

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

**LAND CASE NO. 168 OF 2021**

**SEIF MTIARA.....PLAINTIFF**

***VERSUS***

**JUMANNE JUMA SHAHA.....1<sup>ST</sup> DEFENDANT**

**YONO AUCTION MART.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

20/3/2024 to 5/4/2024

**E.B. LUVANDA, J**

The Plaintiff named above is claiming against the First and Second Defendant above mentioned jointly and severally for the following reliefs: One, the Defendants be compelled to rebuild the Plaintiff's three demolished houses; Two, payment of Tsh 300,000,000 as general damages for unlawful act of demolition of the Plaintiff's houses but subject to court's assessment; Three, payment of interest at court rate of decretal sum from the date of judgment till the date of final payment; Four, costs of this suit; Five, any other or further reliefs this court shall deem fit to grant.

It is pertinent to preface the events giving raise to these proceedings. The facts of this case are rooted on its chequered history from the inception of Civil Case No. 76 of 1986 between Maua Chumu and Mtiara Zomboko, at Mbagala Primary

Court, where the late Maua Chumu was declared the lawful owner over the piece of land one acre located at Chamazi. The late Mtiara Zomboko appealed vide Civil Appeal No. 39 of 1987, where his appeal was dismissed on 13/01/1988 by the District Court of Ilala, as per exhibit D1. It appears thereafter the late Mtiara Zomboko trespassed into the suit land by way of committing stealing to coconuts and was sentenced a conditional discharge of one year, as per a warrant from the Magistrate Primary Court at Mbagala dated 6/09/1989 addressed to the Secretary of CCM, Chamazi Branch with directives that a farm be handed over to the late Maua Chumu, as pleaded in paragraph five of the Second Defendant written statement of defence, part of annexure J1. The said Maua Chumu passed away in 1994, as per the testimony of Mussa Hamis Mkwama (DW1), who asserted that up to her demise she was in occupancy of the suit land. According to DW1, in 2010 the Plaintiff named Seif Athuman Mtiara who also testified as PW1 trespassed into the suit land, which entailed one Fatuma Mussa (deceased) who is the senior daughter of the late Maua Chumu, to petition for the letters of administration for the estate of the late Maua Chumu vide Probate Cause No. 238 of 2010 at Mbagala Primary Court. Following grant of letters of administration to Fatuma Mussa, the probate court appointed the Second Defendant to carry out the eviction of trespassers on the estate of the late Maua Chumu, as per letter dated 4/11/2010 exhibit D3 read

together with a letter dated 28/10/2010 from the District Resident Magistrate In-charge Temeke, exhibit D2. On 11/11/2010 the Second Defendant served the so called trespassers with fourteen days' notice requiring them to vacate from the suit premises, as per a letter dated 10/11/2010, exhibit D5. Following this notice, Said Mtiara, Seif Mtiara, Twaibu Mtiara filed Civil Revision No. 32 of 2010 at Temeke District Court, as per a ruling dated 21/10/2010 exhibit P1, challenging the eviction exercise, which Revision was against Fatuma Mussa and Yono Auction Mart. The District Court ruled that the piece of land belong to Fatuma Mussa.

There is a dilemma on facts, while Stanley J. Kevela DW1 who is a broker, asserted the eviction was complete in November 2010, by way of evicting people who were drinking local beer under a large mango tree at the suit land comprised of coconut and mango trees, and dispelled existence of any house or demolition thereof, which fact was supported by DW1; PW1 on the other hand asserted that his three houses were demolished in 2013, although did not state a specific date or month. According to PW1, one Mtiara Zomboko who is PW1's father, passed away in 1996.

Be as it may, PW1 and kindreds to wit Said Mtiara along with Twaibu Mtiara filed another Civil Revision No. 13 of 2013 at Temeke District Court, as per ruling exhibit P2, challenging the eviction and demolition mounted by Mbagala Primary

Court vide Probate Cause No. 238 of 2010. The District Court, sustained a preliminary objection to the effects that the matter was *res judicata* following its ruling in Civil Revision No. 32 of 2010.

Thereafter the Plaintiff and kindreds filed Civil Appeal No. 77 of 2014 to the High Court Dar es Salaam, as per judgment exhibit P3, where this Court quashed the decision in Civil Revision No. 13 of 2013 and ordered a status quo ante for the Plaintiff and kindred to be reinstated into the suit farm. After this decision the Plaintiff now claim for rebuilding of the three houses alleged demolished in 2013 and/or payment of general damages at the amount stated above.

Issues framed: One, whether demolition of the suit premises by the Defendants was unlawful; Two, whether the late Maua Chumu and her daughter Fatuma Mussa are lawful owner and in rightful possession of the suit premises; Three, if the answer to the first issue is in affirmative, whether the Plaintiff suffered damages; Four to what reliefs are the parties entitled.

I will tackle issue number one and two jointly. This matter as per the facts prefaced above, revolve execution of court orders. However, the manner issues were framed, suggest the question of ownership and demolition were revived and subjected for discussion once again vide this suit. This is because the issue of ownership of the suit property and demolition was subject for discussion by

this Court in Civil Revision No. 77 of 2014, exhibit P3, where at page nine last paragraph extreme bottom, this Court ruled,

*'I find that the execution which involved eviction of the appellants and demolition of the houses built therein had no backing of the law. As provided under section 39 of the Law of Limitation Act, Cap 89 (R.E. 2002), upon expiration of twelve years the period of limitation prescribed for a suit for possession of any property, the right to such property by the 1<sup>st</sup> Respondent was extinguished by expiry of the limitation period'*

Had had non-existence of the above verdict by this Court, I could hold the different view regarding the question of ownership, for reason that: One, no evidence was tendered herein showing that somewhere in between any court be it the probate court itself or superior court to it, issued any order, ruling or directives to the Second Defendant either for postponement, discontinuance or staying execution; Two, the ruling dated 21/10/2011 exhibit P1 which was pronounced prior the disputed demolition and eviction, the learned Resident Magistrate, declined an invitation to hold that the execution was time barred, instead ruled that the piece of land belongs to the late Fatuma Mussa whose the First Defendant is administering her estate. Contextually, exhibit P1 could not be said had the effect of hampering execution; Three, the primary court was sitting as a probate court in Probate Cause No. 238 of 2010, and orders for

eviction was for purpose of preserving the estate of the late Maua Chumu Gereza. The primary court was not sitting in executing Civil Case No. 76 of 1986 as the superior courts were contemplating. In fact, nowhere it was stated that the primary court made explicitly that it was executing the decree in Civil Case No. 76 of 1986. No wonder, the primary court after grant of letters of administration to the late Fatuma Mussa, did not revert to the civil court to execute decree in Civil Case No. 76 of 1986. My undertaking is grounded on the fact that herein, it was asserted that the late Fatuma Mussa rushed to petition for letters of administering for the estate of the late Maua Chumu in 2010, following trespass committed by the Plaintiff around 2010. This can be witnessed by the answer of PW1 during cross-examination by Mr. Paulo Mtui learned Counsel for Second Defendant, where he stated that the houses were built in 2011. And in fact, the execution and handing over of the suit farm to the late Maua Machumu was done in 1980's as evidenced by the warrant of the Primary Court Magistrate, Mbagala Primary Court (which was pleaded in paragraph five of the Second Defendant written statement of defence, part of annexure J1), which was given under the seal of the primary court, for which I take judicial notice under section 59(1)(d) of the Evidence Act, Cap 6 R.E. 2019, the Primary Court Magistrate authored, I reproduce the entire document for appreciation,

*"Mahakama ya Mwanzo Mbagala*

*Wilaya ya Temeke*

*S.L.P. 45697*

*D'salaam.*

*Katibu wa CCM,*

*Tawi la Chamazi.*

*Yah: Jinai No. 549/88*

*Mshitakiwa TIARA ZOMBOKO*

*Mshitakiwa aliyetajwa hapo juu alishitakiwa kwa kosa la kuiba nazi katika shamba la MAUA CHUMU. Na amehukumiwa kifungo cha nje mwaka mmoja. Kwa hiyo shamba lake akabidhiwe mlalamikaji MAUA CHUMU.*

*Hati hii imetolewa leo na Mahakama hii leo tarehe 6/9/89*

*Sgdn: Hakimu Mahakama ya Mwanzo*

*Mbagala"*

This document/warrant was issued after delivery of appeal in Civil Appeal No. 39 of 1987, exhibit D1 which was an appeal in respect of Civil Case No. 76 of 1986, both decreed in favour of the late Maua Chumu.

However, to avoid conflicting decision, I retain the position decreed by this Court in exhibit P3, which had the effects of disowning Maua Chumu and her daughter Fatuma Mussa, both deceased, in respect of the suit land, for the ground that execution in respect of exhibit D1 was time barred.

Therefore, issue number two as to whether the late Maua Chumu and her daughter Fatuma Mussa are lawful owner and in rightful possession of the suit premises, is answered in the negative.

Issue number one as to whether demolition of the suit premises by the Defendants was unlawful. My observation above, could entail to rule this issue in the negative. However as per the verdict entered in respect of issue number two, I am inclined to lean to the position of my Senior Brother Honorable Ruhangisa, J as then was, in exhibit P3, which had the eventuality of declaring the demolition subject for discussion here, to be unlawful. For appreciation, I quote a passage at page nine last paragraph at the extreme bottom, first and second line in exhibit P3,

*"I find that the execution which involved eviction of the appellants and demolition of the houses built therein had no backing of the law"*

Therefore, issue number one is in the affirmative.

Issue number three was framed in the terms that if the answer to the first issue is in affirmative, then whether the Plaintiff suffered damages. Essentially this issue will be determined along the last one, as to reliefs parties entitled. In paragraph thirteen of the plaint, the Plaintiff pleaded for particulars of damages suffered. When adducing evidence, PW1 merely asked the Court for an order that the Defendants to rebuild his houses which they demolished or in default



be ordered to pay him compensation a sum of Tsh 300,000,000 which he said will be enough for him (PW1) aged seventy-one anos, to build all the three houses. However, the evidence of PW1 regarding houses alleged demolished was sham and weak, because PW1 did not elaborate the size of the said houses, materials used whether mud houses or bricks and if was made of bricks whether cement or sand, roofing style was not stated, neither explained the roofing materials. PW1 could not tender even a building plan for the alleged three houses. Did not even explain how were demolished through bulldoze (excavator) or pushed by hands or bouncers, hummer or cold chisel or punch, to depict its durability and solidity. PW1 did not tender any evaluation report for the alleged damage, or estimates for the house or its value. Neither tendered any receipts or records where he used for recording costs or materials for constructing. PW1 did not summon even the artisan be it mason, carpenter, plumber or electrician to support a story that three houses were built thereon. PW1 did not summon even the neighbors to support that indeed houses were built on the suit land then demolished. Pictures which PW1 had intended to demonstrate how demolition was damaging, were blocked at admission stage. In the circumstances it cannot be said the Plaintiff proved the said quantified damages. This is because PW1 did not even bother to explain as to how he arrived at a colossal sum of Tsh 300,000,000 as damages suffered.

However, for the end of justice, I award the Plaintiff general damages a sum of Tsh 30,000,000 to be shared equally between the First and Second Defendant. The counter claim by the First Defendant is ruled to have been taken into board by the deliberation, findings and verdicts in issue number two above. The same is dismissed.

The suit succeeds only to the extent demonstrated above. I make no order for costs.



E. B. LUVANDA  
**JUDGE**  
05/04/2024

Judgment delivered in the presence and Mr. Alexander Kyaruzi learned Counsel for Plaintiff, and Mr. Paulo Mtui learned Counsel for Second Defendant, also holding brief for Mr. Nyira Abdallah learned Counsel for First Defendant.



E. B. LUVANDA  
**JUDGE**  
05/04/2024