

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 131 OF 2016

WILLHELM SIRIVESTER ERIO **PLAINTIFF**

VERSUS

T.L MWALYAMKONO **DEFENDANT**

JUDGMENT

Date of the last Order 25.03.2022

Date of Judgment 20.04.2022

A.Z.MGEYEKWA , J.

At the centre of controversy between **WILLHELM SIRIVESTER ERIO**, the Plaintiff, and **T.L MWALYAMKONO**, the Defendant is a piece of land located at Mapinga area within Bagamoyo District, within Pwani Region. According to the Plaintiff, the Plaintiff claims that the Defendant is a trespasser on his land measuring around six acres situated at Mapinga within Bagamoyo District. The Plaintiff claims that he is the lawful owner of the landed property which he acquired in 1983 from Abdallah Mohamed

Mwanga by way of outright purchase which was consented by the relevant local government authorities. The Plaintiff claims that he acquired the suit land for the purposes of animal husbanding and cultivation Of various perennial and permanent trees. The Plaintiff alleges that since he acquired the suit land, he cleared part of his plot and another portion was left for animal husbanding and other activities.

In the Plaint, the Plaintiff alleges that on 20th February, 2016, the Defendant without any colour or rights decided to trespass the suit land and started to construct a concrete fencing wall enclosing the whole land and prevented him from entering into the suit land. The Plaintiff further claimed that the Defendant proceeded to take possession of his land by clearing the natural trees and started to prepare building sites within the Plaintiff land. The Plaintiff claims that the Defendant's act is illegal and amounts to a trespasser in the Plaintiff's land thus has disturbed the Plaintiff which entitles him to general damages for the trespasser and for other disturbance caused by the illegal act and conduct of the Plaintiff.

The Plaintiff further claims that the Defendant has denied him an opportunity to invest according to his plan thus frustrated the investor who has just repudiated the investment contract. In his Plaint, he stated that the cause of action arose in Bagamoyo and the value of the subject matter

is estimated to be Tshs. 150,000,000/= thus the matter is within the jurisdiction of this court.

In the Plaint, the Plaintiff prays for Judgment and Decree against the defendants for a declaration that the Defendant as follows:-

- a. *That the Plaintiff be declared a rightful owner of the piece of land estimated 6 acres situated at Mapinga Bagamoyo District.*
- b. *An order permanently injunction to restrain the Defendant from interfering the Plaintiff ownership.*
- c. *The court to issue eviction and demolition orders for the structure the defendant had erected on the suit land.*
- d. *The Defendant to pay the Plaintiff a sum in the tune of Tshs. 300,000,000/= being general damages for trespasser and disturbances caused by the defendant.*
- e. *The Defendant be ordered to pay the Plaintiff special damages of Tshs. 140,000,000/= for the frustration he caused to the Plaintiff's project of developing the area.*
- f. *That the Defendant be ordered to pay the Plaintiff men's profit for illegal occupation of the Plaintiff land at a tune of Tshs. 50,000,000/= for prevention of Plaintiff from carrying on dealing with his property.*

- g. *The Defendant to pay the Plaintiff interest at a commercial rate of 24% of (d), (e), and (f) hereinabove from the date of judgment until when the decree is fully satisfied.*
- h. *Costs to be borne by the Defendant.*
- i. *Any other relief(s) as the Court may deem just to grant.*

In response to the Plaint, on 21st September, 2016 the Defendant filed an amended Written Statement of Defence disputing all the claims and urged this court to dismiss the entire suit with costs.

It is imperative at the outset to point out that, this matter has also gone through the hands of my learned brother Hon. Kante, J (as he then was) conducted Mediation. Hearing of this case commenced before my learned sister Hon. Mgonya, J who conducted the 1st Pre-Trial Conference and heard the Plaintiff's case. My learned brother Hon. Mallaba heard the defence case and composed a judgment.

Unfortunate, the Court of Appeal of Tanzania remitted the file to this court whereas the proceedings in Land Case No.131 of 2016 were nullified and the Court of Appeal of Tanzania directed this court to completion of the trial and if it will be necessary to visit *locus in quo* in accordance with the procedures of the law. As per directives of the Court of Appeal of Tanzania, I was able to visit *locus in quo* whereas; Wilhelm Sirivester Erio, the Plaintiff, and Prof. T.L Maliyamkono, the Defendant,

and the learned counsels for both parties were present. The parties had an opportunity to testify in the matter relating to the boundaries and plantation planted in the suit land.

This court gathered and recorded the parties' testimonies, the same were read out to the parties and their Advocates, and both parties had a chance to state their comments or observation. The Defendant was the only one who stated his comments and the same were incorporated. Now, I will evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues including the evidence related to *locus in quo*.

At all the material time, the Plaintiff was represented by Mr. Living Raphael, learned Advocates while the Defendant had the legal service of Mr. Audex Vedasto, learned counsel assisted by Mr. Ditrick Mwesigwa, learned Advocates. During the Final Pre-trial Conference, the following issues were framed by this Court:-

- 1) *Who is the rightful owner of the disputed land, and*
- 2) *To what reliefs are the parties entitled to.*

In what seemed to be a highly contested trial, the Plaintiff called four witnesses. Likewise, the Defendants summoned four witnesses. The Plaintiff's case was founded on Wilhelm Sirivester Erio, who testified as

PW1, Peter Mziwanda (**PW2**). Mohamed Said Pachanja who testified as **PW3** and the last Plaintiff's witness one Salum Said Ngumbe (**PW4**). The Defendants' called three witnesses; T.L. Maliyamkono who testified as **DW1**, Salum Mohamed Ngugwini who testified as **DW2**, Mohamed Omar Ally testified as the third witness (**DW3**) and Joseph John Kinabo was the fourth witness (**DW4**).

Wilhelm Sirivester Erio (PW1) testified that he is the lawful owner of the suit land which he bought in 1983 from one Abdallah Mohamed Mmanga to a tune of Tshs. 600/=. To substantiate his testimony he tendered a copy of a Sale Agreement (Exh.P1) which is alleged to be executed at Mapinga local government. The 1st Plaintiff went on to testify that he asked the neighbours who confirmed that the suit land belonged to Said Mmanga, the vendor. PW1 testified that at the material date, the Village Chairman was one Juma Nassoro and Idd Mtawa was the Secretary but both are deceased.

In his testimony, PW1 stated that the person who witnessed the Sale Agreement on his part was one Peter Mziwanda and on the vendor's side was one Aloyce Thadeo, now deceased. PW1 further testified that in 1984, he surveyed the suit land to secure a title. To substantiate his testimony he tendered a Minutes Sheet which was admitted and marked

as exhibit P2. He testified that in the attempt of surveying the suit land in 2016, he realized that the Defendant has trespassed his land.

PW1 testified to the effect that Professor Maliyamkono has trespassed on his land measuring 6 acres located at Mapinga in Bagamoyo District within Pwani Region. PW1 testified that after the invasion, the Defendant constructed a wall within the plot. He went on to testify that he reported the matter to the Ward Tribunal of Mapinga then later he lodged the instant suit before this court.

The second Plaintiff's witness was Peter Mziwanda who testified to the effect that the Plaintiff is the lawful owner of the disputed land situated at Mapinga, Bagamoyo District, within Pwani Region. He testified that he knows the Plaintiff since 1978 and in 1983, the Plaintiff asked him to accompany him to the suit land. He testified that the Plaintiff went to the local government office and meet the Chairman and Secretary of the Village Council. After measuring the suit land it was proved that the suit land was approximately 6 acres then the Plaintiff paid Tshs. 600/= at the office and he signed the Sale Agreement.

Mohamed Said Pachanja was the third witness. PW3 testified that he resides in Kiharaka Street in Mapinga Village. PW3 testified that he knows the Plaintiff since 1983 at the time when the Plaintiff wanted to buy the

farm at Mapinga. PW3 testified to the effect that he was a caretaker of his brother one Ambros Pachanja since 1979. He testified that he did not witness the sale of the suit land since he was not around on the material date. PW3 testified to the effect that he cultivated the suit land until 1985 and handled the suit land to his relative one Samwel Pachanja.

The last witness on the Plaintiff's side was Salum Said Ngumbe. His testimony was short. He testified to the effect that he resided at Mapinga and held different responsibilities positions at Mapinga local government. He testified to the effect that in 1983, four people arrived at the office whereas one of them was Mzee Mmanga, they wanted to meet the Secretary and later he was instructed to measure the suit land. PW4 testified that he was accompanied by Mzee Mmanga, two neighbours but the Plaintiff was feeling unwell so he did not go. He testified that at the farm he meet Mohamed Pachanja and Pius Salala and he proceeded to measure the suit land by using footsteps.

On the other hand, the Defendants, Professor T. L Maliyamkono (DW1) from the beginning disputed that he did not trespass the Plaintiff's land. He testified that he bought the suit land in 1989 from one Shamsa Ally before the Village authorities. To substantiate his testimony he tendered a Sale Agreement which was admitted by this court and marked as exhibit D1. He testified to the effect that the agreement was executed at the

Mapinga CCM offices. DW1 testified to the effect that he bought the suit in a tune of Tshs. 35,000/= and he paid Tshs. 30,000/= and 5,000/= is unpaid to-date. He claimed that in the suit land there are coconut trees that were uprooted two weeks thereafter. DW1 testified that in 1992, he constructed a *plot* house and his driver was the caretaker of the farmland. He testified that in 1992, the said house was demolished and they stole the bricks and iron sheet.

DW1 continued to testify that he stopped cultivating the suit land instead he continued with clearance of the land. He testified that TANROAD communicated with him concerning expansion of the Bagamoyo road from Dar es Salaam to Bagamoyo, thus, they altered him in case of any compensation due to the construction of the said road they will pay him. To substantiate his testimony he tendered a letter from the TANROAD which was admitted as exhibit D2. DW1 testified to the effect that he met the vendor once before signing the contract and he remembered two people who witnessed the contract; Sheikh Mohamed Omari and Ally Khalid.

Salum Mohamed Ngugwini was the second defence witness. He testified to the effect that he knows the Defendant since 1984 when he was working with the Eastern and Southern African Universities Research

Programme (ESAUERP) as a driver of the Defendant. DW2 testified to the effect that the Defendant and other people went to the land and he remained in the car and later they went to the Village Council offices then they drove to Dar es Salaam. DW2 testified that while in Dar es Salaam the Defendant informed him that he bought a plot at Mapinga. DW2 in 1990 or 1991 the Defendant had a Sabbatical leave thus he flew to UK and he was tasked to oversee the plot. DW2 testified to the effect that he was cultivating non-permanent crops such as cassava until 2016 when the dispute arose. DW2 testified that the Defendant build a hut but it was demolished, bricks and iron sheets were stolen, thus, there is only a foundation and in the plot is one house constructed by Mugisha Maliyamkono the Defendant's son.

Mohamed Omar Ally testified as DW3. He testified to the effect that he is residing in Mapinga and knows the Defendant since 1989. DW3 testified that the Defendant wanted to buy a plot from Shamsa Ally Abdallah. DW3 testified that he knows the plot originally belonged to the vendor's father Ally Abdallah Mmanga. DW3 went on testify that he witnessed the sale agreement and thereafter they headed to the Village Council offices. DW3 went on to testify that the suit land was approximately 6 acres but no measurements were taken. He did not know the boundaries of the suit land.

The last witness on the defence side was Joseph John Kinabo, he admitted that he knows the suit land which is located at Mapinga kwa Kibosho. He testified to the effect that in 2012, he bought a piece of land from the Defendant's son called Mugisha Maliyamkono, and the same measured 130 m x 140 m. he testified to the effect that he heard from his fellow villagers that the suit land belonged to the Defendant. DW4 stated that when buying the suit land he was not given any document to sign which will prove that the land belonged to Mugisha Maliyamkono. DW4 testified that he does not know how the Defendant acquired the suit land. He testified that the house which he bought is not part of the suit land.

Before determining the framed issues, 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.6 [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 Evidence Act, Cap.6 [R.E 2019] provides that:-

“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."

The above legal requirements have been emphasized in numerous decisions. They include the decision in **Godfrey Sayi v Anna Siame (as legal representative of the late Mary Mndolwa)**, CAT - Civil Appeal No. 114 of 2012 (unreported), the Court of Appeal of Tanzania held that:-

"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."

The quoted excerpt emboldens the reasoning by Sarkar on Sarkar's *Laws of Evidence*, 18th Edn. M.C. Sarkar, S.C. Sarkar, and P.C. Sarkar, published by Lexis Nexis (at p. 1896). The learned authors remarked on this cherished principle in the following words:-

"... the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for negative is usually 12 incapable of proof. It is ancient rule founded on the consideration of good sense and should not be departed from without strong reason. Until such burden is discharged the other party is not required to be called upon to prove his case. The Court has to examine whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such a conclusion, he cannot proceed on the basis of the weakness of the other party..."[Emphasis added].

From the foregoing, let me now confront the issues framed for the determination of the present dispute between the parties. In addressing the first issue *who is the rightful owner of the disputed land or not.*

Glancing at the testimony adduced by the parties during trial and *locus in quo*, it shows that the parties herein lock horns on whether the Plaintiff was the lawful owner of the suit property. It is the Plaintiff's contention that he bought the suit land in 1983 from one Abdalah Mohamedi. To substantiate his testimony he exhibit P1 which clearly shows that the land passed over to the Plaintiff. I am saying so because the Sale Agreement shows the boundaries, size, and location of the plot. On the Eastside – road, Westside - Said Salala, Northside – Bagamoyo road, Southside-

Ambros Pachanja. PW1 also tendered exhibit P2, A meeting minute prepared by the Bagamoyo District Land Officer dated 28th October, 1984 with regard to the survey of the suit land and some villagers attended the meeting.

As correctly prefaced by the Plaintiff's Advocate in her final submission and, as gathered from the testimony of the disputants, it is clear that the Plaintiff and Abdalah Mohamed Mmanga entered into an agreement and a Sale of Agreement was prepared. The Sale of Agreement bears the names of the parties and they signed the contract. It was witnessed by both parties' witnesses who appended their signatures and dates. The contract was signed by both parties and the hamlet leaders witnessed the Sale Agreement and the same bears two stamps; Mapinga Village and CCM Branch at Mapinga. In my respectful view, the contract was made in accordance with the law. The Law of Contract Act, Cap. 345 [R. E. 2019] precisely sections 10, 11, and 12 define a contract and persons competent to contract. Section 10 of the Law of Contract Act Cap.345 [R.E 2019] states that:-

“ All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful li consideration and with a lawful object, and are not hereby expressly declared to be void. ”

Additionally, the validity of any contract depends not only on its form and content but also on factors attributed to the parties. If validity is made, an agreement must meet the basic legal requirements of the rights and obligations created thereunder are to be enforced.

From the above provision of the law, and analyses it is my view that all the ingredients of a legal contract have been fulfilled; as there was an offer and acceptance of consideration which here is the sale of landed property. Therefore, there was legality to the contract between the Plaintiff and Abdalah Mohamed. Consequently, I have no qualms that exhibit P1 is a valid contract as per sections 10, 11, and 12 of the Law of Contract Act Cap.345 [R.E 2019]. Therefore, I am not in accord with the learned counsel for the Defendant that the Sale Agreement is a forged document

This court had an opportunity to visit locus in quo, in order to assist the court to resolve the ambiguities raised by the parties during the hearing of this case and to resolve the controversy about whether there was any cultivation of permanent crops in the suit land. In the case of **John Chuma Appellant v Pastoli Lubatula & Others**, Land Appeal No. 9 of 2019, High Court Mwanza (unreported) my learned brother Hon. Ismail, J had this to say: -

"These visits are intended to get a visual appreciation of the area in contention and check the accuracy of the evidence given in the course

of the trial. Invariably, this happens when the dispute relates to boundaries, and it happens after the parties have dosed their respective cases. The legal holdings are to the effect that the court or tribunal must exercise great caution when doing that, in order not to constitute itself as a witness in the case."

On the other side, the Defendant in proving his ownership testified to the effect that he bought the suit land from Shamsa Ally. To substantiate his testimony, the Defendant tendered a Sale Agreement (Exh.D1) the same is witnessed by both parties; Shamsa Ally, the vendor, and T.L Maliyamkono, the buyer. The Sale Agreement bears the stamp of *Katibu Tawi la CCM*, Mapinga, and was signed by both parties. However, the same does not disclose the size of the plot and boundaries and the same is not dated.

In a chronological account of ownership of the suit land. The Defendant depended on the Sale of Agreement which was prepared in 1989, and a correspondence letter (Exh.P2) from TANROAD whereas TANROAD communicated with the Defendant on the issue of compensation. The circumstances of this case prompted him to attempt to take possession in that fashion.

Conceivably, it is imperative to note that the fact that TANROAD was communicating with the Defendant does not prove the fact that the

Defendant is the lawful owner. During *locus in quo*, DW1 testified in length that he build a house along Bagamoyo road and the same was destroyed by unknown people who took the bricks and iron sheets. When this court visited *locus in quo*, the Defendant was able to show what was claimed to be the foundations of two houses. The said two foundations were visible and the same was in the road reserve area not within the suit land.

Expounding, the testimonies of the parties and the evidence of PW1 and DW1 gathered at *locus in quo*, I find the Defendant's evidence was not strong enough to convince this court that he was the lawful owner of the suit land. First of all, as per the Sale Agreement, the Defendant occupied the suit land in 1989 while the Plaintiff occupied the same in 1983 which means the Plaintiff bought the suit land earlier than the Defendant.

The second aspect flows from the first aspect as between the Plaintiff and the Defendant who bought the land with a good title. In regard to the Plaintiff the person who sold him the suit land was Abdallah Mohamed Mmanga who was the previous owner of the suit land. On the Defendant's side, he claimed that he bought the suit land from Shamsa Ally who was the lawful owner of the suit land. However, reading the evidence on record it appears that Shamsa Ally might not be the lawful owner of the suit land. I am saying so because DW3 in his testimony testified to the effect that

Shamsa Ally has its origin from his father who was commonly known as Mmanga.

The evidence on record reveals that Shamsa Ally was not the original owner since DW3 testified to the effect that the land originally belonged to Mmanga the father of Shamsa Ally and Mmanga is the one who sold the suit land to the Plaintiff. In the record, there is no any record to show that the title of the land passed to Shamsa Ally through inheritance or whether she was an administrator of the estate of his late father. Again, as long as Mmanga sold the suit land in 1983 before Shamsa Ally sold the same to the Defendant. Therefore, in my considered view, the Plaintiff stand a better title than the Defendant since it is proved that he bought the land from a person who possesses a good title to the land in dispute.

Regarding the issue *locus in quo*, the Plaintiff proved his case as he was able to show the court the original boundaries of the suit land as stated in the Sale Agreement; on the Eastern side his neighbor was Hillary before was one Said Salala. PW1 pointed to the original boundary along the road near a cashew nut tree. He pointed out that on the Northside, there was a wall that was built by one Maliyamkono in 2016. Also, the Plaintiff was able to show some of the permanent crops such as sisal, mango, and *Mtiki* trees were in place. Also the TANROAD beacon indicating the end of the road was in place.

In his testimony, PW1 testified to the effect that Joseph John Kinabo is occupying a piece of land that is not part of the suit land, while on the other side, there was no direct proof of the Defendant's allegations that he constructed the two houses within the suit land.

The totality of what has been in the record is that the weight of evidence tilted in the Plaintiff's favour. Nothing convinced this court that the Defendant discharged this burden in respect of the alleged ownership, thus, I have no reason to accede to the Defendant's request to dismiss the suit. In that regard, I am satisfied that the first issue is answered in the affirmative.

The second issue as framed is in respect of the *reliefs to which the parties are entitled to*. The Plaintiff craved a number of reliefs in the Plaint. The evidence adduced seeks a declaration that the Plaintiff is a rightful owner of the piece of land estimated at 6 acres situated at Mapinga Bagamoyo District. The findings of this case prove that he is the rightful owner of the suit land. Therefore, the Defendant is permanently restrained from interfering the Plaintiff's ownership. Also, the third prayer is granted whereas the Defendant is ordered to demolition the structure erected on the suit land.

There is another prayer in the Plaint to the effect that the Plaintiff is claiming for general damages for trespasser and disturbances caused by the Defendant in a tune of Tshs. 300,000,000/= and special damages of Tshs. 140,000,000/= for the frustration he caused to the Plaintiff's project of developing the area.

With respect to general damages, the established position is that the law presumes an award of damages is the domain of the trial court, done after a thorough assessment of the claim, supporting documents, and all the prevailing conditions. Again, award of damages is a discretionary remedy that is preceded by the court's satisfaction that the Defendant's alleged wrongdoing has been proved and confirmed by the court. This is consistent with a long-standing decision of **Stroms v Hutchison** [1905] A.C. 515 in which Lord Macnaghten stated as hereunder:

"General damages "are such as the law will presume to be the direct natural or probable consequence of the act complained of."

In the landmark case of **Cooper Motors Ltd v Moshi Arusha Occupational Health Services** [1990] TLR 90, it was held that:-

"...the mere statement or prayer of a claim for 'damages' will not support a claim for any particular injury or loss other than general damages."

Applying the above authorities in the instant case, it is clear that the Plaintiff failed to prove the damage he allegedly suffered. Therefore it is my considered view that this prayer crumbles.

Regarding the claims of specific damages, the Plaintiff was required to strict proof of special damages. The requirement was underscored in the case of **Balog v Hutchison** [1950] AC 515, which defined special damages with an emphasis that the same must be specifically pleaded and proved strictly. In the case of **Zuberi Augustino v Anicet Mugabe** [1992] TLR 137 the Court of Appeal of Tanzania held that:-

“It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved”.

Guided by the above authorities, I find that there was no proof of the Plaintiff's claim as stipulated under paragraph (e) of the Plaint. Similar, the Plaintiff has failed to prove the claims of *mens profit*.

There is another prayer, the Plaintiff prays for this court to order the Defendant to pay the Plaintiff interest at a commercial rate of 24% of (d), (e) and (f) hereinabove from the date of judgment until when the decree is fully satisfied. This relief cannot be granted since there is no any interest due to the Plaintiff since no any monetary award has been ordered.

The last prayer is about the costs of the suit. The award of costs is in the discretion of the court as provided for under Section 30 of the Civil Procedure Code Cap.33 [R.E 2019]. It is a fact that the Plaintiff would not have bothered to come to court if the Defendant had messed up, as a result, the Defendant 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. I shall demonstrate. In the adversarial system of adjudication, without mince words; I have to follow the principle stated under section 30 (2) of the Civil Procedure Code Cap.33 [R.E 2019] that costs shall follow the event. In the case at hand, the 2nd Plaintiff has prosecuted this case to its finality and, certainly, has incurred costs in this endeavour. These are costs involved in the suit which that Defendant must shoulder and I find no sufficient reason why the Plaintiff should be deprived of the same.

In the case of **Bowen, L.J. in Cropper v Smith** (1884), 26 Ch. D. 700, at p. 711, quoted by the High Court of Uganda in **Waljee's (Uganda) Ltd v Ramji Punjabhai Bugerere Tea Estates Ltd** [1971] 1 EA 188 in which His Lordship stated:

"I have found in my experience that there is one panacea which heals every sore in litigation and that is cost. I have very seldom if ever, been unfortunate enough to come across an instance where

a party ... cannot be cured by the application of that healing medicine”.

In a similar tone, Hon. Othman, J. (as he then was), the foregoing excerpt in **Kennedy Kamwela v Sophia Mwangulangu & another**, Misc. Civil Application No. 31 of 2004 (unreported) when confronted with an identical situation with the following simple but powerful and conclusive remarks:-

“Costs are one panacea that no doubt heals such sore in litigations”.

I share the sentiments of their Lordships in the foregoing quotes respecting costs as a panacea in litigation. I recap that costs are one panacea that soothes the souls of litigants that, in the absence of sound reasons, as is the case in the present case, this court is not prepared to deprive the Plaintiff of. These are foreseeable and usual consequences of litigation that Defendant must shoulder. Based on the foregoing, I find and hold that the Plaintiff is entitled to the costs of this suit.

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

- 1) The Plaintiff is declared a lawful owner of suit land measuring 6 acres located at Mapinga area at Bagamoyo District within Pwani Region.
- 2) The Defendant is restrained from entering the Plaintiff's land.

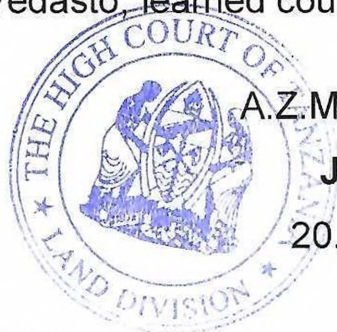
- 3) The Defendant is required to demolish any unlawful landed property in the suit land.
- 4) The Defendant to pay the costs of the suit.

Order accordingly.

Dated at Dar es Salaam this date 20th April, 2022.

A.Z. MGEYEKWA
JUDGE
20.04.2022

Judgment delivered on 20th April, 2022 in the presence of Mr. Rapahel, learned counsel for the Plaintiff and Mr. Rapahel, learned counsel holding brief for Mr. Vedasto, learned counsel for the Defendant.

A.Z. MGEYEKWA
JUDGE
20.04.2022

Right to appeal fully explained.