

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)
AT DODOMA

LAND CASE NO. 03 OF 2019

5M GENERAL SUPPLIES COMPANY LTD..... PLAINTIFF

VERSUS

DODOMA URBAN WATER SUPPLY AND
SANITATION AUTHORITY(DUWASA)..... 1ST DEFENDANT
ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

17/02/2022 & 28/03/2022

KAGOMBA J.

In this suit, 5M GENERAL SUPPLIES COMPANY LIMITED (the Plaintiff) sues DODOMA URBAN WATER SUPPLY AND SANITATION AUTHORITY (the 1st defendant, also be referred by its acronym of DUWASA) and the Attorney General (the 2nd defendant) as a necessary party. The Plaintiff's claims against the defendant are for:

- (i) A declaration that the plaintiff is a paramount owner of the suit land.
- (ii) Vacant possession of the Plaintiff's two unsurveyed parcels of land measuring one acre and one and half acre respectively located at Chilwana street in Ihumwa area in Dodoma Urban, or in the alternative, a fair compensation of Tanzania shillings

Two Hundred Million only (Tshs. 2,000,000/=) for the suit land.

- (iii) Tanzania shillings One Million Two Hundred Thousand only (Tsh. 1,200,000/=) being compensation for Plaintiff's trees which were cut down by the 2nd defendant (sic) in the course of trespassing into the suit land.
- (iv) Tanzania Shillings One Hundred Million only (Tsh. 100,000,000/=) as General Damages.
- (v) Costs of suit.
- (vi) Interest at Court rate from the date of judgment till date of full execution of the decree for the same.
- (vii) Any other relief (s) the Court may deem fit to grant.

The basis of the above claims is explained in the Plaint. It is alleged that in 2016 the plaintiff lawfully acquired the said two plots at Ihumwa (the suit land) for purpose of creating different projects therein, including digging water wells and agricultural activities for business.

It is further alleged that the plaintiff made several developments on the suit land including planting of several trees and conducting agricultural activities and were expecting to proceed with implementation of the

commercial activities on the suit land. However, in 2018 the plaintiff came to find that the 1st defendant, DUWASA had trespassed therein and took possession of the whole of one parcel of land and 85% of the other parcel and had erected beacons therein to indicate the areas are taken. The plaintiff came to learn further that the 1st defendant took the suit land for extension of water wells nearby the suit land, without consulting the plaintiff.

The plaintiff having failed to get redress from the 1st defendant, knocked the door of this Court praying for judgment and decree against the defendants for the six (6) reliefs aforementioned.

The defendant in their Amended Joint Written Statement of Defence denied the plaintiff's claims and stated that the land in dispute was legally allocated to the 1st defendant by the Dodoma Municipal Council after valuation of the same was done and payment of compensation to the affected parties were effected. They further claimed that the plaintiff had no legal backing because from 1973 to 2017 the land in dispute was under the ownership of Capital Development Authority (CDA) by virtue of law after the whole of Dodoma was declared a planning area. As such

according to the defendants the alleged acquisition of land in dispute was void *abinitio*. They prayed for dismissal of the suit with costs.

The plaintiff was represented by Mr. Emmanuel Bwile and Ms. Christina Magazine, learned advocates; and the defendants were represented by Ms. Jenipher Kaaya and Mr. Camillius Ruhinda learned Senior State Attorneys, as well as Neema Mwaipyana, learned State Attorney. In their team there was also Mr. Damas Mkingule, a Law Intern, who appeared during Final Pre-trial Conference.

The issues framed for determination by the Court were as follows:

- 1) Whether the plaintiff is the lawful owner of the suit land.
- 2) If the first issue is in the affirmative, whether acquisition of the suit land by the 1st defendant was lawful.
- 3) Whether the intended compensation is adequate, and
- 4) What reliefs are the parties entitled to.

Gerald Pascal Mrema testifies as PW1. He told the court that he is the Managing Director of the plaintiff company which was incorporated in 2001. He said he acquired Ihumwa farms which form the suit land in 2014 from local people at Chilanwa street. He used local people as well

as middlemen to acquire the suit land. He said, in the process of acquiring the suit land he saw the chairman of the local government for the area, he agreed on price with local people, paid them and purchased the land.

PW1 prayed to tender two agreements for purchase of suit land between his plaintiff Company and Dina Musa Masinga on one hand, and Aimea J. Yugunyage on the other hand. The documentary evidence was rejected by the Court for contravening the requirement of the law, particularly Order VII Rule 14 (1) of the **Civil Procedure Code** [Cap 11 R.E 2019] and section 5 read together with item No. 22 in the first schedule of the **Stamp Duty Act** [Cap 189 R.E 2019]. The documents were being presented to the Court for the first time and being agreements for purchase of land, no Stamp duty was paid for in contravention of the mandatory provision of the Stamp Duty Act, that prohibit under section 47(1) of any admission of such documents in evidence.

PW1 went ahead to tell the Court that in 2016 the plaintiff found DUWASA had encroached the suit land. DUWASA later wanted to pay him Tsh.2,800,000/= (Tanzania Shillings Two Million Eight Hundred Thousand) for both parcels composing of the suit land. PW1 said he wanted to discuss further about the said payment but DUWASA Project

Manager told him that DUWASA would not discuss any further. Hence PW1 decided to file this case.

PW1 told the Court that DUWASA trespassed over the suit land without any notice to the plaintiff. The plaintiff would have been ready to leave the suit land if it were to be paid Tsh 200,000,000/= as the land is resourceful with a lot of water. He said the suit land had various trees of over five years of age which were cut down and destroyed by DUWASA for which he wants to be paid compensation of Tsh. 1,200,000/=.

It was PW1's further testimony that as DUWASA has stopped the plaintiff's dream of carrying out project on the suit land, the plaintiff demands Tshs. 100,000,000/= as general damage, plus cost of the case. He said the decision of the plaintiff's company to file the suit was taken at a meeting of all directors but he did not come to Court with such minutes or resolution passed by the directors. On whether the engagement of the plaintiff's advocate was done by directors, PW1 said he advised his family on the advocate's engagement. He further said that he attended the last meeting on the land acquisition by DUWASA. He said he estimated the value of the suit land based on the dream of the project he wanted to develop on it and based on price per square meter for the

land. He said the valuation of the land for DUWASA project was done by Dodoma City Council but he did not see the need to join the rest. He conceded that he is not informed if the entire city of Dodoma has been surveyed and neither did he know that there was a land ownership by CDA that subsisted for the suit land. He said he has local government documents for the land he bought, and that he gave legal force to his ownership by signing the purchase agreements. No any other land ownership documents were tendered by him.

PW2 Dina Musa Masinga testified that she had sold her land to one Mlema in 2014. She was paid Tsh. 6,500,000/= (Tanzania shillings six million five hundred thousand only) for a one acre parcel, which is located at Chilanwa street in Ihumwa area. She said that she got the *shamba* from her father one Peter Masinga and that the sale of the *shamba* to Mlema was witnessed by the Mtaa Chairman, one Emmanuel Manyika.

PW2 further told the Court that she had no written evidence of ownership of that land. Her father had distributed his land to all his children and she thus acquired the land. She emphasized that she sold the land to one Mlema, after selling, it was said there was a Company. PW2 further said that she wasn't married when she sold the land to

Mlema. The land was one acre measured by using footsteps. She does not know how her father got the land but the farm was his. She said further that the parcel of land had five (5) trees when she sold it, which were two *mijohoro* and three *mwarobaini* type. She found those trees in the farm. Her father gave her the farm after completing school in 2003 when she was 17 years.

PW3 Ainea Josiah Yugunyage, told the Court that in 2014 he sold land to a company whose name he had forgotten. He sold the land at Tsh. 9,800,000/= (Tanzania Shillings Nine Million Eight Hundred Thousand only) and it was one and a half (1½) acre. He bought the same from Nghumbi Mwaluko in 2006.

PW3 further told the Court that when selling the land, it had four (4) *Migunga* trees. The selling was witnessed by one Mohamed Zungu and Emmanuel Manyika who was the chairman. He said that in 2008 DUWASA came to acquire land for water drilling. DUWASA called a meeting to set price for acquisition of the land. He said he sold the land to a company whose name is A5 but its leader is one Mremma.

PW3 further told the Court that he bought that land which he resold to the company. CDA were owning a forest at Ihumwa. He said he is not aware if the entire Dodoma City is surveyed. He said he found the trees on the land; they had grown naturally. The sale price of Tshs.9,800,000/= was just agreed between him and the company. The price per acre at that time was Tsh 6,000,000/= (Tanzania Shillings Six Million) but current price now can be as high as Tshs. 20,000,000/= (Tanzania shillings Twenty million). He said DUWASA held a meeting with land owners. Some of them agreed to DUWASA's price but the company refused. He said that he bought that land from a local resident in either 2005 or 2006.

PW4 Benedict Mwiliko told the Court that he is the Director of Finance and Administration for the plaintiff company. In 2014 he advised his director to buy land for business purpose. They bought land from Dina Masinga who sold them one (1) acre at Tsh. 6,500,000/= (Tanzania shillings six million five hundred thousand) and Ainea Luganitwa who sold them one and half (1^{1/2}) acres at Tsh. 8,000,000/= (Tanzania shillings Eight million only). The land is at Chilwana area.

PW4 further told the Court that in 2018 DUWASA encroached the said land, without notice. They decided to look for their rights in Court.

He said the company expected to start a project of growing specimen such as fish, frogs and plants which are needed by schools. They also expected to carry out a bricks manufacturing project. He prayed the Court to give them their land and to be paid damages and costs.

PW4 further told the Court that he has no share in the company but he is an employee since 2010. He said, before buying the suit land, they satisfied themselves about the legality of the transaction. They passed through the village leadership and by that time they were told that it was fine to buy the suit land. He said by that time there was no any planning by the Directorate of Planning to do anything in that area. He said the two parcels are bordering each other, Dina's farms had over 20 trees planted by her while the company added about 40 more trees. He said the Ainea's farm had 19 to 20 trees, so there were about 40 trees in total.

PW4 told the Court further that the company had four (4) shareholders: (1) Gerald Mrema (2) Sofia Mrema and two others whom he had forgotten. He said the land in Tanzania is owned by the Government. At Regional level, he said the land is managed by village government and regional authorities. He said he did not follow such authorities as he saw no reason for doing so. He also said that when one

wants to buy land, he is supposed to visit the area, meet with the leadership and inquire if the land is set for some legally known uses. He stated that before buying, they went to the concerned street and village and offered to buy the land from the two sellers who were ready to sell. He said, the leadership confirmed that the land was unencumbered and had no other uses. This was the end of plaintiff's case.

For defence, Norbert Mwombeki testified as DW1. He is the Planning, Designing and Construction Engineer of DUWASA. He told the Court that he was the Project Supervisor for the drilling of boreholes, construction of collector (main), construction of sump tank, construction of water storage tank for new government city. He said they targeted Ihumwa area because the Mzakwe water source was far from the government city. There were indications that Ihumwa area has enough water. DUWASA team engaged the area local government and conducted geophysical survey. After being satisfied that there was enough water, DUWASA wrote to seek permission to acquire the land from Dodoma City Council who were understood to be the land owners.

DW1 further told the court that after the Chief Government Valuer had given a valuation report of all the properties of 111 people who were deemed to be eligible for compensation, DUWASA wrote a cheque to compensate them accordingly. However, two (2) people in the list refused to accept the payment, one of them being Gerald Mrema and the other one is Mr. Ally. He said 109 people were paid their compensation accordingly. Upon the payment, DUWASA were allowed by the Dodoma City Council to take the land for implementation of the project. He further told the Court that the project land now belongs to DUWASA and the procedure to issue a title deed to that effect was on going. Mr. Mwombeki said the parcel belonging to Mr. Gerald Mrema is part of the project land. He further testified that 5M General Supplies Co. Ltd (the Plaintiff) is not in the Valuation Report and he doesn't know that company.

During cross examination, DW1 said that a person whose land has been taken should be paid compensation timely and in accordance with the valuation report. He said it is the valuation report which identifies who owns the subject land, and it's the city council which knows the owners of the parcels on the said project land.

Charles Zacharia Nyungu testified as DW2. He is a valuer grade I in Dodoma City Council, at the department of Land Planning and Natural Resources since 2015. He testified that he participated in preparation of the valuation report for the DUWASA's Project at Ihumwa for purposes of paying compensation. He said the report is called "Dodoma Urban Water Supply and Sanitation DUWASA Valuation Report for Construction of Boreholes and Water Pipes Routes at Ihumwa Area for Compensation Purpose, Dodoma City Council". He tendered the same and it was admitted as Exhibit DI.

DW2 told the Court that there are two basis of valuation but he used the comparative method. He said, by applying the comparative method, the land in dispute has a value of Tsh. 2,800,000/= (Tanzania Shillings Two Million Eight Hundred Thousand only). He said the method is used to compare the project valuation with similar valuation done recently in the neighborhood. He said, he compared present valuation with the valuation for the Dry Port project which was done in 2017. He said in that project Tsh. 2,500,000/= was paid as compensation per acre. He also compared it with the valuation in the Standard Gauge Railway Project where Tsh 2,500,000/= was paid per acre in the same vicinity of Ihumwa area. DW2 further said that he also compared his valuation with the

valuation done by Ramaa Company Ltd in 2017 which also paid Tsh. 2,500,000/= per acre. He said after getting those benchmarks they calculated the value for the Ihumwa water project and arrived at the value of Tsh. 2,800,000/= for the suit land as aforesaid. He said the arrived valuation of Tshs 2,800,000/= is equal to Tsh. 700/= per square meter. He said, disturbance allowance, transport allowance, accommodation allowance and compensation for plants, for those who had planted, were all considered.

DW2 further told the Court that relevant laws on payment of compensation were also considered, particularly the Land Act No. 4 of 1999 and the Land Acquisition Act, as well as Corporates Compensation schedule, which is on paragraph 1 of Exhibit DI. He said Mr. Gerald (Mrema) whose name is on page 1 appearing as the 4th person on the compensation list, was considered for payment of compensation for land only because his land was not developed. He said his area comprised of 1,924 square meters where Tsh. 700/= was paid per square meter and compensation for his land came to the value of Tsh. 1,346,800/= (Tanzania Shillings One Million Three Hundred Forty Six Thousand Eighty Hundred only). DW2 further said that Mr. Mrema was also to be paid Tsh.

7,744 as disturbance allowance, hence a total of Tsh. 1,454,544/= for his first plot.

Regarding the second parcel, DW2 testified that it was a bare land measuring 1,792 square meters. It was also paid compensation at the rate of Tsh. 700/= per square meter plus disturbance allowance of Tsh. 100,352/= which yielded the total of Tsh. 1,354,752/=. DW2 told the Court that before paying compensation land owners were involved accordingly in meetings of experts attended also by local leadership.

During cross examination DW2 further testified, that in order to know a company that owns land, it must submit its land ownership documents. He said it is not true that valuation of all company properties has to use income method. He said, the income approach is used in income generation properties such as hotels, petrol stations and similar assets. He conceded that companies have audited financial statements but added that they should also be paying appropriate tax for the income shown in their financial statements. He said Gerald Mrema and 5M Company Ltd are two different persons, and that he was not given evidence to show that among the people affected by the project there were companies.

DW3 Irene Gideon Makondo testified in this Court that she is the Ward Executive Officer (WEO) for Ihumwa Ward where the project was being carried out. The ward is comprised of three streets of Ihumwa, Chilwana and Chang'ombe. She said in 2018 she supervised payment of compensation to the people whose land was acquired by DUWASA for the water project. She narrated all the steps taken to identify the land and its occupants and the consultative meetings with the land owner that ensued. She said the total number of land owners was 111, covering a land size of 111,320 square meters and that all the land owners were paid their compensations. She said that the land had natural trees, not planted. DW3 further said that she had no memory of a company that was paid compensation. She said since the area is known and owners are known the chairman and executive officers of the Chilwana street were used to contact and identify the owners. She said she does not know 5M Company Ltd as she came to adduce evidence in a case involving an individual against DUWASA.

DW3 further told the Court that she was the supervisor of the land acquired and that she participated in approving the compensations. She said she has no memory of issuance of the notice for land acquisition, nor can she remember the number of meetings held and the amount paid to

all the people. She said there was no company in that area, as all the land occupants were individuals.

DW4 Pirmin Privatus Mzenga, a Senior Land Officer with Dodoma City Council told the Court that he is an Authorized Land Officer who supervises land services, which include land ownership, collection of revenue and dispute resolution.

He told the Court about steps of acquiring land for both land owned by government and land not owned by government. He said, Ihumwa is one of the areas which were acquired by government but no compensation was already paid. He mentioned other such areas as Kikombo, Mtumba, Zuzu, Nala, Mkonze and Bihawana.

DW4 told the Court that there has been no complaint officially received with regard to payment of compensation for the DUWASA project at Chilwana street in Ihumwa area. He said, that in the case before the Court, the complainant's name is on page 6 of the payment schedule S/N 4. He said the name of the land owner is of an individual and not a company.

DW4 told the Court that when the government wants to acquire land it issues a notice in the government gazette. He said he doesn't know if it was there. He said the affected persons are normally notified by letters sent to the mtaa chairman calling them to attend meetings for identification of their properties. He conceded that acquisition if done without notice and due compensation is illegal.

DW4 further testified that compensation is supposed to be paid for the land acquired by DUWASA. This was the end of defence case.

Upon closure of the defence case Mr. Bwile, the learned advocate for the plaintiff notified the Court that he would like to file submission before the judgment. Mr. Ruhinda, the learned Senior State Attorney also prayed to file final submission on the case. The prayers were granted and date were set for filing. However, it is only the defence counsel who filed his submission. There was no submission filed by the plaintiff's advocate as prayed and granted.

In the final written submissions, the defence submitted, among other things, that the onus of proof lies on the plaintiff as per section 110 (1), (2) and section 112 of the **Evidence Act [Cap 6 R.E 2019]**. The

defence submitted that all four Plaintiff's witnesses did not prove how the plaintiff came into possession of the suit land. They cited the case of **Melita Naikimanjil & Loishilaari Nikimanjil V. Sailevo Loibanguti (1988) T.L.R.121** where the Court held that "the appellants being plaintiff's, failed to discharge their burden of proving the case on a balance of probabilities". They also cited the case of **Abdul-Karim Haji V. Raymond Nchimbi Alois and Joseph Sita Joseph (2006) TLR 420**, for the elementary principle that he who alleges is the one responsible to prove his allegations.

The defence further submitted that even if the property in question would have been under the ownership of PW1 who introduced himself as the Director of the plaintiff, still the property of the director is in no way the property of the company. They cited the case of **Salomon V. Salomon & Co. LTD (1897) AC.22** at page 49 where it was stated;

"The company is at law a different person altogether from the subscribers"

It was a contention of the defence that any suit instituted by a body corporate, must be instituted independent of its members or shareholders through presentation of a resolution of the body cooperate to file a suit

and or authorize a member or other person to represent it. The defence further submitted that such an authorization is missing. For there being no such authorization, it makes it uncertain whether the suit property owned by the director of the plaintiff who is PW1, is also the plaintiff's property.

For the above stated reason, the defence side is of the view that the evidence adduced by the plaintiff as to ownership of the disputed land has not met the onus of proof as held by the Court of Appeal in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) and Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT) (unreported)** where it was held that the party with legal burden also bears the evidential burden on the balance of probabilities.

On the flip side, the defence submitted that DW4 has testified that the suit was initially owned by the Capital Development Authority (CDA), and upon its demise, the whole land was handed over to Dodoma Municipal Council. That, it was CDA who was obliged to compensate indigenous people of the area who continued using the land such as PW1 Gerald Mrema. It is said that under that spirit when DUWASA needed the land it approached Dodoma City Council who helped DUWASA to follow

the due process which ended up with valuation of indigenous properties and paid the required compensation. It is for this reason, the defence argues, the Certificate of Occupancy is being prepared for DUWASA. That was defence submission on the first issue to be determined.

Before embarking on the remaining part of submission of the defence side, I find it imperative to dwell on the first issue, as framed for determination by this Court. The first issue is whether the Plaintiff is the owner of the suit land. Obviously, deliberations of the remaining issues will be inconsequential if this first issue is not answered in the affirmative.

There is no dispute that the plaintiff in this case is Messers 5M General Supplies Company Limited who claims to be the owner of the suit land. It is true that the plaintiff has called four (4) witnesses to adduce evidence that it's the owner of the suit land, the suit land was trespassed into by the 1st defendant who curtailed the plaintiff's business plan and cut down trees planted by the plaintiff. For all these alleged wrongs, the plaintiff seeks Court's declaration that the plaintiff is the lawful owner of the disputed land, and in **Alternative** be paid Tanzanian Shillings Two Hundred Million only (Tshs. 200,000,000/=) as compensation, payment of Tanzania Shillings One Million Two Hundred Thousand only (Tsh.

1,200,000/=) as compensation for the trees cut down plus general damages to the tune of One Hundred Million Shillings (Tsh. 100,000,000/=). As correctly submitted by the defence side, the plaintiff has a duty to prove all these by balance of probabilities.

In a nutshell, the testimony of PW1 Gerald Pascal Mrema with regard to plaintiff's ownership of the suit land is recorded as follows:

*"I acquired Ihumwa farms from local people at Chilonwa (sic) street. I acquired them in 2014. I used middlemen and local people. We agreed on the price and I paid. I saw the Chairman of the local government and we did business. I have documents for purchase of the land and I pray the court to admit the same **as evidence of my ownership of the said land.** The documents have the photos of those **who sold the land to me.....**" [Emphasis added].*

What happened to the admission of those land purchase agreement is common knowledge to the parties and the Court alike. Simply, the documents were not admitted in evidence for contravening the law.

The important aspect of PW1's testimony which the Court would like to highlight is that the land, according to PW1, was bought by himself.

He went further to try to tender the objected documents, to show **his ownership** of the suit land. From PW1's testimony, the suit land was not bought by the plaintiff but by PW1 who is the Managing Director of the plaintiff company. This is the most reliable testimony the Court was given in absence of documentary evidence.

Yet on the testimony of PW1, when he was cross examined by Ms. Jenipher Kaaya, learned Senior State Attorney, he told this Court. He told the Court that 5M General Supplies Co. Ltd is a company incorporated in 2001. He said he has not been notified to bring incorporation documents to the Court. He told the Court that there are four directors, PW1 himself inclusive, and that if incorporation documents will not be submitted to the Court let it be believed that the Company does not exist! None of the plaintiff's witnesses who adduced evidence after PW1 bothered to tender in Court the plaintiff's incorporation certificate, its memorandum and articles of association, its board resolution authorizing the filing of the case and the appointment of the plaintiff's advocate, among other things, which were yawning for such proof.

The testimony of PW1, among other things, reveals that existence of the plaintiff as a body corporate has not been proved. Neither was its

authorization to file the case. It is apparent that the plaintiff knocked the doors of this Court with an assumption that the Court has taken judicial notice of its incorporation and its existence as a body corporate. That is a wrong assumption for reasons associated with *locus standi* of body corporate itself and those who purport to represent it.

In the case of **Lujuna Shubi Balonzi Senior V. Registered Trustees of Chama cha Mapinduzi (1996) T.L.R 203 (HC)** it was observed as follows;

"In this Country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the Court has power to determine the issue but also that he is entitled to bring the matter before the court".

In the case under consideration, the Plaintiff is shown to be drawn by Charles Alex, Esq. of Sasa Advocate Dar es Salaam who has not signed to endorse it. Verification of the Plaintiff was done by Gerald Pascal Mrema, being the Managing Director and the Principal Officer of the plaintiff. The Plaintiff has the words "FILLED BY" but it is not shown who filed the Plaintiff

in Court. That vital information is missing. During hearing, the plaintiff was represented by Mr. Emmanuel Bwile and Ms. Christina Magazine. I am of strong view that since the plaintiff is a body corporate, it was imperative to show if the filing of this case in Court and appointment of the advocate who purported to draw the Plaintiff and the two learned advocates who represented the plaintiff in Court, were doing so while duly instructed by the plaintiff not Mr. Gerald Pascal Mrema. It was equally imperative for the plaintiff company to sanction the filing of the case by a board resolution to that effect. Apparently, the above basics were not observed.

In the case of **Omondi V. National Bank of Kenya Ltd and Others (2001) 1 EA 177** it was held that:

"It is a basic principle of company law that the company has a distinct personality from its shareholders and directors even where the directors happen to be the sole shareholders (see Salomon v. A. Salomon and Co. Ltd [1897] AC 22). The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company's property apart from shares they own. From that basic consequence of incorporation flows another

principle: only the company has capacity to take action to enforce its legal rights".

In the case of **Bugerere Coffee Growers Ltd V. Sebaduka And Another (1970) 1 EA 147** it was held as follows:

"When companies authorize the commencement of legal proceedings a resolution or resolutions have to be passed either at a Company or Board of Director's Meeting and recorded in the minutes, no such resolution had been passed authorizing these proceedings"

The above decision has been referred with approval in many of decisions of this Court. (See for example the case of **Tanzania Glielam Industries & Another V. Bjorn Schau & 4 others, Comm. Case No. 103 of 2003** High Court Commercial Division. (unreported)).

Suffice to state here that while the plaintiff purports to be a body corporate duly incorporated under the law, by virtue of its name and what is pleaded in the Plaint, before filing the Plaint to institute the action against the defendants, it was mandatorily required to have passed a resolution sanctioning Court proceeding. This was not done in this case. The consequences are fatal. The case should collapse for lack of *locus*

standi on part of the plaintiff. Besides, the testimony of PW1 further shows that no evidence was adduced by himself or the other three (3) plaintiff witness to substantially prove the plaintiff's ownership of the suit land.

PW3 Ainea Josiah Yugunyage told the Court that in 2014 he sold one and half ($1\frac{1}{2}$) acres of land to a company he had forgotten its name. He later recollected the name as "A5" whose leader was one Mrema. PW3 said the sale of the said land was witnessed by Mohamed Zungu and Emmanuel Manyika. He told the Court that he sold the land at Tsh. 9,800,000/= (Tanzania Shillings Nine Million Eight Hundred Thousand only). This is the only piece of evidence linking the said one and a half ($1\frac{1}{2}$) acres with a company that can be assumed to be the plaintiff. The question is whether this evidence suffices to prove ownership of land by the plaintiff?

The testimony of PW3 is obviously not sufficient to prove plaintiff's ownership of the suit land. It raises a question as to whether the company named as "A5" is the same as 5M General Supplies Co. Ltd. There is also a question whether the price was Tsh. 9,800,000/= which he mentioned, or Tsh. 8,000,000/= as PW4, the Director of Finance for plaintiff told this

Court? Above all, there is a question as to which of the two testimonies between the evidence of PW1 that he (personally) bought the said suit land and PW3 that he sold his one and a half (1½) acres to a company called 5A should be trusted by the Court? With such questions lingering, this Court cannot hold that the ownership of the suit land by the plaintiff has been proved. Obviously, it has not and I firmly hold so.

In the final written submission, the defence counsel have belabored to address the remaining issues that were framed by the Court for determination. The second issue was whether, upon confirmation of the plaintiff's suit land ownership, the acquisition of the suit land by the 1st defendant was lawful. The third issue was whether the intended compensation was adequate and the fourth issue was on the reliefs the parties are entitled to. I have read the defence submission and I agree entirely with their conclusion that the plaintiff has failed to prove it on balance of probabilities. The second, third and fourth issues are as dependent on proof of the first issue as an unborn baby is dependent on the life of its mother. The death of its mother naturally leads to the death of the child in the womb. Similarly, with the plaintiff's failure to prove not only its ownership of the suit land but also its existence as a body corporate and its *locus standi*, deliberation on the rest of the framed

issues becomes irrelevant and of no further consequences. For this reason, the Court conserves its energy and time resource for other pending tasks before it. The remaining issue shall therefore not be deliberated upon.

In the upshot, the plaintiff's case fails in its entirety. It is therefore dismissed with costs.

Ordered accordingly.

Dated at Dodoma this 28th day of March, 2022.




ABDI S. KAGOMBA
JUDGE