

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA**

LAND CASE NO. 12 OF 2022

**MOYA LUMINU (As administrator of
estate of the late LUMINU MASANGU) PLAINTIFF**
VERSUS
SERIKALI YA KIJIKI CHA CHAMALENDI 1ST DEFENDANT
IGUNGA DISTRICT EXECUTIVE DIRECTOR 2ND DEFENDANT
THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

Date of the last Order: 9/11/2023

Date of Judgment: 13/02/2024

KADILU, J.

This suit was lodged before this court by the Plaintiff herein Moya Luminu, as administrator of the estate of the late Luminu Masangu against the Defendants, Serikali ya Kijiji cha Chamalendi, the District Executive Director of Igunga District Council and the Attorney General as a necessary party. The plaintiff is claiming against the defendants jointly and or severally for declaratory orders that the plaintiff is the rightful owner of the land in dispute and the 1st defendant is the trespasser.

The facts of the case as can be depicted from the pleadings and evidence go thus, in 2018 the plaintiff was appointed an administrator of the estate of the late Luminu Masangu who passed away in 1975. According to the Plaint, the late Luminu Masangu was the lawful owner of the land in dispute after having cleared a virgin land in the past 43 years. After the death of the late Luminu Masangu, the disputed land was left to Moya Luminu as an administrator of the estate. Moya Liminu alleges that he has been in occupation of the disputed land since 1979 and he has been using it uninterruptedly until 2018 when the dispute arose.

He contends further that in 1978, Chomachankola Village Council borrowed the villagers' land including the land in dispute for a community project referred to as "*Mfuko wa Maendeleo ya Kijiji*" (MFUMAKI) which was operative throughout the country. According to the plaintiff, the land was returned to him in 1978 and in 1999 the Village Council verified that the land that was borrowed from the plaintiff had already been returned to him. Evidence reveals that in 2013, Chomachankola village was subdivided into two villages namely; Chomachankola and Chamalendi. The plaintiff fell into Chomachankola's jurisdiction where he resides to date.

He, however, avers that he had 25 acres of land in Chamalendi village valuing TZS. 75,000,000/= . He told the court in his testimony that in 2018 the first defendant trespassed into his land and started to use it without compensating him. The land was allocated to Chamalendi villagers for agricultural use. The plaintiff averred that following the first defendant's act, he wrote a letter to the 2nd defendant to solve the matter but it proved futile. He then issued a statutory notice to the 3rd defendant expressing his intention to sue the Government, still the 1st defendant adamantly refused and/or neglected to return the disputed land to him.

He thus instituted the instant suit praying for judgment and decree against the defendants for the declaration that he is the rightful owner of the land in dispute and that the 1st defendant trespassed on it. He also prayed for the 1st defendant to be ordered to vacate the land in dispute and condemned to pay the costs of this suit. The defendants filed a joint Written Statement of Defence (WSD) in which they stated that the disputed land belongs to the 1st defendant as it has been occupying it since 1975 being part of the land designated for the MFAMAKI programme

and the villagers used to hire it seasonally. The defendants refuted that the 1st defendant had never handed the land in dispute over to the plaintiff since the plaintiff had never occupied it.

The defendants deny further that Chomachankola Village Council held a meeting in 1999 and discussed handing back to the plaintiff which the village had acquired in 1975. They stated that there was a meeting conducted in 1994 which resolved that the village should prevent the villagers' encroachment on its land. The defendants attached the minutes of the said meeting that was held in 1994. The defendants alleged that the 1st defendant could not have trespassed on the plaintiff's land in 2018 because the same had been hired for agricultural activities by the villagers since 1975. They added that in 2018, it was the plaintiff who started to claim that the said land was previously owned by his late father. The defendants prayed for the suit to be dismissed with costs.

When the case was called on for hearing, the Plaintiff was represented by Advocate Stella Thomas Nyakyi whereas the defendants were represented by three State Attorneys namely; Mr. Samwel Mahuma, Mr. Guren Mapande, and Ms. Grace Mwema. In collaboration with the learned minds, the court framed the following issues:

- i. Whether the plaintiff is the rightful owner of the land in dispute.
- ii. Whether the 1st defendant trespassed on the disputed land.
- iii. To what reliefs are the parties entitled?

To prove his claim, the plaintiff testified as **PW1** and called three other witnesses; Elias Nzuba (**PW2**), Yusuph Mwishamu (**PW3**), and Robert Tungu (**PW4**). He also tendered five documentary exhibits. On the other hand, the defendants called two witnesses namely; Jimisha Mang'wengula (**DW1**) and Richard Onesmo, (**DW2**). They tendered one

documentary exhibit **(exhibit D1)**. In his testimony, PW1 testified that he is claiming for his farm that he got as an administrator of the estate of his late father but it was invaded by the 1st defendant. He tendered exhibit P1 which is the letter of administration appointing him on 26/07/2018 the same year when the dispute arose.

He explained that the disputed land measures 25 acres and borders Shinyanga Road, Nchamo Ntonyange, Eliasi Luzuba, and Nangala Chemu. He elaborated further that in 2018, the 1st defendant encroached on his land. PW1 informed the court that the 1st defendant is a new village that was divided from Chomachankola village in 2013. He went on to explain that in 1982, the villagers were requested to offer part of their land to the village for a development scheme known as MFUMAKI thereafter, in 1999 the land in dispute was returned to them.

PW1 proceeded to testify that he had minutes of the village meeting returning the land to him. However, the minutes could not be admitted as they were photocopies and they were not certified. Generally, the minutes did not meet the conditions for the admissibility of secondary evidence as laid down under Section 67 of the Evidence Act [Cap. 6 R.E. 2022]. Nonetheless, a letter that was attached to the minutes was admitted and marked as exhibit **"P2."** PW1 insisted that he sent his complaint to Chamachankola about his land whereby the village committee held a meeting and discussed it. The minutes of the alleged committee meeting were admitted as exhibit **"P3."**

PW1 maintained that Chamalendi is a new village established in 2013 after his farm was returned to him by Chomachankola village in 1999 so, according to him, Chamalendi invaded his land in 2018. He stated that he wrote a letter to Igunga District Executive Director claiming his land

and the District Executive Director directed the District Land Office to attend to his claims. The office called him via a letter dated 18/04/2018 requiring him to attend the Land Office with evidence of his ownership of the land in dispute. That letter was admitted as exhibit "P4" although PW1 did not disclose the outcome therefrom. He averred that there were four families whose land was taken for the MFUMAKI project but they do not have a dispute with the 1st defendant concerning their farms.

PW2, Eliasi Nzuba testified that he was the plaintiff's neighbour. He stated that after the death of the plaintiff's father, he (Moya) started using the disputed land. PW2 mentioned the neighbours to the plaintiff's land as Nishom Ntonyange, Nagala Chemu, and Shinyanga Road. PW2 added that Moya's land measures 25 acres and is located in Chomachankola village. According to PW2, in the 1970s, a development programme known as MFUMAKI was established to deal with millet farming. He explained that the programme started in 1978 and ended in 1979. He added that in 2013 when Chamalendi village was established, the MFUMAKI programme had already ended.

He further clarified that MFUMAKI used to borrow farms from the villagers. He said in 1979, the farms were returned to the owners. He stated some examples of villagers whose farms were taken including four families of Moya, Ntonyongo, Nzuba, and Mahona. He narrated in addition that Moya's land is now in Chamalendi village but formerly, it was in Chomachankola village. According to him, the land in dispute belongs to the plaintiff's father and not Chamalendi village because the village was established in 2013 while the said farm was returned to the plaintiff in 1979.

PW3 Yusuph Mwishamu testified that Chamalendi village was established in 2013 which was divided from Chomachankola village. He recounted that the plaintiff's farm bordered Eliasi Luzuba, Luminu, and Nhangala. PW3 alleged that the 1st defendant encroached on Moya's land in 2018. He opined that the land does not belong to the village because the village was established in 2013 while Moya has been there since the 1970s. He explained that from 1978 to 1979, agricultural activities went on as usual in Chomachankola village through MFUMAKI which was a collective agricultural programme.

PW3 testified that MFUMAKI borrowed land from the villagers including Luzuba, Minu Moya, Mahona, and Kipande. He said after using the farms, Chomachankola village returned them to the owners. Moya's land was later invaded by Chamalendi village which is the 1st defendant in this case. He argued that Chamalendi is a new village so it could not own the land which belonged to Moya since the 1970's and MFUMAKI ended in 1979.

Robert Tungu Tegwa (PW4) testified that in 2010, he was the Hamlet leader of Sokoni hamlet in Chomachankola village. He said he knows Moya because he owns land within his hamlet. He elaborated that in 1978, there was MFUMAKI programme in Choma village that used the villagers' land and returned it in 1979 when the programme was over. He also stated that Chamalendi village was established in 2013. Before that year, it was a hamlet but it was later upgraded to a village after it was split from Chomachankola village.

PW4 stated that in 2011 he was appointed a member of the social welfare committee in Chomachankola village. He told the court that Chamalendi village was established when he was still a member of the

committee. He stated in addition that Moya's farm is now located in Chamalendi village after the demarcation from Chomachankola village. The witness testified further that after the MFUMAKI programme, the farms were returned to the owners. According to him, Chamalendi village was not involved in the MFUMAKI programme. He explained that Moya's land measures 25 acres and that there was no dispute over it until 2018 when Chamalendi village invaded it.

On defence, Jimisha Mang'weng'ula testified as **DW1** and stated that he was a Village Executive Officer (VEO) of Chamalendi village. He expounded that he started working as a VEO in 2019 but before that, he was a VEO of Mwajilunga village. He said he knows Moya as a complainant against Chamalendi village for the alleged encroachment into his land measuring 25 acres. DW1 denied that Chamalendi village had invaded Moya's land because, in 1974 Chomachankola village compensated the villagers whose land was used for MFUMAKI by giving them alternative farms.

DW1 told the court that no land had ever been returned to the villagers because they were compensated by being given farmlands on the Eastern and Western parts of Chomachankola village. For that reason, he said, it is not true that the village wrote a letter to Moya giving him any land because his land was not acquired by the village, so he was not even among those who were later compensated. DW1 contended that the Chamalendi village is currently leasing the land in dispute to the villagers as a source of revenue for the village.

He narrated that in 1994, some villagers started to invade the same farms for which they were already compensated. It was when the Village Council held a meeting and deliberated that the farmlands should be

leased to the needy villagers. He tendered the minutes of the village Council's meeting that were admitted as exhibit "D1."

The witness explained further that the Chomachankola Village Council meeting that was held in 1994 discussed some of the villagers' complaints about the then MFUMAKI farmlands which they were re-claiming back despite being duly compensated in 1974. The meeting resolved that all farmlands belonging to the village should remain so unless the law is changed or the Government directs otherwise. The meeting deliberated that the villagers who had already encroached on the said farmlands had to be informed that they were in contravention of the law.

Richard Onesmo (DW2) testified that he was the first Village Chairman of the 1st defendant for five years from 2014 to 2019. He testified that the MFUMAKI programme took place from 1978 to 1979 and some villagers' farms were borrowed for the programme and after that, they were compensated by being given other pieces of land. He mentioned some of the villagers whose farms were involved in the programme and were compensated including Mwanajagi, Mshamo, Mwanahasani (Moya's sister), and Masanja Ngeleja.

According to DW2, the said farms were not returned to any villager. He informed the court that part of the land in dispute has been designated for the construction of village offices, a police station, a school, a health centre, etc and the rest is being used for leasing the villagers who have no farmlands. DW2 stated that the 1st defendant had never taken Moya's land because the village owns sufficient land of about 205 acres. DW2 concluded that Moya has no land in Chamalendi village and that, nobody's land has ever been taken by the village.

After having set out the facts of the case, matters in dispute and the evidence presented, the task before me is to resolve the issues raised prior to the hearing. I will start with the first issue which needs me to declare whether the plaintiff is the lawful owner of the land in dispute or not. It is common knowledge that in Tanzania one may acquire land in various ways such as by allocation by the Government authority, purchase, inheritance, gift, and by adverse possession. In the case at hand, the plaintiff claimed to have inherited the disputed land from his deceased father.

For that matter, the burden of proving that he is the rightful owner of the land in dispute lies on him as stipulated under Section 110 (1) of the Evidence Act that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The plaintiff tendered a letter from Chomachankola Village Council (exhibit P2) purportedly handing the land in dispute over to him in 1999, but he did not bother to call any of the village leaders to testify about that letter. The defence evidence is to the effect that the plaintiff has no land in Chamalendi Village thus, no farmland was ever returned to him by Chomachankola Village.

In proving that he inherited the land in dispute from his late father who passed away in 1975, the plaintiff produced Form No. IV, Administration of Estate Form (exhibit P1) issued by Chomachankola Primary Court on 25/07/2018 after the dispute arose. Without disrespect to the plaintiff, ownership of land cannot be proved by a mere letter of appointment as an administrator of the estate especially where there is no cogent proof about how the deceased acquired ownership of the land in question. More so when the defendants have alleged that the plaintiff

processed the said letter of administration to obstruct justice as he had no evidence of the acquisition of the land he is claiming. The plaintiff was expected to present candid proof about his source of ownership to satisfy the court that the disputed land originally belonged to his late father and he (the plaintiff) inherited it upon death.

The plaintiff did not provide a reasonable explanation as to why he was late in processing the letters of administration. It is undisputed that the father passed away in 1975 and the plaintiff was appointed the administrator just a few days after the burial of their father, but he processed exhibit P1 in 2018, 43 years after the nomination by the family/clan meeting. He did not also tell the court the reasons for not having distributed the disputed land to the heirs while there has never been resistance from any member of the family. That is significant because the one who is holding the land was supposed to sue in his name as the land no longer belonged to the deceased rather, it is his.

As the plaintiff claims to have acquired the contested land by inheritance, and that his deceased father had no documentary evidence of its ownership, then he was expected to present a legal document that would establish the inheritance of the said land. Such evidence would include a valid will, family history, or the distribution of all of the deceased's estate to the heirs for the court to satisfy itself that the disputed land was indeed bequeathed to the plaintiff. The plaintiff's major argument is that the land in dispute belonged to his deceased father who obtained it by clearing the bush, and that between 1978 and 1979 it was borrowed by Chumachankola Village for the MFUMAKI community project. Exhibit D1 is clear that all the owners of MFUMAKI farmlands were given alternative lands in 1979 and the claimants of 1994 were the trespassers

on the village land. When exhibit D1 was sought to be tendered, the plaintiff through his Advocate did not object to its admission so I have no reason to doubt its genuineness.

I have also observed some contradictions in the plaintiff's evidence about when the disputed land was allegedly returned to him. While he tendered exhibit P3 indicating that the land was returned to him in 1999, on being cross-examined by Mr. Guren Mapande (State Attorney), he responded as follows:

"The land in dispute has belonged to me since 1982. I do not have any evidence of ownership. I own it informally. I do not have a legal document."

When the plaintiff was testifying (PW1), he told the court that two types of farmlands were returned to him; one in 1979 and the other in 1999. Likewise, PW2 testified consistently that the plaintiff's land was returned to him in 1979. This piece of evidence was corroborated by the testimonies of PW3, PW4, DW1, and DW2. DW1 and DW2 elaborated that the villagers whose land was acquired for MFUMAKI were compensated but others including the plaintiff reclaimed back the same land a few years later. They even trespassed on the village land leading to the said land being leased to the needy villagers after the deliberation of the Village Council meeting held in 1994 as evidenced by exhibit D1.

It should be noted that under Section 4 (1) of the Land Act [Cap. 113 R.E. 2019], all land in Tanzania is public land vested in the President as trustee for and on behalf of all citizens. In that regard, Section 18 (1) (d) (i) of the Village Land Act [Cap. 114 R.E. 2019] recognizes that the village land may be owned under the customary right

of occupancy including intestate succession between persons residing in or occupying and using land within the village having jurisdiction over that land. In the instant case, the plaint and testimony of the plaintiff indicate that he resides in Chomachankola village and owns land there which has not been involved in any dispute. He nevertheless claims to be the owner of the land in dispute within Chamalend village which he has failed to account for.


Worse still, the plaintiff kept on stating that the disputed land measures 25 acres but he has not described its demarcations apart from mentioning the names of individuals whom he regards as neighbours. In resolving land disputes, the importance of making detailed descriptions of the land in dispute cannot be overstated. Order VII, Rule 3 of the CPC, [Cap. 33 R.E. 2022] is clear that where the subject matter of the suit is immovable property, the plaint should contain a description of the property sufficient to identify it and, in case such property can be identified by a title number, the plaint must specify such title number.

In the case at hand, the plaintiff only states that he estimates the disputed land to be 25 acres without indicating where it starts and ends. A thorough description of his alleged land was critical especially because he claimed that the land was once in Chomachankola village but now it is in Chamalendi. In the case of ***Daniel Kanunda (as the administrator of the Estate of the late Nbalu Kashaha Buluda) v Nasaka Ibeho & 4 others***, Land Appeal No. 20 of 2015, High Court of Tanzania at Tabora, it was observed that for purposes of ownership or possession of land, it is specific demarcations and the location (geographical, political or otherwise) of a piece of land that differentiates it from another piece of the same earth or its surface.

Based on the foregoing analysis, I am not persuaded by the plaintiff's evidence that he is the lawful owner of the disputed land. Thus, the first issue is answered in negative. I am of the firm view that a mere assertion by the plaintiff that he obtained the suit property from his deceased father without showing how it was transmitted to him is not sufficient ground to justify the reliefs he has claimed. Having held so, the second issue has been dissolved. There is no way the 1st defendant would have trespassed on the disputed land that belongs to itself. As for the reliefs to which the parties are entitled, this court finds that the plaintiff is not entitled to any reliefs since he is not the lawful owner of the suit land. He has not suffered any compensable loss as evidenced by pleadings and his testimony.

Consequently, I dismiss the case with costs for lack of merit. The right of appeal is fully explained to any aggrieved party.

Order accordingly.


KADILU, M.J.
JUDGE
13/02/2024.

Judgment delivered in chamber on the 13th Day of February 2024 in the presence of Mr. Samwel Mahuma, State Attorney for the defendants.




KADILU, M.J.,
JUDGE
13/02/2024.