

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 46 OF 2019

SUNDAY AGREY MSELI.....1ST PLAINTIFF

RACHEL GABRIEL KITILA.....2ND PLAINTIFF

KHADIJA AHMAD MBINGO3RD PLAINTIFF

SHARIFA HASSAN MKAKIA.....4TH PLAINTIFF

REHEMA SAID MARUKU.....5TH PLAINTIFF

VERSUS

MUSA BAKARI NANKURU.....DEFENDANT

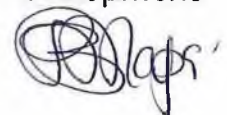
Date of Last Order: 20/10/2021

Date of Judgment: 4/11/2021

JUDGMENT

MKAPA, J

The dispute between the parties herein involves the ownership of a parcel of land Reference Nos. VAL/ KIN/ CHAS/ bas/ 1828, VAL/ KIN/ CHAS/bas/1830, VAL/KIN/CHAS/bas/1789, VAL/KIN/CHA/bas/1827 and VAL/KIN /CHAS/bas/1743 situated at Chasimba area, Kinondoni District in Dar-Es-Salaam Region, hereinafter referred to as "the suit land". The plaintiffs instituted this suit against the defendant for a declaration that; they are the lawful owners of the suit land; payment of general damages and costs of the suit, interests and exemplary damages amounting to one hundred million shillings (T.shs. 100,000,000/=). According to the Plaintiff the Plaintiffs were allocated the above named parcel of land by the Ministry of Land, Human Settlement Development



following valuation exercise as justified by the letter from the Commissioner for Lands dated 26th July 2013, addressed to the Kinondoni Municipal Council through the street chairman of Basihaya Street.

The cause of action arose when the defendant started cutting down crops and trees which established boundaries of the plaintiff's plots within the suit land alleging that, the District Land And Housing Tribunal for Kinondoni at Kinondoni in **Application No. 20 of 2006** in which the plaintiffs were not party had declared him the lawful owner of the suit land.

The defendant filed written statement of defence opposing all the claims and prayed for the suit to be dismissed with costs. Mr. Andrew Miraa, learned advocate, appeared for the plaintiffs while Mr. Amani Joachim, also learned advocate represented the defendant. The following issues were agreed upon;

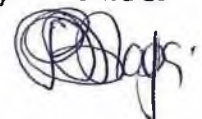
- i. Whether the plaintiffs are the lawful owners of suit land.
- ii. If the 1st issue is answered in affirmative, whether the plaintiffs are entitled to any damages.
- iii. What are the relief(s) entitled to parties.

The plaintiffs summoned eight witnesses and tendered ten exhibits to advance their case. The witnesses are; Mr. Sunday Agrey Mseli (PW1), Mr. Haruni Mpangausi (PW2), Ms. Rachel Gabriel Kitila, (PW3) Khadija Hamadi Mbingo (PW4), Mr. Elias Gabriel Mseli (PW5), Ms. Sharifa Hassan Mkakiya, (PW6), Mr. Juma Hassan Chakumba (PW7), Ms. Rehema Said Makuku (PW8). On the other hand, the defendants also summoned four witnesses and tendered three exhibits. The defendant's witnesses are Mr. Melchior Julius, (DW1), Mr. Musa Bakari Nankuru, (DW2), Mr. Daniel Aron Chaga (DW3), and Mr. Edwin Mutasingwa Masabalala (DW4). At the closure of the evidence, parties filed final submissions.

The witnesses for the plaintiffs maintained that the plaintiffs are the lawful owners of the suit land having signed various forms issued by the Ministry of Land formalizing their occupation namely, Land Form No. 69

(compensation claims), valuation forms, and payment invoice for land fees. PW1 the 1st plaintiff, testified that, he is among the 932 residents of Chasimba area who were appellants in Court of Appeal **Civil Appeal No. 129 of 2008**. He stated that since 2002, he has been in occupation and living as a trespasser on the suit land which originally belonged to the Tanzania Portland Cement Company. His piece of land measures 222 square meters and forms part of the suit land. It was his further testimony that, sometime in 2002 a dispute arose over the suit land. In 2010 the Court of Appeal in **Civil Appeal No. 129 of 2008 (Exhibit P1)** declared the plaintiffs trespassers to the suit land. It was his further testimony that, following the Court of Appeal's decision, the Government through the Ministry of Land in a meeting held on 13/06/2015 (**Exhibit P6**) and chaired by the Minister responsible for Lands Hon. William Lukuvi (MP) and attended by among others Kinondoni District leaders, the Member of Parliament for Kinondoni Constituency, the managing director of the Tanzania Portland Cement Company and Chasimba residents, reached a settlement whereby the suit land was released and remained with the individuals. It was PW1's further testimony that, following the settlement a survey was conducted for the purpose of subdividing the suit land into plots and the same were allocated to Chasimba residents including the plaintiffs. PW1 narrated how the exercise was conducted which involved physical verification whereby each individual occupier was required to appear physically and be present on a specific date, time and place when the assessment was conducted. He stated that, each individual had to identify plants, crops, permanent structures and other unexhausted improvements (if any) and the same were valued. The exercise was under the supervision of the street and village leaders. After the verification process each occupier was issued with Land Form No. 69, Valuation Form for compensation claims and payment invoice for land fees. (Exhibit P2) also invoice for payment of land fees, (Exhibit P3)

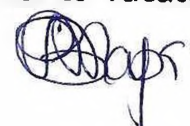
PW1 further testified that, in 2017 the plaintiffs were informed through their ten-cell leader that the office of the Commissioner for Lands had cancelled their valuation forms because of the pending case at the Kinondoni District Land and Housing Tribunal to wit; **Misc.**



Application No. 20 of 2006 involving the suit land. He stated that, after following up the matter he discovered that the said pending case involved a third party and the defendant and he was not a party to the case and further that, the said Application had already been determined. It was his further testimony that, he wrote a letter to the Commissioner for Lands (Exhibit P4) challenging his decision for the reason that, he was not a party to the said pending case and further that, his piece of land which was subject to cancellation had already been valuated and issued with Valuation Form No. VAL/KIN/CHAS/BAS/1828.

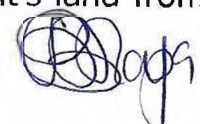
Similarly, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 corroborated the evidence adduced by PW1 and maintained that they are the lawful owners of the suit land. They stated that, they have been physically in occupation and living in the suit land in which each one occupies a piece of land. It was their further testimony that, in the course of their occupation they had houses, families and cultivated variety of crops and on the date of assessment were physically present. They tendered (Exhibit P7) namely, Land Form No. 69, Valuation Form No. 1 and payment voucher for land fees all in respect of PW3; Exhibit P8 payment invoice for land fees for 464 square meters related to PW4; (Exhibit P9), Land Form No. 69 and payment invoice for land fees for 2759 square meters for PW6, and (Exhibit P10) payment invoice for payment of land fees for a piece of land measuring 293 square meters related to PW8.

The case for the defence on the other hand was that, DW2 (the defendant) was also a trespasser to the suit land just like the plaintiffs, and was engaging in cultivating variety of crops. DW2 testified that, he once travelled to Ifakara leaving behind Juma Chakumba who happened to be the son of his friend to take care of his piece of land measuring one and half acre. Upon his return Juma Chakumba resisted to surrender the piece of land to him claiming that he was the rightful owner. It was his further testimony that, he filed complaint to a ten-cell leader and Boko village council. After hearing the defendant and Juma Chakumba, the village council found it necessary to visit the land in dispute and finally decided in favour of DW2 the defendant, to the effect that, the defendant was the rightful owner and ordered Juma Chakumba to vacate the land in dispute. Upon Juma Chakumba's refusal to vacate



the land in dispute, the defendant filed a complaint against Juma Chakumba at Boko Ward Tribunal in **Application No. 113 of 2005** (Exhibit D1) after Juma Chakumba had divided the land in dispute into plots and sold the plots to 11 different people including DW1. The Boko Ward Tribunal decided in favour of the defendant. DW2 stated further that, he later applied for execution of the Ward Tribunal's decision in **Misc. Application No. 20 of 2006** (Exhibit D2.) at the District Land and Housing Tribunal of Kinondoni which ordered eviction of all occupiers of the land in dispute. (DW1) Melchior Julius, testified that, he was one of the occupiers who purchased the piece of land he occupies within the land in dispute. He stated that, he first purchased the same from one Khadija Hamad, (Juma Chakumba's wife). Later, having discovered that the very piece of land which he had acquired from Khadija was involved in a dispute between Khadija's husband and the defendant herein, he had to re-acquire by re-purchasing the piece of land from the defendant in order to save his house from demolition. DW1 testified further that, other occupiers who did not agree with the re-purchase arrangement with the defendant had their structures demolished and later, they instituted the present case.

DW3 testified that, he is a resident of Basihaya Chasimba area since 2002. That, he served as a street chairman of Basihaya area from 2009 to 2014. He stated that, in 2003 while he was serving as a secretary to the special committee on dispute settlement for Chasimba residents who were declared trespassers to the suit land belonging to the Tanzania Portland Cement Company, the Committee received a complaint from the defendant that, one Juma Chakumba had trespassed unto his piece of land measuring one and a half acre and sold it to 11 different people. It was his further testimony that, in the exercise of formalizing settlement for Chasimba residents who were declared trespassers, the Committee had agreed that, for areas which occupiers were in dispute the assessment should be kept on hold until such disputes were resolved. Among such areas was the suit land which involved a dispute between the defendant and one Mr. Juma Chakumba. That; the Committee had declared the defendant as the rightful owner and advised the 11 occupiers who had purchased the defendant's land from



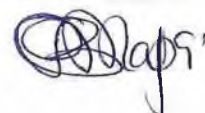
Juma Chakumba to agree with the defendant on how to settle the matter. However, three out of eleven occupiers agreed to compensate the defendant, while the rest declined hence their valuation had to be cancelled. (Exhibit D3). DW4 briefly testified that, his niece was among the occupiers of the suit land and had to purchase twice the piece of land he occupied after being advised by the village leaders that the area was involved in a dispute between the defendant and Mr. Juma Chakumba. That; his niece had earlier purchased the piece of land from one Khadija, and later re-purchased from the defendant. He stated that, his niece was later issued with Land Form No. 69 which was issued by the village leaders.

Having elucidated the evidence obtained from the witnesses and the exhibit tendered, prior to getting into determining the issues framed, I found it necessary to mention from the outset that, the law is settled in civil cases that the burden of proof lies on the party who alleges anything in his favour. [See; section 110 of the Law of Evidence Act Cap 6 [R.E 2019]. This legal position was underscored in **Anthony M. Masanga V. Penina (Mama Mgesi) & Lucia (Mama Anna) Civil Appeal No. 118 of 2010** (unreported) where the Court observed;

".....let's begin by re-emphasizing the ever cherished principle of law that generally, in civil cases the burden of proof lies on the party who alleges anything in his favour"

Additionally, the standard of proof in civil cases is on balance of probability by weighing the weightier evidence [See; **Geita Gold Mining Ltd & Another Vs. Ignas Athanas, Civil Appeal No. 227 of 2017; Anthony. M. Massanga V. Penina (Mama Mgesi) Lucia (Mama Anna) Civil Appeal No. 118 Of 2014** (both unreported)

Turning to the first issue as to whether the plaintiffs are the lawful owners of the suit land there can be not doubt that this is a question of evidence which requires proof. In proving ownership of the suit land the plaintiffs tendered Exhibit P6 "**MUHTASARI WA MKUTANO WA HADHARA KUJADILI MPANGO WA UENDELEZAJI ENEO LA CHASIMBA, CHATEMBO NA CHACHUI**" dated 13/06/2015. In the said meeting which was chaired by the Minister for Lands Hon. William



Lukuvi (MP) and attended by among others Chasimba residents, the meeting resolved to change use of the land in dispute namely, **"Kiwanja No. 1"** which is the crux of **Civil Appeal No. 129 of 2008**, from the area reserved for extracting cement production materials to human settlement. It is on record at page 4 of the minutes, that those who were eligible for the allocation of the land earmarked for human settlement were occupiers who were present on 18/3/2013 the date which was set for assessment as required by Regulation 6 (c) of the Land (Compensation Claims Regulations, 2001). The relevant extract of the minutes is reproduced hereunder;

"Wananchi waliotambuliwa wakati wa zoezi la uthamini ndio watakaohusika na zoezi zima, wananchi ambao hawakuwepo na walikuja baada ya zoezi la uthamini hawatahusika kabisa na mpango huu, aidha watatakiwa kuondoa maendelezo yao na kuondoka mara moja ili kupisha zoezi la kupanga na kupima upya eneo hilo."

A reading from the above resolution of the meeting it is plain clear that, those eligible for the allocation after the change in use of the suit land were the occupiers who were physically present on the date set for assessment and subsequent valuation. In their testimonies basically all the plaintiffs testified the fact that, they were present on the date of assessment and in addition they also tendered Land Forms No. 69 (Exhibits P2, P9, P7) Payment invoices (Exhibits P7, P9, P10, P8, P3), Valuation Form No.1 (Exhibit P2, P7). All these forms were issued after the physical verification/assessment exercise which was conducted in accordance with Regulations 6 and 7 of the Land (Compensation Claims) Regulations, 2001.

A thorough perusal of the minutes of the meeting held on 13/06/2015 which in my view set the criteria for eligibility to land allocation after the change of land use, made no mention on the assessment exercise to be kept on hold in areas where there were disputes amongst the occupiers. In any case if there was a dispute on the suit land, even logic dictates that, the defendant ought to have been physically present at the suit land on the date of the assessment as required by the law



just as the plaintiffs were, in order for the street chairman, village leaders and the committee to confirm on the existed dispute.

However, in his testimony the defendant failed to prove his presence on the day of the assessment nor did he tender the relevant forms namely, Land Form No 69, Valuation Form No. 1 and invoice for payment which tantamount to eligibility for allocation as tendered by the plaintiffs.

On a perusal of Exhibit P5, I found that the letter from the Ministry of Land, administration department dated 26/7/2013 and addressed to the Kinondoni Municipal Council titled " MUSA BAKARI NANKURU KUFANYIWA UTHAMINI" directed the Kinondoni Municipal Council to inform among others the plaintiffs herein named; Sharifa Hassani Mkakia, Rehema Said Maruru, Rachel Gabriel Kitila, and Sunday Agrey Mseli on the revocation of their Land Form No. 69 upon the advice from the Chairman of Basihaya Street in order to initiate the valuation process in respect of the defendant. However, in my view this letter is misplaced. I say so because the criteria for eligibility for allocation to the suit land after the assessment/valuation was already set at a meeting held on 13/06/2016 in compliance with Regulation 6 and 7 of the Land (Compensation Claims Regulations) thus, Exhibit P5 is disregarded.

On the other hand, the defendant claimed ownership of suit land after being declared the lawful owner of the same by the Boko Ward Tribunal in **Application No. 113/2003** between the defendant and Juma Chakumba. He stated that, Juma Chakumba sold the suit land to 11 different people, after being entrusted to take care of the same while the defendant went on leave to Ifakara. Additionally, he relied on letters from the Ministry of Land, Housing Development and Settlement dated 13/08/2021 addressed to Juma Hassan Chakumba, Khadija Ahmed Mbingo, Rahel Gabriel Kitila, Sunday Agrey Mseli, Rehema Said Malulu and Sharifa Hassan Mkakiya (Exhibit D3). It was his testimony that, the 1st paragraph of the said letters informed the addressees the fact that, upon the defendant being declared lawful owner of the suit land in 'Madai Na. 20/2006', by Kinondoni District Land and Housing



Tribunal, and later issued with Valuation Form No. VAL/KIN/CHAS/BAS/3291 on 23/12/2013 he is now the lawful owner. However, the defendant miserably failed to tender any evidence to that effect including the said Valuation Form nor Land Form No. 69 and the invoice for him to prove his physical present in the assessment and subsequent valuation exercise as per the requirements of Regulations 6 and 7 respectively, of the Land (Compensation Claims) Regulations, 2004 for him to be declared eligible for land allocation as agreed at the meeting held on 13/6/2015 chaired by the Minister for Lands and attended by among others Chasimba residents.

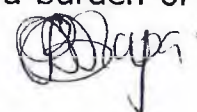
Further, a close examination of the letters relied upon by the defendant from the Ministry of Lands dated 13/08/2021 which directed the plaintiffs to stop effecting payment of land fees for processing land allocation and to return the payment invoices revealed that, the letters were issued 8 years from the date the suit land was valued and more surprisingly, at a time when the present case is pending before this Court.

At this juncture I need not over emphasize on observance of the cardinal principle of the law which requires individuals including public officials to refrain from interfering with matters pending before the Court. Hence, I feel this need not detain me much and I proceed to disregard Exhibit D3.

As I mentioned earlier, it is well established principle of the law that, in civil case the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities.

I now get into determining whether the plaintiffs have managed to discharge their duty by proving ownership of the suit land on balance of probability.

The Court of Appeal in **Paulina Samson Ndawaya V. Theresia Thomas Madaha CAT, Civil Appeal No. 45 of 2017** Mwanza, (Unreported), observed the following on how to discharge a burden of proof in civil case;



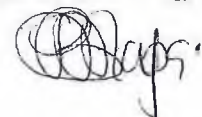
*".....That the degree is well settled. It must carry reasonable degree of probability, but not so high as required in criminal case. If the evidence is such that the tribunal can say- **we think it is more probable than not** the burden of proof is discharged."*

Guided by the above authority, the answer on the first issue is in the affirmative that, the plaintiffs have managed to prove ownership of the suit land on balance of probability. This is evidenced by their testimonies on how they had complied with the resolutions of the meeting held on 13/06/2015 which set out the criteria for eligibility requirement for the allocation of the suit land in line with the requirements of the law to wit; Regulation 6 and 7 respectively, of the Land (Compensation Claims) Regulations, 2001. Further, they basically tender one or two of the following document namely, Land Form No. 69, Valuation Form No1 and invoice for payment to support their claim thus, the plaintiffs' evidence appears weightier than the defendant. In the event, I am satisfied that, it is more probable than not that, the plaintiffs are the owners of the suit land. On the part of the defendant he failed to tender such material evidence to prove his case and in the end I found his evidence weightless.

I therefore declare the plaintiffs as the owners of plots with ReferenceNos.VAL/KIN/CHAS/bas/1828,VAL/KIN/CHAS/bas/1830,VAL/KIN/CHAS/bas/1789,VAL/KIN/CHAS/bas/1827andVAL/KIN/CHAS/bas/1743 located at Chasimba area Kinondoni District in Dar-Es-Salaam Region.

Taking note of what I have explained above, since the allocation process involves requiring the plaintiffs to effect payment, the plaintiffs are ordered to comply with the requirements of the law and such other terms and conditions as were agreed at the meeting held on 13/6/2015.

As regards the 2nd issue; whether the plaintiffs are entitled to any damages; the reliefs sought in the plaint are that, they pray for general damages and exemplary/punitive damages to the tune of one hundred million shillings (T.shs. 100,000,000/=).



The decision in the case of **P.M. Jonathan V. Athuman Khalfan 1980 TLR 175** at page 190, is illustrative on what constitutes exemplary/punitive damages when **Lugakingira J**; (as he then was) held;

"...Exemplary damages, on the other hand, are a punishment to the defendant for misconduct which general and aggravated damages cannot reach and as a reminder that tort does not pay. They should be recoverable from any defendant whose outrage deserves punishment. It may be anomalous to use the civil court for criminal purposes but I do not desire to express myself on the issue. I would only add that where the defendant is a servant of the people and commits wrong under the guise of his power or where the defendant is motivated by expectations of gain that would be reason for the court to take an even more serious view and to award such exemplary damages as the occasion would require".

In her testimony PW8 prayed for an order to intensify security at the suit land because of the threats they have been receiving. However, she failed to tender any evidence that she did report the matter to the police. Therefore the award for punitive damages cannot be sustained. Instead, the plaintiffs are entitled to general damages of shillings five hundred thousand shillings each.

That said, it is the finding of this court that the plaintiffs have managed to prove their case on balance of probability and the following are the reliefs;

- i. The plaintiffs are the lawful owners of the suit land with Reference Nos. VAL/KIN/CHAS/ bas/1828, VAL/KIN/CHAS/ bas/1830, VAL/KIN/CHAS/bas/1789, VAL/KIN/CHA/bas/187 and VAL/KIN /CHAS/bas/1743 located at Chasimba area, Kinondoni District in Dar-Es-Salaam. Hence, are required to effect payment as required by the law.



- ii. Defendant to pay general damages of shillings five hundred thousand (Tshs.500,000/=) to each of plaintiffs.
- iii. Each party to bear own costs.

It is so ordered.

Dated and Delivered at Dar-Es-Salaam, this 4th day of **November, 2021.**




S. B MKAPA
JUDGE