

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 191 OF 2021

ABDALLAH OMARY NDOGONDOGO.....1<sup>ST</sup> PLAINTIFF  
OMARI MOHAMED MADANGANYA.....2<sup>ND</sup> PLAINTIFF  
MARIAM IBRAHIM WIMBE.....3<sup>RD</sup> PLAINTIFF  
UBAYA SALEHE MNYIMADI.....4<sup>TH</sup> PLAINTIFF  
SOMOE BAKARI..... 5<sup>TH</sup> PLAINTIFF  
JUMA RASHID NGUTA..... 6<sup>TH</sup> PLAINTIFF

VERSUS

SOAP AND ALLIED INDUSTRY.....1<sup>ST</sup> DEFENDANT  
MKURANGA DISTRICT COUNCIL.....2<sup>ND</sup> DEFENDANT  
COMMISSIONER FOR LANDS.....3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT  
SOLICITOR GENERAL.....5<sup>TH</sup> DEFENDANT

J U D G M E N T

*Date of last Order:14/02/2023*

*Date of Judgment:30/03/2023*

**K. D. MHINA, J.**

The plaintiffs herein have raised a claim against the defendants over land measuring 750 acres located at Lugwadu and Magodani Villages within Mkuranga District and prayed for the following reliefs;

- i. A declaration that the Plaintiffs are the lawful owners of the suit land.

- ii. The defendants be ordered to distribute/allocate 750 acres to the plaintiffs.
- iii. The 1<sup>st</sup> defendant be ordered to pay compensation over unlawful demolition of the plaintiffs' properties.
- iv. The 1<sup>st</sup> defendant be ordered to pay general damages to the plaintiffs, and the same be assessed by the Court.
- v. Costs and any other relief this Court may deem fit and just be granted.

According to the plaint, the plaintiffs herein, who sue on behalf of other 1119 persons with the same and similar interest, alleging that they are the lawful owners of the suit land measuring 750 acres located at Lugwadu and Magodani Villages, which they owned through customary rights since 1960 after clearing the bushes.

On 15 March 2016, the 1st defendant, under the direction and protection of the 2nd and 3rd defendants without any notice, invaded the plaintiffs' land and demolished their properties without giving compensation as required by the law.

The defendants vehemently disputed the claim. In the written statement of defence, the 1<sup>st</sup> defendant alleges that he owns the suit land described as Farm No. 271 of Kazole with a certificate of title no 34681 dated 17 December 1988. Further, he asserts that in 2015 and 2016, some plaintiffs invaded the suit land and destroyed mango, coconut, cashew nuts, orange and indigenous trees. Following that trespass, some plaintiffs were arraigned, prosecuted, convicted, and sentenced by Kibaha District Court in Criminal cases with Numbers 81 of 2015, 67 of 2015, and 29 of 2016.

In their joint written statement of defence, the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants allege that the suit land is owned by the 1<sup>st</sup> defendant, who was lawfully granted the right of occupancy under certificate of title no. 34681 dated 19 December 1988.

During the final Pre-Trial Conference, which is usually conducted under Order 8 Rule 40 of the Civil Procedure Code, Cap 33 R: E 2019, the following issues were framed for the determination of this Court;

- i. Who is the lawful owner of the suit land.*
- ii. Whether there was adequate compensation paid to the previous owner.*
- iii. To what reliefs are the parties entitled.*

At the hearing, the plaintiffs were represented by Mr. Jackson Komba and Mr. Kevin Mshana, learned Advocates, while the 1<sup>st</sup> defendant was represented by Mr. Mussa Maghimbi and Mr. Nimrod Msemo, also learned Advocates. The 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants were represented by Ms. Kimaryo and Ms. Johari Mkwawa, both learned State Attorneys.

The first plaintiffs' witness **Abdallah Omary Ndogondogo (PW1)**, testified to the following effect that they acquired 750 acres of land by way of customary. Their parents have lived there since the 1960s without any disturbance from the Government or any person. He said he was born at that land in dispute.

He further testified that on 15/3/2016 at about 14:00 hours, they were invaded by the police officers who were with the first defendant for the allegations that they invaded the 1<sup>st</sup> defendant's farm, described as No. 271 located Lugwadu Magodani. They were arrested and charged at Kibaha RMs Court, but on 25/10/2016, their houses were demolished without compensation before that case was conducted.

He concluded by testifying that the suit land belonged to them; therefore, he prayed for the declaration that they were the lawful owners of the suit land, compensation for the demolished houses, and costs of the suit.

The second witness, **Ubaya Saleh Mwinyimali (PW2)**, testified that he owned disputed land under customary rights after he inherited it from his parents, who owned and have lived in that land since 1960.

He further testified that they lived peacefully without any disturbance until early 2016, when they were invaded by police officers who were in a company with one person. Then their houses were demolished without prior information to the village authority.

He concluded by praying to be declared lawful owners of the and compensated for the demolition of their houses.

**PW3, Salehe Abdallah Udagila**, testified to the following effect that he was a leader of Vikindu Village from 1988 -1998 as a village chairman.

He knew the 1<sup>st</sup> defendant as an investor in his village. In 1988 he requested 1000 acres of land to invest in farming in writing and was granted his request.

He concluded by testifying that the suit land was not within the land given to the 1<sup>st</sup> defendant.

**PW 4, Omary Mohamed Madanganya**, testified that the suit land was their ancestor land. He was born in that area, and his father stated to live in the land since 1960. The suit land is more than 750 acres and borders Mpalianda River in the North, Omary Miraji, Lugano Mwamakamba, and Kagaruki in the South, with Property International in the east and soap and Allied Industry in the west side.

He further testified that in 2016 they were invaded by police officers with one Hamidu Barma and were forcefully evicted from the suit land without any court order. They were told that Hamidu Barma was the lawful owner of the suit land. Then we vacated that area.

After that, they conveyed a meeting and appointed representatives so that they could file a suit.

Further, he testified that on 30 August 2020, the late President Magufuli passed at Mkuranga, and he informed him about the dispute. The late President interrogated the District Commissioner, who admitted to knowing the dispute. Also, the member of parliament, Mr. Ulega, informed

the late President that he knew about that dispute. After hearing both sides, the late President ordered the title revoked and the land given to them.

Then the revocation process was initiated as the Minister, Hon. Lukuvi, visited the disputed land and conveyed the meeting whereby the 1<sup>st</sup> defendant was also present. Then Hon. Lukuvi revoked the title and ordered the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to survey the land and return the 750 acres to villagers.

He concluded by testifying that the order was not complied with, which was why they filed this matter.

**PW5, Ibrahim Amir Nongwe**, testified that he was once the village chairman of Mkozi village for five (5) years during the presidency of the late Mwalimu Nyerere and President Mwinyi, but he did not remember the exact years.

He knows Mkozi, Lugwadu and Magodani villages. Previously, Mkozi and Lugwadu were the same villages, but after the population increase, the village was divided into Mkozi and Lugwadu. Magodani is a neighboring village.

He concluded by testifying that they did not receive any requests for allocating land for investment when he was a chairman. Further, the suit

land was within Mkozi village, and there was no dispute on that land during his reign, and what he knew was that the area belonged to the people.

The sixth witness, **Said Omar Chalamanda (PW6)**, testified to the following effect that the suit land was their ancestor's land, and he started to live there in 1983.

In 2016, the 1<sup>st</sup> defendant invaded them at Lugwadu and Magodani villages, and the size of invaded land was 750 acres.

He concluded by testifying that after they were evicted from the suit land, they filed this suit to demand to be given back their land and compensation for their house's demolition.

**PW7, Ramadhani Chuma Kinawila**, testified that he knew the 1st defendant as an investor at Vikundu and employed him for two years.

He further testified that the suit land, i. e 750 acres belonged to Lugwadu and Magodani villages; therefore, it was not owned by the 1<sup>st</sup> defendant.

He testified that the 1st defendant never told him he owned the suit land. Therefore, because the plaintiffs' houses were demolished, they must be compensated and returned to that land.



The last plaintiff's witness, **Juma Rashid (PW8)**, testified that; on 15/3/2016, they were invaded by the police officers and the 1<sup>st</sup> defendant at land. It was about 14:00 hours, and eight police vehicles led the RPC of the Coastal region. Then the 1<sup>st</sup> defendant told the police to arrest the persons found in that land, and that day, 20 people were arrested and taken to the police station. At the police station, they were informed that they trespassed into farm no 271, located at Magodani village, which was not true. Then they were taken to Kibaha District court and incriminated in criminal case no. 29/ 2016. After getting bail, they started to take action, and they went to see the District Commissioner of Mkuranga, one Sanga. After he failed to solve the dispute, they went to see the Regional Commissioner, Mr. Evarist Ndikilo, but their efforts went unrewarded.

He further testified that before the finalization of the criminal case, on 25/10/2016, the 1<sup>st</sup> defendant and police officers went to suit land with three excavators and demolished the houses and properties without any notice and paid compensation.

Later the Regional Commissioner convened a meeting and informed them that the suit land, i.e., 750 acres owned by the investor, then he closed the meeting.

Further, he testified that the suit land is in Lugwadu and Madogani villages and borders Omary Miraji and Lugano Martin Mwamakamba in the south by, Mpalyanda and Farm No. 271 located at Kazole village on the north side and with Kagaruki on the east side.

He said he was born in the disputed land, and his father told him that their land measures 11 acres, bordering Ally Mbwana Shekhe in the south, north with Haji Kagoro, east with Mzee Kindamba, and west with Bi. Edita.

He concluded by testifying that on 3/10/2020, the Minister of Land visited the suit land and convened a meeting with the villagers. In that meeting, the Minister declared that the 750 acres of land be returned to the people and directed the Director of Mkuranga District Council to divide the land into plots and allocate it to the people. But that directive raised another problem because it was directed that the land be distributed to all people and not the persons evicted from therein.

Also, the late President Magufuli, on 29/9/2020, when he was from Lupaso to attend the burial of the late President Mkapa, was informed about the dispute. He instructed the Minister, the District Commissioner, and the

Council Director to settle that dispute, and that instruction was not complied with by them.

**Kidawa Omary Jumbe (DW1)** testified on the defense case that he knew one Hamidu who owned Soap and Allied Industry because he purchased the farm from her parents.

She further testified that her parents were compensated after the valuation was conducted and the report was sent to Kisarawe District. After her parents were paid compensation, she was given her share.

She said other villagers also, including her sister, were compensated for their lands.

She concluded by testifying that she did not know the size of the land purchased by Mr. Hamidu, and at that time, their local leader (Mjumbe) was Shomvi Yusuph Kinawile.

**DW2, Abbas Shahame** testified to the following effect; he knew Mr. Hamidu, the Director of the 1<sup>st</sup> defendant. In 1988 Mr. Hamidu went to Vikindu village seeking land. At that time, Kazole and Kiongoni were a forest with wild animals. Therefore. Mr. Hamidu was given that land for development after compensating the villagers who owned that land.

He further testified that at that time, it was considered that the land given to the 1st defendant measured 1000 acres and was a wild field (mashamba pori). When the land was surveyed, those inside the surveyed land were compensated because the land was owned by some villagers who were transferred there in 1974 under Operation Vijiji.

DW2 further stated that the land in dispute at that time was within Vikindu village, and he was once the Chairman of Vikindu from 1993-2000 before its demarcation. Before demarcation, Magodani village was within Vikindu Village, and during his reign, there were no complaints of trespass into the land. The dispute started in 2015. Therefore, Mr. Hamidu acquired the suit land lawfully.

He concluded by testifying that the relation between Vikindu Village, Magodani Village, Lugwadu Village, and Kazole Village is that prior to demarcation, Magodani and Kazole were within Vikindu Village as hamlets, but Lugwadu was another village.

**Hamed Bharmal (DW3)**, the holder of the Bachelor of Science in Agriculture and the owner and one of the Directors of the 1<sup>st</sup> defendant, testified that; there was a dispute after a few people invaded their land

located at Kazole Village, the size of 1750 acres bordering Lugwadu and Magodani Villages.

He testified that he acquired that land after he wrote a letter on 7/4/1988 to Vikindu village requesting land of at least 1000 acres for agricultural activities. He was invited to meet with the village council, who promised to allocate land for him.

Later he called and showed the forest land, where he discovered that there were mango trees, cashew nut trees, and coconut trees.

When he was given that land in 1988, there was nobody there.

When he surveyed the land, he found its size to be 1750 acres; therefore, he informed the village council that the land exceeded 1000 acres. Then the village council and a meeting with the leaders from Kisarawe, Vikindu, and Mkozi Villages. After the meeting, he was also allocated the parcel of land, which exceeded. Then he proceeded to compensate those who were supposed to be paid. The persons who were supposed to be compensated were identified by the office of the Vikindu Ward, they listed the names, and he was given the compensation schedule. He paid

compensation by cheque through the District Commissioner's office at Kisarawe.

He put beacons as a boundary to the land, obtained the title deed, and developed the farm.

Further, he testified that he surrendered the title deed to the Commissioner of Land for the reason of including the land in dispute in the town plan development.

He said that the dispute on his farm started in 2015. Before that, there was no dispute, and the farm was developed as they planted 50,000/= coconut trees, 3000 cashew nut trees, and 2000 mango trees. Also, he was raising cattle as he was supplying beef to the supermarkets. Also, he had a poultry farm.

DW3 further testified that in 2015, people started trespassing into the suit land and cleared a large portion of the farm. Therefore, he reported the matter to the police, the DC office, and the RC office. Those trespassers were evicted, and later they filed cases against him, almost 14 cases. In those cases, it was discovered that they trespassed, and some of them

were imprisoned. When the land was invaded in 2015, few people started to build houses therein.

He concluded by testifying that in 2015 they wanted to change the use of the land because of industrialization; therefore, he prayed to be declared the lawful owner of farm no. 271.

**Riziki Mathew Chaguye (PW4)**, a Land Officer stationed at Mkuranga District Council, testified that; he knew the suit land based on the documents in their office. That the 1<sup>st</sup> defendant requested 1000 acres of land at Vikindu village in 1988, and that request was granted by the Vikindu village council with conditions that;

- i. The 1<sup>st</sup> defendant should pay 20% of the land value for each acre acquired.
- ii. The 1<sup>st</sup> defendant should pay compensation for the properties found on the land.

Then the village council meeting minutes were sent to the Director of Kisarawe District. The District Council, through the Land development officer, informed the Vikindu village and copied the 1<sup>st</sup> defendant that the land boundaries of the land allocated to the 1<sup>st</sup> defendant should be

known. Properties inside the land should be identified, evaluated, and compensation should be paid.

DW4 further testified that the surveyor from Kisarawe by the name of Kondo Mkangala, in collaboration with the villagers and the 1<sup>st</sup> defendant, identified the boundaries and thereby discovered the land within the boundaries was 1750 acres and not 1000 acres. Then the surveyor informed the Land Development Officer of Kisarawe, who conveyed the fact to the village so they could decide whether to keep the land which exceeded or allocate to the 1<sup>st</sup> defendant. Further, the 1<sup>st</sup> defendant was informed and agreed to pay compensation for the extra 750 acres; therefore, 13 persons were compensated for those 750 acres. It was after the Valuer, Land Development Officer, Village Executive Officer, District Commissioner, Regional Commissioner, and the Chief Government Valuer signed the valuation report then the compensation paid was TZS 104, 580/=

He further testified that after the 1<sup>st</sup> defendant paid the compensation in full, the land was surveyed and designated as farm no. 271 Kazole Vikindu, and on 19 December 1988, the Ministry of Land issued to the 1<sup>st</sup> defendant the title deed no. 34681 for 1750 acres of land.



In 2015-2016, the District Council received information about trespassing on that farm by persons from different areas. Those persons invaded the farm and allocated parcels of land to themselves; others sold those parcels of land to other people. As the authority of surveying and planning, the council conducted several meetings with the trespassers, but they were not ready to leave the land.

Further, then the District Council met with the 1<sup>st</sup> defendant and was resolute that the status of the suit land was no longer a village; therefore, he was advised to change the use of the suit land. Then the 1<sup>st</sup> defendant surrendered the title to the Government registered in 2016, and the new land use, i.e., the town plan drawings, was approved so that the 1<sup>st</sup> defendant could develop and change the land use from farmland. That process was ongoing.

He testified that the lawful owner of farm no 271 was the 1<sup>st</sup> defendant, and the District Council recognized others as trespassers.

The last defence witness, **Adelfina Camilius Lekule (DW5)**, the Land Officer from the Assistant Commissioner for Land for Dar es salaam

and Coastal region, testified that; the suit land was known as farm no. 271 Kazole Vikindu, and in 1988 it was allocated to the 1<sup>st</sup> defendant.

She further testified that the process started from the village level, and the 1<sup>st</sup> defendant was given the title deed with no. 34681.

The status of the land was that the 1<sup>st</sup> defendant surrendered the title deed in 2016, requesting a change of land use. That process started at the level of the District Council, where the owner indicated his intention to surrender the title. If the Council approves, they prepare a deed of surrender which the Regional Land officer will endorse for registration. Therefore, the process was at the implementation stage on the best use of land as presented by the land owner.

Having summarized and considered the evidence brought before this court, the following are the deliberations of this Court in the disposal.

The first issue for determination is; who is the lawful owner of the suit land.

In the deliberation and determination of this issue, this court will place the oral testimonies from both sides under scrutiny and decide the issue on a balance of probabilities. In this suit, no documentary evidence was

tendered by any witness to prove land ownership. Further, this Court will be guided by Section (1) of the Evidence Act, Cap. 6 [R.E. 2019], which reads

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

Similarly, I will be guided by the case of **Hemedi Said vs. Mohamedi Mbilu** (1984) TLR 113; it was held that;

*"He who alleged must prove the allegation."*

Therefore, on the ownership of the suit land, the adduced evidence was as follows;

On the side of the plaintiffs' case, PW1 testified that his parents had lived in the suit land since the 1960s, and he was born there. PW2 testified that he inherited the land from his parents and has lived in the suit land since the 1960s. PW4 testified that he was born in the suit land, and his parents began to live in the area in the 1960s. On his side, PW6 testified that the suit land is their ancestral land, and he started living there in 1983. PW8 testified that he was born in the suit land, and his father told him that their land had a size of 11 acres.

The other plaintiffs' witnesses were PW3 testified that from 1988-1998 he was a Chairman of Vikindu Village. At that time, the 1<sup>st</sup> defendant requested 1000 acres of land, and he said the 1<sup>st</sup> defendant was allocated the land as requested and that land is not a suit land.

PW5 testified that he was the Chairman of Mkozi Village during the Presidency of the late Mwalimu Nyerere and Former President Mwinyi. He testified that the suit land is within Mkozi Village and belongs to the villagers. Also, there was PW7, a former employee of the 1<sup>st</sup> defendant. He testified that the land belonged to Lugwadu and Magodani Villages, and during his employment, the 1<sup>st</sup> defendant never told him that he owned the suit land.

Therefore, the plaintiffs allege they acquired ownership of the suit land through inheritance from their parents.

On the defence side, DW3 testified that the suit land is described as Farm No 271 with the size of 1750 acres, and he acquired it lawfully in 1988. It is located at Kazole Village, bordering Lugwadu and Magodani Villages. He was allocated by Village Council by then of Vikindu Village. Further, he compensated those who were supposed to be compensated

whom Vikindu Ward Office identified. He paid compensation via the office of the Kisarawe District Commissioner.

He surveyed the land and issued the title deed, which he said he surrendered to the commissioner for land to change the use of that land. In 2015 some persons started trespassing on the farm, so he occupied the land peacefully from 1988 up to 2015.

DW1 testified that her family was one of the beneficiaries of the compensation paid by the 1<sup>st</sup> defendant.

DW2 testified that he was the Chairman of Vikindu Village from 1993 to 2000. In 1988 the 1<sup>st</sup> defendant was allocated the suit land; at that time, it was a forest and a wild farm (shamba pori). He compensated those who owned the land given to them in 1974 during operation vijiji.

DW4, the Land Officer from Mkuranga District Council, testified that the suit land was owned by the 1<sup>st</sup> defendant, who was issued with title deed no. 34681 for the suit land, described as Farm No.271 Kazole Vikindu, after following the acquisition procedures.

In 2015-2016 the suit land trespassed. Despite several meetings between the trespassers and the District Council, they were not ready to

vacate from the suit land. PW4, the Land Officer from the Office of Assistant Commissioner for Land for Dar es salaam and Coastal Regions, testified that the 1<sup>st</sup> defendant acquired the suit land in 1988 and was issued the Title deed with No. 34681. The Title deed was surrendered to their office by the 1<sup>st</sup> defendant to change the land use.

From the above testimonies, on my deep analysis, I find that;

**One**, the description of the suit land is Farm No. 271 Kazole. This is evidenced by testimonies from the Land Officer from Mkuranga District Council (DW4) and the Land Officer from the Assistant Commissioner for Lands (DW5).

**Two**, from the testimonies of DW3, DW4, and DW 5, the suit land is a surveyed land with a title deed.

Flowing from the above findings that the suit land is surveyed, that fact "lands" me to section 2 of the Land Registration Act, Cap 334 [R: E 2019]. It reads;

*"Registered land means the land in respect of which an estate has been registered."*

The provision of the law above indicates that the prima facie proof of ownership of land is a registration. In our country, in most cases, registration is by Letters of Offer or Certificates of Title.

The Court of Appeal in **Leopold Mutembei vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development, and another**, Civil Appeal No 57 of 2017 (Tanzlii), held that; *We find it apt to emphasize the essence of any land titles system by referring to the observation made by Dr. R.W. Tenga and Dr. S.J. Mramba in their book bearing the title **Conveyancing and Disposition of Land in Tanzania: Law and Procedure**, Law Africa, Dar es Salaam, 2017, at page 330:*

*"... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect, or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."*

Further, in **Salum Mateyo v Mohamed Mateyo** [1987] TLR 111, it was held that:

*"... proof of ownership is by one whose name is registered"*.

Therefore, the issue is if the suit land is registered, the question to be asked is in whose name is registered.

At the trial, all plaintiffs' witnesses did not mention whether the land was registered. Further, as I alluded to earlier, they testified that their land ownership was passed from their parents, who started owning it in the 1960s. When plaintiffs cross-examined if they had any document to prove their ownership, they had none. On the other hand, DW3, DW4, and DW5 both testified that the title deed with No. 34681 was issued and registered in the name of the 1<sup>st</sup> defendant as the owner of Farm No 271 Kazole, the suit land.

Therefore, in answering the first issue based on the available oral evidence on record, while the plaintiffs failed to prove their ownership over the suit land, the defence side proved the ownership of the 1<sup>st</sup> defendant over the suit land.

The second issue is whether adequate compensation was paid to the previous owner; this should not detain me long, and I divide this issue into two phases.



One, when the 1<sup>st</sup> defendant acquired the land in 1988. In this, neither of the plaintiff witnesses testified on whether they were compensated and the compensations were adequate when the 1<sup>st</sup> defendant acquired the suit land. The only witness to testify on compensation was DW1, who testified that they were rightly compensated in 1988 when the 1<sup>st</sup> defendant was allocated the suit land.

Two, when the plaintiffs were evicted in 2016. The plaintiffs' witnesses testified that they were unlawfully evicted, and their properties were demolished in 2016. As indicated earlier, the evidence on record proved that the 1<sup>st</sup> defendant was the owner of the suit land through registration.

Therefore, any encroachment of suit land means interfering with the possession, which amounts to trespass. In **Frank Safari Mchuma vs. Shaibu Ally Shemndolwa** [1998] TLR 280, the term trespass to land has been defined as;

*"..unjustifiable intrusion by one person upon the land in the possession of another. It has therefore been stated with a light touch that: "If the defendant places a part of his foot on the plaintiff's land*

*unlawfully, it is in law as much a trespass as if he had walked half a mile in it."*

From the above discussion, it is; therefore, an act of the plaintiffs to intrude into the 1<sup>st</sup> defendant's land was a trespass. According to DW3, the plaintiffs started trespassing in 2015, and DW4 testified that the plaintiffs trespassed in 2015 and 2016. Further, he testified that the efforts by the District Council to request the plaintiffs to vacate from the suit land at that time proved futile after they refused to leave from the suit land.

The next question is whether the plaintiffs are entitled to compensation. My answer to this is negative because the plaintiffs were the trespassers to the suit land. The Court of Appeal in **Princess Nadia (1998) Ltd vs. Remency Shikusiry Tarimo and two others**, Civil Appeal No. 242 of 2018 (Tanzlii), held that;

*"Since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises. Just as she was not entitled to any notice before eviction, **she had no right to claim any compensation from the forceful eviction**". [Emphasis provided]*

Therefore, since the plaintiffs were trespassers, they have no right to claim compensation following the forceful eviction from the suit land.

The last issue is on reliefs sought by the plaintiff as enumerated in his pleadings. For clarity, I will deal with each relief claimed. In the 1<sup>st</sup> and 2<sup>nd</sup> reliefs, the plaintiffs' prayed

- i. A declaration that the Plaintiffs are the lawful owners of the suit land.
- ii. The defendants be ordered to distribute/allocate 750 acres to the plaintiffs.

As elaborated earlier, there is no proof that the plaintiffs own the suit land; the available evidence on record proved the 1<sup>st</sup> defendant is the lawful owner of the suit land by registration with title no. 34681 for the land described as Farm No 271 Kazole.

Further, the land cannot be allocated/ distributed to the plaintiffs because the suit land lawfully belonged to another person. Grabbing a person's land and allocating it to other persons is unlawful.

Therefore, the prayers are declined.

For the 3<sup>rd</sup> and 4<sup>th</sup> prayers; that

- iii. The 1<sup>st</sup> defendant be ordered to pay compensation over unlawful demolition of the plaintiffs' properties.
- iv. The 1<sup>st</sup> defendant be ordered to pay general damages to the plaintiffs, and the same be assessed by the Court.

These prayers for compensation are also declined because, as I have already held and as per the cited case of **Princess Nadia (Supra)**, a trespasser has no right to benefit from her/his wrongful act. Just as they are not entitled to any notice before eviction, they have no right to claim any compensation for the forceful eviction.

Therefore, flowing from above, the plaintiffs fail to prove their case, and consequently, the suit is devoid of merits and is hereby dismissed with costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**30/03/2023**