

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 159 OF 2020

MIREA COMPANY LIMITED PLAINTIFF

VERSUS

**HAMISI IDDI SEGUMBA (Administrator of the estate of the
late IDDI SULEIMAN SEGUMBA) and Others DEFENDANTS**

JUDGMENT

Date of the last Order: 06.04.2022

Date of Judgment: 22.04.2022

A.Z.MGEYEKWA , J.

At the centre of controversy between the Plaintiff, **MIREA COMPANY LIMITED**, and 43 Defendants is a piece of farm land measuring 12 acres located at Sanzale area at Bagamoyo District, within Pwani Region. Plaintiff claims against the Defendants jointly and severally for a declaration that the Plaintiff is the lawful owner of the farmland at Bagamoyo and the Defendants are trespasser thereon.

In the Plaintiff, the Plaintiff prays for Judgment and Decree against the Defendants for a declaration. The Plaintiff also prays for an eviction order against the Defendants. The Plaintiff also prays for this court to order the Defendants to demolish and structure constructed in the suit land, general damages, and costs of the suit.

Following the prayer by the Plaintiff's Advocate to proceed *ex parte* succeeding the absence of the Defendants I am alive to the fact that the Defendants were aware of the hearing of this case since the summons were served to all Defendants and later the Defendants were served by way of publication in Kiswahili tabloids – *Mwananchi* Newspaper dated 21st September, 2021 still they did not show appearance. Therefore, this court granted the Plaintiff's prayer to proceed *ex parte* against the Defendants.

It is imperative at the outset to point out that, this matter has also gone through the hands of my learned Sister Hon. Mango, J who kept the records well and on track. I have heard the Plaintiff's case and now I have to evaluate the evidence adduced by the witnesses to determine and decide on the matter in controversy.

At all the material time, the Plaintiff was represented by Mr. Kelvin Stephene Msuya, learned Advocate.

The Plaintiff's case was founded on An Jong Sik, who testified as **PW1**, Daniel Peter Mollel who testified as **PW2**, and Cosmas Ernest Amos (**PW3**). The Plaintiff's side tendered a total of five (3) documentary Exhibits to wit; a Certificate of Occupancy dated 8th May, 2009 which was admitted by this Court and marked as **Exhibit P1**. A Certification of Incentive was admitted by this Court and marked as **Exhibit P2**. A Sale Agreement dated 9th January, 2010 was admitted by this Court and marked as **Exhibit P3** collectively.

The Plaintiff fielded three witnesses in support of its case. An Jong Sik an employee of Mirea Company Ltd testified as PW1. He introduced himself as the Director of Mirea Company which is registered in Tanzania. To substantiate his testimony, he tendered a certificate of incorporation which was admitted and marked as Exh.P1. PW1 testified that the Company was registered at Tanzania Investment Center. To substantiate his submission he tendered a copy of the certificate of incentives which was admitted and marked Exhibit P2.

PW1 continued to testify that in 2010, he bought a plot in Bagamoyo area from one Idd Sulemani Segumba. To substantiate his testimony he

tendered a contract between the Government Village and his wife and our Company. To substantiate his testimony he tendered a certified Sale Agreement dated 9th January, 2010 is hereby admitted and marked as Exh. P3.

PW1 testified that all 43 Defendants are trespassers, they have invaded their land and constructed houses. He testified that in 2017, they became aware that the defendants have invaded their land and thereafter they report the matter to the Village Council and urged them not to continue with construction. PW1 went on to testify that they reported the matter to Magomeni Ward Tribunal and applied for an injunction order which was affixed in the Defendants buildings but the defendant took out and destroyed the injunction order.

In his testimony, PW1 urged this court to evict the trespassers from the suit land and order the Defendants to demolish any structure erected within the suit land and pay the costs of this suit.

There was another piece of evidence from Daniel Peter Molle. He testified that he is a Pastor residing in Arusha. He testified to the effect that he was employed by Mirea Company Limited as an Administrator Manager and worked with the Company from 2012 to 2018. PW2 testified that in August, 2014, he accompanied by Idd the son of Venda Selemani

Segunda visited the suit land to validate the boundaries and installed pillars. He testified that after resurveying the boundaries, the Plaintiff proceed to finalize the payment. PW1 testified that in 2017, some people invaded the Plaintiff's land. PW2 testified that it seemed that Idd Segumba sold the said area to other people who were cultivating and some of them constructed houses therein.

PW1 went on to testify that they applied for an injunction order and lodged a case at the District Land and Housing Tribunal but the said case was transferred to the High Court because of pecuniary jurisdiction. PW2 testified that in 2021, he went to the suit land to delivery summons to the Defendants but unfortunately, he was unable to serve them the Court Broker served them but they denied to sign the summons. He testified that the Sanzale Chairman was in the front line to inform the villagers that the Plaintiff will visit the suit land but they did not appear.

There was yet another piece of evidence from Cosmas Ernest Amos (PW3). He testified to the effect that he resides in Sanzale, Bagamoyo and since 2016, he is working with Mirea Company as a guard man. He testified that the disputed land is measuring 12 acres, located at Sanzale within Bagamoyo District and he is the caretaker of the suit land. He testified that they were invaded in 2017, therefore, Daniel went to the suit land to install pillars. But after a while, people invaded the suit land and

took off the pillars. Thus, they decided to file a case before this court. He testified that in 2020 he and Daniel Mollel visited the suit land and tried to serve the trespassers with a court summons but they denied receiving the summons. He testified that the Village Council did not show any cooperation.

At the Final Pre-Trial Conference, the Plaintiffs and the Defendants proposed the following issues which were adopted by the court as follows:-

- 1) *Whether the Plaintiff is the lawful owner of the disputed land.*
- 2) *Whether the Defendants have trespassed into the Plaintiff's land.*
- 3) *To what relief are the parties entitled to*

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 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.”

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 balance of probabilities.”

With the above excerpt, let me now confront the issues framed for the determination of the present dispute between the parties. The first issue

for determination as agreed by Plaintiff and this court but proved *ex parte*, is who between the Plaintiff and Defendant is a lawful owner of the disputed plot. The evidence advanced by the Plaintiff *ex parte* is quite overwhelming that the Plaintiff was allocated the disputed parcel of land vide Sale of Agreement dated 8th December, 2009 (Exh.P3).

The testimony of An Jong Sik; PW1 is quite vivid that the Plaintiff is a lawful owner of the disputed plot in that the Sale Agreement clearly shows that on 9th January, 2010, Iddi Sulemani Segumba sold land measuring 12 acres located Sanzale, Magomeni area to Mirea Company in a tune of Tshs. 30,000,000/=. The Plaintiff paid Tshs. 10,000,000/= and Tshs. 20,000,000/= was to be paid on 9th January, 2010. According to the Plaintiff, the Plaintiff and the 1st Defendant claimed for the balance of the purchased price of the farm land in Civil Case No. 11 of 2010 and the two settled the matter as the Plaintiff paid Hamis Iddi Segumba the administrator of the estate of the late Iddi Seleman Segumba, the 1st Defendant an amount of Tshs. 30,000,000/= in three installments.

The said Deed of Settlement was signed on 20th November, 2013. The boundaries were well stated and both parties signed the Sale Agreement and two witnesses on each side signed the Sale Agreement. The Village Chairman one Njema S. Mohamed and Dolla R. Msonge, the Village

Executive Officer signed the said contract. The Mirea Company is a registered Company (Exh.P1).

PW2 and PW3 testified in favour of the Plaintiff that Mirea Company bought the suit land and in 2014, they went to resurvey the boundaries accompanied by the son of the late Iddi Selemani Segumba who was the vendor. PW3 testified that the suit land is measuring 12 acres. In the light of Exhibit P1 through to Exhibit P3, I am satisfied that the Plaintiff is the lawful occupier of the disputed plot. The first issue is therefore answered in the affirmative.

The second issue as framed is *whether the Defendants are a trespassers*. Having answered the first issue in the affirmative, the second issue must certainly be answered in the affirmative as well. I have found and held that the Plaintiff is the lawful owner of the disputed plot. Therefore, whoever encroaches upon it is a trespasser.

The third issue as framed is in respect of the reliefs to which the parties are entitled. The Plaintiff craved a number of reliefs in the plaint. However, the evidence adduced seeks a declaration that the Plaintiff is a lawful owner of the disputed plot. There is another prayer in the plaint to the effect that a demolition order be issued against any structure erected on the disputed plot. The testimonies of PW2 and PW3 are quite glaring that

the Defendants have invaded the suit land and some of them constructed houses in the suit land. I thus take it that the disputed plot is invaded. On the premises, this court is issuing an order of demolition of any structure erected on the suit land. This court also orders the Defendants to vacate the suit land.

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 wrong doing 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 poof the damage he allegedly suffered. Therefore it is my considered view that this prayer crumbles.

In the light of the evidence adduced before me in the absence of the Defendant, the Plaintiff is declared a lawful owner of the farmland measuring 12 acres situated at Sanzale within Bagamoyo District in Pwani Region. The Defendants have consequently declared trespassers to this farmland. Judgment is entered in favour of the Plaintiff with costs.

DATED at Dar es Salaam this 22nd April, 2022.

A.Z.MGEYEKWA
JUDGE
22.04.2022

Judgment delivered on 22nd April, 2022 in the presence of Mr. Msuya, learned counsel for the Plaintiff in the absence of the Defendants.

A.Z.MGEYEKWA
JUDGE
22.04.2022

Right to appeal full explained.