

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 233 OF 2022

PETER PETER JUNIOR PLAINTIFF

VERSUS

PETER PAULO MARO (as an administrator of the estate
of the late Paul Steven Marco) **DEFENDANT**

JUDGMENT

Date of the last order: 13.03,2023

Date of Judgment 30.03.2023

A.Z.MGEYEKWA, J

At the centre of controversy between the Plaintiff and the Defendant is a piece of land measuring 17 acres located (henceforth the suit land) standing within Kibosha Hamlet, Mapinga Ward in Bagamoyo District within Pwani Region. The material facts of this case are very brief and not difficult to comprehend. Sometimes in 2019, the Defendant trespassed into the plaintiff's land measuring 17 acres claiming that the

suit land belongs to him by virtual that he is the administrator of the estate of the late Paul Steven Maro. According to the plaint, the Plaintiff is the lawful owner of the suit land measuring 17 acres which were part of 25 acres that he bought from Juma Kivurugo to the tune of Tshs. 2, 500, 000/=. The Plaintiff stated that in 2007, he sold part 8 acres out of 25 acres and remained with 17 acres. The Plaintiff claims that the Defendant interference through trespassing into his piece of land has caused him trouble inconveniences, mental trauma and he has been deprived of an opportunity to use and invest in the suit land.

In the Plaint, the Plaintiff prays for Judgment and Decree against the defendants as follows: -

- i. Declaratory that the piece of land consisting of 17 acres located within Kibaha Hamlet, Mapinga Ward in Bagamoyo District belongs to the Plaintiff. The said land edges with Ally Mtoto Ally in the East part, Abdallah Lugoma in the west part, Omary Lugoma now is Nathanael Mwakipiti Kigwila of Plots No. 45, 44, 43 and 42 Block SS Mapinga Bagamoyo Urban in the South part and Juma Seleman Mohmaed in the North part.*
- ii. The declaration that the Defendant is a trespasser in the suit land.*

- iii. Order a permanent injunction, restraining the Defendant, his agent or any person acting or working on his behalf from further trespass into the suit land.*
- iv. Order of demolition of structures erected therein.*
- v. Order of eviction from the suit land.*
- vi. Payment of general damage compensation for loss of use of land and destruction of soil in the suit land at the tune of Tshshs, 100,000,000/=.*
- vii. Order recovering soil in the pit with imported soil.*
- viii. Costs of the suit are to be borne by the Defendant.*
- ix. Any other(s) as this Honourable Court may deem fit and just to grant.*

The matter was called for mention several times only the Plaintiff was appearing before the Court. On 20th October 2022, the Court ordered the Defendants to be served through publications in widely circulated newspapers.

The suit was argued before me on 9th March 2023. I am alive to the fact that the Defendant was notified through publication to appear on 9th March 2023, when this case was fixed for hearing, and the Defendant was so informed through the said publication. However, he did not appear. Having regard to the entire circumstances of this case, I am of the

considered view that the Defendant was duly being served therefore, I grant the Plaintiff's counsel prayer to proceed *ex parte* against the Defendant.

At all the material time, the Plaintiff was represented by Mr. Mlyambebele Ng'weli, learned Advocate. During the Final Pre-trial Conference, the following issues were framed by this Court: -.

- 1) Whether the Plaintiff is the lawful owner of the suit premises*
- 2) To what relief are parties entitled to.*

The Plaintiff's case was founded on Peter Peter Junior, who testified as PW1, Abubakar Juma Lugoma (PW2), and Ramadhani Hamsa Swalehe (PW3). Four exhibits were adduced by the Plaintiff in support of her testimony to wit; A letter requesting for exhibits dated 3rd February 2023 (Exh.P1), a Sale Agreement dated 15th June 1994 (Exh.P2), an Application for Survey dated 28th July 2008 (Exh.P3) and a copy of Land Case No. 213 of 2020 (Exh.D4)

Having heard the testimonies of the Plaintiff, I am in a position to confront the issues framed for the determination of the present dispute between the parties. Before, I start to determine the issues I want to make it clear that in civil proceedings, the burden of proof lies with the one who alleges.

See the case of **Govardhan P. Thakase v Janaradhan G. Thakase**, 2005 AIHC 1276. The Plaintiff is the one who alleges the existence of fact thus, PW1 must prove that she has an interest in the suit land. The standard of proof was elaborated under section 110 of the Evidence Act Cap.6 [R.E 2019]. This section places the burden of proof on the party asserting that partly desires a Court to believe him and pronounce judgment in his favour. For ease of reference, I reproduce section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] hereunder:-

"110 (1) 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.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Similarly, in the case of **Nsubuga v Kavuma [1978] HCB 307** the High Court of Uganda held that:-

" In civil cases, the burden lies on the plaintiff to prove his or her case on the balance of probabilities."

Applying the above position of the law to the instant case, the Plaintiff is required to prove that he is the lawful owner of the disputed land and he had to lead evidence to show that the Defendant is a trespasser.

From the foregoing, let me now confront the issues framed for the determination of the present dispute between the parties. I choose to tackle and address the issues as they appear. The first issue is *whether the Plaintiff is the lawful owner of the suit land.*

In a chronological account of the ownership of the property, the Plaintiff alleged that he bought a suit land measuring 25 acres from Kivuruge on 15th March 1994. PW1 testified that involved the Village Government and neighbours and paid Tshs. 2,500,000/=. To substantiate his testimony he tendered a sale agreement dated 15th June 1994 and a payment receipt dated 15th June 1994. He claimed that in 2020, the Defendant invaded his suit land. To substantiate his testimony, the Plaintiff tendered a Sale Agreement (Exh.P2) which proves that on 15th June 1994, Plaintiff bought the suit land from Juma Kivurugo and paid Tshs. 2,500,000/=.

According to the Plaintiff's Sale Agreement which was admitted in evidence as exhibit P3, the Plaintiff's neighbours are Ally Mtoto Ally on the East side, Abubakari Omary Lugoma on the West side, Omary Lugoma on the South side, and Juma Selemani Mohamed on the North side.

The proof of ownership of land in our jurisprudence was discussed in various cases, the person who alleges must prove his case. In the instant

case, the Plaintiff is required to prove his case on the balance of probabilities. This was emphasized by the Court of Appeal of Tanzania in the case of **Paulina Samson Ndawavya v Theresia Thomas Madaha**, Civil Appeal No. 53 of 2017 (unreported), the Court held that:-

"...It is equally elementary that since the dispute was in a civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other..."

Similarly, in the case of **Oliva Ames Sadatally v Stanbic Bank Tanzania Limited**, Civil Appeal No. 84 of 2019 [TANZLII 17th June 2022], the Court of Appeal of Tanzania cited with approval the case of **Mathias Erasto Manga v Ms. Simon Group (T) Limited**, Civil Appeal No. 43 of 2013 (unreported). The Court of Appeal of Tanzania among other things stated:-

" The yardstick of proof in civil cases is the evidence available on record and whether it tilts the balance one way or the other..."

Based on the above authorities, and having read the evidence of Peter Peter Junior (PW1) as a whole, the conclusion I draw is that the Plaintiff

in proving his case tendered a sale agreement which proved that he bought a suit land from Juma Kivurugo. The evidence of witnesses brought forward by the Plaintiff, is to the effect that the Plaintiff is the lawful owner of the suit land.

According to PW2 and PW3 evidence they were able to identify the Plaintiff's neighbours as follows; Ally Mtoto Ally on the East side, Abbakari Omary Lugoma on the West side, Omary Lugoma on the South side, and Juma Selemani Mohamed on the North side. Therefore, in my considered view, the Plaintiff has proved that he is the lawful owner of the suit land on the balance of probabilities.

I now turn to determine the third issue, *what reliefs are the parties entitled to*. Starting with reliefs (i), (ii), (iii), (v), and (vii) based on the above findings, it is clear that the Plaintiff's prayers have merit.

The (vii) prayer on general damage, the Plaintiff is claiming total general damages to the tune of Tshs. 100,000,000/= . I shall start with the aspect whether there was any finding on the proof of damages.

It is the trite law that general damages must be averred that such damage has been suffered by the Plaintiff after the consideration and deliberation on the evidence on record able to justify the award. And in awarding

general damages, the court has to assign reasons for awarding the same. See **Alfred Fundi v Geled Mango & 2 Others** Civil Appeal No. 49 Of 2017 CAT Mwanza, **YARA Tanzania Limited v Charles Aloyce Msemwa and 2 Others**; Commercial Case No. 5 of 2013: HC of Tanzania (Commercial Division) at Dar es Salaam (unreported).

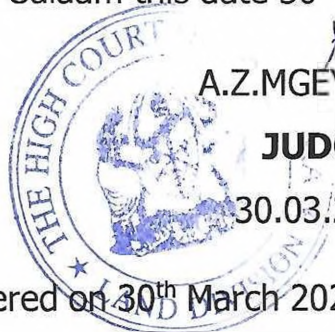
In my considered view, the Plaintiff did not tender any cogent evidence to prove the alleged damages therefore, in my view, this prayer is unfounded. Even prayer number (viii) cannot be granted because the Plaintiff did not prove if the Defendant dug soil from his piece of land. It was mere words without beings supported by any cogent evidence. Therefore, the prayers under paragraphs (vi) and (viii) crumble.

The last prayer is about the costs of the suit. It is a fact that the Plaintiff would not have bothered to come to court if the Defendant had messed up, as a result, the Defendant acts necessitated the plaintiff to incur costs in hiring an advocate, filing fees, transport et cetera, and therefore, I hold that the Plaintiff is entitled to the costs of the suit. These are costs involved in the suit which the Defendant must shoulder and I find no sufficient reason why the Plaintiff should be deprived of the same.

In the upshot the case is decided in favour of the Plaintiff, I proceed to declare and decree as follows:-

1. The Plaintiff is the lawful owner of 17 acres of a piece of land located at Kibosha Hamlet, Mapinga Ward Tribunal in Bagamoyo District
2. The Defendant is a trespasser.
3. The Defendant, his agent, or any person acting or working on his behalf are evicted and retained from trespassing the suit land.
4. The Defendant to demolish any structures erected in the suit land.
5. Defendant to bear the costs of this suit.

Dated at Dar es Salaam this date 30th March 2023.

A.Z.MGEYEKWA
JUDGE
30.03.2023

Judgment delivered on 30th March 2023 in the presence of Sunday Msoni, holding brief for Mr. Mlyambebele Ng'weli, learned counsel for the Plaintiff.

A.Z.MGEYEKWA
JUDGE
30.03.2023

Right to appeal fully explained.