

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 115 OF 2018

ALLY SHABANI KILIMA 1ST PLAINTIFF

YACoub MOHAMED KIDULA 2ND PLAINTIFF

VERSUS

JOSEPH SABAYA SEHEME 1ST DEFENDANT

ALEX JOSEPH 2ND DEFENDANT

JUDGMENT

S.M. MAGHIMBI, J:

On the 30th August, 2018, the two plaintiffs herein filed a suit against the defendant jointly and severally for trespass on a piece of land measuring 55 acres with estimated value of TZS 330,000,000/= which they allegedly acquired by way of purchase at diverse dates from 2000 and 2001. . The plaintiffs further claimed the suit land was purchased by the two plaintiffs with the common interest of building school. There is also a claim that sometimes in 2017, the defendants, without any colour of right, wrongfully entered and took possession of the suit property, wrongfully remained in possession thereof and have thereby trespassed and started disturbing and/or interfering the plaintiffs from full enjoyment of the suit land hence denying the plaintiffs the right of enjoyment of the suit land.

The plaintiffs further claimed that as a result of the said interference, the 1st defendant utilized the resources of the suit property without consent by sand quarrying, cutting down trees of the suit land and starting selling the

suit land to the 2nd defendant and other anonymous persons without being authorized by the plaintiffs and wrongfully remained in possession thereof. In their detailed plaint, the plaintiffs prayed for judgment and decree against the defendants jointly and severally as follows:

- a) Declaration that the plaintiffs are lawful owners of the suit land situated at Galagaza, Mwendapole Village Kibaha District.
- b) The defendants yield vacant possession to the plaintiffs the suit land situated at Galagaza, Mwendapole Village Kibaha District
- c) Permanent injunction to restrain the defendants, its servants or agents or otherwise howsoever from remaining on or continuing in occupation of the suit land;
- d) General and punitive damages to be accessed by the court
- e) Costs of the suit
- f) Any other relief the honorable court deemed fit to grant

After several efforts to serve the defendants proved futile, the suit proceeded ex-parte. In order to prove their case, the plaintiffs called 5 witnesses. **PW1** was the first plaintiff while **PW2** was Mohamed Fakihi Mbangwe, the person who sold the land to the first plaintiff. **PW3** was Saidi Omari Kiangi, a person who was a neighbor to the PW2 and **PW4** was Khamis Ramadhani Chanzi the former Village Chairman of Mwendapole from 1977 to 1992 who witnessed the allocation of land to PW2 and **PW5** was the second plaintiff.

Since the matter proceeded ex-parte of the defendants, the plaintiffs remained with a duty to prove how they attained ownership to the suitland. As for the evidence adduced, the suit was originally owned by the PW2 who claimed to have acquired the land measuring 30 acres by allocation when the Village Council was allocating agricultural land to the

people. He applied for the allocation and was granted the land around the year 1991. After the allocation he continued with agricultural activities including paddy farming as there was a pond in the middle of the farm. He lived in the area for around 10 years or less, by then he was a civil servant so when he retired he went back to Lindi.

Seeing that he could not continue with the farming PW2 sold the land to the 1st plaintiff. He recognized the EXP2 as the sale agreement between him and the 1st plaintiff executed in the year 2000. He also identified the boundaries as they were when selling the land which he said to be a road on the east PW3's land, on the north there was Mr. Warioba and on the south there was Fredrick Mwakitale whom he found the land for.

On his part, PW4 testified that in the year 1988 the then DC of Kibaha called meetings with intent to divide the land to people for agricultural purpose and they inspected the land and found that the land was abandoned by the farmers. The abandonment followed the programme of moving people from remote areas to places where the basic need are available, like hospitals and schools and hence the land was allocated to people for agricultural purposes. He confirmed that during the allocation, PW2 was allocated 30 acres of land and one Colonel Mwakitalu was allocated the land of about 25 acres.

This Mwakitalu, according to the evidence, is the person who sold the 25 acres of land part of the disputed land to the 2nd plaintiff forming after being introduced by the 1st plaintiff (PW1). Therefore up to this moment, the undisputed testimonies of PW2's and PW4 sufficiently proved how the PW2 and Mzee Mwakitalu became the owners of the suitland which they later sold to the plaintiffs.

There was also PW3's evidence, he was the neighbor to the previous owner of the disputed land and was also a witness in execution of the EXP2. PW3 on his part supported the evidence by confirming that the land in dispute was owned by two people, there was Mzee Mwakitalu who is now deceased and Mzee Faki Mbangwe (PW2) and that they were allocated the land in the same year 1990. He also confirmed of the sale of the land to the plaintiffs as he was a witness in both EXP2 and EXP5 and that now there is a person who invaded that land and that is why there is this dispute here in court.

On his part, the 1st plaintiff who testified as PW1 adduced evidence on how he bought the suitland from PW2 vide a sale agreement dated 24/12/2000 (EXP2). He further tendered a Valuation Report of a property on farm measured 32 acres at Galagaza Area Kibaha Town Council dated June 2018 as EXP1. According to the PW1, the report was for assessing the current market value for a land located at Kibaha. PW1 also testified that at the said plots, there are agricultural activities going on but he aimed to build a school there and had therefore asked for the Permit from the Village Council to survey the land. He tendered the minutes of a meeting of the Galagaza Village Council dated 24/05/2001 as EXP3.

On the alleged trespass, his testimony was that he came to know of the invasion in 2017 and was confirmed by the Village Council and asked him to report the matter to police and at the police station is where he was directed to go to court hence the case. On the effect of the trespass, PW1 claimed that he could no longer continue with the development of the land by building the school as planned and was also affected psychologically. He incurred costs to prosecute this case and he prayed to be declared the

lawful owner of the said land and the costs of this suit. He further prayed for damages for the time that he wasted to prosecute the case.

On my part, since I had said that the PW2 successfully established his ownership to the land by his evidence and that of PW4, and since there is no denial that the PW2 sold the land to the PW1(1st plaintiff) vide EXP2, and that the minutes of the village approved survey by the 1st plaintiff, then the evidence has successfully established that the land measuring 30 acres is the property of the 1st plaintiff.

As for the 2nd plaintiff, his evidence was supported by that of PW4 whom as I have said earlier was the Chairman of the Village Council at the time of the transaction and confirmed that the PW2 and Mwakitalu (who sold the land to the 2nd plaintiff) were allocated the disputed land. There is also evidence of PW2 who said his neighbor was the same Mwakitalu who sold the land to the 2nd plaintiff. There is also the evidence of PW2 who sold the land to the 1st plaintiff but testified that he was a neighbor to Mwakitalu (who sold the land to the 2nd plaintiff) as they were both allocated the land the same time. The evidence was further corroborated by that of PW3 whom as earlier indicated, was a neighbor to the previous owner of the suitland and also a witness to EXP2 and EXP5

On his part the 2nd plaintiff testified as PW5, his testimony was that he bought the land from Mr. Mwakitalu vide EXP5 which was also evidenced by PW4. He also tendered a Valuation Report for assessing current market value purposes prepared for him in June 2018. He further testified that the trespass begun in 2017 where he found some poles planted in the disputed land.

On the extent of trespass, he testified that there is a "bonde" on the side of the farm where the trespasser has harvested a lot of sand resulting into destruction of environment. That he also could not develop his farm because he could not access the farm and consequently he suffered economically for not being able to develop the farm. That he also suffered some psychological torture because he could not access the farm out of fear of being killed or injured and that when he was buying that land his aim was to build a secondary school which they had agreed with his neighbor, the 1st plaintiff, to build the school jointly in both the farms.

The 2nd plaintiff's (PW5) prayer before the court is first for a declaration that he is the lawful owner of the suit property and further prayed for an order of immediate vacation of the defendants from the property and for compensation from the loss incurred for not being able to access his farm. He also made a prayer for costs.

At this point, as it was for the first plaintiff, since the ownership of the previous owners (both Mr. Mwakitalu and PW2) was well established and confirmed by PW1, PW3 and PW4, and since there is a valid sale agreement EXP5 between the 2nd plaintiff and Mwakitalu which was also witnessed by the PW4, then the evidence adduced is sufficient to prove that the remaining 25 acres of the disputed land belongs to the 2nd plaintiff who purchased the same from Mzee Mwakitalu.

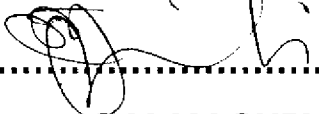
As the ownership as well as the trespass has been well established' both the plaintiffs are hereby declared owners of the disputed land measuring 55 acres in their respective portions as pleaded and proved. Since both plaintiffs prayed for damages for the torture and loss if their intended investment, which I find the evidence to be satisfactory to have

established, I find it just they are compensated by general damages to the tune of Tshs. 10,000,000/- each plaintiff to be paid by the defendants. I further order that the defendants pay the costs of this suit. All in all, this suit is allowed and the following orders are made:

- a) The plaintiffs are hereby declared to be lawful owners of the suit land situated at Galagaza, Mwendapole Village Kibaha District.
- b) The defendants are ordered to immediately yield vacant possession of the suitland to the plaintiffs.
- c) The defendants, their servants or agents or howsoever claims title under them are hereby permanently restrained from interfering with, remaining on or continuing to be in occupation of the suit land.
- d) The defendants shall pay the plaintiffs General damages to the tune of Tshs. 20,000,000/- which shall be split at the rate of Tshs. 10,000,000/- for each of the plaintiffs.
- e) The defendants shall pay the costs of the suit

Dated at Dar es Salaam this 14th day of December, 2020




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S.M MAGHIMBI
JUDGE