

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 60 OF 2022**

**BETWEEN**

**MUSTAFA SEIF NGANE (suing as the Administrator of the Estate of  
the late Seif Ngane.....PLAINTIFF**

**VERSUS**

**ENOCK ELIKARIA MASSAM.....1<sup>ST</sup> DEFENDANT**

**AMAN JOHN KIMARO.....2<sup>ND</sup> DEFENDANT**

**GODBLESS GODWIN MARIKI.....3<sup>RD</sup> DEFENDANT**

**GRACE MPONJI.....4<sup>TH</sup> DEFENDANT**

**QUEEN MBANDO.....5<sup>TH</sup> DEFENDANT**

**SELEMAN RAJABU KINGAMMBA..... 6<sup>TH</sup> DEFENDANT**

**DR. NAOMI KATUNZI.....7<sup>TH</sup> DEFENDANT**

**EXPARTE JUDGMENT**

*21/02/2023 & 07/3/2023*

**A. MSAFIRI, J.**

In this suit the plaintiff one Mustafa Seif Ngane is suing as the administrator of the estate of the late Seif Ngane. He claims that he is aggrieved by the unlawful acts of trespass committed by the defendants on the land he occupies lawfully. *Alle*

The plaintiff claims that, the 1<sup>st</sup> to 7<sup>th</sup> defendants have unlawfully entered and established themselves in the middle of the farm owned by the plaintiff occupying a total of 7.5 of the entire farm without any permission and consent of the plaintiff.

The plaintiff prays for the judgment and decree against the defendants jointly and severally as follows;

- i. A declaratory order that the estate of the late Seif Ngane is the lawful owner of the whole land illegally invaded and developed by the defendants as such all defendants herein lack the right to ownership of interest over the land in dispute thus are trespassers.
- ii. A declaratory order that, being trespassers, the defendants, with immediate effect, vacate and demolish at their costs, all buildings and other objects incidental thereto as developed over the land of which they trespassed; or in the event of failure or defiance in complying with such an order within a period of thirty days (30) from the date of court's judgment be forcefully evicted through the process of the Court;
- iii. A declaratory order for perpetual injunction against all defendants jointly and severally, their agents or any other person (s) acting or working under their instructions from entering, disturbing the peaceful enjoyment of the ownership of land in dispute by the plaintiff, further developing, disposing in any way whatsoever and/or doing any act whatsoever the land in dispute;

*Alls*

- iv. An order for payment of TZS. 100,000,000/= being the damage suffered by the plaintiff in pursuing and recovering the land invaded by the defendants.
- v. An order for payment of costs of this suit to the plaintiff and his advocates.
- vi. Any other relief that this Court deems fit and just to grant.

This suit was instituted in this Court on 23/3/2022 by the plaintiff against the seven (7) defendants. It is only the 1<sup>st</sup> defendant Enock Elikana Massam who has ever entered appearance in Court despite the service being duly conducted to all defendants. The 1<sup>st</sup> defendant was represented by Mr. Dua Said, learned advocate and filed his written statement of defence. The first defendant entered appearance through his advocate but later abandoned his case.

2<sup>nd</sup> – 7<sup>th</sup> defendants never entered appearance and were served through substituted service by publication in a local newspaper named Habari Leo on 26/5/2022. The 2<sup>nd</sup> – 7<sup>th</sup> defendants also failed to appear in Court and never filed their written statements of defence.

On 17/10/2022 when the matter was set for first pre-trial conference, none of the defendants entered appearance, hence the Court exercising its powers under Order VIII Rule 20 (b) of the Civil Procedure Code Cap 33 R.E 2019, ( the CPC), strike out the 1<sup>st</sup> defendant's written statement of defence and ordered the ex-parte hearing against all defendants.

At the hearing, the plaintiff was represented by Mr. Denice Tumaini and Ms. Geraldine Paul, learned advocates. *Aells*

Before embarking on the framed issues and analysis of the evidence adduced, I feel I should point that the plaintiff through his counsel Mr. Denice Tumaini, prayed for the Court to visit the locus in quo before the commencement of the hearing or before the closure of the plaintiff's case.

However, the prayer was not granted. After hearing the case which was ex-parte, the Court was satisfied that it can determine the matter based on the adduced evidence without having to visit the locus quo.

In the case of **Prof. T.L. Maliyamkono vs. Wilhelm Sirivester Erio**, Civil Appeal No. 93 of 2021, CAT at Dar es Salaam, the Court of Appeal reiterated the principle about the court's visiting the locus in quo which was set in their case of **Nizar M. H. Ladak vs Gulamali Fazal Jan Mohamed** (1980) TLR 29 where it was set that a visit of the locus in quo is not mandatory, and it is done only in exceptional circumstances.

Having gone through the evidence which was adduced in the matter at hand, I don't see any exceptional circumstances which necessitate this Court to visit the locus in quo.

Having said that, now I will embark on the matter at hand and the evidence presented before me.

Before the commencement of the hearing, three issues were framed for determination which are;

1. Whether the estate of the late Seif Ngane is the lawful owner of the land in dispute.
2. If the answer to the first issue is in affirmative, whether the defendants did trespass to the land in dispute.

3. To what reliefs are parties entitled to.

The two witnesses who were summoned for the plaintiff's case adduced their evidence through witness statements which were filed in Court and adopted during hearing as evidence in chief.

For the purpose of chronology of evidence, I shall start with the analysis of the evidence of PW2, one Mustafa Seif Ngane. He adduced his evidence that he is a biological son of the late Seif Ngane and that the late Seif Ngane was the lawful owner of a farm which is located at Kulangwa and Tegeta "A" in Goba Ward, within Ubungo Municipality. (herein the land in dispute).

That, the late Seif Ngane inherited the land in dispute from his father the late Ngane Ngakina and it was formerly located at Goba-Kisauke, Kinondoni Municipality before it was partitioned to form another Municipality known as Ubungo Municipality.

That the late Ngane Ngakina acquired this land in dispute by clearing bushes in 1930's. PW1 stated that, formerly the size of the land in dispute was 100 acres but it was reduced to 93 acres in 1991 by the Government when his late father Seif Ngane was accorded permission to continue with the process of surveying the said land.

PW2 testified further that he know the 93 acres land owned by the late Seif Ngane is bordered by a number of neighbours, on the northern it is bordered by Mama Veronica, one Sharubu (Kidevu) and the late Judge Paul Bomani. On the eastern side and on part of southern east, the disputed land is bordered by Octavian Temu. On the south west there is Paul Mnyamwezi and Mzee Kashinde, on west there is a valley. *Adde.*



He stated that the proof of ownership of the disputed land by his father is a copy of the letter from Goba Ward Executive Officer to the Deputy Registrar of High Court dated 05/9/2017 introducing the plaintiff as the lawful owner of 93 acres of the disputed land.

Also, a copy of letter dated 11/01/1991 from Town Planning Directorate to Goba Ward Secretary directing him to accord the late Seif Ngane with cooperation he would need to have 93 acres of land located at Goba to be surveyed. He tendered the said two documents which were admitted collectively as exhibit P3.

PW2 produced purported more proof to indicate the ownership of the land in dispute by his father the late Seif Ngane by tendering decisions of several cases which he claims the courts of law found and declared the late Seif Ngane to be the owner of the disputed land.

He urged this Court to take judicial notice of the decision of the High Court in (PC) Civil Appeal No. 84 of 1987 which declared the late Seif Ngane to be the owner of land invaded by William Maziku and John Andrea. Another case which PW2 claimed that the late Seif Ngane was declared the owner of land at Goba Matosa is Civil Appeal No. 120 of 2001 which was delivered on 05/3/2002.

The copies of judgments of the hereinabove stated cases were admitted in this present matter as exhibit P4 collectively.

PW2 testified further that the first to seventh defendants intruded and now occupies parts of the land located in the middle of the land owned by the estate of the late Seif Ngane which is subject of this matter. That, he

*Alle*

came to know of the defendant's intrusion in the mid of the year 2021 having noticed unfamiliar developments going on in some parts of the disputed land.

He said that, the 1<sup>st</sup> defendant occupies the disputed land which was recovered from Octavian Temu. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants occupies one and the same side of intruded land. While the land occupied by the 7<sup>th</sup> defendant is at the middle of that which was recovered from one Kyabukoba Mutabingwa, Octavian Temu and Ibrahim Kaitira Katonda.

He said further that the only way that defendants would have acquired the disputed land is by purchasing it from his late father or from a third party who would have legally purchased or received ownership from the late Seif Ngane. PW2, said that, he knew for fact that, the late Seif Ngane has never sold or conveyed any piece of land to any of the defendants.

PW2 claimed that, he tried to settle the matter amicably but with no success as the defendants refused to cooperate. That he tried to engage the Local Government authority at Goba- Kulangwa Street and even up to Ubungo District Commissioner but the defendants never showed up when they were summoned.

He also tendered an administration letter on which he was appointed by Kinondoni Primary Court as the administrator of the estate of the late Seif Ngane. The said letter was admitted as exhibit P.2.

He prayed for the Court to uphold the prayers sought in the plaint.

PW1 was one Runyoro Adolf Atulinda. He briefly stated that, he bought a piece of land from one Octavian Temu by following legal procedures. That piece of land is located at Plot No. 399 Block H, Goba Kulangwa Area, *Adels-*

Ubungo, Dar es Salaam and he was registered a sole owner of the right of occupancy of the said land. He proceeded to tender a copy of the certificate of Title which the Court admitted as exhibit P1.

After closure of plaintiff's case, the counsels filed the final submissions which I have considered while analyzing and determining the evidence.

Having gone through the whole evidence adduced before the Court along with the tendered exhibits, I will now determine the issues in this suit.

The first issue is whether the estate of the late Seif Ngane is the lawful owner of the land in dispute. In determining this issue, the Court has to ascertain on whether the late Seif Ngane was the lawful owner of the land in dispute.

According to the evidence of PW2, the late Seif Ngane inherited disputed land from his father who is also late Ngane Ngakina who obtained the said land by clearing bushes in 1930's. The late Seif Ngane inherited the said land in 1960's and the land is un-surveyed measuring about 93 acres. The available documents which shows the said land in dispute was owned by the late Seif Ngane are exhibits P3 collectively.

There is a letter dated 05/9/2017 from the Ward Executive Officer of Goba Ward, addressed to the Deputy Registrar of the High Court as the owner of farm sized 93 acres located at Kulangwa and Tegeta "A", Goba Ward. Also there is a letter dated 11/01/1991 which shows attempts by the late Seif Ngane to survey this 93 acre farm which was un-surveyed. The letter is from the Town Planning Officer at the Department of Town Planning. The said letter shows that the late Seif Ngane had requested to be formerly granted

*Alle-*



his farm which is located at Goba. The letter was addressed to the Secretary, Goba Ward, instructing the same to discuss and give opinion on the request of the late Seif Ngane to formerly own/ be formerly granted the land in dispute (a request to formalize the land in dispute).

By this evidence, this Court is satisfied that the plaintiff has been able to prove that the disputed land was owned by the late Seif Ngane, and the said land was un-surveyed whereby the late Seif Ngane was in the process of formalizing it as per exhibit P3 collectively.

The plaintiff has proved to the Court that he was appointed the administrator of the estate of the late Seif Ngane after the latter's demise.

Basing on the available evidence, the first issue is answered in the affirmative.

The second issue is whether the defendants have trespassed to the land in dispute.

The evidence of PW2 Mustafa Seif Ngane shows that the defendants have intruded and occupies the land in dispute. That, he knows and believe that the late Seif Ngane has never sold or conveyed any piece of land in dispute to the defendants.

PW1's evidence shows that the late Seif Ngane has sold few pieces of the land in dispute to some people who are not the defendants in this case. The people who purchased pieces of land from the land in dispute are one Octavian Temu, who purchased a piece of land from late Seif Ngane in 1993. This was proved by a Sale Agreement which was admitted in Court as exhibit

*Alls.*

P8. This Octavian Temu, then later sold this piece of land to PW1 Runyoro Adolf Atulinda.

Also, the late Seif Ngane sold a piece of land to one Ramadhani Abdallah Simtitu (sized one acre), Mpeli William Manase and Shirima Albani, (sized half acre), and Obarsilanta Simon Panga (sized 9800 square meters). This is per exhibit P5 collectively.

Furthermore, there was agreement between the late Seif Ngane and one Octavian W. Temu to settle the dispute between them over a piece of land within the disputed land, where it was claimed by the late Seif Ngane that Octavian Temu has trespassed into his land. The dispute was settled amicably between them as per exhibit P6 collectively.

Also there is agreement between Mustafa Seif Ngane as administrator of the estate of the late Seif Ngane and one Ibrahim Kaitira Katonda whereby they agreed to settle amicably the dispute over a piece of land occupied by Ibrahim Katonda and which was claimed to be part of the land in dispute owned by the late Seif Ngane. This is also reflected in Exhibit P6.

As already observed, there is no evidence that the late Seif Ngane ever sold any piece of the disputed land to the defendants or enter any agreement with any of the defendants to settle the land dispute amicably.

The 1<sup>st</sup> defendant entered appearance in Court on several times and even filed his written statement of defence before he abandoned his case. The 2<sup>nd</sup> to 7<sup>th</sup> defendants were served through substituted services as I have already stated, but they never appeared in Court. *Adls.*

From the available evidence, it is clear that the late Seif Ngane has never sold any part of suit land to the defendants so their occupancy of the same amounts to nothing else but trespassing. The second issue is also answered in affirmative.

The third issue is reliefs of the parties. In his plaint, among the reliefs claimed by the plaintiff is for the payment of TZS 100,000,000/= being the damage suffered by the plaintiff in pursuing and recovering the land invaded by the defendants. By this relief, the plaintiff is seeking for specific damages. However, he has not showed in his evidence how he has suffered and how he has reached to the sought amount.

That having been said, this Court finds that the plaintiff is entitled to the reliefs as follows;

1. The estate of the late Seif Ngane is declared the lawful owner of the disputed land located at Kulangwa and Tegeta "A" Streets respectively at Goba Ward (formerly known as Goba Kisauke), in Ubungo Municipality (formerly Kinondoni Municipal) in the city of Dar es Salaam (the suit land).
2. The defendants who currently occupies the suit land are declared trespassers.
3. The defendants who are trespassers, are ordered to vacate the land in dispute and remove at their own costs, any form of objects they have developed or erected on the suit land.
4. An order for perpetual injunction is hereby entered against all defendants jointly and severally, their agents or any other person

*Acts.*

(s) acting or working under their instructions from entering, further developing, disposing in any way whatsoever and/or doing any act whatsoever over the land in dispute.

5. Costs of the suit to be borne jointly by the defendants.

It is so ordered.

Right of appeal is explained accordingly.



THE HIGH COURT OF TANZANIA  
LAND DIVISION  
**A. MSAFIRI**  
**JUDGE**  
**07/3/2023**