IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 47 OF 2001

SISI ENTERPRISERS LTD ..... PLAINTIFF

VERSUS

MINISTER FOR LANDS HUMAN
SETTLEMENT DEVELOPMENT ..... FIRST DEFENDANT
THE COMMISSIONER FOR LANDS ..... SECOND DEFENDANT
THE REGISTRAR OF TITLES ..... THIRD DEFENDANT
ATTORNEY GENERAL ..... FOURTH DEFENDANT

J U D G M E N T

IHEMA, J.

On 14th February, 2001 the plaintiff SISI ENTERPRISES LIMITED filed a suit against the Minister for Lands and Human Settlement Development, the Commissioner for Lands, the Registrar of Titles and the Attorney General herein after referred to as the defendants. The plaintiff is claiming against the defendants severally and jointly for a declaratory order to the effect that the acquisition of all that piece of land comprised in Certificate of Occupancy No. 16390 measuring 21.3 acres and popularly known as the Drive in Cinema is unlawful. Furthermore the plaintiff's claim is for damages, special, punitive and general; interest at 31% per annum, costs as well as any other and further reliefs and orders deemed just by this court.

It is alleged by the plaintiff that it is the holder of the suit land since 18th June, 1966 for a 99 years lease whereat it has developed the same by building a Drive in Cinema which was in operation at the time of filing the suit under reference. The plaintiff has further stated that on 5th June, 1999 it signed a Letter of Intent with the United States Department of State so as to enter into an exclusive option to purchase the suit land at a consideration of US $ 3,000,000 as per Annexture - Sisi 2 to the plaint. However on 3rd August, 1999 the plaintiff claims to have received a letter from the Commissioner for Lands informing it that the government intended to acquire the suit land pursuant to Section 4 of the Land Acquisition Act 1967 for the purpose of granting the same to the Embassy of the United States of America in Dar es - Salaam. That, despite strong objection by the plaintiff to the intended acquistion, for among other reason, its unlawfulness, the defendants went ahead with the acquisition and the subsequent offer of the suit land to the Embassy of the United States of America in Dar es Salaam.

In return the defendants a[illegible]
a sum of T.Shs.602,363,000 which [illegible] inadequate, hence the filing of the present suit.

In support of its claim for general, special and punitive damages the plaintiff has contended that the act of the defendants to unlawfully acquire the suit land denied it to conclude a deal with the Embassy of the United States of America on a willing seller willing buyer basis following a firm offer of US $ 3,000,000 for the purchase of the suit land.

On the other hand the Attorney General answering on behalf of the other defendants, has contended, inter alia, that the suit land was properly acquired by the President on 16th July, 1999 due to the reason that the plaintiff had ceased operating the Drive in Cinema and the President's intention to acquire the suit land through publication in the Government Gazette on 16th July, 1999.

In reply to the above the plaintiff stated that the Drive in Cinema business was no longer economically viable hence its request for change of the user - class for redevelopment [illegible] and the request was still pending for consideration with the Ministry when the purported [illegible] was carried out.

At the trial the following issues were framed and agreed to by the parties namely:-

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

(b) Whether the purpose for 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.

Both parties were represented by counsel; Messrs Bomani and Mbwambo appeared for the plaintiff while Mr. Chidowu learned State Attorney represented the defendants. Two witnesses were called to testify for the defendants, i.e. Ms Blasia Kibano, a Land Officer (DW1) and Mr. Deodatus Kahanda, a Valuer (DW2), while three witnesses namely Titus Kalokola a professional valuer, (PW2) Benedict Ferdinand Shayo (PW3) and Rajin Kanti Patel (PW1) all former employees of the plaintiff, testified for the plaintiff.

It is on record that in their written submissions in support of the plaintiff's case Messrs Bomani and Mbwambo learned counsel chose to argue the second issue first for the reason that everything else hinges on it. I will therefore also address that issue first.

It is forcefully argued by the learned counsel for the plaintiff that the

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that the compulsory acquisition of the plaintiff's land by the President in the manner and style in order to offer it to the Embassy of the United States of America does not fall within the ambit of the provisions of section 4 of the Land Acquisition Act 1967. Mr. Chidowu on the other hand argued that the acquisition was indeed for a public purpose as "it was acquired for a general public use in that the public for whatever reasons can use the Embassy confortably and there are improved services to the Tanzania Public by the American Embassy."

With due respect to Mr. Chidowu learned State Attorney, it is quite apparent that the acquisition of the suit land does not fall within the definition or ambit of public purpose or interest. For as correctly stated in B.P. Bhatt & Another Vs. Habib Rajani (1958) E.A. by His Lordship Law, J. at page 536 cited by the plaintiff's advocates," 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, in the present case the American Embassy and not the public of Tanzania. Furthermore "the phrase public purpose or interest 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."

I will accept therefore the argment that acquisition for the purpose of granting the acquired land to build an Embassy of the United States of America much as it advances the diplomatic relations between Tanzania and the USA, is not a direct, general interest of the Tanzania community or public. Indeed the wording of section 4 (1) (a) of the Land Acquisition Act 1967 is unambigous and it reads:-

> "Section 4 (1): Land shall be deemed to be required for a public purpose where it is required for any of the following purposes: for exclusive government use, for general public use for any government scheme, for development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing."

Clearly a grant to the United States of America Embassy is not within the scheme of the law as legislated by parliament and the law does not stipulate "general public use" as the learned State Attorney would wish the court adopt. It is clearly provided that the use must be for general public use for any government scheme. It follows therefore the acquisition of the suit land for granting it to the United States Department of State for construction of a Chancery is not supported by the law of the land.

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I reiterate a well established principle of law and as provided for in Article 24 (2) of our constitution that where the right(s) of the individual are to be taken away by law such law must be clear and unambiguous and must be strictly adhered to and ought to be construed strictly (emphasis supplied). For ease of reference, Article 24 (2) of the Constitution States in Kiswahili:

> ' 24 (2) - Bila ya kuathiri masharti ya ibara nd ya (1) ni marufuku kwa mtu yeyote kunyang'anywa mali yake kwa madhumuni ya kuitaifisha au madhumuni mengineyo bila ya idhini ya sheria ambayo inaweka masharti ya kutoa fidia inayostahili.'

It should be stressed that for any acquisition to be justified it has to be within the four corners of the law and not otherwise. In the event I hold the firm view that the purported acquisition of the suit land is contrary to law and ipso facto unlawful.

Before I depart from the consideration of this issue I wish to make the following observation. At the time when the acquisition was being recommended by the Minister for Lands and Human Settlement to his Excellency the President 'the willing seller willing buyer negotiations' had reached an advanced stage certainly in full view and knowledge of the Ministry Officials. This fact has been clearly pleaded in paragraph six (6) of the plaint and as if this statement of fact is irrelevant to the suit i defendants' reply thereto as contained in paragraph 3 of their written statement of defence is both preposterous and playsome.

Be as it may the defendants' attitude or conduct in this factual situation may not be without consequence in the suit. All said the answer to the second issue that is whether the purpose for which the suit land was purportedly acquired is a public purpose in terms of the provisions of Section 4 of the Land Acquisition Act is definitely in the negative.

Next for determination is the issue whether there was proper and sufficient notice for acquiring the suit land under the law. It has been pointed out quite correctly by learned counsel for both parties that Sections 6, 7 and 8 of the Land Acquisition Act 1967 are relevant. However learned counsel for the plaintiff have gone further by arguing that the mandatory requirements in the said provisions were not complied with. I agree. Much as the defendants have attached copy of the relevant Government Notice - GN 469 of 15/9/99 to their written statement of defence (Ann. D2) it is in evidence that the statutory notice was not brought to the attention of the plaintiff. Blasia Atanasi Kibano (DW1) in her testimony had this to say:

> I recall that on 7th May, 1999 I despatched a letter to the plaintiff as notice of the government's intention to acquire the plaintiff's land at Drive Cinema. I delivered the letter by

dispatch to the Manager of the p[illegible]. The letter was received by a house servant whose name I do not know."

Apart from the fact that the said letter was not produced in court, its evidential value in my view is of no consequence in view of the subsequent publication of the Government Notice dated 16/7/99 coming more than two months later. There is a lot to be desired as to how the purported acquisition was handled by the Ministry of Lands and Human Settlement Development.

There was yet another letter of 5th July, 1999 by M.H.C.S. Longway then Commissioner for Lands inviting the plaintiff to put up a case against the intended acquisition of his land. The uncontroverted testimony of the plaintiff shows that the plaintiff received the letter on 2nd August, 1999 well after the suit land had been acquired. A doubt has been raised by the plaintiff to the effect that the Government Notice of 16/7/99 might not have been published on the given date.

It is trite law that the notice of intention to acquire land should be published in the government gazette and that the period of notice be not less than six weeks unless the President certifies that the land is urgently required for a public purpose, whereat the period may be for such lesser period as the President may direct.

I therefore agree with the learned counsel for the plaintiff that the mandatory requirements for the notice were not complied with, thus compounding so to say the illegality of the acquisition. Could it be said that the plaintiff was ever given opportunity to put up his case against the intended acquisition in the circumstances assuming that the same was justified. In my humble view, I think not. At any rate having ruled that the purported acquisition was clearly not made for a public purpose in terms of Section 4 of the act, I hold the view that the notice and the manner in which it was issued are equally void and of no consequence.

The third and last issue for determination is the adequacy of compensation offered by the government to the plaintiff following the purported acquisition. Since I have ruled that the acquisition was contrary to law the plaintiff de jure remains the lawful owner of the suit land. De facto however the United States of America Embassy has been granted the suit land and a new Chancery with millions of dollars has been built on it. Learned counsel for the plaintiff have argued that the only realistic option available is to seek adequate and if I may add propt compensation to be paid on the basis of willing seller and willing buyer or market value of the property due to the fact that the provisions of the Land Acquisition Act 1967 do not apply.

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I respectfully agree that this is indeed an equitable remedy open to the plaintiff and in tandem with the provisions of section 3 (1) (g) of the Land Act No. 4/1999. Section 3 (1) (g) provides:

" 3 (1): The fundamental principle(s) of the National Land Policy which is the objective of this Act to promote and to which all person(s) exercising powers are to have regard to are:

(g) to pay full, fair and prompt compensation to any person who e ri ht of occupancy or recognis d long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the state under this Act or is acquired under the Land Acquisition Act,

Provided that in assessing compensation land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following:-

(i) Market value of the real property
(ii) Transport allowance
(iii) Loss of profits or accomodation
(iv) Cost of acquiring or getting the subject land;
(v) any other cost, loss or capital expenditure incurred to the development of the subject land; and
(vi) Interest at market rate will be charged."

"Annexture Sisi 2" to the plaint, a letter or Intent dated 5th June, 1999 signed by Mr. Keith Wilkie for the US Department of State and Mr. Chitteranjan Chhaganbhai Patel for Sisi Enterprises Ltd indicates the parties intent to enter into an option agreement to execute a binding option to purchase the suit land for US Dollars three million. This amount is supported by the testimony of Titus Kalokola (PW3) a professional valuer in Exh. P1 and to a certain extent by the testimony of Datus Kahanda (DW2) also a valuer in the Ministry of Lands that the commercial or market value of the land at the Drive in Cinema could be pegged at Tshs.100,000,000/= per acre. The suit land as stated elsewhere measures 21.3 acres. I will therefore accept the submission and hold the view that the commercial or market value of the suit land be pegged at US $ 3,000,000 or its equivalent in Tanzania shillings as adequate and fair compensation to be paid to the

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plaintiff by the defendants. The amount will attract interest at the current commercial rate as provided for under section 3 (g) (VII) of Act No. 4/1999. There will not however be an order for any damages, special, punitive or general as prayed by the plaintiff in the circumstances of this case.

For the foregoing reasons judgment is granted to the plaintiff as prayed and to the extent stated in this judgment. The plaintiff will also have its costs. Order accordingly.

S. Ihema

JUDGE

Court: Judgment delivered in chambers this 16th day of October, 2003 in the presence of Mr. Bomani and Mr. Chidowu learned counsel for the parties.

Right of appeal is open to the parties.

S. Ihema

JUDGE

16/10/2003