

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(LAND DIVISION)  
AT  
DAR-ES-SALAAM  
LAND CASE NO. 24 OF 2017**

**JAMBO FREIGHT LIMITED.....PLAINTIFF  
VERSUS**

**SAID R. ZAYUMBA@SAID RASHID  
ZAYUMBA AND 16 OTHERS.....DEFENDANTS**

Date of last Order: 14/03/2022

Date of Ruling: 04/ 03 /2022

**JUDGMENT**

**NANGELA, J.:**

The Plaintiff in this suit is suing the Defendants, jointly and severally, seeking for, among others, the following orders:

1. A declaration of ownership of disputed land property identified as Plot 120 Mabibo Port Access Industrial Area, Dar-es-Salaam City,
2. Eviction Order to evict the Defendants and or their agents/relatives or workmen from the disputed property,
3. Demolition Order, to demolish all structures erected on the disputed suit property,

4. Permanent Injunction order against the Defendants,
5. General Damages and
6. Any other relief(s)/ orders this Honourable Court deems fit and just to grant.

The hearing of the case commenced well, starting with the Plaintiff's case which was advocated for by Mr Lusajo Willy, learned Advocate, while Mr Twaha Taslima and Fadhili Taslima of Taslima Law Chambers, represented the Defendants.

For purposes of gaining insights of this case, I will narrate the brief facts. Sometime in 1988, the Plaintiff was granted a Certificate of Title in respect of Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam, herein referred to afterwards as "**the suit property**." It was averred, however, sometimes in 2008, the Defendants invaded the said-suit property.

The Plaintiff resisted the trespass by seeking assistance of the Kinondoni Municipal Council but with no avail. As such, since 2006 to year 2016, the Plaintiff is said to have employed different means of evicting the Defendants from its property they had trespassed, including agreeing with them that they be compensated some amount of money for the developments made thereon. Although the Defendants are said to have

accepted the compensation monies from the Plaintiff, they refused to vacate from the suit property.

It is on those accounts that the Plaintiff approached this Court on the 24<sup>th</sup> January 2017 seeking for the orders afore stated. The Defendants filed a joint Written Statement of Defence. They denounced the Plaintiff's claims that he has ever possessed the disputed suit property. They averred to have acquired the suit property under the Villagization policies and throughout have been in occupation of it without any interruption from any person, including the Plaintiff.

The Defendants have further stated that, their ownership is fully recognised by the government authorities as they were issued with residential licences and rents have been collected from them. As such, they have totally denied to have trespassed the Plaintiff's land. However, the Defendants partly admitted that, the Plaintiff entered into agreements with the Defendants and did pay them compensation according to a valuation.

Before commencement of the full hearing, this Court drew up four issues which were agreed upon by all parties. The issues were as here under:

1. Who between the parties is the lawful owner of Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City.

2. Whether the compensation paid by the Plaintiff was lawful and adequate.
3. Whether the Plaintiff suffered any damages.
4. What reliefs are the parties entitled to.

On the 23<sup>rd</sup> November 2020 the full hearing of this suit commenced. The Plaintiff called a total of 7 witnesses, Mr Msham Said Mkenda (Pw-1), Mr Said Ligunda (Pw-2), Joe Martin Mzuwanda (Pw-3), Anthony Joe Mzuwanda (Pw-4), Mr. Waziri Masudi Mganga (Pw-5), Mr Palmon Rwegoshora (Pw-6) and Mr Fred Calist Mbaraka (Pw-7).

In summary, all these witnesses for the Plaintiff had one message: Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City belongs to the Plaintiff. In court, Pw-3 and Pw-4, who works as Managing Director and Operational Manager of the Plaintiff's affairs, respectively, testified on how they acquired the suit property. Pw-4 tendered in Court a certified copy of Certificate of Title, CT No. 38833, Land Office No.107660 for Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City, the same being received as **Exh.P.2**.

Besides, Pw-3 and Pw-4 narrated to the Court how, out of goodwill, offered to compensate all who had trespassed on the suit property. In particular, Pw-3 told

this Court that, the monies the Plaintiff had used to pay for such compensation, was borrowed from the Commercial Bank of Africa (CBA Bank) and the CT was pledged as security for the loan taken by the Plaintiff. Pw-4 tendered 17 compensation agreements, duly signed by the Defendants, and, these were admitted as **Exh.P.2**.

As regards the testimony of Pw-1 and Pw-2, they testified that, at some point in 1978, their area was classified as an industrial area and all residents were compensated by the government and vacated the area. Further, according to Pw-5 and Pw-6, Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City belongs to the Plaintiff and, that, it was issued in 1988.

As regards the Residential Permits issued to some residents, Pw-5 and Pw-6 testified that, such were erroneously issued. This Court did also call for a witness for the Court, one Mr. Iddrissa Juma Kayera, Assistant Commissioner for Lands, who supported the testimonies of Pw-5 and Pw-6 in relation to the ownership of the Plot and the status of the Residential Permits issued to some of the Defendants (whom the Plaintiff consider to be "trespassers"). As for Pw-7, he testified to have witnessed the signing of **Exh.P1** by the Defendants.

As for the Defendants' case, the Defendants called 12 witnesses and tendered five (5) documents in support of the Defence case. These were Mr. Mohamed Matata

(Dw-1), Somoe Ali (Dw-2), Ms Mwajabu Said (Dw-3), Ms Francisca Rugeiyamu (Dw-4), Adriano Nelson Chusi (Dw-5), Mr Saidi Pazi (Dw-6), Issa Ramadhani (Dw-7), Sarah Ngailo (Dw-8), Benjamin Mgittu (Dw-9), Ms Magret Sterwart Kiganga (Dw-10), Monica Gregory (Dw-11) and finally, Angela Chillo (Dw-12).

In summary, all these witnesses for the Defence case had one thing in common, that is, they were paid compensation by the Plaintiff but what they were paid was inadequate and was contrary to what was agreed between the Defendants and Pw-4 (the Operations Manager of the Plaintiff). The Defendants alleged as well that, they were lawful owners of the respective plots they occupy within the suit property having purchased them at some point in the past.

At the end of the hearing, the parties made a prayer to file closing submissions. However, it was only the Plaintiff's legal counsel who filed such closing submissions, which I will consider as well as I address the issues raised and agreed upon by the parties in this suit.

As a matter of law, he who alleges must prove. See the case of **Abdul-Karim Haji vs. Raymond Nchimbi Alois and Another**, Civil Appeal No.99 of 2004 (unreported). It is also a cardinal principle of law that, in civil cases, parties are to prove their cases on the balance of probability. See the case of **Silayo vs. CRDB (1996)**

**Ltd [2002] 1 EA 288 (CAT) and Catherine Merema vs. Wathigo Chacha**, Civ. Appeal No.319 of 2017 (unreported).

In this case the Court raised four issues which I will address shortly. The first one was:

Who between the parties is the  
lawful owner of Plot No.120  
Mabibo Port Access Industrial  
Area Dar-es-Salaam City.

During the hearing, the Plaintiff (through Pw-4), tendered in Court with a view to prove ownership of the disputed suit property, documentary evidence, in the form of a certified copy of a Certificate of Title, CT No. 38833, Land Office No.107660, for Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City. The document was admitted without any objection as **Exh.P-2**. Besides, Pw-3, Pw-5, Pw-6 and the Court Witness supported a view that, the suit property belongs to the Plaintiff and that; the CT has never been revoked.

It is worth noting, as authoritatively stated by the Court of Appeal in the case of **Amina Maulid Ambali and 20 others vs. Ramadhani Juma**, Civil Appeal No.35 of 2019, that:

"when two persons have competing interests in a landed property, the person with a certificate thereof will always be

taken to be the lawful owner unless it is proved that certificate was not lawfully obtained, [ or that, it has been lawfully revoked by the competent authority].”

In view of the fact that the documentary evidence tendered by Pw-4 as **Exh.P-2** and relied upon by the Plaintiff was in no way controverted as one obtained unlawfully or that it had been revoked, that fact disposes the first issue and vindicate the Plaintiff's claim over the disputed landed property. The Defendants have not adduced any evidence to contradict the lawfulness and validity of **Exh.P-2**.

It is also worth stating that, even the Residential Permits such as those adduced in evidence as **Exh.D.3** and **Exh.D.4** by Dw-6 and Dw-7 respectively, cannot be regarded as good titles compared to the Plaintiff Certificate of Title.

Let me, as well, state that, this Court has taken judicial notice of its own decision in relation to the same property, i.e., the case of **Jambo Freight Ltd vs. David Martin Mpahi and 25 Others**, Land Case No.352 of 2016, (unreported). In that case, his Lordship, I.C. Mugeta, J., made a finding to the effect that **Jambo Freight Ltd** (the same Plaintiff herein) is the rightful



owner of Plot No.120 Mabibo Port Access Industrial Area Dar-es-Salaam City.

That finding, which is a decision *in rem*, still holds and, to the best of my knowledge, no appeal was ever preferred by the Defendants against it. In law, a decision *in rem* conclusively determines the title to a property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. With all that in mind, the first issue is hereby disposed of by declaring that the Plaintiff is the lawful owner of the suit property.

The agreed second issue was crafted as follows:

Whether the compensation paid by the Plaintiff was lawful and adequate.

The evidence availed to the Court has revealed two things in respect of the issue of compensation. In the first place, there was compensation which was made payable to all those who had interest on the said disputed land prior to its being surveyed and classified as an industrial area, in 1978.

According to the testimony of Pw-1 who, since 1977, has been living in at Mwongozo Street, Mabibo Ward, Dar-es-Salaam, in 1978 the residents of the area were informed that, their area would be classified as an industrial area. He testified that, the area was later

surveyed by land experts and the residents who had interest in that landed property, himself being one of them, were fully compensated and vacated that surveyed area of land.

In the case of **Jambo Freight Ltd vs. David Martin Mpahi and 25 Others**, (supra) this Court made a finding that, survey of the said land was done and compensation was paid to the prior occupants of the said land. That finding is important even to the case at hand because of the fact that, some of the Defence witnesses such as Dw-5 and Dw-12, testified that that they have been living on the same property since 1978 and 1979.

The second aspect in relation to compensation is the compensation which was paid to the Defendants by the Plaintiff as **Exh.P1** and the testimonies of Pw-3 and Pw-4 indicate. The Defendants have never disputed the fact that they received or pocketed the monies. What they claim and stand for is that, the monies given to them as compensation, were inadequate compared to the developments they had made in the suit property.

Before I respond to the issue of adequacy or otherwise of the compensation received by the Defendants, let me pose and ask if at all it was necessary to pay them any of such amounts or put it other way round whether the Defendants were at all entitled to compensation. The fact is that, since the Plaintiff was/is

the rightful owner of **Plot No.120**, Mabibo Port Access Industrial Area Dar-es-Salaam City, the Defendants were/are trespassers and they deserved no compensation from the Plaintiff.

As Pw-3 and Pw-4 stated, the Plaintiff chose to pay the Defendants compensation as purely a gesture of goodwill or rather on a humanitarian ground and they should rather be grateful to the Plaintiff's management rather than scourging their backs or give a frown face to such an act of kindness. A trespasser has no right to compensation.

In view of that fact, the issue regarding whether what the Defendants got as compensation from the Plaintiff was adequate or not, has no legal value and this Court sees no need to respond to it beyond what has already been stated. I must only add that, the Defendants were not, in the first place, entitled to be paid compensation by the Plaintiff.

However, since the Plaintiff paid them, as evidenced by **Exh.P1**, such payment was a token of kindness which ought to have been responded to on a similar tone by the Defendants vacating the suit property peacefully.

The third issue is:

Whether the Plaintiff suffered any damages.

According to the testimonies of Pw-3 and Pw-4, the monies used by the Plaintiff to pay compensation to the Defendants, were borrowed from the Commercial Bank of Africa (CBA Bank) and the CT was pledged as security for the loan taken by the Plaintiff. Even after such payments were made, the Defendants were still defiant and never vacated the land.

On the other hand, and according to the testimonies of Pw-3 and Pw-4, the Plaintiff lost the investment partner it had sought, who was to build an industry on the disputed land, and as of now, the Plaintiff is also forced to repay the monies obtained as a loan from bank, which monies were used to effect compensation to the Defendants.

In the case which I earlier cited, the case of **Jambo Freight Ltd vs. David Martin Mpahi and 25 Others**, (supra) this Court ordered the trespassers to vacate the land and each was to pay **TZS 1,000,000/-** as compensation for damages inflicted on the Plaintiff. In my humble view, a similar verdict may need to be meted out in respect of this case, although the amount may differ. This is to say, therefore, that, the Plaintiff has suffered damages and the Defendants have to compensate the Plaintiff for the damages suffered.

The last issue is: *to what reliefs are the parties entitled*. In my view, the Plaintiff has fully discharged its

burden of proving its case and deserves to be granted the reliefs it has sought. In view of that, this Court proceeds to grant the following reliefs sought in the Plaint, that:

1. the suit property trespassed by the Defendants belongs to the Plaintiff for the Plaintiff to recover the possession of the same;

2. an order is hereby given to the Defendants and or their relatives, their agents and/or their workmen and servants, assignees or collaborators to immediately, within three months from the date of this judgement, vacate the suit property for the Plaintiff to recover its possession;

3. a demolition order is hereby issued, directing that the Defendants demolish on their own and within three months from the date of this judgement, all structures erected on the suit property whether by them or their agents, assignees, workmen, or collaborators, failure of which the Plaintiff will be entitled without further notice to demolish such structures.

4. The after the expiry of the three months grace period granted

herein by this Court, the Defendants, their relatives, their agents and/or their workmen and servants, assignees or collaborators or any other persons, are permanently restrained from entering the suit property or carry out any activity unless so allowed by the Plaintiff.

5. Each of the Defendants are hereby ordered to pay the Plaintiff **TZS 200,000/-** as general damages.
6. The Defendants are jointly and severally liable to pay costs of this suit to the Plaintiff.

**It is so ordered.**

DATED AT DAR-ES-SALAAM ON THIS 4<sup>th</sup> DAY OF  
MARCH, 2022



.....  
**DEO JOHN NANGELA**  
**JUDGE,**