

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

LAND CASE NO. 190 OF 2020

RAPHAEL MTALIMA1ST PLAINTIFF

MARY MTALIMA (MRS RAPHAEL MTALIMA)2ND PLAINTIFF

VERSUS

RIMINA AUCTION MART & COMPANY LIMITED.1ST DEFENDANT

ROSE JOSEPH MASUKA.....2ND DEFENDANT

ABDALLAH NABAHANI BAKAR.....3RD DEFENDANT

RICHARD AGREY4TH DEFENDANT

GABRIEL ANDREW.....5TH DEFENDANT

ALOYCE MAMKU.....6TH DEFENDANT

DAVID A. NOBLE7TH DEFENDANT

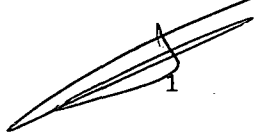
JOHN PETER MAJURA.....8TH DEFENDANT

JUDGMENT

2ND & 3RD December, 2021

A. MATUMA, J:

The Plaintiffs who are husband and wife have sued the defendants for several orders including a declaration that without any color of rights, the defendants entered into their lawful possessed land at Tungutungu Village within Mapinga Ward in Bagamoyo District thereby making unbearable and inhuman demolition of their four houses and destructions of their various valuable properties whose total value is Tanzania shillings one billion three hundred eighty-four million five

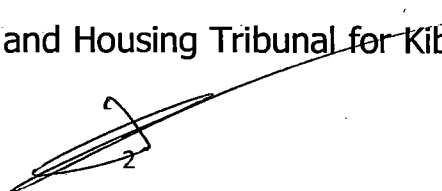


hundred (Tshs. 1,384,500,000/=) purporting to execute a decree of the suit in which they were neither parties nor the suit land had ever been involved in any suit.

The brief facts of the case are that; sometime between march and April, the 5th to 8th defendants who are close friends each bought a farm in the herein above named village the total of which was five acres but each had his own piece of land within those five acres whereas the fifth Defendant owned one acre, the sixth defendant owned one acre, the 7th defendant owned one and a half acres and the 8th defendant owned one and a half acres.

For the reason of their closeness as I have already stated above, the four defendants fenced the five acres together. The five acres were bought from family members. When it got 2012 the plaintiffs bought one and a half acres which is within the five acres but they bought the same from one Felister Bubao Fungameza (PW3). One Jumaa Juma Mshihiri also claimed ownership of three acres thereat which prompted him to sue the 5th to the 8th defendants in the Ward Tribunal of Kerege. The 1st Plaintiff joined him as the Plaintiff. In course of hearing that case and in the manner which is not apparent on record the 1st plaintiff herein was dropped from the suit and the judgment was entered against the 5th to 8th defendants and in favour of the said Jumaa Juma Mshihiri. The 5th to 8th defendants appealed to the District land and Housing Tribunal which quashed the proceedings and judgment of the Ward Tribunal by reason that the Ward Tribunal had no pecuniary jurisdiction.

In that regard Jumaa Mshihiri started a fresh suit land Application No. 48 of 2014 in the District Land and Housing Tribunal for Kibaha against the



5th to 8th defendants but he was adjudged the loser. Those defendants were decreed lawful owners of the whole five acres. Since the plaintiffs were also claiming ownership in part of the five acres which measured 1½ acres particularly the area which comprises that of David A. Noble and Aloyce Mamku (Marselino), the two decided to institute Land Application No. 93 of 2018 against them.

The 1st Plaintiff engaged an advocate in his defence. The suit took over for trial. The defendants herein above named gave their evidence and in the due course of the trial such suit was withdrawn on the ground that it was wrongly instituted because what was being claimed (the suit land) was already decreed in Land Application No. 48 of 2014 as the lawful property of the said Applicants now the defendants. It was considered as superfluous to claim ownership of what was already decreed to them. The advocate of such defendants withdrew that case with the view of going to execute the decree in Land Application No. 48 of 2014 against not only the judgment debtor but also his agents and or any person thereat.

An application to that effect was dully filed by the defendants and dully granted. The 1st defendant herein was appointed court Broker to execute the decree and the 2nd to the 4th defendants have been sued because they are officers of the 1st defendant. The 1st defendant to the 4th defendant executed the decree by demolishing the four houses and a wall fence which the Plaintiffs claim to own hence this suit.

Six issues were agreed by the parties and drawn for determination;

- i) *Whether the suitland had ever been litigated between the parties herein in any court of competent jurisdiction.*

- ii) If the first issue is answered in the affirmative, whether this suit is an abuse of court process.*
- iii) If the first issue is answered in the negative, who is the rightful owner of the suit land.*
- iv) Depending on the outcome of issue no. (iii) herein above whether the plaintiffs' eviction by the suit land was lawful.*
- v) Whether in the course of eviction of the plaintiffs by the defendants, the plaintiffs' structures were demolished by the defendants.*
- vi) To what reliefs are the parties entitled to.*

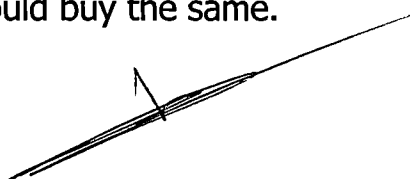
During trial the 1st, 2nd, 3rd and 4th defendants were absent without notice and thus the suit proceeded against them exparte. The remaining defendants were represented by Mr. George Mushumba learned advocate. The Plaintiffs on their party had the service of a convoy of three learned advocates namely Tibiita Muganga, Florence Tesha and Sindilo Lyimo.

The parties gave their respective evidences for and against this suit very touching and sad so to speak, on each side. Without reproducing the evidence of each witness, I will give the evidence in a very summary form. The Plaintiffs side had a total of eight witness who gave the evidence to the effect that the Plaintiffs owned the suit land which was free from any encumbrances. They had their four houses built on the suit land, modernized, decorated and well furnished. The total costs of the developments effected by the plaintiffs to the suit land was Tshs. 1,384,500,000/=.

On the 17/10/2020, in untold manner and while away on their daily struggles for life, the plaintiffs were phoned and informed that a group of almost thirty (30) people armed with hammers have invaded the premises, demolished the houses and destructed various valuable properties. They rushed to the scene and found the worse situation they had ever seen. That necessitated the Plaintiffs to shift into Legho Hotel to take refuge where they stayed for six days and later rent a house in which they paid Tshs. 700,000/= (exhibit P9) since then to date.

The 1st Plaintiff also employed some watch guards to guard the remaining materials on the suit land pending determination of this suit. They are now seeking this court to decree them as lawful owners of the suit land, a declaration that the execution of the decree was wrongly executed to the suit land, payment of specific damages to the extent I have already stated herein, general damages at least 500,000,000/=, declaration that the defendants are trespassers to the suit land, punitive damages to the tune of Tshs. 50,000,000/=.

On their party the 5th to the 8th defendants, their respective evidence was to the effect that they each possessed a piece of land at Tunguturgu hamlet which generally measured five acres. They enclosed it but sometime in 2012 the 1st plaintiffs' phoned the 7th defendant and informed him that he wanted to buy a land at the hamlet and when he reached there he was told that the 7th defendant had bought the land in question, so he wanted to know if it is truly and whether the nearby land was free so that he could buy the same.



As David Noble the 7th defendant knew that the whole five acres were not free from encumbrances, he called Raphael Mtalima (the plaintiff) to meet him and his fellows. They met and they accordingly informed him (the plaintiff) that the whole land was bought by them. The 1st plaintiff appreciated and thanked them that he was about to be defrauded. Quoting DW1, the first plaintiff in appreciating them for the information said;

"Daa ilikuwa nipigwe, unajua mimi ni mwanasheria. Najua anayetangulia kununua ndiye anahesabika mnunuzi"

To their surprised, they started to observe destructions of their fence and crops. They engaged Maasai Watchguards but the hamlet chairman (PW5) chased them. They themselves decided to ambush one night in which they arrested the said hamlet chairman leadings a group of people in the destructions of their properties. They set him to police (RB No. MPG/RB/387/2012 dated 6/7/2012) but they were told to pursue the civil suit as the land was in dispute.

Land suits were instituted here and there until when they were finally decreed lawful owners in the said land as a whole (five acres) including the dispute land in the instant suit. The execution was carried on and all persons in the suit land were evicted as per court order. Raphael Mtalima and his family were among the evicted persons who were on that land which was already decreed to be owned by the herein four defendants.

That after such eviction which indisputably involved demolitions of the structures in the suit land, the court Broker handled them the suit land. Even through the 1st plaintiff did not allow them access as he engaged

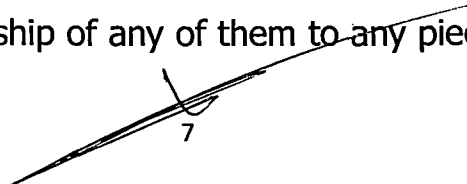
bouncers against them, rebuilt another house and roofed it, rebuilt the wall fence, fixed cameras (CCTV) and up-to-date the plaintiffs have denied them any access to their lawful land completely to the extent of making court order and its execution meaningless. They thus prayed for dismissal of the suit with costs.

The 7th defendant David A. Noble had his counter claim in which he prayed for declaration that he is the lawful owner of the suit land, declaration that plaintiffs are trespassers thereof, costs of the counter claim, interests any other relief(s).

Now back to the issues, I will determine issue after another. The first issue is whether the suit land had ever been litigated between the parties herein in any court of competent jurisdiction. With this issue and according to the evidence on record, there is no doubt that the suit land was accordingly litigated between the parties.

I stand with this observation because there is abundant evidence that the plaintiffs' witness Mr. Jumaa Mshihiri (PW4) sued the 5th to 8th defendants for trespass in land at the Ward Tribunal of Kerege. Although the records show that he claimed only three acres, physically he claimed all the five acres as rightly stated by the defendants.

This is because each of the defendants had his own piece of land within the five acres, the five acres are not in joint ownership. Jumaa Mshihiri in suing them did not demarcate and or point out which part of the five acres he was claiming ownership of three acres thereof. Instead he dragged each and every defendant at the Ward Tribunal against them all for the whole land which was in their possession meaning that he did not acknowledge ownership of any of them to any piece of land thereof.



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In other words, had he been successful in the suit, all the defendants would have been evicted from the whole five acres and not the three acres.

According to the evidence of both parties, when the suit was still pending in the Ward Tribunal the defendants noted that in the suit land (the current suit land in the instant suit) was being developed. Some construction was going on. They lodged complaints to the tribunal which issued a stop order and summoned he who was making such development.

It is when the 1st plaintiff herein appeared in the tribunal and identified himself as the one who was in development of such area. He thus joined the suit and at the end of the day he was held lawful owner thereof Jumaa Mshihiri was as well decreed lawful owner against the defendants.

The defendants appealed to the District Land and Housing Tribunal for Kibaha (Land Application No. 91/2013) which nullified all the proceedings and quashed the judgment of the Ward Tribunal for want of pecuniary jurisdiction.

In that regard, a fresh suit was instituted by Jumaa Mshihiri against the defendants in the whole land including that which the 1st plaintiff had started to develop.

The 1st plaintiff did not join such suit nor was joined by any. Technically the 1st Plaintiff was thus not a party to that suit but substantially he was a party represented by Jumaa Mshihiri because the said Jumaa Mshihiri claimed for the whole land including the current in dispute in which at first in the Ward Tribunal the 1st plaintiff was a co-plaintiff.

A handwritten signature in black ink, appearing to be 'Jumaa Mshihiri', written over the end of the text. The signature is stylized and includes a small mark resembling the number '8' at the bottom.

Had it been that the suit land was not in dispute by Jumaa Mshihiri, he could not sue David A. Noble and Aloyce Mamku whose lands are exactly where the plaintiffs claim ownership. It is reasonable to determine that the 1st plaintiff left Jumaa Mshihiri to fight for the whole land for their joint benefit or else he should have intervened the suit because Jumaa Mshihiri was claiming it all. He was as well aware that the defendants also were claiming ownership thereto. The plaintiffs cannot argue that such suit land was not subject to litigation between the 5th to 8th defendants and Jumaa Mshihiri.

When Jumaa Mshihiri was adjudged the loser, the Plaintiffs continued to occupy the current suit land as if the same was not decreed to be owned by the defendants.

The 6th and 7th defendants whose parcel of land were occupied by the plaintiffs decided to start a fresh suit against the Plaintiffs (land Application No. 93 of 2018) in the District Land and Housing Tribunal. The plaintiffs engaged advocate Catherine to represent them. The suit took over its trial and in the due course on the 19/08/2019 the same was withdrawn with the view of execution the decree in land Application No. 48 of 2014 which had decreed the whole area including the current suit land to the defendants.

Such withdraw was made and the reason for it withdraw stated in the proceedings exhibit (P10) in the presence of the plaintiffs' advocate one Mr. Benson Makula. The 1st Plaintiff (PW1) admitted in evidence that his advocated informed him fully what happened in court. Therefore, the plaintiffs were aware that the withdraw of Land Case No. 93 of 2018 in which they were parties was due to the pleaded fact that the remedy

sought thereof which was a declaration that the suit land which is in fact the suit land in the instant case is the lawful property of the 6th and 7th defendants was already given in Land Case No. 48 of 2014. Therefore, it is only execution which is remaining against Jumaa Mshihiri, his agents or any other person therein.

Since the plaintiffs were present through their advocate at the time of withdrawal of Land Application No. 93 of 2018 in respect of the suitland and the reasons for the withdrawal stated, they cannot dispute the fact that the judgement and decree in Land Application No. 48 of 2014 was considered a solution in that suit (Land Application No. 93 of 2018) in respect of the suit property. Otherwise the Plaintiffs through their advocate could have objected the withdrawal of such suit because it was intended to execute the Decree in Land Application No. 48 of 2014 in respect of the suit land in the instant case in which they are claiming interests.

Or, after the withdrawal, the plaintiffs could have taken all legal measures against the intended execution in the instant suit land. With all these observations, when dots are connected from Land Case No. 44 of 2012 at Kerege Ward Tribunal, Land Appeal No. 91 of 2013 in the District Land and Housing Tribunal, Land Case No. 48 of 2014 and Land Application No. 93 of 2018, it is justifiable to conclude that the suit land was litigated between the parties in the court of competent jurisdiction "**for all intent and purposes**" which presupposes that when all things are taken into consideration the real and true intent of the facts therein can be construed to mean the truth of a certain fact even if such fact is not seen explicitly on the face of record. The Plaintiffs are thus estopped to deny the truth of such facts that they

allowed not only the 5th to 8th defendants to believe that the Decree in Land Case No. 48 of 2014 was considered to be a solution in Land Case No. 93 of 2018 supra, but also the trial tribunal and the defendants' advocate.

Under section 123 of the Evidence Act, Cap. 6 R.E. 2019, a person whose declarations, acts or omission permits others to believe a thing to be true and to act on such belief, would be estopped to deny the truth of such thing. For easy of reference let me quote the section;

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such believe, neither he nor his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing."

Under the herein above quoted provision, the acts and omissions by the plaintiffs to have not objected the withdrawal of Land Application No. 93 of 2018 which intended for the execution of the Decree in Land Application No. 48 of 2014 supra in relation to the current suit land, or even to take any action against the intended execution caused and permitted the defendants, their advocate and the trial tribunal to believe that the judgment and Decree in Land Application No. 48 of 2014 was the last solution in respect of the suit property and that such suit property was liable to execution. As the defendants acted on such belief to execute the decree, the plaintiffs in law are estopped to deny the truth of the defendants' belief that the suit land was conclusively determined in their favour.

I therefore conclude the first issue in the affirmative that the current suitland was conclusively determined between the parties.

The second issue on whether this suit is an abuse of court process is answered in the affirmative as well due to the outcome of the first issue herein above.

This is because, once land Application No. 93/2018 was withdrawn, the available remedy to the plaintiffs was either to file objection proceedings against the intended execution to the suit property or file an application for investigation of the claim under Order XXI rule 57 of the Civil Procedure Code, Cap. 33 R.E. 2019. The trial Court would have investigated the claim or determine the objection against the intended execution of the decree in relation to the suit land. The plaintiffs and their Convoy of advocates deliberately circumvented the due processes of the law and decided to file the instant suit in total disregard to all what happened as herein above stated as if there was no court decree declaring the current suit land as a lawful property of the defendants herein. That is an abuse of Court process.

But again as I have earlier on stated, it is in evidence that the plaintiffs while in court with this pending suit and while they were successfully evicted from the suit land, they have ren-entered, rebuilt a house thereon and installed cameras against the defendants and or their agents to re-take possession. The plaintiffs through PW1 conceded in evidence that he has engaged watch guards at the suit land whom he pays (exhibit P6) to guard the suit land and the remains which survived the execution against the general public including the defendants. This is disrespect to the due process of the law, oppressiveness to the court

and defendants and pretending superiority over the whole world. I am saying all these because it is the Court of law which is mandated under the mother law (the Constitution) to administer justice. If one cannot respect court orders, who else can he respect.

It is like the plaintiffs have already adjudged themselves winners and are merely waiting for this court to stamp and endorse their own determined decree. That is a purely abuse of the due legal process. As the plaintiffs were already evicted from the suit land, it would be expected by any reasonable person that they would not retake possession of the same forcefully without due processes. It was more so unexpected from the 1st plaintiff who has been identified before me as a lawyer, an advocate and an officer of the court. If he cannot respect court orders and due processes of the law, who else should he be expected to respect.

The law and due processes of the law is there to be adhered by not only lay persons but also learned brethren. In the case of ***Idd Hassan Rusovu versus Omary Mwilwa @ Chubwa and 3 others, Land case No. 07/2021***, High Court at Kigoma, this court adjudged against those who are disorderly in the society in total disobedience to the due legal processes whenever they fight for whatever rights they assert. Borrowing the Wisdom of justice Katiti in the case of ***Joseph Mazunzu versus Republic Criminal Appeal No. 3 of 1991***, (HC at Tabora), the court in Idd Hassan Rusovu's Case Supra held;

"We cannot peacefully make our journey through life without law telling us the right direction to follow, and sometimes even the

time to follow and when to start our journey and through which route."

In the instant matter the plaintiffs seems to be not ready for whatever Court order against them as it happened in the execution of the decree herein. Perhaps they will only stand by the court order only when they will be decreed winners against the defendants. I therefore conclude the (ii) Issue as I have herein above stated that this suit is an abuse of court processes.

The third issue depended to the first issue if it is answered in the affirmative. It is on who is the rightful owner of the suit land. Since it was conclusively determined in land Application No. 48/2014 supra that the defendants and in particular the sixth and seventh are lawful owners of the suit land, that decision remains intact until when it shall be vacated by whatever legal process, be it the same court to set aside its own judgment or the superior court by way of Appeal or Revision as the case may be to quash it and set aside the decree they of.

A mere fact that a third party interests are or have been injured by the judgment and decree does not make such judgment and decree redundant to its decree holders because there are legal remedies provided in law for the third party to have the judgment reviewed and or quashed in protection of his or her interests. Thus by reasons of the decision in Land Application No. 48/2014 Supra, it is the defendants and more so the 6th and 7th defendants who are the lawful owners of the current land in dispute.

But I have decided to take the matter as the plaintiffs are wishing, that they were not parties to land Application No. 48/2014 Supra and thus

entitled to have their evidence evaluated and a decision reached. In that respect I proceed to determine who is the lawful owners of the suit land in the circumstances of the evidence I have on record from both parties. I find that it is the 6th and 7th defendants who are lawful owners of the suit land.

The defence evidence is that those defendants bought and obtained ownership of such land in 2011 from family members. Prior to the plaintiffs purchase of the same suit land the defendants and the 1st plaintiff met at the 7th defendant's office in which the 1st plaintiff was duly informed that the land he intended to buy was already bought by them. He thanked them as he was about to be defrauded as herein quoted promising the defendants that he will not purchase such land. Unfortunately the 1st plaintiff purchased the suit land at their back from a stranger Felister Bubao Fungameza who had no title over there and started to confront the defendants.

The evidence that the plaintiffs knew that the land was not free from encumbrances so he should not buy it was not cross examined nor impeached and therefore it is taken to be the whole truth. That is the legal principle as it was decided in a number of cases including that of ***Goodluck Kyando versus Republic (2006) TLR 363*** that the evidence which is not cross examined is taken to have been admitted by the opponent party.

In that regard when the 1st plaintiff and his wife wanted to buy the suit land they knew that the said land was already bought and owned by the defendants from blood relatives; Josephina Joseph and Festo Joseph. Prior to the institution of this suit the plaintiffs were aware of the fact

that Josephina Joseph and Festo Joseph sold the suit land to the 6th and 7th defendants herein. These fact is gathered from the meeting the 1st plaintiff and the defendants convened prior to the purchase of the suit land by the plaintiffs and also from exhibit P10 which was tendered by the 1st plaintiff himself. In that exhibit those vendors are named clearly and the 1st plaintiff was party to that suit dully represented.

In the circumstances they were obliged to join those vendors in the suit for them to establish their title and to defend their sale of the suit property to the defendants. Failure of the plaintiffs to have joined those necessary parties who passed the title of the suit land to the defendants calls for this court to draw an adverse inference against them that had they joined the said vendors in this suit they would establish their good title to the suit land. And legally justify their passing of the titles thereof to the defendants.

In that regard the title of the defendants to the suit property cannot be challenged without challenging the title of those who passed it to them. And such challenge cannot be done in their absence as by doing so would be condemning them unheard which is bad in law as it was held in the case of ***Mbeya - Rukwa Auto Parts and Transport Ltd V. Jestina George Mwakyoma (2003) TLR 251.*** Therefore their sale of the suit land to the defendants herein above named shall always remain lawful as no body including the plaintiffs who has challenged their title on the suit land prior to their passing it to the defendants. The plaintiffs by not including those vendors in the suit is interpreted to mean they didn't want to challenge them for their previous ownership of the suit land and are accordingly estopped to deny the truth of such belief within the meaning of section 123 of the Evidence Act Supra.

On the other hand, Felister Bubao Fungeneza who purported Vendor of the suit land to the plaintiffs was not credible. She was not consistent on how she came to own the suit land. At times she testified that she inherited it from her parents (father), but at the same time she testified to have been allocated by the village authority which was caring the said land and sometime she stated that she was given the land by her aunt (mama mdogo).

She did not even establish her father's allegedly ownership in the suit land. She merely stated that her father had cleaned bushes. When she was cross examined whether she witnessed her father cleaning the bush she stated clearly. *"I did not witness him clearing the bush."*

She contracted herself when she stated in evidence that she opened the probate cause of the estate of his father and passed the farm to her. But on further cross examination of the where about documents relating to the probate she stated that they were all burnt. When she was further impeached during cross examination she confessed that they did not have any probate cause in court,

"We did not open any probate case in any court."

It is then when she changed the story and stated that everything was under her mama mdogo and later put everything to her ownership. This lying witness cannot be trusted at all on the purported ownership of the suit land and therefore she had no land to sale to the plaintiffs.

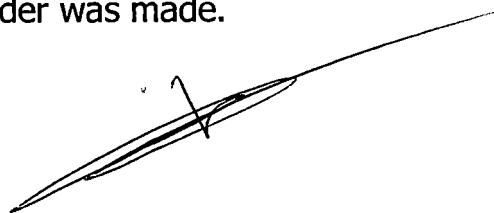
The plaintiffs were thus defrauded and they were themselves part of the illegal business because they had prior knowledge that the suit land was not free for them to buy as I have already said above. They however

with deliberate intention decided to dance a fraud song, so majestically. A person who involves himself into frauds and illegal business has no body to blame for the outcomes, but himself. See among other cases that of ***George Benjamin Ferdandes V. Registrar of Titles and Anna Kibibi Marealle, Civil Appeal No. 65 of 2018*** (CAT), and that of ***Saada January Nyambibo (Administrator of the estate of the late January Bwire Nyambibo) versus Debora January Nyambibo and Another Land case No. 97 of 2020*** (High Court Land Div. Dar es Salaam).

A person having no good title cannot in law pass it under the legal principle ***Nemo dat quod non habet*** in the meaning that no one can give that which he does not have. Seen also; ***Pascal Maganga V. Kitinga Mbarika, Civil Appeal No. 240 of 2017*** (CAT).

With the herein observations, I rule out that Felister Bubao Fungameza had no shamba to sale to the plaintiffs. The issue is therefore finalized that it is the 6th and 7th defendants who are lawful owners of the specific area which is in dispute within the five acres. The plaintiffs are violent trespassers and who are disobedient to the law.

As in regard to issue no.(iv) whether the plaintiffs' eviction by the defendants from the suit land was lawfully, I find it yes. It was lawful because not only that the defendants herein above named are lawful owners of the suit land, but also there was a court order for such eviction (exhibit D3). There was also a demolition order and no any challenge against the order was made.

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a cursive, somewhat abstract shape.

The plaintiffs averred that they were not served with the Eviction & Demolition order. This averment is unfounded because the plaintiffs evidence shows that in the suit premises there were several people including house maids, the father and mother of the 1st plaintiff and some elder children. There was no specific evidence from the plaintiffs' case that all family members were not served with the notice or seen it affixed. As confessed by the plaintiffs' witnesses, even police officers were informed about the intended eviction. I cannot see why the Court Broker would inform the Police of the intended eviction and hide the same information to the plaintiffs and their families. In the circumstances of this case as I have said the plaintiffs are disorderly people and thus cannot be believed that they did not see the notice as the law does not provide that the notice must be physically handed to the person intended to be evicted. It would depend on the circumstances of each case and the conduct of such party. I conclude the issue that the eviction was lawful.

The fifth (v) issue is whether in the course of eviction of the plaintiffs by the defendants, the plaintiffs' structures were demolished by the defendants. I find this issue in the affirmative that the structures thereof were demolished by the 1st defendant in execution of the decree. The plaintiffs' witnesses gave an oral evidence to such demolition and they witnessed the same. Their evidence was thus direct and admissible in term of section 62(1) of the Evidence Act Supra. They tried to tender electronic evidence (Video clips) unsuccessfully but that does not mean that they have failed to establish the alleged demolitions. They managed to establish the demolitions as such evidence was even corroborated by DW1 who stated that after the eviction they were called

and handled the suit property. I therefore find the fifth issue in the affirmative. Now it is the last issue in relation to the reliefs which the parties are entitled to.

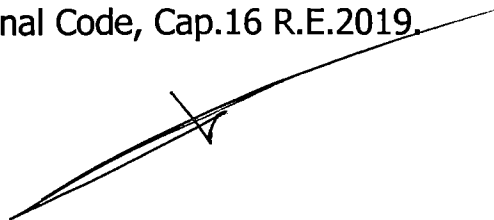
Since I have already determined that it is the defendants who have better title on the suit land, the first relief is to dismissed the suit and allow the counter claim. I therefore find this suit to have been brought without sufficient cause and I accordingly dismiss it. The plaintiffs are declared trespassers on the suit land and who are liable to give an immediate vacant possession to the defendants.

I am aware according to the evidence on record that plaintiffs have already been evicted under due process of the law but they have deliberately re-entered into the suit land. Such re-entering is purely a criminal offence. The defendants are at liberty to continue their criminal actions as it has already been reported to police as per evidence of DW1.

From the date of this judgment, every structures, fixtures and fittings and Electrical installations on the suit land are declared lawful properties of the 6th and 7th defendants in accordance to the extent of the trespass made by the plaintiffs in their lawful parcels and unlawful enclosed by the plaintiffs. This is in accordance to the legal maxim ***Quicquid Plantatur solo solo cedit*** (Whatever affixed to the soil belongs to it). Should the plaintiffs deliberately refuse to peaceful vacate within twenty four hours after the delivery of this judgment, the due process for their re-eviction shall be carried on and at all times from the date of this judgment up to the date of the re-forceful eviction, the plaintiffs shall be liable to payments of Tanzania shillings five million (Tshs. 5,000,000/=)

to the 6th and 7th defendants per day as damages for denial of the defendants to their peaceful enjoyment of their lawful land. The 6th and 7th defendants are also awarded Tshs. 50,000/= per each day of the unlawful re-possession of the suit land by the plaintiffs from the date they were originally evicted on 17/10/2020 to the date of this judgment. The plaintiffs are warned to refrain from making any destruction of the structures re-constructed on the suit land including the new house and the wall fence and or to temper anyhow with the electrical installation such as CCTV cameras and everything installed on the suit land because they are no longer their properties but the properties of the 6th and 7th defendants. Should they destruct any of the infrastructures thereof they shall be liable for compensation of the destructions as shall be assessed by the relevant recognized authorities. The compensation for the destructions shall be paid to the 6th and 7th defendants. Should the plaintiffs take away the cameras and any other fixtures and fittings without the consent of the 6th and 7th defendants, they shall be regarded as thieves and liable to prosecution.

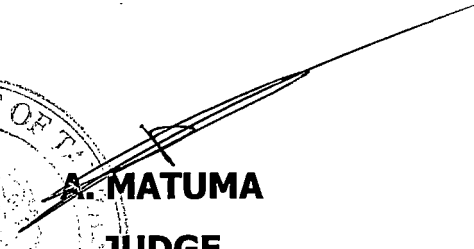
The plaintiffs are ordered to immediate withdraw of their bouncers and or watch guards from the suit land because they have been there for long time illegally. They should be withdrawn before tomorrow on the 4th December, 2021 at 1400hrs and should this order be disobeyed the plaintiffs and their bouncers or watch guards must be arrested forthwith and charged for disobedience of lawful court order within the meaning of section 124 of the Penal Code, Cap.16 R.E.2019.

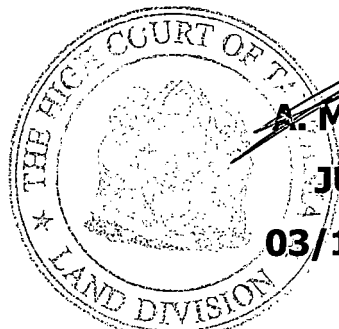
A handwritten signature in black ink, consisting of a long, sweeping horizontal stroke with a small vertical tick mark in the middle, and a shorter, curved stroke below it.

Since Jumaa Mshihiri declared before me that he is not fighting for the suit land in the instant matter, his appeal if any against Land Application No. 48/2014 supra by whatever results thereof shall not affect the rights of the 6th and 7th plaintiffs declared in this judgment that they are lawful owners of the suit land in the instant case as per their own demarcations. In the like manner this judgment shall not be used by all the defendants as a bar to any appeal against the decree in Land Application No. 48/2014 supra in respect of the land which is not in dispute in the instant suit. The plaintiffs are condemned costs of this suit to the 5th, 6th, 7th and 8th defendants.

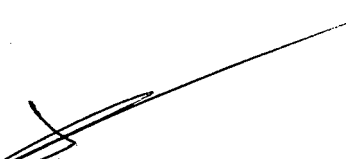
All having been said herein above, this suit stands dismissed in its entirety with costs.

It is so ordered.


A. MATUMA
JUDGE
03/12/2021



Court: Judgment delivered in the presence of the second plaintiff and her advocates Tibiita Muganga and Sindilo Lyimo and in the presence of the 5th and 8th defendant. Right of appeal explained.


A. MATUMA
JUDGE
03/12/2021

