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

LAND CASE NO. 205 OF 2017

MWASA JEREMIAH JINGI.....1ST PLAINTIFF
MAKORI YUSUPH MASIANA.....2ND PLAINTIFF
VICTUS S. SYLIVESTER.....3RD PLAINTIFF
HENRY JESTON NAGWA.....4TH PLAINTIFF
DAMIAN MAYEGA GURTY.....5TH PLAINTIFF
ROSE ATUPELE NGOGO.....6TH PLAINTIFF
AND 113 OTHERS APPENDED

VERSUS

THE TANZANIA RAILWAY CORPORATION.....1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT

Date of Last Order: 02.12.2022
Date of Judgment: 28.04.2023

JUDGMENT

V.L. MAKANI, J

The six plaintiffs above named and 107 others whose list is appended to the plaint are each praying for the following reliefs:

(a) *The declaration that each of the plaintiffs acquired and resided in his/her respective premises in the suit land lawfully*

(b) *The declaration that the act of the defendant of demolishing the plaintiffs' premises, structures*

and items in the suit land without following lawful procedures was unlawful.

(c) *The defendants be ordered to give a fair compensation to each of the plaintiffs for demolishing the plaintiffs' premises, structures and destroying plaintiffs' items in the suit land to the tune of the sum indicated in Annexure G.*

(d) *General damages of Tsh. 5,000,000/= to each plaintiff.*

(e) *Interest on the decretal sum at the court's rate from the date of judgement until full execution of the decree.*

(f) *Costs of the suit.*

(g) *Any other relief(s) this court may deem fit and just to grant.*

According to the plaint the plaintiffs are residents of Kipawa, Ukonga, Gongo la Mboto and Pugu Station (the **suit land)** along the railway line. The plaint states that the plaintiffs are lawful owners of the suit land and some of them have been in possession of their land way back in 1960 and some have derived their rights over their respective plots from their forefathers or lawfully acquired the plots by different ways, occasions and times. It is further stated in the plaint that in June, 2016 the Reli Holding Company Limited (**RAHCO**) on behalf of the 1st defendant made a public announcement to residents that it would identify and put the mark "x" on every house, item or property

erected within the railway strip but did not state the demarcation of the strip. That in July, 2016 the houses identified were marked with "x". That the residents protested and wrote a letter to the relevant Minister who wrote back to tell them to be patient while they were solving the issue. However, in March 2017 the 1st defendant started to demolish houses structures in the suit land without conducting valuation and the plaintiffs were rendered homeless with no means of acquiring permanent residences. The plaint states that there were efforts to amicably resolve the matter which was not fruitful.

In this suit the plaintiffs were represented by Mwesigwa Ishengoma, Advocate, while the defendants were represented by Ms. Gati Mseti an Yuda Ogonyi, learned State Attorneys.

Before commencement of the hearing of the case, issues were framed in terms of Order VIII Rule 40(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) as follows:

1. *Whether the plaintiffs lawfully acquired the suit land namely the residential areas of the plaintiffs along the railway line from Kipawa, Ukonga, Gongo la Mboto and Pugu Station.*

2. *Whether the demolition of the plaintiffs premisses on the suit land by the 1st defendant was procedural.*

3. *Whether the plaintiffs are entitled to compensation, if any.*

4. *To what reliefs are the parties entitled to.*

The hearing of the suit was conducted in two folds. Six plaintiffs presented their evidence orally and the remaining 65 plaintiffs/witnesses filed affidavits (as examination in chief) and they were duly cross-examined on the contents of the said affidavits.

The 1st plaintiff was **PW1**. He said the dispute started in 2016 when the residents in the suit land were told to move from the reserved area by way of a notice. He said some of their houses were outside the reserve area. He said they organised themselves as residents and went to the 1st defendant and met the officers of the company. He said Mr. Mohamed R. Mohamed (Engineer), Petro (Lawyer) and Catherine (Relationship Officer) came to the site and met the representatives of the plaintiffs. **PW1** continued to say that he was one of the representatives of the residents. He said they agreed that the houses marked "x" shall not be demolished as they were built outside the reserve area and the exercise of demolition should be stopped and the resolution should be in writing. He said through the Ward Executive Officer (**WEO**) of Gongo la Mboto they wrote a letter

on July, 2016 to the 1st defendant and another letter to the Minister for Works in August, 2016 to enquire about the proper interpretation of the Railway Act 2002. He said in December, 2016 the Minister agreed with RAHCO that they should not proceed with any exercise for demolition unless further directions. But according to PW1 on 11th, 12th and 13th March, 2017 demolition started from Reli station to Pugu and the demolition was within 30 meters so all who had built within the 15 meters were affected. He said the demolition was therefore unlawful. He supported his arguments by the following documents namely: the letter by RAHCO to Ilala Municipal Council dated 24/06/2016 (**Exhibit P1**), the letter by RAHCO to Gongo la Mboto Ward dated 26/07/2016 (**Exhibit P2**), the letter by the Plaintiffs to the Minister for Works dated 18/08/2016 (**Exhibit P3**), the response letter from the Minister of Works to the plaintiffs dated 13/12/2016 (**Exhibit P4**) and the list of the effected plaintiffs (**Exhibit P5**).

PW1 said that the demolition affected him because he lost three houses and other properties in the houses of the value of about TZS 170 Million. He said they became homeless and had to pay rent for part of the family who remained in Dar es Salaam as he and his wife had to move to Lindi. He said the demolition affected them

psychologically as they were confident that no demolition would take place. He prayed for the court to declare that the demolition was contrary to the law and payment of TZS 170,000,000/= as damages.

On cross-examination **PW1** admitted that **Exhibit P5** which is the list of the plaintiffs is a document which is not titled. He further admitted that there was no formal communication between the plaintiffs and RAHCO as the communication was physical. He also admitted that there was no proof of a meeting/understanding that RAHCO would stop the demolition. He said when he built his house the railway line was already there.

On re-examination he clarified that there was notice by RAHCO through PA System and the demolition was in March, 2017. He said in the meeting with RAHCO they told them the law allows them to build within 15 meters from the railway line but they were told that RAHCO would look into the matter.

PW2 was Makori Pius Masiana. He said he was resident of Gongo la Mboto until 2017. He said they are suing the defendants because they demolished their houses unlawfully. He stated that the dispute in

respect of the demolition started in 12/07/2016 when he found a Notice of Demolition from the defendants. He said he went to the office of WEO and found out that the notice was to many residents. He said WEO called the Railways officials and there was a meeting and Railway agreed to remove the "x" marks on the houses that were earmarked for demolition. He said that Railways agreed to do so in writing, but they did not do so. He said they went to the Human Rights Centre who told them to come to court, but before that they wrote a lettr to the Minister for Works who responded that they were following upon legal interpretation, and they waited for the matter to be resolved. He said despite the letter in February, 2017 there was public notice in the Guardian Newspaper that those within 15 meters would not be paid but those beyond 15 metres would be paid compensation. He said his house was about 20 metres, but it was demolished in March, 2017. He said the demolition was unlawful as they were all waiting for resolution of the matter according to Railway and the Ministry. He said the demolition devasted him and he lost his residence and personal belongings and his children studying in private schools had to stop because he had to relocate. He said he suffered psychologically. He prayed for the court to declare that he is the lawful owner of the property that was demolished and that the demolition

was unlawful. He also prayed for compensation and reliefs as in the plaint. **PW2** relied on the **Exhibit P7**, a copy of a letter from Municipal Director Ilala to Ward Executive Officer Gongo la Mboto dated 01/07/2016 (**Exhibit P8**), copy of a letter from RAHCO to WEO of Gongo la Mboto dated 26/07/2016 (**Exhibit P9**), copy of a letter from the Committee whose houses were demolished to the Minister of Works dated 18/08/2016 (**Exhibit P10**), copy of the letter from the Ministry of Works to WEO of Gongo la Mboto dated 13/12/2016 (**Exhibit P11**), the Article from the Guardian Newspaper dated 07/02/2017 (**Exhibit P12**) and Residential Licence No. ILA 028817 of Land ILA/UKG/GLL 42/303/A, G/Kwalala Street, Ukonga Ward, Ilala Municipality in the name of Makori Yusuph Masiana valid from 02/09/2013 to 01/09/2018 (**Exhibit P13**).

On cross-examination **PW2** admitted that he has been paid by RAHCO but only TZS 2,700,000/= he said the whole house was demolished except the toilet and there was also a piece of land that remained. He emphasized on re-examination that since he had a Residential Licence he had all the rights to reside in the said place.

PW3 was Rose Atupele who said RAHCO took her business land and destroyed her belongings. She said she owns land at Pugu Bombani, Pugu Ward, Ilala District from 1991. In 2008 she built a school – Rosehill Secondary School and she said her property was outside the 15 metres. She said in 2016 they were informed by RAHCO that there were notices of demolition, but she did not get one. She said she asked the office of WEO but there was nothing. She went to Gongo la Mboto Ward who knew nothing so she had to go to the Ilala Ward. She said she then joined the Committee suing RAHCO because she came to learn that RAHCO were not following the 15 metres rule, but they were adding 15 more metres. She said she recognises the letters that have been tendered as she was a representative in the committee. She said she suffered a lot from the demolition because 12,575 square metres which was part of the school area was taken away which included the sports pavilion and two water wells and also fruit trees. She said she bought the land and she prayed for the court to declare that acquisition of part of the area of her school was unlawful and also asked for compensation for the destruction of the properties and costs of the suit.

PW4 was Damian Mayega Gurty. He said he is in court because Tanzania Railways Corporation (**TRC**) demolished his house. He said on 28/06/2016 he was informed by his wife that TRC were marking their house with "x" which meant that it was earmarked for demolition. He said WEO advised them to be present when the exercise was going on. He said they appointed representatives who went to TRC and when they came back they said the exercise has been suspended. He recognised and relied on the exhibits that have been tendered including **Exhibits P7**, **P8, P9, P10, P11** and **P12**. He said he suffered psychologically because he lost his permanent residence and two business frames. He also relied on Residential Licence No.ILA 005240, G/Kwalala Street, Ukonga in the name of Damian Mayega Gurty issud on 16/03/2006 and valid up to 16/04/2018 (**Exhibit P14**). He prayed for the court to declare that he is the lawful owner of the piece of land that described in **Exhibit P14** and he be given compensation, costs and other reliefs as in the plaint. He also pointed out that he took a loan from CRDB and Barclays Bank for purposes of school fees.

On cross-examination he said he found the railway line in place, and he was told there was no problem when he started building without

knowing the law related to railway lines. He said he knows about the law related to railway of 2002 and the amendment of 2017. He said it was former president the late Magufuli who said the railway reserve was 30 metres from the middle of the railway he did not know if there was any previous law.

PW5 was Henry Jaston Nagwa. He said he is in court because his house in Ukonga Madafu was demolished. He said there was no notice of demolished and they went to Serikali za Mitaa to ask why their houses which were 30 metres from the railwayline were marked "x". he said there was a meeting with railway officials and the exercise of marking "x" to houses was suspended. He said representatives made a follow-up and in December 2016 they got a response from the Ministry that the dispute was more legal and that they have to wait. He said in February, 2017 there was an article in the newspaper that the railway reserve was 15 metres from the middle of the railway and from 30 metres they could build permanent residences. He said he bought his piece of land from Michael B. Nyande and he tendered a Sale Agreement (**Exhibit P15**). He also relied on **Exhibits P8**, **P9, P10, P11** and **P12**. He prayed for the court to declare him the lawful owner of the piece of land and house that was demolished and that

the said house was unlawfully demolished. He also prayed for compensation resulting from the demolition and destruction of properties and also costs of the suit. On cross-examination he admitted that the Sale Agreement does not show the measurements or the location and also it does not show that it is bounded by the railway line.

Mr. Ishengoma Counsel for the plaintiffs re-called **PW1** under section 147 (4) of the Evidence Act CAP 6 RE 2019. **PW1** further testified that the house that was demolished was his vide the Sale Agreement and Property Tax Bill of TRA of 2009. **PW1** tendered sketchmap of his house (**Exhibit P16**) and Breakdown of costs showing estimates as to what he is claiming as **Exhibit P17**. On cross-examination **PW1** admitted that the breakdown was his own making as there was no valuation from an expert. He also said the sketchmap was by an expert, who did not endorse his name or stamp because the document was not complete as the house was demolished.

The plaintiffs' witnesses who followed from **PW6** to **PW66** filed affidavits which were taken as examination in chief. They tendered **Exhibits P18** to **P43**. The exhibits ranged from Sale Agreements,

Property Tax Demand Bills from Tanzania Revenua Authority (TRA), Residential Licences, Introduction Letters from *Serikali za Mitaa*, National IDs and Marriage Certificates. The witnesses appeared in court for cross-examination and the tendering of the said exhibits. The affidavits that were filed were standard in nature in that they had the name of the deponent, the name of the place of the demolished property and the value of the property. The compensation claimed from the alleged unlawful demolition ranged from TZS 10,000,000 to TZS 550,000,000/=.

The first witness for the defence was Adonia Stephano Mmanywa (**DW1**) an Estate Officer from Tanzania Railways Limited who takes care of the property of the company and the infrastructure. He said in 1962 there was East African Railways and Harbours Manual (the **Engineers Manual**) and thereafter there was the law of 1977, 2002 and now the Railways Act of 2017 which also recognises the previous laws. The Engineers Manual provided that the reserve area was 200 feet, that is 100 feet on each side from the middle of the railway line. He said when converted it is 60 metres which is 30 metres from each side. In the 2007 law there was an introduction of 15 and 30 metres railway strip in urban and rural areas respectively. He said this did not

change the reserve area measured at 30 metres from the centre of the railway line. He said the railway strip was meant for operational purposes, even the company was not allowed to build anything on the strip. He said in Gongo la Mboto there were notices that were issued to those who were within the railway reserve, and after the notice demolition took place and there was no valuation that was conducted in respect of properties within the reserve area. He said where the company wanted to expand because of the new SGR project the residents were compensated. He said the demolition exercise was from Dar es Salaam station to Makutopora and the residents who were outside the reserve area were paid compensation but those within the reserve area were not paid anything. There were procedures of acquisition of land from the residents outside the reserve area but within the project area and there was sensitization through *Serikali za Mitaa* and the residents themselves. The payments were made after approval of the valuation and upon agreement there was signing by the residents, officer of Serikal za Mtaa, District Executive Director, District Commissioner, Regional Commissioner. He said the residents were paid through their bank accounts. He said the claims by the plaintiffs is not proper because they invaded the reserve area and he thus prayed for the suit to be dismissed.

On cross-examinatoin **DW1** emphasized that the notices for demolition were issued on 2016 and demolition was on 2017. He further said that the reserve area is 30 metres and not 15 metres as alleged by the plaintiffs.

DW2 was Oswin Ernest Matanda Civil Engineer of Tanzania Railways Limited. He said railway reserve is 60 metres that is 30 metres from each side from the centre of the track. He said the reserve areas are meant for security so that people do not build within the area for purposes of safety. He said the reserve area also hosts communication and infrastructure and there is a provision for development of the railway. He said the plaintiffs are trespassers because, according to the Engineers Manual they were supposed to follow procedures, and nothing is supposed to be done within the area without permission of the Chief Engineer. He said when they discovered that there were trespassers within the reserve area they had to be evicted. He said the claims by the plaintiffs have no merit and it should be dismissed.

After presentation of evidence final submissions on behalf of the parties were filed and Mr. Ishengoma drew and filed final submissions on behalf of the plaintiffs. Submitting on the first issue he said the plaintiffs acquired the residences along the railway line lawfully as some of them had Residential Licences in conformity with section 23(1) of the Land Act, others had Sale Agreements and some also paid Property Tax receipts. He said the plaintiffs acquired their landed properties outside the legal railways strip and built their house 15 metres on both sides of the railway line from the centre. He said they built their houses outside the railway strip and since the plaintiffs' properties were outside the railway strip then the issue is answered in the affirmative that they plaintiffs acquired the landed property legally.

As for the second issue, Mr. Ishengoma said the demolition of the plaintiffs' houses was not only unprocedural but also unlawful because after the 1st defendant serving notice to the plaintiffs the same was suspended vide **Exhibit P9** so that the matter could be resolved after a correct interpretation of the words rural and urban. He said the letter withdrew the notices served on the plaintiffs in July, 2016 and still they are valid as there is no other notice until the time

of demolition on 11th to 13th March, 2017. He said lack of notice according to the Railways Act is violation of law because the plaintiffs never encroached the railway strip. Mr. Ishengoma said in summary that the defendants in demolishing the landed properties of the plaintiffs acted in violation of section 3 and 57(2) of the Railways Act and section 6 of the Land Acquisition Act 1967.

As for the third issue, Mr. Ishengoma submitted that the plaintiffs are entitled to a fair compensation according to the Land Acquisition Act (sections 3, 6 and 11) and Land Act (sections 3(1)(g) and (f). he said the Minister responsible for land affairs did not give notice of intention to acquire the land which by then was occupied by the plaintiffs. He said the legal requirement was thus violated by the defendants. He also relied on the Constitution of the United Republic of Tanzania and the case of **Attorney General vs. Lohay Akonaay & Joseph Lohay [1995] TLR 80**.

As for the fourth issue, Mr. Ishengoma said the plaintiffs are entitled to the reliefs as articulated under section 3(1) (g) of the Land Act an Land (Assessment of the Value of Land for Compensation) Regulations 2001 such as compensation, disturbance,

accommodation, and transport allowances. He thus prayed for the court to order the reliefs as in the plaint.

The final submissions on behalf of the defendants was drawn an filed by Ms. Gati Museti, State Attorney. She gave a brief history of the law of railways in Tanzania and she said in post-independence in 1962, the railway reserve was regulated and protected by the Engineers Manual which is in force to date. She said the Engineers Manual at section 18.04 provided for the railway reserve as 200 feet which is equivalent to 60 metres which is 30 metres both sides from the centre of the railway track. She pointed out that the Railway Act, 2002 introduced what is called the railway strip which is 15 metres both sides from the centre of the railway track. She said the Railways Act, 2002 does not provide for the railway reserve as such this is provided by the Engineers Manual vide section 62(3) of the Railway Act, 2002. In the Railways Act 2017 the railway strip boundary was provided as 30 metres from the centre of both sides of the railway track (section 3 of the Act). But the reserve area remained to be the same that is 30 metres from the centre of both sides of the railway track. She said this was eloquently elaborated by **DW1** and **DW2** and further that the railway strip is within the railway reserve and the introduction of

the railway strip in 2002 did not extinguish the presence of the railway reserve.

As for the first issue learned State Attorney submitted that the houses of the plaintiffs were within the reserve area. She said the plaintiffs therefore cannot rely on the railway strip that was introduced in 2002 as the reserve area of 30 metres in the Engineers Manual is still in force. She said residential licences were tendered to prove ownership of plots within the suit land but some are no longer valid and even if valid no building permits were tendered to prove consent or approved drawings and the like. She said the developments were not sanctioned by the relevant authority according to the law. She relied on the case of **Director Moshi Municipal Council vs. Stanlenard Mnesi & Another, Civil Appeal No. 246 of 2017 (CAT-Arusha)** (unreported) where the Court confirmed the legal position provided under Regulations 124 and 139 of the Local Government (Urban Authorities) (Development Control) Regulations, 2008 and section 35 of Town and County Planning Act CAP 355 RE 2002. As for the Sale Agreements which have been tendered to prove ownership Ms. Gati has submitted that the said Agreements do not disclose the location, size and demarcation of the areas that have been claimed by the

plaintiffs. She said the Agreements also do not reflect the names of the plaintiffs. It is therefore difficult to establish if the land stipulated in the Sale Agreements is the same as the land in dispute and as such the said Agreements are not valid in terms with the Law of Contract Act CAP 345 RE 2019 and the Land Act. She further pointed out that some of the plaintiffs have argued that they are owners of the suit land by virtue of inheritance, but there is no such proof to show that title has passed to the plaintiff from his/her parents as such they lack locus to be party to the suit. Ms. Gati therefore concluded that the plaintiffs have neither proved their legal ownership nor illegality of the issued notice by the 1st defendant. She said the plaintiffs have no good titles over the land in dispute which is protected or reserved for railways use as such they are all trespassers to the suit land. She relied on the case of **Tenende s/o Budotela & Another vs. Attorney General, Civil Appeal No. 27 of 2011 (CAT-Tabora)**(unreported) where the Court of Appeal stated that the appellant being a trespasser and their co-trespassers are not entitled to compensation.

As regards the second issue, Ms. Gati said that what was demolished were properties that encroached the railway reserve. She said the

plaintiffs have not managed to prove that they were not residing on the reserve area as such they were trespassers and, two the 1st defendant issued demolition notices directing the local authority, the executive director of Ilala Municipal Council and every house which was to be demolished as per the requirement of the law. She said none of the plaintiffs tendered the specific notices of demolition which were addressed to every owner of the houses subject of the demolition. She said this raised doubt as to whether the plaintiffs were the actual persons affected by the demolition to entitle them to claim for the compensation. She further pointed out that the demolition exercise was supervised by all respective authorities in the presence of the plaintiffs who were also given a chance to remove their belongings. She therefore summed up that the evidence is clear that the demolition was not only conducted fairly but it was also in accordance with the law.

Ms. Gati combined the third and the fourth issues. She said the plaintiffs are trespassers therefore they cannot claim any equitable reliefs. She said the specific damages claimed were not properly pleaded and not specified in the reliefs sought so the plaintiffs have not pleaded specific damages to warrant this court to grant the same.

She relied on the case of **Zuberi Agusino vs. Anicet Mugabe [1992] TLR 139** where it was held that special damages must be specifically pleaded and proved. She said the plaintiffs have failed to prove their case as per section 110 of the Evidence Act as they have failed to meet the standard of proof required under the law. She submitted that the plaintiffs in their testimony and affidavits claim to be compensated but the 1st defendant at different amounts, however, they have not provided any evidential prove to justify their claims such as valuation reports to determine the market value to enable the court to fairly grant the compensation if at all the plaintiffs are so entitled. Ms. Gati therefore submitted that the plaintiffs have failed to justify that they are entitled to any compensation as they are not legal owners of the properties in dispute, second they have failed to prove that they were the actual persons affected by the demolition and lastly they have failed to prove that the value of the alleged demolished properties and further there is nothing to justify that the plaintiffs are entitled to any general damages as claimed because they are trespassers. She prayed that the suit be dismissed with costs.

In considering the issues framed, I will be led by the principle that whoever desires a court to give judgment in his/her favour, has to

prove that those facts exist. This is reflected in 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."*

Thus, the burden of proof is at the required standard of balance of probabilities on the party who alleges (see the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported).

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the plaintiffs that they were owners of the suit land which was outside the railway reserve area and that the demolition was improper as such they are entitled to compensation. What this court is to decide upon is whether the burden of proof has been sufficiently discharged.

As for the first issue the main allegation by the plaintiffs is that the 1st defendant demolished their houses which were outside the railway reserve strip. And in their argument the reserve strip is 15 metres

from the centre of the railway track as per the Railway Act, 2002. On the other hand, the defendants argue that the reserve area is 30 metres, and it has its genesis in the post-independence Engineers Manual (1962) whereas in paragraph 18.04 the standard dimension was 200 feet (equivalent to 60 metres and 30 metres) from the centre of the track.

It should be noted that the reliance of the 15 and 30 metres (urban and rural area respectively) by the plaintiffs is in the Railways Act, 2002 where there was established a new concept of *"railway strip"* (see section 4 and 57 of the said Act). But section 62(3) of the said Act, which is a saving provision, took on board orders, directives, notices, rules or regulations made under the East African Railways Corporations Act, 1967 if not inconsistent with the provisions of the Railways Act, 2002. The said section 62(3) states:

> *Notwithstanding the repeal of the Tanzania Railways Corporations Act, 1977, any order, directive, notice, rules, or regulations made under that Act or under the East African Railways Corporations Act, 1967 (Acts, of Community) shall, in so far as they are not inconsistent with the Provisions of this Act remain in force until they are revoked or as the case may be cancelled by an order, directive, notice, rules or regulations made under this Act.*

Now, what is a railway reserve area as opposed to railway strip? Is there a difference between the two? According to several resource materials, the railway reserve is an area of land that is designated for the construction, maintenance and operation of a railway line. Several facts determine the width of the reserve area including the speed of trains the surrounding terrain and the requirements of the railway line. The reserve area is not for public use or development. The railway reserve usually includes the area where the railway tracks are laid, as well as a buffer zone on either side of the tracks that provides clearance for the safe operation of trains. The buffer zone helps to prevent accidents and collisions between trains, pedestrians and vehicles. On the other hand, the railway strip refers to land owned by the railway company which is adjacent to or near the railway reserve. The railway strip can be used for storage of equipment or materials, parking vehicles commercial develop0ment, access for maintenance and repair works, landscaping or environmental protection. It may also include other infrastructure such as stations, depots, workshops or offices. In summary the railway reserve is the area of land set aside for construction and operation of the railway line, while the railway strip is the land

adjacent to or near the railway reserve and can be used for various purposes other than construction and operations.

The explanation above was confirmed by **DW2** the Civil Engineer of the 1st defendant and shows clearly that these two concepts of railway reserve and railway strip. And a quick eye reveals that a railway strip is within the railway reserve area. In essence therefore the concept of railway reserve area found in the Engineers Manual of 1962 was, as argued by the defendants, saved by section 62(3) of the said Railway Act, 2002 whose dimension measured at 60 metres which is 30 metres from the centre of the track. Mr. Ishengoma argued that the Director General stated that the dimension of the reserve area was 15 metres during his press conference, but the Director's declaration at the press conference cannot nullify the law. In view thereof, the concept of railway reserve is still within the law, and I hold that the introduction of the railway strip in the Railway Act of 2002 did not extinguish the existence of the railway reserve whose dimension is 30 metres from the centre track.

Having established that the dimension of the reserve area is 30 metres from the centre of the track, it is apparent that all the

properties of the plaintiffs in the suit land were within the reserve area. I say so because the evidence by the plaintiffs revolved around the fact that the properties were built outside the railway strip (15 metres) and there is no proof that they were outside the 30 metres. And since there was no permission from the Chief Engineer or the company, the properties of the plaintiffs were unlawfully within the reserve area and therefore the plaintiffs unlawfully acquired the suit land namely the residential areas along the railway line from Kipawa, Ukonga, Gongo la Mboto and Pugu Station. The answer to the first issue is thus in the negative.

Without prejudice to the above, even if the court had found that the suit land was outside the railway strip, did the plaintiffs prove their case to the standards required by the law? The answer to this question is in the negative. To prove ownership of the suit land some of the plaintiffs tendered Residential Licences. The witnesses were **PW2, PW4, PW9, PW11, PW14, PW40** and **PW58** who tendered **Exhibits P13, P14, P23, P26, P29, P36** and **P40**. However, the Residential Licences does not prove that the plots so owned were 15 metres from the railway line because some of the licences did not have maps (**P13** and **P14**) and those with maps did not have a key

to show that there is a railway line and the proximity between the plots and the railway line. In short, there is no railway line that was reflected in the maps attached to the Residential Licences. So, one cannot prove the dimensions of the railway strips alleged, the mere tendering of these licences does not prove that these plaintiffs were outside the dimensions required by the law and thus owners of the plots within the suit land.

Apart from the above, some of the licences as pointed out by the State Attorney, were invalid at the time of the notice and demolition in July, 2016 and March, 2017 respectively. These included **P13, P23, P26, P29, P36** and **40**. Consequently, without a valid residential licence these plaintiffs cannot claim ownership of these plots within the suit land. In any case, the plaintiffs did not find it necessary to call a witness from the Municipal Council, Land department to testify on the grant and validity of the said residential licences.

Other plaintiffs have testified and tendered sale agreements. I have gone through the said agreements and have noted that they do not give the description of the land, that is, the size, specific location and boundaries (neighbours). Further in the Amended Plaint the

description of the suit land is very general, that is, Kipawa, Ukonga, Gongo la Mboto and Pugu Station Wards. In the affidavits the plaintiffs merely state the acreage and where the plot is, for instance, 5 acres in Gongo la Mboto. But it is an obvious fact that Gongo la Mboto is a very large area, and 5 acres can be anywhere within that area. The court insists on sufficient description in terms of size location, address and/or boundaries for purposes of its proper identification. Proper description of property is paramount in proof of ownership of land to distinguish the land in dispute from any other land. And the rationale is to avoid any chaos and make execution easy. Failure by the plaintiffs to properly describe the land in dispute is in violation of Order VII rule 3 of the Procedure Code, CAP 33 RE. 2019 which is a mandatory requirement of the law. Without proper description the plaintiffs cannot be declared owners of plots within the suit land (see the case **Daniel Dagala Kanuda (As an Administrator of the Estate of the late Mbalo Lusha Mbulida) vs. Masaka Ibeho & 4 Others, Land Appeal No. 26 of 2015 (HC-Tabora)**(unreported).

There are other plaintiffs who claimed to be owners of plots on the suit land by inheritance. But they did not tender Letters of

Administration or any other proof to show that they have inherited the suit land and that title has passed to them. In the absence of such proof, their claim for ownership and viability to compensation cannot stand. There is also the question of building permits. None of the plaintiffs who allege to have buildings in the suit land have tendered in evidence building permits to show compliance with the law. Even **PW3** who said she was owner of the school (Rosehill Secondary School) did not have a Certificate of Title or a building permit taking into consideration that a school is a big infrastructure.

It was also noted in the course of hearing that some of the plaintiffs tendered TRA demand notices for payment of property taxes, national identities, receipts for payment of electricity and water and introductory letters as proof of ownership of plots within the suit land. However, evidence of payment of property tax, electricity or water bills does not prove ownership of the suit property. In the case of **Hamisa Athumani vs. Halima Mohamed, Land Appeal NO. 28 of 2018 (HC-Tanga)** (unreported) the court stated that evidence of paying land rents or being in possession of receipts showing that one paid land rent in respect of a certain plot is not evidence of ownership of that plot. The court stated:

> *"... it should be noted that evidence of paying land rents or possession of receipts showing that one paid land rents in respect of a certain plot is not evidence of ownership of that plot."*

In the totality, the plaintiffs were unlawfully within the reserve area and therefore the plaintiffs unlawfully acquired the suit land namely the residential areas of the plaintiffs along the railway line from Kipawa, Ukonga, Gongo la Mboto and Pugu Station. And even if they it was established that they were outside the railway reserve as alleged, still there is nothing to prove that they were owners of the demolished properties within the suit land.

The second and third issues whether the demolition of the plaintiffs premisses on the suit land by the 1st defendant was procedural and whether the plaintiffs are entitled to compensation are straight forward. As established herein above that the plaintiffs unlawfully acquired land within the reserve area in essence therefore the plaintiffs are trespassers. In that regard, the demolition of the properties by the 1st defendant was therefore not unprocedural hence the plaintiffs are not entitled to any compensation or at all (see **Tenende s/o Budotela & Another** (supra). In principle the

plaintiffs have failed to prove the case to the standards required by the law on balance of probabilities.

The last issue is to what reliefs are the parties entitled to? It has been established that the plaintiffs have failed to prove their case, so as said above the they are not entitled to any compensation prayed. The plaintiffs also claimed for general damages at the tune of TZS 5,000,000/= each. It is trite law that the court discretionarily awards general damages after taking into consideration all relevant factors of the case (see the case of **Cooper Motor Corporation Limited vs. Moshi Arusha Occupational Health Services [1990] TLR 96).** However, once the amount in general damages is specified as is in the present case, it ceases to be general and turns to be specific damages which ought to be pleaded and proved. (See **Zuberi Augustino vs. Anicet Mugabe** (supra) and **Masolele General Supplies vs. African Inland Church [1994] TLR 192** and **Bamprass Star Service Station vs. Mrs. Fatuma Mwale [2000] TLR 96**). The plaintiffs as said have prayed for TZS 5,000,000/= each for disturbance and stress when following up this matter. However, the claimed amount was not specifically proved as regard to each of the plaintiff, it was a blanket claim to all which in my view cannot

stand as each plaintiff suffered independently and was thus supposed to specifically plead and prove what disturbance one underwent and to what extent leading to the specific damages claimed. In that regard, therefore, the plaintiffs are not entitled to the damages claimed.

For the reasons I have endeavoured to address, it is apparent that the plaintiffs have failed to prove their case to the standards required by the law. Consequently, the suit is dismissed, and the plaintiffs are not entitled to the reliefs prayed for in the plaint. Considering the nature of the case there shall be no order as to costs.

It is so ordered.

THE HIGH COURT OF TANZANIA
LAND DIVISION

V.L. MAKANI
JUDGE
28/04/2023