

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

LAND CASE NO. 131 OF 2021

IAN SIFUEL MAMUYA.....PLAINTIFF

VERSUS

**OTHMAN MWINYIJUMA JUMBE.....1ST DEFENDANT
TOBIAS JACK.....2ND DEFENDANT
MASSUD MOHAMED.....3RD DEFENDANT**

Date of Last Order: 08.02.2023
Date of Judgment: 27.03.2023

JUDGMENT

V.L. MAKANI, J

The plaintiff IAN SIFUEL MAMUYA is, in the amended plaint praying for the following orders against the defendants jointly and severally as follows:

- (a) A declaration that the plaintiff is the lawful owner of land described as Plots No. 67 and 69, Block G issued with Certificate of Occupancy under Title No. 46209, Mji Mwema Magogoni, Kigamboni Municipality, Dar es Salaam.*
- (b) A permanent injunction against the defendants their agents or any other person action on their behalf to vacate from the suit property.*

- (c) *An order compelling the defendants their agents or any other person acting on their behalf to vacate from the suit property.*
- (d) *An order compelling the 1st defendant to pay TZS 500,000 per month from October 2010 to the date of judgment being mesne profit arising from the trespass.*
- (e) *An order compelling the 2nd defendant to pay TZS 500,000 per month from October 2010 to the date of judgment being mesne profit arising from trespass.*
- (f) *An order compelling the 3rd defendant to pay TZS 500,000 per month from October 2010 to the date of judgment being mesne profit arising from trespass.*
- (g) *Interest at the court's rate from October 2010 for item (d) (e) and (f) to the date of judgment.*
- (h) *Interest at the court's rate of total decretal sum from the date of judgment until payment of the decretal sum in full.*
- (i) *Payment of general damages as shall be assessed (sic) by the honourable court.*
- (j) *Costs of the suit be borne by the defendants.*
- (k) *Any other relief and/or ordered as the same deem fit and just to grant.*

The Plaintiff in this case was represented by Mr. M. Majura, Advocate and the 1st Defendant was represented by Mr. Yuda Thadei and the 2nd and 3rd defendants were represented by Mr. Dennis Kahana and Mr. Victor Mwakimi.

The plaintiff called three witnesses including himself as **PW1**, Adelfrida Lekule, Land Officer-Dar es Salaam (**PW2**) and Pasval Mathias Mhande-Surveyor, Ministry of Lands (**PW3**). The defendants witnesses were the 1st defendant (**DW1**), Festus Kija Ikoba (**DW2**), Ramadhani Suleiman Abdallah (**DW3**), the 3rd defendant Massud Mohamed Massud (**DW4**), Lilian Josephat Rweyemamu (**DW5**) and the 2nd defendant Thobias George Jack (**DW6**).

According to the plaint the plaintiff alleges that he is the legal owner of the landed property on Plots 67 and 69, Block G, Mjimwema, Magogoni, Dar es Salaam with Certificate of Title No. 46209 (the **suit property**) whose value is estimated at TZS 1,000,000,000/=. He further alleges that the plaintiff that the defendants trespassed in the suit property, vandalised the property including illegal removal of survey beacons, and constructed illegal boundaries without the plaintiff's consent. The plaintiff goes on alleging that the Commissioner for Lands recognises him as the lawful owner and that despite that the defendants were given ample time to vacate since 2014 they have not done so. The plaintiff claims that he has been unable to do investment as planned because of the trespass by the defendants and this has caused loss to the plaintiff.

Before the commencement of the suit two issues were framed as follows:

- 1. Whether the plaintiff is the lawful owner of the suit property.*
- 2. To what reliefs are the parties entitled.*

The plaintiff (**PW1**) in his examination in chief stated that he is in tourist business in Arusha with a hotel and a house of wines. He said the 1st and 2nd defendants are trespassers in the suit property as the 1st defendant has built a house while the 2nd defendant has erected a wall and built a servant quarter. He said he was allocated the suit property by the Commissioner for Lands vide Certificate of Title No. 46209 (**Exhibit P1**) issued on 06/07/1996. He said he has two plots namely Plot No. 67 and 69 at Block G with 6,034 square meters. He said the 1st defendant has taken 2,280 square meters, while the 2nd defendant has taken 2,115 square meters. He said the 3rd defendant has taken 25 square meters.

PW1 said on 04/08/2022 he conducted an official search and the result in the Official Search Report (**Exhibit P2**) reflected that the suit property was in his name. He said he has been paying Land Rent (**Exhibit P3** collectively) and the last payment was made on

30/07/2018. He said the land use is business tourism. He said he wrote a letter to Kigamboni Development Authority (**KDA**) to get clarification on use of the suit property and they clarified vide a letter dated 03/08/2016 (**Exhibit P4**) that the area has been secluded for tourism development and all landowners should follow that plan. He said he had intended to build a hotel restaurant and café. He also wanted to build an Art Gallery (for phase one) an increase of rooms in the hotel from 7 to 20 rooms (phase two). He said this project did not proceed because the land was trespassed and the first trespassers in 2008 were Othmani Jumbe, Ally Junat and Mama Davy. **PW1** said the two trespassers Ally Junat and Mama Davy left because he told them that he was the owner of the suit property. But in 2016 there were two new trespassers, that is, the 2nd and 3rd defendants. He said after discovering the trespassers he wrote a letter to the Commissioner for Lands (**Exhibit P5**) for clarification as to who is the owner of the suit property. The Commissioner responded and confirmed that the plaintiff was the owner of the suit property (**Exhibit P6**) and further that there were two survey maps that is E1-330/251 of 2007 and E1-330/294 of 2008 which were in the process of being cancelled (**Exhibit P7 and P8**). He said he wrote a letter to Temeke Municipal Council requesting for the return of the beacons, and he was told to make payment by the Council for the said

exercise (**Exhibit P9**). He said the trespassers were given notice to vacate through his advocate's letter dated 30/04/2017 (**Exhibit P10**) and the notice is **Exhibit P11**. **PW1** went on saying that in 2018 he placed a complaint to the police vide Police Report No. KGP/RB/3705/2018 (**Exhibit P12**) and the offence was criminal trespass. **PW1** said he was still adamant and on 12/10/2019 he wrote a letter to the Commissioner for Lands seeking for further clarification as to who is the owner of the suit property. The Commissioner replied on 13/11/2019 vide **Exhibit P13** that he is the owner of the suit property. He also pointed out that he wanted to build a wall around the plot and he got a Building Permit (**Exhibit P14**) whose validity was six months and also there was notice to commence construction (**Exhibit P15**). **PW1** also tendered a Business Plan (**Exhibit P16**) to show his intention to build a tourist hotel whereas he was supposed to invest at least USD 300,000. He said he was expecting to get a loan from the Bank and call for shares which combination would have gotten a profit of TZS 500,000,000/= annually after the operation capital and taxes. He said the project could not take off because of the trespassers. He prayed to be declared the owner of the suit property. He also prayed for the trespassers to vacate the suit property. He further prayed for permanent

injunction so that no further development is made at the suit property. He prayed for damages and costs of the suit.

On cross-examination **PW1** said he bought the suit property from two people namely Swaleh Mohamed and Massud Massud (the 3rd defendant). He said the Sale Agreements are all misplaced, but he bought the land in 1991 obtained the Certificate of Title in 1996. He said before obtaining the Certificate of Title the Sale Agreements were presented to the Commissioner for Lands. He said the Sale Agreements are the basis of the issuance of the Certificate of Title. He said he discovered the trespass in 2004. He pointed out that the notice by the advocate was given to the Chairman of *Serikali ya Mitaa* and he admitted that there is no proof that the 1st defendant received the said notice. He said the sale between him, and the 3rd defendant was before the village leaders, but he does not have the proof. He also admitted that the demand letter and notice were addressed to the 2nd and 3rd defendants but there was no proof of receipt.

PW2, Adelfrida C. Lekule is Land Officer at the Office of Commissioner for Lands Dar es Salaam. She said **Exhibit P1**- Certificate of Title of the suit property is in the name of the plaintiff and it was registered in 1996.

She said the Commissioner for Lands vide **Exhibit P6** confirmed that the owner of the suit property was the plaintiff and so did the Official Search Report (**Exhibit P2**) and further that there is no encumbrance. She said the plaintiff as owner of the suit property was advised to protect his land.

On cross-examination **PW2** confirmed that before the procurement of a Certificate of Title the plaintiff presented two Sale Agreements between him and Saleh and Massud. He said the Sale Agreements are in their records but were not presented in court as exhibits. She said the application for a Certificate of Title requires a Sale Agreement and an application and in the present case there was a Letter of Offer of 1995 and then a Certificate was issued after a due diligence was done by the City Council. She admitted that the due diligence report is not part of the records of the court.

PW3 was Pascal M. Mhande a Surveyor with Ministry of Lands, Dar es Salaam. He said **Exhibit P7** the letter from *Upimaji na Ramani* addressed to the plaintiff was for verification of the boundaries of the suit property. He said the letter reflects that there were two survey maps **E1-330/251** and **E1-330/294** that covered plots 67 and 69. He said

E1-330/251 was for **Plot 2048** and E1-330/294 for **Plot 2066**. He said **Exhibit P8** is a letter from the Survey Office Temeke cancelling the survey maps E1-330/251 and E1-330/294 and ordering the removal of beacons from Plots 67 and 69. And what was cancelled according to **PW3** was Plots 2048 and 2066 and he said when such survey maps are cancelled then the plots on the maps are also cancelled.

On cross-examination **PW3** admitted that there was a weakness in the system as to verification because the office discovered that there was already a survey after a visit to the site. He said he was not sure if the 2nd and 3rd defendants have been informed that the survey plans issued have been cancelled. He said in re-examination that the cancellation means the survey plans have been removed from the records and they no longer exist. He said they were cancelled after discovery that they were done in the suit property which had a Certificate of Title already.

DW1 is also the 1st defendant. He said he is not a trespasser in the suit property. He said he bought the said land from Massud, the 3rd defendant herein. He said before paying for the said land he made enquiries from the neighbours to confirm that the 3rd defendant was the owner of the suit property. He said on the South there was Mzee Festo

who confirmed that the 3rd defendant was his neighbour. On the West there was Mzee Ramadhani Selemani and on the North and East side there was the 3rd defendant himself. He said he bought the suit property in 2001 for TZS 800,000/=. The Sale Agreement was admitted as **Exhibit D1** and property Tax Demand Notices for the years 2007,2009, 2011, 2014/15 2016/17 were collectively admitted as **Exhibit D2**. He said he has constructed a house and has been on the suit property for 21 years now. **DW1** informed the court that he started knowing the plaintiff in court. **DW1** denied ever seeing **Exhibits P10, P11, P12**. He said he has never been called to the Police, *Serikali za Mitaa* or anywhere else in relation to the suit property. He also said he has never seen any notice from the plaintiff. He said he has constructed a residential house and his family is residing in the said house. He also denied seeing any beacons, or any Land Officer or any letters from the Land Office. He said he has been on the suit property for a long time but there is no communication whatsoever about trespassing.

On cross examination **DW1** informed the court that the suit property was a squatter area, and he did not have a residential licence and they do not pay land rent because the area is a squatter, and the Sale Agreement was witnessed by Primary Court Magistrate.

DW2 was Festus Kija Ikoba. He said the Village Council of Maweni Mjimwema Kigamboni allocated pieces of land. He said he knows the 1st defendant since 2003 as his neighbour and his relatives were supervising construction. He said before the 1st defendant the area was owned by Mzee Massud. He said he knows Dr. Mamuya who came and introduced himself in 2015 or 2016 and claimed the he had trespassed in the area as it belonged to him. He said he told the said Dr. Mamuya that he was allocated the land by the Village Council. He said the person who came to see him was old and seemed to be suffering from paralysis and he told him he was living in Moshi. He said the plaintiff was not the one who came to visit him. He said he knows well the 3rd defendant.

DW3 was Ramadhani Suleiman Abdallah. He said he is resident of Maweni Kigamboni since 1997 and he bought land from Mzee Massud the 3rd defendant. he said he knows the 1st defendant and that he is his neighbour. He said he has known him since 2001 and in his plot, there is a house, garden and a chicken pen. He said he is aware that the 1st defendant bought the plot from the 3rd defendant and his uncle used to do casual work during construction of the 1st defendant's house. He said he does not know the plaintiff.

DW4 was the 3rd defendant Massud Mohamed Massud. He said he has been sued as a trespasser while he doesn't know the plaintiff. He said he is not a trespasser as he has been in the area of Kigamboni Mjimwema since 1968. He said he owned a big area and he sold plots to different people. He said he inherited the land from his father who passed away in 1969. By then the area was known as Magogoni. He said he has proof of ownership of 2½ acres from *Serikali ya Mitaa* (**Exhibit D3**). He said the 2½ acres is the piece of land now remaining which is owned by him and his family. He said he does not know the plaintiff and he has never seen him or heard any other case against him except this case. He said he has never received any notice or a police report except the summons to attend this case. He said the claim is not the truth and he prayed for the suit to be dismissed with costs.

On cross-examination **DW4** pointed out that if at all the plaintiff had any claim against him he would have started with the Village because the local leaders know who owns what and where. He said he sold land to the 1st defendant and other people. He said before they had sold the land to Norfish and Umati but they did not pay so they were removed and the land was returned to them by Gazette of 1998 by the then

President Mkapa. He said there are beacons on the land but those were for Norfish. He said he heard the name of the plaintiff here in court and he has never sold land to him, and he does not know him.

Lilian Josephat Rweyemamu was **DW5**. She said she was Chairman of *Serikali ya Mtaa* for three phases from 2000 to 2014. She said she was also Counsellor (*Diwani*) up to 2016. She said she has been residing in Mjimwema from 1989 to this date. She said in 1989 there were about 6 families, and her hosts were Mwingira, Massud, Col. Mbalwa, Lt. Col. Marando and Festo Likoba. She said she knows **Exhibit D3** which is to confirm that Massud is the owner of the piece of land where he is currently residing. She said there is a stamp of *Serikali ya Mtaa* and her signature as the Chairman. She said **Exhibit D3** is an introduction letter and normally when a person wants to sell his plot of land, he normally involves *Serikali ya Mtaa* and the leaders makes inspection to know the size and boundaries before sale of the plot is concluded. She said she does not have and have not seen any documents of the plaintiff, so she does not know if the 3rd defendant trespassed in his land. She said what she knows is that the 3rd defendant is her neighbour, and she knows his plot.

On cross-examination **DW5** admitted that the Sale Agreement **Exhibit D1** between the 1st defendant and the 3rd defendant never passed through the office of *Serikali ya Mitaa*. She also said during her leadership she has never heard of the plaintiff or any dispute between the plaintiff and the 3rd defendant.

DW6 was Tobias George Jack the 2nd defendant. He said the case against him is alleged trespass in the plaintiff's property and building thereon. He said the said property is in Maweni Mjimwema Kigamboni. He said he bought the property in 2002 for TZS 1,500,000/= from Massud Massud the 3rd defendant herein vide Sale Agreement signed on 16/01/2002 (**Exhibit D4**). He said after purchase of the land he started the process of getting a Certificate of Title through *Serikali ya Mitaa* (**Exhibit D5**) and the Municipal Council. He said the KDA wrote a letter to the Municipal Council about our application for the Certificate of Title and the letter has a sketch map Ref. 1KGA/KDA/28/032017 and E1 330/294 the mapping reference number. He said he then made payment to the Kigamboni Municipal Council and was given receipts (**Exhibit D7** and **D9**) from Ministry of Lands and receipts from Kigamboni Municipal Council (**Exhibit D8**). He said that the receipts from the Ministry of Lands are in respect of Plot 2066 Block G, Kigamboni. He

thus said the alleged trespass in Plots 67 and 69 are baseless as he is in Plot 2066 Block G, and these are different plots. He said he has been in Plot 2066 since 2005 and he has built a house therein. He said he does not know the plaintiff and the first time he saw him is in court. He said he has never had any dispute concerning his plot and he has never been in court in respect of his plot, and he has never been informed that his plot has been revoked. He said according to **Exhibit D6** his Deed Plan was registered. He said **Exhibit P8** is a letter from the Ministry of Lands, but it is the first time he saw it and it was not addressed to him. He prayed for justice to be done.

On cross examination he said **Exhibit D6** is a letter from KDA to Kigamboni Municipal Council and he does not know the whereabouts of the KDA right now. He said he has no information of the cancellation of the plots by virtue of **Exhibit P8** and he said it is the first time he saw the letter. He said he has not tendered any Certificate of Title in respect of Plot 2066. He said he was given a Letter of Offer and a letter to process the Certificate of Title but are not tendered in court. He said he knows that Plot 2066 which is his plot still exists though he is yet to get a Certificate of Title. He is not aware of Plots 67 and 69. He further stated that **Exhibit P7** and **P8** states plots 67 and 69 are in Mjimwema

Magogoni and **Exhibit D6** states the plot is in Maweni Mjimwema and he believes these are different plots.

Parties filed final submissions to assist the court in its findings. Mr. Majura for the plaintiff in answering the first issue submitted that the plaintiff is the lawful owner of the suit property. He said there was no document that was tendered by the 1st and 2nd defendants that they were owners of the suit property. He said they all claimed to have purchased the suit land from the 3rd defendant but there is no proof that at the time of the sale the 3rd defendant (**DW4**) had a valid title to pass to them. He said the only document the 3rd defendant tendered was a document by *Serikali ya Mitaa* (**Exhibit D3**) which does not show the size and boundaries and thus has no connection to the suit land. He supported his argument with the case of **Moshi Mustafa & 2 Others vs. Ilemela Municipal Council & Another, Civil Appeal No. 117 of 2020 (CAT-Mwanza)** (unreported). He further said nowhere in the Written Statement of Defence (the **WSD**) it is disclosed that the Certificate of Title by the plaintiff was obtained out of misrepresentation or fraud and if they had any dispute, they would have filed a caveat to express their dissatisfaction for the grant of the land to the plaintiff. He said the defendants fraudulently attempted to cause the disputed land

to be resurveyed and the faulty survey plans E1 330/251 and E1 330/294 were cancelled. He said it was not the defendants or any other person who challenged the said cancellation of the survey plans. He went on saying that according to section 2 of the Land Registration Act any presentation of a registered interest in land is prima facie evidence that the person registered is the lawful owner of the said land. he said there is no evidence to fault the grant of the Certificate of Title to the plaintiff. He relied on the case of **Julius Raphael Mataraiya vs. Commissioner for Lands & 5 Others, Land Case No. 109 of 2018 (HC-Land Division)** (unreported) which cited the case of **Amina Mauld Ambali & 812 Othes vs Ramadhani Juma, Civil Appeal No. 35 of 2019 (CAT-Mwanza)**(unreported). He said ownership of the disputed land to the plaintiff was duly proved and **Exhibit D1** and **D2** do not in any way refer to the suit property.

As to the second issue to what reliefs are the parties entitled to Mr. Majura said the plaintiff wanted to invest in the disputed sum of USD 1,487,976 according to the building permit (**Exhibit P14**) and the Business Plan (**Exhibit P16**) and since the investment was not done the market value of the rent for the space which is illegally occupied by the defendants is TZS 1,500,000/= per month so he entitled to recover

TZS 500,000/= per month from each of the defendant. He concluded by submitting that the evidence on record proves that the plaintiff is the legal owner of the suit property, and the defendants are trespassers and have unreasonably refused to vacate. He prayed for the prayers for specific and general damages.

Final submissions on behalf of the 1st defendant were filed by Mr. Yuda Thadei. He said that the plaintiff alleged to be the lawful owner of the suit property and tendered the Certificate of Title No. 46209 in the name of the plaintiff. He said the plaintiff alleged that he bought the suit property from the 3rd defendant, but he did not tender the Sale Agreement. He said the plaintiff never produced records to show that during the survey he actually followed the procedures including getting a clearance from *Serikali ya Mitaa* to the effect that the suit property belongs to him and that there was no dispute to the neighbours plots to avoid dispute of boundaries. He said the plaintiff said the Sale Agreement were part of the documents presented at the Ministry for processing the Certificate of Title but the witnesses from the Ministry never produced such documents obtained prior to the survey. He said the court was therefore left in doubt as to whether the plaintiff owned the suit property and followed the procedures before the survey was

conducted in respect of the plots in dispute. He said the plaintiff alleges that he knows the 3rd defendant and vice versa but, in their testimonies, both the plaintiff and 3rd defendant said they did not know one another. Mr. Yuda Thadei said in such a situation where the buyer and seller deny each other the court is not in a position to conclude as to who is saying the truth. He said since it is the plaintiff that acquired the land and not the Government, then the plaintiff is supposed to prove how he acquired the land and that he followed the procedures before the survey was made which include proof that at the time of survey there was no dispute with other plots. He said the Certificate of Title cannot operate as a total proof to ownership of the suit property as it has to be supported by other corroborative evidence which should show how the alleged owner acquired the land before he was given the Certificate of Title. Mr. Yuda Thadei observed that the issue of trespass cannot be considered because the survey did not follow the proper procedure, that is, the plaintiff has not proved how he acquired the land before the survey was done.

Mr. Thadei Yuda also pointed out the issue of limitation of time. He said the plaintiff pleaded in his plaint that he acquired the suit property in 1996 but throughout there is nowhere that the plaintiff has been making

follow up to protect his plots. He said the 1st defendant indicated that he has been in his plot since March, 2001 and the dispute arose in 2021 when he was served with the pleadings of this case. He said limitation on land matters is 12 years and when the matter was served on the 1st defendant it is about 20 years therefore the suit was filed out of time. He prayed for the suit to be dismissed with costs.

Final submissions on behalf of the 2nd and 3rd defendants were filed by Mr. Victor Mwakimi, Advocate. Though the submissions were filed separately but they are similar in content. Mr. Mwakimi on the first issue submitted that the plaintiff does not have *locus standi* to institute the suit against the 2nd and 3rd defendants. He said from the facts apparent on the face of the record the plaintiff and the original title holder are two distinct creatures. He said according to **Exhibit P1, Exhibit P5** and **P9** the signatures are in contrast to those in the plaint and **Exhibit P13**. He said without even a handwriting expert the signatures vary and they are quite different from that of the owner of the suit property. Secondly, he said the names are different one is Dr. Ian Sifuel Mamuya of P.O. Box 294 Marangu, while the plaintiff is plain Ian Mamuya of P.O. Box 1498 Arusha. He said the plaintiff said he has a doctorate in Economics and his father is a medical doctor but in cross-examination he failed to

say when he graduated. He said the plaintiff is impersonating himself for unfair advantage.

Mr. Mwakimi said there is no cause of action against the 2nd defendant. he said in the plaint there are no facts which associates the 2nd defendant to the suit land only trespass is mentioned in paragraph 7 and 9 of the plaint, but there are no exhibits tendered to prove the allegation against the 2nd defendant who has pleaded to be owner in a different property other than the suit property. Mr. Mwakimi also alleged the same to the 3rd defendant but went further to submit that the plaintiff stated that he bought the suit property from the 3rd defendant, but the latter has denied him completely. He said **Exhibit D3** does not relate to the suit property. He said parties are bound by their own pleadings and the plaintiff has no cause of action against the 2nd and 3rd defendants. Mr. Mwakimi also pointed out that there were contradictory statements and lack of clarity in the pleadings. He observed the contradictions in **Exhibits P12** and **P13**. In totality Mr. Mwakimi said the plaintiff has failed to prove his case in terms of section 110 of the Evidence Act CAP 6 RE 2022 and the case of **Paulina Samson MNdawayya vs. Theresia Thomasi Madaha, Civil Appeal No. 45 of 2017 (CAT-Mwanza)**(unreported).

Having narrated the evidence of the witnesses and the final submissions I would now embark on addressing the issues that were framed for consideration. But before that I would wish to address the issues of law that were raised by the respondents' Counsel.

I have noted that Mr Thadei raised the issue of limitation of time in his final submissions. Mr. Mwakimi has also raised the issue of *locus standi* and cause of action against the 2nd and 3rd defendants. First, I must point out that the issues were raised in the final submissions, and this is irregular as hearing had been concluded. Although these may be issues of law and the court has to decide on it, but it should also be noted that justice would not be seen to be done where the plaintiff's advocate had no opportunity to respond to the said issues. I accordingly find the issues raised to have come too late in time and an afterthought, and in my view, they shall not be afforded any consideration.

Now coming to the substantive issues. The first issue for determination is whether the plaintiff is the lawful owner of the suit property. 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."

In this suit proof of ownership by the plaintiff is **Exhibit P1** which is the Certificate of Title of the suit property. The defendants have not denied the existence and the validity of the said Certificate of Title. The Land Officer **PW2** confirmed that the suit property is in the name of the plaintiff. The Search Report (**Exhibit P2**) also emphasizes that the said Certificate is in the name of the plaintiff and further there are no encumbrances whatsoever. The letters from the Commissioner for Lands **Exhibit P6** and **P13** further confirms that the suit property is in the name of the plaintiff. **PW3** also concretized that the Plots 67 and 69 contained in the Certificate of Title as the ones in the survey map. The evidence of **PW1**, **PW2** and **PW3** and the existence of the Certificate of Title and the exhibits in support thereof were not shaken, and this

means the suit property is owned by the plaintiff by virtue of the Certificate of Title (**Exhibit P1**) which is a prima facie proof as to ownership in terms of section 2 of the Registration Act and the cases of **Salum Mateyo** and **Amina Maulid Ambali** (supra).

Mr. Thadeo Yuda for the 1st defendant in the final submissions claimed that there was no evidence of survey or Sale Agreement. But as stated by **PW2** the Sale Agreements are in their files and the Certificate of Title could not have been issued if prior conditions were not met including the Sale Agreements and survey. So, the 1st defendant's argument on the process of survey by the plaintiff cannot stand were there is a Certificate of Title in place and as correctly observed by Mr. Majura there is no proof that the said Certificate was fraudulently obtained.

For the 1st defendant the only proof he had on ownership was Sale the Agreement between himself and the 3rd defendant (**Exhibit D3**), which according to **DW5** the Sale Agreement never passed through *Serikali za Mitaa* in that regard the sale transaction is unknown to the village hence questionable. In any case, where a suit property is on a planned area as is the case in the present matter a Certificate of Title stands stronger than a Sale Agreement.

The 2nd defendant (**DW5**) stated that the suit property and his property Plot 2066 are different. However, the 2nd defendant has not presented any document on ownership other than payments to the process of obtaining a Certificate of Title which are dated way back in 2017. Further, there is a letter from the Ministry of Lands (**Exhibit P8**) stating categorically that the survey maps **E1-330/251** (Plot 2048) and **E1-330/294** (Plot 2066) that covered plots 67 and 69 are cancelled and there was an order for removal of beacons from Plots 67 and 69. **PW3** emphasized that the these plots are no longer in existence as there was a mistake because it was discovered that the survey maps **E1-330/251** (Plot 2048) and **E1-330/294** (Plot 2066) were wrongly demarcated over plots 67 and 69. In my considered view, the cancellation of the survey maps and plots are valid as there is no Letter of Offer or Certificate of Title that has been given to the 1st and 2nd defendants on the basis of the survey maps **E1-330/251** (Plot 2048) and **E1-330/294** (Plot 2066) to this date despite that payments were made. It also raises eyebrows why there is no follow-up from the 1st and 2nd defendants about the procurement of the Certificate of Title and more so to the 2nd defendant who commenced the process way back in 2017. Consequently, the question that these plots exist and belong to the 1st

and 2nd defendants cannot stand because there are no Letters of Offer or Certificates of Title in respect of Plots 2048 and 2066, by implication therefore, these plots were cancelled and are not in existence.

The 3rd defendant's proof of ownership was **Exhibit D3**. The said exhibit is very general in that the boundaries are not explicit and as submitted by Mr. Majura, and correctly in my view, the exhibit is not directly connected or is not the same as the suit property. In that regard, ownership of the suit property by the 3rd defendant has accordingly not been proved.

For the reasons I have endeavoured to enumerate above, when the evidence is put on balance, it leans in favour of the plaintiff as the owner of the suit property, and I hold as such. The first issue is therefore answered in the affirmative.

The second issue was what are the parties entitled to. The plaintiff has prayed for special and general damages. 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). The plaintiff has claimed payment of TZS 500,000/= per month from each of the defendants being mesne profit arising from trespass. However, the plaintiff has not demonstrated how he has arrived at the said mesne profit of TZS 500,000/= per month payable by each defendant. It is only mentioned that the said amount is according to the market value but there ought to be evidence of the existing market value rates. 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 plaintiff suffered when making follow ups to rescue his property and was

delayed in starting his business as planned. Consequently, I award a token amount of TZS 10,000,000 as general damages.

In the result it is decreed as follows that:

1. The plaintiff is hereby declared the lawful owner of the suit property namely, Plots No. 67 and 69, Block G issued with Certificate of Occupancy under Title No. 46209, Mji Mwema Magogoni, Kigamboni Municipality, Dar es Salaam.
2. The defendants are accordingly ordered to vacate from the suit property.
3. The plaintiff is awarded general damages to the tune of TZS 10,000,000/=.
4. The defendants are condemned to costs of this suit.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
27/03/2023