

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

LAND CASE NO. 83 OF 2021

**JOHA HASSAN MOHAMED.....1ST PLAINTIFF
JOYCE JOSEPHAT.....2ND PLAINTIFF**

VERSUS

**JALIA AMIRI GUFU.....1ST DEFENDANT
AMIR RAMADHANI GUFU.....2ND DEFENDANT
AIDA HASSAN.....3RD DEFENDANT
JAMILY YUSUPH.....4TH DEFENDANT
TANZANIA AIRPORTS AUTHORITY.....5TH DEFENDANT
ATTORNEY GENERAL.....6TH DEFENDANT**

Date of Last Order: 28.02.2023

Date of Judgment: 04.04.2023

JUDGMENT

V.L. MAKANI, J

The plaintiffs JOHA HASSAN MOHAMED and JOYCE JOSEPHAT are praying for the following orders:

- (a) *A declaration that the 1st plaintiff is the legal owner of the Plot No. 87 Block S and the 2nd plaintiff is the lawful owner of Plot No. 89 Block S Savara Area, Buyuni Ilala Municipal Dar es Salaam respectively.*
- (b) *The declaration that the 1st 2nd 3^d and 4th defendants trespassed into the suit (sic).*

- (c) *A declaration that the 5th defendant failed to honour their promises of compensating the plaintiffs their respective plots of land.*
- (d) *Payment of special damages at the rate of TZS 40,000,000/= for each of the plaintiffs.*
- (e) *Payment of the general damages.*
- (f) *Costs of the suit.*
- (g) *Any other relief(s) the honourable court deems fit and just to grant.*

In the plaint, the plaintiffs are claiming for ownership of the two Plots No.87 and 89 Block S, Buyuni Ilala Municipality Dar es Salaam (the **suit properties**). The 1st defendant was living in Kigilagila with his family but the 5th defendant - Tanzania Ports Authority (**TAA**) in the course of expanding the Julius Nyerere International Airport had to move the 1st plaintiff and other residents of Kigilagila to another area. TAA offered plots to all who were within the expansion area and the 1st plaintiff was offered Plot 89, Block S, in Zavala Pugu Buyuni Ilala Municipal. The 2nd plaintiff was a customary owner but during the survey by TAA she was allocated Plot No. 87, Block S, Zavala, Pugu Buyuni. These two plots were adjacent to land owned customarily by Jalia Gufu (1st defendant) under the guardianship of her parents the

2nd and 3rd defendants. These new plots were surveyed by the Municipal Council under the instruction of TAA. The plaint states that the 1st, 2nd and 3rd defendants trespassed into the new plots and sold part of Plot No. 87 and 89 to the 4th defendant but the defendants allege that TAA failed to issue compensation to the customary owners before re-allocating the same to the plaintiffs. The 2nd plaintiff processed a Certificate of Title No. 175080, Land Office No. 919639 for Plot 87 Block S at Buyuni. However, the 4th defendant is allegedly in the plot sold to him by the 1st, 2nd and 3rd defendants.

The plaintiffs in this suit were represented by Mr. Frank Kilian, Advocate, while the 1st, 2nd, 3rd and 4th defendants were represented by Mr. Innocent Mwelelwa, Advocate. The 5th and 6th defendants were represented by Ms. Deborah Mcharo, Mr. Boaz Msoffe and Mr. Edward Jonathan Chitalula, State Attorneys.

The plaintiffs were the only witnesses, whereas evidence for the 1st, 2nd, 3rd and 4th defendants was by the 2nd and 4th defendants. And Edith Naftali Gari was witness for the 5th and 6th defendants.

Before commencement of hearing of the suit. Mr. Kilian made corrections that Plot 87 belonged to the 2nd plaintiff while Plot No. 89 belonged to the 1st plaintiff. The following were issues were framed:

- 1. Whether the plaintiffs are the lawful owners of the suit property namely Plots No. 87 and 89 Savera area, Buyuni Ilala Municipality*
- 2. Whether the 1st 2nd 3^d and 4th defendants are trespassers to the said suit property.*
- 3. Whether the plaintiffs were lawfully compensated by the 5th defendant following the allocation of the suit property.*
- 4. To what reliefs are the parties entitled to.*

The first witness (**PW1**) was the 1st plaintiff, Joha Hassan Mohamed. She said before the dispute arose, she and her family had a house in Kigilagila built by her husband. She said people from TAA informed them that there was expansion of the Julius Nyerere International Airport. It was agreed that they would move but they would be compensated with money and alternative plots, and this was duly satisfied by TAA. She said she was allocated Plot 89, Block S and said she started construction and built a four bedroomed house which was completed and she had started living in the said house. But there arose a dispute whereas the 3rd defendant claimed that the plot belonged to her because TAA had not paid her any compensation.

PW1 told the 3rd defendant to go to TAA but she insisted that she was the one who has to pay her. She said she reported the issue to TAA who said they heard her, but they did nothing and there was a lot of harassment which led her to report to *Serikali ya Mitaa*. She then went to the Ward Tribunal to file a case, then to Ilala District Tribunal and then to this court. She said her husband Mohamed Kondo Mg'onda died on 10/10/2003 and her stepson Abdallah Mohamed Kondo was appointed Administrator of his estate. She said the Administrator gave her and her two children Plot 89 Block S belonging to her husband as per the letter from the court (**Exhibit P1**) and TZS 17,000,000/= was paid by TAA which was received by the Administrator Abdallah Mohamed Kondo. She tendered the payment voucher and the Form to Confirm payment of compensation as **Exhibit P2** and **P3** respectively. She also tendered the letter to the effect that they were to get alternative plots (**Exhibit P4**). She said according to the letter she was allocated Plot No. 89, Block S but the customary owner of the land (farm) had sold part of the plot and there was a lot of destruction and her house was demolished. She prayed to be given an alternative plot and compensation because this was not her mistake. She also prayed for compensation for the building and costs.

On cross examination **PW1** she said she was harassed by the 2nd and 3rd defendants who are husband and wife claiming they are owners of the plots though the same is in the name of their daughter the 1st defendant. She further confirmed that the plot was given to her by TAA as part of compensation after demolition of her house at Kigilagila to pave way for expansion of the airport. She said in the allocated Plot 89 Block S, Zavala she only lived for 6 months, and she was in the process of getting a Certificate of Title, but the Municipal Council said the plot was yet to be in the Town Plan. She said it was TAA who showed her the boundaries and beacons, but it was the 3rd defendant who harassed her as owner of the Farm.

PW2 was the 2nd defendant Joyce Josephat. She said she bought a Farm in Buyuni Zavala in 2004 from Asha Salum Mwalimu. The Farm was measured at 43 x 20 paces. She said the Village Council informed them that there was a survey to be made by TAA. They told them that they may be moved a few paces or others may be relocated. She said when the survey was conducted, she moved a few paces to her neighbour's plot. She said she started construction and she built a three bedroomed house. She tendered a letter from the Village

informing them valuation would be conducted as **Exhibit P5**. The aim of the letter was to inform that a person with a farm would be given a surveyed plot and a Certificate of Title. She said according to the Valuation Form (**Exhibit P6**) issued to them by the Village Council and TAA they were to be compensated. The said **Exhibit P6** was signed by one Yofika Marko Shahidi on behalf of the Commissioner and she tendered Certificate of Title No. 175080 Plot 87 Block S Buyuni Ilala Municipality (**Exhibit P7**). She said according to the sketch within the Certificate of Title her plot is close to Plot 88 which belongs to the 1st defendant who is the daughter of the 2nd and 3rd defendants. She said before the survey they were living well with her neighbours the 1st, 2nd and 3rd defendants but problem arose when TAA did not pay compensation to the residents who were found on the land. she said when the survey was conducted the original boundaries were affected as Plot 88 was squeezed by Plots 87 and 89. She said the 4th defendant bought the land according to the original boundaries and he built a wall. She said though she has a Certificate of Title it is not complete as part of her land has been taken by the 4th defendant on the basis of the original boundaries. She asked TAA when she would be compensated and they, vide a letter (**Exhibit P8**), said they would make payments in the next budget of

2020/2021, but nothing has been paid to date. She prayed to be paid compensation and that the boundaries be corrected to correspond to what is in the Certificate of Title. She also prayed for damages and costs of the suit.

On cross-examination **PW2** said she was one of the customary owners of land at Zavala. She was not from Kigilagila and according to the original boundaries her plot has been encroached by new people from Kigilagila. She said there are new boundaries by the survey, so the 1st 2nd and 3rd defendants have a right to block them because they have not been compensated by TAA. She pointed out that there are people living in the area using original boundaries and others using surveyed boundaries and the problem is TAA because it has failed to pay compensation, so the original owners do not want to release or move to the surveyed plots.

The 2nd defendant Amiri Ramadhani Gufu was **DW1**. He said he came to know the 1st plaintiff when TAA brought her to the suit property. The 2nd plaintiff is his neighbour. He said the 1st defendant is his daughter and the 3rd defendant is his wife. He said they bought land

at Zavala from Said Ally Manduta. She said the size was about a ¼ of an acre and there was a Sale Agreement (**Exhibit D1**). He said there was a survey in 2004 and the original owners were informed that they were to be compensated but this promise has not been satisfied up until this date and for this reason they decided to sell the plot to the 4th defendant so that they get money for school fees. He said TAA are the trespassers as they have not compensated any of them though they have disturbed them. He admitted that when the plot was sold in 2015 to the 4th defendant the area was already surveyed but he said he sold the plot on the basis of the original boundaries because they were yet to be compensated.

On cross-examination **DW1** admitted that the 1st plaintiff was not a resident before the survey. He said after the survey his plot was Plot No. 52 which had a building therein and he was not happy, and he told *Serikali ya Mitaa*. He said the dispute was not initiated by him but by TAA who had not compensated them. *Serikali ya Mitaa* told them they should not leave until they are compensated. He said TAA are trespassers as they have not fulfilled their promise of payment of compensation.

The 4th defendant was **DW2**. He said he knows the 1st and 2nd defendants as his neighbours in Zavala Pugu. He said he bought the plot of land from the 2nd and 3rd defendants vide a Sale Agreement (**Exhibit D2**). He said after the purchase of the plot he did not develop it for a time but when he went to visit on 2019 the plaintiffs told him that he has trespassed in their plots allocated to them by TAA. He said he called the sellers and they told him the area was surveyed by TAA but since no compensation was not paid, they decided to sell it. He went to *Serikali ya Mitaa* who told him the same story that since no compensation was paid by TAA the customary owners were allowed to continue with their lives. He said he is not a trespasser, and the dispute has brought a lot of loss because there is no development that can be done. He said he is of the view that TAA were the source of the dispute because there was no compensation paid to the customary owners and that the new owners claim to have been allocated plots by TAA. He prayed for the court to declare them owners of the suit plot.

On cross-examination **DW2** said after the survey the plaintiffs have entered into his plot and he is supposed to enter into someone else's plot who has already built a house and residing therein. He insisted

that *Serikali ya Mitaa* told them that the original boundaries prevail because the owners were not paid compensation by TAA. He said before the purchase he was cleared by *Serikali ya Mitaa* as there is a stamp in the Sale Agreement of a member who is a representative of the Chairman. He said he has incurred costs of buying the plot, costs of the case and there are psychological issues to be considered.

The witness for the 5th and 6th defendants was Edith Naftali Gari (**DW3**), Land Officer of TAA. She said in 2004 TAA wanted to expand the Julius Nyerere International Airport and according to Land Acquisition Act compensation was for money and alternative plots among them being land in Pugu Makanga Ward, Zavalla. She said these were farms with customary owners. She said the 2nd plaintiff and 1st defendant were original owners in Zavalla. She said in 2004 a survey was conducted and plots 87, 88 and 89 were created. So, the 2nd plaintiff was given plot No. 87 and the 1st defendant Plot No. 88. The 1st plaintiff was compensated and given an alternative plot No. 89. She said on payment of compensation some residents who were transferred from Kigilagila and those customary owners were not paid but the process is ongoing. She said there are complaints from those who have not been given compensation and those who have not

received alternative plots. But there is no complaint from the 1st defendant. she said the 4th defendant according to their records is unknown to TAA, but he is the one who has brought confusion. He said the 1st defendant sold the whole plot instead of the one which was surveyed and allocated by TAA. She said initially there was temporary allocation but later the 1st defendant was allocated Plot 88.

On cross examination, **DW3** admitted that she did not know if the plaintiffs were compensated and did not remember the amount of compensation. She said there was an understanding between the customary owners, that is, the 2nd plaintiff and the 1st defendant and TAA but it is not in the court records. She did not know and was not involved in the signing of the Agreement/Understanding and she did not know either of the time frame. She said the 1st plaintiff was from Kigilagila and she was allocated plots owned by the 2nd plaintiff and others. She said the survey plots have extended to customary plots.

DW3 further admitted that valuation is supposed to expire within two years, so the valuation expired in 2006. **DW3** did not have proof that there was temporary allocation to the 1st defendant which later became known as Plot No. 88. She admitted that payment of

compensation is still in process and TAA is still waiting for directives on the payment of compensation, and non-payment of compensation is contrary to the law as compensation was supposed to be paid within 2 years after the valuation was conducted. She said in re-examination that valuation was completed in 2004, survey was completed in 2009-2010 and people were relocated from Kigilagila and Kipawa in 2010 to 2011. She said in respect of this case there are no complaints.

The parties opted not to file final submissions.

Having narrated the evidence by the parties herein, I will now endeavour to consider the issues agreed upon and in so doing I will be guided by the principle that whoever desires the court to give judgment in his/her favour, has to prove that those facts exist. This is under sections 110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2022. In the case of **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004** (unreported) the Court of Appeal held that:

".....it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Also, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) where it was further held that the party with legal burden also bears the evidential burden on the balance of probabilities.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is upon the plaintiffs to prove that they are the owner of the suit properties and that the defendants herein are trespassers and further that TAA failed to honour her promises to compensate the plaintiffs. What this court is to decide upon is whether the burden of proof has been sufficiently discharged.

It is not in dispute that the 1st plaintiff was initially resident of Kigilagila but was relocated to Pugu Zavalla because of the expansion of Julius Nyerere International Airport. The 1st plaintiff does not deny that she was paid compensation, but her claim is that the relocated plot has a dispute in that the customary owners are still within the area and to make matters worse they have sold part of her allocated plot to the 4th defendant. The 1st, 2nd and 3rd defendants do not deny that there was a survey and further that there were told about the

relocation of people from Kigilagila including the 1st plaintiff and that the 1st plaintiff was allocated Plot 89 and the 2nd plaintiff was also allocated Plot 87.

Now, who is the owner of the suit properties, that is, Plot 87 and 89 Block S, Zavara area, Buyuni Ilala Municipality? Section 2 of the Land Registration Act Cap 334 R.E 2019 provides that prima facie proof of ownership of land is Certificate of Title or at least a Letter of Offer. And this position was illustrated in **Salum Mateyo vs. Mohamed Mateyo (1987) TLR 111** where the court held:

"This means, any presentation of a registered interest in land is prima facie evidence that the person so registered is the lawful owner of the said land."

Also in the case of **Amina Maulid Ambali & 812 Others** (supra) (unreported) the Court of Appeal observed:

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

According to the evidence above, the 1st plaintiff has all the papers to warrant her ownership of Plot 89 Block S, Zavara area. **Exhibit P1** is the letter for allocation of Plot 89 Block S, Zavara area to the plaintiff's husband which later the Administrator gave it to the 1st plaintiff. There

is confirmation of payment of compensation for relocation (**Exhibit P2 and P3**) and there is also proof that Plot 89 Block S, Zavara area is an alternative plot following the relocation from Kigilagila (**Exhibit P4**). **DW3** the Land Officer of TAA has also confirmed that the survey was conducted and that the 1st defendant was allocated the said Plot 89 Block S, Zavara area. Though **DW1** asserts that the land belongs to him, but he has also asserted that in the survey the 1st defendant was allocated Plot 52. In view thereof, Plot 89, Block S, Zavara Area, belongs to the 1st defendant who possess all the documents related to the survey and the whole process of relocation and allocation of the said plot.

As for the 2nd plaintiff the record is very clear that despite that she is the customary owner, she participated in the survey, and she was allocated Plot 87, Block S, Zavera Area, Buyuni, Ilala Municipality. She went further to process her title and was granted Certificate of Title No. 175080, Land Office No. 919639. The 2nd plaintiff is therefore owner of Plot 87, Block S, Zavera area, Buyuni Ilala Municipality, Dar es Salaam.

The second issue is whether the 1st, 2nd, 3rd and 4th defendants are trespassers in the suit properties. Having established that the plaintiffs are owners of Plots No. 87 and 89 Block S, Zavala area, Buyuni, Ilala Municipality it is apparent that 1st, 2nd, 3rd and 4th defendants are trespassers. The 1st, 2nd, and 3rd defendants claim that TAA did not compensate them that is why they sold the suit land to the 4th defendant. However, it is on record that they were aware of the survey exercise, they agreed to it and thus were cognisant of the relocation of the plots to the respective persons including the plaintiffs. **DW1**, admitted that they sold the plot to the 4th defendant after the survey, so they knew that the plots were already relocated to the plaintiffs. The issue of compensation was an arrangement between the 1st defendant and TAA and therefore the sale of the suit property to the 4th defendant knowing that already the plot has been allocated to the 1st plaintiff is in my view improper. The 1st plaintiff is not part of the understanding between the 1st defendant and TAA on compensation and further that if at all the 1st defendant and his parents the 2nd and 3rd defendant were not happy with the whole exercise, they would have taken up the issue with TAA for allocating their land without compensation.

The 4th defendant has unfortunately been caught in the web of the principle of "buyer beware" (**caveat emptor**). Practically, as a purchaser he had an obligation to have knowledge of the nature of the property he was buying from the 1st, 2nd and 3rd defendants. The 4th defendant was thus bound by principle of buyer beware which assumes that buyers will inspect and otherwise ensure that they are confident with the integrity of the product or land before completing a transaction. In fact, a buyer of landed property is supposed to make a search, make on-site inspections of the property, and make enquiries if there are any existing disputes over the property, boundaries, right of way, maintenance of roads and the like. It was therefore the duty of the 4th defendant to make such enquiries and search before proceeding with the sale between himself and the 1st, 2nd and 3rd defendants so as to satisfy himself of the transaction. In his evidence as **DW2**, the 4th defendant only pointed out that he contacted the village leadership to check on the authenticity of the sellers of the plot of land, but the said leaders were not called as witnesses to support this statement. If the 4th defendant had gone into the trouble to know what he was buying he would have known that the property had problems. In the circumstances he too falls in the category of a trespasser.

The third issue is whether the plaintiffs have been adequately compensated by TAA on account of the relocation. Indeed, in her evidence the 1st plaintiff stated that she was compensated for relocation from Kigilagila and was given Plot 89, Block S Zavalla. However, due to the problems which arose the alleged customary owners, that is the 1st, 2nd, 3rd and 4th defendants trespassed and even demolished the house in which the 1st plaintiff had built. In essence the 1st plaintiff currently has no plot and house to live in. The 2nd plaintiff though she has a Certificate of Title, but as a customary owner she is entitled to compensation which has not been paid to date by TAA. It is apparent from the evidence that the foundation of the dispute is non-payment of compensation by TAA as agreed. For instance, **DW3** told the court that they are people who were relocated to Zavalla who have not been compensated and there also customary owners who have also not been compensated and accordingly the process is still ongoing. In my view, there is negligence on the part of TAA considering that the process of relocation started in 2004 by way of survey and actual relocation commenced in 2009 and was completed in 2010. So, if some of the people are yet to be compensated, then the TAA cannot escape liability to the problem which has also befallen the plaintiffs. Subsequently, despite that the 1st plaintiff was compensated for the relocation but she

has to be compensated for being left a destitute and the 2nd plaintiff for not being paid her compensation as a customary owner (see **Exhibit P6** and **P8**).

In view of the above therefore, it is the holding of this court that TAA are obligated to ensure that the 1st plaintiff is properly relocated to Plot No. 89 Block S Zavalla or in the alternative ensure that she gets an alternative plot of the same size in the same area or anywhere else to the satisfaction of the 1st plaintiff. And since the reason for her demolished house is basically on account of TAA then TAA shall contribute to building costs at TZS 10,000,000/= to the 1st plaintiff. TAA shall also ensure that the boundaries in respect of Plot 87 Block S Zavalla owned by 2nd plaintiff are properly demarcated to reflect what is in the Certificate of Title No. 175080 and further that she is eligible for compensation as a customary owner which she has not been paid to this date as agreed and in accordance with the law.

The last issue is to what are the parties entitled to. The plaintiffs have prayed for special and general damages at TZS 40,000,000 each. It is settled law that specific damages have to be specifically pleaded and strictly proved. (See the cases of **Samwel Kimaro vs. Hidaya Didas**,

Civil Appeal No. 271 of 2018 (CAT-DSM) (unreported) and the case of **Stanbic Bank (T) Limited vs. Abercrombie & Kent (T) Limited, Civil Appeal No. 2001, (CAT-DSM)** (unreported). Though the plaintiffs have claimed for payment of TZS 40,000,000/= each as special damages, they have however, not demonstrated how they has arrived at the said TZS 40,000,000/= payable to each of them. In that regard, I don't find reason to award the specific damages prayed.

As for the general damages prayed, it is trite law that the court discretionarily awards general damages. The rationale for such an award of general damages is to try and place an injured party in as good position as that party would have been had the wrong complained of not occurred (see the case of **Tanzania-China Friendship Textile Company Limited vs. our Lady of Usambara Sisters [2006] TLR 70 and Antony Ngoo and Denis Antony Ngoo vs Kitinda Kimaro, Civil Appeal No. 35 of 2014 (CAT-Arusha)** (unreported). I have given due consideration of the prayer, and in view of the circumstances of the case as explained above, it is quite apparent that the plaintiffs have suffered a lot and as said the 1st plaintiff has been left hanging with nothing, that is, she has no plot or house. On the other hand, the 2nd plaintiff has also been making constant follow-ups to TAA to get her

compensation and to make good her boundaries. In that regard the plaintiffs are awarded general damages to the tune of TZS 30,000,000/= each payable by the 5th defendant (**TAA**).

In the result it is decreed as follows that:

1. The plaintiffs are hereby declared the lawful owners of the suit property namely, Plots No. 87 and 89, Block S, Zavalla, Buyuni, Ilala Municipality, Dar es Salaam.
2. The 1st, 2nd 3rd and 4th defendants are hereby declared trespassers in the suit property.
3. The 5th defendant (**TAA**) is ordered to ensure proper relocation of the 1st plaintiff in Plot No. 89, Block S, Zavalla Buyuni, Ilala Municipality or in the alternative, the 5th defendant (**TAA**) to ensure that the 1st plaintiff is given an alternative plot of the same size in the same area or in another area to the satisfaction of the 1st plaintiff.
4. The 5th defendant (**TAA**) is ordered to ensure that the boundaries of Plot 87, Block S, Zavalla, Buyuni, Ilala Municipality

Dar es Salaam in the name of the 2nd plaintiff are properly demarcated to reflect what is in Certificate of Title No. 175080.

5. The 5th defendant (**TAA**) is ordered to pay compensation of TZS 10,000,000/= to the 1st plaintiff as building costs; and 5th defendant (**TAA**) is further ordered to pay compensation to the 2nd plaintiff as a customary owner as agreed and in accordance with the law.
6. The plaintiffs are awarded general damages to the tune of TZS 30,000,000/= each payable by the 5th defendant (**TAA**).
7. The defendants are condemned to costs of this suit.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
04/04/2023