

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 290 OF 2016**

**DORIS NARCIS TARIMO ..... PLAINTIFF**

**VERSUS**

**THE CHIEF EXECUTIVE TANZANIA**

**NATIONAL ROAD AGENCY ..... 1<sup>ST</sup> DEFENDANT**

**THE DISTRICT EXECUTIVE**

**DIRECTOR FOR TEMEKE ..... 2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER FOR LANDS ..... 3<sup>RD</sup> DEFENDANT**

**PROPERTY MARKET CONSULT LTD ..... 4<sup>TH</sup> DEFENDANT**

**ZAINABU SINARE ..... 5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT.**

**S.M. MAGHIMBI, J:**

In the year 2010, the defendant, The Tanzania National Roads Agency (herein referred to as TANROADS) embarked on a project of extension of Tarmac Road at Yombo Vituka at Sigara Street (currently known as Magogoni Street). The project also affected the plaintiff's house which is the source of the current dispute whereas the plaintiff claims for inadequate compensation of her demolished properties. In her plaint, the plaintiff prayed for judgment and decree to be entered as hereunder:

1. That the 1<sup>st</sup> defendant to be ordered to re-evaluate to include whole improvement done by the plaintiff.
2. That the 1<sup>st</sup> defendant be ordered to compensate the plaintiff according to the market price.
3. Any other order(s), relief(s) this honorable court may deem fit to grant.

At the conclusion of the pleadings during the final pre-trial confence, it was not disputed that the plaintiff owned a property that fell within the the 1<sup>st</sup> defendant's project. It was further undisputed that the defendant was listed for compensation, compensated and that her properties were demolished in due course of expansion of the road. However, the following issues were found to be in disputed and were hence framed for determination:

1. Whether the plaintiff was adequately compensated after demolition of her property by 1<sup>st</sup> defendant.
2. Whether, if the 1<sup>st</sup> issue is answered in the negative the 3<sup>rd</sup> and 4<sup>th</sup> defendant are liable to pay the plaintiff any sum of money.
3. To what reliefs are the parties entitled to.

In order to prove her case, the plaintiff called 2 witnesses and the defendants had four witnesses. Mr. Jovinson Kagirwa represented the plaintiff while Ms. Narindwa Sekimanga, learned State Attorney represented the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants along with Mr. Peter Sengerema, an advocate with the 1<sup>st</sup> defendant. Ms. Gigi Maajar represented the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

Beginning with the first issue, whether the plaintiff was adequately compensated after demolition of her property by 1<sup>st</sup> defendant. Compensation of land acquired by the Government is governed by Section 11 of the Land Acquisition Act, Cap. 118 R.E 2002 ("The Act"). Section 11(1) of the Act provides:

*(1) Subject to the provisions of this Act, where any land is acquired by the President under section 3, the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation as may be agreed upon or determined in accordance with the provisions of this Act.*

It is undisputed that the compensation was paid as per the requirement of the Act, the only issue in dispute is whether the compensation was adequate. But before I proceed to determine this issue, my attention was caught up and bound by the provisions of Section 13 (1) (a) of the Act, (as amended by Section 57 of Act No. 2 of 2002) which provides:

*(1) Where any land is acquired under this Act and there is a dispute or disagreement relating to any of the following matters—*

*(a) the amount of compensation;*

*and such dispute or disagreement is not settled by the parties concerned within six weeks from the date of the publication of notice that the land is required for a public purpose, the Minister or any person holding or claiming any interest in the land may institute a suit in the Court for the determination of the dispute*

PW1 testified that the land some of which was re-possessioned by the 1<sup>st</sup> defendant for expansion of the road had a house with three bedrooms and a master bedroom. It also had a leisure hut, a shop and car garage. The house was surrounded by two fences, a water well, concrete water tank which carried two water tanks and a wall that was built by nondo with security lights and grills and the other wall which was only bricks and grills. There was also a gate with a canope and a TNG ceiling.

She testified further that what was demolished was the leisure hut, two fences, front shop, part of the car garage, the water well and the concrete tank. She admitted to have been paid for some of the items although it was in small quantity. The items that were listed for compensation included the two fences, the land and loss and profit amount, amounting to Tshs. 9,819,855/=. She was not satisfied with the payments so she wrote a letter to Tanroads informing them that what she was paid was less than the value of what was demolished. Tanroads sent another valuer and PW1 was subsequently paid an amount of Tshs. 2,026,000/- which she was told was the value of some farm produce (mazao) and the well. Further that she is now claiming for compensation for the demolished shop, car garage and the leisure hut. When she was cross examined by Ms. Maajar, the plaintiff did not have any document to support her claim.

On their part, the defence evidence included that of the DW1, the Social Development Specialist at Tanroads, Dar-es-salaam. His testimony was on the procedures in the process of valuation up to payment which he testified that it starts with the identification of the area where the project is taking place. Thereafter they employ surveyors to identify the exact area which

will be taken for a particular project and then employ an engineer in order to specify exact area of the project. After this is completed, a resettlement action plan (RAP) is prepared. DW1 elaborated that the RAP includes sensitization; which aims at internalizing the community within the project area to be familiar with the project that is about to be undertaken; and compensation. That in compensation, a valuer (in this case the 3<sup>rd</sup> defendant) is employed for the purpose of making the valuations. DW1 testified further that in the case at hand, all the procedures were followed. DW1 testified further that EXD1, an introduction letter of the plaintiff from Serikali ya Mtaa wa Sigara dated 03/02/2011 was presented to their offices through which the plaintiff was paid accordingly.

Through EXD2, a table for compensation of residents of Sigara area in Yombo Vituka DW1 testified that the plaintiff was No. 21 in the list and she was paid an amount of Tshs. 9,819,855/- as compensation. That the compensation included a shop, car garage, fence including the wall, water tank and a resting hut. DW1 testified further that there was also land compensated two rooms and that the plaintiff was also paid transportation costs, accommodation and disturbance allowances.

DW1 also adduced evidence that the plaintiff was not satisfied with the compensation paid and to this, she lodged a complaint through the grievance committee established for that purpose. Having heard her grievances, the EXD3, a supplementary compensation table was prepared and the plaintiff was paid a further of Tshs. 2,933,570/-. This money was for water tank and the land where the tank was located plus a coconut

tree, things which were not previously valued. The plaintiff was further paid an inconvenience allowance.

DW2, an accountant at Tanroads, did not have much to say apart from identifying the tables that were used to pay the victims of the project.

DW3 was the Director of valuation with the 3<sup>rd</sup> defendant and her testimony was that in the process of valuation in dispute, they went to each individual's house and met with the owner along with the valuer, the representative from local authority and the representative from the government (Tanrodas). There were identification numbers plucks from each person and after that the valuation report was signed by the owner of the property, the valuer and a member from the local government authorities. She testified further that valuation is then calculated at their offices based in the valuation done at the site. A compensation table was then prepared (EXD2 and EXD3) and was then taken to the Chief Government valuer who reviewed it and approved it by signing it. She elaborated that for the plaintiff, the compensation was on the shop area, garage and leisure hut.

At this juncture, I have assessed the evidence from both sides, as elaborated; the plaintiff's claim is not supported by any document. She did not hence prove or adduce evidence to convince the court she was inadequately paid. In fact, to my surprise, the plaintiff did not tender a single document to support her case. When she was asked about her receipts of payment, she merely replied that they were kept by her late husband and after he died, she could not find them.

I have further noted that in her claimed amount of compensation, the plaintiff also included the shop that was demolished in the process. Her argument was that since the demolition was nine years ago, she could not do any business in that shop. She further claimed for parking fees because she now has to park her car far away and has to pay an amount of Tshs 2000/- per day. However, Section 14 of the Act deals with Assessment of Compensation and there is no provision which allows assessment of the projected income from the properties that were acquired by the Government and already compensated. Hence this claim has no basis.

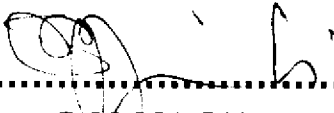
On the other hand, the defence evidence adduced EXD2 and EXD3, the compensation tables and as I have elaborated in the evidence of DW1, the procedure for compensation was followed and even after lodging her grievance, the plaintiff was further paid vide EXD3. The items that were listed for compensation were elaborated and clearly explained to by both the DW1 and DW3. The documentary evidence tendered to support their evidence. At this point therefore, I find the evidence to be sufficient to answer the first issue in the affirmative, that the plaintiff was adequately paid the compensations vide EXD2 and EXD3.

The answer to the first issue automatically settles the second issue which could only call for determination if the first issue was answered in the negative, since the plaintiff was adequately compensated, the 3<sup>rd</sup> and 4<sup>th</sup> defendant are not liable to pay the plaintiff any sum of money.

The third issue is on the reliefs that the parties are entitled to, since the plaintiff could not prove her claim, the suit is bound to be dismissed. In

their Written Statements of Defence, all the defendants prayed for dismissal of the suit with costs. Having made the above findings, I find that the plaintiff has failed to prove her case, the suit is therefore dismissed with costs.

Dated at Dar es Salaam this 24<sup>th</sup> day of April, 2020.

  
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**S.M. MAGHIMBI**  
**JUDGE**