

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND CASE NO. 61 OF 2022

SACOSSA LIMITED PLAINTIFF
VERSUS

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

JUDGEMENT ON REVIEW

Date of last Order: 10.11.2022

Date of the Judgment: 17.11.2022

A.Z.MGEYEKWA, J

This is a Judgment on Review whereas the applicant has brought an application praying this court to review and make correct errors which are apparent on the face of the record.

When the matter was called for hearing on 10th November, 2022, the applicant enlisted the legal service of Mr. Barnaba Luguwa, learned counsel. The respondents were duly been served, however, they did not show appearance. Therefore, this court proceeded with hearing the application *ex parte* against them.

In his submission, Mr. Barnaba urged this Court to correct clerical errors appearing in Land Case No. 61 of 2022. The said errors on the face of the records involve the name of Donald Michael Siwalosi (PW2) who was not part of the Plaintiff's witnesses. The figure to a tune of Tshs. 30,000,000 was not born by any witness and the Company name reads Vangilisasi. Mr. Barnaba went on to state that there was only one Plaintiff; SACCOSA Ltd but on page 6 paragraph 2 the Court referred to the second Plaintiff and the Defendants were 16, not 17. The counsel further stated that in page 1 of the Judgment portrays that the suit was heard and concluded in three days between 27th September, 2022 and 30th September, 2022 while on page 3 the Court stated that the matter was scheduled for hearing on 20th May, 2022. It was his view that there was no activity done on 27th September, 2022. He added that the number of the title deed is missing the first number is the same to read 29644.

Mr. Barnaba continued to submit that they are requesting for review because in there is no issue of who is the Director of the Company he

referred this Court to a Board Resolution which was not tendered in Court but appended to the Plaint which shows that Joyce Mhimbira and PW2 are Directors of SACCOSA LTD. He stated that the same was not produced because there was no any dispute. He urged this Court to admit the document to form part of the Court record. He asserted that Joyce Mhimbira signed the affidavit in support of the application for an injunction. He added that the marital status was not an issue thus the witness could not bring evidence thus they urged this Court to admit the Marriage Certificate. Memorandum and Article of Association of SACCOSA Ltd and Safet Communication System Ltd. He urged this Court to use the said documents and measure the weight of the said documents.

I have heard the submission of Mr. Barnaba and noted some of the clerical errors on the face of the record. The issue of dates appearing on the first page of the Judgment that the matter was concluded in three days is unfounded because the same is not stated in the Judgment, however, on page 3 the matter was called for mention instead of hearing on 20th May, 2022. This Court cannot admit a document that was appended in the Plaint records but not tendered by the Plaintiff since the same is not part of new discoveries matters. However, the affidavit of Joyce Mhimbira, the Marriage Certificate, and the Memorandum and Article of the Association of SACCOSA Ltd forms part of new discoveries matters, hence, the same

will be relied upon by this Court when analyzing the evidence on record. For that reason, I am of the settled mind that the oversight alluded to above are good cause for reviewing the judgment concerned and I will proceed to do.

At the centre of controversy between SACCOSA LIMITED, the Plaintiff, and the 16 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 25th August, 2022 *ex parte* against the Defendants. I am alive of the fact that the Defendants were summoned through the court process server to appear in Court on 6th June, 2022. However, all of them denied signing the summons. The matter was scheduled for mention on 20th May, 2022, the court process server filed his affidavit dated 30th May, 2022 informing the Court that the 16 Defendants were summoned to appear but they refused to sign the summons. The Court scheduled mention on 1st August, 2022, but 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. Hamisi Madunga (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 to that SACCOS LTD is a family Company whereby PW1 and his wife are running the Company since 2000. They have Farm No. 4007 with a Certificate of Title located at Pongwe Kiona in Bagamoyo (Now Chalinze). The Plaintiff testified that they have established a beekeeping project and they kept livestock such as cows and goats in the suit land.

PW1 testified further that the AGV informed him that he is facing financial problems, he was in need of money to pay the Bank that owed him Tshs. 30,000,000/=. PW1 went on to testify that AGV wanted them to exchange a Farm with PW1's house located in Mwananyamala. Hence they prepared a Sale Agreement. To substantiate his testimony PW1 tendered a Deed of Agreement dated 14th 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 6th June, 2009 (Exh.P2) and Certificate of Titles No. 1644 and 94562 (Exh.P3).

Thereafter, the Plaintiff developed a Farm, 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 14th 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.

Hamisi Madunga (PW2) had not much to testify. He stated that he was born in Pongwe and resides in Pongwe Kiona, Bagamoyo District (Now Chalinze) within Pwani Region. PW2 said that he 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 Madunga was at a material time 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, and 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, the Plaintiff 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, PW1 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 and Certificate of Titles (Exh.3).

I have scrutinized the Certificate of Sale and 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. PW1 in his testimony testified to the effect that he and his wife Joyce Mhimbira are the Directors of SACOSSA and they bought the suit land. Supporting his testimony he produced a Certificate of Marriage of Charles Gadi and Joyce Mhimbila to prove that the two of them were married.

In addition, PW1 referred this Court to the affidavit of Joyce Sylvester Gadi who proved that she is the Director of SACCOSA. Also, there is a Memorandum of Association of SACCOSA Ltd which proves that SACCOSA is a registered Company and reveals that Joyce Gadi is one of the Directors.

Moreover, PW1 proved that the transfer of ownership of the suit Farm from Absalom George Vangilisasi to Joyce Mhimbira was smoothly effected, the documents reveal that they exchanged the Farm and their house located at Mwananyamala by tendering a Transfer of a Right of Occupancy regarding CT 29644.

The proof of ownership of land in our jurisprudence was discussed in various cases such as **Amina Maulid & 2 Others v Ramadhan Juma**, Civil Appeal No. 35 of 2019, the Court of Appeal of Tanzania at Mwanza held that:-

“...a person with a certificate thereof will always be taken the lawful owner unless it is proved that the certificate was not lawfully obtained.”

Equally, in the case of **Jane Kimaro v Vicky Adili (Administrator of the Estate of the late Adili Daniel Mande)**, Civil Appeal No. 2012 of 2016, the Court among other things observed that:-

“Ownership of land starts in whose name that estate or interest is registered.”

In the case at hand the Plaintiff was required to prove his case on the balance of probabilities. This was emphasized by the Court of Appeal of Tanzania in the case of **Paulina Samson Ndawavya v Theresia Thomas Madaha**, Civil Appeal No. 53 of 2017 (unreported), held that:-

“...It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other...”

Equally, in the case of **Oliva Ames Sadatally v Stanbic Bank Tanzania Limited**, Civil Appeal No. 84 of 2019 [TANZLII 17th June, 2022], the Court of Appeal of Tanzania cited with approval the case of **Mathias Erasto Manga v Ms. Simon Group (T) Limited**, Civil Appeal No. 43 of 2013 (unreported). The Court of Appeal of Tanzania among other things, stated:-

“ The yardstick of proof in civil cases is the evidence available on record and whether it tilts the balance one way or the other...”

Based on the fact of the case at hand and above authorities and having read the evidence of Charles Gadi (PW1) as a whole, the conclusion I

draw is that the Plaintiff has proved that he is the lawful owner of the suit land on the balance of probabilities.

Next for consideration is the second issue, *whether the Defendants have trespassed the suit land*. As long as the Plaintiff has proved his case that means the Defendants are trespassers.

I now turn to determine the third issue, *what reliefs are the parties entitled to*. Starting with reliefs (iv), (v), and (iv); the Plaintiff is claiming for total general damages in the tune of Tshs. 400,000,000/= being the value of Horticulture products, fruits trees, and vegetation that were destroyed by the Defendants. In my considered views, I find that this Court cannot grant the said reliefs because the Plaintiff has failed to establish the loss incurred since there is no any documentary evidence tendered in Court to support his claims. Therefore, this Court cannot order the Defendants to pay the Plaintiff Tshs. 400,000,000/= being the value of horticulture product, fruit trees and vegetation which they are alleged to have destroyed and Tshs. 250,000,000/= being the costs of rehabilitating the buildings and Tshs. 120,000,000/= for the rehabilitation of the water pipes w which they alleged to have vandalized. Loss of mesne profits to a tune of Tshs. 400,000,000/= is also not proved.

From the above analyses, I find that the Plaintiff has not proved the damages. It is the trite law that general damages must be averred that such damage has been suffered by the Plaintiff after the consideration and deliberation on the evidence on record able to justify the award. The general damage is never quantified, as they are paid at the discretion of the court as it is the court that decides which amount to award, and in doing so, the court has to assign reasons for awarding the same. See **Alfred Fundi vs Geled Mango & 2 Others** Civil Appeal No. 49 Of 2017 CAT Mwanza, **YARA Tanzania Limited versus Charles Aloyce Msemwa and 2 Others**; Commercial Case No. 5 of 2013: HC of Tanzania (Commercial Division) at Dar es Salaam (unreported). Therefore, this prayer is unfounded. Therefore, the prayers under paragraphs (i) to (ix) crumbles.

The last prayer is about the costs of the suit. It is a fact that the Plaintiff would not have bothered to come to court if the Defendants had messed up, as a result, the Defendants acts necessitated the plaintiff to incur costs in hiring an advocate, filing fees, transport et cetera, and therefore.

On my part, I think the Plaintiff is entitled to the costs of the suit. These are costs involved in the suit which the Defendant must shoulder and I find no sufficient reason why the Plaintiff should be deprived of the same.

In the upshot the case is decided in favour of the Plaintiff, I proceed to declare and decree as follows:-

1. The Plaintiff is the lawful owner of the Agricultural Farm with Certificate of Title No. 29644 and CT No. 94562 Pongwe, Kiona Village in Bagamoyo (Now within Chalinze Town Council).
2. The Defendants are trespassers in Agricultural Farm with Certificate of Title No. 29644 and CT No. 94562 Pongwe, Kiona Village in Bagamoyo (Now within Chalinze Town Council).
3. The Defendants are evicted from Agricultural Farm with Certificate of Title No. 29644 and CT No. 94562 Pongwe, Kiona Village in Bagamoyo (Now within Chalinze Town Council).
4. The Defendants are to pay the costs of the suit.

Order accordingly.

Dated at Dar es Salaam this date 17th November, 2022.



A.Z. MGEYEKWA

JUDGE

17.11.2022

Judgment delivered on 17th November, 2022 via video conferencing whereas Mr. Barnabas, learned counsel for the Plaintiff was remotely present.



A.Z. MGEYEKWA
JUDGE
17.11.2022

Right to appeal fully explained.