

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 30 OF 2021

KESSY KHASIM..... PLAINTIFF

VERSUS

TEMEKE MUNICIPAL COUNCIL.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGEMENT

DATE OF JUDGEMENT- 15TH /SEPT/2022

The plaintiff, Kessy Khasim claims that he owns the property in Nzasa Kilungule in Temeke Municipality, and the estimated value of his property is Tshs 300,000,000. That he purchased this property on an auction on 29 August 2009 for Tshs 7,000,000 and has a Certificate of Sale. The case against the defendant is that part of his land was acquired by Temeke Municipal Council for purposes of Road Construction in the Project known as Dar es salaam Metropolitan Development Project "DMDP", a project funded by the World Bank. He claims that before the exercise his house was



marked as one of the properties which would be demolished to pave way for construction of the Road from Nzasa -Kilungule- Buza Road, and he claims that in August 2012 his house was demolished, and part of the land was excavated without notice. He, thus, claims for compensation for the acquisition and demolition of his property, he claims for Tshs 3,000,000,000/= (Three Hundred Million Shillings Only), He also claims for payments of general damages and costs of the suit.

The defendants filed a joint written statement of defense, they disputed all claims and demanded proof from the plaintiff. The defendants averred in their defense that the plaintiff's house was never marked or identified during the identification exercise and thus it was not included as one of the properties which is needed to be acquired for purposes of road construction. That the plaintiff's house was not affected by the Project of Road Construction.


The issues framed by the Court in consultation with the parties are that:

1. Whether the plaintiff is the lawful owner of the suit property.

2. Whether the 1st defendant demolished the suit premises.
3. Whether the defendants acquired the suit premises.
4. to what reliefs are the parties entitled.

During the hearing, the plaintiff appeared unrepresented, and he testified as PW1. He asserted that he purchased the suit premises during the auction and thus he is the lawful owner of the suit premises. That he has been residing in the suit premises since he purchased it in 2009. He also said that in 2013 there was an announcement by the Serikali ya Mtaa that there would be a meeting at Nzasa Primary School, and he attended the meeting. During the meeting they were told that there is a project of Road Construction and that the valuers will come to their houses to value the permanent improvements. He said he was given Form No. 69 and was identified as No. 179, but on 23/2/2021 the Temeke Municipal Director and his team went to his house, they cut some trees, which is Mianzi. He confirmed during his testimony that his house was never demolished. He also said he has been writing letters to Temeke Municipal Council, but he got no responses. He said he asked the Village

Executive Council as to why his name was not listed as one of the people who will be affected by the project, the Village Executive Council advised him to enquire from the Coordinator of the Project, and so he wrote to the Coordinator of the Project on 2nd March 2016, but he got no response. Again, on 7th March 2016, he wrote another letter to Temeke Municipal Council, again there was no response. On 10/08/2016, his Advocate Bamola wrote another letter to the Coordinator of the Project but there was no reply, and on 18th August 2016, he wrote another letter to the Executive Director of Temeke Municipal Council, another letter to the Executive Director of Temeke Municipal Council on 20/04/2020. The Executive Director of Temeke Municipal Council responded on 6/05/2020. In all these letters he was asking as to why he was not compensated, and he said he was told that he would be compensated before the commencement of the project. But on 23/2/2021 his trees were cut, and some of his land was excavated without any payments of compensation, thus he claims for compensation of Tshs 300,000,000 for the trees and some of the land.



On the part of the defendants, Beatrice Choga, the Valuer for Temeke Municipal Council appeared and testified on behalf of the defendants as DW1. She said categorically that the plaintiff's premises was never affected by the project, nothing was removed or cut from his premises, and the project is nearly done, and the plaintiff's house will never be demolished as he is not affected by the project. Regarding Form No. 69, and identification No. 179 given to the plaintiff, she said she did not recognize this as it did not form part of the records in the Municipality, and that the identification exercise was in 2014, and those affected were already paid since 2015. The plaintiff's premises is not affected by the project.

That was all for the plaintiff and for the defendants.

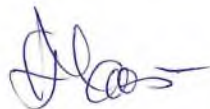
The plaintiff was required to prove all the issues. He was required to prove ownership of the premises, and that his premises were acquired by the defendants', and that his premises were identified as one of the properties which would have been affected by the project, and if so whether the permanent improvements on his land

were valued, and what was the value of his improvements. The plaintiff is obliged to prove as required under the provisions of the Evidence Act, Under Section 101 of the Evidence Act the general or stable burden of proving a case lies on the plaintiff. This section reads:

"101. 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.

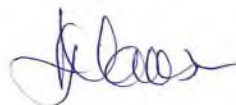
When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

The principle is stated in section 102 from the point of view of what has been sometimes called the burden of leading or introducing evidence which is placed on the party initiating a proceeding. The burden of proof in this case was on the plaintiff to prove by cogent evidence that he is the owner of the premises, that his land or trees or anything was demolished or cut by the defendants', and the value of those improvements which were affected by the project. The plaintiff produced no evidence at all, he did not



produce his title to the premises, he did not produce all letters he alleges to have written to Temeke Municipal Council or to the Project Coordinator, he did not prove that he was indeed given Form No. 69, and that he was identified as No 179 for purposes of evaluation as alleged. He did not bring any proof that trees or land was excavated or that his house was demolished in 2012 even before the valuation exercises. Now, the Court has been called upon to decide the question of ownership, the question of acquisition of the plaintiff's land and the question of compensation without having any records. Can reliance be placed on only on the pleadings without having the evidence and can it be held that the plaintiffs have proved his case, and can a decree be passed based on such pleadings and testimony of the plaintiff himself which was not supported by any evidence.

Indeed, as can vividly be seen from the proceedings, the plaintiff has failed to prove the allegation in the plaint regarding ownership of the premises, regarding the acquisition of his land, regarding demolition of his house, regarding destruction of his trees and some of his land, regarding the value of improvements', if any,



which were destroyed by the defendants. Whatever evidence that is recorded by the Court of this witness (PW1) is hearsay evidence. In the absence of any corroborative evidence, no decree could be passed. The burden of proof is absolutely upon the plaintiff to prove the plea and allegation in the plaint. The plaintiff cannot succeed on account of the lacunae in the evidence of the defendants. The plaintiff only alleged but failed to bring on record any document proving all his allegations and in the absence of the document in question, the burden of proof of ownership of the suit land or premises, acquisition, and compensation cannot be held to be discharged by the plaintiff.

So far as the question of burden of proof it is plain and clear that the plaintiff should have and was duty bound to prove the fact alleged in the plaint by producing documents in the Court and in the absence of any such document, it cannot be held that the allegation in the plaint have been proved.

In view of the aforesaid oral evidence of P.W. 1 and D.W. 1 and the infirmities in PW1's oral evidence, the question is as to whom

the burden of proof rests under the above facts and circumstances? The initial burden of proving a prima facie case in his favor is cast on the plaintiff; As regards section 101 of Law of Evidence, it is well settled law that the burden of proof is cast upon the party who claims the right over the suit property. In the instant case, there was no proof of ownership of the suit premises by the plaintiff. Therefore, the burden of proof regarding ownership of the suit premises have not been discharged by the plaintiff. The plaintiff failed to prove that he bought the suit property validly from the auction or by executing the deed of conveyance or even customarily as he did not produce in court any document to support his ownership.


The plaintiff did not bring any document on record to prove that his premises, if any, and in fact which premises were earmarked as the premises which will be affected by the Project. He did not bring on record Form No. 69 which identified him as the owner of the premises which would have been affected by the project, and he did not bring on record any proof that his entire house was demolished in 2012 as alleged in the plaint, or trees were removed,

or part of his land was excavated. The plaintiff's case was not supported by any evidence. The plaintiff failed to discharge his burden of proving the facts he alleged in his plaint.

Consequently, and based on the above, the suit is dismissed, with costs.

DATED AND DELIVERED AT DAR ES SALAAM THIS 15TH DAY OF SEPTEMBER 2022




(L MANSOOR)
JUDGE

15TH SEPTEMBER 2022