

N THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 10 OF 2018

STEPHEN HAULE PLAINTIFF

VERSUS

RAJABU MAULID 1st DEFENDANT

**JUMBE TAJIRI MAULID (As administrator of
The estate of the late TAJIRI MAULID) 2ND DEFENDANT**

JUDGMENT

Date of the last Order 18.05.2022

Date of Judgment 30.05.2022

A.Z.MGEYEKWA, J.

The Plaintiff **STEPHEN HAULE** commenced this suit against the Defendants, **RAJABU MAULID** and **JUMBE TAJIRI MAULID** (As administrator of the estate of the late TAJIRI MAULID). At the centre of controversy between the Plaintiff and the Defendants is a farm measuring 10 .2 acres located at Muheza Mpiji within Kibaha Town Council within

Cost Region. Plaintiff contends that the Defendants trespassed into the suit landed property.

In the Amended Plaintiff, the Plaintiff prays for Judgment and Decree against the defendants for a declaration that the Defendants are trespassers to the suit property, the defendants permanently be restrained from trespassing into the suit land. The Plaintiff also prays for an eviction order against the Defendants and costs of the suit.

The facts of the case can be deciphered from the pleadings and evidence on record go thus: the Plaintiff on 9th September, 1986 purchased a parcel of unsurveyed land located at Muheza Mpiji within Kibaha Town Council within Coast Region. The Plaintiff in his Amended Plaintiff further stated that immediately after purchasing the suit property, the Plaintiff kept the suit property under the guardianship of the late Juma Ally Mbonde and his son Ally Juma Mbonde took over his father's responsibility of guarding the suit land. It is alleged that on 8th November, 2007, the Defendants unlawfully trespassed into the suit property and slashed the Plaintiffs; nine trees of Mikaratusi, five Mango trees, 10 Coconut trees, three Orange trees, and three Cashew-nut trees with an estimated value of Tshs. 20,000,000/=.

On 24th May, 2016, after being informed that the Defendants have trespassed his land at the Ward Tribunal of Maili Moja, the Defendants challenged the decision of the trial tribunal and the appellate tribunal quashed the trial tribunal decision on the ground of jurisdiction of the Ward Tribunal to determine the matter. The Defendants are alleged to take advantage of the disposal of the appeal by destroying 30 iron bars and 19 concrete poles with a value of Tshs. 2,000,000/=. The Plaintiff's attempts to have the Defendants vacate the suit property failed hence he decided to lodge the instant suit.

In response to the Plaint, on 3rd April, 202, the Defendants filed a joined Written Statement of Defence disputing all the claims and urged this court to dismiss the entire suit with costs and declare the 2nd Defendant as lawful owners of the suit premises and any other reliefs as this Court may deem fit to grant.

It is imperative at the outset to point out that, this matter has also gone through the hands of my learned sister Hon. Wambura, J (as he then was) and Hon. Mango, J who heard the first witness in the Plaintiff's case. I thank my predecessor for keeping the records well and on track. I thus gathered and recorded what transpired at the disputed land 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. Mashaka Ngole, learned Advocate while the Defendants were represented by Mr. Mohamed Mkali, and Mr. Hassan Fatili, learned Advocates. During the Final Pre-trial Conference, two issues were framed by this Court:-

- 1) *Whether the Plaintiff is the lawful owner of the suit land.*
- 2) *To what reliefs are the parties entitled.*

In what seemed to be a highly contested trial, the Plaintiff called six witnesses and the Defendants summoned four witnesses. The Plaintiff's case was founded on Mr. Stephen Haule, who testified as **PW1**, Mr. Ally Juma Mbonde (**PW2**), Mr. Nassoro Hemedi Chande (**PW3**), Ms. Zena Salehe Tindwa testified as **PW4**, Mr. Aminiel Mwambo who testified as **PW5**, Mr. Hamisi Chikawe (**PW6**). The Defendants' witnesses were; Mr. Rajabu Mauli who testified as **DW1**, Mr. Donatus Kiongozi who testified as **DW2** and Mr. Philipo Charles who was the third witness (**DW3**). Mr. Jumbe Tajiri Mauli testified as (**DW4**).

The Plaintiff's side tendered a total of two documentary exhibits. To support their defense case, the Defendants tendered seven documentary exhibits.

Mr. Stephene (PW1) introduced himself as the lawful owner of the suit land. He stated that he resides in Sinza, Kinondoni Dar es salaam. PW1 testified to the effect that on 9th September, 1986, he bought a farm measuring 12 acres located at Muheza Mpiji at Kibaha Maili Moja from Gaudence Ngelela. He testified that he paid Tshs. 6000/= and the sale transaction was conducted at the disputed farm, Muheza Mpiji. PW1 testified that a sale agreement was prepared and the same was witnessed by Juma Ally Mbonde, Aminiel Mwbambo, and Ally Juma Mponde. To substantiate that he is the lawful owner of the suit land, Stephen Haule tendered a copy of the sale agreement the same was admitted and marked as exhibit P1. He testified that the agreement was witnessed by the ten-cell leader namely Hamis Chikawe and both of them signed the document and a stamp duty was affixed.

It was PW1's further submission that the suit land was a farm and of most parts of the land was a farm with few residential houses. He testified that he paid the Tshs. 6000/= in installment; on 2nd October, 1986 he paid Tshs.500/-, parties signed the papers, and each payment was witnessed by Rajab Mrisho Mbonde, the Chairman of Maili Moja hamlet and a tencell leader namely Hamis Chikawe and payment was made to Gaudence Ngelela. He testified that the sale agreement was signed and

stamped. To substantiate his testimony he tendered a sale agreement dated 9th September, 1986 (Exh.P1) between Gaudensia Ngelela and Steven Charles Haule in respect of a farm located at Muheza Mpiji, Maili Moja, Pwani. PW1 also tendered a Sale agreement dated 9th September, 1986 (Exh.P2) between Gaudensia Ngelela and Captain Stephen C. Haule in respect of a farm measuring 12 acres located at Muheza, Maili Moja Pwani Region. PW1 stated that the exhibit P2 shows that the first installment was paid on 2nd October, 1986. The second installment was paid on 3rd November, 1986, the third 3rd installment was paid on 1st December, 1986. He went on to testify that the fourth installment was paid on 3rd January, 1987 the fifth installment was paid on 7th February, 1987, and the last installment was paid on 3rd March, 1987 in each installment PW1 paid Tshs. 500/- and the receipt was issued.

PW1 went on to state that Gaudensia Ngelela, the vendor, had two witnesses; Luteni Kiyule and Captain Shayo Gaudence, and all appended their signatures. PW1 named his neighbours; Northside - Aminiel Mbwambo, Southside- Juma Ali Mbonde, Eastern side- Makuka, and Westerside - Kiingumbi.

PW1 went on to testify that the farm was under the supervision of Juma Ally Mbunde who took care of the suit land from 1986 to 2007 when he

passed away. It was his further testimony that he was residing in Kiluvya - Kisarawe and he often used to visit the suit land. He testified to the effect that in 2006, he allowed Juma Mbonde to sell one acre and use the money to cover his medical costs. PW1 was informed by the late Mbonde's son that there was a dispute, Rajab Maulid has trespassed on his land. He reported the incident to the tencell leader but he did not take any further steps since he had to wait for the tencell leader's response.

PW1 continued to testify that Rasjabu Mrisho, the Chairman of Maili Moja Village, and Mohamed Omary Mchengule Chairman of Uyaoni Village visited the suit land and found Rajabu Maulid in the suit land. They asked him how he acquired the suit land and answered them that he bought the land from a Magistrate and the transaction was witnessed by Diwani. Then the next move, PW1 decided to lodge a case at the Ward Tribunal, he won the case then the matter was before the District land and Housing Tribunal. He testified that the Chairman quashed the decision of the trial tribunal for lack of jurisdiction. Then PW1 decided to file the instant case before this court. To substantiate his testimony, PW1 tendered a Valuation report drawn by Kibaha Town Council dated January, 2018 in respect of a farm measuring 41,283 Muheza Mpiji,

PW2 testified to the effect that he knows the Plaintiff and the 1st Defendant and Mwambo. He testified that he did not know how the Defendants acquired the suit plot. PW2 went on to testify that the Plaintiff occupied the disputed land in 1986 and they planted crops; such as sesame, maize, cassava and millet. PW2 testified that Rajabu Maulid pulled down or cut five mangoes trees, three cashew nut trees, three Coconut trees, and nine *Mikaratusi* trees. PW2 went on to testify that he saw Rajabu Maulid cutting the Plaintiff's trees within one week. PW2 testified that currently, the suit land is a forest. Within a week he had cut down all the trees. He testified that he saw the 1st Defendant's cattle. He testified that they build a mad house in the suit land and the suit land is left undeveloped because of the pending case before this court.

Nassoro Hemedi Chande, (PW3) testified to the effect that he resides in Mbezi Shamba Buguruni area. He testified that the Plaintiff hired him in 1986 as a caretaker to care look and care for a plot located in Kibaha, Mpiji area. He testified that he planted maize, rice, sesame and beans and he was the only one who cultivated there. PW3 testified that he heard Maulid invaded and uprooted the plants from the Plaintiff's farm. He testified that the suit land was not a forest.

Zana Salehe Tindwa was the fourth witness. She testified to the effect that she was the wife of the late Juma Ally Mbonde and they were residing at Muheza Maili Moja. She testified that the farm was adjacent to the Plaintiff's farm. She testified that there were cashew nuts, mangoes, coconuts, and *mikaratusi* trees etc. PW4 testified that she was cultivating the suit land and one Chande was hired to take care of the farm. She said that many of them cultivated the farm.

Amaniel Mwambo was the fifth witness. He testified to the effect that the Plaintiff because he is my neighbour at Maili Moja Muheza and his farm is adjacent to the Plaintiff's farms; North; Aminieli Mwambo East one Makunga, South, Juma Ally Mbonde and West; Mohamed Kingumbwi. PW5 testified that when the Plaintiff bought the farm which contained (10) coconuts trees (3) Mikaratusi (9) Mangoes trees (5) Orange trees (3) and cashew nuts trees. Then the 1st Defendant invaded the farm and cut down the Plaintiff's trees. Now the suit land is a forest. The 1st Defendant has also trespassed on my farm each farm is independent.

The last Plaintiff's witness was Hamisi Chikawe, he testified that since 1985 he is residing at Maili Moja Kibaha. I know Stephen Haule, he bought a Farm on the 09th September, 1986 at Maili Moja Kibaha, and by that time he was a tencell leader of Mile Moja "A" and disputed land with 12

acres was situated at Mile Moja "A". He testified that on 9th September, 1986 when Gaudensia Ngelela and Stephene Haule entered into a Sale of Agreement, he, Hamisi Chikawe, Mwambo, Mbonde, Mzee Juma Ally Mbonde & Ally Mbonde witnessed the said sale agreement, and neighbours; Juma Ally Mbonde and Mwambo were also present PW6 testified to the effect that the Plaintiff paid the amount in installments.

PW6 also testified that the suit land had permanent crops; 10 coconut trees, 9 Mikaratusi, 5 Cashew nuts, 3 Oranges trees, and they also planted cassava, sesame & rice. PW6 testified that he never met the Defendants and as a tencell leader is required to know all guests who enter his village land.

On the other hand, the Defendants, Rajabu Maulid (DW1) testified that the suit premises belong to the Defendants. Stephen Haule has lodged a suit against him claiming that he has trespassed and has cut plants. They allege that the suit plot is measuring 12 acres located in Muheza area in Kibaha District. He claimed that the Plaintiff alleged that in 2007, he cut off the cashew nuts trees, mangoes trees, Mkaratusi trees, Orange trees, and uprooted crops such as rice, millets & maize. DW1 denied the allegation, he testified that the allegations are untrue and fabricated as

Tajiri Maulid, his brother obtained the suit land measuring 50 cares before the Plaintiff in 2000 from Uyaoni Street Government and Mile Moja "A".

DW1 went on to testify that they paid Tshs. 23,000/= for one acre, and in total they paid Tshs. 1,150,000/= Maulid paid the money in installments; the first installment he paid Tshs. 600,000/=, the second installment he paid Tshs. 550,000/= then they were issued with a Certificate of Sale. DW1 testified to the effect that part of the suit land, he does not know the size of the suit land but the 2nd Defendant has a bigger portion of the suit land. He testified that they followed a proper procedure in acquiring the suit land. To substantiate his testimony he tendered a Minutes Sheet (Exh. D1) and tendered a sale agreement (Exh.P2). I heard that there are Land Act of 1999. I do not know if a Customary or village certificate is issued. DW1 testified that the Plaintiff did not tender a Minutes of the meeting conducted by the villagers.

Donatus Kiliangozi testified as DW2. He testified that he is residing in Mile Moja Muheza Kibaha, and in 2000, he was a tencell leader at *Shina* No. 4 at Uyaoni Street. DW2 testified to the effect that Maulid and his fellow approached him at that time Rajabu Mrisho was a member of land allocation committee and Omary Mchangule was a Street Chairman of Uyaone. DW2 went on to testify that they visited the suit land to allocate

the same to the late Tajiri Maulid, they assured themselves that the suit land was not occupied, thus, they allocated the suit land to the late Tajiri Maulidi. He stated that DW2, a tencell leader witnessed, appended his signature and hence allocated the suit land DW2. In his testimony, he stated that Chikawe (PW6) was a Secretary of CCM and he was residing in Mile Moja area. He added that he did not know if Chikawe was a tencell leader. DW2 testified further that he was involved in solving the land dispute between Aminiel Mbwambo & Maulid. DW2 narrated the Defendants boundaries mark; on the Northside is Aamniel Mbwambo, and Mazengo and Mbonde is on the Eastside. DW2 said that Gaudensia Ngelela is not familiar to him.

Philipo Charles was the third defence witness. He testified to the effect that he resides in Kibaha Mile Moja at Muheza Street and worked for Rajabu Maulid. DW2 testified that they were creating a pathway along the boundary. He testified that in the suit land Rajabu Maulid was keeping and grazing cows & goats.

When DW3 was cross-examined, he was certain that the suit land belongs to Rajabu Maulid because he hired him and paid him wages salaries. DW3 testified that he did not come across any document

concerning ownership. He testified that the Defendants' land is measuring 50 acres and the same is forest.

The last witness was Jumbe Tajiri Maulidi, he testified to the effect that he is residing in Shinyanga and Maulid Rajabu was working with his later father for a long time. He stated that he was appointed to administer the estate of his late father Tajiri Maulid. He testified that his father had a farm located at Kibaha which he acquired from the village leadership, but he did not remember the name of the village. He said that his late father took him to the suit farm when he was still schooling.

Having heard the testimonies of both parties and considering the final submission of the Plaintiff's learned counsel, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in civil litigation and which will guide this Court in the course of determining this suit. The said principles include the following; the same is stipulated under section 110 of the Evidence Act Cap.6 [R.E 2019] which places the burden of proof on the party making the assertion which 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 burden of proof lies on that 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”*.

Another salient principle of the law, which are applicable in civil litigation and which will guide this Court in the course of determining this suit is "Parties are bound by their pleadings." Pleadings in this sense include the Complaint, Written Statement of Defence, affidavits, and reply therein if any. Therefore, in its broader meaning pleadings include all documents submitted and annexed thereto and those which were listed along with the complaint or produced before the first date of hearing of the suit. The Court is required and expected to examine the entire pleadings and the totality of evidence tendered, together with an assessment of the credibility of the witnesses who appeared before the Court. The evidence adduced before the Court must be weighed and not counted.

In resolving the controversy before me, the above underlying principles, and case laws shall guide my evaluation and analysis of the

evidence that was presented by parties in this suit, and with earlier framed issues by the court will be resolved seriatim:

The first issue for determination is *whether the Plaintiff is the lawful owner of the suit land*. In a chronological account of the ownership of the property that the Plaintiff has presented, in 1986, the Plaintiff acquired the suit land located at Muheza, Mpiji –Maili Moja at Kibaha within Pwani Region. To enforce his claims he relied on the agreement signed which were admitted as exhibit P1 and exhibit P2. The testimony of PW1 was corroborated by the testimonies of PW2, Aminiel Mwambo who witnessed the sale agreement and Hamisi Chikawe (PW6), the former tencell leader of Mail Moja Village testified to the effect that in 1986 he witnessed the sale agreement dated 9th September, 1986 between the Plaintiff, the buyer and Gaudensia Ngelela, the vendor.

The Defendant on his side testified to the effect that his late brother is the lawful owner of the suit land. DW1 said that in 2000, the Mile Moja "A" Street and Uyaoni Sytreet allocated 50 acres to his late brother as evidenced by the sale of agreement dated 18th October, 2000 (Exh.D.2). DW1 said that he witnessed the process of purchasing the suit land. To support his testimony DW1 tendered a Minute sheet dated 5th July, 2000 prepared by the Development Committee of Uyaoni Street.

After hearing, parties urged for this court to visit locus in quo to find out whether the suit land was developed or a forest area. This court visited locus *in quo* with the main purpose to find out if the suit land was a forest or a developed area. PW1 and DW1 were recalled to testify however, their testimony was only to assist the court to find out whether the suit land was barren or was a forest. The findings reveal that the suit land is a bush land there are few trees, however, it was difficult to tell if the trees were cut down.

The Defendant also claimed that the Plaintiff did not tender any Minute of the Village Meeting. In the situation at hand section 8 (5) of the Village Land Act No. 5 of 1999, is related to the acquisition of village land. For ease of reference and clarity, the provision provides:-

"A Village Council shall not allocate land or grant a customary right of occupancy without a prior approval of the Village Assembly."

The above provision of the law does not apply in the situation at hand because the Plaintiff bought the suit land from an individual not from the village council. In view, the requirement of tendering the said Minutes applied to the Defendants only since they are the ones who bought the suit land from the village council, not from an individual. Therefore, in the circumstances at hand what matter is for the village leadership to witness the sale, and in the matter at hand PW6, Hamisi Chikawe witnessed the

sale. The contradiction that PW6 was *mjumbe wa shine* No.4 while in his testimony he stated that he was *mjumbe wa shina* No.9 is a minor error the same does not go to the root of the case. See the case of **Mohamed Said Matula v Republic** (1995) TLR 3 held that:-

" Where the testimonies by witnesses contain inconsistencies and contradictions, the Court has a duty to address the inconsistencies and try to resolve them where possible, else the Court has to decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter."

The Defendants have complained that the Plaintiff's sale agreement is not valid. As gathered from the testimony of the disputants, it is clear that the Plaintiff and Mohamed Gaudensi Ngelela entered into a Sale of Agreement. The Sale of Agreement bears the names of the parties and both parties signed the contract. The same was witnessed by both parties' witnesses who appended their signatures, dated and bearing a village council stamp and the boundaries were well stated. 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] provides that:-

" All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful

consideration and with a lawful object, and are not hereby expressly declared to be void.”

From the above provision of the law, 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. I have considered that the Sale Agreement (Exh.P1) and the document (Exh.P2) have undergone all stages of the Contract to its finality to make it binding. Therefore, there was legality to the contract between the Gaudensi Ngelela, the vendor, and Plaintiff, the buyer. Consequently, it is my view that the said Sale Agreement (Exh.P1) and document (ExhP2) are valid contract/ document in the eyes of the law.

On their side, the Defendants, DW1 in his testimony admitted that the suit land belong to his late brother Tajiri Mauli. DW1 tendered a Power of Attorney (Exh.D7) to prove the was appointed to conduct his all affairs in respect to his plot situated at Muheza Village, Kibaha Coast Region including legal matters. They testified to the effect that they are the lawful owner of the suit land. To corroborate the testimony of DW1 the DW4 testified to the effect that the suit land is in the name of Tajiri Maulid. Donatus Kiliongozi (DW2), the ten cell leader of Uyaoni Street also testified that he allocated the Defendants a plot and mentioned that in 1986 Michael was the tencell leader but there was no any proof.

It is worth noting that the issue of controversy between the parties was based on a land situated in Mail Moja – Muheza area. Thus, I do not see the relevance of Exh.P1 and DW2 evidence regarding the case at hand. Reading the Minutes of the meeting (Exh.D1) and the Sale Agreement (Exh.D2) these two documents are not related since the Minutes of the meeting of Uyaoni shows that they allocated 50 acres to the Defendants in exclusion of Mail Moja street land. In the sale agreement both streets are involved in allocating 50 acres in exclusion of Mail Moja street government minutes. Therefore, exhibits D1 and D2 are irrelevant to the case at hand.

The Defendants did not summon any leader or person who witness the sale agreement (Exh.D2) from Mail Moja Street. DW3, Philipo Charles is residing in Mail Moja at Huheza but he did not witness the sale agreement.

Jumbe Tajiri Mauli (DW4), the administrator of the estate of Tajiri Maulid was an unreliable witness since he did not prove that his father was the owner of the suit land. The sale agreement (Exh.D2) state that the buyer was Tajiri Maulid, however, Jumbe Tajiri Maulid, the administrator of the estate of the late Tajiri Maulid does not know where the suit land is situated. His evidence is hearsay as he is not sure if the suit land is measuring 50 acres and if the same exists.

The Defendants desired this court to give judgment in favour of them, however, their legal right or liability depends on the existence of facts that

they assert and they must prove that those facts exist. In my considered view, the Defendants have failed to prove that the Mail Moja Street leadership allocated how many areas out of 50 acres in dispute to the Defendants.

It is a cardinal principle of evidence that when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. This principle is enshrined in our law of evidence under section 110 (1) of the Law of Evidence Act, Cap. 6 [R.E 2019]. This provision reads:-

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must.”

For the reasons I have given above, I find and hold that the Plaintiff has proved that he is the lawful owner of the parcel of the suit land measuring 10.2 acres. The fact that the Plaintiff occupied the suit land before the Defendants and the sale agreements are valid the same suffice to declare him the lawful owner. The first issue is therefore answered in the favour of the Plaintiff.

Next for consideration is the second issue; to *what reliefs are the parties entitled to*. I have opted to start with the fifth prayer of general damage. It

is trite law that an award of damages or damage 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.

I will combine the (b), (c), and (d) prayers and argue them together because they are intertwined. The Plaintiff prays for this court to declare

the Defendants as trespassers, vacate possession of the suit property and restrain the Defendants and or their agents, assignee, or unlawfully occupier from the suit property. As long as this court has declared the Plaintiff the lawful owner of the suit land then automatically these three prayers are granted.

Regarding the prayer (d). This court thinks 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 Plaintiff has prosecuted this case to its finality and, certainly, has incurred costs in this endeavour. These are costs involved in the suit which the Defendants 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 remark:

"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 Defendants 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. I declare that the Plaintiff is the lawful owner of the Farm measuring 10.2 acres located at Muheza Mpiji in Kibaha Town Council (District) within the Coast Region.
2. The Defendants are trespassers to the suit land.

3. The Defendants and their agents and assignee are ordered to vacate the suit land.
4. The Defendants and or their agents, assignee, or unlawfully occupier are restrained from entering into the suit property.
5. The Defendants to pay the costs of the suit.

It is so ordered.

DATED at Dar es Salaam this 30th May, 2022.


A.Z. MGEYEKWA
JUDGE
30.05.2022


Judgment delivered on 30th May, 2022 in the presence of the Plaintiff and the 1st Defendant.


A.Z. MGEYEKWA
JUDGE
30.05.2022


Right to appeal fully explained.