

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

**LAND CASE NO. 99 OF 2022**

**PETER PETER JUNIOR**

**(An Administrator of the Estate of the**

**Late Masoud Mohamed MGUNGA..... PLAINTIFF**

**VERSUS**

**LEONARD JAMES MSELLE.....DEFENDANT**

**J U D G M E N T**

*Date of last Order:02/06/2023*

*Date of Judgment:27/07/2023*

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

The main dispute between the parties is the ownership of unsurveyed land measuring ten (10) acres located at Mji Mpya, Madale Hamlet, within Wazo Ward in Kinondoni Municipality.

The background to this matter briefly, as can be discerned from the pleadings, is that the plaintiff, Peter Peter Junior (An administrator of the estate of the late Masoud Mohamed Mgunga), alleges that the late Masoud Mohamed Mgunga acquired the suit land in 1970 after clearing the land and developing the same by planting permanent and seasonal crops such as cassava, cashew nuts, coconut and mango trees.

According to the plaint, after the death of Masoud Mohamed Mgunga, his family members moved to Bagamoyo, and the suit land remained under the care of his son Haji Masoud Mgunga. Later, Haji Masoud Mgunga informed the plaintiff that the defendant had invaded 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 the ten (10) acres of unsurveyed land measuring ten (10) acres located at Mji Mpya, Madale Hamlet, within Wazo Ward in Kinondoni Municipality is the property of Masoud Mohamed Mgunga (deceased) under the administration of the plaintiff.*
- ii. Declaration that the defendant is a trespasser.*
- iii. Order of demolition of structure erected by the defendant.*
- iv. Order of eviction from the suit land.*
- v. Order of permanent injunction to restrain the defendant and any other person under the instruction of the defendant from further trespass into the plaintiff's land.*
- vi. Order of compensation of TZS. 50,000,000/= as general damage for the destruction of the land and for loss of use of land*

*vii. Costs of the suit and any other relief this court may deem fit and just to grant.*

In his written statements of defence, the defendant flatly disputed the claim. He alleges that he is the legal owner of the suit land as he purchased the same from Mohamed Waziri Mtani in 1995 and from Hashim Waziri Mohamed, the legal heir of the deceased Mohamed Waziri Mtani, in 1996.

Further, he alleges that he occupied the disputed land uninterrupted for almost 28 years except in 2018 when one Adolf Kristen filed an application at the District and Housing Tribunal for Kinondoni claiming the ownership, but he died before the Tribunal pronounced a Ruling on the Preliminary Objection raised by him.

The above wrangle put the parties at issue; therefore, on the first day of the hearing, the following issues were agreed for the determination of this suit, namely:

- i. Who is the lawful owner of ten (10) acres of land at Mji Mpya Madale Hamlet within Wazo Ward in Kinondoni Municipality (the suit land).*
- ii. Whether the defendant is a trespasser to the suit land.*

*iii. To what reliefs parties are entitled*

At the hearing, the plaintiff was represented by Mr. Mlyambelele Ng'weli, learned Advocate, while Mr. Muhiddin Suleiman, a learned advocate, represented the defendant.

Further, the witnesses who testified on the plaintiff's side were; **(PW1)** Peter Peter Junior (The administrator of the estate of the late Masoud Mohamed Mgunga); **(PW2)** Kombo Masoud Mohamed Mgunga (the son of the late Masoud Mohamed Mgunga; **(PW3)** Haji Masoud Mgunga (the son of the late Masoud Mohamed Mgunga and **(PW4)** Salum Abdallah Mchumbari (he was a neighbour to the suit land). On the other hand, the defendant's case was supported by the following witnesses; **(DW1)** Leonard James Msele (defendant, bought the suit land from Waziri Mtani); **(DW2)** Theobald James Mselle (younger brother of the defendant who witnessed the sale); **(DW3)** Hemed Omary Mangwengwe ( He witnessed and signed the sale agreement as a friend and neighbour of Waziri Mtani); **(DW4)**, Professor Fredrick Mtenzi ( Witnessed and signed the sale agreement) and **(DW5)**, Godfrey Yetula (Witnessed and signed the sale agreement).

In his testimony (**PW1**), **Peter Peter Junior** stated that the deceased Masoud Mohamed Mngunga (hereinafter referred to as the deceased) was a friend of his father, Peter Haule. He passed away in 1980. He tendered to that effect;

*i. Death certificate of Masoud Mohamed Mgunga with No. 00375122 dated 19/08/2015 as exhibit P1.*

After Mgunga passed away, his family met and appointed him as the administrator of his estate. Later, he applied to the court, and Mwambao Primary Court Bagamoyo appointed him. He tendered to that effect;

*ii. Form No. IV issued by Mwambao Primary Court Bagamoyo dated 2/11/2015 regarding probate No. 48/2015 as exhibit P2.*

One of the properties left by the deceased was ten acres of land located at Mji Mpya Hamlet, Madala, in Wazo ward. The deceased acquired that land by clearing the bushes in 1970.

He further testified that the land in dispute borders Salum Mdunguli and Mohamed Waziri Mtani on the east side; on the North side, the land borders Said Buhege; on the West with Ally Mbilili and on the South, it borders Hemed Salim Malikana.

The deceased planted more than 100 cashew nuts trees, ten coconut trees and two mango trees.

In 2019 the defendant trespassed into the suit land and constructed the house therein after claiming he bought the same land from Mohamed Waziri Mtani.

In his evidence, PW1 insisted that Mohamed Waziri Mtani's land bordered the deceased land on the east side.

He concluded by testifying that the owner of the land in dispute was Masoud Mohamed Mgunga. Therefore, he prayed that the court declare the administrator of the deceased's estate of Masoud Mohamed Mgunga as the lawful owner of the suit land and that the defendant be declared a trespasser.

Further, the house constructed therein be demolished and the defendant evicted. And a compensation of TZS 50,000,000/= for a failure to use land, permanent injunction and the costs of the suit.

**Kombo Masoud Mohamed Mgunga (PW2)** testified that his father owned ten acres of land located in Madale area. On that land, cashew nuts, coconut and mango trees were planted.

He further testified that on the east of the disputed land, the neighbours were Waziri Mohamed Mtani and Salum Mlunguli; on the North, the neighbour was Said Muhege; on the South, it borders Salum Malekano; and on the West, Ally Mbilili.

He concluded that he knew Peter Peter Junior as his brother and his father's estate administrator. Further, the land in dispute belonged to his father and was never sold to anyone. Therefore, the defendant was the trespasser.

**Haji Masoud Mgunga (PW3)** testified that his father owned a ten-acre farm in Madale area. He acquired that land after he cleared the bush and developed the same by planting trees.

In 2010, he visited the land in dispute, and the local authority gave him a letter notifying him to clear the farm/ wild field. He tendered to that effect;

*iii. A letter dated 23/11/2010 from the Local Government Office of Madala Street to Haji Masoud Mgunga as exhibit P3.*

The neighbours to that land were Waziri Mtani on the east; on the north, Mzee Said; on the west side, he forgot and on the south side Mzee Ally.

He concluded by testifying that Salum Malekano and Said Buhege also were neighbours on that land that was never sold to anyone.

In his testimony, **Salum Abdallah Mchungula (PW4)**, the deceased Masoud Mohamed Mngunga because he was his neighbour at Madale. Their lands were bordering on the east side.

He also testified that the land in dispute border Waziri Mohamed Mtani. Other neighbours were Ally Mbilili, Malekano and Ally Buyege. On the land, there were cashew nuts, mangoes and coconut trees. He did not know the size of the disputed land.

In defence **(DW1), Leonard James Msele** stated that he purchased the land from one Waziri Mtani in 1995 and paid in four instalments. On 21/5/1995, he agreed with Waziri Mtani to purchase six (6) acres of land for TZS 370,000/, and that day, he paid Tsh. 200,000/- with the agreement that the remaining Tsh. 170,000/- should be paid after a month. The agreement was concluded in the presence of the witnesses.

Unfortunately, he did not pay that amount as agreed, but on 24/09/1996, he sent his relative to pay the remaining amount to Waziri



Mtani, but he had already passed away. Therefore, the money was received by his son by the name of Hashim.

After that, Hashim said they wanted to sell the remaining four acres where his father was living.

Later Hashim and his siblings told him to pay Tsh. 420,000/- as a purchase price for the four acres. Therefore, on 3/11/1996, in the presence of witnesses, he paid Tsh. 210,000/- as a first instalment, and on 3/1/1997, in the presence of the witness, he paid the remaining balance of 210,000/=. Therefore, he purchased ten (10) acres of land belonging to Mohamed Waziri Mtani. He tendered to that effect;

*iv. Sale agreements dated 21 May 1995, 24 September 1996, 3 November 1996 and 3 January 1997 as Exhibit D1*

At that time, there was a hut built with trees and grass, three coconut trees and five cashew nut trees.

On that land on the east side, there was a valley, and also, there were neighbours who were Said Bayege and Ibrahim Buyege; on the north, the neighbour was again Said Buyeye; on the west, the neighbour was Dr. Nkonyi, and on the south side the neighbour was Ally Mbuyi.

When he purchased the farm, the witnesses were Hemed Mangwewe on the seller's side, and his witnesses were Fedrick Mtenzi and Godfrey Yetula.

After purchasing the land, he hired Hemed Mangwewe to clear the land, and from 1998 – 2005 he planted trees on the land. In 2018 he planted mango trees and about 100 teak trees.

In 2012, he constructed concrete poles in the boundaries of the suit land.

He concluded by testifying that 27 years passed since he purchased the suit land in 1996, and on 4/02/2012, he wrote a letter to the District Council requesting to "formalise" the land ownership. He tendered to that effect;

*v. The letter dated 4/2012 to the Direct of municipal council titled "Maombi ya kupimiwa Kiwanja" as an exhibit. D2*

**Theobald James Mselle (DW2)** stated that on 28/09/1997, he accompanied his brother Leonard Msele to Madale area to meet with Waziri Mohamed Mtani. At the premises of Mtani, they met his sons Hashim and

Saidi, and Leonard Mselle paid TZS 170,000/= to Hashim Mtani as the remaining instalment for the purchase of land.

Again, on 3/11/1996, he was with his brother and met with Hashim and his sibling Rashid Wazir Mtani. After the authorisation from his siblings, Hashim sold the remaining parcel of land to DW1 for consideration of TZS 420,000/=, and DW1 paid TZS 210,000/= as a first instalment.

On 3/1/1997, he witnessed DW1 pay Hashim TZS 210,000/- as the final instalment for the purchase of land.

In 2017 when he was supervising the construction of the house in the suit land, he was summoned by the Street Authorities for the allegation that he trespassed into the suit land. The complainant was the son of Waziri Mtani by the name of Mohamed, who later filed the case at Wazo Ward Tribunal. The matter was not heard at the Ward Tribunal, and the complainant was advised to file the same at the District Land and Housing Tribunal due to jurisdictional issues, but he did not do so. He tendered to that effect;

*i. Proceedings of Wazo Ward Tribunal in Application No. 193 of 2017  
as an exhibit. D3*

In 2018, one Adolf Kristen filed a matter at DLHT for Kinondoni that he trespassed into the suit land. But before the conclusion of the matter, he passed away, and later the matter was dismissed. He tendered to that effect;

*i. Proceedings of the DLHT for Kinondoni in Application No. 243 of 2018 as an exhibit. D4*

He further testified that last year the plaintiff filed a suit at the DLHT, but he did not proceed with it and decided to file this suit.

He concluded by testifying that at the suit, land poles were erected in all corners of the suit, and at the front side, they put the barbered wire.

In his testimony **DW3, Hemed Omary Mangwengwe** stated that Mr. Leonard Mselle (DW1) purchased the suit land from his friend, Waziri Mtani. It was in 1995, about 27 years ago, his friend Waziri Mtani informed him of his intention to sell his land.

He further stated that the neighbours of Waziri Mtani were Mr. Mkonyi (North), Said Buyege and Ibrahim Buyege, (East), Ally Nguyu (South) and Said Buyege (North). At that time, the land had nothing; it was a wild field.

Mr Msele bought the land for Tzs. 370,000/=, and he paid the first instalment of Tzs. 200,000/=. Then he was hired to clear that wild field, and he did that.

Later Waziri Mtani passed away, and the remaining amount was paid to his children. His first child who received the money was Hashim Mtani, and he was together with Said Mtani and Rashid Mtani.

Later, the children wanted to sell the remaining land because they believed their father was bewitched at that place. Therefore, they agreed to sell the remaining land to Mr Msele for Tzs 420,000/=. He paid Tzs. 210,000/= as the first instalment. Later he finalized the payment.

After that, the children of Waziri Mtani moved to another area. On that second parcel of land, there were five cashew nut trees and three coconut trees.

He concluded by testifying that, Mr. Msele requested him to look for his land, and he never saw anyone claiming ownership of that land. Therefore, the lawful owner of the farm was Mr. Leonard Mselle.

**Professor Fredrick Mtenzi (DW4)**, testified that he was a witness when Mr. Leonard Mselle purchased land located in Madale area in 1995 for

the amount of money he did not remember exactly, but it was more than TZS 350,000/=, but he did not remember the exact amount. The size of the land was ten acres.

He concluded by testifying that he owned land at Madale before Mr. Mselle purchased the suit land; therefore, when he heard the suit land was sold, he informed Mr. Mselle.

The last witness was **Godfrey Yetula (DW5)**, who testified that he was a witness when Mr. Mselle purchased that suit land in 1995. That day they arrived at the suit land at about 09:00-10:00 hours, and he purchased about six acres. The land which was purchased was a wild field.

That was the brief evidence from both sides. After that, they filed their final written submissions and wish to appreciate the well-researched submissions by the parties, especially on the key issue of the ownership of the land.

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

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

In the deliberation and determination of this issue, this court will place the oral testimonies from both sides and the tendered documents under scrutiny and decide the issue on a balance of probabilities. This is because the disputed land is not surveyed, therefore neither of the party had tendered the certificate of right of occupancy or a letter offer.

In that respect, this Court will be guided by Section 110 (1) of the Evidence Act, Cap. 6 [R.E. 2019], which reads

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

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

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

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

On the side of the plaintiffs' case, PW1, PW2, and P3 testified that the deceased acquired the disputed land in 1970 after clearing that land. Both mentioned witnesses also mentioned the neighbours bordering the suit

land. Further, according to PW1, the defendant trespassed into the land in 2019 by constructing a house.

The only exhibit tendered by the plaintiff's side in relation to the ownership of the disputed land was a letter dated 23/11/2010 from the Local Government Office of Madala Street to Haji Masoud Mgunza (exhibit P3). That letter titled "AGIZO LA USAFI WA MASHAMBA PORI" was addressed to PW3, as the owner of the wild field referred to in that letter.

PW4, who was 48 years old, testified that he was the neighbour of the deceased Masoud Mohamed Mgunza, who passed in 1980.

On the defence side, DW1 stated that he purchased the ten acres of the disputed land from Waziri Mtani in 1995 and from the children of Waziri Mtani in 1996 and was paying in instalments. His evidence was corroborated by DW2, DW3, DW4 and DW5, who both in their evidence stated that they witnessed the sale between DW1 and the late Waziri

On the defence side, the exhibits tendered were the sale agreements (Exhibit D1 collectively).

Exhibit D1 (collectively) indicate that on **21 May 1995**, TZS 200,000/= were paid, and witnesses were Fred Meenzi, Godfrey Yetula



(DW5) and Hemed Mangwengwe (DW3). The sale agreement was between DW1 and the late Waziri Mohamed Mtani. **On 24 September 1996**, TZS 170,000/= were paid, and the witnesses were Hemed Mangwengwe (DW3), Said Waziri and Narcis Msele. The sale agreement was between DW1 (One Firmin Mselle represented him) and Hashim, the son of the late Waziri Mohamed Mtani.

**On 3 November 1996**, TZS 210,000/= were paid, and the witnesses were, Theobald Mselle (DW2), Hemed Mangwengwe (DW3), Rashid Waziri Mtani and Firmin Mselle. The sale agreement was between DW1 and Hashim, the son of the late Waziri Mohamed Mtani.

**On 3 January 1997**, TZS 210,000/= were paid, and the witnesses were Crary Mselle, Firmin Mselle, Hemed Mangwengwe (PW3) and Saidi Waziri Mtani. The sale agreement was between DW1 and Hashim, the son of the late Waziri Mohamed Mtani.

From the above testimonies, I have the following observations;

**One**, the plaintiff and his witnesses failed to tender any document indicating that the late Masoud Mohamed Mgunga owned the disputed land. He acquired the same in 1970 after finding the land with nobody and

decided to clear it and own it. When cross-examined, PW1 admitted that he had no document showing that the late Masoud Mohamed Mgunga owned the farm.

**Two**, exhibit D3, a letter dated 23/11/2010 from the Local Government Office of Madala Street to Haji Masoud Mgunga (PW3) titled "AGIZO LA USAFI WA MASHAMBA PORI" per se, cannot be a proof of ownership of the land in dispute. The letter does not even indicate the wild field referred to; where it was located, the size etc. Therefore, it is not safe at all to rely on that letter as this Court can not make assumptions on whether the letter was referred to the land in dispute. At least the person who signed it or the issuing authority personnel, if they could testify, might connect the letter and the land in dispute.

**Three**, PW4, who alleged to be the neighbour of the late Masoud Mohamed Mgunga, testified that the suit land belonged to the late Masoud Mohamed Mgunga. Having gone through the record, it is quite clear that the late Mgunga passed away in 1980, while PW4, when testifying on 25 April 2023, stated that he was 48 years old. That means he was born in 1975 and was 5 years old when the late Mgunga passed away. From the

above evidence, in my opinion, it is doubtful if, at that age, PW4 could know the owner of the disputed land.

Further, in his evidence, he did not tell the Court how he knew that the late Mgunga was the owner of the land, either by documentation or only if he saw him (if it was true) living on the disputed land. Though every witness is entitled to credence as held in **In Goodluck Kyando v. R** [2006] TLR 363, where it was stated that:

*"It is a trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."*

But the evidence of PW4 is doubtful, considering what he testified against the deceased, who passed away in 1980 while he was 5 years old.

**Four**, the plaintiff and his witnesses labour their efforts too much in naming the neighbours to the suit land. That is very important in describing the land but not conclusive in proving ownership. What is important is how a party acquired the land and the document (s) or any other relevant evidence to prove ownership of the land. Therefore, the naming of the neighbours is not conclusive proof of ownership of land. In land ownership

proof of ownership, if the land is registered, is by a Title deed and if not registered, as in this case, by any other relevant document such as a sale agreement, deed of gift etc.

**Five**, the plaintiff had the sell agreements for purchasing the land in dispute (Exhibit D1 collectively). PW3 and PW5 witnessed the sale. Exhibit D1 indicated that the defendant purchased the land in dispute from Mohamed Waziri Mtani and later to the son of Mohamed Waziri Mtani after he passed away. Therefore, the sale agreements show how the defendant acquired the disputed land.

**Six**, the evidence of DW3, also corroborated the defendant's acquisition of the disputed land. In my opinion, this was an important witness because, in his evidence, he testified that Mohamed Waziri Mtani was his friend and told him that he wanted to sell his land. Then the buyer happened to be DW1; whereby he witnessed and signed the sale agreements, cleared the farm after DW1's request, and thereafter he was looking for that farm from 1995, and he never saw any person claiming ownership of that land.

**Last**, though PW1 claimed to be appointed the administrator of the late Masoud Mohamed Mgunga through Probate Form No IV (Exhibit P2), but there was nothing to prove that the land in dispute was part of the deceased estate. PW's failure to file inventory (Form no. V) and close the probate cause according to the law after his appointment on 2 November 2015 means that the deceased estate remains unknown. Therefore, there is no evidence whatsoever that the suit land was part of the deceased estate.

Flowing from above in answering the first issue based on the available evidence on record, while the plaintiff failed to prove the ownership over the suit land, the defence side proved the ownership of the defendant over the suit land.

The second issue is whether the defendant is a trespasser to the suit land; this should not detain me long.

The entry point is the case of **Frank Safari Mchuma vs. Shaibu Ally Shemndolwa** [1998] TLR 280, where 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."*

Therefore, as alluded to earlier in the first issue, that the plaintiff failed to prove that he is a lawful owner of the suit land, then the claim that the defendant is a trespasser on the suit land cannot stand.

The last issue is on reliefs sought by the parties as enumerated in their pleadings, briefly, I hold as follows;

For the reliefs claimed by the plaintiff, since there is no proof that the plaintiff own the suit land and that the defendant is not a trespasser, I decline to grant the reliefs sought in the plaint.


Equality, the reliefs sought in the written statement of Defence such as a declaration that the defendant is a lawful owner cannot be granted since he did not raise the counter claim.

Therefore, flowing from above, the plaintiff fails to prove his case, and

consequently, the suit is devoid of merits and is hereby dismissed with costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**27/07/2023**