

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

LAND CASE NO. 13 OF 2018

EZEKIEL MAGESSA PLAINTIFF

VERSUS

GEITA GOLD MINING LIMITED DEFENDANT

JUDGMENT

Date of the last Order: 29th April, 2020

Date of Judgment: 13th May, 2020

A.Z.MGEYEKWA, J

On 22nd June, 2018, the Plaintiff herein, EZEKIEL MAGESSA instituted a suit at hand against the Defendants herein GEITA GOLD MINING LIMITED seeking for the judgment and decree against the defendant for declaration Order that the plaintiff is the legal owner of the disputed property having complied with all conditions and or requirement precedent for the conferment of title over the property

and having enjoyed quite, uninterrupted possession and occupation of the property since 1984.

A brief background of the suit as obtained from the record of the case is that for a long time ago in 1984, the plaintiff has occupied the disputed property without any interruption. The plaintiff claims that he is the legal owner of the property known as Chibugwe No.1 in Geita after complying with all conditions and requirements for conferment of title over the disputed property and he had enjoyed quiet and uninterrupted possession and occupation of the property since 1984. The plaintiff claimed that he occupied the disputed property in 1984 when the land was vacant, bare, unoccupied and un-surveyed then he took possession and occupation of the property. In 1986 Dar Tadine Tanzania Ltd (DTT) entered into a contract with the Government of Tanzania to be in charge of mining activities over the property.

In 1990, the DTT sub contracted the plaintiff to be Incharge of the said mining activities over the property, then DTT closed their mining activities on the property and the Prime Minister of Tanzania instructed the plaintiff to continue being in charge of the mining activities on the property whereas, the plaintiff took charge of the mining activities on the property and paid the Government of Tanzania rent and registration of claim of title from 1991 to 1998. In 1991, the plaintiff applied for and was awarded Prospecting Right over the property No. 159225. 1993 The Ministry of Water, Energy

and Minerals instructed the Zonal Mining Officer not to interfere with the plaintiff mining activities in that area as the plaintiff was regarded as the rightful owner.

Following the above directives of the Ministry of Water Energy and Minerals in 1994, the plaintiff was instructed to erect beacons on the respective properties and the plaintiff believed it was the process of finalizing ownership of the properties. The plaintiff made a follow up in acquiring the said title and he paid for it but subsequently, the plaintiff received a letter of rejection from the Ministry rejecting the plaintiff's application for the title that the property will be allocated to a big company. The efforts taken were fruitless. Hence the plaintiff decided to file the present suit.

In the plaintiff's Complaint, inter alia, the plaintiff is praying for Judgment and Decree against the defendant for the following declaratory orders:-

- a) A declaration that the plaintiff is the owner of the property;*
- b) A declaration that the defendants' notice of evidence is time-barred and hence illegal;*
- c) a permanent injunction restraining the defendant, their agents and or workmen from effecting the eviction notice against the plaintiff;*
- d) general damages*

- e) *for payment of costs and expenses, including the legal fees, costs, and expenses incurred by the plaintiff as a result of the Defendant's Eviction Notice;*
- f) *for payment of interest on the decretal sum at court's rate computed from the date of judgment till satisfaction of the entire decretal sum; and*
- g) *for any other relief(s) the Honourable court may deem fit to grant*

On the other hand, the defendant, in response to the plaintiff's claims, has filed a Written Statement of Defence and Counter Claim disputing all claims by the plaintiff and praying the Court to dismiss the plaintiff's suit with costs.

At all the material time, the Plaintiff was represented by Mr. Leonard Sylvanus Joseph, learned Advocate assisted by Ms. Suzanna, learned counsel while the Defendant was represented by Mr. Silwani Gallati Mwantembe, learned Advocate.

Upon completion of all preliminaries, the Final - Pre Trial Conference was conducted and the following issues were framed by this Court:-

- 1) *Whether the plaintiff was lawfully occupying the piece of land in dispute.*

- 2) *if the first issue is answered in affirmative, whether the defendant Notice issued to the plaintiff to vacate the suit land was unlawful*
- 3) *To what reliefs are the parties entitled to?*

To prove the above issues the Plaintiff's side summoned four witnesses, Mr. Salum Makango who testified as **PW1**, Mr. Ezekiel Magesa who testified as **PW2**, Mr. Samuel Paulo Gombakile, testified as **PW3** and Mr. Fredy Mahove, who testified as **PW4**. The defendant side summoned two witnesses, Mr. Ally Said Ally who testified as **DW1** and Mr. Eric Kalondwa who testified as DW2. The Plaintiff tendered a total of ten (10) documentary Exhibits, to wit **Exhibit P1** a letter dated 1st November 2017; **Exhibit P2** a letter titled "Cancellation of Contract"; **Exhibit P3** a receipt with Registration No. 05140235; **Exhibit P4** a letter dated 1st November 2017; **Exhibit P5** a letter dated 20th April, 1994; **Exhibit P6** a letter with Reg. No. KWEM/V21/11/108; **Exhibit P7** a letter with Reg. No. Kum.N.MD-G/2/46; **Exhibit P8** a letter dated 18th June 1997, Exhibit P9 Government receipt, **Exhibit P10** a notice to vacate.

On the other hand, the defendant side tendered a total of three documentary Exhibits namely; Exhibit D1 an Agreement discussing a dispute between GGML and Ezekiel Magesa dated 3rd June 2018, Exhibit D2 a Special Mining Licence No. SML 45/99 and Exhibit D3 a Notice to Ezekiel Magesa dated 5th June 2018.

In addition and by consent of the parties, on 24th day of April, 2020 both learned counsels filed their Final Written Submissions and I am grateful to the learned counsel for the energy and industrious research involved in canvassing the issues herein.

It is imperative at the outset to point out that, this matter has also gone through the hands of Hon. Gwae, J, and Hon. Rumanyika, J who conducted the 1st Pre-Trial Conference and Mediation respectively. I thank my predecessors for keeping the records well and on track. I thus heard the testimonies of the witnesses for the parties and now have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

To prove the existing contractual relationship between the parties, PW1, *Salum Makango*, testified that he is a lecture at Mining Institute and by employed by the Ministry of Minerals as a head of Mining Processing Engineering and Environmental Engineering and Management in Mines. PW1 testified that in 2013, he was engaged in small mines awareness program among the short term studies whereas in 2016 they conducted research in small mines sites and they visited Geita and Kahama the Mila Mata Convention. He went on to testify that the Convention aimed to minimize the usage of mercury therefore they were observing how small mines are processing mines "*chakata madini* " by minimizing the usage of mercury. He further testified that the Convention recognized formal

and informal small scale miners/ mines. He elaborated that PML stand for small scale and informal are operating in Gold rush.

It was PW1 further testimony that the team visited both the PML mines and Informal mines and that they were guided by ToR looking one of them being how they were processing which medical treatment were used and where they obtained the said mercury and they were conducting environment assessment in informal mines. He went on saying that they were also advising them how to formalize their mines as per the Mining Act of 2010 and of 2017 that in order to be formalized one has to be a citizen, fill in a form and pay for the licence (PML). He testified that PML was issued after the amendment of the Act of 1998 but before PML did not exist instead there was a mining licence or claim orders and legal owners who were operating before 1998 had to apply for a prospecting licence. PW1 testified that the Government had a duty to advice small mines to join a team or apply individually. In accordance to amendment of 2010 and 2017 a small mines was required to have a capital of US \$ 5,000,000/=.

PW1 continued to testify that the responsible Ministry is not allowed to issue a licence I mines where there is already a PML which was issued. He went on stating that in case it happened that a PML are is allocated to a special mining holder or prospecting mines licence then the special mining holder is required to upgrade the PML mines to community with the PML and reach an agreement. PW1

fortified his testimony by referring this court to North Mara Nyamongo before the East Africa Company took over there were PML thus the East Africa Company entered into an agreement to compensate.

Upon cross-examination by Mr. Gallati, learned counsel, PW1 testified that the license were required to be renewed after three years in case one failed to renew then one must surrender the license and the right is automatically nullified. He testified that the plaintiff's license was a one year license from 07.06.1991 to 06.06.1992. He went on testifying that in case the mine owner will not renew the license or not apply to establish a mine then he has no right to establish a mine.

During re-examination by Mr. Leonard, learned counsel, PW1 argued that formal are the one who possesses a license and informal does not possess a license.

PW2, Ezekiel Magesa testified that he is a small mine working at Chibugwe Hill located at Mugusi, Geita at Geita. PW1 said that he started to work in the mines since 1984 and he had a despise with Geita Gold Mine which invaded his mines at Chibugwe. He went on to testify that in 1986 a DTT Company occupied the mine area and he was appointed as a subcontract of mining, sell of mines, and gold and in 1990 he entered into a contract to supervise the said area. To

substantiate this fact, PW2 tendered letter which introduced the plaintiff as a sub contract, which was admitted and marked as Exh.P1. PW1 continued to submit that he was employed by Dar Tadine Company Ltd and had 250 miners then he was operating officially and when DTT ended its contract with the Government, he was instructed to continue to develop mines. To support his testimony he tendered a letter titled cancellation of contract which was admitted as Exh.P2. PW2 went on to state that then he obtained a research license. To substantiate his testimony he tendered a Government receipt which was admitted as Exh.P3.

It was PW2 further testimony that he obtained a claim title which entitled him to occupy the disputed area and in 1991, 1997 and 1998 continued with research and mining activities until when the dispute arose whereas Geita Mining invaded the disputed area in May or June 2018 and announced that the area belonged to them. PW2 went on testifying that before the dispute he was servicing or paying taxes to the Government. To substantiate his fact, he tendered a letter which states that they should be disturbed which was admitted and marked and Exh.P4. PW2 testified that in December 1993 the United Revolving Fund Company wanted to invade their area, they complained to the respective Ministry and were allowed to continue with their research and mining activities. To substantiate his fact, he tendered a letter which was directed to the Chairman of mines, the same was admitted as Exh.P5.

PW2 continued to testify that the Ministry wanted to formalize small mines thus they were instructed to install beacons on which they complied with the directives of the Ministry and he filled in form of ownership whereas he surrendered his research license. To support his fact, he tendered a letter with Reg. No. KWEM/V21/11/108 which was admitted as Exh.P6. and also tendered a letter with Ref.No. MD – G/2/46 which was admitted as Exh.P7. PW2 lamented that after applying for claim title the request was not granted and he did not know why they did not issue the title. He tendered a letter dated 18.06.1997 which was admitted as Exh.P8. He went stating that he paid a royalty fee and mineral officers visited their plots to confirm if they have reached a production stage and then a royalty fee receipt was issued to ensure that they did not steal from the Government. To substantiate his fact, he tendered Government receipts which were admitted as Exh. P9.

It was PW2 further testimony that Geita Gold Mine invaded the area in 2018 and told him that they possess an informal mining license therefore they took away PW2 facilities and restricted PW2 staff to enter into the disputed area. PW2 went on to testify that a notice was issued in 30.05.2018 and he was given 7 days to vacate the disputed area. He tendered the notice to vacate from Geita Gold Mining license property which was admitted as Exh.P10. PW2 went on stating that after the end of 7 days Police Officer and Geita Mines arrived at the disputed area and ordered staff to vacate and took 11

machines, 1 compressor and staff took minerals. Therefore he decided to institute a suit before this court. PW2 complained that for now he is not working at the disputed area and his properties are in the hands of police and he has left gold behind. he testified that he was ordered by the court to go back and occupy the disputed area but he was restrained thus the court order was not adhered to because he was allowed to continue to conduct his activities but the defendant did not obey the court order.

Finally, PW2 prays this court to declare that he is the rightful owner of the disputed area and to be paid his claims and costs which is used to run this case since he has been working for 35 years when he was young and was not disturbed until 2018.

Upon cross-examination, PW2 testified that he was a supervisor of mines and the owner and went on that after DTT to terminate the contract they were not told what procedure to follow. PW2 testified that he applied for a title of ownership and paid the Government every year as shown in Exh.P3 and ended in 1997/1998. He said he applied for a title but he did not receive any reply. PW3 said that he does not have a license and has never filed a suit against the Government or the Ministry. PW3 further testified that this court issued an order on 28.06.2018 and he was restrained to collect his properties which were located at the disputed area.

PW3, Samuel Paulo Gombekile testified that he is a technical mining technician. PW3 testified that he knows PW2 as a miner and he owned a mining area since 1987. PW3 testified that Geita Gold Mining started to operate in 1994 and paid compensation to the Mtakuja Village but the plaintiff had his mines at Chibubwe area which was nearby Mtakuja Village. PW3 further testified that he heard that the properties of PW2 were thrown out from the mines area and many employees lost their employment. He went on to state that the plaintiff paid for operation license several times.

When PW3 was cross-examined by Mr. Gallati, learned Advocate, he testified that he does not remember when the plaintiff's properties were taken out and was informed by one John Mashika that the plaintiff's had around 40 employees. He said he saw the plaintiff's prospective license but he did not know when it was ending. He testified that a person who wants to own a mine has to obtain a license otherwise his operation is unlawful.

PW4, Fredy Mahove testified that he is Mining Officer at Mwanza working with the Ministry of Water Minerals and Mining since 1990. Currently, he is residing at Dodoma working with the same Ministry as Inspection Officer. Before he was an Assistant Commissioner for Mining – Lake Nyanza until 2017 when he was appointed as a Mining Officer of Mwanza. He testified that the Government is taking effort to register the non-official mining workers.

It was PW3 further testimony that the procedure of obtaining a mining license is after accomplishing visibility study and environment assessment and if there are neighbors around the mining area the law require one not to proceed with mining activities because the activity will affect the society. PW4 referred this court to section 96 of the Mining Act which relates to right of developer and section 87 of the Act which relates to compensation and reallocation. PW4 went on to testify that a mining license or mineral right cannot be issued over another mineral right. PW4 ended by testifying that he knows the plaintiff.

Testifying for the defendant's case, DW1, Ally Said Ally stated that he is working with the Ministry of Minerals as an Assistant Commissioner for mines and minerals development. He testified that in 2016 to 2018, he was working at Geita Region supervision all minerals activities. DW1 testified that there are 3 types of mining license; Special Mining license, Mining license and Primary Mining license, and other licenses such as dealers' license, big business license, broker license and small business license, processing license and refining license. DW1 testified that in Geita the Geita Gold Mining and Bosolo Mines possessed a special mining license. DW1 stated that he knows the plaintiff; he filed a claim before the Geita Region Office complaining that he was invaded in his site Mining Block No. 45 /99. He went on to state that the Regional Commissioner convened a meeting and it was decided that the plaintiff had to vacate the disputed plot, refrain to continue with mines business and

he was given 30 days as prayed to vacate the disputed plot. To substantiate his fact, he tendered a Minutes sheet which was admitted as Exhibit D1.

DW1 continued to testify that Police Officer removed the plaintiff equipment from the disputed area and he also visited the area and found people the mining holes. DW1 stated that the plaintiff has no right since right in mining is validated by a license but he had no any mining. He ended disputing the plaintiff's claims.

When DW1 was cross examined by Mr. Leonard, learned counsel, DW1 testified that he has worked with small miners who are possessing PML who operated in an area where a mining license is not issued. DW1 testified that while at Geita he was dealing with issuing mining licenses, supervising inspection, safety in mining area such as accident or corruption and all mining problems. He went on testifying that the issue of the plaintiff was concerning safety-security that is why the plaintiff reported the matter to the Regional Commissioner. DW1 went on stating that the meeting before the Regional Commissioner involved the plaintiff and the defendant and an agreement was prepared by the plaintiff denied to sign it. He stated that the Geita Gold Mining possess a mining license with No. 45/99 in 1999 the license was issued to Ashanti Gold Mine and now it is under the operation of Geita Gold Mining as an owner, they are running the business by virtue of license No. 45/99

It was DW1 further testimony that DW1 stated that the plaintiff prayed for 30 days to vacate the disputed area but he did not comply therefore in 2018 DW1 and the District Administrative Secretary District Administrative Secretary, who was the secretary of the Regional Safety and Security Committee visited the disputed area and DW1 ordered people to vacate the disputed area within 24 hours and they obeyed the order.

DW2, Eric Kalondwa testified that he is a Geologist working at Geita Gold Mining Company Ltd. DW2 testified that the defendant possesses a Special Mining Licence No. 45/1999 and it was issued to Ashanti Gold Field Tanzania Limited. He went on that the Company changed its name from Ashanti to Geita Gold Mining in 1999. To substantiate his fact he tendered a SML No. 45/99, which was admitted as Exhibit D2. DW2 further testified that the mining area is 196.27 square meters. He went on to testify that the plaintiff is an invader because the mining license is issued to the defendant.

DW1 continued to testify that the defendant reported the matter to the Regional Police Commissioner and he replied directing them to bring the matter into the attention of the Regional Commissioner. To support his fact, DW2 tendered a letter dated 05.06.2018, which was marked as **Exhibit. D3**. It was DW2 further testimony that the Regional Commissioner convened a meeting whereas; the Regional Safety and Security Committee, the plaintiff, and representatives

from Geita Gold Mining attended the meeting. He added that in that meeting the plaintiff conceded that he invaded the disputed area and prays for some days to vacate the area. DW2 further testified that an agreement was prepared by the plaintiff refused to sign as a result he was evicted by the Police Officer therefore the plaintiff does not have a license to continue with mining activities at the disputed area.

In conclusion, DW2 urged this court to dismiss the plaintiff's claims with costs.

When DW2 was cross examined by Mr. Leonard, learned counsel, he testified that he is working with the Geita Gold Mining Ltd since 2002. He went on testify that the small mining licence was issued to Ashanti Gold Field Tanzania Ltd. He went on stating that in order to obtain a small mining licence one must obtain a prospective mining which belonged to one Hillarry Resources and Anglo Dologo Mining Tanzania Ltd then he sold his shares to Anglo Gold Mining and later Anglo Gold Mining entered into share agreement with Ashanti Gold Mining whereas it sold 50% of his shares to Ashanti Gold Gold Mining. He further testified that the issue in question is for the plaintiff to prove if he possesses a mining license therefore he has to prove his ownership.

Before, I determine the evidence on record, I think it is pertinent at this juncture to highlight some of the principles of the law, which are applicable in civil litigation and which will guide this Court in the

course of determining this suit. The said principles include the following; firstly, who alleges must prove the allegation and the person whose evidence is heavier than that of the other is the one who must win. See the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113. The said burden in civil cases is on the balance of probabilities or preponderance of evidence. In the case at hand, the plaintiff is the one who bear the burden of proving his case on the balance of probabilities.

Secondly, parties are bound by their pleadings. "Pleadings include the Complaint, Written Statement of Defence, and reply therein, if any and all documents submitted and annexed thereto and those which were listed along with the complaint or produced before the first date of hearing of the suit. The Court is required to examine the entire pleadings and the totality of evidence tendered, together with assessment of the credibility of the witnesses who appeared before the Court. Evidence adduced before the Court must be weighed and not counted. That, it is not the number of witnesses the party calls in support of her/his case that matters, but their credibility. (See Section 143 of the Evidence Act Cap 6 R. E. 2002) and the case of **Rajabu Yusufu v Republic**, Criminal Appeal No. 457 of 2005, Court of Appeal of Tanzania (unreported).

It is upon this background and the above underlying principles, together with case laws which shall guide this court in evaluating and analyzing the evidence on record together with the final submissions

by both learned counsel. As I pointed out at the beginning of this judgment, three issues were framed for trial.

To start with the first issue as to *whether the Plaintiff was lawfully occupying the piece of land in dispute*. I wish to refer to paragraphs 3 of the Plaint where the Plaintiff has indicated this fact, that he is the legal owner of the property known as Chibugwe No.1 in Geita. The plaintiff claimed that he complied with all conditions and requirements for conferment of title over the disputed property and he had enjoyed quiet and uninterrupted possession and occupation of the property since 1984. During trial the plaintiff tendered 10 exhibits to prove his case, I read all the exhibits and found that the plaintiff tried to prove that he was directed to supervise the disputed property by the Dar Tadine Tanzania Ltd (DTT) and he wants to prove that he is a lawful occupier of the disputed area by referring the communication between him and the Ministry of Water, Energy and Minerals.

I am going to examine whether the plaintiff proved that he was the lawful owner of the disputed area. Deciding on the matter at hand, I find it prudent to first venture on the meaning of Lawful Occupier. In the Oxford Dictionary 5th Edition, Oxford University Press, 2002, the term Lawful Occupier means a person in possession and control of land or building as owner or tenant. Now, I will determine the first issue based on the above definition of lawful Occupier.

A plaintiff claim for ownership over the disputed area needs to prove that he is a lawful occupier the applicant and tender cogent evidence of ownership as per context of part IV of the Mining Act, No.14 of 2010 which is a documentary proof in a form of Prospecting Licence or Special Mining License or Primary Licences. Section 32 of the Mining Act, No.14 of 2010 provides that:-

" 32 (1) Where an applicant is entitled to the grant of the prospecting license under section 31, the licensing authority shall issue to the applicant the prospecting license as provided in that section and the license so issued shall subsist for the following periods:-

(a) for the initial prospecting period for which the applicant has applied a period not exceeding four years.

Guided by the above provision of the law, in the instant case the plaintiff testified that in 1999 he obtained a Prospecting License. I am also aware that in his final submission Mr. Leonard, learned counsel for the plaintiff had justified the existence of prospecting license which was annexure "LA 4" which was issued by the Commissioner for Mining in 1991. However, there is no record which shows that the plaintiff renewed the said license. It is evident by the plaintiff himself when he testified in court that he applied for title but his application was rejected by the Ministry responsible for Mining.

Based on the evidence on records, apart from the prospecting license which was not renewed, the plaintiff claims over ownership are based on correspondence between him, the DTT and the Ministry of Energy and Mining. I have perused the (Exh.P1) and (Exh.P2) and found that they are letters written by DTT to ascertain that the DTT appointed him to supervise the disputed property, Additionally, the Ministry in its letter to the plaintiff recognized the plaintiff and one F Ngowi as small scale miners since 1984 and directed the Zone Mining Officer not to disturb them (Exh. P4) and the Ministry wrote a letter to the Chairman of Mining Community Club indicated that the Ministry is surveying and mapping the disputed area which was under the DTT and that they will inform the small scale miner when the same will be finalized (Exh.P5). Again, the Ministry via his letter dated 25.05.1990 recognized the plaintiff as a supervisor of the disputed area until when the Ministry will receive other directives.

There is no dispute that the respective Ministry permitted the plaintiff to supervise the disputed property and the plaintiff proved that he paid mining royalties to the Government over the disputed area. The plaintiff substantiated his fact by tendering Government receipts (Exh.P3) and (Exh.P9). It should be noted that the plaintiff act of paying mining loyalty fee to the Government was a mandatory requirement since he was supervising the disputed property and expected the Ministry will issue him with a title but that was not the case.

Additionally, the correspondence between the plaintiff and the Ministry was to legalize the mining activities to the small scale miners which were under the DTT. In my view the same does not prove that the plaintiff is the lawful occupant to the disputed area. I am saying so because for the plaintiff to be recognized as the lawful owner of the disputed area he had to obtain a mining license.

The plaintiff in his testimony testified that he applied for the title but he was not granted and in the Plaintiff particular paragraphs 18, 19 and 21, the plaintiff admitted that the Ministry of Water, Energy, and Minerals refused to issue him a mining license. Therefore in my view, I find that the plaintiff has taken efforts to officially acquire the mining rights over the disputed property. However, his efforts were futile; the Ministry did not grant him the said title. I am in accord with the defendant's counsel that an application can be granted or not. In the instant case, the respective Ministry did not grant the applicant's application for the title instead it issued a Special Mining Licence to the defendant.

The defendant obtained the Special Mining Licence from the same Ministry which denied issuing the mining rights to the plaintiff. I am referring paragraph 18 of the Plaintiff and annexure LA 10 and also in the examination in chief the plaintiff testified that the Ministry denied to issue him the mining title as prayed. As matter of fact the Ministry of Water, Energy, and Minerals who is the overseer of

issuing of mining rights vide its letters on record did not grant the plaintiff request, and instead the Ministry issued the Special Mining Licence to the defendant.

To substantiate that the defendant is the rightful owner of the disputed property, DW2 tendered a copy of Special Mining Licence No. SML 45/99 (Exh.D2) in court. Therefore, I insist that the plaintiff was required to tender cogent evidence such as valid mining license to show that he is a lawful occupant over the disputed property, otherwise without obtaining a valid licence PW1 cannot claim that he was a lawful occupant of the disputed property. Therefore, I find that the plaintiff failed to prove his case to the standard required by the law. It should be noted that no mining or mineral activities can take place outside the strict legal regime provided under the Mining Act., this was observed in the case of **Hosea Katampa v The Ministry of Energy and Minerals & Others**, Civil Appeal No.221 of 2017 Court of Appeal Mwanza (unreported).

I have noted in his final submission Mr. Leonard claimed that the defendant had not shown any proof that the title (Exh.P2) was legally transferred to the defendant. In my view, the plaintiff cannot rely on or point the weakness of the defense case to prove his claims of occupancy over the disputed property. He was required to prove his case whether the plaintiff lawfully occupied the disputed property.

The defendant after obtaining the mining license wanted the plaintiff to vacate the disputed property, this court does not fault the defendant's action because he was already declared a rightful owner, and he was in possession of the Special Mining Licence 45/99 which was issued on 2nd September 2004. The defense witnesses have proved that the disputed area is within the Special Mining Licence 45/99 and in accordance to Exh. D1 *Makubaliano yaliyofikiwa katika kikao cha kujadili Mgogoro baina ya kampnuni ya GGML na Ndg. Ezekiel Magessa*, reveals that the disputed area was within the SML 45/99. Therefore, the Special Mining Licence 45/99 includes the disputed property as per the definition of section 4 (1) of the Mining Act, No. 14 of 2010 that:-

" Mining area means an area of land subject to a special mining license, a mining license, or a primary mining license."

As rightly pointed out by the learned counsel for the defendant in his final submission that the disputed property which is subject to a mining license was issued to the defendant pursuant to the above provisions of law. Moreover, the law prohibits a person to conduct mining activities without obtaining a mining licence. Section 6 (1) of the Mining Act, No.14 of 2010 which reads as follows:-

" 6 (1) No person shall, on or in any land to which this Act applies, the prospect for minerals or carry on mining operations except under the authority of a mineral right granted or deemed to have been granted, under this Act."

Based on the above provision of law, the plaintiff was illegally conducting his activities in the disputed property because he was not issued with a valid mining license. Therefore, the plaintiff was required to vacate the disputed property.

The plaintiff in paragraphs 24 and 25 of his Complaint has claimed that the defendant was time-barred to raise his claims since 20 years lapsed starting from 1999 to 2018. I have examined the special mining licence and found that it was issued on 27th August 1999 counting the 20 years did not lapse.

There is nothing in evidence indicating that the plaintiff possessed or is in possession of the mining license which gives him legal occupation of the disputed property instead his assertion is based on servicing the disputed property by paying royalties fee to the Government for several years until 2018 and that the respective Ministry was working on his application for the title but he did not mention that the Ministry issued him a mining license. The plaintiff was supposed to come to court with cogent evidence to prove his claims but none of the documents proves the claim on the balance of probability as provided under section 110 (1) of the Evidence Act, Cap. 6 [R.E 2019] 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 above provision was well elaborated and in that of **Lamshore Limited and Another v Bizanje K. U. D. K**, [1999] TLR 330 and in the case of **East African Road Services Ltd v J. S Davis & Co. Ltd** [1965] EA 676 at 677, where it was stated that:-

" He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant. "

Based on the above authority it is vivid that the plaintiff in the present suit has failed to bring sufficient evidence to prove his claims. For the aforesaid reasons and findings, the plaintiff has failed to prove that he lawfully occupying the piece of land in dispute. Therefore, the first issue is answered in negative.

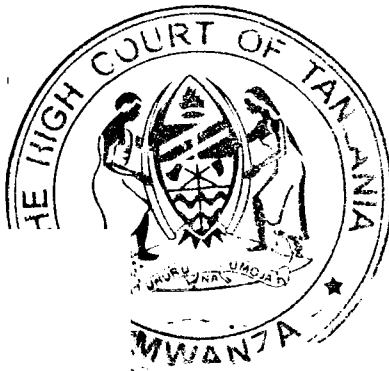
The second issue which states that, *if the first issue is answered in affirmative, whether the defendant Notice issued to the plaintiff to vacate the suit land was unlawful*. This second issue was depending on the answer of the first issue if it could be answered in affirmative but as long as the first issue is answered in negative then this second issue automatically becomes redundant.

As to the third issue which relates to relief, guided by the observations and analysis on the first issue, I have found that the plaintiff is not entitled to any relief. As I have pointed earlier that the principle governing civil cases is stipulated under section 110 of the

Evidence Act, Cap.6 [R.E 2019] that who alleges must prove failure to that the suit must be dismissed. The same was held in the case of **Barelia Karangirangi v Asteria Nyalwambwa** Civil Appeal No. 237. In the circumstance, the plaintiff claims fail. Therefore I proceed to dismiss the suit with costs.

Order accordingly.

DATED at Mwanza this 13th May, 2020.



A.Z MGEYEKWA

JUDGE

13.05.2020

Delivered on 13th May, 2020 via audio teleconference, and
is were remotely present.

A.Z MGEYEKWA

JUDGE

13.05.2020

Right to appeal fully explained.