

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO 115 OF 2017**

- 1. GIDEON JOHN MWIKOLA**
- 2. ABUBAKAR MOHAMED HUSSEIN**
- 3. ISAAYA NAFTARI LUBOTE**
- 4. ZAINISHA ATHUMANI SALUM**
- 5. MWAMEDI SAIDI CHAN**
- 6. ELIKA ELIA MASINGA**
- 7. HADIJA YUSUFU ATHUMANI**
- 8. LAURENT SAMWEL KUFAKUYAGA**
- 9. JUMAPILI SALUM WEBI**
- 10. HERODE STEPHEN DUNGUMARO**
- 11. MWANAISHA ISMAIL ABDALLAH**
- 12. AISHA MOHAMED SULEIMANI**
- 13. IBRAHIM NANGWA KINGO**
- 14. JUDITH S. UPAMBA**
- 15. SAID S. MKALONGEI**
- 16. CHRISTIAN SAMWEL UGI**
- 17. MARIAMU CMARY ALOMBILE**
- 18. SAMWEL KUFAKUYAGA MWAUGI**
- 19. SCHOLASTICA TIMOTHEO**  
**BIKWAKWANYA**
- 20. OLE A. LAIZER**

**PLAINTIFFS**

**VERSUS**

**THE REGISTERED TRUSTEES OF ARCHDIOCESE**

*Adls.*

**OF DAR ES SALAAM ..... 1<sup>ST</sup> DEFENDANT**  
**THE REGISTERED TRUSTEES OF THE AFRICAN**  
**INLAND CHURCH TANZANIA ..... 2<sup>ND</sup> DEFENDANT**  
**KIBAHA TOWN COUNCIL ..... 3<sup>RD</sup> DEFENDANT**

## **JUDGMENT**

25/01/2022 & 08/02/2022

### **A. MSAFIRI, J**

The plaintiff Gideon John Mwikola and other 19 plaintiffs have instituted a suit against the defendants praying for the following orders;

- i. Judgment and Decree against the defendants.
- ii. Declaration by the Court that the 3<sup>rd</sup> defendant did not follow procedures for Land acquisition.
- iii. Declaration by the Court that plaintiffs are legal owners of the land in dispute.
- iv. Declaration by the Court that 1<sup>st</sup> and 2<sup>nd</sup> defendants are trespassers to the land in dispute.
- v. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly to pay the plaintiffs TZS 700,000,000/- as loss suffered by the plaintiffs due to damages done by 1<sup>st</sup> and 2<sup>nd</sup> defendants in support of 3<sup>rd</sup> defendant to their houses, permanent and seasonal crops.
- vi. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly to pay TZS 290,000,000/- as loss suffered by the plaintiffs due to act done by 1<sup>st</sup> and 2<sup>nd</sup> defendants in support of 3<sup>rd</sup> defendant to restrain the plaintiffs from entering and cultivating seasonal crops from the year 2014 to date.



- vii. General damages to be assessed by the court at the tune of TZS 100,000,000/- due to psychological torture, disturbances and uncertainty caused by the defendants.
- viii. Costs of this suit to be paid by the defendants.
- ix. Such other or further reliefs as this Hon. Court may deem fit to grant.

The plaintiffs allege in their amended Plaint that they are the lawful owners and occupiers of the land (herein as land in dispute), located at Mpiji, Air Msae area, Mkoani B in the current Kibaha Town Council. The land is about 30 acres and it was owned by the plaintiffs since time immemorial. They claim that the said land was found virgin and unsurveyed when plaintiffs started to utilize it by clearing bushes and making permanent settlements therein, and it means that it was owned by the plaintiffs customarily and that they are still in occupation of the said land.

They further allege that at the time when the land in dispute was surveyed by the 3<sup>rd</sup> defendant, the plaintiffs were found in the said land living peacefully and enjoying harvests from both permanent and seasonal crops which were cultivated by them.

The plaintiffs further stated that, sometimes in 2014 and without Notice and consultation to the plaintiffs, the land officers under supervision of the 3<sup>rd</sup> defendant paid a visit to the land in dispute, surveyed it and marked the boundaries with beacons. That, the plaintiffs made follow ups to the 3<sup>rd</sup> defendant's office and they found that the land in dispute which is lawfully owned by them, has been located to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

*Atlg.*

They stated that, without any notice to the plaintiffs, the 1<sup>st</sup> and 2<sup>nd</sup> defendants invaded the land in dispute and demolished houses, destructed and uprooted many permanent and seasonal crops in order to occupy the area in dispute, act which made the plaintiffs to suffer loss. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants have prohibited the plaintiffs to do agricultural activities, the act which have caused the plaintiffs to suffer severe loss and insecurity in their own land hence psychologically tortured.

The 1<sup>st</sup> defendant in the amended written statement of defence, disputed the plaintiffs' claim and alleged that she is the rightful owner of 15 acres of land described as Plots No. 16, and 17 Block B, Mpiji, Kibaha, Township, the land which was surveyed by the 3<sup>rd</sup> defendant, and that she is the rightful owner of the said piece of land since the year 2000 without any interference. The 1<sup>st</sup> defendant alleged further that when the land in dispute was allocated to the 1<sup>st</sup> defendant in 2000, there was no any single person residing or carrying out any agricultural activities in the area and that the plaintiffs are trespassers. She prayed that the plaintiffs' claims be dismissed with costs and the 1<sup>st</sup> defendant be declared the rightful owner of the suit premises.

The 2<sup>nd</sup> defendant also denied the allegations by the plaintiffs and put them to strict proof. She stated that she was allocated two pieces of land by the 3<sup>rd</sup> defendant, one with a size of 2 (two) acres located at Kibaha Town Centre and another with a size of 10 (ten) acres located along Mpiji River. That the 2<sup>nd</sup> defendant has occupied the land located at Mpiji River since 1996, that she has cleared the land and used it to date for cultivation

*Allg.*

of various seasonal food crops, and paying land rent. She prayed that the suit be dismissed with costs.

The 3<sup>rd</sup> defendant also filed her written statement of defence in which she denied the whole claims by the plaintiffs and put the same into strict proof. She prayed for the orders that the 1<sup>st</sup> and 2<sup>nd</sup> defendants be declared the lawfully owners of the land in dispute, and that, the allocation of the land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants is legal, and other reliefs.

The plaintiffs were represented by Mr. Steven Mboje, the 1<sup>st</sup> defendant was represented by Mr. Charles Mutakyawa, advocate, who was at sometimes assisted by Ms. Kashindye Thabit, advocate, the 2<sup>nd</sup> defendant had legal services of Mr. Charles Mugira, advocate and the 3<sup>rd</sup> defendant was represented by Mr. Mwinyi, advocate.

The plaintiffs side had a total of eight (8) witnesses, the 1<sup>st</sup> defendant had five (5) witnesses, the 2<sup>nd</sup> defendant had three (3) witnesses and the 3<sup>rd</sup> defendant had only one (1) witness.

The following issues were framed for determination as follows:

- a) Who is the rightful owner of the suit premises?
- b) Whether the defendants cause damages to properties within the suit premises.
- c) To what reliefs are the parties entitled to.

This case was partly heard by Hon. Judge Kalunde, and I took over when he was transferred to another work station.

*Adils*

On the plaintiffs' evidence, **Mwanaisha Ismail Abdallah testified as PW1**. She said she lives at Mwanalugali B, Tumbi, Kibaha, she is a farmer and she has occupied the area since 1970. That she was the first to occupy the area and used to own 15 acres. That when she occupied the area in 1970, there was no dispute and the place was a forest. That she cleared the forest, claimed the land and stayed.

She stated that in 1984, people came and invaded her area. She reported the matter to the ten cell leader. She stated that those people who invaded, started surveying claiming that they were allocated by the District Council. That she also reported the matter to the Regional Commissioner but never received a response. That she decided to file the present suit so that the court may assist her to recover her land.

In cross – examination by Mr. Mutakyawa, PW1 said that there was no leadership at the area when she occupied it. That she has built a house and she used to grow groundnuts. She stated further that the crops which were destroyed are cashewnuts and mangoes and that they were not fully grown to produce anything.

When cross examined by Mr. Mugira, she stated that she does not know who invaded the area, and that her crops were destroyed in 1984. That they went to the Regional Commissioner in 1988 and were told to present their case to the Court.

**Aisha Mohamed Suleiman testified as PW2**. She said that she lives at Mkoani B, Air Msae, Mpiji, Kibaha. That she came to live in the area in 1980 and she used to stay with her uncle one Said Mkalongaye. That she

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now stays in her own place measured about 2 acres which was given to her by her uncle in 1990 and she has built a house. That she is a farmer and her farm is around Air Msae where she grows various crops.

She stated further that in 2014 there arose a dispute when people from Roman Catholic Church came and destroyed people's crops claiming to be the owners of the land in dispute. That in her farm they destroyed cashew trees, mangoes and oranges, and other crops. She said that, the matter was reported to the Local Government, whereby the Village Government invited the Church and the Council to meet and solve the matter. However, the issue was not resolved so they instituted this suit.

In cross examination by Mr. Mutakyawa, PW2 stated that, she was given the area by her uncle with a mere words. That she has stopped growing crops in the area because of the dispute. That she had five mango trees, three orange trees and five cashew trees. That she used to get around 1.5 million shillings from cashew in a good year.

In cross examination by Mr. Mugira, PW2 stated that she built the house in 1992. That her land was taken by Roman Catholic who claims to be allocated the same by the District Council.

In cross examination by Mr. Mwinyi, she stated that she was given the land in 1990 by her uncle but she did not know where her uncle got the land. That once they sat together with the Church and the Village but they were told to leave the area. That the dispute started in 2014, before that there was no dispute.

*Aulls.*





**Mariam Omary Olombile was PW3.** She said that she owns a farm at Mkoani B Mpiji which is equivalent to 4 acres. That she got the area through clearing bushes in 1975. She said further that she built a house where she lives with her family. She alleges that in 2014, people from the church came with the land officers and destroyed her crops and they called her a trespasser.

That she reported the matter to the District Council and was advised to settle the matter with the church but they could not settle, so they instituted the present suit. She stated that before 2014 there was no dispute.

In cross examination by Mr. Mugira, PW3 stated that she took the area in 1975 and she did not involve a ten cell leader. Then she said that she was married in 1975 and started staying in Mburahati with her husband. That she stayed there for 11 years until 1986 when she divorced her husband and went back to her farm. That the area in dispute was not surveyed before as there was no beacons.

**PW4 was Gideon John Mwikola.** He said that he has a 45 acres piece of land at Mpiji which he got in 1979 through clearing forest. That he has built a house on the land and he grows various crops.

He stated that in 2014, a group of people came to his farm and started clearing crops. One of them was a leader of the Roman Catholic. That they said they were clearing their area given by the District Council. That those people destroyed crops and his house. He reported the matter to the village government which also reported to the District Council. That they were told to settle the matter with the church but they failed to

agree, hence they instituted this case. He prayed for the Court to declare the 1<sup>st</sup> defendant a trespasser and if he has any documents the same should be declared invalid.

In cross examination by Mr. Mutakyawa, PW4 stated that he cleared the forest after being shown by one Mwanaisha but he did not inform any leader. That he told a ten-cell leader that he was a resident of that area and the ten cell leader wrote in his book and recognized him as a resident. That the total costs of destruction was TZS 50,000/-.

When cross examined by Mr. Mwinyi, PW4 stated that the Executive Director of Kibaha Town Council told them that the area belong to the church. That if evidence is brought that the church have ownership documents which are valid, he will not deny because he have no any document.

**Josephina Arego Protas testified as PW5.** He stated that he moved to Mkoani B in Kibaha, in 1979. That at that time when he moved, the area was occupied by residents who are farmers. That in 1999 he was elected a Chairperson of "Kitongoji cha Mkoani" where he served until 2004. He said that during his tenure, there was no information or records showing that the area over Mkoani B has been allocated to Roman Catholic Church or AIC Church.

**Judith Samson Upamba was PW6.** She stated that she has a plot at Air Msae, which is approximately 2.5 to 3 acres. That she got the area in 1990 from Mkalongeye. That she told him (Mkalongeye) that she needed a farm, he showed her a forest which she cleared and cultivated and planted mangoes, oranges and cashew trees among other crops.

She stated that from 2014, her crops were destroyed and her house demolished. The District Council, AIC and Roman Catholic churches were responsible. That, she did not know why the defendants did that. After that, they reported to Ofisi ya Serikali ya Mtaa and were told to go to Court.

In cross examination, she said that she arrived at Kibaha in 1990 and met Mkalongeye who was also living there. That Mkalongeye told her that there was no one in the area, so she reported to a ten-cell leader one Mzee Juma before clearing the forest.

She stated that she does not know who destroyed the crops and the house because she was out on her business activities when the properties were destroyed. That she does not know why they destroyed her crops and she had never reported the matter to Police.

**Said Said Mkalongei was PW7.** He said that he had a house on the disputed property and he grew long term crops, his area was equivalent to two acres, which he acquired in 1973 by clearing a forest and developing it. That previously he owned six (6) acres, whereas he gave 4 acres to Bi Asha Mohamed, (PW2), Abubakary Mohamed, Zainisha Athuman and Isaya Naftari (i.e. one acre each).

He stated further that, in March 2014, some church people from Roman Catholic came at their residence at Air Msae. They destroyed houses, and cut the crops saying that the area belongs to them. That they reported the matter to the Street Government, and several meetings were

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conducted between the two disputing parties but they failed to reach amicable settlement. Hence this suit.

In cross examination, PW7 stated that he moved to the area in dispute in 1973. That by 1973 there was a TANU leadership, people went to the chairperson and requested for land. He said that he did not have any ownership document. He said further that they did not report the destruction of properties to the Police but they reported to "Serikali ya Mtaa".

**PW8 was Ibrahim Nangwa Kingu** who stated that he occupies a land equivalent to 2 (two) acres at the land in dispute. That he got the land in 1989 after clearing the forest, and he built a house and started cultivation. He grew cashewnuts, mangoes and bananas and other seasonal crops. That he stopped agricultural activities when his land was invaded by the people from the Roman Catholic Church. That those trespassers destroyed cashew trees and other crops. That the trespassers claimed that the area is theirs. That they reported the matter to "Serikali ya Mtaa", and that a meeting was convened which was attended by Roman Catholic, the District Council, AIC and villagers. After several meetings, the trespassers failed to compensate the villagers and so they instituted the present case.

After the plaintiffs closed their case, the defendants called a total of nine (9) witnesses.

**Rosemary Kaboma Dida testified as DW1** and was a witness for the 1<sup>st</sup> defendant. She said that she was a retired Primary School teacher and

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that among other schools, she taught at Maili Moja Primary School and Mkoani Primary School.

She stated that she knows the first defendant, and she prays at Tumbi Church. That in 1996, they were looking for an area to build a church and conduct other activities, so, she and one Celina Wambura went to see the District Land Officer to request for an area. That the District Land Officer told them that there was an area which has not been allocated to any person, so he directed them to write a request letter. DW1, said that, the requesting letter was written by Parish Priest by name Venance Tegete.

In cross examination, she said that she is a resident of Mkoani B where the disputed area is also located. That she has built a house there from 1993 to 1994, that she has a certificate of Title and a permit, both obtained in 1992. In re-examination, she stated that she has built a house at Mkoani B but her house is not built on the land in dispute.

**DW2 was Benno Michael Kikudo.** He stated that he is a Catholic Priest at Catholic Church, Tumbi Kibaha. That, there are trespassers who has trespassed into Catholic Church area called Air Msae in Mpiji, Kibaha Region. That the area was allocated to the said church by Kibaha Town Council. He stated further that, the Catholic Church wrote a requesting letter for allocation of land to Town Council in 2000. That the letter was written in 23/4/2000. He tendered a certified copy of the request letter and a Police Loss Report of the original letter which was tendered as Exhibit D1.

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He stated further that, under the direction of Town Council, they paid planning and surveying expenses. Then they were issued with a letter of offer for two Plots, one for the church building and the other for service to the society, i.e. Plots No. 16 and 17. He tendered copies of letters of offer of Right of Occupancy both dated 06/08/2008 which were collectively admitted as Exhibit D2.

He said that, after that they erected a house for the guard and livestock. Then, a group of people went to Kibaha Town Council and demanded that they are residents of the granted plots. After several meetings, both parties to the dispute were told by the Council to bring documents of ownership. That, the 1<sup>st</sup> defendant managed to bring the authentic documents which were tallying with the one in the custody of the Council. He tendered a letter of 20/05/2015 by the Town Council, concluding meetings between the two parties. It was admitted as Exhibit D3.

DW2 testified further that, the complainants were claiming that they were not paid compensations on the disputed area. That, the disputed area was one of the areas which was allocated for the new Pwani Region, hence the records which proves compensation were at Kisarawe District.

That, the 1<sup>st</sup> defendant wrote to the Regional Office, Pwani, requesting to search documents. That, by the assistance from the RAS office, they were able to get and see the needed documents i.e. compensation schedules. DW2 tendered the letter dated 31/10/2017 which has attachments which are compensation schedules and was admitted as exhibit D4.

In cross examination, DW2 admitted that the evidence he has adduced was told to him by the late Padre Venance Tegete and he himself was not

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at the area in dispute at that time but he moved in 2010. He stated further that the area in dispute was given to the Church in 2002/2003.

When questioned about Exhibit D2, he stated that the original document was destroyed in fire, and he reported the matter to Police in 2020.

Dw2, stated that the compensation was paid in 1974 and after that, the former residents who were occupying the land in dispute vacated the area. That, from 1974, the area in dispute was unoccupied and was not developed. He stated further that, in 2005, the area was surveyed, and it was bushes and there was no occupants therein. That the residential buildings were erected from 2008 – 2009 by "Wananchi". That they could not produce compensation sheets during the conciliation meetings as the same were acquired later.

In cross examination by Mr. Mwinyi, DW2 stated that, the procedure for allocation of land, was directed at Kibaha District Council, and even survey and planning was done by Kibaha District Council. That, however, the procedure for granting of ownership of the area in dispute was done by Kibaha Town Council and that it was the one which went to reinstate the beacons of the boundaries on the land in dispute which was once placed by Kibaha District Council.

**DW3 was Mtoro John Katele**, who stated that she lives at Mwanalugali, Kibaha Town, since 1990. She said that she was once the District Commissioner for Kibaha,( DC) from 1990-1999. That as a DC, she was a Chairman of the District Land Committee. That in 1986, the area in dispute, i.e Air Msae was in Kisarawe District and it was occupied by few residents. That due to Government plans, the area was planned to be

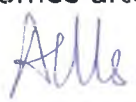
*Alle*

used for public activities. So, the Government acquired the area and the occupants were compensated and vacated the same.

DW3 stated further that, after the acquisition by the Government, the area was divided in two areas, one was allocated to the churches and the other was set to be used as graveyard. That among the churches allocated the land was Catholic Church. And that when this area was being allocated to the church it was unoccupied, it was just bushes.

In cross examination, she stated that she don't remember when the Catholic Church was allocated the land but it was during her service as a DC. She maintained that the former occupants of the area in dispute were compensated, however she said that she does not know names of people who were compensated.

**DW4 as Esther Linus Mhagama** stated that she lives at Kibaha Mkoani 'A' since 1994. That at sometime she was looking for a plot to build a house. That she consulted her neighbours one Jumapili Salum and Herode Stephen who told her that they have areas which they have purchased from other people, but they have found that the said area is already owned by the Government. That they cannot take her to buy that land because the Government has planned the area for the churches and graveyard.

**DW5 was Agnes Abel Hyera** who stated that before her retirement, she worked at Kibaha Town Council as Land Officer. That she started to work at the said office after she had moved from her former office Kibaha District Council. 



That she know the area in dispute since 1980 when she came to live and work in Kibaha. That her first job was to survey Mji Mpya area as the Coast Region was new.

That they surveyed the area. But before that, DW5 and other surveyors has to make sure that the area was compensated. That they were told by the Regional Surveyor of Kibaha of 1980 that the compensation was done from Mpiji River area to Blocks 'A' B, and C. That the area in dispute was planned for social service and it was unoccupied and was just surrounded by bushes. That after compensation, the Government took a big area which is now Kibaha area.

**DW6 was Reuben Mwala** who testified for the 2<sup>nd</sup> defendant. He said that he works as a Pastor since 1992. That in 1993, the African Inland Church (AIC) wanted a land upon which to build a Church and set a Diocese. That they visited the land offices at Kibaha and were shown two areas, small one located at Mkoani 'A' and the big area of 10 acres located along Mpiji River. That the area was shown to them by a Planning Officer named Betty and the area was wild with just trees and bushes.

DW6 stated further that in 1993, the 2<sup>nd</sup> defendant requested for the said two areas and they were granted in 1994. That they paid for survey expenses which were amounting to TZS. 400,000/- for small area of two acres and TZS. 2,000, 000/- for large area of ten acres. The letter granting the 2<sup>nd</sup> defendant's request was tendered as exhibit D2-1. DW6 said that after payment, they were granted a letter of offer which was given in 1994. The letter of offer with receipts of payment was admitted as exhibit D2-2.

*Aills*

In cross examination, DW6 stated that, it was the decision of the Church that teak trees should be planted in the ten acres land whereas in the two acres land, a church was built. That the exercising of planting trees was supervised by one Pastor Emmanuel Mchembe. The trees were planted surrounding the boundaries.

**DW7 was Emmanuel Mchembe.** He said that he is a Pastor of African Inland Church since the year 1989. He stated that he once worked at Kibaha in the year 1995. That while there, he was informed that the Church has acquired two pieces of land, the first was for building a diocese office and the second was intended to build a Church. That he visited the two areas, and the area in dispute was located along Mpiji River, on the area which is famously known as Air Msae. That on the area in dispute there was one big old mango tree, and there were three families living there. Two of the families were inside the Church's area.

He said further that, he questioned the two families which were inside a church area and the replied that they knew the place belong to the Church and they are just farming. That those families were farming inside a Church area and had built a temporary shelter. That it was about early 1996, but those families left in August 1996.

That, he started farming in the area with his family and he did so until he was transferred in 1999 to another area and another pastor came in. He stated that the Diocese asked him to plant teak tress on the area in dispute, which he did. That he planted teak trees to surround the boundaries after identifying the beacons.

*Atts*

In cross examination, he stated that the offer on a land in dispute was granted in 1994.

**DW8 was Ezekiel Samwel Manara**, a pastor of African Inland Church and have been a pastor for 30 years. He stated that, he has worked in Kibaha since 2009 until 2017. That when he arrived at Kibaha, he was given two landed plots owned by the Church. One Plot was located at Mkoani, Kibaha on which the new Church was being built. Another Plot was located at Mpiji, Air Msae, also in Kibaha, there was no building in the said Plot, but there was Government beacons on the boundaries.

He stated further that he started farming in the plot in dispute and he was alone as there was no any other person in the plot. He said that, Pastor Mchembe (DW7) came and plant teak trees surrounding the boundaries of that area, and that was in 2015.

In cross examination, he stated that, when he arrived there, the plot was already surveyed and the people who had previously occupied the plot had already left. That there was mango tree and cashew tree, but he didn't know who planted them as the former occupant has already left after being compensated. He said further that there were other people living in the other side outside the church area but there was no person living inside the church area.

**DW 9 was Upendo Kiwelu** who testified as the 3<sup>rd</sup> defendant's witness. She said that she works at Kibaha Town Council as a Land Officer. She said that in this land dispute, the lawful owner of the area in dispute as per the land office records is the Roman Catholic Church and African

*Alls.*

Inland Church (AIC). That the two churches were allocated that area and issued with letters of offer.

She stated further that on the area in dispute, the compensation procedures were followed and the original occupants were compensated. That the proof of compensation is Exhibit D4 which she prayed to be part of the 3<sup>rd</sup> defendant's evidence. She also identified Exhibit D2 which is an offer on Plots No. 16 B and 17 B which were issued to Roman Catholic Church in 2008 and prayed for the same to be part of her evidence.

She told the court further that, the plaintiffs filed their complaints at Kibaha Town Council. That they were asked to bring with them, necessary documents which prove ownership of the land in dispute, but they failed to do so. She maintained that the procedure for land acquisition was followed, and compensation was paid to the original owners of the land in dispute.

In cross examination by the council for the plaintiffs, DW9 stated that when the customary owned area is needed by the Government, the same has to inform the original owner by giving a 90 days' Notice either through Media or through local leaders. She said that the compensation to the former owners of land in dispute was paid in May, 1974. That the people who originally occupied the area were moved to pave way for the building of headquarters of Pwani Region and social services. She identified Exhibit D4 as the letter informing about compensation and the compensation schedule. She said further that as per the officer records, Maili Moja area

*Adls.*

was the one whose occupants were compensated but she did not know if it is the whole of that area or some parts.

After DW9's evidence, the 3<sup>rd</sup> defendant prayed to close their case which marked the end of the defence case.

Before the writing of the judgment, the Court found it necessary to visit the site. It was observed that the boundaries of the suit land as explained by witnesses of both parties that, on the North side there is Mpiji River. On the South, there is graveyard for both Moslem and Christians. There are also graves of the deceased who were unidentified during the car accident involving a bus known as Air Msae. The area (including the land in dispute) is famously known as Air Msae after the said accident.

The Court observed that on the South East and South West of the land in dispute, there is a surveyed area where there is people's residences. It was observed that in the land in dispute, particularly in the area occupied by the African Inland Church, there is one mud house belonging to one Mama Chande and three old mango trees.

The court observed that the land allocated to the Roman Catholic Church has many residents, there is also many dwelling houses most of them recently built and some of the residents were in process of building more new houses. There is also few old mud houses. There are seasonal crops, and mango and cashew trees.

The court could not see any beacons which could help to identify the boundaries as it was alleged that they were uprooted by the residents.

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But was able to see the remains of teak trees which were allegedly planted by DW 7.

It is trite law that whoever desires a Court to give judgment in his/her favour, he/she must prove that those facts exist. This is provided under Section 110 (1) (2) and 112 of the Evidence Act, Cap. 6 2019. **These provisions place the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain.**

In the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) and Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 CAT (Unreported), it was held that the party with legal burden also bears the evidential burden on the balance of probabilities.

Also, in the case of **Hemed Said vs. Mohamed Mbilu** (1984) TLR 113, it was held that;

*"According to the law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win".*

In the present case, the burden of proof at the required standard of balance of probabilities is left to the plaintiffs being the ones who alleged that they are the lawful owners of the land in dispute, and the 1<sup>st</sup> and 2<sup>nd</sup> defendants invaded it after being illegally allocated to them by the 3<sup>rd</sup> defendant. What this Court is to decide is whether the burden of proof has been sufficiently discharged by the plaintiffs.

*Alle*



I shall determine the issues according to the manner they were framed.

The first issue is who is the rightful owner of the suit land? According to the plaintiffs' evidence, they claim to be the lawful owners and occupiers of the land in dispute. That the same was owned by the plaintiffs since time immemorial, the land was found virgin and unsurveyed and the plaintiffs started to utilize it by clearing bushes and made permanent settlements. According to the plaintiffs, they own the land in dispute customarily. The plaintiffs did not produce any documentary evidence on the claimed ownership. At the same time, the 1<sup>st</sup> and 2<sup>nd</sup> defendants also claims to own the land in dispute legally, they requested for the same and the land was allocated to them. These defendants claims further that the suit land was allocated to them by the 3<sup>rd</sup> defendant after following all the required procedures. They produced Exhibits D1 (a letter from the 1<sup>st</sup> defendant requesting for allocation of land) and Exhibit D2 (the 1<sup>st</sup> defendant's copy of letters of offer of Right of Occupancy dated 06/08/2008). As for the 2<sup>nd</sup> defendant, the witnesses particularly DW6 said that their part of land was allocated to them in 1994. He produced Exhibit D2 – 1 and Exhibit D2-2 which is a letter of offer granted in 1994.

According to the evidence adduced by each side, the plaintiffs are claiming ownership of suit land by customary right, and the 1<sup>st</sup> and 2<sup>nd</sup> defendants are claiming ownership by a granted right of occupancy.

Both the Land Act, Cap 113 R.E. 2019 and the Village Land Act Cap 114 R.E 2019 recognizes granted right of occupancy and also the

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existence of customary rights of occupancy to land in rural and urban areas. As per section 14 of the Village Land Act, any decision to move people from land which is held under customary law attracts full, fair and prompt compensation.

In their evidence, PW1 said she has occupied the land in dispute since 1970 by clearing the bush and that she was the first to live in the area. That she lived peacefully until 1984 when people came and invade her area. That those people surveyed the area claiming that they were allocated by the District Council. That she was never given any compensation. PW3 also said she got the suit land in 1975 through clearing bush. PW4 also stated that he acquired the land in 1979 through clearing bush. PW6 said she moved in 1990 and was given a piece of land by someone known as Mkalongaye, PW7 is Said Mkalongaye who said he acquired the land 1973 by clearing the area. PW8 also got his area in 1989 by clearing the bush.

The major question here is whether the plaintiffs can claim that they own their pieces of land within the land in dispute by customary right, if so, whether they are entitled to the compensation.

It is the evidence of the defendants that the suit land was acquired by the Government in 1974. According to DW9, the compensation was paid to the original owners who moved to another areas. The defence tendered Exhibit D4 which is a letter from the Regional Commissioner's Office, Kibaha, Pwani expressing that the suit land was among the land properties acquired by the Government in early 1970 for the purpose of establishing a new Pwani Region Headquarters. *ALL*



That the occupiers were paid as per the attached schedule. I have read the attached compensation scheduled. It shows a list of "wananchi" who were paid from 1974 – 1975.

According to the correspondent letters, the occupiers of the land were paid and agreed to move to another areas but few of them refused to move as they were not satisfied by the compensation. However, I have noted that none of the plaintiffs name appears in the compensation schedule.

From the evidence, I have gathered that in the early 1970's the Government took acquisition of the land in dispute. The land was surveyed and planned for various uses including building headquarters for the new Pwani Region. Another area was allocated for public services including religious services. Hence, on request, the land in dispute was allocated to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

According to my analysis of evidence, after acquisition of the suit land in the early 1970's, there was no any development on the area hence the area was just wild bushes until 1990's and 2000 when the area was allocated to the two religious institutions namely the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Since after the acquisition, the suit land was not immediately allocated so as to have any development, and it grew into wild bushes it was under the risk of trespass by the people. In their evidence the plaintiffs have stated that they occupied the land through clearing the bushes and nobody was occupying the same. That they occupied the suit land peacefully until 1990's and 2000 when the

*Alle*

defendants claimed that they are the rightful occupants of the suit land.

By this analysis, the plaintiffs cannot claim customary ownership of the suit land because I am satisfied by the evidence of the defendants that the original owners of the said land were compensated in early 1970's when the Government took acquisition of the said land.

By this finding, I am of the view that the plaintiffs cannot claim ownership of the suit land because first it has been established by the defendants through Exhibit D4 that the original occupants of the suit land were compensated in early 1970's when the land was acquired. And since the original occupants of the suit land were paid compensation, the customary right of occupancy was extinguished.

I have gone through the evidence of the plaintiffs who claimed that they occupied the suit land from 1970's through clearing bushes. Unfortunately, there is no any other independent or any other corroborative evidence to back up their claims. Section 14 of the Village Land Act provides for a land which or may be held for customary right of occupancy, and that the person occupying that land shall be entitled to receive compensation.

In absence of any other corroborative evidence or documentary evidence to prove ownership of customary right, how does the court believe to its satisfaction that the person claiming the ownership under customary right is telling the truth i.e. s/he is the real/ lawful owner of that particular land?

*Alle*

Section 14 (4) of the Village Land Act provides as follows;

*"If any question arises as to whether a person in occupation of land is a person to whom the provisions of subsection (2) applies, **that person shall be deemed to be the person unless the contrary is proved to the satisfaction of a Court .....**" (Emphasis added).*

The simple interpretation of the above provision is that if a person occupies a land under a customary right of occupancy then if there is any question about his/her occupancy and whether the occupancy fall under the provision of Section 14(2) of the Village Land Act, then unless there is a contrary proof to the Court, then that person shall be deemed to be the customary owner hence deemed to be entitled to the compensation.

In the current case, as I have observed earlier, the plaintiffs have claimed to have customary right of occupancy. However, the defence has proved to the satisfaction of this Court that the original owners of the suit land were compensated when the suit land was acquired by the Government in the early 1970s. Therefore, in absence of supporting evidence on the part of the plaintiffs, they remain to be trespassers on the suit land.

The answer to the first issue is that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the lawful owners of the suit land, the ownership which was acquired through granted right of occupancy as per their evidence both oral and documentary.

*Aills*

The second issue is whether the defendants caused damages to properties within the suit premises.

It is plaintiff's claims at paragraph 11, 12, 14 of their amended Plaint that the 1<sup>st</sup> and 2<sup>nd</sup> defendants invaded the land in dispute, demolished houses, destructed and uprooted many permanent and seasonal crops in order to occupy the area. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants have threatened the plaintiffs using weapons, an act which has caused insecurity and psychological torture. And that the act of the 1<sup>st</sup> and 2<sup>nd</sup> defendants of demolishing houses, destructing and uprooting permanent and seasonal crops has caused the plaintiffs to suffer severe loss calculated at TZS. 700,000,000/-.

In their testimonies before the Court, PW2, PW4, PW6, PW7 and PW8 stated that the 1<sup>st</sup> and 2<sup>nd</sup> defendants destroyed their seasonal and permanent crops when they invaded their land in 2014. PW2 and PW6 even said that their houses were demolished. PW1 only stated that her land was invaded in 1984 and hence her evidence is contradicting the other plaintiffs.

However, besides the oral testimonies of the said plaintiffs, there is no any evidence to establish that the plaintiffs houses were demolished, and crops destroyed. When the court visited the suit land, it observed that there are permanent trees like mango trees and cashew trees within the suit land. Furthermore, there was some old mud houses alongside new houses. Some of the houses were just been built. The court did not see any ruins of the demolished houses therefore it was

*Alle*

difficult to ascertain whether indeed the defendants caused the alleged damages within the suit land.

In the circumstances, the plaintiffs could have produced even the assessment report of damages or valuation Report. Even the pictures taken of damages could have helped the Court that indeed the claimed damages was done within the suit land.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants have denied to have invaded and destroyed the crops and demolished the house. In their evidence, the 1<sup>st</sup> and 2<sup>nd</sup> defendants through the testimony of DW2, DW6 and DW7, have denied to have invaded the suit land and threatened the plaintiffs but rather there was several meetings to solve the dispute amicably but all were not successful.

In this second issue, it is my finding that the plaintiffs did not successfully discharge the burden of proof as the claims of demolition of houses and destroy of crops, seasonal and permanent, are based on mere words of the plaintiffs. The plaintiff could not establish how they reached to the claimed amount for damages. The second issue is answered in negative.

The third issue is to what reliefs are the parties entitled to. As the plaintiffs are the one who have instituted the suit against the defendants, I have to address the reliefs which they pray before this Court.

Firstly, the plaintiffs prays for declaration that the 3<sup>rd</sup> defendant did not follow procedures for land acquisition. However, as per the evidence, acquisition of land was done by the Government through

*Alb.*

Kisarawe District because the land in dispute area at that time was within Kisarawe. Therefore, even the compensation as per Exhibit P4 was done by Kisarawe District and not Kibaha Town Council. After the area was placed under Kibaha, then Kibaha Town Council (3<sup>rd</sup> defendant) was involved in allocating the already acquired land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Therefore, I find that the defendants' evidence has satisfied the Court that the procedures for land acquisition was followed.

Secondly, the plaintiffs pray for declaration that they are the lawful owners of the land in dispute. I have already made a finding that the plaintiffs are not the lawful owners of the land in dispute, but the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the lawful owners by the granted right of occupancy.

Thirdly, the plaintiffs prays for the defendants to pay them TZS. 700,000,000/- as loss suffered due to damages done by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to houses, permanent and seasonal crops. I have already find hereinabove that the plaintiffs have failed to discharge their duty of proving their claims in regard to the damages purported to be done by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Furthermore, since the plaintiffs have failed to prove the damages allegedly done by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, even their claims of TZS. 290,000,000/- as loss suffered by the plaintiffs and TZS.100, 000,000/- as general damages cannot stand.

On their part, the 1<sup>st</sup> defendant prayed for the suit to be dismissed with costs and they be declared the rightful owners of the suit *Alles*



premises. The 2<sup>nd</sup> defendant prays that the suit be dismissed with costs and the 3<sup>rd</sup> defendant prays that, firstly; the 1<sup>st</sup> and 2<sup>nd</sup> defendants be declared as the lawful owners of the land in dispute; secondly, that the allocation of the land of the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant is legal, and thirdly; any other reliefs this Hon. Court deems fit and just to grant.

For the reasons I have endeavored to address, the plaintiffs have failed to prove the case to the standard required. Accordingly, the plaintiffs are not entitled to the reliefs prayed in their Plaint or at all.

I hereby enter judgment and decree in favour of the defendants as follows;

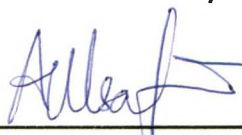
1. The 1<sup>st</sup> and 2<sup>nd</sup> defendants are the lawful owners of the land in dispute.
2. The allocation of the land in dispute to the 1<sup>st</sup> and 2<sup>nd</sup> defendants by the 3<sup>rd</sup> defendant is legal.
3. The suit is hereby dismissed.
4. Due to the nature of the suit, each party shall bear their own costs.

Order accordingly.

Right of appeal explained to the parties

Dated at Dar es Salaam this 08<sup>th</sup> day of February, 2022.



  
**A. MSAFIRI**  
**JUDGE**