

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 84 OF 2021

FOCUS COSMAS CHUWA 1ST PLAINTIFF

KITUNDU SHILA CHARLES 2ND PLAINTIFF

KOSTANTINO EGINO MBONDE 3RD PLAINTIFF

KHAMIS SAID HAMIS 4TH PLAINTIFF

**LUPIANA MICHAEL LUPIANA (Administrator of the Estate
of The Late MICHAEL SIMON LUPIANA 5TH PLAINTIFF**

VERSUS

MUHARAMI ALLY 1ST DEFENDANT

NASSORO SAID 2ND DEFENDANT

SAID MBWANA 3RD DEFENDANT

ALI SHABANI 4TH DEFENDANT

MAMA NYAGA 5TH DEFENDANT

NYAMKENI ABDALLA 6TH DEFENDANT

AMINA MOHAMED 7TH DEFENDANT

REHEMA HEMED 8TH DEFENDANT

RUTHI LABAN 9TH DEFENDANT

KULWA SALEHE 10TH DEFENDANT

MOHAMED ABDALLAH 11TH DEFENDANT

ABDALLAH HASHIM 12TH DEFENDANT

DAWA LUGANO	13TH DEFENDANT
UBAYA RAJABU	14TH DEFENDANT
ADRIAN CHRISPIN	15TH DEFENDANT
SAMWEL OTOM	16TH DEFENDANT
FRANK JUSTIN	17TH DEFENDANT
CHARLES MAKOYE	18TH DEFENDANT
ALI BOKO	19TH DEFENDANT
ZAITUN S. LABANI	20TH DEFENDANT
JUMANNE RAMADHANI	21ST DEFENDANT
YOHANAJONAS	22ND DEFENDANT
JEREMIA CHAULA	23RD DEFENDANT
NDUGU GUMBO	24TH DEFENDANT
SALIM ABDALLA	25TH DEFENDANT
MBARAKA HASSAN	26TH DEFENDANT
YUDA MALINGA	27TH DEFENDANT
ODAA OTOM	28TH DEFENDANT
JUMA NG'AMBI	29TH DEFENDANT
REGINARI A. MUSHI	30TH DEFENDANT
CHRISPIN MITI	31ST DEFENDANT
LIBERATI JUSTINE KAVISHE	32ND DEFENDANT
ISMAIL MZULA	33RD DEFENDANT
SHABANI SAID	34TH DEFENDANT
DANI KASAMBALA	35TH DEFENDANT

ISSA MOHAMED LIPANDA	36 TH DEFENDANT
LILIAN MAJOJO	37 TH DEFENDANT
JAMES SHAYO	38 TH DEFENDANT
MOHAMED MSHINDO	39 TH DEFENDANT
MBARAKA SAID	40 TH DEFENDANT
MOHAMED IDDI	41 ST DEFENDANT
SHUKURU MZUZURI	42 ND DEFENDANT
EDWIN GABRIEL	43 RD DEFENDANT
KUBEJA JAMES	44 TH DEFENDANT
SELEMANI MILANZI	45 TH DEFENDANT
MREMBWA MNAKU	46 TH DEFENDANT
CHRISTOPHER MALISA	47 TH DEFENDANT
SALUM MTUNGO	48 TH DEFENDANT
IDDI MPAMBALUPI	49 TH DEFENDANT
FATUMAJUMA	50 TH DEFENDANT
FATUMA ATHUMAN	51 ST DEFENDANT
ASHA SAIDI	52 ND DEFENDANT
KASSIM PERI	53 RD DEFENDANT
LILA MUHARAMI	54 TH DEFENDANT
MUHARAMI ALLY	55 TH DEFENDANT
EMMANUEL KAZUNGU.....	56 TH DEFENDANT
MUSA KAZUNGU	57 TH DEFENDANT
HAMISI MWENDASHA	58 TH DEFENDANT

NYAZARA NTONDOPE	59TH DEFENDANT
UMI ATHUMANI	60TH DEFENDANT
MOHAMED MANDAI	61ST DEFENDANT
SHUKURU RAMADHANI	62ND DEFENDANT
AMOS LUTEMA	63RD DEFENDANT
ZAINABU SHOMVI	64TH DEFENDANT
MARIAM SHABAN	65TH DEFENDANT
MAUA MUSA	66TH DEFENDANT
JOSEPH PONSIAN	67TH DEFENDANT
STELA LAZARO	68TH DEFENDANT
COSMAS DANIEL	69TH DEFENDANT
MASHUADA CHARLES	70TH DEFENDANT
MKINA CHARLES	71ST DEFENDANT
YUSUF MKOI	72ND DEFENDANT
SALOME JUMA	73RD DEFENDANT
SCHOLASTIKA JACKSON	74TH DEFENDANT
ALI MRISHO	75TH DEFENDANT
DAMINA LAWENA	76TH DEFENDANT
ABDALLA SHABANI	77TH DEFENDANT
PERES LUTEMA	78TH DEFENDANT
ENRINGIRISHA MOSHA	79TH DEFENDANT
GEORGE MOSHA	80TH DEFENDANT
CONSOLATA OKELLO	81ST DEFENDANT

ELIYA NDALU	82 ND DEFENDANT
HAMISI KAJIGIRI	83 RD DEFENDANT
ZILIPA KAJIGIR	84 TH DEFENDANT
REHEMA JUMA	85 TH DEFENDANT
HEKIMA ABDALLA	86 TH DEFENDANT
BIDA MUYA	87 TH DEFENDANT
KUMBA SAID	88 TH DEFENDANT
GODFREY NG'UNGU	89 TH DEFENDANT
EDWARD A. NG'UNGU	90 TH DEFENDANT
ATHUMAN MGENI	91 ST DEFENDANT
RAJABU MGENI	92 ND DEFENDANT
SARAH MSANGI	93 RD DEFENDANT
EMMANUEL CHALA	94 TH DEFENDANT
KASSIM SALUM	95 TH DEFENDANT
SALEHE SALUM	96 TH DEFENDANT
MRISHO RAMADHANI	97 TH DEFENDANT
RAMADHANI KABAVULA	98 TH DEFENDANT
FRAIDA MOHAMED	99 TH DEFENDANT
HAPPY RICHARD	100 TH DEFENDANT
SHABANI KATEMBO	101 ST DEFENDANT
SALUMU MAWINE	102 ND DEFENDANT
NURDIN GWATO	103 RD DEFENDANT
ASHA SAID	104 TH DEFENDANT

KAREN KASINDI 105TH DEFENDANT
YUDA MBALIGA 106TH DEFENDANT
FRANCIS ODAHA 107TH DEFENDANT
SOFIA LUA 108TH DEFENDANT
MARIAM OMARI 109TH DEFENDANT
EMMANUEL SAMWEL 110TH DEFENDANT
ATHUMANI TIPO 111TH DEFENDANT

Date of last Order: 06/12/2022

Date of Judgment: 23/02/2023

JUDGMENT

I. ARUFANI, J

The plaintiffs herein filed the instant suit in this court against the defendants seeking for declaration of ownership of the land with Plan No. E 393, Block "H" situated at Vikawe Shule Street within Kibaha Town Council in Coast Region (hereinafter referred as the land in dispute) which they alleged was trespassed by the defendants. They are also praying for permanent injunction against the defendants from using the land in dispute order of demolishing whatever structure constructed by the defendants on the land in dispute, special damages of Tshs. 1,000,000,000/=, interest of 7% per annum from the decretal amount until full payment and costs of the suit.

After the defendants being dully served with the claims of the plaintiffs the 1st, 23rd, 43rd, 89th, 90th and 98th defendants filed in the court their joint written statement of defence. As the rest of the defendants failed to appeared in the court and they didn't file their written statement of defence in the case, the court ordered the case to proceed ex parte against them. While the plaintiffs were represented in the case by Mr. Michael Mwambeta, learned advocate, the defendants who appeared in the court to dispute the claims of the plaintiffs were represented by Mr. Fred Sanga, learned advocate. The issues framed for determination in the case are as follows: -

1. *Who is the lawful owner of the Land in dispute.*
2. *Whether the Plaintiffs suffered damages.*
3. *To what reliefs are the parties entitled.*

In discharging their duty of establishing their claims, the plaintiffs brought to the court four witnesses namely; (1) Lupiana Michael Lupiana (PW1), (2) Focus Cosmas Chuwa, (PW2), Faustin Magai Luzangi, (PW3) and (4) Costantino Eginu Mbonde, (PW4). In their rebuttal the defendants who testified in the matter are Jeremiah Emmanuel Chaula who is 23rd defendant and he testified as DW1, Dawa Donald Lugano who is 13th defendant and he testified as DW2 and Ramdhani Said who testified as

DW3. While the plaintiffs tendered six documentary evidence to support their evidence, the defendants tendered no any documentary or physical evidence on their side.

Focus Cosmas Chuwa, (PW2) and Costantino Egno Mbonde, (PW4) told the court they are members of the group known as "Natural Power Group" (hereinafter to be referred in short as NPG) which has about thirty members. PW2 told the court they acquired the land in dispute in 1994 after being allocated the same by the Government of Vikawe Shule Village. He said they applied for three hundred acres of land from the mentioned Village Government after the Central Government required youths wanted to do agricultural activities to be given land for that purpose.

They said after the Village Government considered their application, they were given the land in dispute which its size was three hundred acres by being measured by fouts and required to pay compensation to the citizen who had permanent crops on the land given to them. PW2 and PW4 said that, the boundaries of the said land were as follows; on one side there is Yusuph Ngororo, another side there is Mafuta Street, on the other side there is Mpiji River and the other side there is Madiba and Mpingo Farm.

They said after paying compensation to the citizens who had permanent crops on the land allocated to them, they constructed a house for shelter while doing the agricultural activities on the land and started their agricultural activities. They said they continued with their agricultural activities in the farm while participating in all social activities occurred at the village. They said they continued to possess the land until 1999 when they started seeing people trespassing onto their land. When they asked the said people as to why they were invading their land they told them they were employed by Michael Simon Lupiana who is the fifth plaintiff in the matter to work on the land.

Lupiana Michael Lupiana, PW1 told the court he is an administrator of the estate of the late Michael Simon Lupian and his letters of administration of the estate of the late Michael Simon Lupiana was admitted in the case as exhibit P6. He said the deceased was allocated the land measuring fifty acres by the Vikawe Shule Village Government. He tendered to the court the minutes of Vikawe Shule Village dated 28th February, 2002 which shows the late Michael Simon Lupiana was allocated the mentioned land by Vikawe Shule Village Government and it was admitted in the case as exhibit P1.

PW1 said that, after the late Michael Lupiana being allocated the land, the Vikawe Shule street leader wrote a letter authorizing him to survey the land allocated to him and the said letter was admitted in the case as exhibit P2. PW1 went on saying that, when Michael Lupiana wanted to survey the land, a dispute emerged between Michael Lupiana and members of the NPG who had been allocated the same land by Vikawe Shule Village Government.

PW1, PW2 and PW4 said that, after their dispute being taken to the Street Government and told Michael Lupiana was given the land by the Street Government and after the matter being taken to the District Land and Housing Tribunal, they decided to settle their dispute. PW1, PW2 and PW4 said after settling their dispute they made a memorandum of understanding which was signed by PW2 as a representative of NPG, Vikawe Shule Street Government and the late Michael Lupiana for the purpose of developing the land together. The stated memorandum of understanding was admitted in the case as exhibit P3.

PW2 and PW4 said that, after agreeing to develop the land together they applied from the Street Government and other Government Authorities permitted them to survey the land. After obtaining the permit the work of surveying the land was given to **Faustine Magai Luzangi,**

PW3. PW3 said that, after being given the said work by the NPG, he surveyed the land and divided the same into plots. He said to have prepared a sketch Plan of the concerned land which he tendered to the court and admitted in the matter as exhibit P4.

He said before presenting exhibit P4 to the Director of Survey and Mapping for approval he received a letter from Kibaha Town Council which stopped him from continuing with the work of surveying the land and he stopped the work. PW3 said that, later on he heard there was a case between the persons gave him the work of surveying the land and the people who were calling themselves as indigenous. PW1, PW2 and PW4 said the defendants filed land Case No. 353 of 2013 in this court but later on they withdrew it from the court.

They said after the defendants withdrew the case from the court and after being asked by the Director of Kibaha Town Council through the letter which was admitted in the case as exhibit P5 if they had any objection for the plaintiffs to be allowed to proceed to survey the land in dispute and failed to respond to the stated letter, they filed the present suit in this court. When PW2 was cross examined by the counsel for the defendants he said their group is not registered. When he was asked if a village can allocate three hundred acres of land to a person, he said he

doesn't know. He said the house they built on the land in dispute was demolished by the people invaded their land who took their properties and set the house on fire.

When PW3 was cross examined by the counsel for the defendants he said the land he was given a work of surveying it had a house, banana trees and cassava. He said part of the land was valley and other part was forest. He said he didn't involve the people who constructed the house on the land in his work of surveying the land because it was not his duty and said he was given a letter authorized the persons gave him the work to survey the land.

In their defence, **Jeremiah Emmanuel Chaula, Dawa Donald Lugano** and **Ramadhani Said** who testified as **DW1, DW2** and **DW3** respectively told the court they are residents of Vikawe Shule Street and their evidence was almost similar. They said they know the first, second, third and fourth plaintiffs who together with other people have their organization known as "Natural Power Group". They said the mentioned plaintiffs went to their village in 1993 when their area was under village authority and was known as Vikawe Shule Village seeking for land to cultivate. They said the mentioned group of people were seeking for 300 acres of land for the agriculture they wanted to conduct in their village.

They said the leaders of their Village told the mentioned plaintiffs that the village had no land as the land was under the ownership of the villagers. They said the village authority told them to wait so that the leaders of the village could have talk to the villagers and see if they would have agreed to give them their land. They went on saying that, after the villagers being requested to give their land to the NPG, the people who had big lands agreed to give their land to them on conditions that they would have been paid compensation for the permanent crops they had planted on their land which were coconut trees, cashew nuts trees and mango trees.

DW1, DW2 and DW3 said that, it was agreed the compensation would have been paid after valuation of their crops being done by the Government Valuer. They said in 1994 the village authority called the mentioned plaintiffs and told them the land had been obtained but they were required to pay compensation to the people who would have given them their land for the permanent crops they had planted on the land which was intended to be given to them.

They went on saying that, the NPG people agreed to pay the stated compensation and after being shown the land they built there on temporary shelters for use while working on the land given to them. DW1

said after two months the NPG people departed from the land given to them and they didn't see them again. DW1 said that, in 1996 some of the villagers whose land was given to the NPG people started to return to their land as the mentioned group of people left the land given to them without developing the same.

They went on saying that, in 1997 Michael Simon Lupiana who is the fifth plaintiff in the matter went to their village authority to request for a land of keeping his animals. He requested to be given fifty acres of land and he was told by the village authority that the village had no land as the land belonged to the villagers. He said after the villagers being informed about the request of the fifth plaintiff, they agreed to give their land to him on condition that the fifth plaintiff would have built a house in their village for their school teacher as they had no school teacher's house at their village.

They said the fifth plaintiff agreed to fulfill the stated condition and he was given fifty acres of land out of the land which had been given to the NPG people. He said after the fifth plaintiff being given the said land, he built the school teacher's house up to the stage of linter. They said after the house reached to the stated stage it developed cracks. They said the complaint was taken to the District Commissioner who went to the

house while accompanied by the members of the District Security Committee and after seeing the condition of the house, the District Commissioner ordered the house be demolished. They went on saying that, after the house being demolished the fifth plaintiff did not construct another house for the school teacher.

They said between 2006 and 2007 the citizens told the Village Council that they wanted to return to their land because the fifth plaintiff had not fulfilled the condition of being given the land which was to build the school teacher's house. They said after changes of the Village Authority to the Street Government, in 2010 the Street Government said as the fifth plaintiff had failed to fulfill the condition of being given the land, the citizens had a right to return to their land. They said the Street Government requested the citizens who were the owner of the land given to the fifth plaintiff to give part of their land to the citizen who had no land as there were many people who had no land and the said citizens agreed.

They said the Committee for supervising distribution of land to the citizens was formulated and the land was distributed to the citizens and each citizen was given a quarter (1/4) of an acre of land. They said when the exercise of distributing the land was going on the fifth plaintiff claimed

his properties had been damaged and filed a case in the Primary Court against the leaders of the Street Government. They said when the case was continuing, they heard the NPG people had sued the fifth plaintiff but they don't know what was the outcome of their case. They said the street leaders were convicted by the Primary Court but later on were acquitted by the District Court.

They continued to say that, thereafter they were told by the Lawyer from the Town Council that there was an exercise of surveying the land including the land in dispute and told the citizens to vacate from the land in dispute to pave chance for the stated exercise. They said the citizens refused to vacate from the land and requested the Town Council Lawyer to stop the exercise of surveying the land as the land was in dispute. They said they took their complaint to the District Executive Officer who wrote a letter of stopping the exercise of surveying the land in dispute until when the dispute would have been resolved.

They said that, when they were continuing to find solution of their dispute, they heard the NPG people had gone to the land in dispute and destroyed their crops and demolished the buildings they had constructed on the land in dispute. They said when the NPG people were asked by the Street Government as to why they were doing so they said the citizens

had trespassed onto their land. They said thereafter they filed the case in the court against the NPG people but later on they were advised by their advocate to withdraw the case from the court as it had some defects and they agreed to withdraw their case from the court.

They said they stayed until 2016 and after seeing the NPG were disturbing them, they took the matter to the District Commissioner where the meeting involving the citizens, people from NPG, fifth plaintiff and the Street Government leaders. They said the District Commissioner said the citizens were on the land legally and he cannot deny the NPG people and the fifth plaintiff have right to own the land. He told the NPG people to bring the list of their members and their Constitution so that each of them can be given an acre of a land but they didn't comply with the stated directives.

They said the District Commissioner told the fifth plaintiff if he wanted land for keeping animals, he was ready to find the land for him somewhere else out of the town as he was not allowed to keep animals in the town. They said later on they heard the plaintiffs had filed the present suit in the court. They said the NPG departed from the land in dispute from 1994 and stayed until 2011 is when they returned to the

land. They said for the whole period they did not do anything to develop the land.

When they were cross examined by the counsel for the plaintiffs, DW1 said when the fifth plaintiff was building the house for the school teacher, he was using the land given to him. DW1 and DW2 said the land distributed to the citizens was three hundred acres and each citizen was given a quarter (1/4) of the land by the Committee formulated by the Street Government.

After hearing the evidence from both sides, the counsel for the parties prayed and allowed to file in the court their final submissions. The counsel for the plaintiffs stated in his submission in relation to all issues framed for determination in this suit how ownership of land in dispute is proved. He argued the plaintiffs are praying the court to declare them lawful owner of the land measuring 200 acres situated at Vikawe Shule area within Kibaha Township in Coast region which has been unlawful invaded by the defendants.

He submitted the plaintiffs have managed to prove their case as required by section 110 (1) and (2) of the Evidence Act, Cap 6, R.E 2019 that the land in dispute was first allocated to the members of the NPG people by Vikawe Shule Village in 1994. He stated thereafter the fifth

plaintiff was allocated fifty acres of the land by the Village Council in 1997. He stated the defendants gave a mere words in their evidence and their evidence has some contradictions because while some of them said the plaintiffs went to their village in 1990, others said they went in 1993 and stayed there for one and a half month and then left.

He argued the defendants have not proved the plaintiffs and other members of the NPG were ever notified their land had been taken by Vikawe Shule Government and reallocated to the defendants apart from mere words. He said there is no any minutes from the mentioned Government Authority tendered in the court to prove the land of the plaintiffs was taken and distributed to the defendants by the mentioned Government Authorities. He submitted the evidence given by the plaintiffs' witnesses is watertight and prayed the court to find the reliefs prayed in the plaint are meritorious.

On his part the counsel for the defendants stated the evidence given by PW1 and the exhibit tendered in the court shows the late Michael Simon Lupiana did not meet the condition required him to build a house for their school teacher. He stated what was built by the mentioned plaintiff was bellow the required standard and not suitable for person to live in and the District Commissioner ordered the same to be demolished.

He argued that, the court should take note that the first to fourth Plaintiffs are natural persons and they have sued the defendants by using their personal names. He argued exhibit P3 which is a memorandum of understanding shows the first Plaintiff, Focus Cosmas Chuwa signed the same as a representative of Natural Power Group. He argued paragraph 4 of the plaint shows the plaintiffs admitted that the NPG is unregistered group, hence it does not have legal capacity to enter into an agreement.

He submitted that, the evidence of DW1, DW2 and DW3 shows the first to fourth plaintiffs were given the land in dispute in 1994 but they abandoned the same without developing the same until 2010 which is a period of about 16 years is when they returned to the land in dispute. He submitted the principle of adverse possession apply to defendants and referred the court to the case of the **Registered Trustees of the Holy Spirit Sisters of Tanzania V. January Kamili Shayo & 136 Others**, Land Case No. 11 of 2012, HC at Moshi (unreported) where the stated principle was considered.

He also referred the court to the case of **Nitin Coffee Estate Ltd, V. United Engineering Works Ltd**, [1988] TLR 203 and **Abualy Alibhai Azizi V. Bhatia Brothers Ltd**, [2000] TLR 288 which discussed the position of the right of occupancy vis a vis the customary right of

occupancy. At the end he prayed the court to declare the defendants are lawful owners of the land in dispute as they were given the same by the Street Government and prayed the court to find the plaintiffs have failed to prove any damages they have suffered.

The court has carefully considered the evidence from both sides and keenly considered the final submissions filed in the court by the counsel for the parties. The court has found before going to determination of the issues framed in the suit at hand it is proper to state at this juncture that, as rightly submitted by the counsel for the plaintiffs the position of the law as provided under sections 110 (1) and (2) and 112 of the Evidence Act is very clearly that, whoever desires a court to give judgment in his or her favour is required to prove the facts he has alleged are in existence.

The stated position of the law was emphasized by the Court of Appeal in the case of **Abdul Karim Haji V. Raymond Nchimbi Alois & Another**, Civil Appeal No. 99 of 2004 (unreported) where it was stated it is an elementary principle of the law that he who alleges is the one responsible to prove his allegations. It was also stated by the Court of Appeal in the case of **Anthony M. Masanga V. Penina (Mama Gesi) & Another**, Civil Appeal No. 118 of 2014 (unreported) that, a party with legal burden also bears the evidential burden of proving the case on the

balance of probabilities. That being the position of the law the court has found the plaintiffs have a burden to prove they are entitled to the reliefs sought in their plaint.

Starting with the first issue which asks who is the lawful owner of the land in dispute, the court has found the plaintiffs have alleged they are lawful owners of the land in dispute. The first to fourth plaintiffs averred the land in dispute was first allocated to them in 1994 by Vikawe Shule Village as members of the NPG for conducting their agricultural activities. It was further averred that, in 1997 part of the said land measuring fifty acres was allocated to the fifth defendant by the same village authority for the purpose of keeping and pasturing his animals.

The court has found the defendants have not disputed the plaintiffs were given the land in dispute for the stated purposes. The evidence from the defendants' witnesses and the argument from their advocate is that the land in dispute was returned to the previous owners who had agreed their land be given to the plaintiffs after seeing the plaintiffs had failed to meet the conditions given to them for being the land in dispute. The defendants' witnesses told the court that, when the plaintiffs were given the land in dispute, there was a condition that the NPG people would have compensated the previous owners who volunteered to give them their

land because the land had some permanent crops like cashew nuts, mango trees and orange trees.

It was said by the defendants' witnesses that the NPG people failed to compensate the previous owners of the land given to them and the fifth defendant who was also given part of the land in dispute on condition that he would have built a house for the school teacher, failed to meet the stated condition as he built the house which was demolished by the District Commissioner after being found it was built below the required standard. The defendants' witnesses stated after the plaintiffs failed to meet the conditions given to them, the Government of the Vikawe Street decided to distribute the land to some of the citizens who are now defendants in the present suit.

After considering the stated evidence the court has found there is a clear and undisputed evidence that the land in dispute was given to the plaintiffs. The court has found the stated evidence is also supported by exhibit P1 which is the minutes of Vikawe Shule Hamlet which shows the fifth plaintiff was given fifty acres of the land in dispute. The court has considered the averments and the evidence adduced by the defendants' witnesses that the land was taken from the plaintiffs after failing to meet the conditions for being given the stated land and distributed to the

citizens of Vikawe Shule Hamlet but find the stated evidence has not been able to satisfy the court the plaintiffs are not the lawful owners of the land in dispute.

The court has come to the stated finding after seeing that, although the defendants stated the plaintiffs failed to meet the conditions given to them for the land given to them but PW2 and PW4 said they paid the compensation they were required to pay to the citizens who agreed to give their land to them. PW2 said they used the land given to them and they were participating in the social activities conducted at the village. The court has found even the fifth plaintiff whose condition was to build a house for the school teacher he fulfilled the stated condition though DW1, DW2 and DW3 said the house built by the fifth plaintiff was demolished by the District Commissioner after being found it was below the required standard.

To the view of this court the stated evidence of the defendants' witnesses has not managed to satisfy the court that it has outweighed the evidence of the plaintiffs' witnesses that the plaintiffs failed to fulfill the conditions of owning the land in dispute given to them. The argument that the plaintiffs failed to fulfill the conditions given to them was supposed to be supported by evidence from either the Government of the

Vikawe Shule Street or evidence from the District Commissioner's office or Town Council Government to establish the plaintiffs failed to meet the conditions given to them for owning the land in dispute and the land in dispute was lawfully taken from them and distributed to the citizens of Vikawe Shule Street. The court has also found there is no person whose land was taken and given to the plaintiffs appeared in the court to prove he was not paid compensation for the land given to the plaintiffs.

The court has been of the view that, even if it will be said the plaintiffs failed to meet the conditions given to them as stated by the defendants' witnesses, and the Government Authority found there was a justifiable reason for taking the land from the plaintiffs and distribute the same to the defendants but as rightly submitted by the counsel for the plaintiffs the stated exercise would have not been done without informing the plaintiffs that the land given to them was being taken from them as they failed to meet the conditions given to them and it was being distributed to the citizens.

The court has come to the stated view after seeing it was stated in the case of **Edwin Paul Mhede & Another V. Shose K. Ngowo** (Administratrix of the Estate of the late **Constansia S. Ngowo**, Land Appeal No. 97 of 2021, HC Land Div at DSM (unreported) that, after a

land being given to a person it should not be taken from him and given to another person without following the required procedures of reallocating the land already allocated to the another person. To do so will be the source of unnecessary conflicts and disputes to the people and will make ownership and use of it in our country to be uncertain. The above view of this court is getting support from the case of **Nyamhanga Ng'arare V. Kemange Village Council & Two Others**, [2012] TLR 280 where it was stated that: -

"The Village Council had no right and power to allocate or reallocate land to a villager which was in possession of another villager without the consent of that villager."

A village Council which allocates land which is already under development and in the possession of another person would not only bring lawlessness and anarchy to the villagers but would also retard the development of the villagers."

Since it has not been stated anywhere in the evidence adduced in the court that the plaintiffs were informed the land given to them was being returned to the original owners or was being taken and distributed to the citizen as they failed to meet the conditions given to them, the court has found taking of the land already given to the plaintiffs without informing them and distribute the same to the defendants was not proper.

The counsel for the defendants raised in his submission the issue of adverse possession of the land in dispute. After considering the evidence adduced in the matter by both sides the court has found the stated principle is not applicable in the matter at hand.

The court has come to the stated finding after seeing that, although it is stated the first to fourth plaintiffs were allocated the land in dispute in 1994 and abandoned the same until when part of it was given to the fifth plaintiff in 1997, but the limitation of time for the principle of adverse possession is counted from when the person claiming to be the owner of the land under the stated principle entered in the land until when the actual owner started to claim for the same. That is provided so clearly under section 33 (1) of the Law of Limitation Act Cap 6 R.E 2019 where it is stated that: -

"A right of action to recover land shall not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as "adverse possession") and, where on the date on which the right of action to recover any land accrues and no person is in adverse possession of the land, a right of action shall not accrue unless and until some person takes adverse possession of the land." [Emphasis added]

From the wording of the above quoted provision of the law and specifically the bolded part it is crystal clear that the right of action to recover land possessed by another person under the principle of adverse possession is required to accrue from the date on which the person claiming to be the owner of the stated land under the stated principle started be in possession of the land. As provided under item 22 of the Part I of the Schedule to the Law of Limitation Act the limitation period for claiming ownership of a land is twelve years.

That being the position of the law the court has found that, as the defendants' witnesses stated the land in dispute was distributed to the defendants in 2010 and before filing of the present case in the court the defendants filed in the court another case which was Land Case No. 353 of 2013 claiming for the same land and later on it was withdrawn by the defendants, it cannot be said in 2021 when the current suit was filed in the court the period of time for claiming the ownership of the land in dispute had passed against the plaintiffs and the defendants are entitled to be found are owners of the land in dispute under the stated principle of adverse possession. That is because the law requires that, in order for the principle of adverse possession of a land to be invoked a person is

required to be in possession of the stated land for more than twelve years without interruption.

The above finding makes the court to see the position of the law stated in the case of **Registered Trustees of the Holy Spirit Sisters of Tanzania** (supra) is distinguishable to the present case. The court has also found the position of the law stated in the cases of **Nitin Coffee Estate Ltd** and **Abualy Alibhai Azizi** (supra) which discussed the position of the value or superiority of the right of occupancy vis a vis the customary right of occupancy is not applicable to the circumstances of the present suit.

The court has found the counsel for the defendants has raised in his final submission a point that the first to fourth plaintiffs have filed the case in the court in their personal capacity instead of filing the same through the name of their group. The court has been of the view that the stated point was supposed to be raised at the beginning of the case so that the plaintiffs could have been given a chance of responding to the same and not at this stage of final submission where they will have no chance of responding to the same.

The court has also found the stated point has no merit because as stated by PW2 and PW4 their organization is not registered so that I can

be said it has power to sue as a legal person. Since DW1 DW2, and DW3 did not dispute the land in dispute was allocated to the plaintiffs in the matter and other members of their group the court has found there is nothing which can make it to find the stated plaintiffs could have not filed the case in the court by suing their names to claim for the land in dispute.

As for the argument that the Vikawe Shule Village had no power to allocate three hundred acres of land to the plaintiffs the court has found the evidence adduced in the matter shows the land given to the plaintiffs was not a village land but a land which was owned by the villagers who volunteered their land to be given to the plaintiffs on condition that they would have been paid compensation for their permanent crops. All that shows the points raised by the counsel for the defendants have nothing meritorious to make the court to find the case before the court is not tenable.

From the above analysis of the evidence adduced in the case by both sides and the submissions filed in the court by the counsel for the parties the court has found the plaintiffs have managed to establish to the standard required by the law as provided under section 110 (1) and (2) of the Evidence Act that they are the lawful owner of the land in dispute. That is because the averment that the land in dispute was distributed to

the defendants after the plaintiffs failed to meet the conditions given to them is not supported by any material evidence from the defendants and the procedure for taking and distributing the land in dispute to the defendants did not abide to the requirement of the law. Consequently, the court has found the answer to the first issue framed for determination in this case deserve to be the plaintiffs are the lawful owners of the land in dispute.

Coming to the second issue which asks whether the Plaintiffs suffered damages the court has found the plaintiffs are praying to be granted an order of being paid Tshs. 1,000,000,000/= being specific damages. The court has found it is a trite law that claim of a specific damage is required to be strictly proved. The stated position of the law has been emphasized by this court and the Court of Appeal in number of cases which one of them is the case of **Masolole General Agences V African Inland Church of Tanzania** [1994] TLR 192 where it was stated that, once a claim for a specific item is made, that claim must be strictly proved.

While being guided by the stated position of the law the court has found that, although PW2 and PW4 said they developed the land in dispute and they constructed a house on the land in dispute, the house

they averred it was demolished by the defendants after trespassed into their land and destroyed their properties but there is no any evidence adduced to the court to show the value of the house averred was demolished by the defendants. In addition to that it was not stated which properties of the plaintiffs were destroyed by the defendants and what is the value of the stated properties so as to enable the court to gauge how much damages can be granted to the plaintiffs. The stated finding caused the court to come to the settled view that, the second issue has not been proved to the standard required by the law and deserve to be answered in negative.

As for the last issue which is about the reliefs the parties are entitled the court has found as stated at the outset of this judgment that, the plaintiffs are claiming for various reliefs in the plaint. The reliefs they are claiming against the defendants includes a declaratory order that they are the lawful owner of the land in dispute, they are praying for permanent injunction order to restrain the defendants from interfering them in the use of the land in dispute, an order of vacant possession and demolition of the structures erected by the defendants onto the land in dispute, specific damages, interest and costs of the suit.

The court has found the evidence adduced by the plaintiffs' witness show the first to fourth plaintiffs said in their evidence they were given three hundred acres of land but now they are claiming for two hundred acres of land in the reliefs they are seeking for against the defendants. The court has found that, as they are claiming for two hundred acres of land the court will grant them what they are seeking from the court and not what they have not claimed for.

As the court has been satisfied the evidence adduced by the plaintiffs' witnesses has managed to establish the plaintiffs are the lawful owners of the land in dispute but they have failed to establish they are entitled to any damage, the judgment is hereby entered in favour of the plaintiffs and against the defendants as follows: -

1. The plaintiffs are declared they are the rightful owner of the land in dispute measuring 200 acres situated at Vikawe Shule Street in Kibaha Town Council and they have a right to survey the same in conformity with the Kibaha Town Planning Regulations.
2. The court is granting an order of permanent injunction to restrain the defendants, their agents, and assignees from interfering with the plaintiffs' use of the land, developments and transaction of whatsoever.

3. The defendants are ordered to give vacant possession of the land in dispute to the plaintiffs and demolish whatever structures they have erected onto the land in dispute and
4. The plaintiffs are awarded costs of the suit.

It is so ordered.

Dated at Dar es Salaam this 23rd day of February, 2023.



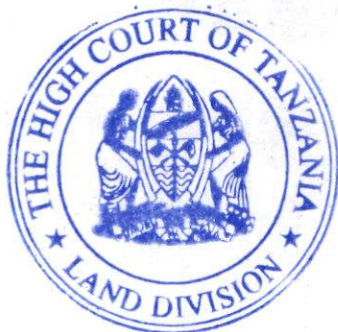
I. Arufani
I. Arufani

JUDGE

23/02/2023

Court:

Judgment delivered today 23rd day of February, 2023 in the presence of all plaintiffs in persons save for the fifth plaintiff and in the presence of the first and twenty third defendants in persons. The rest of the defendants are absent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
I. Arufani

JUDGE

23/02/2023