

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

LAND CASE NO. 322 OF 2023

GAIWA BONIFACE LUGALI.....PLAINTIFF

VERSUS

ANNA YOEL BONIFASI @ ANNA YOEL BONIFAS GAIWA.....1ST DEFENDANT

YASINTA AUGUSTINO.....2ND DEFENDANT

AMINA RAMADHANI MWANGA.....3RD DEFENDANT

FATUMA SAID GWAWA.....4TH DEFENDANT

DONALD KIMARO.....5TH DEFENDANT

MODESTA MUHAGAMA.....6TH DEFENDANT

JUDGMENT *EXPARTE*

26/01/2024 to 20/02/2024

E.B. LUVANDA, J

The Plaintiff above mentioned is suing the Defendants named above for trespassing the Plaintiff's land a farm of eight acres located at Sangara Street, Msongola Ward, Ilala Municipality within Dar es Salaam Region. The Plaintiff alleged to had purchased the said farm on 11/03/2013 from Ashura Hassan Samatta, as per the sale agreement exhibit P1. It was the evidence of the Plaintiff (PW1) he was tipped off by one George on 05/03/2013 that a farm in dispute was on sale. George connected PW1 to Mariam Shaban Mjiru (PW2)

- who in turn connected PW1 to the vendor one Ashura Hassan Samatta. PW1
- explained that after getting in touch with Ashura Hassan Samatta who was along her son one Alumasi, they visited at the farm in dispute, thereafter Ashura Hassan Samatta procured an introduction letter from the Sagara Hamlet introducing her as a lawful owner of the suit farm, then executed a sale agreement before the Honourable Magistrate. This fact was supported by DW2 who asserted that exhibit P1 was attested by Honourable Mkande – Magistrate at Ukonga Primary Court.

It was a testimony of PW1, that after purchasing he request to survey his land vide a letter exhibit P2, thereafter employed the care taker one Evarist Damian Ngenda Lugumye (PW3) who in 2022 travelled to nurse his mother. According to PW1 from then he did not visit the farm up to 2023 after PW3 resumed back, it is when he visited there along with PW3, and saw the Defendants trespassed a farm in dispute and were carrying out activities. PW1 put that, upon inquiry, the Defendants alleged to had purchased the suitland from the First Defendant. PW1 reported the matter to Vuti Police Station as per RB exhibit P3, then were referred to Chanika Police Station as per RB exhibit P4. Thereafter PW1 sued the Defendants to Msongola Ward Tribunal.

A fact that PW1 employed caretaker, seeing Defendants in the suit farm and reporting to Police, was supported by PW3 who alleged to had planted trees

- such as cashewnuts, coconut and palm trees on a suit farm. PW3 alleged seeing
- the Defendants on a disputed farm, where some were making charcoal and timber out of the trees planted by PW3.

In view of that the Plaintiff claimed to be declared the lawful owner, an order for permanent injunction against the Defendants, general damages specific damages of 50,000,000 for loss of use, interest, costs and other reliefs.

The matter proceeded *ex parte* against all Defendants who defaulted to appear, neither filed written statement of defence. As such the matter was heard in terms of Order XIV Rule 1(6) of the Civil Procedure Code, Cap 33 R. E. 2019. The issue for determination, is whether the Plaintiff proved his claim on the required standard.

As it turned out at the trial, PW1 alleged to have been tipped off by one George who is a broker for vending plots and farms, that there is an area for sale at Mvuti Sangara Dar es Salaam. The alleged George who is the first informer to relay news on the so called farm on sale, was not summoned to substantiate those facts. PW1 summoned PW2 who was the second person in the chain of information and who purported to connect PW1 to Ashura Hassan Samata (the purported vendor). PW2 alleged that Ashura Hassan Samata was her (PW2) friend where the latter along with her son Hamis Almasi, had asked PW2 to look

- for a potential buyer of a farm, inturn PW2 conveyed the information to the
- alleged George Baraka Mwansansu.

Neither Ashura Hassan Samatta nor Hamis Almas were summoned to appear to vindicate the alleged sale as per exhibit P1. Neither PW1 nor PW2 asserted as to a fact of buyer be aware, in a sense that PW1 did not explain be it in the plaint or under oath to had inquired to neibours as to the ownership by the alleged Ashura Hassan Samatta, who according to PW2, she was aged about 40 to 45 years. It was not stated as to where the ownership of Ashura Hassan Samatta was traced or rooted either from purchase, original proprieter or inheritance. No statement was forthcoming as to whether the alleged Ashura Hassan Samatta was an indigenious at the suit farm. The alleged introduction letter which PW1 alleged was procured by the said Ashura Hassan Samatta from Sagara hamlet introducing her as the lawful owner, was not tendered in evidence. The Plaintiff did not summon any leader or member from Sagara Hamlet Council to support a fact as to whether the alleged Ashura Hassan Samatta is the proprietor, or if at any time they issued introduction letter in her favour. Even the said Magistrate from Ukonga, Primary Court (C.D Mnkande) who alleged to had attested exhibit P1, was not summoned.

According to PW2, immediately after sale, Ashura Hassan Samatta fled to Tanga, and her phone are not reachable. PW2 put that Ashura was merely

- vending a food kiosk. PW2 asserted that Alumas is nowhere to be found. PW1
- did not mention or summon even a single neighbour, even exhibit P1 does not reflect neighbours on adjoining land.

PW1 alleged to have employed a caretaker (PW3) for his farm in dispute. However, PW3 alleged throughout was living at the house of PW1. No explanation was forthcoming from PW1 as to why he abandoned to visit at his alleged farm in dispute from 2022 when PW3 travelled up country to nurse his mother, till in January 2023 when PW3 resumed back. According to the sale agreements exhibit P6 (belonging to the Third Defendant) and exhibit P5 (belonging to the Fourth Defendant) which were tendered by PW1, depict disposition were done on 19/12/2022 and 10/12/2022, respectively. This covers the same period where PW3 alleged was away and PW1 abandoned to visit his farm in dispute. PW3 could not tell and vindicate his travelling logistics (arrangements) or itinerary neither tendered travelling tickets.

PW1 did not tell as to the fate of his letter exhibit P2, being a request for survey of his farm in dispute. His oral account that he was told to wait for an investor to survey, or else that he was directed to plant trees, while awaiting the purported investor for surveying are unsatisfactory. At any rate to say, PW1 was told to remain pending awaiting for an investor from 11/03/2013 when exhibit P2 was drafted to 2022 when his farm is alleged to have been trespassed, is

- forthcoming from PW1 as to why the said First Defendant coopted the first and
- middle name of the Plaintiff as aforesaid.

In view of the above loopholes, gaps of unproved facts, I hold the view that the Plaintiff failed to meet the minimum threshold of proving civil matters. The final submissions filed by the Plaintiff cannot suffices to remedy the above said gaps. In law it can be said therefore that, there is no remedy which is available to him.

The suit is dismissed. No order for costs.



E. B. LUVANDA
JUDGE
20/02/2024

Judgment delivered in the presence of the Plaintiff and in absence of the Defendants. The Plaintiff retain his right of appeal.



E. B. LUVANDA
JUDGE
20/02/2024