

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

LAND CASE NO. 215 OF 2020

**FRANCIS YUSTIN KAMBONA (As the legal
representative of the late Maria Yustin
Kambona)..... PLAINTIFF**

VERSUS

**ELIZABETH SEME.....1ST DEFENDANT
CHINA RAILWAY SEVENTH
GROUP LIMITED (CRSG).....2ND DEFENDANT**

J U D G M E N T

*Date of last Order:10/03/2023
Date of Judgment:31/03/2023*

K. D. MHINA, J.

The main issue of controversy between the parties to this suit is the ownership of a parcel of land described as Plot No. 2504 Block "L" Mbezi Medium Density area in Kinondoni Municipality, formerly known as Plot No. 119 Block L.

Francis Yustin Kambona (As a legal representative of the late Maria Yustin Kambona), the plaintiff herein ("the plaintiff"), lodged this suit in this Court on 31 December 2020 against **Elizabeth Seme** and **China Railway**

Seventh Group Limited (CRSG). (“the 1st and 2nd defendants respectively”)

The background to this matter briefly, as can be gleaned from the pleadings, is that on February 2020, the plaintiff discovered that the 1st and 2nd defendants were occupying and using the land in dispute. The 2nd respondent had drilled the property to allow passage of sewage. Further, he discovered that the 1st defendant purports to be the owner of the suit land; she leased the same to the 2nd defendant, who occupied it as a tenant. According to the plaintiff, despite persistent correspondences, the defendants refused to vacate from the suit land. This triggered the plaintiff to seek relief from this Court. He now prays for Judgment and Decree against the defendants for the following reliefs;

- i. A declaration that Plot No. 119 Block "L" Mbezi Medium Density, the subject matter of this suit belongs to the plaintiff, the plaintiff is the rightful owner of the said plot and the defendants are trespassers.*
- ii. Order of the Court compelling the defendants to vacate Plot No. 119 Block "L" Mbezi Medium Density.*

- iii. Order of permanent injunction restraining all the defendants, their agents, representatives and any other person on their behalf from interfering with the plaintiff's possession.*
- iv. Order of payment of general damages to a tune of TZS 700,000,000/= as compensation for the loss the plaintiff has suffered and undue profit that the defendants gained for unlawfully occupying the plot.*
- v. Costs of the suit and*
- vi. Any other order and relief this Court may deem fit to grant in the circumstances.*

The defendants vehemently disputed the claims in their separate written statements of defence.

Further, the 1st defendant alleges that she never knew the existence of Plot no 119 Block "L" located at Mbezi, which the plaintiff relied upon. On his side, the 2nd defendant alleges that he was not a trespasser as he leased the land from the 1st defendant vide a lease agreement dated 26 October 2020. Before the lease, the 1st defendant informed them that the survey of the plot was underway; therefore, the Title deed was yet to be issued.

Further, he constructed the "storm drain" after being hired and instructed by the Kinondoni Municipal Council in Kilongawima Series 2000 Drain project.

The controversy above put the parties at issue; therefore, on the first day of the hearing, the following issues were framed and were accordingly recorded by this court for the determination of this suit namely:

- i. Whether the plaintiff is the lawful owner of Plot No. 119 Block "L" Mbezi.*
- ii. Whether there was a lease agreement entered between the 1st and 2nd defendant in respect of Plot No. 119 Block "L" Mbezi*
- iii. Whether the defendants are trespassers into the suit land.*
- iv. To what relief (s) each party is entitled.*

In this suit, the plaintiff is represented by Mr. Ndanu Emmanuel, Advocate. The 1st defendant appeared in person, unrepresented while the 2nd defendant was represented by Mr. Albert Nkuhi Advocate.

In support of his case, the plaintiff called four (4) witnesses; Francis Yustin Kambona (the plaintiff), who testified as PW1; Victoria Yustine Kambona, the plaintiff's younger sister, who testified as PW2; Ebenezer Maganga Moshi, the plaintiff's niece, who testified as PW3 and Johansen

Chibana, the Land Officer from the Ministry of Land and Human Settlement, who testified as PW 4.

In a bid to support her case, the 1st defendant called four (4) witnesses; Elizabeth Loyce Seme (the 1st defendant), who testified as DW1; Grace John Mwashala (DW2); Aneth Rogers Kibaja, the former local street leader at Kilongawima Block "L" who testified as DW3 and Geoffrey Martin (DW5). On the other hand, the 2nd defendant brought two (2) witnesses; Michael Aloyce Chambanenje, the Health and Safety Officer of the 2nd defendant, who testified as DW4, and Mkelewe Masalu Tungaraza, the Civil Engineer from the Kinondoni Municipal Council, who testified as DW6.

In his testimony (**PW1**), **Francis Yustin Kambona** testified that he lives in Houston- Texas, in the United States of America. In January 2020, he came to Tanzania and visited the suit land located at Plot 119 Block "L" Mbezi Beach and found that the 1st defendant trespassed into the suit land. At the suit land, he found the security guards, and after introducing himself, the guards wondered and informed him that they had agreed with the 1st defendant.

He further testified that he went to the local government to introduce himself, and they wondered as they told him that they knew the land belonged to the 1st defendant but did not know if she had any ownership document. After that, he presented the letter of offer with the names of Yustine Francis Kambona and Maria Athanas Kambona, his parents, to the local government leaders. Further, he had a certificate of title in his name as the administrator of the estate. After that, they advised him to file the suit. He tendered to that effect;

- i. Letter of offer with reference no. D/KM/A/30088/3/MH in the names of Yustin Kambona and Maria Kambona for Plot No. 119 Block "L" Mbezi as Exhibit P1.
- ii. Title deed No. DSMT1006273 in the name of Francis Yustin Kambona for Plot No. 2504 Block "L" Mbezi as Exhibit P2.

PW 1 testified that the letter of offer for plot no 119 Block "L" was issued on 5/8/1988 to Yustine Kambona and Maria Kambona, and the certificate of title for plot No. 2504 Block, which was previously described as plot 119, was issued on 24/9/2020.

He further testified that he was appointed as an administrator of the estate on 2/7/2019 after the death of his mother on 12/2/2019 (Exhibit P3-Court form no. IV)

On the plot description, he testified that in the letter of offer and the Title deed, the description differed because previously, the plot was known as plot No. 119 Block L with a size of 9655 sqm. But later on, the local government authority and city planning office surveyed the land and divided plot no. 119 into two plots; 2504 and 2505. The disputed plot is No. 2504 with 4295 sqm.

Therefore, he sued the defendants because the 1st defendant trespassed into his land, and that act caused him to suffer because he lost income for failure to use the land. He said he got an investor from the USA named GXC Company, and they signed a joint venture agreement for building apartments in the suit land, a deal roughly worth TZS 600,000,000/= (Exhibit P4). But because of the failure to use the suit land, the joint venture agreement was terminated.

Further, the matter caused him to suffer from stress, and whatever the case was scheduled, he had to travel from the USA to attend the case, leaving his family and clients.

He concluded by testifying that the 1st defendant leased the suit land to the 2nd defendant by a lease agreement of 25/10/2020, which indicated that the 1st defendant was the owner of the suit land.

Therefore, he prayed to be declared as a lawful owner of the land in dispute, vacant possession for the defendants with immediate effect, the defendants to permanently prohibited to use of the land and damages at a tune of TZS. 700,000,000/= be paid by the 1st defendant because of the loss of income and as she continues to use the suit land by leasing to other persons and costs of the suit.

The second witness, **Victoria Yustine Kambona (PW2)**, the younger sister of PW1, testified to the following effect that she was living in Canada and working as an insurance underwriter.

Further, for the first time, she heard the name of the first defendant and the second defendant on January 2020 after she trespassed into their land located at Mbezi Beach. Previously, the plot was known as plot No. 119 Block L, but after division, it was assigned a new plot number.

PW2 testified that their parents had owned the plot since 1988 by a letter of offer. After the death of their parents, her elder brother Yustine Faustine Kambona was appointed as the administrator of the estate.

She concluded by testifying that as beneficiaries of the estate, it caused a loss because they wanted to invest in the land in dispute after acquiring an investor to construct apartments, but because of the dispute, the investment failed to proceed.

Further, the matter caused stress to them because they attended to the case by traveling from outside the country using their money.

PW3, Ebenezer Maganga Masha testified to the following effect that Francis Yustine Kambona is his niece; he was the son of his cousin's sister.

In 2020, with PW1, they went to land in dispute at Mbezi beach and found heavy machines (caterpillars). Further, they found persons who were constructing a drainage system for rainwater. Those persons introduced themselves as workers of the Chinese Company. Then they went to the street chairman and the ward executive officer of Mbezi Beach Kilongawima, and Francis showed them the ownership documents, i.e., the offer and the

title deed. After that, the chairman and the WEO told them they knew the area owned by Elizabeth Seme. Then Francis asked them if they ever inspected the documents from Elizabeth Seme to prove her ownership but said they never inspected any document and that Elizabeth Seme informed them that the suit land belonged to her and was still unsurveyed. Further, the Chairman and the WEO told them the contract between Elizabeth Seme and the Chinese Company was signed in his office. Afterward, the chairman and the WEO requested copies of the offer and the title deed.

He further testified that they also went to ten cell leader, Mzee Msangi, and informed him about that issue. The ten-cell leader requested the documents, and they also gave him an offer and the title deed; after inspecting it, he was satisfied that Francis was the owner and advised them to lodge the case.

PW3 also testified that in 1988 his sister told me about that land, and in 1990 his sister and her husband took him to the suit land and showed him the same. The land borders the Bagamoyo road; on the right side is a church; on the left is a bar and residential houses beside the plot. Also, he was shown the letter offer, which had his sister's and her husband's names.

The last witness in the plaintiff's case was a Land Officer from the Ministry of Land, **Johansen Chibana (PW4)**, who testified that the land in dispute previously was known as plot 119 Block "L" Mbezi and is owned by Mr. and Mrs. Yustine F. Kambona by the letter of offer with Ref. No. D/KM/A/30088/3/ dated 20/6/1988.

He further testified that later Mr. Yustine Kambona passed away, and Mrs. Kambona started to make a follow-up regarding the plot, but they failed to give her the title deed because the land was not yet surveyed. Later Mrs. Kambona also passed away. Then Francis Yustine Kambona approached their office with the documents from Kinondoni Primary Court showing that he was the administrator of the estate of Mrs. Yustine Kambona.

PW4 submitted that then Francis surveyed the land, which was divided into two plots with no. 2505 and 2504 both Block "L" Mbezi. Then the Ministry prepared the title for plot No. 2504, and when the process was completed, Francis was given the certificate of title. He identified to that effect;

- i. Letter of offer with reference no. D/KM/A/30088/3/MH in the names of Yustin Kambona and Maria Kambona for Plot No. 119 Block "L" Mbezi as Exhibit P1.
- ii. Title deed No. DSMT1006273 in the name of Francis Yustin Kambona for Plot No. 2504 Block "L" Mbezi as Exhibit P2.

When Francis started to make a follow-up for plot No. 2505, we informed him the title deed could not be prepared because there was development by other persons; therefore, he was supposed first to evict the persons occupying plot no 2505 to get a vacant procession.

In the defence case, **Elizabeth Loyce Seme (DW1)**, the 1st defendant, testified to the following effect, her plot was located at Kilongawima, and she acquired it in 1977 after one Mzee Swai gave her. She said that time, the land was governed by village laws, and it was not surveyed.

Later, she surveyed the land and was given the letter by CCM, the supervisors at that time. After that, she went to the land office at Kinondoni Municipal Council, but she was told the master plan for the area was yet to be prepared. After that, she went to the Ministry of Land and discovered that the land was allocated to Simba Garments. While she was making the

follow-up with the help of the State House on the issue of Simba Garmets, again, her plot was trespassed by a conman by the name of Nyange.

On 27/ 2/2001, together with other villagers, they wrote a letter to the Minister requesting that the land be surveyed. The Minister responded on 4/3/2001, informing them that the title deed issued to Simba Garments was in the final stages of revocation. On 18/7/2001, by a letter, they were told that the title deed issued to Simba Garment was revoked.

She testified that they convened a meeting of all villagers on 15/8/2001 which the officials from the Ministry of Land attended.

After that, the area was surveyed except her land, and at that time, she had a case with one Nyange who forged the document. Upon sending the forged documents to the Identification bureau, they confirmed that the documents were forged, but I lost that case because her advocate failed to tender the forged documents as exhibits. She appealed, and the case was still pending at the Court of Appeal. Further, both Mr. Nyange and his advocate passed away.

While waiting to continue the case, the Ward authority of Kilongawima requested a Chinese company to use that land to keep their equipment. She

met with the Chinese, and they agreed and signed the lease contract. Later, she was informed that the Chinese company had started to dig/ excavate in that area. She asked the Chinese why they were excavating at the plot. She complained to the Ward Chairman, who advised her to write a letter to the Municipal Council, but they did not respond. He met with the then Regional Commissioner of Dar es Salaam, Mr. Chongolo, who asked Mr. Tungaraza from the Municipal Council why the Chinese company dug instead of keeping their equipment. Despite that, the Chinese continue to dig and put cravats underground in the land.

DW1 further testified that later she was summoned that she trespassed on the land owned by Francis Kambona. When she attended, it came to her knowledge that the plot in dispute was plot 119, not 2504. When she searched, she found that plot no 119 did not exist.

Furthermore, she testified that the plaintiff, the plaintiff's father, and her mother were unknown at Kilongawima Village. Also, this matter is a political retaliation because of Oscar Kambona.

In her further testimony, she said that the Baptist church does not border the land in dispute as alleged by the plaintiff, and she was the one

who sold that land to the church. She further testified that her plot was never surveyed, and the plaintiff had never tendered a letter issued by the village because, at that time, the village authority allocated the land by way of letters.

Further, an act of the Ward Chairman to send the Chinese Company to her indicated that she is the land owner; therefore, the lease agreement is lawful because.

She concluded by testifying that she acquired that land for development and not for residential purposes because she has a house at the Oysterbay area.

DW2, Grace John Mwashala, the witness for the 1st defendant, testified that in 1993 or 1994, on behalf of her child, she requested an allocation of land from the Ministry of Land. She was given an offer, and the surveyor named Shija took them to show them the plots as allocated. Upon arriving at the plot, they found the 1st defendant.

Then the 1st defendant informed Shija that the land belonged to her, and she refused to vacate. When they returned to the Commissioner of Land, she was allocated another plot at Mbweni.

She told the court that the land in dispute belonged to Mama Seme.

The third defence witness is **Aneth Rogers Kibaja (DW3)**, the witness for the 1st defendant, who testified that she was street executive secretary of Kilongawima Street Block "L" Mbezi Beach from 1999 to 2004.

She said that at that time, there were many land disputes which triggered her to convene a meeting, resulting in a resolution of surveying the area. The Ministry provided them with four surveyors who surveyed the land. At that time, there was a problem regarding the title deed issued to Simba Garments while Mama Seme owned the land.

Later, the title of Simba Garments was revoked, and the land remained in Mama Seme's hands, and everybody knew that the land belonged to mama seme.

She concluded by testifying that Mama Seme acquired that land after the allocation by the village authority during the era of operation vijiji. Therefore, since that time, she has continued to own that land.

DW4, Michael Aloyce Chambanenje, the witness for the 2nd defendant, testified that the 2nd defendant employed him and was responsible for the health and safety issues for the company.

He said that the 1st defendant was the one who leased the land to the 2nd defendant for camping and, as per Kinondoni Municipal Council's direction, to construct a drainage system. Before they signed the lease agreement, they asked the 1st defendant for documents regarding the ownership of the land, but she informed them that the land was in the process of being surveyed; therefore, the documents were not ready. Further, the 1st defendant assured that she was the land owner in the presence of the street chairman Emmanuel Mkuchu. After being satisfied, they entered into a lease agreement.

On top of that, on 18/1/2020, they paid the 1st defendant TZS 3,000,000/= as the amount for the period of six months lease. The 1st defendant signed that receipt. After six months, they agreed to add four and a half months on 26/10/2020, and the 1st defendant was paid TZS 500,000/= per month, which was TZS 2,250,000/=. He tendered to that effect;

- i. Receipt dated 18/1/2020 for the payment of TZS 3,000,000/= as Exhibit D1.
- ii. Lease agreement dated 26/10/2020 as Exhibit D2.
- iii. Receipt dated 26/10/2020 for the payment of TZS 2,250,000/= as exhibit D3.

He also testified that the land is located along Bagamoyo road and on the right side bordering the Chapel Church, the road to Kunduchi and Agrovet company. Further, they opted for that land because it was an open space and located near the working place were constructing a drainage system.

He concluded by testifying that the 2nd defendant had no longer used that land since 20 February 2021, and it was not true that the 2nd defendant trespassed the suit land.

DW5, Geoffrey Martin, the witness for the 1st defendant, testified that the 1st defendant was his aunty (mama mdogo). She owns the farm at Kilongawima Mbezi beach, which they used to farm around 1984 when he was a form III student.

He further testified that at Dar es Salaam, he was living with his uncle, Atubone Wilson, to whom the 1st defendant allocated a small parcel

of land for farming. Therefore, during his holidays in 1984, 1985, 1986, 1987, and 1988 he was helping his uncle farm rice and sugar cane at that land/farm.

He testified that he had never heard of any dispute between the 1st defendant and the plaintiff's mother. The only dispute he heard was between the 1st defendant and one person named Nyange. Therefore, the land in dispute belonged to Elizabeth Seme.

The last defence witness is **Mkelewe Masalu Tungaraza (DW6)**, the 2nd defendant witness who introduced himself as a Civil engineer at Kinondoni Municipal Council (KMC). He testified that he knew the 2nd defendant because of contracts entered with Kinondoni Municipal Council for several projects at Mwananyamala Ward to construct roads, markets, toilets, and drainage systems for rainwater.

Also, the 2nd defendant was assigned to construct a drainage system for rainwater at Kilongawima area and later a storm drainage system at the same area of Kilongawima for rainwater, affecting the Kilongawima Population. The system had a width of 3.5 meters and a length of 1.3 kilometers, starting at Bagamoyo Road up to the Kilongawima area, near

the police residential houses, and from there to the ocean. He tendered to that effect;

- i. The contract of May 2018 between KMC and the 2nd defendant as Exhibit D4.
- ii. The contract dated October 2019 between KMC and the 2nd defendant as Exhibit D5.

He further testified that at the commencement of the project, they were informed that the 1st defendant owned the land. Unfortunately, when the 1st defendant was requested to provide documents to prove her ownership to be compensated, she failed to do so. But because of the importance of the project and the danger posed by the rainwater, the KMC authorized the contractor to proceed with the construction of the drainage system.

He concluded by testifying that the 2nd defendant complied with the contract terms, successfully constructed the drainage system finalized in 2020, and handed it over to the KMC on August 2021. He tendered to that effect;

- i. The Request to submit quotation dated 13/8/2019 exhibit D6.

On 10 March 2023, this Court visited the locus in quo;

- i. In the presence of the parties and their advocates.
- ii. The parties adduce evidence on oath. The parties who adduced evidence were the plaintiff, Francis Yustine Kambona, the defendant, Elizabeth Seme, and Mkelewe Tungaraza for, the 2nd defendant.
- iii. After examination in chief, cross-examination and re-examination were allowed at the locus in quo.
- iv. All proceedings at the locus in quo were recorded and
- v. Following the proceedings at the locus in quo, this court
 - a. clearly identify the plot in dispute and observe its boundaries. The plot is located at Mbezi Beach Kilongawima area, along Bagamoyo road on the west side; it borders Mbezi Chapel Church to the north, residential houses to the east, and tarmac road to Kilongawima on the south side.
 - b. An extensive underground drainage system starts near Bagomoyo road, passing the plot underground towards the east side.

c. The Court also showed where the 2nd defendant's equipment were kept.

vi. These observations were made known to the parties.

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

Starting with the 1st issue as to whether the plaintiff is the lawful owner of Plot No. 119 Block "L" Mbezi as a standard in proving the case, 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 allegations."

According to the plaintiff's case(testimonies), the land was previously owned by Mr. Yustine Francis Kambona and Maria Athanas Kambona, the parents of PW1 and PW2. They owned that land by a letter of offer with reference no. D/KM/A/30088/3/MH issued on 5 August 1988.

At that time, the plot was described as Plot No. 119 Block "L" Mbezi (Exhibit P1), with a size of 9655 square meters.

According to PW1, after the death of his parents, he was appointed as the administrator of the estate on 2 July 2019 by Sinza Primary Court.

Later the plot was surveyed by city planning officers and divided into two plots; plot no 2504 and 2505 Block "L" and PW1 was issued with a Title deed for plot no. 2504. His evidence was corroborated with PW2, PW3, and PW4.

PW4, the Land Officer from the Ministry of Land, identified both Exhibit P1 and P2. He narrated the ownership of the suit land; at first, it was owned by Mr. Yustine Francis Kambona and Maria Athanas Kambona by the letter of offer with reference no. D/KM/A/30088/3/MH. After they passed away, the plot was surveyed and divided into plots no 2504 and no 2505, both Block "L." The Ministry of Lands then issued the title deed for plot no 2504 to the plaintiff, who was the administrator of the estate.

On her side, the 1st defendant narrated how she acquired the land in 1977 after she was given it by Mzee Swai. At that time, it was a village

land and un-surveyed. She narrated how once the title deed was issued to Simba Garmets, it was later revoked in 2001.

Further, she said that when she searched, she found that plot no 119 was not in existence; in addition, her land was yet to be surveyed. Her evidence was corroborated by DW2, DW3, and DW5.

It is from the above pieces of evidence on the background and status of the plot, and after the court visited the locus in quo, my findings are that the dispute on the ownership is over the same plot of land and that the land is surveyed.

Therefore, in cases of this nature, section 2 of the Land Registration Act, Cap 334 [R: E 2019], is instructive. The section reads;

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

The above provision of the law reveals that the prima facie proof of land ownership is a registration. In our country, in most cases, registration is by Letters of Offer or Certificates of 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, from the above discussions, the evidence on record in this matter leads me to hold that the holder of the certificate of title is the one who has proof that he is the owner of the suit land.

According to PW4, the Land Office from the Ministry of Land, the Title Deed (Exh. P2) was issued by the Ministry of Land and originated from the letter of Offer (Exh. P2). Therefore, his evidence indicated that the documents were genuine, taking into account even the 1st defendant did not cross-examine him on the validity and genuineness of the documents.

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."

Therefore, the registration of the plaintiff who is a holder of Title deed No. DSMT1006273, issued on 24 September 2020, is a conclusive proof of his ownership.

The 2nd issue on whether a lease agreement was entered between the 1st and 2nd defendant regarding Plot No. 119 Block "L" Mbezi should not detain me long. The reasons are;

One, in her testimony, the 1st defendant stated that she leased that land to the Chinese Company (2nd defendant), and they signed the lease agreement.

Two, DW4 testified and tendered the lease agreement between the 1st and 2nd defendants and payments receipts as lease payments (ExhD 1 and D2)—the documents to which the 1st defendant did not object. Further, according to DW4, before signing the lease agreement, the 1st defendant assured them that the land belonged to her and that she had no ownership documents because she was in the process of surveying the land.

Three, when the Court visited the locus in quo, it had shown where the equipment of the 2nd defendant were kept within the suit land.

Therefore, from the above analysis, it is not in dispute that there was a lease agreement between the 1st and 2nd defendant on the use of the suit land.

Next for consideration is the 3rd issue of whether the defendants are trespassers into the suit land.

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 "

As I alluded to earlier, the plaintiff is the lawful owner of the suit land; therefore, any unlawful interference with his possession amount to trespass. According to his evidence which remains uncontroverted, the 1st defendant interfered with his land by claiming that she was the lawful owner of the suit

land. As I said earlier, the plaintiff has the Title deed to prove his ownership, while the defendant did not tender a document that proves her ownership over the suit land. Therefore, the 1st defendant is a trespasser.

On the side of the 2nd defendant, though he already vacated the suit land after the completion of the project to which he was assigned but the evidence on record and findings in issues no 1 and 2 lead this Court to find that at the time he occupied the suit land as a lessor, he was also a trespasser. The reasons are;

One, the 2nd defendant leased the suit land from a person who was not the lawful owner of the suit land. The 1st defendant had no good title to lease the land to the 2nd defendant.

Second, the evidence of PW4 that before signing the lease agreement, they asked the local street leaders who confirmed that the 1st defendant was the owner of the suit land. Further, the 1st defendant informed them that she was in the process of surveying the land; therefore, at that time, she had no documents to prove her ownership.

In my opinion, the 2nd did not take sufficient precautions, including conducting an official search at the proper land authority regarding land

ownership, such as the Ministry of Land, to ascertain the lawful owner of the suit land before signing the lease agreement. If they could do so before they signed the lease agreement, they could know the status of the suit land. See **Acer Petroleum (T) Ltd vs. BP (T) Ltd**, Civil Application No. 60/17 of 2020 (Tanzlii)

Therefore, the third issue is decided in the affirmative that the defendants are trespassers, but for the 2nd defendant, since he is no longer at the suit land, his trespassing is only at the period he leased and occupied the suit land.

Turning up to the last issue, which are on reliefs sought by the plaintiff as enumerated in his pleadings. For clarity, I will deal with each relief claimed.

In the first relief, the plaintiff prayed;

- i. A declaration that Plot. No. 119 Block "L" Mbezi Medium Density the subject matter of this suit belongs to the plaintiff, the plaintiff is the rightful owner of the said plot and the defendants are trespassers.

Since I have found, as I elaborate above, that the plaintiff is the lawful owner of the suit land and that his certificate of title is valid, then I hold that the plaintiff is the lawful owner of Plot No. 2504 Block "L" Mbezi formerly known as and described as Plot No. 119 Block "L" Mbezi.

Further, the defendants are trespassers to the suit, but since the 2nd defendant is no longer at the suit land, his trespassing is only at the period he leased and occupied the suit land from the 1st defendant.

For the 2nd and 3rd prayers, i.e.,

- i. Order of the Court compelling the defendants to vacate Plot No. 119 Block "L" Mbezi Medium Density.
- ii. Order of permanent injunction restraining all the defendants, their agents, representatives and any other person on their behalf from interfering with the plaintiff's possession.

Since the plaintiff is the lawful owner of the suit land, I order the defendants to vacate from the suit land. Further, I grant a permanent injunction restraining the defendants, their agents, representatives and any other person on their behalf from interfering with the plaintiff's possession.

For the 5th prayer ie

- i. Order of payment of general damages to a tune of TZS 700,000,000/= as compensation for the loss the plaintiff has suffered and undue profit that the defendants gained for unlawfully occupying the plot.

In awarding general damages, there are governing principles. In **Tanzania Saruji Corporation v. African Marble Company Ltd.** [2004] TLR 155, it was held that;

"General damages are such as the law will presume to be the direct, natural or probable consequence of the act complained of; the defendant's wrongdoing must, therefore, have been a cause if not the sole or a particularly significant cause of damage."

Therefore, it means that general damages are not like special damages, which need to be proved specifically; in general, damages in law are presumed as long as there is proof of the consequences of wrongdoing.

In this matter, the claim of general damages pegged on the fact that the joint venture deal between the plaintiff and the American Company (CXE Construction Co) [Exhibit P4] to construct a four-story apartment building in the suit land collapsed due because of a dispute on the ownership; therefore,

he failed to use his land while the 1st defendant leased the land so that she generated income. The plaintiff prays for TZS 700,000,000/=

Considering that the suit plot was still undeveloped except for an underground drainage system which passes underground the suit plot, the prayer of TZS 700,000,000/= is on the too far higher side.

Due to their unlawful occupation of the land, the defendants deserve to compensate the plaintiff for trespass.

In assessing the quantum because the 1st defendant not only trespassed the suit land but also leased to the 2nd defendant, I order the 1st defendant to pay the plaintiff a total of TZS. 25,000,000/= as damages.

For the 2nd defendant, due to his trespass and use of the suit land, I order the payment of TZS. 10,000,000/= to the plaintiff as damages.

In conclusion, the judgment and decree is entered in favor of the plaintiff as follows;

- i. Plaintiff is the lawful owner of Plot No. 2504 Block "L" Mbezi, formerly known as and described as Plot No. 119 Block "L" Mbezi, and the defendants are declared trespassers.

- ii. The defendants are ordered to vacate from Plot No. 2504 Block "L" Mbezi, formerly known as Plot No. 119 Block "L" Mbezi.
- iii. Permanent injunction is granted restraining all the defendants, their agents, representatives and any other person on their behalf from interfering with the plaintiff's possession
- iv. The 1st defendant to pay the plaintiff the general damages of TZS. 25,000,000/=
- v. The 2nd defendant to pay the plaintiff the general damages of TZS. 10,000,000/=
- vi. Plaintiff is to have his costs from the defendants.

I order accordingly.




K. D. MHINA
JUDGE
31/03/2023