

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

**LAND CASE NO. 85 OF 2016**

**SAID H. LIPITE.....1<sup>ST</sup> PLAINTIFF  
WILLIAM E. MUSHY.....2<sup>ND</sup> PLAINTIFF  
XAVERY P. KUNAMBI.....3<sup>RD</sup> PLAINTIFF  
ELIMERINA P. KILINDO.....4<sup>TH</sup> PLAINTIFF  
LISTER M. BUNZU.....5<sup>TH</sup> PLAINTIFF  
AND 707 OTHERS**

***VERSUS***

**THE MINISTRY OF DEFENCE.....1<sup>ST</sup> DEFENDANT  
THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

12/2/2024 to 28/3/2024

**E.B. LUVANDA, J**

This is a representative suit. The First, Second, Third, Fourth and Fifth Plaintiffs named above are suing under representative capacity on behalf of other 707 Plaintiffs listed in annexure "A" to the plaint.

Plaintiffs are claiming against the First Defendant and Second Defendant above named for a declaration that the Plaintiffs are the legal owners of various pieces of landed measuring a total of around 5000 acres situated at Tondoroni Village, the Area within Kibaha District in Pwani Region (the suit property); a declaration that the First Defendant is a trespasser; payment of special damages to the

tune of Tsh 500,000,000/=; payment of general damages; permanent injunction restraining the First Defendant from interfering Plaintiffs' occupation on the disputed land; costs and any other relief this Court may deem just to grant.

The Plaintiffs pleaded that they are owners of the said different pieces of land with different size and value owned individually under customary or deemed right of occupancy where some have been in occupation of the said pieces of land from the time of their ancestors and others have been allocated by the Tondoni Village, as per a ninety days statutory notice dated 24/11/2015, annexure "E" to the plaint. In annexure "E" the Plaintiff intimated to sue among others for relief of payment of compensation as well as trespass on the part of the First Defendant.

It was the averments of the Plaintiff that they acquired the said pieces of land even before Tondoroni Village was registered in 1993. The Plaintiffs pleaded that the First Defendant is aware of the Plaintiffs' legal occupation of their land at Tondoroni, arguing that Tondoroni is a legally registered village to the extent that the First Defendant have been requesting allocation of land by the Tondoroni Village to its retired officers. They stated that the Plaintiffs' land has never been acquired by the Government and they have never been

compensated for the purpose of any acquisition of their land held under customary tenure.

In their joint written statement of defence, the First and Second Defendants dispelled the Plaintiffs' claim for reason that Tondoroni Village was deregistered officially in 2001 after realizing that the said village was wrongly registered within the area of Tanzania People's Defence Force (TPDF). It was the defence of the Defendants that there is no village legally known as Tondoroni Village.

It was the evidence of the key Plaintiffs' witness Said Hemedi Lipite (PW1) who introduced as a deputy chairman, stated that he arrived at Tondoroni Village in 1971 and acquired fifteen acres of land. PW1 stated that in 1993 Tondoroni was officially registered as a village as per certificate of registration of a village dated 14/9/1993 exhibit P1. PW1 stated that after registration they proceeded with economic activities like agriculture and social services like school, village offices, CCM offices (as put by Xavery Pius Kunambi (PW4), voting right, mosquito net and health services, by Mwanahawa Bakari Matauna (PW5), where more people were interested to join the village, citing a letter dated 10/11/1997 from the General Chief of Officers Forces TPDF exhibit P2, being a request for their officer/staff one FM Mjema to join Tondoroni Village. It was stated that after TPDF resumed from war in Uganda they took over the camp which was formerly JKT Camp in Kiluvya B. Gogoni, in between there is Kibungobungo River

separating it with Tondoroni Village, as put by Lister Mkussa Bunzo (PW2) who alleged to own twenty-four acres of land at Tondoroni Village. This fact was supported by Samuel Gosoro (DW1) who is a retired soldier currently Pastor, who asserted that the 83 Regiment was in area Sinza 1978 in Gogoni Ward, Kiluvya B Village, which was assessed to be not enough for military, hence a need for expansion which entailed procedures for acquiring more land. This fact regarding expansion was also stated by PW1. The said expansion was said to have transpired after DW1 returned from war in between 1980 and 1982 where DW1 was attached or stationed at Kibaha.

It was the evidence of PW1 and PW2 that latter they were being harassed, beaten by military corps, including destruction of their farms, demolition of their houses and mud houses, crops, livestock as put by PW2 and Elimelinda Pacific Kilindo (PW3) the latter asserted owning fifteen acres. It was stated further that the military corps banned villagers from building anything permanent as put by PW4 who is owning eight acres, the school is no longer there stopped in 2015 as put by PW4 and Mwajuma Mohamed Kamba (PW7). PW1 state that after expansion, valuation was conducted but no compensation was paid to them. PW1 tendered various correspondences or letters regarding process of compensation, including a letter from the Regional Deelopment Officer (currently named Regional Administrative Secretary) Pwani dated 21/10/1992

exhibit P3; a letter from the Permanent Secretary Ministry of Lands and Settlement Development dated 15/01/1999 exhibit P4; a letter from PW1 co-signed with Xavery K. Pius (secretary) (PW4), dated 27/09/2015 along its annexures including a letter from the Parliament dated 23/01/2015, a letter from the Commissioner for Lands dated 18/03/2015, a letter from PW1 dated 1/10/2015, all marked exhibit P5 collectively. PW1 tendered a letter from the District Executive Director-Kisarawe dated 10/03/2009 (exhibit P7) addressed to all parents of pupils at Tondoroni Primary School that they are transferred to other schools within Kiluvya Ward.

In a nutshell main complaint by the Plaintiffs' witnesses was for nonpayment of compensation at the same time claiming that Tondoroni Village is legally existing.

On defence, the Defendants pleaded that Tondoroni Village was de-registered (after discovering it was wrongly established and registered within boundaries of TPDF), as per the Government Notice 301 published on 22/8/2014 exhibit D1 which was tendered by Jumanne Samson Mwampashi (DW2) and all social services (mosquitos nets) were extinguished thereon as per a letter from the Permanent Secretary Ministry of Regional Administration and Local Governments addressed to PW1 dated 26/01/2016 exhibit D2 tendered by Shani Njozi (DW3). DW2 asserted that all villagers a total 1,479 people were paid

compensation in 1999 after expansion and acquisition of their lands. According to DW2 a process of valuation started in 1988 up to 1999. DW2 tendered exhibit D3, titled *Malipo ya Fidia Eneo la Jeshi Kikosi cha 83 Regiment Kiluvya/Tandongoni Wilaya ya Kisarawe (Mazao)*. According to DW2 citizens were paid for their crops only, arguing that is why exhibit D3 is named *mazao*. DW2 cited PW1 to have been paid a sum of 181,626 on 28/10/2004. To counter this fact, PW1 was recalled where he owned the name mentioned in exhibit D3, but dispelled to have never been paid any compensation. PW1 tendered a letter from the District Executive Officer-Kisarawe addressed to the Permanent Secretary dated 1/10/2001 exhibit P9 to vindicate his argument that no compensation was paid to him and fellow villagers

Agreed issues: One, whether Tandongoni Village was de-registered under the law; Two, who is the rightful owner of the suit land; Three, to what reliefs are the parties are entitled to.

With regard to issue number one, Mr. Edward Chuwa learned Counsel for the Plaintiffs' submitted that Tandongoni Village was registered with registration number 539 by the Registrar of Villages under The Local Government (District Authorities) Act No. 7 of 1982, as per certificate of registration exhibit P1. The learned Counsel submitted that a fact that it was deregistered has not been proved. He attacked exhibit D1 for reason that it does not conform to the form

of the Government Gazette which must have registration number ISSN – 0323 that has to be registered in the post office. Mr. Charles Mtae learned State Attorney for the Defendants submitted that DW1 and DW2 testified that Tondoroni Village was de-registered in 2002 and by virtue of GN 301 of 22/08/2014 exhibit D1, there is no village legally known by the name of Tondoroni Village, also cited exhibit D1 (sic, D2).

Arguably, Tondoroni Village was registered with registration No. PW/KIJ/539 by the Registrar of Villages under the provision of section 22(1) of The Local Government (District Authorities) Act No. 7 of 1982, Cap 288 R.E. 2019 as per certificate of registration exhibit P1. According to exhibit P1, Tondoroni Village was established within Kisarawe District Pwani Region. Unfortunately, there is no provision providing de-registration of a village by express terms. However, under the said provision of section 22 Act No. 7 of 1982, subsection (3) provides,

*'The Registrar shall, from time to time, and at least once in every calendar year, cause to be published in the Gazette listing every village registered by him since the publication of the previous notice and specifying the location of that village'*

In the Government Notice No. 301 published on 22/08/2014 which is a current one and conform to the format prescribed under the above provision, Tondoroni Village is missing and was not listed among sixty-six villages of Kisarawe District

listed from page 1419 to 1427. By necessary implication, Tondoroni Village was extinguished.

It is the law that upon registration a certificate of registration must be furnished to the village council for it to form a body corporate, see sections 25 and 26(2) of Cap 288 (supra). Herein there is no village council for the purported Tondoroni Village. This can be evidenced by a letter exhibit D2 where the Permanent Secretary for Regional Administration and Local Government who is having mandate over matters and affairs appertaining to local government, made it categorically that there is no any leadership recognized by the law in respect of the Tondoroni Village after being abolished. Therefore, Tondoroni Village is legally non existing. Issue number one is answered in affirmative.

Issue number two, the learned Counsel for Plaintiffs submitted that the Plaintiffs proved that they own various pieces of land in Tondoroni Area. The learned Counsel faulted the alleged acquisition for reasons that procedures were not followed for want of notice of intention to the acquisition, citing section 4(2) of the Land Acquisition Act, Cap 118. The learned State Attorney for the Defendants submitted that exhibit D2 indicate that Tondoroni Village was mistakenly registered inside the boundaries of TPDF hence de-registration.

It is to be noted that among the Plaintiffs who appeared to testify, as per recap above none of them asserted to be a native at the suit land. All are migrants



who relocated from elsewhere and settled thereat on belief that it was a virgin land. For instance: PW1 arrived there in 1971 after relocating from Mhoro Village Rufiji; PW2 hailing from Dodoma, arrived there in 1974; PW3 arrived in 1972; PW4 relocated from Matombo Morogoro, arrived in 1991; Mwanahawa Bakari Matauna (PW5) arrived in 1978; Mwanahawa Isumairi Kwadu (PW6) arrived in 1971; Mwajuma Mohamed Kamba (PW7) arrived in 1982; Hussein Ismail Mataula (PW9) arrived in 1972; Beatus Mathias Mboweto (PW10) arrived in 1988; Sadick Mussa Njewe (PW11) arrived in 1974; Moses Sangira (PW12) arrived in 1981; Ramdhani Hussein Kiwewe (PW13) arrived in 1991; Aisha Mohamed Mziga (PW14) arrived in 1988; Hassan Ally (PW15) arrived in 1980; Kassim Shabani Chewe (PW16) arrived in 1985; Rahim Hussein Mdegu (PW17) was allocated land by the hamlet chairperson on 01/06/2002, as per introduction letter for ownership of a farm exhibit P9.

Therefore, what was pleaded in the plaint that some of the Plaintiffs have been occupying the pieces of land from the time of their ancestors, was a concocted fact.

It is in record that the area of TPDF was expanded in early 1980's which entailed acquisition of more land specifically around Tondoroni Area. This can be evidenced by exhibit P3 (a letter dated 21/10/1992 from RDD), at paragraph one, it read,

*'Pamoja na barua hii nakuambatanishia fand (sic) Form 23 kuhusu fidia eneo lililochukuliwa na Jeshi, Kilvia/Tondoloni (sic) Wilaya ya Kisarawe kwa malipo'*

Also, in the letter of the Permanent Secretary Ministry of Lands and Settlement Development dated 15/01/1999 exhibit P4, at paragraph two, read,

*'Kwa muda mrefu kumekuwepo na madai ya fidia ya Wananchi wa Mkoa wa Pwani kwa sababu maeneo yao yamechukuliwa na yanatumiwa na Jeshi la Ulinzi la Wananchi wa Tanzania (JWTZ). Maeneo husika ni:-*

- (i) Kijiji cha Tondoroni, Wilaya ya Kisarawe*
- (ii) ...N.A...*

*Ni vyema uthamini wa mali husika ukafanyika ili wananchi husika wakalipwa fidia zao na kumaliza migogoro hii ya ardhi dhidi ya JWTZ'*

Seemingly these letters exhibit P3 and P4 were contradicting with a letter by the Permanent Secretary-TAMISEMI which is more recent dated 26/01/2016 exhibit D2 where the Permanent Secretary said Tondoroni Village was wrongly established within the area of TPDF. In other words, the Permanent Secretary TAMISEMI was saying the Plaintiffs are the one who trespassed into an area of TPDF. It appears this version is also at variance with the testimony of DW1 from TPDF and who happened to work at Kibaha early 1980's after returning as a hero from war. DW1 made it clear that there was expansion and acquisition of

land, where 1,508 citizens who were affected by the acquisition were paid compensation as per exhibit D3.

Be as it may, this is a successive trial. Amid composing a judgment, I raised a question and asked the learned Counsel for the Plaintiff and learned State Attorney for the Defendants, to address me the issue as to whether these claims against acquisition and procedure thereon, trespass on the part of the First Defendant and compensation; are legally maintainable.

The learned Counsel for the Plaintiff submitted that when considering whether the claim or suit is within time, ought to look at the plaint and not written statement of defence or the evidence adduced. He submitted that the plaint depicts the trespass and eviction of the Plaintiffs were carried out by the First Defendant in 2015. He submitted that the issue of payment of compensation and land acquisition was not put as a cause of action, arguing that is why the Plaintiffs are not challenging the legality of any land acquisition of which they are not aware of. He submitted that the Ministry of Defence is not responsible for land acquisition under the Land Acquisition Act, rather the Ministry of Lands. He submitted that the issue of land acquisition or fair compensation does not feature but was raised in the trial by the Defendants without any pleadings to that effect. He submitted that the issue could be (sic) litigated in the absence of the Commissioner for Lands, arguing it cannot be raised now.

The learned State Attorney for the Defendants submitted that it is not in dispute that the suit is a suit on compensation for the acquisition alleged occurred in 1980's whereby its compensation finalized in early 2000's. She submitted that most of these claims were instituted beyond the time prescribed under the law as the compensation commenced around 1990's and finalized in the early 2000's. She submitted that for compensation to pass the time filter, the respective Plaintiffs ought to have instituted them within one year from the date of accrual of cause of action in respect to each Plaintiff who claims compensation.

To my opinion the question of time limit can be gauged and ascertained by either looking on what was pleaded in the plaint as to when the cause of action arose as argued by the learned Counsel for the Plaintiff, but also it can be discerned or gleaned from the evidence presented during the trial. Herein the facts suggesting acquisition of land and compensation was introduced by the Plaintiffs themselves and not Defendants as argued by the learned Counsel for the Plaintiff. In fact, the issue that procedures of acquisition were not followed was introduced by the learned Counsel for the Plaintiff in his final submission. Therefore, the learned Counsel for the plaintiff was trying to change a goal post by distancing from and disowning the argument regarding the question of land acquisition and payment of compensation. In the closing argument, the learned

Counsel for the Plaintiff argued that the alleged acquisition was unlawful for reasons that procedures were not followed for want of notice of intention to the acquisition, citing section 4(2) of the Land Acquisition Act, Cap 118. Also, as per the records majority of Plaintiffs' witnesses who adduced evidence were complaining on non-payment of compensation.

It is common ground that the alleged acquisition was explained to have occurred sometimes in 1980's, discussion on compensation was around 1990's and early 2000's.

The Plaintiff claim for reliefs among others to be declared lawful owners, faulting procedure of acquisition for want of notice of intention to the acquisition. As I have said the acquisition complained of, happened in 1980's. In law, the period of limitation to recover land, is twelve years, see item 22 Part I, of the Schedule to the Law of Limitation Act, Cap 89 R.E. 2002.

Again, a claim of trespass and compensation fall under the law of tort. Item 6 Part I of Schedule to Cap 89 (supra), set a limitation period of three years for suit founded on tort. Therefore, the claim of trespass which is deemed to have occurred during acquisition in 1980's and compensation which discussions were held in between 1990's and early 2000's where DW2 and exhibit D3 suggest were effected in 2004, and PW1 disputed it, in law these claims are unmaintainable for reason that they are barred by limitation.

According to section 3(1) Cap 89 (supra), provide, I quote,

*'Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence'*

Therefore, any suit caught under the web of limitation, the only remedy available, is to dismiss without regard as to whether limitation was set as defence by the Defendants. In **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016, the apex Court when considering the consequences brought by time limitation to institute a suit, cited with approval the decision of this Court in **John Cornel vs A. Grevo (T) Limited**, Civil Case No. 70 of 1998, HC Dar es Salaam, which ruled,

*'However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web'*

Herein during the trial, the Plaintiff's witnesses adduced evidence focusing on compensation for alleged unlawful acquisition of their pieces of land. In other words the claim for trespass is taken to have occurred when the alleged land

was acquired in 1980's as per the evidence presented. In the case of **Sixmund Luambano vs Vodacom Tanzania Limited & Others**, Miscellaneous Land Case Appeal No. 2/2020, High Court Songea, this Court speaking through Honorable Moshi, J as she then was, had this to say at pages 6 and 7,

*'The Court of Appeal in the case of **Avit Thadeus Massawe vs Isdory Assenga** (supra), defined the concept of trespass to mean;*

*"entering, remaining or causing an object to fall on the premises/land in the possession of another without permission and/or without justification cause"*

This Court went on to say, at page 7,

*'The ingredients of the tort of trespass are entering (physical or through an object) or remaining on the land, possession of premises. In the case of **Avit Thadeus** (supra) the Court of Appeal held that trespass to land is a tort and the remedies available to the claimant are perpetual injunctions and monetary compensation'*

Therefore, the Plaintiff's claims for unlawful acquisition and trespass on the part of the First Defendant which was filed after expiry of three decades and un paid compensation which was filed after expiry of one decade, are all held to be time barred.

The suit is dismissed. I make no order for costs.



E.B. LUVANDA  
**JUDGE**  
28/03/2024

Judgment delivered in the presence of Ms. Monalisa Mshobozi learned Counsel for Plaintiffs and Mr. Boaz Msoffe learned State Attorney for the Defendants.



E.B. LUVANDA  
**JUDGE**  
28/03/2024