

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 202 OF 2020**

**BETWEEN**

**ELIZABETH SIMON MWAKAPANGALA (Suing as the administratrix  
of the Estate of the late SAID SHOMARI LOKO) ..... PLAINTIFF**

**VERSUS**

**ILALA MUNICIPAL COUNCIL .....1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL..... 2<sup>ND</sup> DEFENDANT**

**TANZANIA AIRPORTS AUTHORITY.....3<sup>RD</sup> PARTY**

**JUDGMENT**

*05/10/2022 & 20/10/2022*

**A. MSAFIRI, J.**


The plaintiff Elizabeth Simon Mwakapangala, suing as the administratrix of the estate of the late Said Shomari Loko, by a Plaint, filed a suit against the defendants namely Ilala Municipal Council (the 1<sup>st</sup> defendant), and the Attorney General (the 2<sup>nd</sup> defendant).

The plaintiff claims that she is the legal wife of Said Shomari Loko who passed away on 9<sup>th</sup> May 2014, and also, she is the legal administratrix of the estate of the said late said Shomari Loko. She claim further that she is the rightful owner of a six parcel of land situated within Mgeule Street in Buyuni

*Alle*

Ward of Ilala District, Dar es Salaam (here in as the suit property or suit land). That, the plaintiff has been peacefully occupying the suit property until sometimes between 2012 and 2013 when the 1<sup>st</sup> defendant through her agents, trespassed into the suit property, alienated it and turned the part around the plaintiff's house into cemetery. That, no explanation or sufficient legal notice of intention to acquire the suit land was given to the plaintiff. That, the 1<sup>st</sup> defendant has continued with the trespass and burial and is threatening to evict the plaintiff from the suit land and demolish her matrimonial house erected on the suit property.

The plaintiff is praying for judgment and decree against the defendants as follows;

1. A declaratory order declaring the plaintiff as the lawful owner of the suit property;
2. A declaratory order declaring the acquisition of the suit property as unlawful;
3. A. permanent injunction restraining the 1<sup>st</sup> defendant, their agents, servants, or assignees from using it as cemetery, entering into possession, selling or otherwise disposing of the plaintiff's six acre parcel of land (suit property).
4. A compensation in the tune of Tsh. 200,000,000/- (Two Hundred Million Tanzanian Shillings only) for trespassing, alienating and use of the suit property as cemetery without due process of the law.
5. Payment of general damages to be assessed by the Court as pleaded in paragraph 14 hereof.
6. Costs of this suit. 

7. Any further orders and relief (s) as the Honourable Court may deem fit and just to grant.

Upon being served with the plaint, the defendants filed their joint written statement of defence denying all the claims, and stated that the land in dispute was under the ownership of Tanzania Airports Authority (here in as TAA), and that the said TAA acquired the land in dispute from the inhabitants after compensation was paid in accordance with the laws of Tanzania. The defendants stated further that, TAA conveyed the suit land to the 1<sup>st</sup> defendant on 9<sup>th</sup> July 2018 for Municipal burial area as it was in the survey plan. They maintained that the plaintiff claims are unfounded, baseless and devoid of merit and prayed for the dismissal of the suit in its entirety with costs.

In this matter the plaintiff was represented by Mr. Daniel Oduar, learned advocate while the defendants were represented by Mr. Stanley Mahenge and Ms. Judith Nasson, learned State Attorneys. The following issues were framed and agreed for determination.

1. Who is the lawful owner of the suit property?
2. Whether the 1<sup>st</sup> defendant acquired the suit property legally.
3. Whether the plaintiff is entitled to the compensation of Tshs. 200,000,000/=
4. To what reliefs are parties entitled to.

After the framing of issues and before the commencement of trial, Mr. Mahenge applied and was granted leave by the Court to file and serve a third

*Alle*

party notice. Accordingly, a 3<sup>rd</sup> party notice was served to TAA, who in turn filed their written statement of defence.

In their third party notice, the 1<sup>st</sup> defendant claims against TAA that, the same handed over to the 1<sup>st</sup> defendant a piece of land located at Pugu Mwakanga, Kinyamwezi described as Plot No. 443 Block 02 (suit property), which was designated for the purpose of burial related activities.

The defendants contended further in the third party notice that; they seem it prudent and appropriate to join the TAA as a 3<sup>rd</sup> party since she was the one who compensated the inhabitants who were the legal owners of the disputed land. The defendants, averred that, the third party should bear any liability in connection with the filed suit.

As stated earlier, the TAA as 3<sup>rd</sup> party filed their written statement of defence and disputed the plaintiff's claims against the defendants and stated that, the acquisition, valuation and compensation on the suit land was done to the rightful owners and that the suit land was designated as cemetery and handed over to the town planning authority, which is the 1<sup>st</sup> defendant. The 3<sup>rd</sup> party prayed for the dismissal of the suit with costs.

After that, the Court was satisfied that there is a question to be tried and determined as to the liability of the 3<sup>rd</sup> party in respect of the claim made against her by the defendants.

The defendants particularly the 1<sup>st</sup> defendant, claims that it was TAA who handed the 1<sup>st</sup> defendant the suit land. That, they believed TAA to have acquired the suit property legally after conducting valuation on the area in dispute and paid the compensation to the owners of that land. Having been

*Aelle*

satisfied about the liability of the 3<sup>rd</sup> party, the Court decided that the question of such liability shall be tried at the trial. At the trial, the 3<sup>rd</sup> party was represented by Mr. Edward Chitalula, learned advocate.

On the plaintiff's evidence, a total of four (4) witnesses gave their testimonies before the Court.

PW1 was the plaintiff herself who testified that she is an administratrix of the estate of her husband the late said Omari Loko. That, she was appointed so on 03/3/2015 by Ukonga Primary Court. She tendered the letter of appointment which was admitted as exhibit P1. She stated that the suit property is located at Mgeule Street, Buyuni Ward which previously was Chanika Ward.

She said that the suit property was bought by her late husband in 1989, and the sale took place at Kijiji cha Ujamaa Buyuni. She tendered the sale agreement which was admitted as exhibit P2. She said she started to live on the suit property since 1994.

She said further that in 2015, the then Ilala Municipal Council turned her land into cemetery. That, her husband who was still alive by then, reported the matter to a cell leader one Doris Mkopi (PW3). That, her husband went with Mkopi to report the matter to the Street Government Office, which told them that they have no information about the process. After the death of her husband in 2014, she pursued the dispute with no success and decided to file this suit.

PW1 stated that, the defence of TAA as 3<sup>rd</sup> party that they are lawful owners is baseless as they have not attached any document to prove their

*Alle*

ownership of the land in dispute. She stated further that until now, she lives in the middle of graves in her house on the suit property. About the compensation, she stated that, her land has never been assessed for valuation, no valuation has ever been done and she has never been compensated.

She said further that, she followed up on the issue of compensation to the Government Street Office where she was told that the office has no any information about the compensation. That the Street Chairman decided to make inquiry at TAA where he was given a logbook on compensation.

PW1 stated that she was summoned by the Street Chairman and went at the office. She saw the log book and read the compensation schedule therein but discovered that her street was not listed among the streets listed for valuation and compensation. She said that valuation was done by the 3<sup>rd</sup> party on Kinyamwezi and Kigogo Streets which are within Pugu Ward. That at the time of compensation Mgeule Street was within Chanika Ward.

She claimed that since her land (suit property) was turned into cemetery, she has suffered economically since she could not use the land for economic activities. She has also suffered mentally and psychologically, and her family have been affected by the fact that they live in the cemetery. She prayed for the Court to restore and give back her land and order the graves to be moved, she also prayed to be compensated for general damages of Tshs. 200 Million.

In cross examination, she stated that her husband died on 09/5/2014, she tendered the Death Certificate of her husband as exhibit P3. She agreed

*Alk.*

that the same shows that her husband died at the age of 41 years old, and this shows that her husband bought the land in dispute aged 16 years old. However, she was adamant that her husband bought the land in dispute and that they were married in 1992.

PW2 was John Lazaro Matebela. He said he lives at Mgeule Street and he is a street chairman at Mgeule Street since 2014. That he has lived at Mgeule Street since 2000. That in 2012, the Ilala Municipal Council (1<sup>st</sup> defendant) moved the graves from Kipawa to Mgeule Street and placed the graves at PW1 area (suit property).

That the 1<sup>st</sup> defendant never met with the street leadership so as to inform the leaders and residents about the decision to move and place the graves at Mgeule Street. PW2 added further that, Mgeule Street has never been assessed for valuation and compensation has never been paid to the residents of Mgeule Street. He said that TAA has never been the owner of the area in dispute.

PW2 said further that in 2020, there was another exercise where by more graves were moved to the area in dispute. As a street chairman, he made follow up to TAA who informed him that compensation was made and showed him compensation schedule book. That after reading the schedule book, he discovered that the valuation was done at Zavala and Nyebulu streets, Buyuni Ward, and Kigogo fresh and Kinyamwezi streets at Pugu Ward and not at Mgeule Street.

He tendered the compensation schedule book as Exhibit P4. PW2 contended that, in the compensation book, Mgeule Street is not shown, and *Alb*



that the purported ten people from Mgeule Street who were claimed to have been compensated, they were from Kinyamwezi Street. That the compensation was never done to the people of Mgeule Street. PW2 contended further that the land in dispute is at Mgeule Street and not at Kinyamwezi Street.

PW3 was Doris Amani Mkopi, who claimed to be the neighbour of the plaintiff. She stated that she has lived at Mgeule Street since 1993. That, Ilala Municipal Council moved the graves to the plaintiff's area since 2012.

She stated that Ilala Municipal Council did not follow procedures of notifying the Street Government of the area about their intention of moving the graves to the disputed area. She stated that she was a cell leader from 2000-2017 so she was a member of the Street Government of the area. She stated that the plaintiff has never been paid compensation. On cross examination, she insisted that no one has ever been paid compensation on that disputed area and that the graves are at Mgeule Street.

PW4 was Awadhi Nyombo Mtani whose evidence was similar to PW3. He also stated that he lives at Mgeule Street since 2000 and the plaintiff is his neighbour. He said that the dispute started in 2012 when the graves were moved to the disputed area which is the plaintiff's area. He stated that the residents of Mgeule Street were never informed on the fact that the disputed area was given to Ilala Municipal by TAA in 2018. He said that that was not true because the graves were shifted in 2012.

He stated that he don't know the people called Alfani Rashid Duge or Salum Musa Duge, and that at the time he was living at Mgeule, there was *Alle.*



no such people living there. He was shown Exhibit P4, a Compensation Book, and said that the people who were compensated were from Kinyamwezi, Kigogo Fresh, Zavala and Nyebulu Streets, and not from Mgeule Street.

On cross examination, he said the plaintiff is his neighbour since 2000, however, he don't know how she got the area.

DW1 Kassimu Ramadhani Mfinanga testified as a defence witness. He said that he is a Street Chairman of Kinyamwezi street. He said he has known the plaintiff since 2013. He said that he lives nearby the plaintiff, at a distance of about 250 metres. He stated that the plaintiff is his subject and she lives at Kinyamwezi Street and not Mgeule Street as she claims.

He averred that the plaintiff's claims are not true because the land in dispute was surveyed and the owners were compensated. He stated that the plaintiff was not the owner of the land in dispute but the land was owned by Mzee Duge's family and they were compensated. He said further that the lawful owner of the disputed land is the Municipal Council which acquired the land after compensating the original owners who were Mzee Duge's family.

DW2 was Ramadhani Selemani Chamwiti. He said he works at Dar es Salaam City Council which was formerly known as Ilala Municipal Council. He is employed as Assistant Land Surveyor. He said that the land in dispute is owned by Dar es Salaam City Council. That the Council acquired the said land from TAA. That there was a project of extension of Julius Nyerere International Airport where by the residents of Kipawa and Kigilagila area which falls under the project, had to be moved from project area.

*Alle.*

That Kinyamwezi area was among the areas which were identified, and surveyed for the residents from project affected areas to be moved there. So, the people from Kipawa were moved to Kinyamwezi and the process began from 2009 and went on to 2011/2012. He said that the disputed area was designed as a cemetery, and the remains from project areas were shifted and buried at the suit property.

DW2 stated that, later the 1<sup>st</sup> defendant received information that the plaintiff has trespassed on the area and is selling pieces of land in dispute to other people.

That the 1st defendant made a follow up on the street and Ward leadership, and was told that the plaintiff is claiming that the land belongs to her, and she has not been compensated. That, the City Council wrote to TAA about the plaintiff's claims and TAA replied with the letter that the land in dispute is owned by the City Council and the original owners were compensated. He tendered the letter which was admitted as Exhibit D1.

DW2 stated further that, the plaintiff is a trespasser on the land in dispute which is located at Kinyamwezi Street. He insisted that the original owners of the land in dispute were all compensated and moved to another areas, and now the land is owned legally by the City Council.

DW3 was Zakia Selemani Athumani who stated that she lives at Pugu Kinyamwezi area. That, she has started to live at Kinyamwezi since 2011. She informed that, before that she used to live at Kipawa but she and other people whose areas were affected by the project of Airport extension, were shifted to Kinyamwezi by the Government. She said she know the plaintiff

*Alle*

she is her neighbour. She said that when she moved to Kinyamwezi in 2011, the land in dispute was unoccupied and there was just bushes and cashew and coconut trees. That the area was acquired, valued and planned by the Government to be the cemetery area, and it is located at Kinyamwezi Street. On cross examination, she stated that she does not know when the plaintiff started to live at her place but she found her there.

As started earlier, the 1<sup>st</sup> defendant served TAA with a third party notice, and with the leave of the Court, the said TAA was joined as a third party.

The third party filed their defence, and vehemently contended the plaintiffs claims. The third party stated that they were the legal owners of the land in dispute and they acquired it by following the procedure of valuation of the land in dispute and compensating the lawful owners, and then handed over the same to the 1<sup>st</sup> defendant who designated the area to be burial place (a cemetery). Before the trial, the Court decided that the question of liability of a 3<sup>rd</sup> party will be tried at the trial.

Hence during the trial, the 3<sup>rd</sup> party was allowed to bring her witnesses so as to help the court to determine the question of her liability.

Reginald Hilary Mosha, testified as the first 3<sup>rd</sup> party witness. He stated that he is a surveyor employed by a private company known as Majengo Estate Developers Ltd, as a Project Manager. He stated that in 2004 his company was hired by TAA to make valuation of the areas at Kinyamwezi and Buyuni. That among areas which were valued was the land in dispute.

*Atts.*

That, at the time of valuation the area was not occupied, undeveloped and there was few coconut and cashew trees. That the suit property was owned by people.

He said that during valuation process, they meet the owners of the land and the process was led by the Street Chairman of the area. That, after valuation, they prepared Valuation Report and handed it to the Government Valuer for endorsement. After getting endorsement, they prepared a compensation schedule. He tendered a compensation schedule which was admitted as exhibit D2. He insisted that the original owners of the land in dispute were compensated and that he remembers them as "familia ya Duge", he stated that he don't know the plaintiff.

Athumani Alfani Duge and Athumani Salum Duge were also 2<sup>nd</sup> and 3<sup>rd</sup> witnesses for the third party. Their evidence was mostly similar. Athumani Alfani Duge told the court that they don't know the plaintiff, but the suit property was owned by his father Alfani Duge who died in 1981 and that after their father's death, they shifted from the suit land to Buyuni. He stated that he had lived at Pugu Kinyamwezi since 1973 when he was born.

He said that, the land in dispute was valued and they were compensated in 2004. He denied that their father sold the land in dispute to the plaintiff's husband in 1989, because at that time their father has already passed away because he died in 1981. He claimed that Exhibit P2, a sale agreement was forged and prayed for the same to be expunged from the Court records.

*Aulls*

Having heard the parties to the dispute, the Court visited the locus in quo, and recalled some of the witnesses who are the plaintiff (PW1) PW2, PW3, DW1, DW3 and Athumani Alfani Duge and Athumani Salum Duge. The Court observed the location of the area in dispute and saw that the place was indeed a cemetery. The house which the plaintiff claims to be hers is in the middle of the graves.

The purpose of a visit was for the Court to ascertain the location of the land in dispute as compared to the evidence adduced in court whereby the witnesses for the plaintiff stated that the suit property is located at Mgeule Street while the witnesses for the defendant claimed that the suit property is at Kinyamwezi Street.

After visiting the locus in quo, it is my view that the location of the suit property is not a core point here. What the court observed is that, the suit property is indeed a cemetery and the plaintiff lives there in her house. The plaintiff claimed she has lived there since 1994 while the defence claims that the plaintiff is a trespasser.

After hearing of the evidence of all parties to the dispute I set on to determine the issues which were framed and agreed before the commencement of the trial.

The first issue is who is the lawful owner of the suit property? The plaintiff claims to be the lawful owner of the suit property. She said her husband Saidi Loko bought the said property in 1989. According to exhibit P1, the sale took place on 10/8/1989 and it was between one Alfani Duge, the vendor and Saidi Shomari Loko, buyer, at a purchasing price of Tshs.

*Alf*

120,000/= . The sale was witnessed by one Rashidi Alfani Duge, and Salum Mussa on the vendor's side and Mohamedi Issa and Brighton Ndamo, on the buyer's side. The plaintiff said she started to live there since 1994 with her husband. She said that the 1<sup>st</sup> defendant turned the place into a cemetery from 2012 until today. She said that the suit property is measured at 6 acres in size. The plaintiff's claims was supported by exhibit P2 which is a sale agreement.

The defendants on their side stated that the suit property is legally owned by the then Ilala Municipal Council, having been given to them by TAA in 2008 and designated into a cemetery.

The only evidence which challenged Exhibit P2 was the evidence of the 3<sup>rd</sup> party witness Athumani Alfani Duge. He said that his father Alfani Duge was the owner of the suit property and he died in 1981. However he did not tender any document to prove that his father Alfani Duge died in December 1981. Athumani Duge said that since his father died in 1981, he could not have sold his land in 1989 as Exhibit P2 shows.

When Athumani Duge was shown Exhibit P2, he admitted that the name of his father appears on the same but denied that his father has ever sold the land in dispute. He said that Exhibit P2 is a forged document as his father died in 1981. Furthermore, he stated that, one of the witnesses in the sale agreement shown as Salum Mussa Duge was illiterate, never knew to read or write, so he could not have signed any document in writing as he seems to have done in Exhibit P2.

*Alls.*



However, it is my view that the words of this witness was mere words, without any proof. The document exhibit P2 was signed and officially stamped by the Village Council of Buyuni (at that time). The defence never challenged the authenticity of the stamp of Village Council. The authenticity of the document was questioned on the fact that, the suit property was sold in 1989, and they claim that at that time the vendor was already dead. As I said earlier there was nothing in Court to prove that Alfani Duge, the vendor, indeed died in December 1981 as Salum Alfani Duge insisted.

Therefore, the allegation of this evidence of a 3<sup>rd</sup> party witness remains mere words which cannot be relied upon by the Court. At this juncture, the burden of proof shifted to the defendants or the 3<sup>rd</sup> party to prove the claims that Alfani Duge died in 1981 and that Exhibit P2 was forged. This is per section 115 of the Evidence Act, Cap 6 R.E. 2019 which provides that;

*"In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*

The evidence of the plaintiff was also supported by PW2, Mgeule Street Chairman. He stated that he knew the plaintiff since 2000 and she was living in the suit property. PW3 also stated to have lived at Mgeule Street since 1993 and built her house there. She knows the plaintiff who was living with her husband at the area in dispute and they have their house there. She stated that the dispute arose in 2012 when the Municipal Council moved the graves to the plaintiff's area. In cross examination, she stated that, she started to live at the area before the plaintiff, and the plaintiff and her husband built their residential house in 1994.

*Alle.*

PW4 is another witness who testified to have found the plaintiff living at the land in dispute in 2000 when he moved and started living at the area. Even the defence witness, DW1, stated that he moved to the area in 2000 and found the plaintiff living on the land in dispute. DW2, stated that the land in dispute was allocated to the Municipal Council (1<sup>st</sup> defendant) from 2011/2012 by TAA.

By analysis of evidence, the defendant and TAA (3<sup>rd</sup> party) claims that the land in dispute was owned by 10 people who were unnamed except for the Duge family. The Duge family through Salum Alfani Duge had nothing to show and prove their claims that the land in dispute belongs to them or to their late father and how he acquired it.

The plaintiff proved to the Court how she came to own the suit property. She is an administratrix of the estate of her husband as per Exhibit P1. Her husband died in 2014 as per Exhibit P3, and it was her husband who was the owner of the land in dispute after buying the same from the original owner Alfani Duge as per Exhibit P2.

The evidence shows that the third party acquired the land in 2009 when the area was surveyed, valuated and the original owners were compensated. So, according to this evidence, plaintiff was already living at the disputed land at the time TAA was acquiring, surveying, and valuating the suit property.

The defence evidence does not show the status of the land before it was acquired by TAA, but, the available evidence shows that the land was owned by ten people among them Alfani Duge's family.

*Alls*

The plaintiff's evidence shows that her late husband bought the land from Alfani Duge, the plaintiff has been living there since 1994, and the witnesses from both parties to this matter found her living on the suit property.

The defence claims that it was the plaintiff who has trespassed to the area in dispute, but the evidence does not show when did the plaintiff trespassed to the area, instead all the evidence shows that that the plaintiff was living at the land in dispute since 1994 and she was there when the land in dispute was turned into cemetery.

It is trite law that, in civil matters it is the party bringing the claim (the plaintiff) who has the burden to prove her/his claim. This was held in the Court of Appeal case of **Yusufu Selemani Kimaro vs. Administrator General & 2 others**, Civil Appeal No. 266 of 2020 CAT at DSM. Also sections 110 (1) (2) and 112 of the Evidence Act, places the burden of proof to whoever desires the Court to give judgment as to any legal right or liability on existence of facts which he/she ascertains. That legal burden is on the balance of probabilities.

In the matter at hand, it is my finding that the plaintiff has successfully managed to prove that she is the legal owner of the suit property. Exhibit P2 shows that that her late husband bought the land in dispute from Alfani Duge. The 3<sup>rd</sup> party stated that the land in dispute was originally owned by ten people where only Mzee Duge family was mentioned. Salum Alfani Duge, son of Alfani Duge claimed his father never sold his land in 1989 as he died in 1981, and that one of the witnesses who signed by writing, could not have

*Alle*

done so as he was illiterate, hence the document was forged. At this time, the onus of proof shifted from the plaintiff to the defendants.

It was observed by the Court of Appeal in the case of **Yusuf Selemani Kimoro vs Administrator General & 2 others (supra)** that, the burden of proof in civil cases is always unstable and may shift constantly throughout the trial according to the circumstances. And it was observed further that, in civil cases, the onus of proof does not stand still but rather it keeps on oscillating depending on the evidence led by the parties. Also as I have already pointed herein above, this principle of shifting of burden of proof is cemented under section 115 of the Evidence Act.

In the instant case, it was the claim of the 3<sup>rd</sup> party that Alfani Duge died in 1981, however it was mere words of the witness which was not supported by any document of proof so, to my view, here the burden of proof shifted to defence to prove that Alfani Duge is already dead and he died in 1981. Also they needed to prove that Exhibit P2 was forged as it was claimed by the witness. The forgery claims are serious and as they have criminality nature, the standard of proof is higher than normal civil claims so, it can not be a mere oral statement of the witness which was not corroborated by any other evidence. From this analysis, I find that the plaintiff has managed to prove that she is the legal owner of the suit property and the first issue is answered so.

The second issue is whether the 1<sup>st</sup> defendant acquired the suit property legally?

*Alb.*

According to the evidence of the 1<sup>st</sup> defendant, she claims that the land in dispute was under the ownership of TAA which acquired the land from inhabitants after compensation was paid as per the valuation which was conducted in 2004. That, the TAA conveyed the suit land to the 1<sup>st</sup> defendant on 09/7/2018 for Municipal burial area.

The 3<sup>rd</sup> party who is TAA, claimed that she legally acquired the suit land and assigned Majengo Estate Developers, a consultant company to carry out valuation over the said land.

The major question is whether the procedure for acquisition of land was followed by the TAA. I have set this major question for the reason that before determining whether the 1<sup>st</sup> defendant acquired the suit property legally, it is important to know first if TAA acquired the said suit property legally from the so called original inhabitants.

According to the evidence of the 3<sup>rd</sup> party, the land in dispute was valued and the ten people who were the original owners were duly compensated. The 3<sup>rd</sup> party brought witnesses in Court to establish that they were the original owners of the suit property and were compensated.

Reginald Hilary Mosha, the project Manager of Majengo Estate which conducted valuation on the land in dispute, stated that the valuation was conducted in 2004. At that time, the plaintiff was already living in that area as the evidence shows that she started living at the suit property since 1994. If Majengo Estate conducted valuation on the land in dispute, then they must have valued the plaintiff's area.

*Alle.*

After valuation, the Court was told by 3<sup>rd</sup> party witness that compensation was paid to the original owners who were ten (10) people.

According to Exhibit D1, which is a letter from TAA to the office of the Executive Director, Ilala Municipal, the General Manager of TAA through the said letter informed the Ilala Municipal that when valuation was conducted in 2004, the plaintiff was not the owner of the area in dispute.

However, the plaintiff managed to establish that she is the owner of the land in dispute by producing Exhibit P2, a sale agreement entered in 1989 whereby Saidi Shomari Loko, husband of plaintiff, bought the suit property from the original owner Alfian Duge.

It is true that Alfian Duge was the original owner, however since he sold the land in dispute to the plaintiff's husband then it was not proper to pay compensation to the Duge's family because the land in dispute was no longer under their ownership.

According to the provisions of the Land Acquisition Act, Cap. 118, any land may be acquired by the President where such land is required for any public purpose. It is provided further under Section 4(1) of the said Act that;

*4(1)(a); land shall be deemed to be required for a public purpose where it is; for exclusive Government use, **for general public use**, for any Government Scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, **social services** or housing. (emphasis mine).*

*Alle.*



In the current matter, it is clear that the land in dispute was acquired for public purpose and designated by the 1<sup>st</sup> defendant for social services which is cemetery.

So, under the land laws, the land in Tanzania is vested under her Excellency the President. And the President can acquire the same for the public purpose or public interest.

However, the same Land laws particularly the Land Acquisition Act provides for the procedure for land acquisition for public purpose. Sections 6 and 7 of the Act provides for the requirement of issuing notice of intention to acquire the land to the owner or the persons with interest on such land. Section 8 of the Act gives requirement of the notice issued to be served by various ways to the person interested in that land and the notice shall be published in the Gazette soon after service. Section 11 of the Act requires the Government to pay compensation.

In the matter at hand, there is no evidence from either the 1<sup>st</sup> defendant or 3<sup>rd</sup> party that they complied with the above requirements during the acquisition of the suit land. The plaintiff contended that no notice was issued to her as the owner and occupier of the suit land and no compensation was ever paid to her.

Hence, notwithstanding the fact that the acquisition done by the 3<sup>rd</sup> party and the 1<sup>st</sup> defendant who has power to acquire land, and plan the land by designation might be lawful, the fact that the procedure for acquisition as provided under the law was not done, hence such act was unlawful and illegal.

*Ally-*

The second issue is answered in negative that the 1<sup>st</sup> defendant did not acquire the suit property legally as the acquisition was unlawful from the beginning for noncompliance of the requirements of the Land Acquisition Act on procedure for acquisition of land for public interest on public purpose.

The third issue is whether the plaintiff is entitled to the compensation of Tshs. 200,000,000/=

In the plaint, the plaintiff is praying for compensation from the defendants in the tune of the said amount for trespassing, alienating and use of the suit property as cemetery without due process of law. However, the plaintiff did not establish how she had arrived at such figure. There is no any valuation report to prove whether the valuation of the suit land was done and arrived at the claimed amount. That being the case, the court finds that the figure claimed by the plaintiff is not founded.

It is my finding that the plaintiff is entitled to compensation, however the Court cannot bless the amount claimed by the plaintiff as there is no evidence on how the amount was reached.

The fourth and last issue is to what reliefs are parties entitled to. I find that the plaintiff has succeeded to prove her case to the balance of probability. Since the land in dispute was acquired by the Government for public use and has been designated as a cemetery, then the plaintiff is entitled to be compensated as she has pleaded in her plaint.

The plaintiff has pleaded for other reliefs such as a declaratory order that she is the lawful owner of the suit property, and permanent injunction to restrain the 1<sup>st</sup> defendant from using the suit property as cemetery. *ALG*

As the suit property is already acquired by the Government for the public interest, what the plaintiff is entitled is fair compensation.

However before I give an order on the reliefs, I find it important to determine on the 3<sup>rd</sup> party liability on the suit. As I have already determined in analysis of the second issue, the 1<sup>st</sup> defendant did not acquire the suit property legally as the acquisition was unlawful from the beginning for noncompliance of the requirements of the Land Acquisition Act on procedure for acquisition of land for public interest on public purpose. However the 1<sup>st</sup> defendant claim that it was the 3<sup>rd</sup> party who gave the suit property to her for burial purpose. The evidence shows that indeed the 3<sup>rd</sup> party gave the suit property to the 1<sup>st</sup> defendant but did not comply with the requirements of the law in acquiring the said suit property.

Basing on that, I find that the 1<sup>st</sup> defendant has a bonafide claims against the 3<sup>rd</sup> party and hence the 3<sup>rd</sup> party will be required to indemnify the 1<sup>st</sup> defendant on any legal responsibility shouldered upon her.

On the reliefs, I hereby order as follows;

1. I declare that the plaintiff is the lawful owner of suit property and hence, entitled to a compensation.
2. I order that the valuation be done on the suit property by the independent valuer to be engaged by the plaintiff. The said valuation to be done in corroboration with the Land Officer of the 1<sup>st</sup> defendant.
3. The plaintiff be paid compensation by the 1<sup>st</sup> defendant and the 3<sup>rd</sup> party according to the valuation report which will be done by an

*ALLG.*

independent Valuer upon getting verification and approval from the Chief Government Valuer.

4. The plaintiff to be paid general damages to the tune of Tshs. 50,000,000/= for the mental anguish and sufferings she has incurred since 2012 when her land was turned into cemetery.
5. The plaintiff to be paid the costs of the suit.

It is so ordered. Right of appeal is explained accordingly.



  
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**A. M. MSAFIRI**  
**JUDGE**  
**20/10/2022**