

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 30 OF 2019

ERNEST MUNISHI PLAINTIFF

VERSUS

ST. MARY'S INTERNATIONAL ACADEMY LTD..... 1ST DEFENDANT

THE ATTORNEY GENERAL2ND DEFENDANT

COMMISSIONER OF LAND 3RD DEFENDANT

THE REGISTRAR OF TITLE4TH DEFENDANT

UBUNGO MUNICIPAL COUNCIL5TH DEFENDANT

ALFAN RAMADHANI MOHAMED 6TH DEFENDANT

CGA CONSULTANT (T) LIMITED7TH DEFENDANT

LORA NARCIS MKUDE 8TH DEFENDANT

JUDGMENT

12th July &, 31st August, 2022

F. H. MAHIMBALI, J.

Mr. Ernest Munishi the plaintiff in this case, claims to have a long standing right over parcels of land which later came to be allocated to the 1st defendant – St. Mary's International Academy and Mr. Alfani Ramadhani Mohamed (6th Defendant). Subsequently, Mr. Alfani Ramadhani (6th Defendant) sold part of his allocated land to the 7th and 8th Defendants.

That the first and sixth defendants each claim to be allocated the said land by Goba village Authority during operation Safisha mapori as per Regional Commissioner's directives in 1998/1999. That after being allocated the said land in 1999, St. Marry's International Academy (1st Defendant) has been in use and occupation of it from 2000-2017 peacefully. Likewise, has been Mr. Alfian Ramadhan Mohamed (the 6th Defendant).

On the other hand, despite this allocation of land by Goba village council to St. Marry's International Academy and Mr. Alfian Ramadhani Mohamed, Mr. Munishi (plaintiff) claims long existing right of the said land as he had purchased the said parcels of land in 1976 and 1978 from three different people namely: **Joseph Nyambuya, Said Pembe and Said Musa Matube** (P1 exhibit). That after the said sale and purchase, he planted various plants such as Mango trees and cassava but were destroyed by the 1st defendant. In establishing boundaries of the said parcels of lands, he mentioned his neighbours to the said land are: Oisso Kalle (North Eastern), South East (graves), South bordered by Mr. Uhemba, West by Steven Chandarua and North side by Bagamoyo road and Morogoro Road. Out of the people he bordered with, Mr. Oisso Katte and Uhemba are dead. It is his claim that the allocation of the said

land to St. Marry's International Academy is illegal and unlawful. However, on the southern part, the plaintiff claims to be invaded by the 6th, 7th and 8th defendants. He became aware of the said invasion by 2017 when he saw beacons on his land. He then complained to Goba Local Authority where a letter to the Commissioner for Lands was written and eventually instructions to Ubungo Municipal Council were issued but could not yield the solution.

The plaintiff claims in his testimony that he has all the time been occupant and present at the suit land and using it except in the area trespassed by 6th, 7th and 8th defendants. The Suitland measures 13,300 Sqm which is equivalent to 4 acres. However, the total area he owns is about 13 acres.

In essence, in digest to the plaintiff's case, it is undisputed that he purchased land as per exhibits P1-collectively. Similarly, it is also undisputed that the first defendant and sixth defendants were allocated land by the Goba village Authority in 1999 (exhibit **DE1, DE4, DE6 and DE7**).

Following the controversy between the parties, five issues were agreed to compass the hearing and determination of the suit.

1. Whether the plaintiff in the main case is a lawful owner of the land in dispute.
2. Whether the allocation and or acquisition of the land in dispute to the 1st and 6th defendants in the main suit was lawful.
3. Whether the registration of the land in dispute in the name of the 1st defendant was lawful.
4. Whether the sale of the land in dispute by the 6th defendant to the 7th and 8th defendants was lawful.
5. To what reliefs are the parties entitled to

As per the issues framed and pleadings filed, the 6th defendant Alfian Ramadhani Mohamed in his WSD by way of counter claim also claimed that the 1st defendant encroached part of his land. However, for unknown reasons, he withdrew his counterclaim following the advice he received. Nevertheless, in his testimony after he had established how he got the land from the Goba Village Authority in 1999, he clarified how the 1st defendant encroached part of his allocated land. Therefore, close scrutiny of the case, establishes two sets of disputes in it both against the 1st defendant. In one set, the plaintiff claims his land as invaded by the 1st, 6th, 7th and 8th Defendants. However, in the second set, the 6th

defendant having sold part of his land to 7th and 8th defendants he claims to have his residual land (1/2 acre) as invaded by the 1st defendant while surveying his land and fencing it by wall.

During the hearing of the case Mr. Ayoub Mtafya and Anna Mathias learned advocates represented the plaintiff. For 1st Defendant, there were Messrs Audax Kaendaguza and Augustino Emmanuel. Mr. Elias Mwendwa and Nipael Ezekiel learned state attorneys appeared for the 2nd – 5th defendants (who are Attorney General, Commissioner for Lands, Registrar of Titles and Ubungo Municipal Council). Mr. Raphael Maunda learned advocate at one time represented 07 and 8th defendants but later (at defense stage) also represented the 6th defendant after his lawyer had deserted/differed with him in the course of trial. **I must first appreciate the decorum of all learned advocates and state attorneys exhibited during the trial of this case. Though there were times of high tides and turbulences by some advocates, eventually there was recollection that we were in court session and discipline was then maintained by each counsel during all time of the session.**

Now back to the issues of the case. With the contesting interests amongst the parties, the first issue for deliberation is whether the plaintiff is the lawful owner of the land in dispute. To put it otherwise

ought to be “who is the rightful owner of the land in dispute between the parties to the suit”. As per pleadings and evidence, the determination of the first issue, mainly involves available evidence each party possess/has established the lawfulness of the said possession.

The plaintiff on his part gave testimony and evidence to the effect that between 1976 and 1978 he had purchased parcels of land from three persons: Joseph Nyambuya, Said Pembe and Saidi Musa Matube. From Mr. Joseph Nyambuya he purchased two parcels of land. One on 4th December 1976 and the other on 30th May 1977. From Saidi Pembe he purchased one parcel of land on 12/11/1976. And from Said Musa Matube, he bought a parcel of land on 19/3/1978.

As per deed of sale (P1 exhibit), Said Pembe says he sold his farm to the Plaintiff with wild trees (Mipingo), coconut trees, bananas trees and Mango trees.

Mr. Said Musa Matube, sold to the plaintiff a farm of Banana trees, cashew nut trees ad Mango trees. Mr. Joseph Nyambuya on his part as per deed of sale dated 14/12/1976 sold his farm to Mr. Munishi at a price of 2000/= with banana trees, coconut trees (12), Cashew nut and Mango trees. In the subsequent sale dated 07/5/1977, Mr. Joseph

Nyambuya sold out his farm of banana and coconut trees (15) cashew nut trees (16), Mango trees (9) at a price of 2000/= to the same plaintiff – Mr. Munishi.

On the other hand, defense testimony of 1st and 6th defendants (DW2 and DW3 respectively) testified how they responded to the Government Public advertise of 1998 through radio and newspaper advertisements that there were farms for public allocation. Amongst those interested in the said allocations were these two defendants (1st and 6th defendants) who applied for the size each needed and were ultimately granted the said farms (See exhibits DE1, DE4, DE6 and DE7). Whereas exhibits P1 (for the plaintiff – sales of land between 1976 – 1978) show that the purchased farms contained numerous permanent crops such as coconut trees, Cashew nut trees, Mango trees and Migomba, exhibit DE1 and DE6 described the allocated land to the and 6th defendant as farms (PORI). DW4 – Mr. Sylvanus Alexander testified it well how he took part as secretary of Goba village in 1998 and participated into allocating land (PORI) to those who applied for it following the Government Advertisement of allocating abandoned farms/Mashamba PORI. He testified very well and boldly (in his demeanour). That he being in the land allocating committee of Goba

village of the said land, they only allocated land in respect of SHAMBA PORI. The said lands had neither permanent crops nor temporary crops and nothing was developed to term it as farm.

That following the said allocation of land to other people who responded to it, DW4 testified how then he received Mr. Munishi with his complaint that they had allocated part of his land to other people. He required him to furnish documents. Upon examining them, he was confident that his documents were short of description to describe him as owner of the allocated land. The shortfalls of the said documents are: The size of the land he had purchased and the exact location of it.

Therefore, to have a clear answer on the first issue, it is important to know what is the land Mr. Ernest Munish claims to have purchased from Mr. Said Pembe, Said Musa and Joseph Nyambuya (P1 exhibit). Is it the same as that allocated to St. Marry's International Academy Ltd and Mr. Alfian Ramadhan Mohamed? To respond to this, I will let the exhibits speak for themselves.

P1 exhibit reads:

1. The sale deed of 14/12/1976

Mimi,

Joseph Nyambuga nimeuza shamba langu kwa Ndugu Ernest Munishi kwa bei ya Shs. 2000/= ndani ya shamba kuna mimea ya Ndizi, minazi 12, mikorosho na miembe mitano. shamba kwa upande limepakana na mzee Maganga Gereja ambae ni mjumbe wa nyumba kumi.

Nimepokea Sh. 1,050/= baki sh. 950/=

Mashahidi ni

i. Maganga Gereja Mjumbe

ii. Raphael Maluga

iii. Nusura Rashidi.

iv. Matao Tenera.

Mimi Joseph nimepokea Sha 700 baki 250

Joseph Nyambuya: Signed

The same Joseph Nyambuya by his Subsequent sale contract dated 30/5/1977, it is written:

Ndugu Joseph Nyambuya ameuza shamba lake la ndizi na minazi 15, mikorosho 16, miembe 8 ameuza kwa shs, 2000/- mnunuzi ndugu Ernest M. Munishi amelipa zote mbele ya mashahidi wafuatao

i. Mjumbe Maganga Gereja

ii. Rafael Maruga

iii. Nusura Rashidi.

iv. Matai Tenera.

Mbele ya mwenyekiti na katibu Tumesibitisha kweli ameuza safi

Mwenyekiti: Signed

Katibu: Signed

The third sale contract dated 12/11/1976 reads.

Ofisi ya CCM

Kijiji cha Geba

Wilaya ya Kinondoni

S.L.P. 9583

D. S. M.

12/11/1976

Ndugu Said Pembe

*Nimeuza shamba langu la migomba, miembe mikorosho,
minazi kwa ndugu Ernest Munishi.*

Mipaka: *Magharibi ni makaburi, Kasikazini ndugu
Msafiri, Mashariki ni kwa Said Musa bei ni Shs 1500/=*
amenipa pesa zote mbele ya mashahidi

Mwenyekiti *Shomari Pazi – shahidi*

Nusura Rashidi: Signed

Maganga Gereja: Signed

Mjumbe *Awadhi Wazili.*

Kitambulisho cha uuzaji 102

Saini ya muuzaji: Signed

Saini ya mnunuzi: Signed

Also in the last sale document dated 19/03/1978 is worded:

Ofisi ya CCM

Kijiji cha Gaba

*Wilaya ya
Kinondoni*

S.L.P. 9583

D. S. M

Ndugu Said Mussa Matuba

*ameuza shamba la migomba na mikorosho na miembe
kwa ndugu E. L. M. Munishi kwa bei ya shs 1200 ameliap
pesa zote hadaiwi na hana deni mbele ya wafuatao:*

Mwenyekiti: *Shomazi Pazi: Signed*

Katibu: *Nuru Pade: Signed*

Mjumbe: *Awadhi Wazili: Signed*

Sahihi ya Muuzaji: *Signed*

Sahihi ya Mnunuzi: *Signed*

Kitambulisho cha uuzaji 308 cha muakili 3

With this evidence, what is then the suit land? Where is it? What is the size of it? The purported sale deeds are silent on those facts.

On the other hand, the 1st and 6th defendants via exhibits DE1, DE2 DE4 and DE6 explicitly state what is their land and where is it.

For 1st defendant, the testimony of DW1, DW2, DW4, DW8 and DW9 is clear as what is the land owned by St Marry's International Academy. It is 4 acres (PORI by then) and then surveyed as plots 2207 – 2214 Block G Goba Mchigani and dully granted right of occupancy with title number 174638 (see exhibits DE1 and DE3)

Similarly, the land owned by the 6th defendant has been clearly described by DW3 and DW4 (with exhibits DE4, DE6 and DE7). That the land size is one acre located at Goba Mchigani.

The common legal principle underscores that he who claims must establish. Has the plaintiff then established that the land in dispute is his basing on the proof in PE1 exhibit?

In my considered view as highlighted above, the description of the suit land by the plaintiff as per exhibits P1 was not sufficient enough for determination of the land claimed by the plaintiff to be the suit land (in dispute).

The legal requirement for disclosure of the address or location was not for cosmetic. It was intended for informing the third parties (such as court and other relevant institutions) of a sufficient description so as to specify the land in dispute for purposes of identifying it from other

parcels of land, around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it.

However, regarding un surveyed land, specifications of land size, its location, boundaries and or permanent features surrounding the land at issue are very important particulars for purposes of identifying the land from other parcels of land neighbouring it. This is what **Regulation 3 (2) (b) of the GN No 174 OF 2003** envisaged by the term "location".

It was therefore inadequate for the plaintiff to only claim the parcels of land he had purchased from Said Musa, Said Pembe and Joseph Nyambuya (P1 exhibit) being the same land allocated to 1st Defendant (now plot 2207 – 2214 Block G (DE3 exhibit) or the land allocated to the 6th Defendant (DE4, DE6 and DE7). The provided particulars of the plaintiff's purchased land (P1-exhibit) are insufficient of anything valuable to describe that land as being the same allocated to the 1st and 6th Defendants by Goba Village Authority. The impression one gets from exhibit P1 (purchased land by the plaintiff) it is not known

whether the land is in Dar es Salaam leave alone Goba. What is the size of the said purchased land. Was land purchased from Said Musa adjacent to Said Pembe and that of Joseph Nyambuya? Which part of his parcels of land purchased actually forms the suit land? Is it of Said Musa, Said Pembe or of Joseph Nyambuya? or the combined parcels of land by all the vendors?

It is therefore not only necessary for the plaintiff to disclose the details of the boundaries and other permanent features (if any) surrounding the land in dispute but also important for purposes of distinguishing it from other parcels of land in the same village/area. The plaintiff in this case has not been able to do so in the pleadings and in the evidence. None of his witnesses said anything material on the size of the land he had purchased but just the fact of being neighbour to him (PW2 and PW3).

The importance of making detailed descriptions of suit lands in resolving land disputes cannot be emphasized. The law has been consistently underscoring that significance (**Order VI, rule 3 of Cap 33 R. E. 2019**). It guides that in claims for immovable properties, the plaintiff shall disclose:

"a description of the property sufficient to identify it and in case such property can be identified by the number under the Land Registration Act the plaintiff shall specify such title number".

It is equally my settled opinion that Regulation No 3 (2) (b) of the GN 174 of 2003 (supra) should be construed to mean what was envisaged under these provisions of **Order VI, rule 3** Cap 33. Though the plaintiff claims against the first defendant for plots 2207 -2214 Block G-Goba Mchigani as his, it is not in tallying in description with the parcels of land he bought from Said Musa, Said Pembe and Joseph Nyambuge (P1 exhibit) as the same land. This is because there is no nexus evidence linking the parcels of land (P1 exhibit) and land in exhibits DE1 and thus DE3 as suit land.

In the case of **Daniel Kanunda** (As Administrator of the Estate of the late **Mbalu Kashaha Buluda Vs Masaka Ibeho and 4 others**, Land Appeal No 20 of 2015, High court Tabora, Utamwa, J at page 7 made insistence of description of the Suitland in the following wording.

"... land in fact a natural immovable solid part of the earth or its surface (and some of its contents) extending globally with some various manmade division, sub division manmade divisions, sub divisions, sub-sub divisions etc. Such as continents, states, countries, Regions, District villages etc. For purposes of ownership or possession of land, it is specific demarcations and the location (geographical, Political or

otherwise) of a piece of land that differentiates it from another piece of the same earth or its surface. Admittedly this may not be the very professional way of describing land, but at least these are the practical and common attributes exemplifying land, I am entitled to presume them as true under section 122 of the Evidence Act (Cap 6 R. E. 2019). It is for this truth I believe my brother (Moshi, J as he then was) remarked to the effect that land can only be allocated when distinct and determinable It is also common knowledge that villages in this country represent sub-partitions of land and are creatures of law properly registered (section 22 of Cap 287) they are found in larger political partitions within the country such as wards, Districts and Regions”.

Having reasoned that much, it is my finding that with the first issue “whether the plaintiff in the main case is the lawful owner of the suit land it is answered in negative as reasoned in the foregoing findings. There is no material evidence to connect that the parcels of land purportedly purchased by the plaintiff are the same as the ones allocated to the 1st and 6th defendants. The situation would have been different had the plaintiff clearly established that what he purchased (PE1) is actually the suit land. The priority principle as per the case of **Kimaro vs Joseph t/a (Catholic Charismatic Renewal**, Civil Appeal No 33 of 2017, CAT (unreported) states. *“The priority Principle is to the effect that where there are two or more parties competing over the same interest especially, in land each claiming to have title over it, a*

party who acquired it earlier in point of time will be deemed to have better or superior interest over the other”.

With the second issue whether the allocation and or acquisition of the suit land to the 1st and 6th defendants in the main case was lawful.

As per testimony of **DW4 SYLVESTER ALEXANDER AYOO (Former Goba village secretary)** the reason of allocating the said parcels of land to Public including 1st and 6th defendants was due to abandonment and undeveloped bush lands. The said parcels of land allocated to the 1st and 6th defendants were established to be clear bushes. There were neither crops (permanent or seasonal crops) nor any existing structures. DW1, DW4 discounted clearly the assertion that the allocated areas had any grown crops or existing structures. DW2 and DW3 all support the assertion that when they were allocated the said farms, the land was mainly full of bushes.

In his testimony, Mr. Munishi (PW1) testified that he all the time had been using his land, had permanent crops and erected a living structure. He came to note of invasion of his land in 2017. The relevant part of his testimony when being cross – examined by Mr. Kamihanda state attorney at page 45 of the typed proceedings reads.

"I was a resident of Goba since when I was given a document introducing me as a resident of Goba. ... I constructed a house in Suitland and I resided there". I constructed the house in 1979 and I resided in the house up to 2015. When survey was being conducted, I was not there in the disputed land. The house I built is not there".

With this evidence, and the partial description of the suit land by the plaintiff and his exhibits, it is a suggestion that, perhaps what is claimed by the plaintiff as his land is distinct from the land allocated to the 1st and 6th defendants. Otherwise, the plaintiff wants to suggest that his permanent crops and the erected structure were all destroyed and demolished. If this assertion is true, then there ought to have been proof of the said destruction and demolition. I say so because if at all the time, the plaintiff had been there at his land (suit premises), then he could have known the said allocation done to the 1st and 6th defendants in the said 1999 and the alleged destruction and or demolition. None has been established. He who alleges must prove, the standard of proof is on balance of probability; none has been established by the plaintiff in the instant case.

Upon this disapproval, I am confident that the village authority acting on the instructions of the said Regional Commissioner rightly in my view allocated the said land to the 1st and 6th defendants including

other public members digesting the testimony of DW4 and DW8 and DW9. I thus rule that issue no 3 is also answered in the affirmative.

With the third issue whether registration of the land in dispute in the name of the first defendant was lawful. As per discussion above in respect of issues no 1 and 2 (supra) and relying on the evidence in record of DW4, DW8 and DW9, to the extent of 4 acres land size allocated to the first defendant (DE1) the registration of the suit land was justifiable. I say so on simple reason that the 1st defendant as per testimony of DW1, DW4 she was legally allocated that land. So, her move to make the land registrable was justifiable as that land was legally allocated to her. The position would have been different had the plaintiff's claim of possession of the said land had been established.

The fourth issue is whether the sale of land by the 6th defendant to the 7th and 8th defendants was lawful. As per establishment/evidence of DW3 (6th defendant) and DW4, exhibits DE4, DE5, DE6 and DE7, there is abundant evidence that the 6th defendant was lawfully allocated the said land by Goba village Council. Though the same had not been sanctioned by the Village Assembly as per current land laws, I am aware that the said process started in 1998 prior to the enactment of the current land laws. Nevertheless, as per response to issue no 1 above

and its description, in no way was the plaintiff prejudiced as it appears to be a different land from the one he claims he had purchased. Therefore, the disposition of the same to the 7th and 8th Defendants was legally justifiable as the 6th defendant had a legally rooted title.

That notwithstanding, the relevant authorities (Commissioner for Lands and Ubungo Municipal Council) need to pass through exhibits DE1, DE3, DE4 DE6 and DE7 thoroughly for purposes of finding the real boundaries of the real land allocated to 1st Defendant and 6th defendants so as to clear the boundary doubts/dispute between the 1st and 6th defendants. In this way it will be clear whether after the sale/disposition of land by 6th Defendant to the 7th and 8th defendants, the 6th defendant remains with any parcel of land that has been surveyed by the St. Marry's International Academy.

Having discussed the 1st to 4th issues accordingly, I now grant the reliefs as follows:

- i) The plaintiff's claims of possession of land against the 1st, 3rd, 6th, 7th and 8th defendants are hereby dismissed for want of establishment.

- ii) The 1st defendant is the lawful owner of the disputed plot to the extent of 4 acres allocated to him.
- iii) The 6th defendant is the rightful owner of part of the disputed land to the extent of one acre in which 7th and 8th defendants accrue their possession/occupation.
- iv) The 3rd and 5th defendants to re-evaluate plots allocated to the 1st and 6th defendants and demarcate it properly as per exhibits DE1, DE3, DE4. DE6 and DE7 to solve the boundary dispute between the 1st and 6th defendants in the involvement of 7th and 8th defendants.
- v) The 6th defendant's remaining land (if any) upon disposing part of it to the 7th and 8th defendants be clearly established and demarcated.

As per nature of this suit each party shall bear his or her own costs. I so rule.

DATED at DAR ES SALAAM and MUSOMA this 31st August 2022.



F.H. Mahimbali

Judge

Court: Judgment delivered this 31st August, 2022 by video link, connected from Musoma High Court and High Court Land Division – Dar es Salaam in the presence of Mr. Luoga, State attorney, for 2nd to 5th defendants, plaintiff, 1st defendant, 6th, 7th and 8th defendants are absent.



F.H. Mahimbali

Judge