IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., MSOFFE, J.A. and KAJI, J.A.)

CIVIL APPEAL NO. 30 OF 2004

THE ATTORNEY GENERAL ..... APPELLANT

VERSUS

SISI ENTERPRISES LTD ..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Dar es Salaam)

(Ihema, J.)

dated the 16th day of October, 2003
in
Civil Case No. 47 of 2001

JUDGMENT OF THE COURT

MSOFFE, J.A:

In Civil Case No. 47/2001 of the High Court of Tanzania at Dar es Salaam the respondent herein sought, inter alia, a declaratory order that the acquisition of all that piece of land comprised in certificate of title No. 16395 measuring 21.3 acres and popularly known as Drive in Cinema, was unlawful.

The respondent's case was that it was the holder of the land in issue since 18/6/1966 in a 99 years lease. That,

consequent upon being granted the lease it developed the land by building the complex known as Drive in Cinema. On 5/6/1999 it signed a letter of intent with the Department of State of the Government of the United States of America to enter into an exclusive option to purchase the land at a consideration of USD 3,000,000/=. However, before the intent could materialize it received a letter from the Commissioner for Lands informing it that the Government of Tanzania intended to acquire the land under S. 4 of the Land Acquisition Act, 1967. Inspite of its strong objections to the intended acquisition, the Government went ahead to acquire the land and eventually offered it to the Embassy of the United States of America. In return, the Government offered to compensate it a sum of Tshs.602,363,000/=. The respondent declined to accept the above sum of money for being inadequate and accordingly proceeded to file the above mentioned suit.

On the other hand, the case for the appellant herein was that the acquisition of the land was lawful under the Land Acquisition Act, 1967. That on 16/7/1999 the President vide General Notice No. 469 acquired the land essentially because the respondent had ceased to operate the Drive in Cinema, and the land was required for a public purpose. And that, at any rate, the President's intention to acquire the land was **published** in the aforesaid Government Gazette on 16/7/1999.

The trial court framed the following issues:-

a) *Whether there was proper and sufficient notice for acquiring the suit land under the Land Acquisition Act 1967.*

b) *Whether the purpose in which the land was purportedly acquired is a public purpose under section 4 of the Land Acquisition Act 1967.*

c) *Whether the proposed compensation offered by the government is adequate having regard to all the circumstances of the case.*

After a full trial the High Court, Ihema, J. answered the issues in the negative. In essence the High Court decided that the acquisition was not in public interest and no reasonable notice was given before the said acquisition. Henceforth, the said court ordered compensation of USD 3,000,000 with interest at market rate under Section 3 (1) (g) (vii) of the Land Act No. 4/99.

This is an appeal against the above decision of the High Court. There are four grounds of appeal which read as follows:-

1. That the trial court erred in law and in fact in its finding that there was no proper and sufficient notice in acquiring the suit land under the Land Acquisition Act, 1967.

2. That the trial court erred in law and in fact in its finding that the acquisition was not for public purpose as provided for under Section 4 of the Land Acquisition Act, 1967.

3. That the trial court erred in law and in fact in finding that the compensation of the suit land be pegged at USD 3,000,000 or its equivalent in Tanzania shillings for it is on the high side.

4. That the trial court erred in law in its finding and granting interest at the current commercial rate as provided for under Section 3 (g) of the Land Act No. 4/99 for at the time of filing the suit this law was not operative.

At the hearing of the appeal the parties were represented by the same advocates who appeared on

their behalf at the trial. Mr. Ngwembe, learned Senior State Attorney, appeared for the appellant. On the other hand Mr. Bomani, learned advocate, appeared and resisted the appeal on behalf of the respondent.

We propose to begin with the second ground of appeal. The crucial issue here is whether the acquisition for purposes of the American embassy was in public interest. In his oral submission on the point, Mr. Ngwembe essentially repeated his earlier submission at the trial:- That the general public was to benefit from services offered by the American embassy at the acquired piece of land. With respect, we do not agree with him that the acquisition was in public interest. We say so for reasons which will emerge hereunder.

The starting point is the definition of “public interest,” or “public purpose” as it is sometimes called. In **Stroud’s Judicial Dictionary** Fifth Edition, Vol. 4 a matter of public interest:

> “is that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

In **Black’s Law Dictionary,** Seventh Edition by Bryan A.

Garner, “public interest” means:-

> “1. The general welfare of the public that warrants recognition and protection.
>
> 2. Something in which the public as a whole has a stake; esp. an interest that justifies governmental regulation.”

Black’s Law Dictionary also defines “public purpose” as:-

> “An action by or at the direction of a government for the benefit of the Community as a whole.”

In **Ellis V. Home Office** (1953) 2 QB 135, Morris L.J. stated:-

> “One feature of the public interest is that justice should always be done and should be seen to be done.”

To come back home, we have the case of **Agro Industries Ltd Versus Attorney General** 1994 TLR 43 where this Court cited a head note in **B.P. Bhatt and Another Versus Habib Rajani** 1958 EA 536 that to be in the “public interest”:-

> “it is not sufficient that public interest

> may benefit indirectly or incidentally, if the primary purpose of the application is to benefit the landlord's interest and not that of the public."

In **Bhatt's** case, Law J. relied on the Indian case of **Hawabai Franjee Petit Versus Secretary of State for India** 1915 39 BOM 279 where in defining "public purpose" it was stated:-

> " . . . . . the phrase, whatever else it may mean, must include a purpose, that is to say an aim or object, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

In **Agro's** case (supra) this court then concluded:-

> "So what do we understand by an action being in the public interest? We think it is so when looked at objectively with impartial eyes, the action is primarily and not incidentally in the interest of the public . . ."

In the light of the above definitions, it is clear to us that "public interest" or "public purpose" must include a purpose, that is to say an aim or object in which the general interest

of the community is concerned or involved, as opposed to the particular interest of individuals or institutions.

In the instant case, the acquisition was made under **Section 4 (1) of the Land Acquisition Act, 1967** which reads:-

> "4 (1) Land shall be deemed to be required for a public purpose where it is required for any of the following purposes:
>
> a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing;
>
> b) for or in connection with sanitary improvement of any kind, including reclamations;
>
> c) for or in connection with the laying out of any new city, municipality, township or minor settlement or the extension or

improvement of any existing city, municipality, township or minor settlement;

d) for or in connection with the development of any airfield, port or harbour;

e) for or in connection with mining of minerals or oil;

f) for use by the community or corporation within the community;

g) for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development.

The crucial question here is whether the acquisition and the subsequent grant to the US Embassy was within the ambit of the above sub-section. In our respectful opinion, the answer is in the negative. The acquisition did not fit in any of the situations mentioned in the above sub-section. Indeed, the spirit of the above Act was, and indeed still is, to acquire land for **public purpose** and not for any other use. Therefore, the validity of any acquisition under the Act depends on whether the land is required for a public

purpose. In the instant matter, the acquisition for purposes of the foreign embassy was not in line with the "public purpose" or "public interest" envisaged under the **Act**. We will, therefore, find nothing to fault the trial Judge in his findings and conclusions on the point in issue.

We now move forward to consider the third and fourth grounds of appeal which were argued together by Mr. Ngwembe. The complaint here is threefold:- **One**, that it was wrong to invoke the Land Act, 1999 in determining compensation and interest. Mr. Ngwembe maintained that **sub-sections 1** and **2** of **Section 12** of the Land Acquisition Act, 1967 were relevant for purposes of determining compensation and interest. **Two**, that the decreed sum of USD 3,000,000 was on the high side. **Three**, that it was wrong to enter the judgment in foreign currency in the light of the decision in **Continental Agencies Versus A. C. Berrillo Co. Ltd** (1971) EA 205, Mustafa, J.A., that a Tanzanian court can only enter judgment in Tanzania shillings.

On the other hand, Mr. Bomani was of the general view that both the Land Acquisition Act, 1967 and the Land Act, 1999 did not apply for purposes of determining compensation. He urged that the point should be determined on the basis of the prevailing market value where the criterion should be "willing buyer willing seller" basis. Hence, in his view, the price agreed by the parties in

the letter of intent would be appropriate compensation in the circumstances. As for interest, he at first contended that a rate of 31% was pleaded at the trial. On reflection, he submitted that the respondent would be satisfied with an award of interest prevailing at the time the judgment was given.

In considering the third and fourth grounds of appeal we think it is necessary to introduce the subject by making the following observations. **One**, since the acquisition was unlawful as we have tried to demonstrate in the second ground of appeal, **de jure** the respondent remains the lawful owner of the suit premises. **De facto**, however, the embassy of the United States of America has been offered the land and a new chancery built on it. In the premises, the only realistic and prudent option for the respondent is to be granted viable and adequate compensation for unexhausted improvements. **Two,** in the light of the position we have taken on the second ground of appeal, it will follow that since the acquisition was not made under the provisions of the Land Acquisition Act, 1967, then that Act would not apply in determining compensation. Likewise, the Land Act 1999 would not be relevant because the acquisition took place before the Act came into force. The acquisition was made on 16/7/1999 and the said Act came into effect on 1/5/2001 by virtue of G.N. 485/2001.

Pursuant to the above introductory observations, it will

now be clear that market value will be the determining factor. We have considered the rival positions given by Messrs. Ngwembe and Bomani on the matter. In the end, we are inclined to go along with the value given by the Government valuer. We do so not out of disrespect to the valuation report given by the private valuer, PW2 Titus Kalokola. On the contrary, much as we respect the report, we are of the view that justice will demand that we trust more the value given by the Government valuer than that of the private valuer. In this context, the value of Tshs.998,467,000/= given by the Government valuer, DW2 Deodatus Kalyanda, will be fair and adequate compensation to the respondent. We further think that this will be fair compensation given the fact that the unexhausted improvements were on a prime area of the city.

A word about a judgment entered in foreign currency. Mr. Ngwembe's contention that a Tanzanian court cannot enter judgment in foreign currency in view of the decision in **Continental Agencies** is, with respect, no longer good law. The current position is as stated by this court in **Transport Equipment Versus Valambhia and another** 1993 TLR 91 where it was held, inter alia, that following the enactment of the Foreign Exchange Act No. 1 of 1992 which came into force on 16/3/1992 as per G.N. 37/92, the principle of law propounded in **Continental Agencies** no longer applies in this country.

In view of the position we have taken on the second, third and fourth grounds of appeal we find no need of discussing the first ground of appeal.

In the end result, and for the above reasons, we dismiss the appeal on ground two. As for grounds three and four, we allow it to the following extent:- **One,** the amount of money due and payable to the respondent as compensation for unexhausted improvements is Tshs.998,467,000/=. **Two**, the above sum of money will attract interest at the commercial rate prevailing at the date of this judgment. **Three**, since we have dismissed and partly allowed the appeal, it will be fair that each party bears its own costs here and the court below.

We so order accordingly.

DATED at DAR ES SALAAM this 15th day of June, 2005.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

S.A.N. WAMBURA
SENIOR DEPUTY REGISTRAR