

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO.75 OF 2018**

**VENANCE B. MINDE ..... 1<sup>ST</sup> PLAINTIFF**  
**BENNY R. MAKUNDI ..... 2<sup>ND</sup> PLAINTIFF**  
**BERNARD B. KANIZIO ..... 3<sup>RD</sup> PLAINTIFF**  
**ROMANUS S. MWAPINGA ..... 4<sup>TH</sup> PLAINTIFF**  
**JANEPHA EMANUEL KWEKA ..... 5<sup>TH</sup> PLAINTIFF**  
**HAMISI YUSUPH ..... 6<sup>TH</sup> PLAINTIFF**  
**FAUSTINI SALUMU MKAMILA ..... 7<sup>TH</sup> PLAINTIFF**  
**ABDALLAH DUBE ..... 8<sup>TH</sup> PLAINTIFF**  
**MOHAMED S. MWISONGO ..... 9<sup>TH</sup> PLAINTIFF**  
**DEOGRATIAS J. LYIMO ..... 10<sup>TH</sup> PLAINTIFF**  
**AIDAN SADALA NYEUPE ..... 11<sup>TH</sup> PLAINTIFF**  
**STANSLAUS I. MASOY ..... 12<sup>TH</sup> PLAINTIFF**  
**HENRY MUCHUNGUZI ..... 13<sup>TH</sup> PLAINTIFF**  
**DENNIS Y.A. MUSHI ..... 14<sup>TH</sup> PLAINTIFF**  
**CHAROKIWA H. CHAROS ..... 15<sup>TH</sup> PLAINTIFF**  
**RAPHAEL M. ASSENGA ..... 16<sup>TH</sup> PLAINTIFF**  
**RODGERS L. TEMU ..... 17<sup>TH</sup> PLAINTIFF**  
**LAZARO CHUWA ..... 18<sup>TH</sup> PLAINTIFF**  
**CLEMENCE P. SHIYO ..... 19<sup>TH</sup> PLAINTIFF**  
**GOODLUCK E. KIMEI ..... 20<sup>TH</sup> PLAINTIFF**  
**PAULO C. WEGGA ..... 21<sup>ST</sup> PLAINTIFF**  
**FAUSTA R. NGOWI ..... 22<sup>ND</sup> PLAINTIFF**

EMMANUEL JULIUS MATEMBA ..... 23<sup>RD</sup> PLAINTIFF  
 BEATA HILLARY NGAMILO ..... 24<sup>TH</sup> PLAINTIFF  
 HAPPYNESS S. NGOWI..... 25<sup>TH</sup> PLAINTIFF  
 RAJABU KINDUNDA..... 26<sup>TH</sup> PLAINTIFF  
 FRANK E. LAUWO..... 27<sup>TH</sup> PLAINTIFF  
 JOHN MATHAYO MWASHA ..... 28<sup>TH</sup> PLAINTIFF  
 JITHADA Y. CHELENZO ..... 29<sup>TH</sup> PLAINTIFF  
 SAULO KIVUYO ..... 30<sup>TH</sup> PLAINTIFF  
 NAVONE KISAKA ..... 31<sup>ST</sup> PLAINTIFF  
 GOODLUCK YESAYA KESAMBURINGWA..... 32<sup>ND</sup> PLAINTIFF  
 GODFREY S. TAIRO ..... 33<sup>RD</sup> PLAINTIFF  
 LETARE E. SWAI ..... 34<sup>TH</sup> PLAINTIFF

## VERSUS

THE REGISTERED TRUSTEES OF  
 CHAMA CHA MAPINDUZI ..... DEFENDANT

## JUDGMENT

*Date of the last Order: 17.09.2021*

*Date of Judgment: 29.09.2021*

**A.Z. MGEYEKWA, J**

This suit was lodged before this court by the Plaintiffs. They are claiming against the defendant jointly and or severally that they are lawful owners of

the suit premises and the Defendant is the trespasser. They claim for this court to issue a permanent injunction to restrain the Defendant, his servants or anybody acting in his interest from nay interfering with the Plaintiffs' ownership of the suit premises. The Plaintiffs prays an eviction order to be issued to the Defendants. They also pray for general damage in a tune of Tshs. 920,000,000/=, costs of the suit and any other relief(s) this court may think fit to grant.

A brief background of the suit as obtained from the record of the case is that the Plaintiffs are residing and work for gain in Kilosa and Kilombero District within Morogoro Region. They claimed that in the year 1986 the Plaintiffs severally and jointly developed the suit premises which is a football playground and erected business frames some of them constructed six frames and others constructed 5, 4, 3, 2, and 1 frames. Following a dispute between the Ruaha Primary School and the Registered Trustees of Chama Cha Mapinduzi the Defendant decided to apply to Kilosa District Council for the offer of Right of Occupancy to the said football playground. They claimed that they obtain the Right of Occupancy on 15<sup>th</sup> July 1995 measured 70 x 70 meters in exclusion of the playground which belongs to Defendant. On 23<sup>rd</sup>

April, 2018 the Defendant through the Secretary to Chama Cha Mapinduzi Ruaha Ward Branch illegally invaded the suit premise and inserted numbers on the frames, and started to collect rents and placing padlocks on the frames' doors.

In their Complaint, the Plaintiff prays for Judgment and Decree against the defendant as follows:-

- (i) The Plaintiffs severally and jointly are the legal owners of the suit premises and the Defendant is a trespasser.*
- (ii) An order permanently injunction to restrain the Defendant, his servants, or anybody acting on his interest, from any way interfering with the Plaintiff ownership of the suit premises.*
- (iii) Eviction order to issue to the Defendant.*
- (iv) An order for TZS. 920,000,000/= for general damages or any other reasonable amount that, this Honourable Court shall deem just to grant.*
- (v) Costs are provided for.*
- (vi) Such further/other relief(s) as the Court may deem just to grant.*

On the other hand, the Defendants, in response to the Plaintiff' claims, has filed a Written Statement of Defence.

It is imperative at the outset to point out that, this matter has also gone through the hands of my brother; Hon. Maige, J conducted the 1<sup>st</sup> Pre-Trial Conference, hearing of the Plaintiffs and Hon. Mgetta, J conducted Mediation. I thank my predecessors for keeping the records well and on track. I thus gathered and recorded what transpired at the disputed land and now have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

At all the material time, the Plaintiffs were represented by Mr. Bartalomew Tarimo, learned Advocate, while the Defendant was represented by Mr. Mafuru Muyenjwa, learned Advocate.

Upon completion of all preliminaries, the Final – Pre Trial Conference was conducted and the following issues were framed by this Court:-

- 1) *Whether the Plaintiff owner of the disputed property as alleged.*
- 2) *Whether the Defendant is a trespasser into the suit property.*
- 3) *To what reliefs are the parties entitled.*

To prove the above issues, the Plaintiffs' side had three witnesses, Mr. Venance Benedict Minde, who testified as **PW1**, Mr. Benny Rumishael Makundi, who testifies as **PW2**, and Mr. Charokiwa Huseein Charos, who testified as **PW3**. The Defendants' called one witness; Mr. Hamza Waziri Ngarkula who testified as **DW1**. Due to the circumstance of the case, this Court called two witnesses, Halid Mponda Hassan who testified as **CW1**, and Hassan Rashid Ally who testified as **CW2**.

The plaintiff's side tendered a total of six (6) documentary Exhibits to wit; a Minute of a Meeting dated 21<sup>st</sup> June, 2018 was admitted by this Court and marked as **Exhibit P1**. A contract between Chama Cha Mapinduzi and Evalista Joseph Msaru was admitted by this Court and marked as **Exhibit P2**. Application Form issued by Chama Cha Mapinduzi to Mwl. Benny Rumishael Makundi was admitted by this Court and marked as **Exhibit P3 attached hereto is a sale agreement**. Application Form issued by Chama Cha Mapinduzi to Mwl. Benny Rumishael Makundi was admitted by this Court and marked as **Exhibit P4**.

Additionally, the Plaintiffs tendered an Application Form issued by Chama Cha Mapinduzi to Charokiwa Charos was admitted by this Court and marked as **Exhibit P5** and a Letter of Offer of Right of Occupancy was admitted by this Court and marked as **Exhibit P6**. The Defendants tendered one (1) documentary Exhibits to wit; a Witness Statement that was admitted and marked as **Exhibit D1**. The Court witnesses' tendered one documentary evidence to wit; A Survey Report in respect to the football playground which was admitted by this Court and marked as **Exhibit CW1**.

In his effort to prove his case the Plaintiffs who paddled their own canoe in this matter appeared in Court and testified as follows; PW1, Mr. Venance Benedict Minde testified that he is a businessman. He testified that the dispute in court is against 32 owners of 92 commercial frames which are numbered 1 to 120. PW1 testified that he is representing other Plaintiffs in the suit. To substantiate his testimony he tendered a Minute of a Meeting dated 21<sup>st</sup> June, 2018 which was admitted by this Court and marked as **Exhibit P1**.

PW1 testified that in 1986 he and other 33 people were notified by village authority that a playing ground was under construction and they were invited to construct a wall surrounding the football playground and they were allowed

to constructed commercial frames. He testified that the 1<sup>st</sup> to the 5<sup>th</sup> Plaintiffs constructed 5 frames and the second Plaintiff constructed 6 frames and the 7<sup>th</sup> to 9<sup>th</sup> Plaintiffs they constructed 4 frames each and the 10<sup>th</sup> and 11<sup>th</sup> Plaintiffs constructed 3 frames each, 11<sup>th</sup> to 29<sup>th</sup> Plaintiffs constructed 2 frames and the 30<sup>th</sup> to 34<sup>th</sup> Plaintiff constructed 1 frame each. PW1 testified that they made use of the said frames until 23<sup>rd</sup> April, 2018 when unknown people approached them and claimed that the frames were CCM properties.

**PW2**, Mr. Benny Rumishael Makundi, testified to the effect that he has 6 frames. He said that he constructed two of them in 1986 and purchased another four frames in 1993 and 1994 from Hale and Makundi. To substantiate his testimony, he tendered a sale agreement (Exh.P3 and Exh.P4). PW2 went on to testify that the Defendant told them to write names of their successors as well. He further testified that he used the premises for business until 2018 when the Defendant trespassed their frames and from 2018 to date they are not conducting any business. PW2 urged this court to evict the Defendant from suit property and pay them damages and other costs.

Mr. Charokiwa Huseein Charos was the last Plaintiff's witness. He testified to the effect that the suit property had 92 premises which the Defendant has dispensed them and referent to the 3<sup>rd</sup> parties. He testified that he occupied the frames since in 1986 and the village authority told them to construct wall surrounding the suit premises. PW3 testified to the effect that they have suffered economic loss and urged this court to order the Defendant to vacate the suit premises with costs. He also prayed for this court to restrain the Defendant from committing further trespass.

On his part the Defendant sole witness, Mr. Hamza Waziri Ngarkula testified from Antons Mhenez that he is Ward CCM Executive Secretary since 2007 to 2012. DW1 testified that the suit premises belongs to the Defendant. In 1984/85, the Defendants and the Plaintiffs are tenants. He testified that the Board of Trustees issued agreements since 1985 and one of the agreement terms and condition was that the one entered into an agreement should not rent. DW1 testified that the suit premises nor ownership were not transferred to the Plaintiffs. He testified that the plaintiff are not recognized because they do not pay rents. He urged this court to dismiss the suit with costs.

The court witnesses; **CW1**, Halid Mponda Hassan testified that he is a land surveyor working with District Council for Kilosa. He testified that the disputed Plot is unsurveyed located in Ruaha area. CW1 went on to testify that on 10<sup>th</sup> September, 2021 he complied with the court order and managed to measure the disputed area inside and the surrounding area where there are several frames. CW1 testified that the measuring exercise was witnessed by the Plaintiffs and Defendant and OCS from Luhembe were present. He testified that the inside area measured 11,699 sqm and the surrounded area measured 15,977 sqm. Thereafter he prepared a Sketch Map and a report. To substantiate his submission he tendered a Survey Report which was admitted as Exhibit CW1.

When CW1 was cross examined by Mr. Tarimo, he claimed that letter of offer for Right of Occupancy state that the disputed area measured 10,115 sqm. He testified that a land surveyor is in a better position to confirm the measurement of the suit landed property than the owners. CW1 testified that the letter of offer is unknown the same was prepared by a Land Officer and the title reads Kilosa District Council issued by the Executive Director.

When CW1 was cross examination by Mr. Mafuru, CW1 testified that there are two measurements inside and outside, the proper measurement is

11,696 sqm and 15,977 sqm respectively. He testified that the measurement appearing in Exhibit P6 is 10,115 but the same does not show if it is the outside or inside measurement because the area was unsurveyed. He testified that the measurement was estimated

Hassan Rashid Ally testified as **CW2**. He testified that he is a Land Officer working with the District Council of Kilosa since 2004. He testified that the Survey Report is prepared by the Executive Director of Kilosa District. He said that the measurement of the football ground is 11,696 sqm inside and 15,977 sqm outside the football ground. He went on to testify that the Offer of letter is prepared by the District Executive Director of Kilosa and the total measurement of a football ground is 10,115 sqm. He added that in accordance with the letter of offer is that was only demarcated not surveyed and the same was not linked or connected to the sketch map.

When CW2 was cross examined by Mr. Tarimo, he testified that the difference between the offer of letter and Surveyor Report is 1,581 sqm. He testified that the offer of letter is relating to the whole measurement of the football field including the inside and outside measurement. He added that the measurement was estimated.

When CW2 was cross examined by Mr. Mafuru he testified that they used to estimate the size of the unsurveyed area since the measuring equipment were few. He testified that before issuing a certificate of the title they measure the area once again. CW2 testified that the Defendant is the one who is paying land rent.

Having heard the testimonies of both parties and considering the final submission of all learned counsels, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in civil litigation and which will guide this Court in the course of determining this suit. The said principles include the following; the same is stipulated under section 110 of the Evidence Act Cap.6 [R.E 2019] which places the burden of proof on the party making the assertion which that partly desires a Court to believe him and pronounce judgement in his favour. Section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] provides that:-

*"110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2) When a person is bound to prove the existence of ant fact, it is said that burden of proof lies on that person."*

Similarly, in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113 it was held that *"he who alleged must prove the allegations"*.

Another salient principle of the law, which are applicable in civil litigation and which will guide this Court in the course of determining this suit is "Parties are bound by their pleadings." Pleadings in this sense include the Complaint, Written Statement of Defence, affidavits, and reply therein if any. Therefore, in its broader meaning pleadings include all documents submitted and annexed thereto and those which were listed along with the complaint or produced before the first date of hearing of the suit. The Court is required and expected to examine the entire pleadings and the totality of evidence tendered, together with an assessment of the credibility of the witnesses who appeared before the Court. The evidence adduced before the Court must be weighed and not counted.

In resolving the controversy before me, the above underlying principles, case laws shall guide my evaluation and analysis of the evidence that was presented by parties in this suit, pleadings together with the final submissions

by the learned counsels, and with earlier framed issues by the court will be resolved seriatim:

The first issue for determination is *whether the Plaintiffs are lawful owners of the alleged disputed area*. In a chronological account of the ownership of the property that the Plaintiffs have presented, they said that suit land was originally allocated to ... in the year 1986, they acquired parcels of land outside the Ruaha football playground, measuring 70 meters width and 70 meters length. They Plaintiffs claims are based on the construction of the business frames around the football playground. To enforce their claims they relied on the agreement signed by some of the parties and the Defendant. The Defendant on his side claimed ownership of the suit land since 1980's as evidenced by the certificate of occupancy issued on 20<sup>th</sup> September, 2007 (Exhibit P6).

There is no dispute that the Plaintiff constructed frames in the suit land for a long time, however the same does not diminish the fact that the Plaintiff entered into an agreement as stated under the Form titled 'FOMU YA MAOMBI SEHEMU YA KUJENGA VIBANDA VYA BIASHARA UWANJA WA MPIRA - TAWI LA CCM RUAHA' issued by the Defendant to Benny Makundi, the 2<sup>nd</sup> Plaintiff on 28<sup>th</sup> February, 1994 (Exh.P3, Exh.P4 and Exh.P5). For ease of reference I

reproduce the Application Form of Frames Constructions in the football grounds – CCM Branch:-

CHAMA CHA MAPINDUZI

FOMU YA MAOMBI SEHEMU YA KUJENGA VIBANDA VYA BIASHARA UWANJA WA MPIRA  
TAWI LA CCM RUAHA

MAELEKEZO KWA MWOMBAJI:

1. Jina kamili MWL BENNY RUMISHAEL MAKUNDI (MNUNUZI MPYA)
2. Jina la ukoo MAKUNDI
3. Jina la mrithi JASTIN BENNY MAKUNDI
4. Tarehe 7<sup>th</sup> Dec, 1993
5. Nimekubali kujenga sehemu ya kufanyia biashara yangu kwenye eneo la kuzunguka uwanja wa mpira wa miguu wa Tawi la CCM Ruaha kwa masharti yafuatayo: -
6. (1) Hatabomoa sehemu aliyopewa kujenga au hatabadilisha chochote au kuuza sehemu hiyo aliyopewa kujenga kwa ajili ya kufanyia biashara mpaka uongozi wa Tawi (Halmashauri Kuu) itoe idhini ya kufanya hivyo na uongozi wa Tawi (Halmashauri Kuu) ndiyo yenye uamuzi wa mwisho.
6. (2) Atajenga sehemu hiyo aliyopewa si Zaidi ya muda wa miezi miwili (2) kuanzia tarehe aliyoweka sahihi kwenye fomu hii, lakini iwapo amemaliza kujenga sehemu ya ukuta wa uwanja wa mpira anaweza kuendelea kujenga sehemu zilizobakia kwa muda wa miezi mitatu (3) pia atajenga kufuatana na ramani ya uwanja wa mpira.
6. (3) Biashara zitakazowekwa kwenye sehemu hizo ni zile zinazokubaliwa na uongozi wa Tawi (Halmashauri Kuu) wakishirikiana na Bwana afya.
6. (4) Yeyote ambaye atashindwa kumudu kujenga sehemu katika eneo hilo kwa muda uliopangwa atakuwa amekosa haki na hatarudishiwa gharama zake.
7. Ninathibitisha kwamba maelezo yote yaliyotolewa katika fomu hii kwa kadri ya uwezo wangu nimeyakubali.

Tarehe 7<sup>th</sup> Dec, 1993

Sahii ya Mwombaji .....

8. UTHIBITISHO WA KAMATI YA USIMAMIZI WA UJENZI WA UWANJA WA MPIRA

Maoni ya wajumbe wa kamati

Tunathibitisha kwamba kadri ya fahamu zetu maelezo aliyoyatoa mwombaji ni ya kweli amekubaliwa/amekataliwa na amepewa na: -14 – B

.....  
Sahihi ya Katibu wa Kamati

.....  
Sahihi ya Mw/Kiti wa Kamati

9. UTHIBITISHO WA OFISI YA CHAMA TAWI LA RUAHA

Tunathibitisha kuwa anastahili/hastahili kupewa na kujenga sehemu hizo/hiyo.

.....  
Sahihi ya Katibu wa Tawi

7-12-93  
Tarehe

.....  
Sahihi ya Mw/Kiti wa Tawi

The above-extracted passage leaves no doubt that the Plaintiff had an agreement with the Defendant, they were allowed to construct frames surrounding the football ground. However, there is no any term for transferring the ownership to the Plaintiffs. The Form does not state that they can sell to someone else. It was the Plaintiffs thinking that after occupying the said area for a long time they automatically becomes owners.

They are claiming that they have been in peaceful possession of the said suit properties for more than 30 years upon which they think are entitled to be registered as the lawful owners. In other words, the Plaintiffs remained in possession of land with the full knowledge that they are owning the surrounded football pitch area. The question to ask is *whether adverse possession may arise after the lease agreement*.

These being the standpoints, Mr. Tarimo in his final submission insisted that Plaintiff were owning the said area without being disturbed for 30 years. To prove their case, the Plaintiffs also tendered a lease agreement between

Chama Cha Mapinduzi Trustees and individuals (Exh. P2). The law is clear when it comes to adverse possession in the case of **Bhoke Kitang'ita v Makuru Mahemba**, Civil Appeal No. 222 of 2017, the Court of Appeal of Tanzania insisted that adverse possession must be proved that there had been no interruption to the adverse possession throughout the aforesaid statutory period. Exh.P3 collectively are FOMU YA KUJENDA FRAMES. Kujaza fomu sio ticket ya umiliki. One of the CONDITION in the plaintiff required to abide with is on Paragraph 6 (1) of the said fomu clearly states that hatabomoa sehemu hiyo aliyopewa kujenga au hatabadilisha chochote na kuuza sehemu hiyo aliyopewa kujenga kwa ajili ya kufanyia biashara ampak uamuzi wa tawi halmashauri kuu itoe idhini ya kufanya hivyo. Tawi ndio yenye maamuzi ya mwisho.

The Plaintiffs tendered sale agreement (Exh. P3 attachment) these documents as well are not justifying ownership. It was the Plaintiff own plan to sell the frames to another person and reading the sale agreements it does not show whether the Tawi or District Council approved the sale of the said frames.

The Plaintiffs also tendered a letter of offer which bears the name of the Defendant a lease of 33 years was issued to the Defendant the estimated size of the playground was 10,115m<sup>2</sup>. The plaintiffs are relying on this document to claim that the remaining unsurveyed area belongs to them. Reading Exhibit CW1, the Survey Report reveals that the football playground measures 11.696 sqm and the surrounding area is 15,977 sqm and the Plaintiff are claiming for 70 meters x 70 meters is equal to 4,046.856 sqm Mr. Tarimo in his final submission submitted that the surrounding area measures 11,696 sqm as per Exhibit CW1 which belongs to the Plaintiffs, however, the measurement of 11,696 sqm does not tally with the Plaintiffs claims as stated on paragraph 4 of the Plaint. For ease of reference, I reproduce their claim hereunder:-

*" ...The Plaintiffs severally acquired parcels of land around and outside the Ruaha football playground, the ground that measures 70 meters in length and 70 meters in width. Alleged to have been owned by the Defendant."*

Apart from the Plaint, PW1 also testified to the effect that the surrounding football playground is measuring 70 meters x 70 meters. Plaintiff became amused after the introduction of fee, and the same does not entitle them to

claim ownership over the said frames. The Plaintiffs' Advocate in his final submission insisted that the Plaintiffs are the lawful owners of the surrounding football playground measured 70 x 70 meters as pleaded. After parties, budding words on the issue of measurement, both learned counsel sake the court intervention to involve the surveyor to survey the disputed area. The Survey Report reveals that the football playground is measuring 11,696 inside and the surrounding is 15,977 sqm. Contrary to what the Plaintiffs have pleaded in their Plaint.

Having departed from their pleadings, they cannot claim ownership over the surrounding area of the football playground measuring 15,977 sqm. The Court of Appeal of Tanzania in a recent case of **Agatha Mshote v Edson Emmanuel & 4 Others**, Civil Appeal No. 121 of 2019 delivered on 20<sup>th</sup> July, 2021 held that:-

*"It is settled law that parties are bound by their own pleadings and that a party shall not be allowed to depart from his pleadings to change its case from what was originally pleaded. This entails a party parading the evidence to prove or support what he has pleaded ..."*

Claiming that the Defendant is not owing more than 10,115 sqm as stated in the letter of offer (Exh.P6) is baseless since it was the duty of the Plaintiff has to prove their ownership. In order for the Plaintiffs to claim ownership over the suit landed properties were required to prove to the standard required by the law. The records are silent whether the Plaintiffs tendered any documentary evidence which shows that they are the lawful owners of the area surrounding the football ground. Mr. Tarimo submitted to the extent that the Defefand cannot own more than 10, 115 sqm as stipulated in the letter of offer. It is noteworthy that even if the square meter appearing in the letter of offer differ from sqm appearing in CW1, the exceeding square meter cannot be granted to the Plaintiffs without any proof of ownership.

It is my respectful view that the Plaintiffs assertions are plainly worthless. All the years when they constructed the frames, the Plaintiffs were still tenants and the same was not changed. Staying peaceful in a place where the owner is known cannot amount to adverse possession. Claiming that they occupied the suit land since 30 years ago, is not only unconfirmed information but also worthless evidence that cannot be acted upon by this court of law. It would have been prudent if the Plaintiffs had produced the

certificate of titles or transfer deed or brought a Land Officer as a witness to testify to prove the transfer of title deed from the Defendant to the Plaintiffs.

At any rate, looking at the documents tendered in court (Exhibit P1- CW1) the same did not support the Plaintiffs assertions that they are the legal owners of the suit properties. As rightly pointed out by Mr. Mafuru the owner of the disputed plot was known.

Next for consideration is the issue whether the Defendant are trespassers into the suit property. In the Black Dictionary, the word trespasser is defined to mean 'One who commits a trespass; one who intentionally and without consent or privilege enters another's property. By the definition, the Defendant is not a trespasser. The record reveals that the Defendant from the beginning of the suit is the one who was in possession of a letter of offer and he was paying land taxes to prove that he is the lawful owner of the suit property. The Plaintiff who alleged the same were not able to prove that the Defendant trespassed their land.

The last issue for consideration is *what relief (s) are parties are entitled to*. The Plaintiff in their Complaint has prayed to be declared lawful owner of the suit property, the area surrounding the football playground. Guided by the

observations and analysis of all nine issues, I have found that the Plaintiffs have failed to prove their ownership. All documents tendered by the Plaintiff do not give them rights to claim for ownership.

For those reasons they are not entitled to any relief as they have failed to prove their claims. One of the canon principles of civil justice is for the person who alleges to prove his allegation. The same was held in the case of **Abdul Karim Haji v Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (unreported) the Court of Appeal of Tanzania held that:-

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

And on the same line of argument in respect of standard to proof was observed by the former East African Court of Appeal in the case of the **East African Road Services Ltd v J. S Davis & Co. Ltd** [1965] EA 676 at 677, it was stated that:

*" He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant. "*

Applying the above authorities, I have to say that the Plaintiffs have failed to prove their allegations. Therefore, the Plaintiffs' reliefs are hereby disregarded.

In regard to other relief, this court cannot grant what was not pleaded.  
Suit dismissed without costs.

Order accordingly.

DATED at Dar es Salaam this 29<sup>th</sup> September, 2021.



  
A.Z.MGEYEKWA  
**JUDGE**  
29.09.2021

Judgment delivered on 29<sup>th</sup> September, 2021 in the presence of Mr. Bartalomew Tarimo, learned counsel for the Plaintiffs, and Mr. Mafuru, learned counsel for the Defendant.



  
A.Z.MGEYEKWA  
**JUDGE**  
29.09.2021

Right to appeal full explained.