

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO.15 OF 2018**

FARM AFRICA AGROFOCUS (T) LIMITED PLAINTIFF

VERSUS

- 1. JOHN KAIGE & 71 OTHERS**
- 2. MOHAMED MPANGE**
- 3. ROBERT MWAIMU**
- 4. MOSES MOHAMED**
- 5. STANLEY YOLAM**
- 6. ABEL ADONIAS**
- 7. KHADIJA HAMAD**
- 8. GERVAS LIGOMBAS**
- 9. JOYCE YONA**
- 10. VERONICA MAPUNDA**
- 11. KATLAS ELIAS**
- 12. MZEE KABOMBWE**
- 13. VICTORIA MGABE**
- 14. NASHONI MAKUNDI**
- 15. AMAN SHABAN**
- 16. HABIBU KAHAPA**
- 17. MAGE ADONIAS**
- 18. KIBWANA MAGETA**
- 19. SIGA MARUNDA**
- 20. PILIMA MAPUNDA**
- 21. SALUM JOSHUA**
- 22. SHANI MASUFURIA**

..... DEFENDANTS

23. **KANYENYE STEVEN**
24. **MUSSA LAZARO**
25. **BENJAMIN HUSSEIN**
26. **PRISCA NYAMIRA**
27. **KASSIM MATIKO**
28. **MOTORI MUHA**
29. **KITAMBI WILSON**
30. **MASEBO BAKARI**
31. **DAUDI ELIAS**
32. **BAKARI SAIMON**
33. **TOBIAS MALONGO**
34. **CHARLES MPUTU**
35. **BONI BONI**
36. **SAID ABDALLAH**
37. **KHADIJA KASSIM**
38. **MARIAM AYUBU**
39. **ADAM HAMAD**
40. **FRANK MOSES**
41. **PATRIC ANTONY**
42. **MZEE HUSSEIN MOHAMED**
43. **MOHAMED MPANGE**
44. **ROBERT YOLAM**
45. **ANTHONY PETER SHOMARI**
46. **SHOMARI NGALIMAS**
47. **PATRIC JOSHI**
48. **MAIMUNA HASSAN**
49. **ZENA MRISHO**
50. **KHALFAN SALUM**
51. **MZEE JOHN DAUDI**

..... **DEFENDANTS**

- 52. PETRO MGOGO
- 53. KAITANI KATEMBO
- 54. LONDO LONDO
- 55. EMMY DOCTOR
- 56. WILLY ANTHONY
- 57. FARANK PETER
- 58. PATRICK OLAM
- 59. STEVEN ANTHONY
- 60. MRISHO AMBOKI
- 61. MUSSA JUMA MUSSA
- 62. MUUNGANO MTAKA RADHI
- 63. NURU KHATIBU
- 64. ZAMDA KHATIBU
- 65. MATIASI YARED
- 66. AMOS VICENT
- 67. ASHERI SHELU
- 68. MZEE MAZUNGUMZA
- 69. GERVAS MLILU
- 70. SHIJA ANTHONY
- 71. MARIAM SAID
- 72. MARIA ANTHONY

..... DEFENDANTS

EXPARTE JUDGMENT

S.M KALUNDE, J:-

In this suit the plaintiff is suing the defendants for trespass into his farm with Certificate of Title No. 3917 situated on the South of Kilosa Township in Kilosa District, Morogoro Region (herein referred to as "**the disputed land**"). The plaintiff case is

that, in 2009 he bought the disputed land from the Tanzania Sisal Board. Upon completion of the legal formalities, the plaintiff was issued with the title to the disputed land and went on to carry out a survey. It was alleged that sometimes in 2016 the defendants, jointly and severally, trespassed into the disputed land and erected buildings without the plaintiff's consent. The matter was reported to local authorities who attempted to resolve the dispute. However, efforts to settle the dispute amicably between the plaintiff and the defendants were futile. Hence the present suit.

In the present suit the plaintiff is seeking for *inter alia* the following reliefs:

- (a) A declaration that the plaintiff is the lawful owner of the disputed land;
- (b) An order that the defendants trespassed into the plaintiff land and hence need to be evicted;
- (c) The defendants be ordered to demolish all buildings and structures erected onto the disputed land;
- (d) Payment of general damages for inconveniences and economic loss amounting to Tshs. 300,000,000.
- (e) Costs of the suit; and
- (f) Any other relief(s) as the Court may deem fit and just to grant.

Having failed to appear and file their defence, on 20th November, 2019, **Hon. Maige J.** (as he then was) ordered the that suit be heard **ex-parte** against the defendants. Consequently, at the Final Pretrial and Scheduling Conference, the following issues were agreed and framed for determination:

- (1) Whether the plaintiff is the lawful owner of the suit land;**
- (2) Whether the defendants are trespassers on the suit land;**
- (3) If the second issue is in the affirmative, whether the plaintiff suffered economic loss;**
- (4) To what relief(s) are the parties entitled to.**

In the present case, the plaintiff wants to be declared to be the lawful owner of the disputed land. The onus of proving that she is the registered owner of the suit land is upon her. This position was stated in **Godfrey Sayi vs Anna Siame as Legal Representative of the Late Mary Mndolwa**, Civil Appeal No. 114 of 2014 (CAT) (unreported) and **Salum Mateyo vs. Mohamed Mateyo** [1987] T.L.R 111. In **Godfrey Sayi** (supra) the Court of Appeal Stated:

"It is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are

fortified in our view by the provision of section 110 and 111 of the Law of Evidence Act [Cap. 6 R.E. 2002] which among other things states:

110. Whoever desire any court to give judgment as to any legal right or liability depend on existence of facts which he asserts must prove that those facts exist

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

The duty to prove the case is placed on the plaintiff even when the case is being heard **ex-parte**. This view was stated by this Court in **The Manager, NBC, Tarime v Enock M. Chacha** () [1993] TZHC 8; (02 November 1993 TANZLII) where **Masanche, J** (as he then was) stated:

*"Assuming that the respondent was properly allowed to prove his case ex-parte, he did not prove his case on the balance of probability as required by law. **It does not follow that since a party has been allowed to prove his case ex-parte, he can just casually go through his claims, in the hope that the Court will readily grant the prayer. A party who proceeds to prove his case ex-parte must prove his case on the required standard of the law. Where the proof falls short of the required standard, the court must dismiss the case...**" [Emphasis added]*

Mindful of that position, I proceed to the merits of the case. In the first issue, I am being called to respond to the question whether the plaintiff is the lawful owner of the disputed land. In a bid to prove that he is the lawful owner of the disputed land the plaintiff paraded three witnesses. **PW1, MUZAMIL MUSTAFA KARAMAGI**, the director of the plaintiff, testified in chief that the plaintiff bought the suit land from the Tanzania Sisal Board in 2009. He tendered **Exhibit P.1**, a Certificate of Title No. 3917 issued over the disputed land. PW1 went on to say that, in 2009 the farm was sold to **Agro focus (T) Limited** which subsequently entered into a joint venture with **Farm Africa (T) Limited** to form the present owner **Farm Africa Agro focus (T) Limited**.

PW2, CHEYO PAULO NKELEGE, a Land Officer working at the Kilosa District Council testified that, in accordance with available records at the Land Registry at Kilosa District Council the plaintiff was the lawful owner of ten (10) farms called **No. 344, 345, 346, 347, 349, 350, 351, 352, 353** and **354**, both forming part of Certificate of Title No. 3917 located at Magomeni Kilosa District. PW1 recognized Exh. P. 1 as the same title available in the Land Registry records. He also recognized the appended approved survey plan which was approved after the resurvey of the disputed land. The witness added that the plaintiff was the lawful owner has since been paying land rent to the tune of Tshs. 65,000,000 annually. He added that, by 30th June, 2020 the plaintiff had no rent arrears.

In accordance with Exh. P.1, the title to the suit land was issued to East Africa Sisal Plantations Limited in 1938 from then it changed ownership to different entities. In 2009 the title was transferred to Agro focus (T) Limited for a consideration of Tshs. 100,000,000. Subsequent to that transfer, in 2014 Agro focus (T) Limited transferred the suit land to owner Farm Africa Agro focus (T) Limited for a consideration of Tshs. 1.00. Further to that, PW2 testified that the records at the District Land Registry for Kilosa showed that the plaintiff is the lawful owner. In light of the above testimony I am satisfied that, on the balance of probability the plaintiff has proved that their lawful owners of the disputed land. In that respect, I answer the first issue in the affirmative.

In the second issue, I am being called to answer whether the defendants have trespassed into the suit land. Trespass was defined in Frank **Safari Mchuma vs Shaibu Ally Shemdolwa** [1998] TLR 280 at page 288 where the High Court, (**Lugakingira, J.** as he then was) stated:-

*"By definition trespass to land is unjustifiable intrusion by one person upon the land in the possession of another. It has therefore been stated with a light touch that: **"If the defendant place a part of his foot on the plaintiff's land unlawfully, it is in law as much as a trespass as if he had walked half a mile on it"** (Ellis v. Loftus Iron Co . (2) per Coleridge C.J. at P. 12) ..."* [Emphasis added]

In his testimony, PW1 averred that the farm was invaded by almost seventy (72) two trespassers between 2016 and 2017. His effort to protect the farm were ineffectual because he did not get hold of the requisite support from the Government. He added that the trespassers erected houses. PW1 testimony was supported by **PW2, ALI SAID LIGUTA**, a former “**Mwenyekiti wa Kitongoji**” from Mitalulani where part of the trespassed land is located. PW2 testified that in 2016 the plaintiff’s land was invaded by people from different part of Kilosa who were looking for areas to settle and cultivate. He said the incidents were reported to the local leaders with a view to resolve the crisis. However, the trespassers refused to vacate the area.

In addition to that, PW3 said the plaintiff farm has been invaded by unknown people. He said he knew of the trespassers because of complaints filed by the plaintiff. PW2 testified that, an inspection carried out by his office on 26th November, 2020 revealed that trespassers had invaded Farm No. 344 which is part of CT No. 3917 owned by the plaintiff. With the above testimony, I find that the plaintiff has been able to prove that the defendants are trespassers on the suit land. The second issue is answered in the affirmative as well.

The third issue is an offshoot of the second issue, that is, whether, as a consequence of the defendants’ trespass, the plaintiff has suffered economic loss amounting to Tshs.

300,000,000. In his testimony PW1 said the trespassed land was allocated for a poultry project. The witness said the poultry farm could not be implemented because the trespassers invaded the project area. When question by the Court on whether he had any proof that the part of the suit land was designated for a poultry farm, PW1 said he had a project proposal, which, however, he did not tender in Court. Further to that no evidence was presented on the extent of economic loss incurred by the plaintiff. In that respect I find that claims of economic loss have not been specifically proved.

As may be discerned from the plaint and his testimony, the plaintiff's claim of economic loss are the nature of specific damages. It is trite law and we need not cite any authority, that special damages must be specifically pleaded and proved. It is the function of the Court, through an¹ assessment of testimony and evidence, to determine and quantify the damages to be awarded to the injured party. See **Zuberi Augustino v. Anicet Mugabe**, [1992] TLR 137.

Nevertheless, it goes without saying that, by the defendant's wrongdoing in occupying the suit land, the plaintiff has suffered some general damages. The position is that general damages are such as the law will presume to be the direct, natural or probable consequence of the act, complained of, the defendant's wrongdoing must, therefore, have been cause, if not a sole or a

particularly significant cause of damage. See **Tanzania Sanyi Corporation vs. African Marble Company Ltd** [2004] TLR 155.

A similar approach was taken in **P. M. Jonathan vs Athuman Khalfan** [1980] TLR 175, where at page 190 it stated that:-

"The position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the plaintiff's loss of reputation, as well as a solarium for mental pain and suffering."

General damages are those that the law presumes follow from the type of wrong complained of. In the present case the defendants trespassed into the plaintiff's farm, denying him his right to use and develop the same. I am convinced that, in circumstances of this case, the plaintiff deserves some compensation for the inconveniences and albeit a loss occasioned by non-use of the disputed land.

As for other reliefs, in an event where the plaintiff has been declared a lawful owner of the disputed land and the defendants have, on the other hand, been declared to be trespassers thereon, the defendants are definitely required to vacate the disputed land; and they cannot do so until they demolished all their structures and fittings unto the disputed land. In consequence thereof, I make the following orders:

- (a) The defendant to yield up vacant possession of the disputed land to the plaintiff;
- (b) The defendants to demolish all the building, structures and remove all fittings on the disputed land; and
- (c) General damages to the tune of Tshs. 20,000,000.00, are awarded to the plaintiff.

In final, the suit succeeds as explained above. In the circumstances, no order for costs is made.

It is so ordered.

DATED at DAR ES SALAAM this 04th day of JUNE, 2021.



S.M. KALUNDE
JUDGE