

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

LAND CASE NO. 325 OF 2017

FRANCIS MAGESA MASAMI..... 1ST PLAINTIFF
HASSAN ATHUMAN MTILA.....2ND PLAINTIFF
BEN L. MWAIJANDE.....3RD PLAINTIFF
THE REGISTERED TRUSTEES OF THE
CONGREGATION OF THE HOLY GHOST.....4TH PLAINTIFF
BAKI CRUSHER STONE AND
CONSTRUCTION CO. LTD.....5TH PLAINTIFF
MARIAM FEISAL.....6TH PLAINTIFF
FREDRICK KARIA.....7TH PLAINTIFF
LEONARD MPANJU.....8TH PLAINTIFF
INNOCENT MJEMA.....9TH PLAINTIFF
KAFUI SENGOKA.....10TH PLAINTIFF
MARIUS MPANJU.....11TH PLAINTIFF
RANGER KANANI.....12TH PLAINTIFF
CHARLES IREGE.....13TH PLAINTIFF
GERALD Z.P. TINALI.....14TH PLAINTIFF
JANE M. NGANDAKU.....15TH PLAINTIFF
MASUDI SALUM.....16TH PLAINTIFF
SEUSHI JUMA MBURI.....17TH PLAINTIFF
DOTTO MADUHU NKONYA.....18TH PLAINTIFF
HOSSEN MOHAMMED.....19TH PLAINTIFF

RASHID A. LIGONA.....20TH PLAINTIFF
REHEMA BWASHEE.....21ST PLAINTIFF
HATIBU MRISHO.....22ND PLAINTIFF
MWANAIIDI OMARI.....23RD PLAINTIFF
RASHID MOHAMED.....24TH PLAINTIFF
LUMUMBA ATHUMAN LUMUMBA.....25TH PLAINTIFF
REHEMA SALUM UBAMANDE.....26TH PLAINTIFF
ZAHARANI MSHINDO JUMA.....27TH PLAINTIFF

VERSUS

JAFFER IDD MSANGI DEFENDANT

JUDGMENT

MGETTA, J:

This suit was instituted on 22/8/2017 by twenty – seven plaintiffs namely Francis Magesa Masami (1st plaintiff) , Hassan Athmani Mtila (2ND Plaintiff), Ben L. Mwaijande (3rd Plaintiff), The Registered Trustees of the Congregation of the Holy Ghost (4th Plaintiff), Baki Crushers Stone and Construction Co. LTD (5th plaintiff), Mariam Feisal (6th plaintiff), Fredrick Karia (7th Plaintiff), Leonard Mpanju (8th Plaintiff) innocent Mjema (9th Plaintiff), Kafui Sengoka (10th plaintiff), Marius Mpanju (11th plaintiff), Ranger Kanani (12th plaintiff), Charles Irege (13th Plaintiff), Gerald Z.P. Tinali (14th Plaintiff), Jane M. Ngandaku (15th Plaintiff), Masudi Salum (16th plaintiff), Hossen Mohamed (19th Plaintiff), Rashid A. Ligona (20th Plaintiff), Rehema Bwashee (21st plaintiff), Hatibu Mrisho (22nd Plaintiff), Mwanaidi Omari (23rd Plaintiff), Rashid Mohamed (24th plaintiff), Lumumba Athuman Lumumba (25th plaintiff), Rehema Salum Ubamande (26th plaintiff), and Zaharani Mshindo

Zamu (27th Plaintiff) . All the plaintiffs jointly and severally played for judgment and decree against one Jaffer Idd Msangi (the defendant) for the following:-

1. A declaration that they are legal owners of the disputed land.
2. The defendant be ordered to pay them TZS 500,000,000/= (Five Hundred Million) for malicious acts of trespassing, deforestation, destroying structures and infrastructures such as local paths and fish ponds in the disputed land.
3. The defendant be ordered to pay the plaintiffs interest on the amount mentioned in item 2 above at the commercial rate of 22% per month from the date when cause of action arose until the date of judgment.
4. The defendant be ordered to pay the plaintiffs interest of the decretal sum at the court rate of 12% from the date of judgment until final payment.
5. The defendant be ordered to pay general damages to the plaintiffs at a rate to be assessed by this court.
6. Costs of the suit be borne by the defendant.
7. Any other reliefs the court feels fit and fair to grant

In his written statement of defence, the defendant vehemently denied the allegation leveled against him. He prayed the claims brought by the plaintiffs against him be dismissed with costs as they are devoid of merit.

Upon the completion of pleadings mediation was attempted but in vain. Then, issues for determination were framed as hereunder:

1. Who is the lawful owner of the disputed land?

2. Whether the defendant has trespassed into the disputed land and vice versa.
3. Whether part of the disputed land is surveyed.
4. Whether sale agreement dated 5/8/2000 supervised and signed by the chairman of Serikali ya Kitongoji Vumilia Ukooni being not a leader in the locality of the disputed land is lawful.
5. Whether the chairperson of Vumilia Ukooni pursuant to sale agreement dated 5/8/2000 after signing it had power to order the responsible leaders of Mwasonga to handle over appropriate document to the defendant.
6. To what reliefs the parties are entitled.

In a nutshell, let me revisit the pleadings. In their plaint, the plaintiffs pleaded that they are owners of about two hundred and fifty acres of land located at Mwaninga street, Kisarawe II Ward, Kigamboni Municipality in Dar es Salaam (henceforth the suit land). They obtained the suit land either through inheritance from their parents or purchased from indigenous peoples in various times way back early 1990s. Sometimes in 2007 the defendant trespassed into the suit land, dug trenches along and across the suit land, cut down trees and produced charcoal, demolished structures thereby and removing or destroying beacons. Sometimes in 2009 by using police officers, he threatened to harm them with machetes and to put them in police custody. Indeed, some plaintiffs were put into police custody, but later on released. The plaintiffs reported the matter to Ward executive officer and then to officer Commanding District (OCD) so that to have the

matter settled amicably but the defendant beaver attended any meeting.

It was further alleged that in October, 2015 the defendant hired property international Limited to survey, plan and fix beacons on the suit land so as to dispose it by sale. He then employed guards armed with rifles who threatened and prevented the plaintiffs from entering into the suit land.

In his written statement of defence, the defendant vehemently denied the allegations levelled against him. He alleged that he is a legal owner of about 300 acres of land since the year 2000. He obtained some acres by way of purchase from different villagers and or indigenous people, the sale transaction that was blessed by local authority, and some pieces of land known as Uwala were given to him free of charge for his own use. On 25/3/2008, he wrote a letter through Mwaninga local government to Temeke Municipal Director (henceforth DED) requesting for land survey permission. He was advised by Temeke Municipal officers to survey the land as estate and not as a farm. As a result, on 18/11/2013, he submitted a request through village authority to DED Temeke Municipality to have the land surveyed as estate. While agreeing that the suit land is surveyed, he denied to hire property international to survey and plan the suit land. He however admitted to have employed security guards to take care of his land. He finally prayed for the dismissal of the suit.

Now, when the suit was called on for hearing, Mr. Felix Makene, the learned advocate appeared for the plaintiffs; while the defendant enjoyed a legal service of Mr. Mashiku Sabasaba, the learned advocate.

The plaintiffs paraded a total of sixteen plaintiff witnesses name Francis Magesa Masami as plaintiff witness No. 1 (PW1), Rehema Salum Lubamwinde as PW2, Hassani Athuman Mtila as PW3, Rehema Bwashehe as PW4, Mwanaidi Omari as PW5, Mariam Feisa as PW6, Dotto Maduhu Nkonya as PW7, Ben Lukohar Mwaijande as PW8, Michael Fabian as PW9, Hatibu Mrisho Hatibu as PW10, Hussein Mohamed as PW11, Mwinyi Othumani Ramadhani as PW12, John Maendeleo as PW13, Rashid Abdallah Ligonaas PW 14, Joel Simbo Kirundusa as PW15 and Musa Mkumba as PW 16.

In brief, hereunder are the plaintiffs testimonies. PW1 Masami testified that in the year 2007, the defendant trespassed his piece of land situates at Mwaninga street and pieces of land that belonged to his fellow plaintiffs by putting a grader plying around their pieces of land claiming that the entire land belonged to him. He cleared their land, putting roads and boundaries around their land.

PW1 Masami asserted that he purchased piece of land measuring about 27 acres from one Bakari Sema Fungo in 1998 as per sale agreement, exhibit P1 collectively. When the defendant trespassed into his land, he reported the matter to street chairperson who issued a letter and directed him to report to Kisarawe II Ward Executive Officer (Henceforth the WEO). WEO tried to contact the defendant who replied he was in Arusha. He promised to report to WEO when he would came back to Dar es salaam from Arusha. He did not keep on his promise. But he was seen at the land in 2015 when, the church guard who was clearing the 4th plaintiff, was arrested and taken to Kigamboni Police station where they went to complain. The

church guard was released and the police officer advised them to institute a civil case at the court.

PW1 Masami went on asserting that there are beacons, roads and natural trees which were cut down by the defendant. He insisted that the suit land situates at Mwaninga, and not Vumilia Ukooni, which had no relationship with Mwaninga Street because every street has its own autonomy. He finally prayed to be declared as a lawful owner of the land he owns.

When cross examined by Mr. Sabasaba, PW1 Masami asserted that before he purchased his land, he was satisfied that Bakari, the seller, was the original owner. It was full of trees, it was virgin land, he cleared it and established it as a farm. At the time sale agreement was concluded between him and Bakari, the area was still known as Chekeni, Mwasonga, which is now known as Mwaninga street. Further cross examination revealed that one Majari witnessed the sale agreement exhibit P1 by initialing on it, PW1 Masami signed as purchaser, he admitted that his signature on the sale agreement differ with that he put on the plaint. The former signature is old one and the later on the plaint is a new, that also appears on his Identify Card. But both belong to him.

PW1 Masami asserted that it was transpired at the village that the defendant claimed the entire land; while by 2007 when he invaded and prevented him from entering it, he (PW1 Masami) was in his land for the past nine years dealing with agricultural activities. He was prevented from developing his land, his trees were destroyed, hence he suffered damages that should be compensated by the defendant.

Rehem Salu Lubamunde testified as PW2 whose evidence is more or less similar to that of PW1 Masami. In the year 2007, the defendant trespassed into her land she obtained in the year 1993 by clearing it as it was a virgin land which bordered the land of Mohamed Bwando on west, wawili wawili on the South, Athumani Ngaja on the North and on the east there is a road. She was using the land for cultivation of cashewnuts, natural trees, cassava, potatoes, ground nuts. As the defendant refused to reconcile the dispute, hence this suit. When cross examined by Mr. Sabasaba, PW2 Rehema admitted that the neighbors to her land are not parties to this case as they either died or sold their land to other people or abandoned.

PW3, Hassan Athuman Mtila, a resident of Madale, Tegeta testified that in 1976 he cleared a piece of land measuring about 10 acres which was a virgin land at Mwaninga area and he started to cultivate cotton, maize, cassava, coconuts, and cashewnuts therein. His land is identified by Mkuza that he prepared in 2005 around it and also natural trees marked with blue colours. Likewise, it borders the defendant's land on the east, scholars on the west. Iddi Semvua Msangi is on the North, and on the South there is Mwaijande.

PW3 Hassan went on asserting that the defendant trespassed into his land in the year 2007 and fixed beacons, and employed a guard who prevented him from entering land. He reported to the street government for conciliation but in vain. Hence, this suit was instituted. He insisted that Vumilia Ukooni Street government is different from Mwaninga street government. He prayed that the defendant be ordered to vacate his land and pay compensation for damages.

Rehema Bwashehe PW4 a resident of Manzese Uzuri area, asserted that she owns one acre piece of land at Mwaninga which borders Mwanaidi Omari, Khatibu Mrisho, Rashid Ligona, and Holly Ghost Father Church. She purchased it from Yusuf Mwinyi Athumani in the year 2006 as per sale agreement, exhibit P2. In the year 2007, the defendant trespassed it by creating Mkuza around it claiming that it belonged to him. After invading her land and that of her Co-Plaintiffs, the defendant employed a guard who was preventing them from entering their respective pieces of land. They complained to local leaders, and thereafter filed this suit.

When cross examined, she reiterated that she purchased the piece of land in 2006, the purchase was conducted in village office, the boundaries were showed and identified to her by street Government Chairman. She asserted that her neighbors are also parties to this suit.

PW5 Mwanaidi Omari, a resident of Manzese Uzuri area, asserted that in 2006 she purchased a two acre piece of land from Mwinyi Othmani Ramadhani as per sale agreement, exhibit P3. She fixed a small beacon at each angle of her land showing the boundaries. She also planted Michenza, Machungwa, Mango trees, Kommanga and Mbilimbi plants. Her land borders the land of Hussein Mohamed, Rehema Bwashehe, Rashid Ligona and Holy Ghost Church. In the year 2007, the defendant invaded her piece of land. She referred the matter to the village authority, then together with her co-plaintiffs instituted this suit. She prayed the defendant be ordered to vacate her piece of land.

In cross examined, she reiterated that she purchased a piece of land from Mwinyi Athumani in 2006 and the street government chairman is called Mwinyi Athumani. He was the one who sold a piece of land to her, prepared

exhibit P3 and stood as a witness. She insisted that exhibit P3 is valid today, but according to it was Asha Omari and not Mwinyi Athuman, who sold the piece of land to her.

In further cross examination, PW5 Mwanaidi insisted she purchased the piece of land on 25/09/2006. On North there is PW4 Rehema, but she insisted that she (PW5 Mwanaidi) purchased her piece of land before PW4 Rehema had purchased hers. That is to say she was the first to buy her piece of land before PW4 Rehema had purchased hers. However, exhibit P3 shows that she purchased her land bordering PW4 Rehema who had not yet purchased her piece of land. She however admitted that she did not know Asha Omari who appears as a seller on exhibit P3. She concluded that perhaps Athumani Mwinyi knew Asha Omari, the purported seller.

PW6 Mariam Feisa, a procurement officer working with WWF – World Wide Fund for nature, resident of Kigamboni, asserted that with 10 others colleagues namely Fredrick Karia, Leonard Mpanju, Marius Mpanju, Charles Irege, Gerald Tinali, Innocent Mema, Kafui Sengoka, Masoud Salum, Jane Ngandaku and Renja Kanani jointly purchased 25 acres situated at Mwaninga street previously known as Mwasonga from one Sultani Said Kibasila in the year 2010 for purpose of erecting residential houses, business building and other social and public use. She produced sale agreement as exhibit P4. Their piece of land border with River Nguva on West, on South and East there is a land of the defendant, and North there is Saidi Kibasila. They discovered that the defendant had trespassed their land when upon visiting it on 4/10/2020 for purposed of commencing survey process, they were prevented by the defendant's guards to enter into their land and also found a house built at lanter level. She averred that the act of the defendant

affected them to a great extent. They referred the matter to street government and thereafter instituted this suit praying the court to order the defendant to vacate from their land.

When cross examined by Mr. Sabasaba, she stated at the time they purchased the land, the area was known as Mwasonga, but now it is known as Mwaninga. The sale agreement exhibit P4, was signed by the seller Said Kibasila. One Said Sultani and Saidi Sultani who sold pieces of land to the defendant were present. They paid TZS 20,000,000/= as purchased price to the seller. They are eleven and have some interest as they were together studying in same class at the University of Dar es Salaam. She admitted that it is true that on the sale agreement signatures of other purchasers are missing, but they are her fellow owners of 25 acres. PW6 Mariam admitted that she had a mandate to sign exhibit P4 on behalf of other purchasers.

PW7, Dotto Maduhu Nkonya, testified that together with her husband called Seushi Juma Mburi, the 17th plaintiff purchased a land measuring 40 acres situated at Mwaninga from Saidi Mohamed Bwando and Omari Mohamed Bwando in the year 2009. She with her husband planned to build houses for residential and public use. At the time they purchased that Land her neighbours were Josephine Michael on the east, Ramadhani Meja and Yochi Iddi on the South. There is nguya river on the West and the defendant on the north. She produced two sale agreements as exhibit P5 collectively. After purchasing it, they cleared the land and in the year 2015, when they started survey process, they were prevented by the defendant's guards. They found on their land nguzo to hold water tanks and cultivation activities of passion already started thereon. They also found Mkuza that was put by defendant's grader. Upon invasion by the defendant, they reported the

matter to the street government and later on instituted this suit in 2015. Since then she never visited the suit land again. She prayed that the defendant be ordered to vacate the piece of land.

When Cross Examined by Mr. Sabasaba, she asserted that the boundaries of the land she bought from the two brothers, were showed by themselves (seller) and street Government leader, her neighbors such as Josephin were also present, except the defendant but they are not party to this case because their lands were not invaded by the defendant. However, she admitted she did not know defendant's land.

PW8, Ben Lukohr Mwaijande, a resident of Kimara Korogwe area asserted that in the year 1992 he purchased 13 acres of land form Mohamed Said Matibwa and in the year 1993 he purchased more land measuring 16 acres form Bakari Hassani Fungo; all pieces of land situate at Mwaninga previously known as Chekeni Mwasonga. He produced sale agreements of 1993 as exhibit P6, of 1992 as exhibit P12.

PW8 Ben went on asserting that in the year 2015, the defendant invaded his 29 acres of land after his attempt to buy it from him had failed. In the year 2003, through his guards, the defendant chased away Mr, Michael Tengeneza who was clearing his land he had planted Mango trees, cashewnuts, and coconut trees which were destroyed by the defendant.

In the year 2014, PW8 Ben had applied and was permitted by Temeke Municipality to change the land use. Survey was conducted as per Town planning (TP). The map showing that his land was surveyed and application letter for change of land use were produced as exhibit P7 collectively. He testified further that the 1st map contain 1-35 plots Block DD while the 2nd

map contains 36-48 plots. The survey process was still in progress for more other plots, but the survey process was halt by this land dispute. There were new beacons with No. BUH fixed by the defendant, and his beacons No. DNW and DRP were removed by the defendant and damped them along the road.

He expected to use the land for orphans and construction of houses for commercial and public use as his sources of income after he had retired. But, his expectation was prevented by the defendant's act. He therefore prayed that he be declared as a lawful owner of 29 acres of land and the defendant be ordered to pay damages and compensation to him.

In cross examination, he admitted that exhibit P12 was signed by Bakari Hassan Fungo, the vendor, who had passed away at Chekeni Mwasonga street. He insisted that his land is surveyed and the authorized land surveyors to fix the beacons with No. DNW and DRP. He said he who removed his beacons was the one who fixed beacons No. DUH in favour of the defendant.

Michael Fabian PW9 a resident of Mwaninga supported the testimony of PW8 Ben. He asserted that he was employed to guard and clean PW8 Ben's land since 2003. In 2015 the defendant with the company of police chased him away and stated that the entire land belonged to him. Indeed, he ran away and reported the matter to street government as well to PW8 Ben, the owner of the land, who arrived at his land and found the defendants guards still there. They chased him also. It was the year 2015 when he came to know the defendant who invaded PW8 Ben's land.

When cross examined, PW9 Michael asserted that PW8 Ben have two different pieces of land. One measuring 16 acres and the other 13 acres. He was making cleanliness in both and picking up cashewnuts. However, PW9 Michael admitted that the defendant owned land at Mwaninga, but he did not know how he obtained it.

In his testimony, Musa Mkumba, PW16 a resident of Mtoni kwa Azizi Ali, Temeke a surveyor, testified in favour of PW8 Ben that pw8 Ben applied to the District Executive Director to have his land surveyed and he was the one who surveyed and fixed beacons in his land between 2014 and 2015 at Mwasonga area and named the area as block DD Mwasonga. There were two phases of plots that he surveyed. He identified exhibit P7 collectively, the plan number D1 332/241 which is registered as E' 332/242. He emphasized that no one is allowed to destroy or remove the already fixed beacons, but what he witnessed is that the beacons, that he fixed on PW8 Ben's land were removed. It was suspected that he who removed them was the defendant.

When cross examined by Mr. Sabasaba, PW16 Mkumba asserted that he is a graduate in survey and started to work as surveyor in 2010. He said there was only one Town Plan map (TP). He insisted that one land cannot be surveyed twice. It was the defendant who encroached into PW8 Ben's land and to solve such encroachment, the ministry of Land has to make amendment to the TP. He stated that it is the municipality that prepares the beacons.

Pw10 Hatibu Mrisho Hatibu, a resident of Manzese asserted that he owns a piece of land measuring one acre at Mwaninga street that he purchased from Yusuf Mwinyi Athuman in the year 2006 as per sale agreement, exhibit P8.

He asserted that his piece of land borders the land of Tashid Ligona (east), a road (west), Rehema Bwanshehe (south) and another road (north). The defendant trespassed his land and destroyed crops such as banana, cashewnuts, mango trees and groundnuts, and fixed his beacons therein. He reported to street government where he found other people with similar issue.

He purchased the piece of land for residential, animal keeping and agricultural purposes. He agreed that the defendant had her own land on which he erected his house. The defendant's act has affected him because he has not erected house. He is still a tenant. He prayed that he be declared a lawful owner of his piece of land and defendant be ordered to compensate him.

When cross examined, he insisted that he bought the piece of land from Yusuf Mwinyi Othman. But he didn't know if the seller related to the village chairman. However, he did not know how and where the seller got that land he bought. He admitted that exhibit P8 is a sale agreement that gave him the right to own that land. Neighbours were introduced to him at the time he purchased it.

In further cross examination he admitted that one Rashid Lugona who had a land on eastern side of his land, said he purchased his in 2007; while he (PW10 Habibu) said he purchased his on 09/10/2006. That is to say that he was the first to purchase his, then Lugona followed. In other words, Lugona was not present and had not yet obtained his land at the time PW10 Habibu purchased his own piece of land, he also admitted that exhibit P8 bears the names of Hatibu, but the name of Mrisho is missing.

PW11 Hussein Mohamed, a resident of Mwananyamala asserted that in 2006 he purchased one acre of land situated at Mwaninga from one Adam Said as per sale agreement, exhibit P9. His land borders the land of Rashid Mohamed (east) Joel (west) church areas (South), and Mwanaidi Omari (North). The defendant trespassed his land in 2007 and destroyed his crops such as cassava, cashewnuts, potatoes claiming that the entire land belonged to him. He reported to street government, hence this suit.

He asserted further that he bought the piece of land for purpose of erecting house and agricultural activities, but the act of defendant had prevented him from developing his land as a result he suffered damages. He asserted that the defendant has his own land where he built a house in which his guard reside. He prayed that the defendant be ordered to vacate his land and to compensate him.

In cross examination, PW11 Hussein admitted that he did not know where the seller got that land he sold to him. Likewise, he said he knew Rashidi Mohamedi even before this land dispute had occurred; that he was introduced to Joel and Mwanaidi Omari as his neighbours. He said his land is on the western side of the land of Rashidi Mohamedi.

PW13, John Maendeleo, Missionary Padri of Roman Catholic under Holly Ghost father, testified that in the year 2005 they bought 25 acres of land situated at Mwaninga street from Omari Haruna and paid TZS. wanted to establish public development activities. When they prepared to establish activities over there they were told there was a land dispute.

Land borders the land of Vijana on east, Mr. Michicha (North), and the defendant on the west and south. The purpose of obtaining that land was

frustrated by the present dispute as a result they suffered damages as they couldn't build schools, churches, etc. he prayed that they be declared as lawful owner and the same be left to them. The defendant be ordered to pay costs and damages they had incurred.

In cross examination, P13 John asserted that he joined with Holy Ghost in 1988. He and Padri Josephat Kilawila witnessed the sale transaction because they were the two who looked for and obtained that land and subsequently purchased it. Four people namely Omari Haruna, sikujua Omari, Haruna Omari and Mwinyi Othman, the street government chairman (sellers) sold the land to them (purchasers). Before they purchased that land they were satisfied the land belonged to the sellers. He and his colleague just paid the sellers at the land they purchased. On that date, he went at the land as prayer and Padri Josephat was responsible with sale agreement which was prepared by street government. The sale agreement, exhibit P10 was prepared, supervised and they signed by Mwinyi Othman as a seller. He admitted there are no signatures of Haruna, Sikujua and of Omari on the sale agreement. On their party, it was father Josephat Kilawila who signed the sale agreement as purchaser on behalf of congregation of Holly Ghost. He admitted there was not sign showing he signed on behalf of Holly Ghost.

PW13 John admitted that it is true the sale agreement was not well prepared. However, he admitted they trusted the sellers, but he did not refute that the land they bought did not belong to the sellers. He also admitted that Holy Ghost has registered trustees. He did not produce any document to show that it is registered.

In reexamination, PW13 John reiterated that the family of Omari Haruna, Haruna Omari and Mwinyi are the names of the people appearing on the

sale agreement, that Holy Ghost is an institution in the church lead by Padri Macha Daniel, that Padri Josephat is a leader/director of Libaman schools, and that they purchased the land in 2005, and the defendant invaded it in 2015.

Rashid Abdallah Ligona, resident of Manzese Uzuri testified as PW14 that he owns a land measuring three acres at Mwaninga that he purchased in 2007 from Adam Saidi as per exhibit P11, sale agreement. His land borders with the land of Rashid Mohamed (South), Said on east, Ali Hassani (west) and Hatibu Mrisho (north). The defendant invaded into his land in 2008 and uprooting his crops and trees. Since the invasion, he had not yet made any development on the land as a result he suffered a lot. He prayed to be declared as a lawful owner of that land and the defendant be ordered to vacate the land. The defendant be ordered to pay damages and costs.

When cross examined by Mr. Sabasaba, PW14 Ligona asserted that he did not know how and where Adamu Saidi, the seller obtained that land he sold to him: whether he took other's land or not. He averred that Mwinyi Othman was a village chairman and witnessed a number of land sale transactions; that before he did not know Adam Saidi.

Pw15 Joel Simbo Kirundwa, businessman, a director to the 5th plaintiff, Baki Crushers, testified that he purchased a land measuring 16 acres located at Mwaninga from Mwinyi Othman Ramadhani. He paid him TZS 27 million as purchase price and the sale agreement, exhibit P13 was prepared. His land borders the land of vijana, now Rehema and Habibu on the North, of Yoshi and Mwaijande on the South, Mama Keni on West and of Mwilala Maulana on the east.

PW15 Joel went on asserting that in 2015 he was telephoned by PW1 Masami who told him that there was a person who offered to buy his (PW15 Joel) land at TZS 15 million per acre. PW1 Masami mentioned to PW15 Joel the names of the defendant. He continued with his work of digging fish ponds and a place for animal keeping. It was then his laborer who told him that the defendant with a person of Somali Origin arrived and claimed that the entire land including his belonged to him. Later on, he saw the defendant having his workers creating roads, plots and Mkuza trespassing his land. He also threatened to harm him. He thus prayed that the defendant be ordered to vacate the land and pay costs.

In cross examination, PW15 Joel insisted that he purchased the land in the year 2014 in the names of his company from Mwinyi Othmani Ramadhani after he had been satisfied that it belonged to him. Mwinyi had his own documents which he just showed to him (PW15 Joel). Mwinyi did not hand over his documents to him, instead they prepared a sale agreement, exhibit P13.

It was the evidence of Mwinyi Othmani Ramadhani PW12 Mwaninga street chairman and a resident of Mwaninga street which supported the evidence of PW15 Joel. He testified that he sold a land measuring 16 acres situated at Mwaninga, to the 5th plaintiff, Baki Crusher, which is owned by Joel Simbo in the year 2014 at TZS 27M/= In the year 2005, he purchased that land he sold to 5th plaintiff from one Ferdinando Mathias Sikapula who cleared it as virgin land.

He went on asserting that in the year 2006 while he was still chairman of Mwaninga street, he witnessed Ramadhani Rashid Othman selling 2 1/2 acres of land to the defendant. He was a witness and the one who prepared sale

agreement. It is that 2 $\frac{1}{2}$ acres of land to the defendant. He was a witness and the one who prepared sale agreement. It is that 2 $\frac{1}{2}$ of land where the defendant built his house in which his guard stays. He denied that the defendant owns 310 acres. The defendant invaded the land that does not belong to him.

In cross examination, PW12 Mwinyi asserted that land borders the land owned by the church who obtained it long time ago. He admitted that it is true he was the one who was preparing sale agreements, signed them and stamped them, and that he may be blamed for the mistakes and irregularities on those sale agreements. The purchasers were coming into his office with the sellers. His duty was to prepare sale agreements, inspect the boundaries and stamp the sale agreements. He witnessed several land sale transactions.

That's all about the plaintiff's case.

Upon closure of the plaintiff's case, the defendant's case opened and a total of five defendant's witnesses testified. These are Jaffer Idd Msangi who testified as defendant witness No. 1 (DW1); Michael Sangijo Kagoma as DW2; Kaitani Abel Cosmas as DW3; Matias Luwole Serikali as DW4 and Remidians Rupia Mwesiga as DW5.

DW1 Jaffer, an accountancy consultant and resident of Njiro Arusha, asserted that he was sued by 27 plaintiffs claiming against him, amongst other things, that he trespassed into their land and made destruction therein. He said what he knows is that he had 330 acres of land at Mwaninga, Kisarawe II, Kigamboni Municipality. He purchased that land from four individuals between the year 2000 and 2005. He purchased 215 acres from Mwajuma Salum Kuliangoma at Tshs. 1 M/= as purchase price. The purchase

price was made in installments. First installment in the sum of TZS 800,000/= was paid on 05/08/2000 at Vumilia Ukooni sub village where the vendor Mwajuma Salum Kuliangoma was residing. The last instalment in the tune of TZS 20000/= was made on 30/08/2000 at Chekeni Mwasonga and a document exhibit D1 collectively containing 215 acres of land was prepared. He asserted that vumilia ukooni is very near to Mwaninga.

DW1 Jaffer testified that on 05/08/2000 he purchased 20 acres from Sultani Saidi Kibasila as per the document he produced as exhibit D2. He purchased the third land from the family of Simba and Kuliangoma in the year 2001 as per exhibit D3. He purchased the 4th land from Ramadhani Athumani Mbunda on 16/09/2005 at a purchased the 4th land from Ramadhani per exhibit D4 which shows that the land he purchased from Ramadhani Athumani Mbunda is surrounded by a land that he owns as well. He insisted that the total land he purchased measures 330 acres and aimed to use it for agriculture, livestock and horticulture purposes.

DW1 Jaffer asserted that on 15/11/2014 he wrote a letter to Temeke District Executive Director seeking for permission to have his land surveyed, but there was no response from the DED. He tendered the letter which was not replied as exhibit D6. However he asserted, later on survey instructions was issued to Temeke Municipal surveyor. Hence, survey exercise was conducted by JMZ in March, 2015 up to November, 2015. They surveyed only 490 plots, listed of 808 plots because his TP and that of PW Ben Corroded and because he had insufficient money.

He produced approved registered survey which was objected to and never received in evidence. He went on asserting that in 2006, he used the grader

to make roads and Mkuza. In the year 2015 he was reported to police that he invaded the plaintiff's land, the allegations that he denied.

DW1 Jaffer testified that the plaintiffs tendered exhibits showing that on different time each acquired piece of land. He said Mariam Faizal and her group acquired land in 2010. The allegation that he invaded their hand is false; Doto and he husband alleged to acquire land in 2009; 5th plaintiff Bake in 2014, he insisted that they acquired the land while he had already put Mkuza. He started that he did not enter into the land of PW8 Ben, that his land is surrounded by road and that when he wanted to survey his land, he involved his neighbours.

It was the assertion of DW1 Jaffer that his TP was issued on 30/10/2014 while TP of PW8 Ben was issued in 2015, as a result PW8 Ben's TP overlapped his TP. He asserted that they asked the Ministry of Land to clear that error. In 2018, the Ministry of land made amendment of the TP of PW8 Ben in order to remove PW8 Ben's area that overlapped his land. He asserted that the land of PW8 Ben and his land do not interfere each other. They are separated by a road.

DW1 Jaffer concluded saying that the claims brought by the plaintiffs are baseless, but aimed to disturb him because he was there since 2000. The documents that were tendered by the plaintiff recognized his presence. He argued that if their land, were trespassed they could have reported to police immediately. They waited and gathered to report the invasion to police. They claimed he trespassed into their pieces of land in 2007, but they did not take action until 2015 when they instituted this suit for the first time.

When cross examined by Mr. Felix, DW1 Jaffer replied that he purchased four pieces of land which in total made up 330 acres as follows that exhibit D1 shows 215 acres, exhibit D2, 20 acres but exhibit D3 does not show the size of land that he purchased. Exhibit D4 shows that he purchased two and half acres. The total area indicated in the three exhibits is 237 and half acres, but he insisted his total land he purchased measures 330 acres situated at Mwaninga. He admitted that he was not sure if Vumilia ukooni is similar with Mwaninga. However, he admitted Vumilia Ukooni was sub village with its own boundaries and its leaders were not supposed to witness any sale transactions of land which was carried outside its boundaries. The valid documents ought to be prepared and issued by Mwaninga where the land he purchased situated, although sale transaction was concluded at Vumilia Ukooini where the seller was living.

When cross examined he said he made purchase price payment on three instalments to Mwajuma, the seller. He first paid TZS 200,000/= on 5/8/2000, the second instalment of TZS 600,000/= was paid June 2000, but he admitted there was no mention of TZS 600,000/= on exhibit D5. He said he paid TZS 200,000/= and 3rd instalment on 30/8/2000. He instead that the truth is that the sale transaction was concluded at Chekeni Mwaninga as per Exhibit D5 titled "Hati ya Uthibitisho wa Mauzo ya Shamba" which, according to him, confirms that purchase transaction took place and that uthibitisho equal to Mkataba.

Further cross examination revealed that he started to survey after receiving authority from Temeke Municipality although he failed to tender a written authority as exhibit. He said he engaged company to consult survey,

Thus, he added, the sale agreement dated 30/8/2000 issued by Chekeni Mwasonga is valid one. However, he had not yet tended in court the document issued by Chekeni Mwasonga. In respect of exhibit D3 of 4/2/2001, it is indicated that he purchased a land from the family of Simba and Tuliangoma. It was a land that was left by the late Mohamed Mbwana (Tuliangoma). He did not now the administrator of the estate of the late Mohamed Mbwana, but he thought that, the family that sold the land measuring 61 acres to him was the administrator of the deceased estate. But, he admitted the 61 acres and relative of vendor Mwajuma Salum, although signed do not feature on exhibit D3.

DW1 Jaffer went on asserting that he who sold the land as per exhibit D4 of 16/9/2005 was Ramadhani Rashid Mbunda, although the names appearing on exhibit D4 is Ramadhani Rashid Othman. He trusted what is written on exhibit D4. On 8/8/2000 he purchased the land from Sultani Said Kibasila as per exhibit D2. On 5/8/2000, he paid part of purchase price as per exhibit D1, not to purchase land. He went on asserting that exhibit D2 is confirmation of selling the land which is equal to sale agreement which was made before Mohamed Izengo, the Chekeni Mwasonga village chairman. Sub village Chairman also signed on the sale agreement.

As far as survey of the land is concerned, DW1 Jaffer asserted that the process to survey started in March, 2015 and completed in November, 2015 although he had not yet produced evidence of survey. He surveyed half of his entire land in the presence of neighbours. He wrote a letter in 2014 through Ward Executive officer to Tembeke District Executive Director who issued survey instruction. However, there was no reply to his letter from DED. He further admitted that para 3 of written statement of defence is self-

explanatory although there is a slight mistake therein. It was not 2000 but it was 2015. He asserted that he was owner of the land but not registered owner as stated on para 3 of the Written Statement of Defence.

DW1 Jaffer asserted furthermore that his TP was approved on 30/10/2014 by Director of Town Planning in the Ministry of Lands, but he admitted he had not produced approved TP. He added it was TP of PW8 Ben which overlapped his land. He wrote to the Ministry of Land explaining over that overplanning, but he failed to tender the letter as exhibit. He however asserted that PW8 Ben's TP was amended in 2018, although he did not produce such amended TP as exhibit. He denied to have surveyed over the PW8 Ben's land, because at the time he was conducting survey he did not see any beacons, otherwise his surveyor could have informed him.

In re-examination, DW1 Jaffer stated that the seller in exhibit D3 were Mwajuma Salum and Hamis Simba and their relatives as heir/heiress of the late Mohamed Mbwana. It was Hamis Simba who signed the sale agreement. Others put their thumbs. There is no size of the land indicated in exhibit D3, but he was showed the boundaries. Exhibit D1 is acknowledgment of receipt of purchase price in respect of the land at Chekeni Mwasonga whose payment was made at Vumilia Ukooni where the seller resided. According to exhibit D1, the sale agreement would have been issued at Chekeni Mwasonga. Exhibit D4 shows that the seller was Ramadhani Rashid Othman. Exhibit D2 is sale agreement. To his understanding after he had obtained written sale agreements he considered himself as registered owner of the suit land as stated in para 3 of the written statement of defence.

In re-examination, DW1 Jaffer stated that exhibit D 2 – D5 shows Vumilia Ukooni and Chekeni Mwasonga respectively, that the seller resided at Vumilia Ukooni and the suit land situates at Chekeni Mwansonga.

DW2 Michael Sangijo Kagomu, resident of Mwasonga, Kisarawe II since 1986 asserted that he happened to be grassroot-member, village council member and then village council chairman, etc. He said he participated in land sale transactions which were conducted within the area he was a leader. He identified exhibits P6 and P12 that bear Chekeni Mwasonga Ujamaa village rubber stamp and signature of Hassani Bakari as village secretary. He said Hassan Bakari never be village secretary and had no authority to sign on exhibit P6 and P12 as he was a mere village executive in CCM party. He who was responsible with land sale agreements was Herman Majaliwa, Mwasonga street. Other streets were mwasonga and mkamba. The first Chairmna of Mwaninga street was Mwinyi Othman. He himself was a chairman of Mwasonga street until the year 2014. He asserted further that a leader as Mwasonga street cannot witness any land sale transaction concluded at Mwaninga street and vice versa.

In cross examination, Dw2 Michael asserted that Vumilia Ukooni is a street under the chairman of Bi. Haymati. Vumilia Ukooni Street and Mwaninga are neighbor streets, but each one has its own leadership. Nobody had authority to interfere with activities of other street such as witnessing land sale agreements.

DW3 Kaitani Abel Cosmas asserted that the defendant was his neighbour as their respective lands boarders to each other at Mwaninga Street. He was allocated a land in 2004 by Mwasonga leadership. In the year 2004 at the time he was allocated a land, Mwaninga street was a sub village within

Mwasonga village. He stated further that he had already sold his land to one Sofia in 2012 and the sale transaction was witnessed by the late William Izengo. In 2006, he came to know the boundaries of the land of the defendant when he was preparing Mkuza surrounding his land.

In cross examination, he disclosed that it was the defendant who asked him to come and testify in his favour after defendant had told him that his land was invaded but did not tell him who invaded it. He knew the defendants land, but he did not know its size. He also said he witnessed the defendant buying two and half acres of land.

DW4 Matias Luwole Serikali, testified on exhibit D7, the Town Planning Survey with reference No. TEMI/34/52010 with names Mwasonga residential layout plan, the survey plan that was confirmed/approved on 30/10/2014, and brought by the defendant at the Ministry Land. It is prepared under standard; and second approved Town planning drawing survey with reference No. TEMI/IIIA/12015, exhibit D8 which was confirmed or approved on 22/5/2015 with the names Mwasonga residential layout plan which overlapped with the first one. That is to say that exhibit D8 overlap or supersede exhibit D7 because exhibit D7 was the first to be prepared and received approval on 30/10/2014, while the exhibit D8 was the second to be prepared and received approval on 22/5/2015.

However, he admitted that the two exhibits concerned different pieces of land, but there is a place where exhibit D8 superseded part of exhibit D7.

The overlapping starts at 543500 Easting and 9227500 Northing, the overlapping is on the right side. In respect of exhibit D8, grid reference is 543500 Easting and 9227250 Northing, 543500 Easting and 9228750 Northing. The overlapping is on the left side. There was overlapping, but the drawings were approved. In order to tackle the problem, the matter must be referred to Temeke Municipality for certification. In the alternative, the court may order the ministry of Land to rectify such overlapping.

When cross examined, DW4 Matias, a Town Planning Officer asserted that he come to the court to testify on the documents which they keep in the Ministry of Lands that the two documents show overlapping problem which must be corrected. He asserted further that the defendant's land had appeared on both exhibits D7 and D8. He insisted that he was so sure that according to the measurements there is overlapping on the two exhibits.

DW5 Remidians Rupia Mwesiga, a principal surveyor with Kigamboni municipality explained the Procedures to follow if a person wants his land to be surveyed. To write to street government which confirms that the land to be surveyed belonged to the applicant, then the application is forwarded to the District Executive Director. If such person, wants the Municipal Council to survey his land, the council gives survey costs or if he wants to involve registered surveyor, such person has to submit a letter indicating the

Registered surveyor's names and particulars, Town planning drawings and a letter showing ownership or land acquisition proof. Thereafter, land officer has to approve that the owner of the land is the exact one whose particulars appear on the documents. Then, survey permit is issued to a surveyor indicating the total number of beacons to be used.

DW5 Remidians asserted further that the drawings are prepared by Municipal Town Planners and are the documents which commences the survey process. Even the procedures of preparing the drawings must also commence from street government, then to the Municipal Council and then to Ministry of Lands for approval. After approval, the surveyor uses it for conducting survey. He tendered Registered survey plan for Mwasonga area as exhibit D9 collectively. These exhibits show the plots that were surveyed i.e. plots No. 236-316, Block DD; 484-551, Block DD; 317-581, Block DD; 552-578, Block DD and Plots No. 88-234 Block DD, Mwasonga Area, Kisarawe II Kigamboni Municipality. The registered survey plan is numbered 83642 of plan No. E/332/266, Registered survey plan No. 86645 of E/ 332/269, Registered survey Plan No. 83647 of E/332/271, Registered survey plan No. 83643 E/ 332/267, and Registered Survey Plan No. 83644 of E/332/268.

DW5 Remidians asserted furthermore that to reach at exhibit D9, there were procedures that were followed. And in survey, the municipality provide

beacons to private surveyor and the land officer have no sign on the forms. At survey field, the surveyor must have TP if there are two TP overlapping, the two PT must be returned to the Ministry of Lands for amendment before going on with the survey process. If there is discovery of overlapping, the town planner or surveyor or land officer has to write a letter to the municipality for amendment. If there is previous survey already conducted, one cannot resurvey the land; and if there is existing TP, one cannot prepare another PT. He admitted that they still have such problems as private surveyors are normally involved. After the survey, the Municipality Land Office, goes to inspect what he had done.

When cross examined by Mr. Felix, DW5 Remidians asserted that a letter wrote by individual to have the land surveyed can be replied or not by District Executive Director. In reply, the municipal council issues survey permit through a company whose particulars attached that is going to survey the land. If it is municipal council that a person wants to survey the land, the municipality reply by giving survey costs. In respect of the survey conducted in favour of the defendant, he admitted he did not know who conducted it as well the owner of the land surveyed; that he had not yet seen the TP which gave birth to exhibit D9. He also identified exhibits P7 collectively showing plots on Block DD Mwasonga and were registered first

before exhibit D9 Collectively. He insisted that the land could not be surveyed twice. Plots in exhibit D9 were surveyed on 26/11/2015 and registered on 2/12/2015. The plots on exhibit P7 collectively were surveyed on 22/7/2015, and registered on 13/8/2015. He admitted that he was not involved in preparation of TP and that he did not know the defendant or PW8 Ben.

I have endeavored to have a summary of pieces of evidence adduced by both sides. I have also gone through written submissions submitted by the learned advocates for respective parties.

From the evidence adduced by both parties I finally find that, generally the plaintiffs have stronger evidence than that of the defendant. Although, the plaintiffs recognize that the defendant have his own piece of land over there but not much to the extent of encroaching their plaintiffs' respective pieces of land. I further find that Ben Mwaijande has proved that he purchased a piece of land measuring 29 acres and the same had been surveyed prior defendant's invasion, and that land was thoroughly recognized by him. I proceed to declare him as a lawful owner. His evidence is supported by the evidence of PW9 Michael, PW8 and PW16. Dotto Maduhu Mkonya (PW7) has proved thus. She and her husband own 40 acres of land which I do accordingly declared the same acres as lawfully belonging to her and her husband. I furthermore, PW10 Hatibu is a lawful owner of one acre while Mwanaidi had contradictory evidence. He evidence is not straight forward evidence. She has failed to prove her case to a balance of probability.

I find that PW6 Mariam proved thus 25 acres belong to her, and Hatibu PW10 owns only once acre out of the land thus was invaded by the defendant.

As I have pointed herein before the plaintiffs have proved their cases, except the few I have just mentioned hereinabove, to the balance to probability. The evidence have shown that the defendant invaded their pieces of land, chased them out from them land, and threatened to jail them I now order the defendant to vacate from plaintiffs' pieces of land and permanent injunctive order is accordingly issued against the defendant, its agents and workmen from interfering with peaceful ownership of the so declared land lawful owned by plaintiffs. The defendant is condemned to pay costs to the Plaintiffs and to pay a total compensation in a tune of TZS 100M/ (TZS one Hundred Million). I furthermore order that all people or persons who entered into the plaintiff's pieces of land so declared and that was in dispute at the time and after the time this suit, had already been instituted and was still in prosecution before this court, to vacate and are declared to be trespasser and should also vacate the suit land forth with in order to give vacant possession to the plaintiff so declared lawful owners herein. It is accordingly ordered.




J.S.MGETTA
JUDGE
23/12/2021

COURT: Right of appeal to the Court of Appeal is fully explained.




J.S.MGETTA
JUDGE
23/12/2021

COURT: This judgment is delivered today this 23rd day of December, 2021 in the presence of Mr. Felix Makene the learned advocate for the Plaintiffs and in the presence of the defendant in person.



A handwritten signature in black ink, appearing to read "J.S. MGETTA".

J.S.MGETTA
JUDGE
23/12/2021