

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT DAR ES SALAAM**

LAND CASE NO. 57 OF 2020

GUNGUTALA MKOROMI (Suing as the administrator of the estate of the late
Mkoromi Mangalyuma Mkamalachaka..... PLAINTIFF

VERSUS

NICK ITUNGA.....1ST DEFENDANT

THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH

OF TANZANIA.....2ND DEFENDANT

COMMISSIONER FOR LANDS3RD DEFENDANT

MINISTER FOR LANDS AND HUMAN SETTLEMENTS

DEVELOPMENT.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

28/06/2022 & 12/07/2022

GWAE, J

The amended plaint in this suit duly filed on 10th June 2022, discloses that, on 27th day of April 2091, the plaintiff, Gungutala Mkoromi was duly appointed to be an administrator of the estate of one Gungutala Mangalyuma



Mkamlachaka Komba (his late father) who passed away on 23rd day of May 1990.

It is the averment by the plaintiff that sometimes in 1989, the said 15 acres were encroached when the late Mkoromi felt sick however later on the deceased person was able to redeem the said acres and then hosted one Alibhai to harvest salts therein until when the said Alibhai left the country in the early 1990.

It is further the plaintiff's averment that in the year 2008 the plaintiff and the family of the late Mkoromi (herein "deceased") became aware of the fact that the land in which the deceased and his family was residing and doing various economic activities since allocation of 15 acres to the deceased on the 20th June 1975 by village authority (Mtongani village at Kitongawima area) was surveyed in 2004 particularly when they purported to build modern house to replace their mud house which led to demolition of their residential houses in Plot No. 2424 Block "L" Mbezi Beach, within Kinondoni Municipality in Dar es salaam Region and eviction thereof.

After awareness of the survey, the plaintiff and the family of the deceased person made necessary follow ups to the responsible Government Institutions. Eventually, they came to realize that, the said Plot No. 2424 was

re-surveyed and ten (10) plots were generated out of it, these were; 2424/1 to 2424/10. Fortunately, the deceased's family was eventually granted three plots out of the said ten plots, these were; Plots No. 2424/2, 2424/4 and 2424/5. The plaintiff is claiming ownership of other plots (Plot No. 2424/6, 2424/7/, 2424/8 and 2424/9) created out of Plot No. 2424 before its subdivision save to Plots No. 2424/10 declared by the court of law to be lawful property of one Thadeo and Plot No. 2424/1 and 2424/ 3 whose occupiers had already compensated the deceased's heirs.

Now, in his endeavors to have the said four plots granted or allocated to the family of the late Mkoromi, the plaintiff as a legal representative of the deceased has knocked the doors of this court praying for judgment and decree against the defendants jointly and/or severally as follows;

- a) For a declaration that the plaintiff's late father was the lawful owner of the whole land currently known as Plots No. 2424/1 to 2424/10 Block "L" Mbezi Beach, in Kinondoni Municipality and surrounding area to total of fifteen (15) acres
- b) For a declaration that the plaintiff is the lawful owner of the Plots No. 2424/6, 2424/7/, 2424/8 and 2424/9 (suit plots) Block "L" Kinondoni Municipality.

- c) For a declaration that the plaintiff is the lawful owner of the Plot No. 2424/7, 2424/8 and 2424/9 Block "L" Mbezi Beach ((three suit plots) unlawfully allocated to the 2nd defendant by the 3rd and 4th defendant.
- d) For a declaration that the plaintiff is the lawful owner of the Plot (three suit plots) allocated to the 2nd defendant by the 3rd and 4th defendant was unlawful
- e) For a declaration that the 1st defendant and 2nd trespassers unto the suit land
- f) For an order of vacant possession of the suit plots to the plaintiff
- g) In the alternative, for an order of compensation to the plaintiff from the 3rd and 4th defendants for the unlawful demolition of their houses and unlawful eviction of the plaintiff and his relatives from his late father's land without compensation
- h) For general damages to be assessed by the court
- i) For the interest at the court's rate and
- j) For the costs of this suit

When the defendants were served with the copies of the plaintiff's amended plaint to the defendants, namely; Nick Itunga, the Registered



Trustees of the Anglican Church of Tanzania, the Commissioner for Lands, Minister for Lands and Human Settlements Development and the Attorney General who shall be referred hereinafter to as 1st, 2nd, 3rd, 4th and 5th defendants), the 3rd, 4th and 5th defendants through their joint written statement of defence to the amended plaint seriously contested the plaintiff's claims by averring that the plaintiff's late father was not allocated a total of 15 acres at the suit plots and that ten Plots (2424/1-2424/10) including the suit plots, four plots after sub-division of from Plot No. 2424 Block "L" Mbezi Beach emanated from Plot No. 1079 Kunduchi Salt owned by one Nurmohamed Alibhai.

Admittedly, the 3rd, 4th and 5th defendants jointly stated that the 1st defendant trespassed into suit plots and that the 2nd defendant was lawfully allocated three suit plots, that the alleged mud houses were demolished by the Government officials due to the fact that the plaintiff was not a lawful owner of the suit plots and that the family of the deceased were allocated three (3) plots aforementioned on the basis of humanity. However, they contended that Plots No. 2424/1, 2424/3 and 2424/6 are still under Government ownership as opposed to the plaintiff's assertion.



In his defence, the defendant who he did not wish to amend after the filing of the plaintiff's amended plaint as per this court order dated 9th June 2022 which was to the effect that the defendants were at liberty to file their amended plaint if need arise, though his WSD, denied the plaintiff's claims by stating that he was lawfully granted the three plots by the allocating authority.

Replying to the WSD filed by the 3rd, 4th and 5th defendants, the plaintiff stated that the land owned by the said Alibhai was different from the one owned by the plaintiff's late father and that he was compensated by those people who own Plot N. 2424/1 and 2424/3 as well as Plot No. 2424/10.

The parties in this suit had legal services from their respective learned counsel, Ms. Stella Simkoko appeared for the plaintiff, Mr. Mwanenza Mapembe for the 1st defendant whereas Mr. John Mponera represented the 2nd defendant whilst Miss Lupondo assisted by Mr. Salehe Manoro, both the learned state attorney who appeared representing the 3rd, 4th and 5th defendants.

On the 16th day of June 2022, this court with consultation with the parties' counsel framed the following issues for the parties' proof or disproof and eventually court's determination;

1. Whether the plaintiff's father was the lawful owner of 15 acres allocated to him by the then Mtongani Ujamaa village at Kilongawima in 1975
2. If issue No. 1 is answered to the affirmative whether the survey in 2004 is unlawful.
3. Who is the rightful owner of Plots No. 2424/6, 2424/7 2424/8 2424/9 and 2424/10?
4. Whether the 1st and 2nd defendants are trespassers to the suit plots
5. Whether the plaintiff is entitled to compensation for unlawful demolition of their houses and unlawful eviction from the 3rd, 4th and 5th defendants?
6. To what reliefs are the parties entitled to.

In discharging his onus of proof of his claims against the defendants, the plaintiff was able to summon his four witnesses to wit; Hussein Abdallah Katendele (PW1), Juma Kitundu Mbogo (PW2), John Mathias Mangana (PW3) and Gungutala Mkoromi (PW4).



He also tendered a total of nine (9) exhibits, these are; an affidavit affirmed on the 5th May 2022 regarding the use of both names of Hussein Abdallah Katendele or Juma Kandele (PE1), A letter of allocation of 15 acres in favour of the plaintiff's late father by the then Mtongaji village authority dated 15th June 1975 (PE2), application letter for allocation dated 13th May 197 (PWE3) by the late Mkoromi, land rent receipt of 20th June 1975 (PE4), a letter dated 5th May 2008 written by Minister's Persona Secretary and addressed to the RC's Personal Secretary, A letter dated 7th January 2009 for survey of a farm which was written by plaintiff's brother, Michael Mkoromi and addressed to the DED Kinondoni Municipality accompanied by various correspondence letters (PE6), Survey Plan of Plots No. 2424/1 to 2424/10 Block "L" Mbezi Beach dated 3rd September 2013 with Plan No. E' 255/649/10297, the survey of Plots No. 2412-2440 dated 31st August 2004 (E' 255/446 accompanied by Survey of Plots No. 2424/1-2424/10 Block "L" Mbezi Beach withi Kinondoni Municipality, an affidavit sworn by the plaintiff to the effect that, the names of Mkoromi Mangalyuma Mlalachaka Komba and Mkoromi Mlalachaka Komba are the names of the plaintiff's late father (PE8) and letters of administration of the deceased person's estate granted

in favour of the plaintiff on the 27th day of April 1991 by Kawe Primary Court (PE9).

Through oral testimonies by the said four witnesses, the plaintiff was able to adduce evidence to the effect that, the late Mkoromi was allocated the farm measuring 15 acres where the suit plots are currently located and that there were members of the Mtongani village allocating committees (PW1&PW2) who witnessed such allocation.

Evidence adduced on the side of the plaintiff through PW3 and PW4 is also to the effect that, the late Mkoromi became into customary possession and use of 15 acres since 1958 till 1975 when he was formally allocated with the same by Mtongani Village Authority allocated, that, there were correspondences between the deceased person's family and the Government responsible offices for lands after discovery that the suit plots including other plots within 15 acres to have been surveyed since 2004.

Admittedly, PW3 and PW4 testified that they are beneficiaries of the plots generated out of Plot No. 2424 (Plot No. 2424/2, 2424/4 and 2424/5) granted to the deceased's family and orally cemented that the 2nd defendant was unlawfully granted Plot No. 2424/7-2424/9 adding that the 3rd, 4th and



5th defendants jointly liable for the plaintiff's claims due to the fact that they unlawfully surveyed the 15 acres and without notice to the family of the deceased.

When cross examined by Miss Luondo, the plaintiff's witnesses especially PW3 and PW4 as to whether they have any documentary evidence as to the grant of Plot No. 2424 to the deceased person, they replied that the said deceased had never been granted the mother plot before its subdivision in 2008.

After close of the plaintiff's case, the 1st defendant entered no defence whereas the 2nd defendant summoned one Leonard James Mgomelo (DW1) whose evidence is to the effect that the 2nd defendant is the lawful owner of three disputed plots (Plots No.2424/7-2424/9) on the ground that she was granted by the body in authority. He then produced a certificate of title with No. 160627 Land Office No. 457373 issued on 25th November 2013 with its Survey Map (DE2).

On the part of the 3rd, 4th and 5th defendants, equally there was only one witness one Helen Philipo who appeared during hearing as DW2. She gave her testimony regarding the history by stating that originally one Alibhai



Nurmohamed was granted a farm measuring 146 acres known by as Kunduchi Salt Works Limited in 1967 including the place in which the suit plots are situated and that the said Alibhai surrendered the said right of occupancy to the Government of Tanzania. In support of her oral testimony, she tendered a Certificate of Occupancy (DE3) comprised of 146 acres granted to the said Alibhai for 99 years on 22.06.1967 and which demonstrates its surrender by the previous owner on 1st June 2013

DW2 also testified that the heirs of the late Mkoromi were duly notified of the suit plots and other plots to the effect that the same were surveyed out of the Plot No 1079. She added that the one who was suitable person to complaint over the suit plots that emanated from Plot No. 1079 was the previous owner of the farm, Alibhai. DW2 had an opportunity of using a letter dated 11th June 2018(DE1) addressed to the plaintiff and written by the Ministry of Lands which is to the effect that, Plots No. 2424/1 to 2424/10 emanated from Survey Plan No. E'.255/449 after the survey over Plot No. 1079 surrendered by Alibhai Nurmohamed to the Registrar of Title on the 1st June 2012. DW2 marked the end of defence case.

The parties' advocates obtained the leave to file their respective closing submissions which they file in accordance with the court's order dated 23rd



June 2022 save the 1st defendant who did not file the same. I shall give due consideration to the final submission in the course of determining each issue as herein under. Suffices at this juncture to heartedly thank the counsel for the parties for their supportive and guarding submissions towards making of this judgment.

Now, to the court's determination of the above framed issues, starting with the 1st issue which reads; **whether the plaintiff's father was the lawful owner of 15 acres allocated to him by the then Mtongani Ujamaa village at Kilongawima in 1975.**

Before I start tackling of the 1st issue, I would briefly respond to the submissions by the counsel for the 3rd, 4th and 5th defendants in that, the matter against the defendants is not barred by the Law of Limitation Act since it is amply clear from the parties' oral evidence and documentary evidence that, the plaintiff became aware in 2008 (See DE5) of the survey conducted in 2004 while this suit was duly instituted in April 2020. I am saying so simply because, the plaintiff has glaringly testified that he has relinquished institution of case against those who were allocated other plots (Plots No. 2412 to Plot No. 2440 save Plot No. 2424) as the same was time

barred. Hence, in my considered opinion, the course of action accrued when the alleged demolition and eviction took place.

More so, I am aware of the ruling dated on 21st day of October 2021 delivered by my learned Lady Justice **Mwenegoha**, J overruling the preliminary objection raised by the defence, though the same not available in the case file.

Back to the 1st issue, it is a general principle that whoever desires the court to decide in his or her favour who depends on the existence of certain facts must prove existence of those facts as provided under provisions of section 110 of the Tanzania Evidence Act, Cap 6, Revised Edition, 2019 and as correctly stressed in the case of **Antony M. Masanga vs. Penina Mama Magezi and Lucia** (Mama Anna), Civil Appeal No. 118 of 2014 (unreported), the Court of Appeal of Tanzania in underscoring the standard of proof in civil cases had these to say;

"Let's begin by re-emphasizing the ever-cherished principle of law that generally, in civil case the burden of proof lies on the party who alleges in his favour"

In present suit, I have carefully examined both oral testimonies of the plaintiff's witnesses (PW1-PW4) and documentary evidence which is to

the effect that, the late Mkoromi initially cleared the virgin land including suit plots since 1958 and he finally applied and obtained the letter of offer (PE2). Basing on the oral evidence and that of PE2 and PE3, it is amply established that the plaintiff's father did apply for allocation and was allocated fifteen (15) acres at Kilongawima area by Mtongani Village Authority and he might have probably buried his relatives in that farm granted to him as exhibited by the Survey Map, E' 255/446 where Plot No. 2440 is indicative of existing cemetery with 2113 sqm (See PE7).

Although, I am alive of the principle that consistencies of evidence in vital matters may weaken a party's case as argued by the counsel for the 3rd -5th defendants however examining the testimonies of PW1 and PW4, the difference of evidence in whether there were neighbors is cured when the former witnesses testified in that regard that there were no neighbors when the deceased cleared the virgin land in 1958 and when the later (PW4) testified that he found neighbors at the Plot, that is so because when he (PW4) was born in 1970s.

However, according to the pieces of evidence particularly the admitted fact that, the then Mtongani Village had more than 50 acres, this court apprehends doubts as to whether the late Mkoromi was granted 15 acres



located at the disputed plots. Furthermore, as correctly submitted by the counsel for the 3rd, 4th and 5th defendants and admitted by PW1 that the said 15 acres purporting to have been allocated to the plaintiff's late father bore no boundaries nor the plot's descriptions are indicated in that letter of offer. Thus, in my considered view, there are a lot to be desired or to certainly hold that the said 15 acres allocated to the plaintiff by the then Mtongani Village Authority, "Kamati ya Ujenzi na Kilimo" included the disputed plots and other surveyed plots. descriptions of the land said to have been allocated to the late Mkoromi was vitally important in order to differentiate it from other parcels of land (See a decision of this court (**Utamwa, J**) in the case of **Daniel Dagala Kanuda (As Administrator of the estate of the Late Mbalu Kushaba vs. Masaka Ibeho, Sita and others**, Civil Appeal No. 26 of 2015 (unreported). Therefore, the 1st issue is partly determined in affirmative.

In the 2nd issue, **if issue No. 1 is answered to the affirmative whether the survey in 2004 is unlawful.**

According to the evidence on record, it is not disputed that there was survey of Plots No. 2412-2440 Block "L" Mbezi Beach conducted in the year



2004. Evidence given by DW2 and PE3, in my opinion, is worth of belief in that, there was a subsequent sub-division of the Plot No. 2424 Block "L" Mbezi Beach conducted in 2013 generating ten plots out of it, the disputed plots inclusive. DW2 went on stating especially when cross examined that survey of Plot No. 2424 depended on the town plan and use of the land. Moreover, the plaintiff is not a right person to claim if the survey conducted in 2004 prior to the surrender of Plot No. 1079 was lawful or otherwise as the one who is the proper person to question its propriety or else was the said Alibhai Nurmohamed, the former owner of Kunduchi Salt Works Limited who was granted the same since 1976. The 2nd issue is answered the survey of 2004 was lawful.

As to the 3rd issue to wit; **who is the rightful owner of Plots No. 2424/6, 2424/7 2424/8 2424/9 and 2424/10?**

Since the 1st defendant has not filed his defence and he has not subsequently entered his defence at all and since the defence witness for the 3rd to 5th defendants (DW2) has sufficiently testified to the effect that Plots No. 2424/6 and other Plots (Plots No. 2424/1 and 2424/3 are still under the ownership of the Government as of now. Regarding to three suit plots



owned by allocated to the 2nd defendant by the 3rd to 5th defendants. According to section 2 of the Land Registration Act, Cap 334, Revised Edition, 2019 defines owner as follows;

"In relation to any estate or interests the person for the time being in whose name that estate or interest is registered"

The Court of Appeal in the case of **Amina Maulid Ambali and 812 others v. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (unreported) when interpreting section 2 of the Act (supra), had these to say;

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is provided that the certificate was not lawfully obtained"

In our instant suit, the 2nd defendant through her witness, DW1 has been able to sufficiently prove his ownership as envisaged by the above quoted provision of the law that, she lawfully obtained the certificate of title (DE1). Also, DW1's testimony has been amply supported by that of DW2 who vividly adduced to the effect that Plot No. 2424/7 to Plot No. 2424/9 had been procedurally allocated to the 2nd defendant and not neither the

plaintiff nor the 1st defendant. I am also guided by judicial decision in the case of **Salum Mateyo v. Mohamed Mathayo** (1987) TLR 111 where Justice Mroso (as he then was) had the following to say;

"It seems to me clear that in law, the appellant in whose name the suit premises were registered was the owner. I am fortified in this view by section 2 of the Land Registration Ordinance, chapter. 334 which defines "owner" in relation to any estate or interest as the person for the time being in whose name the estate or interest is registered."

Further to that, the plaintiff's evidence is to the effect that, the late Mkoromi has never been granted Plot No. 2424 Block "L" Mbezi Beach nor its sub-divisions particularly when his witnesses were cross examined by the defence counsel for the 3rd -5th defendants. It is also a trite principle under provisions of section 26 of the Land Registration Act (supra) that, where the registration of a certificate of title is said to constitute a conclusive proof and that a person named therein as a proprietor of the land is absolute and indefeasible owner unless the fraud or mis-presentation is strictly proved or accusations to the effect that the certificate of title (CT) was illegally or unprocedurally obtained which is not the case herein.

Had the plaintiff been able to indicate or show boundaries or specific Plot allocated to late Mkoromi in 1975 due to his long possession and use yet possession his would have been caught by legal requirements provided for under section 37 of the Law of Limitation Act, Cap 89, Revised Edition, 2019 and provisions of sections 44-51 of the Land Act (supra) for revoking or acquiring an abandoned land (See decision of the Court of Appeal of Tanzania in **The Attorney General vs. Mwahezi Mohamed** (As administrator of the Estate of the Late Dolly Maria Eustace) **and three others**, Civil Appeal No. 391 of 2019 (unreported-CAT). Worse still, it is amply established that the said Alibhai was allocated Plot No. 1079 in 1967 prior to 1975 when the plaintiff's late father is said to have been allocated 15 acres by the then Mtongani Village Allocating Committee. Having discussed as herein, the 3rd issue is therefore not decided in favour of the plaintiff.

Regarding the 4th issue, **whether the 1st and 2nd defendants are trespassers to the suit plots**

As demonstrated in the earlier issues (1st to 3rd issues), the 2nd defendant cannot be termed as a trespasser of the Suit Plots No. 2424/7 to

Plot No. 2424/9 Since he was lawfully granted by responsible and authorized Government Entity. He is therefore in possession and use of the three plots with authorization by the competent authority. My finding is fortified by the court's precedent in **Frank Mchuma vs. Shaibu Ally Shemndolwa** (1988) TLR 278 which the counsel for the 3rd, 4th and 5th defendants invited the court as a guidance where it was stated and I quote;

"Trespass means intrusion upon land in the possession of another and the defendant did intrude upon the land of the plaintiff who, under common law, was in possession of the land in Dar es Salaam even though he was in Moshi most of the time; at common law there is a presumption that possession is always attendant to title and, as the plaintiff had title to the land, it is presumed that he was in possession....."

Although in entering upon the land in question the defendant acted in honest belief that he was not trespassing on any other person's right, intentional entry upon another person's land is actionable even if done under a mistake of law or fact, or under an honest belief that the land is yours, or that you have the right to enter, that a person is not a trespasser unless he knows that h is the trespasser.....";

Furthermore, since the plaintiff has not made his case against the 1st defendant as elucidated herein above, the 1st defendant cannot therefore be



declared a trespasser against the plaintiff's suit Plot No. 2424/6 save to the Government which has not also sued him by filing a counter claim against him (1st defendant).

Now, to the determination of 5th issue, **whether the plaintiff is entitled to compensation for unlawful demolition of their houses and unlawful eviction from the 3rd, 4th and 5th defendants?**

I am alive of the fundamental principle provided by our Constitution, 1977 as amended from time to time that a person cannot be deprived of his or her parcel of land which he or she lawfully owns without an adequate or fair compensation (See Article 24 of the Constitution and the court's decision in **James Ibamba vs. Francis Sariya Moshs** (1999) TLR 364 as rightly cited by the plaintiff's counsel in her closing submission). That being the legal position, it follows therefore a person who claims compensation for deprivation of land or demolition of his properties or eviction by Government must establish that he or she lawfully owns such landed property and that, there were houses or other valuable properties and that they were evidently evicted by the defendants/ respondent.



In our case, I have failed to decide the 5th issue in favour of the plaintiff due to the following reasons, **firstly**, that, the plaintiff's claim is not against the one whom he alleges is abundantly proved to have demolished his mud houses and or who evicted him and his family as exhibited by PE5, the letter addressed to the plaintiff informing him that it was the village chairperson and Kinondoni Municipality who did demolish and evict the plaintiff's relative and **secondly**, that, the plaintiff's evidence is not heavier as that of the defence leading to the court's apprehension that he has failed to prove his ownership over the disputed plots to the required standard and **thirdly** that, DE1, the letter from the 3rd defendant's is self-explanatory that the suit plots and others emanating from Plot No. 1079 were under ownership of the Government. It follows therefore, the plaintiff is not entitled to the compensation by the 3rd, 4th and 5th defendant.

Coming to the **6th issue on** reliefs that the parties are entitled, having in mind of the above deliberations of the above issues, the plaintiff is not entitled to any relief contained in his amended plaint. However, I refrain from making an order as to costs due to the nature of the case that is, this suit was previously decided ex-parte and in favour of the plaintiff and the




fact that had the Government Institutions been responsible for land matters, this suit might not have been lodged.

That said and done, the plaintiff's suit is dismissed. Each party shall bear his or her own costs


It is so ordered

Dated and delivered through visual video this **12th July, 2022**




M. R. GWAE
JUDGE
12/07/2022

Court: Right of appeal fully explained


M. R. GWAE
JUDGE
12/07/2022