

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 61 OF 2022

SACOSSA LIMITED ..... PLAINTIFF

VERSUS

TORODA KIDAWADINA..... 1<sup>ST</sup> DEFENDANT  
DAUDI SAMWEL..... 2<sup>ND</sup> DEFENDANT  
MLEMA MEREKWA..... 3<sup>RD</sup> DEFENDANT  
NOYA NANANGI..... 4<sup>TH</sup> DEFENDANT  
ALEX MHAMII..... 5<sup>TH</sup> DEFENDANT  
KILUGAGEDA BABAHII..... 6<sup>TH</sup> DEFENDANT  
KUSHOTO SUBAIDA..... 7<sup>TH</sup> DEFENDANT  
KIDAGARAUJA..... 8<sup>TH</sup> DEFENDANT  
GIDAGEDA DIGAI..... 9<sup>TH</sup> DEFENDANT  
NGAELE..... 10<sup>TH</sup> DEFENDANT  
CHARLES KITABU..... 11<sup>TH</sup> DEFENDANT  
KITABU NADA..... 12<sup>TH</sup> DEFENDANT  
JOSE SUBAIDA..... 13<sup>TH</sup> DEFENDANT  
DIGAI KICHAREDA..... 14<sup>TH</sup> DEFENDANT  
MAMA PAULO..... 15<sup>TH</sup> DEFENDANT  
MARSEDA MAMAYA (a.k.a TOLU)..... 16<sup>TH</sup> DEFENDANT

JUDGEMENT

27.09.2022 & 30.09.2022

A.Z.MGEYEKWA, J

At the centre of controversy between SACCOSA LIMITED, the Plaintiff, and the 17 Defendants, is an Agricultural Farm C.T No. 29644 and 94562

Pongwe Kiona Village located at Bagamoyo District. The bone of contention is trespass. In the Plaint, the Plaintiff prays for Judgment and Decree against the defendants as follows: -

1. *This Court be pleased to declare that the plaintiff is the lawful owner of all that land comprised in Agriculture Farm with Certificate of Title No. 29644 and C.T No. 94562 PONGWE, KIONA Village in Bagamoyo (Now within Chalinze Town Council).*
2. *That this Court be pleased to declare that the defendants are trespassers in Agricultural Farm with Certificate of Title No. 29644 and C.T. No. 94562 PONGWE, KIONA Village Bagamoyo (Now within Chalinze Town Council).*
3. *That the defendants should be evicted from Agricultural Farm with Certificate of Title No. 29644 and C.T No. 94562 PONGWE, KIONA Village in Bagamoyo (Now within Chalinze Town Council).*
4. *That the defendants be held liable jointly and severally to pay the plaintiff Tanzania shillings Four Hundred Million (400,000,000/=) only being the value of the Horticulture product, fruit trees, and vegetation they have destroyed/harvested.*
5. *The defendants should be held liable jointly and severally to pay 250,000,000/= being the costs of rehabilitating the buildings they have vandalized.*

6. *The defendants be held liable jointly and severally to pay to the plaintiff an amount of Tanzania shillings 120,000,000/= for the rehabilitation of the water pipes network they have vandalized.*
7. *That the defendants should be ordered to pay Plaintiff Tanzania shillings Four Hundred Million (400,000,000/=) only as a loss of mesne profits.*
8. *That the defendants be ordered to pay shillings Twenty Million (20,000,000/=) only being the costs of recovering the boundaries and replacing the beacons on the suit lands.*
9. *This Court be pleased to order that the defendants should pay the plaintiff general damages at the sum to be assessed by Court.*
10. *Costs to follow events.*
11. *Any other reliefs this Court deems fit to grant.*

The suit was argued before me on 25<sup>th</sup> August, 2022 *ex parte* against the Defendants. I am alive to the fact that the Defendants were summoned through the court process server to appear in Court on 6<sup>th</sup> June, 2022. However, all of them denied to sign the summons. The matter was scheduled for hearing on 20<sup>th</sup> May, 2022, the court process server filed his affidavit dated 30<sup>th</sup> May, 2022 informing the Court that the 17 Defendants were summoned to appear but they refused to sign the summons. The Court scheduled mention on 1<sup>st</sup> August, 2022, again they

did not appear. Having regard to the entire circumstances of this case, I am of the considered view that the Defendants were duly being served but they opted not to appear in Court and defend themselves. Therefore, to grant the Plaintiffs' counsel prayer to proceed with the hearing of the case *ex parte* against all Defendants.

During the trial, the Plaintiff was represented by Mr. Barnaba Luguwa, advocate. During the Final Pre-trial Conference, the following issues were framed: -

- 1) *Whether the Plaintiff is a legal owner of the suit land*
- 2) *Whether the Defendants have trespassed the suit land*
- 3) *To what reliefs are the parties entitled to.*

In his effort to prove this case the Plaintiff who paddled his own canoe in this matter summoned one witness. Donald Michael Siwalosi PW2 to testify in support of Charles Gadi, Bishop of Good News for all Ministry (PW1), who testified on oath, and told this court that he is the lawful owner of the suit land. PW1 testified that SACCOS LTD is a family Company whereby PW1 and his wife are running the Company since 2000. They have a Farm No. 4007 with a Certificate of Title located at Pongwe Kiona in Bagamoyo (Now Chalinze). The Plaintiff established beekeeping project and they kept livestock such as cows and goats. They bought the

Farm from AGV Kisasi to a tune of Tshs. 30,000,000/=. To substantiate his testimony PW1 tendered a Deed of Agreement dated 14<sup>th</sup> November, 2001 (Exh.P1). PW1 testified that they were introduced to the Village leaders who approved their project plan and later they obtained two Certificates of Title. To substantiate his testimony PW1 tendered a Minutes Sheet dated 6<sup>th</sup> June, 2009 (Exh.P2) and Certificate of Titles No. 1644 and 94562 (Exh.P3).

Thereafter, the Plaintiff developed a Farm, they planted trees and installed water pumps from River Wami. PW1 testified to the effect that the intruders invaded their Farm and are keeping heads of cattle comprising thousands of livestock. He continued to testify that the Defendants started to cut down trees, destroyed water pumps and uprooted coconut, orange, and lemon trees. PW1 said that the Defendants demolished a house and took away doors, iron sheets and windows.. To substantiate his testimony PW1 tendered a Deed of Agreement dated 14<sup>th</sup> November, 2001 Certificate of Titles No. 1644 and 94562.

The Plaintiff's efforts to stop the intruders with the help of the Police Officers and Village leaders proved futile. PW1 had to involve a Livestock Officer who solicited the Defendants' IDs and listed 16 names and the same were verified by the Village Council. These averments have been

testified to by the Plaintiff himself who testified as PW1 in a lengthy testimony.

The second Plaintiff had not much to testify. Hamisi Madunda was born in Pongwe and resides in Pongwe Kiona, Bagamoyo District (Now Chalinze) within Pwani Region. The second Plaintiff knows the suit land very well because he grew up in the said land and all social activities were performed at the suit land. Hamisi Madunda, PW2 was at the material time a caretaker of the Plaintiff from 1998 to 2001. They cultivated cotton. The first owner was AGV Vangilisasi and occupied the land since 1983 and he was hosting festivals. AGV introduced him to PW1 and he continued to work with PW1.

PW2 went on to testify that they cultivated various crops and he was grazing cattle. They planted cyprus and coconut trees. The Defendants invaded the suit land, destroyed crops, uprooted trees and water pipes. They had to stop all Farm activities because the invaders threatened them and continued to destroy the farmland and demolished a house and stole iron sheets.

Having heard the testimonies of the Plaintiff and considering the final submission of the learned counsel for the Plaintiff, I proceed to determine the three issues as listed below:-

1. *Who is the lawful owner of the suit land*
2. *Whether the defendants are trespassers*
3. *To what reliefs are parties entitled to*

Before determining the issues so framed, I will first address the law on the burden of proof in civil cases. One of the canon principles of civil justice is for the person who alleges to prove his allegation. Sections 110 (1) & (2) and 112 of the Evidence Act, Cap.11 [R.E 2019] place the burden of proof on the party asserting that partly desires a Court to believe him and pronounce judgment in his favour. Section 110 (1) of the Act provides as follows:-

*"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 any fact, it is said that the burden of proof lies on that person. On whom the burden of proof lies*

*111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof of the particular fact.*

*112. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it*

*is provided by law that the proof of that fact shall lie on any other 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".*

Applying the above position of the law to the instant case, PW1 is the one who filed this suit before this Court. Therefore, he is required to prove that he is the lawful owner of the disputed land and he had to lead evidence to show that the Defendants are trespassers.

From the foregoing, let me now confront the issues framed for the determination of the present dispute between the parties. I choose to tackle and address the issues as they appear. The first issue is *whether the Plaintiff is the lawful owner of the suit land.*

In a chronological account of the ownership of the property, the Plaintiff alleged that he bought a Farm from one Absalom George Vangilisasi. The Farm was registered in the name of SACOSSA Limited. To prove his ownership he relied upon the Sale of Agreement, Certificate of Titles. I have scrutinized the exchequer receipts and noted that the same is in the name of Joyce Mhimbira. The Deed of Agreement for the exchange of the property and Farm is between Joyce Mhimbira and Absalom George



Vangilisasi. There is nowhere Charles Gadi (PW1) name is featured in the said documents and he is the person who tendered the documents before this Court.

PW1 alleged that they exchanged the Farm and their house. However, the documents are in the names of Absalom George Vangilisasi his wife Easter A.G Vanglisasi, and Joyce Sylivester and the owner of Plot No. 405 BLK 7 located in Mwananyamala B is Joyce Sylivester. The Transfer of a Right of Occupancy in regard to CT 29644 shows that Absalom George Vangilisasi transferred the land to Joyce Mhimbira. Therefore, there is no any prove if Absalom George Vangilisasi transferred the suit Farm to PW1.

Again, there is no any documentary evidence that proves that Joyce Mhimbira and Charles Gadi are related and there is no any documentary evidence to prove that the two of them are owners of SACCOSA LIMITED.

Moreover, the name and particulars of Joyce Mhimbira are not stated in the Plaint. The document with PW1's name is the Minutes dated 6<sup>th</sup> June, 2005 showing Charles Gadi attended the meeting but the same is not related to the case.

Having read the evidence of Charles Gadi (PW1) as a whole the conclusion I draw is that the Plaintiff has failed to prove his case on the

balance of probabilities that he owned a piece of land, and that the Plaintiff did not tender any cogent documents before this Court to prove his allegations. It is clear from evidence and from what I have endeavoured to state above that the Plaintiff has failed to prove his case.

Next for consideration is the second issues, *whether the Defendants have trespassed the suit land*. Since PW1 failed to prove his ownership of the suit land and there are no evidence to prove that SACOSSA legally acquired the suit Farm that means the Plaintiff did not prove whether Defendants encroached the Plaintiff's land. Therefore, this second issue is redundant.

I now turn to determine the third issue, *what reliefs are the parties entitled to*. From the above findings, PW1 has failed to prove his case on the standard required by the law which is on the balance of probabilities. Therefore his prayers and reliefs are rejected.

In the upshot, this suit is dismissed in its entirety for the reasons stated hereinabove without costs.

Order accordingly.


Dated at Dar es Salaam this date 30<sup>th</sup> September, 2022.



  
A.Z. MGEYEKWA  
JUDGE  
30.09.2022

Judgment delivered on 30<sup>th</sup> September, 2022 via video conferencing  
whereas Mr. Barnabas, learned counsel for the Plaintiff was remotely  
present.



  
A.Z. MGEYEKWA  
JUDGE  
30.09.2022

Right to appeal fully explained.