

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

LAND CASE NO. 92 OF 2022

1. MWAJUMA ALLY ABDALLAH
2. SAID ISSA IBRAHIM
3. JAMES BUTERA
4. MUSSA JUMA MUSSA
5. NASSORO JUMA MUSA
6. IBRAHIM ALLY TINDWA
7. MERIKIORI WILYAM
8. ISSA SADIKI HUSSEIN
9. MWALAMI JUMA JOTA
10. CATHERINE MACHUIO
11. SEVERA MARIKI MROSO
12. AMIR HUSSEIN KADRY
13. SHAHA ABDALLAH YUSUPH
14. ROBERT RICHARD MVAMBA
15. FRANK CHARLES FUNGO
16. RAY MWAIHAKI KAMILO
17. AHMED AYUBU MWANGA
18. JEMA KONDO PEMBE
19. OMAR SAID KALUWEI
20. GAZO MZEE PAZI
21. ALLY OMARY MKUMBA
22. SHABANI MATIGITI

PLAINTIFF'S

**VERSUS**

**ELIZABETH JOSEPHAT KYAKURA..... DEFENDANT**

**JUDGMENT**

*14<sup>th</sup> June, 2023 & 11<sup>th</sup> August, 2023*

**L.HEMED J.**

The above named 22 plaintiffs lodged the instantaneous suit against the defendant herein, **ELIZABETH JOSEPHAT KYAKURA** claiming

ownership of the unregistered pieces of land situated at Mabwepande within Kinondoni District measuring 75 acres. It was alleged that on 19<sup>th</sup> August 2003, the Mabwepande Village Council, issued notice/letter to all persons owned land at Mabwepande to develop their respective pieces of land in one month time and that thereafter the undeveloped lands would be divided to other persons. The notice was published in Mtanzania Newspaper of 18<sup>th</sup> August 2003. Later on the village council allocated the undeveloped land and the plaintiffs herein were allocated the suit pieces of land.

The plaintiffs alleged that in the year 2019, the defendant trespassed into the suit pieces of land and illegally occupied the land denying them an opportunity to peaceful enjoyment of ownership. After having forcefully occupied the suit piece of land, the defendant has invited many other people to the premises and they are dividing the land to small plots and has offered for sale to different people without any consultation and prior consent from the plaintiffs. The plaintiffs are thus praying for judgement and decree against the defendant as follows:-

*"1. A declaration that the plaintiffs are the rightful and lawful owners of the pieces of land in dispute located at Mabwepande in Kinondoni measured 75 acres demarcated as per paragraph 3 of the plaint.*

2. *A declaration that the defendant is a trespasser and she has no any right over the plaintiff's land.*
3. *A permanent and perpetual injunction against the defendant, her workmen, or any other person working of her behalf, from trespassing and interfering with the plaintiff's ownership of the disputed pieces of land.*
4. *For demolition of any structure or development put by the defendant or any or her assignee or agent.*
5. *For eviction order against the defendant from the premises and land.*
6. *For order to surrender the plaintiff's properties or its replacement costs.*
7. *The defendant be ordered to pay the plaintiff general damages, punitive and exemplary damages as will be reasonably assessed by the court.*
8. *For an order of interest.*
9. *Costs of the suit*
10. *Any other reliefs deemed as fit and just so to grant."*

On her part, the defendant disputed the plaintiffs' claims. She asserted to have never trespassed in any plaintiffs' land. At the end, she prayed for the dismissal of the suit with costs.

It should be noted that on 6<sup>th</sup> February 2023, the 3<sup>rd</sup> 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, and 21<sup>st</sup> plaintiffs, through their advocate decided to withdraw their claims. The suit proceeded with the claims of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, and 22<sup>nd</sup> plaintiffs. At

all the material time in the course of the trial, **Mr. Haji Mlosi**, learned advocates, represented the plaintiffs while the defendant enjoyed the service of **Mr. Nerlex B. Mutongore**.

Before the commencement of the trial, the following issues were framed to provide guidance of the trial. The said issues were as follows:-

- 1. Who is the owner of the Suit Land?*
- 2. To what reliefs are both entitled?*

The method of filing witness statements was used in gathering evidence, whereas 11 witness statements were filed. The plaintiffs paraded eleven (11) witnesses for purposes of introducing witness statements and exhibits thereof. The said witnesses were; MWAJUMA ALLY ABDALLAH (PW1), MELCHOR WILLIAM LEMERY (PW2), SAID ISSA IBRAHIM (PW3), GAZO MZEE PAZI (PW4), CATHERINE MECHIOR MBEYELA (PW5), ISSA SADIK HUSSENI (PW6), MUSA SHABANI MATIGITI (PW7), NASSORO IDRISA HEMED (PW8), AHMED AYUB MWANGA (PW9), MUSSA JUMA MUSSA (PW10) and HEMEDI SAID NGENJE (PW11). Nine (9) witness statements were adopted to form part of the proceedings, whereas, the witness statements of PW5 and PW7 were rejected due to some anomalies.

Exhibits tendered were 'FOMU NO.KMP/NO 220" dated 1/3/2014 (exhibit P1), Receipt No.2220 of 1/3/20004 (Exhibit "P2), 'FOMU' NO KMP/NO 3423 dated 14/4/2004 and receipt No.3443 (exhibit P3); Receipt No.343 dated 11/3/2003 and FOMU NO.KMP/NO, 343 (Exhibit "P4"); and Form No.KMP/NO.445 dated 20/4/2004 (exhibit P4).

The defendant's case had only one witness, the defendant who testified as DW1. Her witness statement was adopted to form part of the proceedings. No exhibit was tendered for the defendant's case.

At the conclusion of defence case, parties requested to file final submissions, which were promptly filed as per the schedule directed by the court. I must acknowledge both advocates, **Mr. Haji Mlosi** and **Mr.Nevereus Mutongore** for their work which has been useful in the course of composing the judgment at hand. I have opted to analyze evidence adduced while dealing with issues framed.

The suit at hand is centered on ownership of the suit land which is situated at Mabwepande area in Kinondoni Municipality within Dar es Salaam region. The plaintiffs claim to be owners of the same. They blame the Defendant for having trespassed into their pieces of land.

In determining the matter at hand I will be guided by principles enshrined under sections 110 and 111 of the Evidence Act, [Cap.6 RE 2019], on the burden of proof. The said sections provides thus:-

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

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

*111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side."*

Let me start with the 1<sup>st</sup> issue. It was on *who is the owner of the Suit Land*. This issue is aimed at determining the rightful owner of the suit landed property between the parties herein. The testimonies of plaintiffs, which were in their witness statements, were all the same. They testified to the effects that they acquired the Land in dispute through the Village Council of Mabwepande.

It was adduced by all plaintiffs' witnesses that they applied for allocation of the land by filling in application forms. The forms were issued with the conditions for joining membership of the Village. Another

requirement was the payment of Tshs 120,000/= which all the plaintiffs complied with and were issued with payments receipts. The said payment receipts were received into evidenced as exhibits P1, P2, P3, P4, P5, P6, P7, P8 and P9. The Chairman of the Village Council for Mabwepande one A. M. Matumla endorsed the said receipts.

On the defence side, the defendant testified as DW1. In her witness statement, she told the court that in the year 1984 to 1987 her father one Josephat Rwechungura Kyakula purchased a piece of land of more than 25 acres in Mabwepande, for agriculture purposes. She added that, her father could not develop it due to illness and consequential death. DW1 further informed the court that after the demise of her father, her mother one Ajira Omar Kyakula took over the management of the disputed land. She processed survey of the land and converted it to the real estate business under the company known as **Genie International Company Limited**.

It was further testified by DW1 that she is currently the Managing Director of the said company. It was asserted by DW1 that the said company sold the plots to various people who transferred to various owners. According to DW1, the disputed land was surveyed and owned

by Genie International Company Limited. She ended up praying for dismissal of the suit with costs.

From evidence hereinabove, it is straight forward that the defendant is not the owner of the suit land. I am holding so because according to the defendant's evidence the suit piece of land was under **Genie International Company Limited**. Although the defendant told the court to be the managing director of the company, she is distinct from the company under the doctrine of corporate personality laid down in the case of **Salomon v A Salomon & Co.Ltd**, [1897]AC 22 that once a company is duly incorporated, it is an independent person with its rights and liabilities appropriate to itself.

The question that arises here is whether the plaintiffs have proved their claims of ownership of the suit pieces of land. The plaintiffs alleged that the Village Council of Mabwepande had allocated them the pieces of land. Evidence tendered were the application forms and payment receipts (Exhibits P1-P6). I must clearly state right here that the procedures of acquiring land in the village is governed by the Village Land Act, [Cap.114 R.E. 2019]. Some of the procedural requirements are provided under sections **8 (5), 22, 23, and 24** of the Act. Among the crucial condition for allocation of land in the village is the approval of the



decision to allocate land by the village assembly. This condition is provided under section 8 (5) of the Act, thus:-

*"(5) A village council **shall not allocate** land  
or grant a customary right of occupancy  
without prior approval of the village assembly."*

(Emphasis Added)

From the above-cited provision, the words '**shall not allocate**' envisages mandatory requirement that the village council must convene the village assembly for approval prior to allocation of land to any applicant. In the instant case, the plaintiffs did not adduce evidence to establish if the village assembly approved the allocation of the alleged village land to them. They did not call any one from the allocating authority (the Village Council) who could testify on the fulfilment of the said requirement. Failure to parade such witnesses entitles the court to draw an inference that if they were called they would have given evidence contrary to the plaintiffs' interests as was held in **Hemedi Said v. Mohamedi Mbilu**, [1984] T.L.R 113.

I have also closely examined all exhibits tendered by the plaintiffs' witnesses and found that all of them do not describe the exactly location of the pieces of land they allege to be allocated. In disputes of ownership

of land like the one at hand, where the plaintiffs allege trespass, evidence on the proper location of the suit land is vital. The significance of such evidence is to establish not only ownership but also the extent of the alleged trespass. It is unfortunately the plaintiffs have failed to carry that burden of proving trespass as required under section 110 (2) of the Evidence Act,[Cap.6 R.E. 2019].

I have also come across with the **Town and Country Planning (Planning Areas) Order** of 1992, Government Notice (G.N) No 231 of 1993 made under the Town and County Planning Act, Cap 355. The said Government Notice declared the whole land of Dar es Salaam the planning area since 1993. It is well known that once the land is declared the planning area under the Town and Country Planning Act it ceases to be part of the village land.

According to section 15 of the Town and Country Planning Act, Cap 335, planned areas fall within the mandate of local authority within which the area/land declared planned situates. In the instant case the fact that the Mabwepande is within Kinondoni municipality, then the Municipal Council for Kinondoni is the one with the mandate of all the land within Mabwepande. Upon declaration of the land in Dar es Salaam planned

area, then all village councils including the one at Mabwepande ceased to have mandate of allocating land.

The plaintiffs testified that they were allocated pieces of land in the year 2004 by village council of Mabwepande. Besides village councils in Dar es Salaam having no legal mandate to allocate, it is doubtful if by the year 2000 there was any village legally existing in Dar es Salam!

I have further noted that my sister at the bench Hon. A, Msafiri J, encountered similar scenario in the case of **Hassan Amiri Hemedi & 4 others vs Lake Oil Limited & another**, Land Case No 84 of 2020 (Hc-Land Division). She observed that: -

*"...All parties to the dispute did not dispute the existence of GN No 231 of 1993 which was established under Town and Country Planning Act. The said G.N No 231 of 1993 declared Mabwepande area to be planning area. This was in 1993, In 2000, the Kinondoni Municipal Council was established. By this the whole Kinondoni area was under the Municipal Council which is a planning authority, vested powers to own and plan land on behalf of his Excellency the President of the United Republic of Tanzania"*

I totally subscribe to the observation and the position taken by Hon. Msafiri, J in the above-cited case. I also comment that when the Village Land Act, [Cap 114 R.E 2019] was enacted in 1999, could not apply in all land of Dar es Salaam as was already declared planned area. The village council for Mabwepande alleged to have allocated the land to the plaintiffs did not have the mandate so to do. Since, the 'Authority' alleged to pass the title to the plaintiff had no mandate, nothing passed to the plaintiffs.

From the foregoing, the plaintiffs have failed to prove ownership over the suit landed properties. They are thus not entitled to be declared lawful owners of the disputed land.

The 2<sup>nd</sup> issue was on reliefs parties are entitled to. Evidence on record has shown that the plaintiffs have failed to prove their case. Having failed to prove their claims, the plaintiffs are entitled for no reliefs other than the suit being dismissed. I hereby dismiss the entire suit with costs. It is so ordered.

**DATED** at **DAR ES SALAAM** this 11<sup>th</sup> August, 2023



  
L. HEMED

**JUDGE**