

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

**LAND CASE NO. 406 OF 2017**

**YASSIN ABRAHAMAN MRINGO ..... PLAINTIFF**

**VERSUS**

**OSCAR HENRY KATUNZI ..... 1<sup>ST</sup> DEFENDANT**

**ANNA JOSEPH LUVANDA ..... 2<sup>ND</sup> DEFENDANT**

**MARTINIAN KASHAIJA ..... 3<sup>RD</sup> DEFENDANT**

**VICKY LAWRENCE SANANGE (Defending under**

Power of Attorney of **YUSUPH TUGUTU ..... 4<sup>TH</sup> DEFENDANT**

**GRATIAN KAMALA MBELWA ..... 5<sup>TH</sup> DEFENDANT**

**DEOGRATIUS D. KAMUGISHA ..... 6<sup>TH</sup> DEFENDANT**

**SHEILA HAMIS NAMKWAWA ..... 7<sup>TH</sup> DEFENDANT**

**FRANK MICHAEL ..... 8<sup>TH</sup> DEFENDANT**

**GERALD SIMA ..... 9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*06/05/2022 & 09/06/2022*

**A. MSAFIRI, J**

The plaintiff have instituted the above suit against the defendants praying for the following orders; *Adls*

- i. Declaratory order that a land located at Madale area (herein as land in dispute), within Ubungo Municipality is a lawful property of the plaintiff.
- ii. Declaratory order that all defendants are trespassers to the land in dispute.
- iii. Declaratory order that sale of part land in dispute from the 2<sup>nd</sup> defendant, 4<sup>th</sup> defendant, 7<sup>th</sup> defendant, 8<sup>th</sup> defendant and 9<sup>th</sup> defendant is illegal thus ineffectual.
- iv. For permanent injunction to restrain defendants and/ or their agents from interfering whatsoever with the plaintiff's exclusive right to peaceful use of property.
- v. For permanent and perpetual injunction to restrain all defendants and/or their agents from disposing the land in dispute or part thereof or tempering with plaintiff's ownership of the land in dispute whatsoever.
- vi. For the declaratory order that, 2<sup>nd</sup> defendant, 3<sup>rd</sup> defendant, 4<sup>th</sup> defendant, 5<sup>th</sup> defendant, 7<sup>th</sup> defendant, 8<sup>th</sup> defendant and 9<sup>th</sup> defendant be evicted from the land in dispute.
- vii. General damages to be assessed by this Honourable Court.
- viii. Costs of this suit to be provided for.
- ix. Any other order of relief which this Honourable Court may deem fit and just to grant. *Acts-*

Originally, the plaintiff had sued only five defendants but later prayed to amend his plaint where he added another four defendants, making a total of nine defendants.

In his amended plaint, the plaintiff claims that on or about 13<sup>th</sup> April, 2016, he lawfully purchased a piece of land (shamba) located at Madale area from the 1<sup>st</sup> defendant Oscar Henry Katunzi. The photocopy of sale agreement was attached.

That, the 2<sup>nd</sup> defendant recently has arisen to claim ownership of the land in dispute and has interfered the plaintiff from using and developing the land in dispute. The plaintiff claim further that the 2<sup>nd</sup> defendant without any right, and in collusion with 5<sup>th</sup> and 6<sup>th</sup> defendants, has sold part of the land in dispute belonging to the plaintiff. That, the said defendant has sold the land in dispute to the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants. That, until to date, the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants are in illegal occupation of the respective pieces of land in dispute.

He claimed that, despite repeated demands by the plaintiff and his counsel seeking remedies for the trespass and illegal occupation of the land, the defendants has refused, neglected or otherwise failed to heed to the demands and they have remained adamant to surrender the land in dispute to the plaintiff. *Alle*

The 1<sup>st</sup> defendant filed his written statement of defence. The same was filed on 07<sup>th</sup> September 2020. In his defence, the 1<sup>st</sup> defendant refuted the plaintiff's claims, and state that the same are baseless, fanciful, frivolous and vexatious and should be dismissed with costs.

He alleged that the ownership of the land in dispute was never transferred from the 1<sup>st</sup> defendant to the plaintiff, as the plaintiff never fully paid the purchase price. That, the plaintiff paid Tshs. 20,000,000/- only as part of Tshs. 146,000,000/- of the agreed purchase price.

The 1<sup>st</sup> defendant also filed a counter claim in which he filed a claim against the plaintiff, 2<sup>nd</sup> – 9<sup>th</sup> defendants and other four persons who are not part of the main suit. Among the reliefs sought was that he be declared the lawful owner of the land in dispute measured 8 acres and that he sold only one (1) acre to the 1<sup>st</sup> defendant by counter claim (plaintiff in the main case).

Despite of filing his written statement of defence with a counterclaim, the 1<sup>st</sup> defendant never entered appearance in Court. Therefore, on 12/10/2021, after several attempts at serving the 1<sup>st</sup> defendant has failed, this court issued an order of service by publication on the 1<sup>st</sup> defendant, which was complied by the plaintiff. On 19/10/2021, the 1<sup>st</sup> defendant was served through Mwananchi Newspaper.

Since the 1<sup>st</sup> defendant was aware of this case to the extent of filing his written statement of defence, and a counterclaim, and considering that he *Adls.*

was again notified by publication, then on 22/10/2021 when the 1<sup>st</sup> defendant failed again to enter appearance in court without any notice, the court ordered for the case to proceed ex-parte against him.

The 2<sup>nd</sup> – 9<sup>th</sup> defendants filed their Joint Written Statement of Defence, which was later amended. In their amended joint written statement of defence, the 2<sup>nd</sup> – 9<sup>th</sup> defendants vehemently denied the plaintiff's claims and put him to strict proof. They denied to be trespassers on the land in dispute.

2<sup>nd</sup> defendant stated that she was the legal owner of the land in dispute by virtue of the sale agreement between her and one Prisca Tesha who was the original owner of the disputed land.

The 3<sup>rd</sup> defendant claimed to be the legal owner of a part of the land in dispute measured two acres by virtue of sale agreement between him and the 2<sup>nd</sup> defendant. That, he eventually sold the said land to other people including 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> defendants.

The 4<sup>th</sup> defendant also claimed to be a legal owner of a piece of land in land in dispute measured at 500 square metres by virtue of sale agreement between him and the 2<sup>nd</sup> defendant.

The 5<sup>th</sup> & 6<sup>th</sup> defendants said that they do not claim any occupancy right over the land in dispute. That they were local government leaders *Atle*.

performing their duties therefore the plaintiff have no cause of action against them.

The 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants claimed to be the lawful owners of the pieces of land within the land in dispute by virtue of sale agreements between them and the 3<sup>rd</sup> defendant.

The defendants prayed that the plaintiff's case be dismissed with costs.

During the trial, the plaintiff was represented by Mr. Emmanuel Kessy and Mr. Adinan Chitale, learned advocates while the 2<sup>nd</sup> – 9<sup>th</sup> defendants were represented by Mr. Mashaka Mfala and Ms. Winner Julius, learned advocates.

The plaintiff side had a total of three (3) witnesses, and the 2<sup>nd</sup> – 9<sup>th</sup> defendants had a total of twelve (12) witnesses. After the hearing of the evidence on both sides, the counsels for the parties requested and were granted by the court to file their final submissions. However, only the counsel for the defendants filed the same.

Before commencement of the trial, the following issues were framed and agreed for determination;

- a) Who are the lawful owners of the suit premises (land in dispute).
- b) Whether the defendants are the trespassers on the suit premises.
- c) What reliefs are the parties entitled to.

*Acute.*

I will determine each issue by analysing the evidence which was presented before this court by both parties to the case.

This matter is centred on the first issue i.e. **who are the lawful owners of the suit premises?**

The plaintiff is claiming that he lawfully purchased the land in dispute on 13/4/2016 from the 1<sup>st</sup> defendant. He claims that the 2<sup>nd</sup> to 9<sup>th</sup> defendants are trespassers.

The 2<sup>nd</sup> to 9<sup>th</sup> defendants claims that they are lawful owners of the land in dispute. They contend that the plaintiff has no any claim of right over the land in dispute.

In the plaintiff's evidence before the Court, he testified as PW1. He stated that he is an architecture and owns companies known as City Plan Consultants and City Plan Properties Ltd. He said that he deals with the buying and selling of land. He testified further that, in 13/4/2016, he entered a contract of buying a land with one Oscar Henry Katunzi (1<sup>st</sup> defendant who is ex-parte). That, the land is located at Madale, near Greenlight School, which is measured at 7.5 acres. That, the purchase price was Tshs. 146,000,000/-. That the proof of sale is a Sale Agreement between him and Oscar Henry Katunzi. The sale agreement was admitted as Exhibit P1.

PW1 told the court that, the sale agreement was signed by both parties and he paid Tshs. 20,000,000/- to the buyer. The plaintiff averred that he had paid the outstanding amount by cash and cheque. He said that he can prove

*Alle*

that he paid by cheque by Bank statement which shows that, he was paying/transferring money from his bank account to Oscar Katunzi's Bank account. However, the plaintiff did not produce in court any other document to prove his claims that he paid the whole amount of agreed purchase price.

The court has noted that Oscar Henry Katunzi in his written statement of defence in which he also raised a counterclaim, denied the plaintiff's claims of paying the whole amount of purchasing price. In his defence, Oscar Henry Katunzi (who was the 1<sup>st</sup> defendant) claimed that the plaintiff paid him only Tshs 20,000,000/-.

In absence of any proof from the plaintiff to counter or refute the claims from the 1<sup>st</sup> defendant, the odds are against the plaintiff that he did not complete the payment as per the claims of the missing 1<sup>st</sup> defendant, so he failed to honour the terms of sale agreement between the two of them.

According to Exhibit P1 which is the Sale Agreement between Oscar Henry Katunzi and Yassin Abraham Mringo (plaintiff), the purchase price was Tshs 146,000,000/-. It was agreed that the mode of payment will be thus; the first instalment i.e. Tshs 20,000,000 will be paid immediately after signing the agreement, which was on 13/04/2016. The second instalment will be payment of the remaining balance which is Tshs. 126,000,000/-, and which will be paid after the issuance of permit for change of use of land from school to residency by the authority concerned. *Adls.*



Furthermore, the terms of agreement states further that if the said permit will not be issued, then the buyer will be entitled to only one acre of land from the suit premises worth Tshs 20,000,000/-. I will hereby quote the terms of Sale Agreement;

*"3. Kwamba MUUZAJI na MNUNUZI wamekubaliana kwa pamoja malipo ya mauziano yatafanyika kwa awamu mbili kama ifuatavyo:*

- i) Awamu ya kwanza Mnunuzi atamlipa MUUZAJI shilingi Milioni Ishirini (Tshs. 20,000,000/-) ambayo italipwa mara tu baada ya kusainiwa Mkataba huu.*
- ii) Awamu ya pili ya malipo ya kiasi kilichobaki yaani milioni moja na ishirini na sita (shs. 126,000,000) itafanyika mara mchoro na kibali cha kubadili matumizi kutoka shule kwenda makazi vitakapopitishwa na mamlaka husika.*
- iii) Ikiwa kibali tajwa hapo juu hakitapitishwa, Muuzaji atampimia mnunuzi eneo la ekari moja lenye thamani ya shilingi milioni ishirini (Tshs. 20,000,000/-) yaani kiasi ambacho mnunuzi atakuwa ameshamlipa muuzaji (emphasis added).***

On cross examination by Ms. Julius, the plaintiff again admitted that they had agreed with the 1<sup>st</sup> defendant on payment by instalments as per Exhibit P1. He agreed that they did not get a permit on change of plan of use of land from school to residential. He claimed that, although the permit has not been issued until now, it has no time limit as they are still processing for

*Allo*

it. He also admitted that he has not produced any document in Court to prove the alleged payments but he will if he was asked to do so.

When cross examined by Mr. Mashaka on Exhibit P1, the plaintiff stated that he has noted the 1<sup>st</sup> defendant's claims in his written statement of defence that, he, the plaintiff paid only Tshs 20,000,000/- but he maintained adamantly that he has paid the whole purchasing price.

In the circumstances where the plaintiff is claiming that he paid the whole purchase price while the 1<sup>st</sup> defendant contended in written statement of defence that the plaintiff paid only Tshs. 20,000,000/-, it is my view that it was the duty of the plaintiff to prove that he fulfilled his contractual obligations.

However, the plaintiff has not produced any evidence beside his oral claims that, he paid the remaining balance. Since he has not proved to this court that he fulfilled the terms of the sale agreement between him and the 1<sup>st</sup> defendant, then his status stand as per item (iii) of the sale agreement i.e. he is entitled to one acre worth Tshs. 20,000,000/- which he is required to get from Oscar Henry Katunzi (1<sup>st</sup> defendant).

In the final submissions by the counsel for the 2<sup>nd</sup> – 9<sup>th</sup> defendants, the counsel submitted that since the remaining balance of Tshs 126,000,000/- was not paid by the plaintiff to the 1<sup>st</sup> defendant then no consideration was *Adde.*

fulfilled in regards to the 7.5 acres of land in accordance with the conditions of the Sale Agreement Exhibit P1.

The counsel for the 2<sup>nd</sup> – 9<sup>th</sup> defendants referred this Court to the case of **Stella Masha vs. Tanzania Oxygen Limited** [2003] T.L.R 64. In the referred case, among other things, this court cited with approval the case of **Coker vs. Ajewole** (1976) (1) ALR Comm 230 at page 235 in which it was stated that,

*"It is a settled law that a person seeking to enforce a contract must show that all conditions precedent have been fulfilled and that he has either perform all the terms which ought to have been performed by him. Accordingly, generally a plaintiff in an action for specific performance of an agreement cannot succeed if there is a failure on his part to discharge his obligations under the said agreement".*

It is also a trite law that whoever desires a Court to give judgment in his/her favour, he/she must prove that those facts exists. This is provided under Sections 110 (1) (2) and 112 of the Evidence Act, Cap 6 R.E 2019.

As observed earlier, the 1<sup>st</sup> defendant's written statement of defence raised claims that the ownership of land in dispute was never transferred from the 1<sup>st</sup> defendant to the plaintiff as the latter never fully paid the purchase price. Although the 1<sup>st</sup> defendant is ex-parte, his written statement of defence was filed in Court and is part of the Court records. *Alle.*

PW2 Angrose Jeston Ntahondi was a lawyer who witnessed the sale agreement. He stated that he attested the sale agreement between the plaintiff and the 1<sup>st</sup> defendant. That, the agreed price was Tshs. 146,000,000/=. In cross examination, he said that he never witnessed the payment between the plaintiff and the 1<sup>st</sup> defendant but he knew that as per the sale agreement, the payment was to be in installments and the first instalment was to be Tshs. 20 Million.

PW3 was Mary Anthony Mushi who testified that he knows Oscar Henry Katunzi. That the said Katunzi told her he was selling his land located at Madale. That she told the plaintiff about the sale. She stated that she with the plaintiff and Oscar Katunzi went to see the land and later went to the Street Chairman leader one Deodatus Kamugisha who confirmed that he knows Oscar Katunzi. This witness also did not state whether she witnessed the payments of the purchase price.

From this analysis, I find that, the ownership of land in dispute which is claimed to be owned by Oscar Henry Katunzi was never transferred to the plaintiff. If the plaintiff has any claim over the land in dispute, then it should be a one acre piece of land which as per Exhibit P1, should be allocated to the plaintiff (who was the buyer) by Oscar Henry Katunzi (1<sup>st</sup> defendant).

If the plaintiff is not the lawful owner of the land in dispute, then who is the lawful owner of the said land?

*Aelle*

In order to prove that Oscar Henry Katunzi is the owner of the land in dispute, the plaintiff, testifying as PW1, told the Court that, Oscar Henry Katunzi told him he bought a piece of land (shamba – land in dispute) from Mohamed Hussein Kangambili in 1992. And that Mohamed Hussein Kangambili bought that land from Binti Ibrahimu Kapemba in 1983. He tendered exhibits P2 and P3 respectively which were admitted in Court. Exhibit P2 is the sale agreement between Oscar Henry Katunzi and Mohamed Kangambili and Exhibit P3 is a sale agreement between Mohamed Kangambili and Binti Ibrahimu Kapemba. In both exhibits, the land is located at Madale, and is measured at 08 acres.

In the 2<sup>nd</sup> – 9<sup>th</sup> joint written statement, the 2<sup>nd</sup> defendant claimed that she was the lawful owner of the land in dispute. Testifying as DW2, Anna Luvanda who is the 2<sup>nd</sup> defendant, said that the land in dispute was legally owned by her, and she bought it in 1992 from one Prisca Tesha and that she has lived there peacefully for more than 24 years. That, she went with Prisca Tesha to Tegeta Village Office (as it was called by then) for the process of entering a sale agreement between them.

DW2 stated further that at first, she has made enquires about the land in dispute at Tegeta Village Office where she was assured that the land is owned by Prisca Tesha. That at that time, the land was bushes, and she bought it at Tshs 150,000/-. The witnesses were Gratian Mbelwa and Mzee Kipara Moto. She tendered the Sale Agreement which was admitted as Exhibit D1 collectively with its certified copy. *Aelle*

Before determining on the contents of Exhibit D1, I should point that, during the trial, the counsel for the plaintiff raised an objection on admissibility of the said document on the reason that the original Sale Agreement has no stamp duty contrary to Section 47 of the Stamp Duty Act, Cap 189. Section 47 of the said act provides that instruments not duty stamped shall be inadmissible in evidence.

Mr. Kessy for the plaintiff stated that it is only the photocopy which is stamped so, the document should not be admitted. Mr. Mashaka for the 2<sup>nd</sup>-9<sup>th</sup> defendants argued that the original document was laminated so it could not be stamped. That, for that reason, they were advised to photocopy the original document which they did, certified it, then stamped it.

I agreed with the explanation given by the defence and admitted the original document and its photocopy which is certified, collectively as Exhibit D1.

As regards to the admissibility of the document, I am of the opinion that since the original document has been tendered along with the certified copy which is stamped, Section 48 of the Stamp Duty Act, provides for authenticated copy of the document to be sent to a Stamp Duty Officer.

In the circumstances at hand, the court is satisfied that the certified copy of the original was duly stamped and therefore the requirement of the provisions of the Stamp Duty Act was complied with. Hence the document is admissible.

*Alle*

DW2 stated further that she has owned the land in dispute peacefully and undisturbed for about 24 years until 2017 when the dispute arose with the plaintiff claiming that he is the owner of the land in dispute. DW2 stated that at the time she was buying the land in dispute, it was measured at 10 acres, but later, the land was reduced in size when unknown people constructed rough roads around the disputed area.

When she was cross examined, she stated that Prisca Tesha got the land by being allocated by the Village Government. However, she did not tender any document to prove the claim that Prisca Tesha was allocated the land in dispute by the Village Government.

The evidence of DW2 Ana Luvanda, was supported by DW3, Hussein Mkumba. He stated that he has lived at Madale Mivumoni since 1974. That he knows DW2 since 1994, as she owned a land which is nearby his area. That the land was previously occupied by a woman called Mama Tesha, and that, the village Government did not grant the land to Mama Tesha because at the time, the area was wild bushes and unoccupied and people used to take unoccupied land, clear the bushes and claim the land.

The evidence of DW2 was also supported by Adam Mbambango who testified as DW4. He stated that he is a cell leader at Mivumoni area cell No. 4. That he has been a cell leader since 2009. He said he know the land in dispute and that he knows DW2 who is the owner of the said land. That, previously the land was owned by Mama Tesha. DW4 stated that he has known DW2 *Alleg.*

since 2012 as the land in dispute is within the area of his leadership, and his home is nearby DW2's area and he used to see her farming in the area.

DW5 was Gratian Mbelwa who also supported the evidence of DW2 Anna Luvanda. He stated that he was a Street Chairman of Madale Street where the land in dispute is located. His leadership was from 2004 – 2009, and again 2014 – 2019. He stated that in 1992 when DW2 was buying the land in dispute, he was a witness. That the land in dispute was legally owned by DW2. He identified in Court, Exhibit D1, the sale agreement between DW2 and Mama Tesha which he had witnessed.

After examining the plaintiff's evidence which shows that the land in dispute was legally owned by Oscar Henry Katunzi and DW2's evidence which shows that the land in dispute was legally owned by DW2 Anna Luvanda, I am convinced that the balance of probability is in favour of DW2 as her evidence clearly shows and has convinced the court that she is the lawful owner of the land in dispute.

I say so for the reason of presence of major discrepancies or doubts which are in the evidence of the plaintiff. First, the plaintiff did not bring any witness who reside along the area in dispute (a neighbour) to support his evidence that the land in dispute belongs to Oscar Henry Katunzi.

Exhibit P2 is a Sale Agreement between Mohamed Hussein Kangambili who is claimed to be the original owner of the land in dispute, and Oscar Henry *Alle*



Katunzi. The agreement was entered on 24/12/1994 and was witnessed by witnesses one Hussein Mkumba, and Nassoro Juakali and Chande Katipwai who was a Street Chairman of the area who signed and stamped the document. None of the witnesses were brought to testify on the validity of the Sale Agreement.

I am aware of the general rule that no particular number of witnesses is required to prove the fact. However, in the circumstances, I am of the view that, it was important for the plaintiff's case to try and bring those witnesses to prove his claims.

The importance of the evidence of persons who witnessed the purported sale between Oscar Katunzi and Mohamed Hussein Kangambili is cemented by the evidence of Mohamed Hussein Kangambili himself who testified as DW1. DW1 said that he moved from Kipawa, Dar es Salaam to live at Madale, Dar es Salaam in 1989. He was shown Exhibit P3 which is the Sale Agreement between Binti Ibrahim Kapemba and Mohamed Hussein Kangambili which was entered in 1983. He vehemently denied to have entered any sale agreement and stated that he don't know any Binti Ibrahim Kapemba and had never sold any land to her.

He said that, he was born in 1967. According to Exhibit P3, DW1 entered a Sale Agreement in 1983 at Madale, Dar es Salaam. He contended that at that time, i.e. 1983, he was still a student, aged 16 years old and he was still living at Ilonga Village, Mahenge. *Adls*

DW1 stated further that he knows one Oscar Henry Katunzi as he once entered a Sale Agreement with him where he sold him his piece of land located at Madale, Nakasangwa, Mashamba ya Jeshi, Dar es Salaam. That, the piece of land he sold to Oscar Henry Katunzi was measured at 30 x 50 by foot septs. DW2 was shown Exhibit P2. He said he don't know the land described in the document and has never owned it. He said further that he was surprised to see his picture and signatures on the documents.

In cross examination, DW2 reiterated that, the piece of land he sold to Oscar Henry Katunzi is located at Nakasangwa, Madale and not at the land in dispute. He said that he sold the said area at Tshs. 35,000/-. But the sale agreement remained with Oscar Katunzi who was the buyer so he is unable to tender the agreement before the Court.

In re-examination, DW2 stated that he could not prove that he was born in 1967 as during the time he was born, there was no birth certificates.

DW8, Deodatus Kamugisha who was a Street Chairman from 2009 to 2014 and 2014 to 2019, also stated that the land in dispute was lawful owner by Ana Luvanda, DW2. He was shown Exhibits P4 and P5 which are purportedly letters and identification of Oscar Henry Katunzi by the Street Local Government. The letters were both signed by DW8 and stamped with official stamp. He denied to have ever seen nor signed the same.

The second reason for my finding that the land in dispute does not belong to the plaintiff is that, I have already pointed earlier herein that the plaintiff

*Aelle*

was in breach of his obligations as per the sale agreement between him and Oscar Henry Katunzi in such a way that the ownership did not move from Oscar Henry Katunzi to the plaintiff. Even if the ownership could have been moved, it would be void ab initio as the ownership of the land in dispute by Oscar Henry Katunzi was not proved to the balance of probabilities, a standard required in civil matters.

On 06/5/2022, the court visited the locus in quo to ascertain whether the land in dispute claimed by the plaintiff, was the same area claimed to belong to DW2. The court satisfied itself that the area is the same as the plaintiff and defendants were present and were the one who pointed the area and borders to the Court.

For this analysis, the first issue is answered that DW2 Ana Luvanda is the lawful owner of the land in dispute. This is for the reason that the Court has been satisfied by her evidence which was also corroborated by other evidence that the land in dispute was legally owned by her since 1992 and she has been in occupation of the same undisturbed until 2016/2017 when the present dispute arose.

Since the Court has found DW2 to be the lawful owner of the land in dispute, then what is the status of the other defendants?

According to the evidence of DW2, she is no longer the occupant/ owner of the land in dispute as she divided the same into pieces of land which she sold to Martinian Kashiija, 3<sup>rd</sup> defendant and Yusuf Tugutu, who was *Accts.*

represented by the power of attorney by the 4<sup>th</sup> defendant. The 2<sup>nd</sup> defendant being the owner of the land in dispute, she had right to dispose it in any lawful way she deems fit including selling it. As there is no dispute between the 2<sup>nd</sup> defendant and the 3<sup>rd</sup>, 4<sup>th</sup> defendants that the 2<sup>nd</sup> defendant sold pieces of land from the land in dispute to them, then I will not waste the court's time in discussing the sale agreements between those two sides.

I hereby find that the 3<sup>rd</sup> and 4<sup>th</sup> defendants are the lawful purchasers of the pieces of land which forms the land in dispute as they bought the same lawfully from the 2<sup>nd</sup> defendant. This was evidenced by exhibit D2 which is a sale agreement between the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> defendant and exhibit D4 which is a sale agreement between the 2<sup>nd</sup> defendant and the 4<sup>th</sup> defendant. As the 2<sup>nd</sup> defendant was the lawful owner of the land in dispute, I find that the ownership passed successfully from her to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

The same position goes for 8<sup>th</sup> defendant Frank Michael and 9<sup>th</sup> defendant Gerald Sima who claimed to buy pieces of land from Martinian Kashaija the 3<sup>rd</sup> defendant who bought the same from 2<sup>nd</sup> defendant.

There is no dispute that the 8<sup>th</sup> and 9<sup>th</sup> defendants bought the land in dispute from the 3<sup>rd</sup> defendant who also bought the same from the 2<sup>nd</sup> defendant who was the lawful owner of the land in dispute. The sale agreements to evidence the sales was tendered as exhibits D5 and D6 respectively. *Alle*

To sum up on the first issue as to who is the lawful owner of the land in dispute/suit premises, it was the duty of the plaintiff to discharge the burden as he is the one who instituted the suit claiming that he is the lawful owner of the land in dispute.

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

In the present case, the plaintiff failed to discharge the burden of proof on the balance of probabilities. By this, as already explained, the lawful owner of the land in dispute was the 2<sup>nd</sup> defendant who later sold the land in dispute to the defendants who, among them also sold the same to other people.

If the answer to the first issue is as hereinabove, then **the second issue as to whether the defendants are the trespassers on the land in dispute** is answered in negative. As I have observed and found on the first issue, the 2<sup>nd</sup> defendant was the lawful owner of the land in dispute which she sold to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and which the 3<sup>rd</sup> defendant also sold to the 8<sup>th</sup> and 9<sup>th</sup> defendants and other people.

**The third issue is to what reliefs are the parties entitled to.** *Alls*

As the plaintiff did not succeed to discharge his burden of proof sufficiently on the balance of probabilities, he is not entitled to any reliefs claimed in his plaint.

In their amended Joint Written Statement of Defence, the 2<sup>nd</sup> – 9<sup>th</sup> defendants have prayed for the plaintiff's claims to be dismissed with costs. As they did not claim for any other reliefs in their pleadings, nor filed any counterclaim, the court cannot award the reliefs claimed outside the pleadings.

Before going further, I have also observed that the plaintiff did not prove any claim against Gratian Kamalwa Mbelwa, the 5<sup>th</sup> defendant and Deodatus Kamugisha, the 6<sup>th</sup> defendant.

For the reasons I have hereinabove explained, I hereby dismiss this case in its entirety. The plaintiff shall bear the costs of the suit.

It is so ordered. Right of appeal explained.

Dated at Dar es Salaam this 09<sup>th</sup> day of June, 2022.



  
A. MSAFIRI.  
JUDGE