

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

LAND CASE NO. 85 OF 2016

**SAID H. LIPITE.....1ST PLAINTIFF
WILLIAM E. MUSHY.....2ND PLAINTIFF
XAVERY P. KUNAMBI.....3RD PLAINTIFF
ELIMERINA P. KILINDO.....4TH PLAINTIFF
LISTER M. BUNZU.....5TH PLAINTIFF
AND 707 OTHERS**

VERSUS

**THE MINISTRY OF DEFENCE.....1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT**

Date of Order: 17.03.2021
Date of Judgment: 20.08.2021

JUDGMENT

V.L. MAKANI, J

The plaintiffs above have instituted a suit on behalf of 707 others against the defendants. They are praying for the following orders:

- 1. Declaration that the plaintiffs are legal owners of various pieces of land measuring about 5000 acres in total situated at Tondoroni village, the area within Kisarawe District, Pwani Region.*
- 2. Declaration that the 1st defendant is a trespasser.*
- 3. Payment of special damages to the tune of Tsh. 500,000,000/=.*
- 4. Payment of general damages to be assessed by the court.*

5. Permanent injunction restraining the 1st defendant from interfering the plaintiff's occupation on the disputed land.

6. Costs.

7. Any other relief this honourable court may deem fit to grant.

The plaintiffs allege in the plaint that they are the lawful owners of various pieces of land at Tondoroni village Kisarawe area within Pwani Region (the **suit land**). It is further alleged that the plaintiffs cleared the suit land and they developed the land by constructing permanent dwelling houses and engaging in agricultural and livestock activities and that they are still in occupation of the said land. The plaintiffs further allege that the government has never compensated them and therefore their customary titles to the said land have never been revoked by the president. The plaintiffs further state that in October, 2015 the 1st defendant through The People Defence Forces (the **JWTZ**) trespassed in the suit land and demolished their houses and ordered them to vacate their homes. The plaintiffs state the JWTZ have already demolished about 100 houses without lawful order and the plaintiffs have suffered damages on account of the demolished houses.

The defendants in their amended Written Statement of Defence, disputed the plaintiffs' claim and alleged that there is no village legally known as Tondoroni as the said village was deregistered by virtue of Government Notice No. 301 of 22/08/2014. They further alleged that the suit land belongs to battalion 89 KJ of JWTZ. They prayed for the suit to be dismissed with costs.

The plaintiffs were represented by Mr. Edward Chuwa and Anna Lugendo, Advocates; and the defendants were represented by Mr. Hosea, Mr. Rashid and Mr. Mtae, State Attorneys. The plaintiffs' side had 16 witnesses some of whom testified orally and others by way of affidavit. On their part the defendants had 4 witnesses.

The following issues were framed for determination as follows:

- a) Whether Tondoroni village was de-registered under the law.*
- b) Who is the rightful owner of the suit land.*
- c) To what reliefs are the parties entitled to.*

Said Hemed Lipite testified as **PW1**. He said he was in Tondoroni village since 1974 during Nguvu Kazi operation. At the village they were doing agricultural activities. He said the village was registered

in 1993 and a Certificate to that effect was issued (**Exhibit P1**). He said he was deputy chairman of the village and after the registration by TAMISEMI they proceed with development activities. **PW1** said many people were applying to join to the village including officers from the Army (83 KJ JWTZ) (**Exhibit P2**). He said they are in court because Army Officers from KJ 83 JWTZ are beating villagers so that they vacate. He said they came to the village in 1986 and they asked to expand for purposes of doing exercises and they consulted the Village Council. The citizens refused but the Chairman convinced them and a valuation was conducted but no compensation was paid. He said in 1990 the Regional Administrative Secretary (*Katibu Tawala wa Mkoa*) ordered compensation within 90 days but this has not be done to date (**Exhibit P3**). He said in 1993 the Land Ministry ordered valuation and compensation to the citizens within three months (**Exhibit P4**). **PW1** lamented that despite these letters no compensation has been paid to them. He said they wrote several letters to the authorities to complain about the invasion to their land (**Exhibit P5** collectively). He said Tondoroni village is still existing and there is no letter suggesting that it has been erased from the Register as alleged by the defendants. He said there are activities continuing in the village as can be evidenced by various

communication (Letters) from the authorities (**TAMISEMI**) and development partners (**PLAN International**) the District Council Kisarawe and also from the Commanding Officer of 83 KJ (the letters are **Exhibit P6** collectively). **PW1** said he owns 16 acres which he cleared the forest. He said his land is adjacent to that of Bakari Tumba (North), River Kapinga (West) Mtupange (South) and in the East there is a road. He said he used to cultivate the farm for food crops, and he built a house but it was demolished 5 times. He said he has undergone economic loss children have not gone to school and he has nothing to show in life to sustain himself. He prayed for the court to declare that Tondoroni village has not been de-registered and that it still exists under the law and that the villagers of Tondoroni are lawful owners of the village land. The defendant should be restrained from entering and doing anything in Tondoroni village. He further prayed for the court to declare him the owner of the 16 acres of land in Tondoroni village and damages from the defendant from barring him from doing any development in his land and destroying his land.

In cross-examination **PW1** said he did not have any document to prove that he owns 16 acres of land at Tondoroni village and he

insisted that they have no information that their village was de-registered as they were not given any notice.

PW2 was Lister Mussa Bunzo. He said that he came to the village for agriculture in 1974 and he was given a bush to clear so that he could clear and live. He said the villagers had constructed schools, mosques and in 1993 the village was registered. He said more people joined the village and they were being allocate land. He said in 1986 JWTZ requested to do military exercises in their land and they would compensate them but they have not been compensated todate. He said the Military Camp is outside their village it is in Kiluvya B. He said he owns 24 acres of land and he borders a road to Kisarawe (West), farm of the late Ramadhani Dudu (north), Abdallah Mandai (East) and Ali Shomari Shomvi (South). He said he has been a CCM leader since 1976 and he is not aware that there was valuation conducted in the suit land.

Elimirina P. Kirinodi was **PW3**. She said she migrated to Tondoroni village in 1972. She said she owns 15 acres of land and that the village was registered in 1993. She said her land borders that of Abdalla Mbogo (East), Mathias Tisioan Mboweto (North), Nassoro Mbogo

(West) and Salum Makuka (South). She said the 1st defendant demolished her house and she lost her animals and crops. She too did not have documents to show that she owned 15 acres of land in the village.

PW4 was Xavery Pius Kunambi. He said he came to Tondoroni village in 1991 from Matombo Morogoro. He also said that the village was registered in 1993 and he owns about 8 acres. On cross-examination he said the 1st defendant trespassed in the suit land in 2015 where they found people living in the area. He insisted that the village was not de-registered, and that the 1st defendant is in Kiluvya B outside Tondoroni village and therefore they are neighbours.

The other witnesses were PW5 to PW17. They all testified by affidavit filed in this court by order of the court of 22/08/2017. Their affidavits were similar save for the acreage of land and the value of the loss and the time they came to the suit land

Mwanaisha Bakari Matauna (**PW5**) said she owned 9 acres of land at Tondoroni Village having cleared the bush in 1978. 1st defendant

trespassed into her land in 2015 and demolished her house worth 5,000,000/=

PW6 was Mwanahawa Ismail Kwadu. She cleared the bush at 1982 even before the registration of the land in 1993. She had $\frac{3}{4}$ acres of land and her land was trespassed in 2015 by the officers of the 1st defendant. She suffered loss of about TZS 2,000,000/=.

PW7 was Athuman Issa Chillo. In his affidavit he said he owns 4 acres of land and he cleared the bush in Tondoroni in 1971. He said he built a two bedroom house and engaged in agriculture. He said the 1st defendant trespassed into his land in October, 2015 where his house was demolished and crops uprooted and he suffered loss of expected earnings of about TZS 20,000,000/= from commercial crops such as cashew nuts. He said on cross-examination that he knows well the Tondoroni areas as he has been there since 1971.

PW8 Mwajuma Kamba said she had 7 acres of land in Tondoroni village. She said she lost her wooden cabin worth of TZS 500,000= and suffered loss of worth of TZS 2,000,000/= expected profit to be

earned in her agricultural produce. On cross-examination she said their land is demarcated by a river.

Hussein Isamil Mataula was **PW9**, and he testified to own 25 acres of unsurveyed land at Tondoroni village and he cleared the bush in 1972. He said he had built a 4 bedroomed house worth TZS 5,500,000/= and he engaged in agriculture where he cultivated cashewnuts and other commercial produce. He said his house was demolished by the 1st defendant's officers in October, 2015. On cross-examination PW8 said the 1st defendant's camp is located in Kiluvya "B" while the Tondoroni village is in Kiluvya "A".

PW10 Beatus Mathias Mboweto said he owns 6 acres of land in Tondoroni village which he acquired in 1988 by clearing the bush. He said his neighbours were Camilius Tisian Mboweto in the West. He said he had a wooden cabin which was demolished in October, 2015 by officers of the 1st defendant. He said when he moved to Tondoroni village the 1st defendant camp was not there. He said he suffered damages of TZS 1,000,000/= being loss of profit which could have been earned from agriculture had it not been for the trespass.

Sadiki Mussa Njeweje was **PW11**. In his affidavit he testified that he owns 15 acres of land in Tondoroni where he has been since 1974. He said his land borders that of Mrs. Iddi in the south, a road in the East and West and Hamadi Mfaume in the North. He said he suffered loss of from the trespass by officers of the 1st defendant in October, 2015 of TZS 5,000,000/=. On cross-examination he said the 1st defendant's camp is in Kiluvya B and the camp was set up after they had arrived in Tondoroni village.

PW12 was Rajabu Zangira and he testified to own 12 acres which he acquired in 1981. He said Tondoroni village borders the camp of the 1st defendant known as 83 KJ and it is separate from the land of the village. He said there was a Primary School which was demolished together with his house worth TZS 1,500,000/= and his crops worth TZS 1,000,000/= were destroyed by officers of the 1st defendant in October, 2015. He said he also suffered loss of TZS 2,000,000/= being expected income on commercial crops. On cross-examination he said his crops were planted in 1981 hence by the time they were destroyed in 2015 they were more than 34 years. He said the village of Tondoroni is still in existence and in 2015 they was a polling station

at the village and so the government knew of the existence of the village.

PW13 was Ramadhani Hussein Kiwewe, he said he owned 18 acres of land at Tondoroni village since 1991. He said he built a house which was demolished by the officers of the 1st defendant in October, 2015. On cross-examination he said that the 1st defendant is located at Kiluvya "B" far away from Tondoroni village.

PW14 was Asha Mohamed Msiga who said she had been in the village since 1988 and the village was later registered in 1993. She said officers of the 1st defendant trespassed in her land in October, 2015 and she suffered loss of TZS 5,000,000/= as her house was demolished and crops were destroyed. On cross-examination she confirmed that her land bordered that of Aziza Ally (East), Abdallah Mwera (West), Binti Bushiri (North) and Said Kitumbi (South).

PW15 was Hassan Ally who testified to own 5 acres of land in Tondoroni village and he had built two bedroomed house worth TZS 500,000/=. He said his house was demolished by officers of the 1st defendant in October, 2015 and he suffered loss of about TZS

2,000,000/= as his house was demolished and on expected earnings from commercial crops that was on his land. On cross-examination he said the village had never been de-registered.

Kassim Shabani Chewe was **PW16**. He testified that he owns 17 acres of land in Tondoroni village since 1985. He said he had a brick house worth TZS 55,000,000/= which was demolished by the officers of the 1st defendant. He said he had permanent crops such as cashewnuts, mangoes and they were all destroyed. His children were going to school at Tondoroni Primary School but were later transferred to Kiluvya "A" Primary School. He tendered a letter of transfer of daughter Mwanaisha Kassim (**Exhibit P7**). He said the importance of the said exhibit is to prove that there was a school, and the plaintiffs were in occupation of the suit land and so the claim by the 1st defendant is unfounded.

PW17 Rahim Hussein Mbegu testified that he owns 6 acres of land at Tondoroni after being allocated the land by the Village Authority in 2002 (**Exhibit P8**). He said he built a 2-bedroom house which was worth TZS 2,000,000/= and was demolished by officers of the 1st defendant in October, 2015.

The defendants called 4 witnesses namely Samwel Gasore (**DW1**) who is a retired officer of JWTZ but now a pastor, Jumanne Samson Mwampashi (**DW2**) Land Officer of Kisarawe District Council and Shani Njozi (**DW3**) the Municipal Solicitor of Kisarawe Municipal Council and Antony Ngwada (**DW4**) a soldier, a relationship officer of 83KJ

DW1 told the court that he had a duty while he was the Warrant Officer II of JWTZ to take care of the boundaries of the Camp which had about 4,197 hectares. He said the dispute of the land is a long time dispute after citizens ("wananchi") were duly compensated. He said the amount payable was about 39 Million for Tondoroni, Mloganzila and Kiluvya B. He said there was a need for the camp to expand that is 83 KJ and so a valuation was done in 1972 and again in 1993. He said the amount payable was for the villages of Tondoroni (the whole village), part of Mloganzila and Kiluvya B. There was a review of the compensation and in 1999 payment to wananchi was assessed to TZS 762,044,696. He said 6 years lapsed without payment and 144 wananchi filed a case in the High Court and TZS 50,000,000/= was paid in instalments of TZS of 20,000,000/= and

TZS 30,000,000/= in 1998. He said the Government in 2002 gave a total of 712,000,000/= to the District Commissioner Kisarawe for a further compensation and wananchi were accordingly paid including the Said Lipite, Chande Nyamtera and Awadhi Mayopa and after payment wananchi were given notice to vacate. He said whoever was in the area at the time of the valuation was paid and the ones claiming in this case are strangers. He said to his understanding Tondoroni Village was de-registered in 2014 after acquisition and payment of the compensation according to the valuation. He prayed for the suit to be dismissed and the suit land be declared as belonging to 83 KJ and the wanachi to vacate and the army to proceed with training and other duties. On cross-examination **DW1** admitted that he had not seen notice of acquiring land as required by the law. He insisted that whoever is claiming now is a stranger because if he had been in the area at the time of the assessment then he would have been paid.

In his testimony **DW2** Land Officer of Kisarawe District Council said that 83 KJ is at Tondoroni since 1988 and after payment of compensation to about 1,479 wananchi JWTZ started to develop the area. The area is about 4,197 and there are coordinates which shows that JWTZ are owners of the suit land. He said in 83 KJ is in Kiluvya

Ward. Mlongazila Hospital is in the East, in the South there is Pugu forest/Central Railway, in the West there is Kiluvya A, in the North Kiluvya B villages and in the North/East there is Mloganzila village. He said Tondoroni villagers were all compensated and thereafter the village was de-registered by Government Notice of 301/2014 (**Exhibit D1**). He said all the social services were removed after the compensation and every person who was compensated signed according to the assessment. In cross-examination **DW2** said according to **Exhibit P1** the village of Tondoroni was registered in 1993 but was de-registered in 2014. He said the process for compensation started in 1988 to 1999. He said administratively, the village of Tondoroni no longer exists.

DW3 is the lawyer of Kisarawe District Council. She said the village of Tondoroni was registered in 1993 but it was discovered that it was wrongly registered because it was within the boundaries of JWTZ. She said the village was de-registered in 2004 and there was a Government Notice to that effect in 2014. **DW3** said the 1st plaintiff Said Lipite wrote to TAMISEMI asking about the village of Tondoroni particularly about social services. TAMISEMI responded vide a letter (**Exhibit D2**) copied to the Executive Director of Kisarawe District

that the village was de-registered. There was also a Notice to the villagers of Mloganzila, Tondoroni and Kiluvya B that they should not pass within JWTZ area as there were military exercises a fact which was also reflected in **Exhibit D2**. In cross examination **DW3** said the individual villagers upon de-registration had to be compensated and they were compensated. She insisted on re-examination that **Exhibit D2** was information that Tondoroni Village was de-registered vide GN No. 301 of 2014.

DW4 as a relationship officer of 83 KJ testified that he was responsible for the security of the people and the boundaries of the regiment. He said he became aware of the dispute during handover as he was transferred to 83KJ in 05/05/2020. He said the dispute was by Saidi Lipite and others being removed from the area of the army and they also disputed the compensation given. He said the village was registered in 1993 and de-registered in 2002 vide GN No. 301 of 2014. He said the area of 83 KJ is about 4,071 and the area was surveyed in 1978 and in 1980 JKT were assigned the area and in 1982 83KJ moved in the area. He said JKT were in the area for building infrastructure. In 1984 there was a survey by Interconsult and 1993 the village was registered when 83KJ was already in the area.

DW2 was recalled and he tendered the book/register which showed the compensation to wananchi (**Exhibit D3**). He said the wananchi were paid for their crops. He cited an example of the 1st plaintiff who was compensated and listed as No. 266/274 and was compensated and he signed for TZS 181,626/=. He said that valuation was before the land law was amended so the value of land was not considered but crops only. He explained further that compensation was under the Act No. 47/1967 though the money was paid out in 2004.

The parties through their Counsel filed their final submissions. Mr. Edward Chuwa for the plaintiffs after narrating the evidence observed that the first issue whether Tondoroni village was lawfully de-registered is problematic because it does not assist the parties and the court in determining the real issue in controversy which is the second issue as to who is the rightful owner of the suit land. He said registration or de-registration of the village does not determine the land rights of the occupiers/citizens as it is purely a political administration. He said the village was registered under the Registrar of Villages Act No. 7 of 1982 in 1993 and a Certificate of Registration (**Exhibit P1**) was issued. He said the de-registration of the village

has not been proved as **Exhibit D1** The Government Notice No. 301 of 22/08/2014 is not a Government Notice as the Registration No. ISSN 856-0323 has not been registered in the post office. He said **Exhibit D1** is not a gazette but it is a document from the Prime Minister's Office whose authenticity is doubted. He said the said document appears to have been prepared in Dodoma being the offices of TAMISEMI while in 2014 the Prime Minister's offices were still in Dar es Salaam. He further pointed out that even if the village was de-registered this does not extinguish the rights of the plaintiffs over their respective lands. He said Kisarawe Municipal Council recognises the rights of the plaintiffs and that they have never been compensated as per **Exhibit P6**. He said in the Written Statement of Defence, the defendants alleged that Tondoroni village was de-registered in 2002 but still in 2010 Kisarawe Municipal Council vide their letter **Exhibit P6** recognised the rights of the Tondoroni people. He relied on the case of **Suzana Kakubukubu & 2 Others vs. Walwa Joseph Kasabi & the Municipal Director of Mwanza [1988] TLR 119** that a deemed right of occupancy held by virtue of native law and customs is not extinguished upon an area being declared to be a planning area. He also relied on the case of **Methusela Paul Nyagaswa s. Mbote Nyirabu (1985) TLR 103**.

He further went on to say even if the village was de-registered then the provisions of the Land Acquisition Act, 1967 ought to be followed in acquiring land belonging to the Village Council.

As for the second issue Mr. Chuwa said the plaintiffs have proved to the court that they own various pieces of land in Tondoroni area. He said **DW1, DW2, DW3** and **DW4** pointed out that the government allocated the land to the 1st defendant to regiment described as 83KJ of JWTZ and they were paid compensation according to **Exhibit D3**. However, he said the question is whether Tondoroni area to which the plaintiffs claim to be owners have been legally acquired. He said according to section 4(2) and 6 of the Land Acquisition Act, notice of acquisition by the president must be issued. But for Tondoroni people no such notice was ever given. He said **DW1** testified that the land was acquired in 1988 and 1999 and that **Exhibit D3** is the notice but it is not notice or at all. He relied on the case of **Mulbadaw Village Council & 67 Others vs National Agricultural & Food Corporation (1984) TLR 15**. He said the procedures were not followed and if at all the government wanted to acquire the said land for public purpose it would have invoked legal procedures of which the plaintiffs would have been paid accordingly. He said **DW3** failed

to tell the court the names of those plaintiffs who were paid and again those who were not paid, and this draws an adverse inference against the defendants that the list brought to court worked against them. Mr. Chuwa submitted that through documentary evidence the Ministry of Lands mention the Land Acquisition Act and the Kisarawe Municipal Council are not aware that the plaintiff' land has been acquired and compensation paid but it is only **DW2** and **DW3** who seem to have this knowledge. He said the testimony of **DW2** must be discredited because it had a lot of inconsistencies and self-contradictions. He said this proved that there had never been land acquisition, valuation or compensation to the plaintiffs or any landowners of Tondoroni village. He thus concluded that the 1st defendant is a trespasser, and the plaintiffs are entitled to the reliefs so prayed in the plaint with costs.

The final submissions on behalf of the defendants was by Mr. Charles Mtae, State Attorney. As for the first issue whether Tondoroni Village was de-registered under the law, Mr. Mtae said the defendants maintain that Tondoroni village was de-registered in 2002 by virtue of the Government Notice No. 301 of 22/08/2014 and that there is no village legally known by the name of Tondoroni Village. He said **Exhibit D1** cemented this position in collaboration with the testimony

of **DW1** and **DW2** and **Exhibit D2** which is a letter from TAMISEMI to **PW1**. He went on to say that **Exhibit D2** does not only say the village does not exist but also its leadership. He further submitted that villages are under TAMISEMI and if at all Tondoroni village was not de-registered then this suit would have been brought by Tondoroni Village Council and not individuals who claim to be villagers.

As for the second issue, who is the rightful owner of the suit land, Mr. Mtae pointed out that in the case of **National Agricultural & Food Corporation vs. Mulbadaw Village Council & Others [1985] TLR 88** there were numerous villagers who did not testify like in the instant matter. The court held that for those villagers who did not testify then their claims had to fail. He said though in 16/03/2016 the 1st, 2nd, 3rd, 4th and 5th plaintiffs were granted leave to sue in a representative capacity on behalf of 707 plaintiffs, but his understanding was that such capacity did not extend to giving testimony on behalf of others. He also relied on the cases of **Haruna Mgangaos & 932 vs. Tanzania Portland Cement Co. Limited, Civil Appeal No. 129 of 2008** and **Peter Peter Juniour & 17 Others vs. Mohamed Akibal & Chairman Kifungamao Village,**

Land Case No. 104 of 2015 (HC-Land Division) (both unreported). He thus said the claims by all the plaintiffs who did not testify should be dismissed.

Mr. Mtae said **Exhibit D2** shows that sometimes in September 1993 Tondoroni Village was registered with Certificate No. PW/KIJ/539. However, according to the letter it was mistakenly registered inside the boundaries of JWTZ, and it warranted de-registration through GN 301 of 2014 a fact which was cemented by **DW4** who testified that JWTZ had 4071 Hectares and stated the boundaries. He said the testimony of **DW1**, **DW3** and **DW4** confirmed that the village was inside the JWTZ area.

Mr. Mtae also observed that there are facts which the court takes judicial notice which does not need to be proven and Government Notices are among the documents which the court can take its judicial notice pursuant to section 58 and 59(b) of the Evidence Act CAP 6 RE 2019. He said GN 301 of 2014 is a bundle of documents which contains administrative areas of the districts for the whole country (*Maeneo ya Utawala katika Mamlaka za Mitaa (Mamlaka za Wilaya)*), therefore, it was impossible to produce the whole bundle in court. He

said **Exhibit D1** is therefore an extract (Volume IV) of the said Government Notice and in that premise, he said the exhibits tendered maintain that Tondoroni Village was de-registered and is not among the village under the authority of Kisarawe District Council. Mr. Mtae went on to say that **DW1, DW2** and **DW3** said in their testimony that after de-registration of Tondoroni village the villagers like **PW1** were compensated as per **Exhibit D3** (*Malipo ya fidia ya kikosi cha 83 Kiluvya*) Tondoroni and at the same time given alternative areas such as Makurunge, Kiluvya A and Visegese. He said anyone claiming after the compensation is a trespasser and further that a rational mind claiming as an original villager and his name does not appear in **Exhibit D3** then he has room to refer the issues to Kisarawe District Council for administrative remedies.

Mr. Mtae also pointed out that none of the plaintiffs properly described his own suit land properly as required in the case of **Daniel Dagala Kanuda (as administrator of the Estate of the Late Mbalu Kushaba Buuda vs. Masaka Ibeho, Sita Luchas Elisha Lucas, Cheyo Sita Njegelo & Maduhu Mughogote, Land Appeal No. 26 of 2015 (HC-Tabora)** and **Registered Trustees of Msjid Jumuiyatil Islamia Ubungo Kinofoni vs. Halima A.**

Kebe & Omari Sulieman Magingo, Land Case No. 114 of 2019 (HC-Land Division) (both unreported). He said failing to describe the alleged pieces of land was not only during the hearing but even in paragraph 5 and 6 of the plaint. He said since the plaintiffs have failed to properly describe their land the court order that will be made in respect of the land will be uncertain and not executable. He said according to the **Local Government (District Authorities) Act, CAP 287 RE 2002** it is the Village Council that ought to have instituted this suit and not mere villagers who do not have documents of ownership of the land. He concluded that as for ownership of the suit land the plaintiffs have failed to prove that they own pieces or parcels of land in Tondoroni village.

As to the reliefs prayed, Mr. Mtae said as for items (i) (ii) and (v) the plaintiffs failed to prove that they are entitled to the prayed reliefs. And as for special damages as prayed in item (iii), Mr. Mtae said the plaintiff failed to prove specifically and strictly the same as laid down in the case of **Bolag vs. Hutchson 1950 AC 515** and **Zuberi Augustino vs. Anicet Mugabe [1992] TLR 137**. Mr. Mtae also said the pecuniary jurisdiction of the court is mixed up because the plaintiffs stated the value of land is more than TZS 50,000,000/= as

the claim was TZS 500,000,000/= and therefore the court has jurisdiction. But in essence there was no proof to such an amount and it was fixed to cloth the court with the said jurisdiction which according to Mr. Mtae was not proper. He said the suit lacks merit as the plaintiffs failed to prove what they alleged in their plaint according to section 110 of the Evidence Act, and so they are not entitled to any relief. He prayed for the suit to be dismissed with costs.

Before the writing of the judgment the court found it necessary to visit the site. It was observed that the boundaries of the suit land as was explained by **DW2** in his testimony that the eastern side Muhimbili University of Health and Allied Science (**MUHAS**) (Mloganzila), on the West-River Kiluvya, South-Morogoro Road and North Pugu Forest and Railway. It was observed that there were scanty dwellings most of the defendants were not in the suit land. There was also a proof that indeed sometime back there were social activities within the area like schools and mosques which were demolished after the de-registration of the village. PW1 said the demolition was caused by the 1st defendant.

It is trite law that whoever desires a court to give judgment in his/her favour; he/she must prove that those facts exist. This is under the sections 110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2019. These provisions place the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain. In the case of **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004** (unreported) the Court of Appeal held that:

“.....it is an elementary principle that he who alleges is the one responsible to prove his allegations”

Also, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) where it was further held that the party with legal burden also bears the evidential burden on the balance of probabilities.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the plaintiffs being the ones who alleged that the 1st defendant invaded the suit land and they are entitled to the reliefs prayed for. What this court is to decide

upon is whether the burden of proof has been sufficiently discharged by the plaintiffs.

I shall determine the issues according to the manner they were framed. Mr. Chuwa wanted this court not to consider the first issue, but I find it pertinent to do so as basically the evidence before the court is hinged on the said issue and further in his submissions Mr. Chuwa also leaned on the registration and de-registration of Tondoroni village.

There is no dispute that the village of Tondoroni was registered in 1993. The only dispute between the parties is that while the plaintiffs claim that the village is registered and still in existence, the defendants are claiming that the said village was de-registered in 2002 and this was gazetted in 2014. The defendants presented **Exhibit D1** which was the gazette that de-registered the village. The plaintiffs on their side claim that the village is still in existence and it has not been de-registered as alleged, and **PW1** is still the Chairman of the Village Council. The only proof by the plaintiffs that the village was still registered were the exhibits tendered in support of their case in particular **Exhibits P1, P3, P5, P6** and **P9**. However, the exhibits

mostly letters by the Chairma (**PW1**) and specifically (**Exhibit P6**) the letter to the Director of Kisarawe District dated 01/10/2015 which required the said Director to confirm in writing whether Tondoroni village was still registered. On 26/10/2016 the said letter was responded to by TAMISEMI who are tasked with the management of the villages in the country (**Exhibit D2**) stating categorically that Tondoroni Village was mistakenly registered within the boundaries of JWTZ therefore the said village was accordingly de-registered. **Exhibit D2** went on stating that the village was de-registered in 2002 and was gazetted through GN 301 of 2014. Mr. Chuwa in the final submissions argued this court not to take into consideration **Exhibit D1** because the said GN 301/2014 did not exist. However, **Exhibit D1** was admitted in evidence and the court took judicial notice of its existence and that is why Mr. Chuwa had an opportunity to cross-examine the witness on this document. As stated by Mr. Mtae, **Exhibit D1** is and extract in GN. 301 of 2014 as it is a big bundle of document. Mr. Chuwa's argument that **Exhibit D1** is not genuine and does not exist has no merit. The said **Exhibit D1** and **Exhibit D2** corroborated with the testimony of **DW1, DW2 DW3** and **DW4** is evidence that Tondoroni Village was de-registered, and the said evidence was not shaken to the contrary.

Mr. Chuwa pointed out that there was improper acquisition of land as per the Land Acquisition Act CAP 118 RE 2019. However, by virtue of **Exhibit D1** and **D2** there was no acquisition as JWTZ were already within the area before the registration of the village. Part of **Exhibit D2** states:

"Baada ya kufanya ufuatiliaji na uchambuzi wa nyaraka mbalimbali kuhusu suala hili, Ofisi ya Rais – TAMISEMI ambayo ndiyo yenye dhamana na Usajili wa Vijiji imabaini kwamba Kijiji cha Tondoloni kilianzishwa tarehe 14/09/1993 na kupatiwa Cheti Na. PW/KIJ/539. Baada ya kuanzishwa Kijiji hicho ilibainika kwamba kiko ndani ya eneo la Jeshi la Wananchi wa Tanzania (JWTZ) ambalo lilikuwapo hata kabla ya Kijiji hicho kuanzishwa".

The Land Acquisition Act is an Act to provide for the compulsory acquisition of lands for public purposes and in connection with housing schemes. But in the present case and according to **Exhibit D2** there was no acquisition of land for public use instead Tondoroni village was mistakenly registered within the boundaries of JWTZ and TAMISEMI who governs villages had to rectify the mistake by de-registering the said Tondoroni village. In that regard the argument that there was no proper notice for purposes of acquisition cannot hold water.

Saidi Lipite (**PW1**) claimed in his testimony that the village still existed, but he did not tell the court where he and the other plaintiffs got the authority to claim the land on behalf of the village. As correctly submitted by Mr. Mtae if they were claiming interests of the village then the Village Council would have been the proper party mandated to institute the suit having had authorisation from the Village General Assembly (see the **Local Government (District Authorities) Act, CAP 287 RE 2002**). **PW1** who was adamant that the village was still in existence, and he was still Chairman, could not bring evidence of the status of the village, such as the list of the current leaders and where the village government was operating from and the reporting authority. Even during the site visit **PW1** could not show the location of their office or his home. In that regard and considering the evidence on record, the balance lies in favour of the defendants that indeed the village is no longer in existence and it was de-registered in 2002 and the de-registration was gazetted vide GN. 301 of 2014.

The second issue is who is the rightful owner of the suit land. The suit land as stated hereinabove is 4701 hectares which according to the plaintiffs belonged to Tondoroni Village. As established hereinabove, the said village was de-registered and therefore it does

not exist. In other words, any claims for land within the suit land, which as established is under the governorship of JWTZ cannot stand.

Without prejudice to what have been stated above, according to the testimony of **DW1**, **DW2** and **DW3**, after de-registration of Tondoroni village the villagers like **PW1**, were compensated as per **Exhibit D3** (*Malipo ya fidia ya kikosi cha 83 Kiluvya - Tondoroni*) they were at the same time given alternative areas for occupation such as Makurunge, Kiluvya A and Visegese even the school and students at Tondoroni were transferred to Kiluvya A (**Exhibit P7**). In that respect and as pointed out by Mr. Mtae, and correctly in my view, anyone claiming after the compensation was paid, is a trespasser and if a person is claiming as an original villager and his name does not appear in **Exhibit D3**, then his issue can be resolved administratively by Kisarawe District Council.

In any case, ownership of land is a very sensitive issue. It was expected that the plaintiffs including their Chairman **PW1** would have documents pertaining to ownership of the suit land. Indeed, as argued by Mr. Chuwa the occupation of the land by the plaintiffs is customary, but since there was a Village Council which according to

PW1 was very active, then the villagers ought to have documents of individual ownership or if not, then the Village Council would have had at least a list of their villagers who are residents in the village for identification purposes when it comes to ownership of the land. As it is now anyone can claim to be a villager which in my view is not proper and would result to springing of claims from everywhere.

Another thing is the description of the land by the plaintiffs. The land was not properly described. The description in paragraph 5 and 6 of the plaint is not sufficient. And equally in the testimony by the plaintiffs they only mentioned the neighbours to the East West, South and North. Others mentioned the boundaries of the village instead of their pieces of land especially during cross-examination. When the court visited the site, the plaintiffs who were available at the site could not clearly point out boundaries of individual pieces of land. Proper description of the suit land enables proper award of rights to a party and also easy execution. It is common knowledge that the rationale behind proper description of land in dispute is to inform the court of the identity of the sit land as against all the other pieces of land surrounding it. In the present case, the plaintiffs said they were villagers with pieces of land in Tondoroni village. But the village is big

(4701 hectares) and mere mentioning of the neighbours without stating the specific location of their land in Tondoroni village cannot be sufficient for the court to determine ownership of individual pieces of land as claimed. In the case of **Daniel Dagala Kanuda** (supra) the court stated:

"....The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it."

It is apparent that the basic claim, as said, leaned on the village land as opposed to individual land. That is why many witnesses when describing their land fell into describing the village boundaries instead. In the absence of proper description it is difficult for the court to embark to determine ownership of various pieces of land all over the suit land. According to Order VII Rule 3 of the Civil Procedure Code CAP 33 RE 2019, the description of the property is mandatory for proper identification. So, in the absence of proper identification and description of the suit land, the court cannot safely state that the plaintiffs are lawful owners of the claimed pieces of land in Tondoroni

village which they themselves could not properly describe. In essence, the plaintiffs have failed to prove that they are lawful owners of the suit land.

The plaintiffs also claimed special and general damages. The particulars of the damages were pleaded in paragraph 1 which stated as follows:

"PARTICULARS OF DAMAGES

Special damages

(a) Cost of demolished houses – Tshs.
500,000,000/=.

General damages

The plaintiffs have suffered damages to be assessed by the court."

According to **Black's Law Dictionary**, 8th edition at p. 419 "special

damages" is defined as:

"Damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved."

"General damages" are also defined in the dictionary at p. 417 as:

"Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed."

In Masolele General Agencies vs. African Inland Church

Tanzania [1994] TLR 192, the Court of Appeal of Tanzania, held:

"Once a claim for a specific item is made that claim must be strictly proved, else there would be no difference between a specific claim and a general one..."

In the case of **Cooper Motor Corporation Limited vs. Moshi Arusha Occupational Health Services [1990] TLR 96**, the Court of Appeal of Tanzania held:

"General damages need not be specifically pleaded; they may be asked for by a mere statement or prayer or claim."

According to the evidence on record it is clear that the plaintiffs were not led to prove the said special damages as claimed. The plaintiffs merely stated in their testimonies orally and by affidavits that they lost crops and houses were demolished but did not explain how they arrived at the claimed amount. As a result, and in consequences of the forgoing, I hold that the Plaintiffs have failed to prove to the requisite standards that they suffered any special damages as such are not entitled to the special damages claimed.

The plaintiffs also claimed general damages to be awarded by the court. The court discretionarily awards general damages after taking into consideration all relevant factors of the case. In the present instance, as stated hereinabove, it is apparent that the plaintiffs are not owners of the suit land and even if they were they were

compensated their injury/loss. Thus, I do not find it necessary to award any damages to the plaintiffs and I hold as such.

The final issue is to what reliefs are the parties entitled to? For the reasons I have endeavoured to address, the plaintiffs have failed to prove the case to the standards required. Accordingly, the plaintiffs are not entitled to the reliefs prayed in the plaint or at all. Subsequently, the suit is without merit and it is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
20/08/2021

