

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)  
AT KIGOMA**

**LAND CASE NO. 28 OF 2021**

**SHABANI S/O ALLY MKUYU.....1<sup>st</sup> PLAINTIFF**  
**HAWA D/O KASHINJI.....2<sup>nd</sup> PLAINTIFF**  
**TATU D/O IBRAHIM.....3<sup>rd</sup> PLAINTIFF**

**VERSUS**

**THE ISLAMIC INSTITUTION OF MWANGA  
(UNDER BARAZA KUU).....1<sup>st</sup> DEFENDANT**  
**WADHAMINI WA BARAZA KUU.....2<sup>nd</sup> DEFENDANT**  
**KIGOMA-UJIJI MUNICIPAL COUNCIL.....3<sup>rd</sup> DEFENDANT**  
**MBEZI AUCTION MART & CO. LTD.....4<sup>th</sup> DEFENDANT**  
**HON. ATTORNEY GENERAL.....5<sup>th</sup> DEFENDANT**

**Date of Last Order:17/11/2022**

**Date of Judgement: 15/12/2022**

**JUDGEMENT**

**MAGOIGA, J.**

The plaintiffs, **SHABANI S/O ALLY MKUYU, HAWA D/O KASHINDI** and **TATU D/O IBRAHIM** by way of plaint instituted the instant suit against the above-named defendants jointly and severally, praying for judgment and decree in the following orders, namely: -

- i. That, the plaintiffs be declared as lawful owners of the suit land as it is described in paragraph 8(a), (b) and (c) of the plaint;



- ii. That, the 1<sup>st</sup> or the 2<sup>nd</sup> defendants' allocation of the suit land by 3<sup>rd</sup> defendant as described herein above or any document in respect of the suit land be nullified;
- iii. The defendants be ordered to pay a compensation as per paragraph 8 a), (b) and (c) herein above. **In alternatively** to the paragraph 2 herein above, the 1<sup>st</sup> and 2<sup>nd</sup> defendants be ordered to re-build all demolished plaintiffs' residential houses or to pay compensation accordingly;
- iv. That, the defendants be ordered to pay general damages for inconveniences occasioned to each plaintiff for trespasses as it will be assessed by this honorable court;
- v. That the defendants be ordered to pay interest at court rate of 7% over decretal sum from the date of judgement till the date of full payment;
- vi. The defendants be ordered to pay costs of the suit;
- vii. Any other reliefs this Honourable Court deemed just and fit to grant.

Upon being served with the plaint, each defendant filed written statement of defence disputing the plaintiffs' claims and replied that the land in dispute were lawfully surveyed in 1994 and later on allocated to

the owners since 1998, the 2<sup>nd</sup> defendant inclusive and consequently urged this court to dismiss this suit with costs.

Briefly the facts of this suit as gathered from the pleadings are that the 1<sup>st</sup> plaintiff's land is measured 100 metres length and 70 metres width and is estimated to be valued at Tshs.80,000,000/-. The 2<sup>nd</sup> plaintiff's land is measured at 62 metres length and 42 metres width and is estimated to be valued at Tshs.30,000,000/=. And, the 3<sup>rd</sup> plaintiff's land is measured 4 acres valued at Tshs.130,000,000/=. The suit lands are located at Masanga Rubabi street within Buhanda Ward in Kigoma Ujiji Municipality in Kigoma Region.

Further facts were that, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are customarily owners and have been in occupation and use of the disputed lands since 1985 and 1983 respectively. The 3<sup>rd</sup> defendant inherited the suit land from his parents in 2002 but who customarily owned the same. All plaintiffs claimed to have developed their respective suit lands by constructing residential houses thereon.

Facts went on that in 2018, the 1<sup>st</sup> and 4<sup>th</sup> defendants without any colour of right demolished the plaintiffs' houses and evicted the plaintiffs from the suit land in execution of decree in Land Appeal No.12 of 2015 before District Land and Housing Tribunal on claims of being tress

passers to the suit land owned by the 3<sup>rd</sup> defendant. Against the above background, the plaintiffs issued a 90 days statutory notice and upon its expiry without any measures taken, instituted the instant suit claiming reliefs as contained in the plaint, hence, this judgement.

At all material time of this case, the plaintiffs were enjoying the legal services of Mr. Sylvester Damas Sogomba, learned advocate from Kigoma based legal clinic of **DAMAS AND ASSOCIATES ADVOCATES**. The 1<sup>st</sup> & 4<sup>th</sup> defendants were equally enjoying the legal services of Mr. Method R.G. Kabuguzi learned advocate from Kigoma based legal clinic of **KIGOMA ADVOCATES LAW CHAMBERS**. The 2<sup>nd</sup> defendant also enjoyed the legal service of Mr. Ignatus R. Kagashe, learned advocate from legal clinic of **NATIONAL ATTORNEYS** and the 3<sup>rd</sup> & 5<sup>th</sup> defendants were equally enjoying the legal services of by Mr. Anold Simeo learned State Attorney from the office of the **SOLICITOR GENERAL**, Kigoma branch.

Before hearing started, the following issues were framed, recorded and agreed between parties for determination of this suit, namely: -

1. *Whether the plaintiffs are lawful owners of the suit land?*
2. *Whether the procedure for surveying and allocating the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants was lawful?*



3. *Whether the act of demolition of the plaintiffs houses by the defendants was lawful?*

4. *Whether the plaintiffs deserve any compensation?*

5. *What reliefs are the parties entitled to?*

To prove their respective claims, the plaintiffs adduced evidence through a total number of six witnesses, namely:- **SHABAN ALLY MKUYU (PW1), MWATANO BILAHANDI (PW2), HAWA KASHINDI (PW3), HARUNA SADIKI (PW4), TATU IBRAHIM (PW5) and BONDO MAULID BONDO (PW6).**

The first witness was **SHABAN ALLY MKUYU** (to be referred in these proceedings as '**PW1**'). Under affirmation, PW1 told the court that, he sued the defendants because the 4<sup>th</sup> defendant demolished his house without paying compensation. According to PW1, his suit land is measured 100 metres length and 70 metres width which he inherited from her mother in 1979 and mentioned its borders. PW1 told the court that at all material time he has been using the land for farming and constructed a house thereon worth Tshs.80,000,000/- because of its size.

PW1 insisted that he knows no WADHAMINI WA BARAZA KUU nor remember to have met them. To him, he remembers that his house was

demolished. PW1 pointed out that, the Islamic Institutions of Mwanga is a different entity from WADHAMINI WA BARAZA KUU.

PW1 went on telling the court that his land is different from the one involved in Land Case No. 12 of 2015 between the Islamic Institution of Mwanga and Wadhamini wa Baraza Kuu on one hand and Moshi Sadiki Ndimligo and Said Athuman.

It was further testimony of PW1 that he doesn't know if the same was allocated to them in 1978. On 8/10/2013 the 'Wadhamini wa Baraza Kuu' sent a letter of valuation to the Municipal Executive Director (MED) requesting for valuation of trees which were in the land with purposes of paying the owners compensation. However, to date no valuation has been done.

From 1978 to date, PW1 insisted that, he is the occupier and user of the land in issue but he came to know that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been allocated with the land on 7/6/2018 when his three houses were demolished. There were also four mango trees and other natural trees including seven (7) trees known as "Mitichuma".

PW1 told the court that, at all material time he had never seen any person who came to survey the land in dispute. According to PW1, there was no any other activities done at the area other than demolition of his

houses, which he insisted, was unlawful because his land was not in land case before Tribunal he has mentioned above.

PW1 strongly testified that he owns the suit land customarily thus he deserves to be compensated for the exhaustive developments demolished which are three houses and destruction of trees. He prayed the court to grant his prayers as contained in the plaint with costs.

Under cross examination by Mr. Kabuguzi, PW1 said the basis of suing the 1<sup>st</sup> defendant is because he was supervisor of a case and that he sued the 4<sup>th</sup> defendant because he is the one he saw doing demolishing the houses. PW1 admitted that, the 4<sup>th</sup> defendant came with the court's order for demolition.

When pressed on with more questions, PW1 admitted that his land is included in Plot No. 718 Block 'PB' Mwasenga and that was told of this fact by his advocate. It was the response of PW1 that, even if the houses were in the same plot, it was wrong for the 4<sup>th</sup> Defendant to demolish his house because he was not a part to the case. On the value of materials used to construct the houses, PW1 admitted not knowing the value of materials used to build his houses but there were of burnt bricks and iron sheets, estimated to be Tshs 80 million. According to PW1, the demolition was done on 7/6/2018 behoving him to file a case

before District Land and Housing Tribunal on 30/7/2019, but which case was dismissed because the value of the land was beyond the pecuniary jurisdiction of the Tribunal and instituted this suit.

Under cross examination by Mr. Kagashe, PW1 told the court that he inherited his land from his grandma in 1979, but he started to use it in 1985 because before that he was an infant. PW1 went on telling the court that he built his houses in 2005, which is about 20 years. During the 20 years there were mango trees planted by his grandpa and that other plaintiffs are his neighbours especially 2<sup>nd</sup> plaintiff.

Under cross examination by Mr. Simeo, PW1 replied similar answers as he replied to Mr. Kagashe except that he said that he sued the 2<sup>nd</sup> defendants because they are the ones who claim to own the suit land.

Under re-examination by Mr. Sogomba, PW1 replied that he acquired the land by inheriting it from his grandma since 1979 and started developing it in 1985. PW1 insisted he was not involved in the case by Moshi Said Ndimligo and his colleague and that the demolished houses were three and some trees estimated to Tshs.80 million.

The next witness was **MWATANO BILAHANDI** (to be referred in these proceedings as '**PW2**'). Under affirmation PW2 told the court that, she lives and was born at Buhanda- Businde village in Kigoma District. PW2

went on telling the court that he knows PW1, who is her elder sister's son who is dead now. PW2 told the court that, PW1 inherited the suit land from his parents and has been occupying the same under customary occupancy. PW2 told the court that, she can't tell the size of the area of land in issue but it was big. PW2 insisted there were houses as well constructed by PW1 but which were demolished now.

Under cross examination by Mr. Kabuguzi, PW2 replied that, the grandma left the shamba after her death, hence, PW1 took over the shamba. PW2 admitted not knowing if the land is under the Municipal council.

PW2 went on stating that there were three houses, two of which were thatched. The rest of her testimony of PW2 is same as that of PW1 and need not repeat them here.

Under cross examined by Mr. Kagashe PW2 replied that, there was no any elder when the grandpa gave the land to PW1 as they were only two of them.

Further under cross examined by Mr.Simeo, PW1 told the court that, she was present when the land was given to PW1 but she can't recall the year. There were three houses valued at Tshs 80 million. The value is based on construction material costs.



Under re-examination by Mr. Sogomba, PW2 told the court that, before the houses were demolished, the land has been used and occupied by PW1.

The 3<sup>rd</sup> witness was **HAWA KASHINDI** (who is the 2<sup>nd</sup> plaintiff and to be referred in these proceedings as '**PW3**'.) PW3 under affirmation told the court that, she lives at Buhanda village for long time. She was born at the same village. PW3 told the court that, she had sued the defendants because they trespassed to her land and demolished her house which was built at her shamba (heka) which can be divided into four plots. And that, at the suit land there was a house, as well, fence foundation and a business hut.

PW3 went on testifying that it was in 2018 when her structures were demolished, and her neighbors were as follows; Sadiki Ibrahim downwards (matokajua) Haruna Kagoshi to the south. A road known as Masanga Lubabi and another road to the other side and is valued at Tshs. 30 million.

According to PW3, she was allocated the land by Ward Executive Officer (WEO) and she had a letter of allocation given to her by the WEO. She prayed to tender in court the said letter headed "KITAMBULISHO" dated



20/2/83 by Katibu Kata which was admitted in evidence and marked as **"Exhibit P1"**.

PW3 testified further that Exhibit P1 was telling her that she was a resident of Buhanda-Businde which area is in Buhanda village.

PW3 told the court that after that letter, she cultivated and remained into the land until the dispute arose. According to PW3, the area is one acre. PW3 prayed the court to decide in her favour as prayed in the plaint.

Under cross examination by Mr. Kabuguzi, PW3 told the court that, **exhibit P1** is not the evidence of allocation of the land to her. PW3 insisted that, she claims Tshs. 30 million due to demolition of her house and for being prevented from using the land.

Under cross examined by Mr. Kagashe, PW3 told the court that Exhibit P1 concerned a different area other than where she lived with her husband Mzee Gwavi Ibrahim Gwavi. PW3 further told the court that this case concerns the land on Exhibit P1 but not where she is living. PW3 further told the court that she gave the suit land to her son Ibrahim Sadiki who lives to the demolished house.



Under cross examination by Mr. Simeo, PW3 had the same answers as to the other counsels hence no need to repeat the same.

Under re-examination by Mr. Sogomba, PW3 told the court that since issuance of the letter Exhibit P1 she has been cultivating crops at the same land to date.

The next witness was **HARUNA SADIKI** (to be referred in these proceedings will be known as ('PW4')). Under affirmation, PW4 told the court that he lives at Mwasenga, Masanga Lubabi street, Mwasenga Ward and that PW3 is his biological mother. PW4 went on telling the court that he is giving evidence relating to land which was unlawful invaded by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and demolished houses at the suit land in 2018.

According to PW4, the 4<sup>th</sup> defendant is the Court Brokers who led the exercise, the 2<sup>nd</sup> Defendant is unknown to him and he doesn't know why they were also sued but to his recollection is that the legal officer of the 3<sup>rd</sup> defendant recognized the 2<sup>nd</sup> defendant as the lawful owner of the suit land.

Further, PW4 testified that he knows the institution involved in the dispute is the "Wadhamini wa Baraza Kuu". The said institution is not registered because they failed to tender any registration certificate in

2018. PW4 went on telling the court that, he can't tell if they were lawfully allocated with the land because there was no meeting to tell the villagers about the allocation but what he is aware of is that the Director of the Municipal ought to have informed the occupiers of the land so that they can be paid compensation.

On surveying and subsequent allocation of the land, PW4 insisted was not lawful because the previous occupiers were not compensated. The demolition of the house of PW3 was not lawful because there was no any justification for her house to be demolished.

In short, PW4 supported the evidence of PW3 (His mother) on occupation of the shamba in dispute and that they discovered the dispute after demolition of the houses which matter was reported to MED, DC and ultimately filed this case. As to the value of the house, PW4 told the court that Tshs.30 million claimed was just an estimated value by PW3. PW4 insisted that the the 'Wadhamini wa Baraza Kuu' has done nothing at the area.

Under cross examination by Mr. Kabuguzi, PW4 told the court that, he is not the owner of the suit plot, but PW3 who is his mother was given to her by WEO and he is testifying that the suit plot belongs to his mother.



Under cross examination by Mr. Kagashe, PW4 testified that he had nothing as exhibit to support his evidence. The demolished house was constructed in 2000.

Under cross examination by Mr. Simeo, PW4 told the court that, he was testifying about lack of registration of the 'Wadhamini wa Baraza Kuu' because the MEC inquired to the Administrator General without any answer. According to PW4, lack of answer from the Administrator General, to him, means the 'Wadhamini wa Baraza Kuu' was not registered.

Pressed with questions, PW4 admitted that MEC never cancelled the certificate of Right of occupancy by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and that he was not present when the suit land was surveyed. PW4 admitted that, before the MEC the records show that the suit land is owned by the 2<sup>nd</sup> defendant.

According to PW4, exhibit P1 is proving allocation of the land in dispute to the 2<sup>nd</sup> plaintiff (PW3). PW4 told the court that they reported at local government then filed a case at the DLHT where the value of the suit plot made them to file this case here. PW4 insisted that the demolished house was built in 2000 but he does not know when the 'Wadhamini wa



Baraza Kuu' were allocated with the land. Much pressed with questions he eventually admitted that exhibit P1 is not a certificate but a letter.

Under re-examination by Mr. Sogomba, PW4 told the court that, since 1983 when the land in dispute was possessed by PW3 to date, then, it was the 1<sup>st</sup> and 2<sup>nd</sup> defendants who trespassed into her land.

The fifth witness **TATU IBRAHIM** (to be referred in these proceedings as '**PW5**'). Under affirmation PW5 testified that, she sued the defendants for trespassing into her land and demolished her three houses, a wall, and foundation of a house. PW5 told the court that the area of land they trespassed by invading it, is at Masanga Lubabi with size of four acres.

PW5 went on testifying that there were seven mango trees, eleven palm oil plants which she is still harvesting, one pawpaw plant and a lemon tree and indentified her neighbours.

PW5 went on testifying that, she was not involved in the case filed by Moshi and his fellow. PW5 prayed that this Court be pleased to declare her the owner of the suit land or be paid compensation of Tshs 80,000,000/= due the size of the land, three houses, trees and palm oil plants. Finally, PW5 prayed that the defendants should pay the costs of the case.



Under cross examination by Mr. Kabuguzi, PW5 told the court the suit land has not been surveyed because if done was to be aware because she lives in the same land.

Under cross examination by Mr.Kagashe, PW5 told the court that she has no documentation but was quick to point out that, that by itself does not negate the fact that the suit land belonged to their parents and local government acknowledged through exhibit P1 and that the houses were erected without building permit.

Under cross examination by Mr. Simeo, PW5 told the court that she was born at the suit land and wanted to be compensated the amount claimed in the plaint.

Under re-examination by Mr.Sogomba, PW5 told the court that she inherited the land from her parents.

The last witness for plaintiffs was **MR. BONDO MAULID BONDO** (to be referred in these proceedings as '**PW6**').PW6 under affirmation told the court that he lives at Buhanda Businde area in Kigoma-Ujiji Municipality. PW6 went on telling the court that he is a peasant and knows Tatu Ibrahim (the 3<sup>rd</sup> plaintiff) as a resident of Buhanda since she was born. He was a BAKWATA secretary of Businde Ward since 1988 to 2015. PW6 testified that, the 3<sup>rd</sup> plaintiff in 2000 went to BAKWATA for

inheritance issues of her parents who died in 1999. PW6 told the court that he summoned the Buhanda Businde Ward and distributed all properties left by her parents to the heirs including a plot of land at Lubabi where her father lived before reallocation during operating Vijiji in 1974. They were six of them; Tatu was given a Shamba at Lubabi which he was testifying to.

PW6 went on testifying that, the size of the land was relatively big, with mango trees and palm oil plants and that PW6 himself was involved together with all neighboring persons in order to avoid future boundary disputes.

PW6 told the court that in 2013, the 3<sup>rd</sup> plaintiff complained to him that some beacons have been fixed in her land. PW6 took up the matter and was informed that there are investors, but they will pay compensation before they start developing the land. PW6 told the court that he can recognize minutes of BAKWATA by his signature and the BAKWATA rubber stamp impression in 2000 though he doesn't recall the date. Other documents in the file included share by Tatu Ibrahim, list of her parent's properties and decision of BAKWATA Committee. PW6 tendered in evidence the documents headed "Baraza Kuu la Waislam



Tanzania Madai ya Mirathi, Ofisi ya Bakwata Kata ya Buhanda Businde  
Hukumu dated 18/5/2000 and its annexures as" **Exhibit P2.**

Under cross examined by Mr. Kabuguzi, PW6 told the court that ne was born in 1958 at Buhanda Village and that he knew the late Ibrahim, the father of Tatu in 1966. PW6 told the court that there was no house at the land inherited by 3<sup>rd</sup> plaintiff because was 'mahame', prior the area where Tatu's parents lived before relocation to village.

PW6 testified that when he took up the matter as BAKWATA leader and got informed that the land has been surveyed and the owners would be compensated he never pursued it further.

Under cross examination by Mr. Kagashe, PW6 replied that, they were close with Tatu Ibrahim's father at Buhanda before relocation to villages, shifted to Businde. PW6 insisted that here was no any house when Tatu Ibrahim inherited the land but it was the land on which her father lived.

Under cross examined by Mr.Simeo on the issue of inheritance, PW6 told the court that, as a secretary to BAKWATA he was responsible for supervising Islamic religious matters and he distributed the land according to Islamic rules, where the share is two by one. According to PW6, they distributed the land in dispute to Tatu Ibrahim which had mango trees and palm oil plants, there was no house at the suit land

when she inherited in 2000 but her father had a house prior to villagisation scheme in 1974 at the suit land.

Under re-examination by Mr. Sogomba, PW6 told the court that there has been no any complaint after distribution of properties of late Ibrahim. PW6 insisted that the 3<sup>rd</sup> plaintiff is claiming her land which has been invaded by unknown persons. After shifting to villages, the area remained under Tatu Ibrahim use.

This marked the end of plaintiffs' case and same was marked closed.

The defence also led evidence through five (5) witnesses namely:-  
**MAJALIWA ALLY NDADA (DW1), JOB JOHN GWASA (DW2), HANZURUN HILALI MAHUBA(DW3), KIHUMBI MUSA KULAKULE (DW4) AND STEVEN AMBROSE KUNDI (DW5)**

The first witness for defence was **MR. MAJALIWA ALL NDADA** (to be referred in these proceedings as '**DW1**'). DW1 under affirmation told the court that he is a secretary of the Islamic Institution of Mwanga Kigoma (under Baraza Kuu) (IIM), the 1<sup>st</sup> Defendant, since 2015. DW1 went on telling the court that the Islamic Institution of Mwanga Kigoma (IIM) is a society established for development initiatives of Muslims youths. According to DW1, the society is a community-based organization (CBO) not registered under any law, but it is under umbrella of 'Wadhamini wa

Baraza Kuu' (WBK) the 2<sup>nd</sup> Defendant. Basically, DW1 told the court that, the 1<sup>st</sup> defendant is a branch of the 'Wadhamini wa Baraza Kuu' dealing with youths.

DW1 is aware of the dispute in this case on ownership of Plot No. 718 "PB" Mwasenga area in Kigoma Municipal, which, according to him, the owner of the plot is the 2<sup>nd</sup> Defendant because in 1997 the Regional Land Division advertised for allocation of land plots whereby the 2<sup>nd</sup> defendant mobilized themselves and reported to the 2<sup>nd</sup> defendant who allowed them to form a group which they formed and called it Islamic Institution of Mwanga Kigoma. DW1 went on telling the court that they requested by the Land Division which inquired if they were registered, and eventually advised them to liase with a registered society. Upon that advise, DW1, told the court that they approached the 2<sup>nd</sup> defendant who is "Wadhamini wa Baraza Kuu" which its full name is **"Wadhamini wa Baraza Kuu na Jumuiya ya Taasisi za Kiislam Tanzania**. Under that arrangement, DW1 told the court that the 1<sup>st</sup> defendant was affiliated to the 2<sup>nd</sup> defendant who requested and was allocated a land in dispute. DW1 went on describing the size of the land and that eventually were issued with certificate of title in the name of the 2<sup>nd</sup> defendant.



According to DW1, the area was virgin with natural trees, shrubs and grass comprising of about five (5) hundred meters with about 100 meters.

DW1 further testimony was that, in 2012 they got a summons from Buhanda – Mwasenga Ward Tribunal which was addressed to 'Wadhamini wa Baraza Kuu', but the beneficiaries of the suit was Islamic Institution of Mwanga- Kigoma who responded to the summons and that at the ward Tribunal they informed the Tribunal about their status. The plaintiffs was **Moshi Sadiki Ndimligo** and **Said Athumani** and their complaint was against 'Wadhamini wa Baraza Kuu' that they have invaded in their ancestral land. The Tribunal gave dissenting decision each one favoring one of the two parties. DW1 told the court that aggrieved by the Ward tribunal decision, they appealed to the District Land and Housing Tribunal for Kigoma against the decision which was registered as Land Appeal No 12 of 2015 and was decided in their favour and quashed the Ward Tribunal decision and eventually applied for execution.

DW1 went on telling the court that the order of the Tribunal was clear and it said that all persons in plot No 718 to vacate including Moshi Sadiki Ndimligo and Said Athumani while in the course of execution they



got a summons from Tabora High Court registry for an application for extension of time to appeal. In the application at Tabora, Said Athumani was accompanied by Tatu Ibrahim and the Mwasenga chairman but their application was dismissed for want of merits.

Further testimony of DW1 was that, they got a summons for compensation on the suit plot about Tshs 11 million while they were still looking for funds, people started to invade in the suit plot and uprooted the beacons. DW1 mentioned the people who invaded the suit land as Tatu Ibrahim (3<sup>rd</sup> plaintiff) Haruni Sadiki, Hawa Kashindi (2<sup>nd</sup> plaintiff) and Shaban Ally Mkuyu (1<sup>st</sup> plaintiff) who started to uproot the beacons and sold parts of the plot to other persons. Not only that but they also constructed two complete houses and the rest were walls under construction (pagale)

DW1 went on telling the court that they asked the 2<sup>nd</sup> defendant 'Wadhamini wa Baraza Kuu' to continue with execution whereby Mbezi Auction Mart evicted all tress passers.

According to DW1, the plaintiffs are not lawful owners of the suit land, because they didn't protest against the execution until were evicted. DW1 insisted that the suit plot is a property of the 2<sup>nd</sup> defendant because no plaintiffs had any house in the suit plot and their claims of

demolition of houses, if any, was a hoax. In the circumstances, DW1 invited and urged this court to dismiss this suit with costs.

Under cross examination by Mr. Sogomba, DW1 admitted that, 'Wadhamini wa Baraza Kuu' lost in the Ward Tribunal but the 'Islamic Institution of Mwanga' which is not registered entity presented the appeal under the name of "Wadhamini wa Baraza Kuu". Further admission was that by 1998 when the land was allocated to them there were some people in the disputed land. Asked as to the exhibit P1 said that it was just an introductory letter and not an allocation letter. DW1 pointed out that the order of the DLHT was meant to evict all persons in the suit land. DW1 further admitted that the plaintiffs were not parties to the case that was finally executed. Pressed with questions, DW1 told the court that, he doesn't know when Mwasenga area was surveyed but they didn't demolish the house of Tatu Ibrahim.

As regard to payment of compensation of Tshs 11 million, DW1 said he doesn't know whether it was paid or not.

Under cross examination by Mr. Kagashe, DW1 told the court that, the letter of offer was issued in 1998 and that by the year 2000, there were no houses at the suit plot, so was in 1998. DW1 admitted that the three



plaintiffs were not parties in the case of Ndimligo, but started to invade the suit plot in 2002 to 2003.

Under cross examined Ms. Chilongozi, DW1 admitted that, "Islamic Institution of Mwanga is not registered entity but work under 'Wadhamini wa Baraza Kuu'" and that the appeal was preferred by the Islamic Institution of Mwanga. According to DW1, he went to the suit plot when they were being shown as a member of IIM.

Under cross examination by Mr. Simeo, DW1 told the court that, he is a leader of IIM under WBK, and they executed the decision of the DLHT against Ndimligo and his fellow but equally admitted that the plaintiffs were not parties in that case.

Under re-examination by Mr. Kabuguzi, DW1 told the court that the plaintiffs had no houses at the suit plot and are mere tress passers to the suit plot.

Next witness for defence was **JOB JOHN GWASA** (to be referred in these proceedings as '**DW2**'). Under oaths and examined in chief by Ms. Joyce Godfrey, DW2 told the court that as Court Broker he implemented Tribunal orders in respect of Land Appeal No.12 of 2015 after complying with issuance of 14 days notice to judgement debtors. DW2 admitted in the execution he found two houses, which according to his testimony,

he thought those houses and a foundation belongs to the judgement debtors and much as he never received complaint nor an order uplifting the execution he demolished the two houses and dismissed the claims by the plaintiffs as baseless and consequently urged this court to dismiss this suit with costs.

Under cross examination by Mr. Sogomba, DW2 told the court that he was executing Tribunal orders of demolishing the judgement debtors' houses. DW2 pressed with question if has the orders of the Tribunal subject of execution but admitted did not tender it.

Under cross examination by Mr.Kagashe, DW2 told the court that as court broker was not served with any order contrary to the one given for execution.

Under cross examination by Mr. Simeo, DW2 told the court that he executed the case between IIM and Moshi Sadick and Said Ibrahim but the size of the land was not established during execution.

Under re-examination by Ms. Godfrey, DW2 told the court that he has no reasons why the executing documents were not annexed to the WSD.



Next was **HANZURUNI HILALI MAHUBA**(to be referred in these proceedings as '**DW3**'). Under affirmation, DW3 told the court that 'WBK' was registered in 1992 with registered number 507668 but was re-registered in 2014 with Registration No.SA 7668. DW3 went on to identify the plot in dispute as Plot No.718 Block "PB" Mwasenga , Kigoma Municipal allocated in 1997 after following all laid down procedures. The rest of testimony of DW3 was replica of DW1.

DW3 tendered in evidence **exhibits D1 and D2** which were certificate of registration No.SO 7668 of 1992 and certificate of re-registration No.SA 7668 of 2014, Land Rent assessment as **exhibit D3**, letter on disputed plot as **exhibit D4**, eviction order dated 2016 as **exhibit D5**.

Under cross examination by Mr. Sogomba, DW3 told the court that WBK was given the plot in 1998 and not 1997 and WBK has all qualification to be allotted land as it was in this case and explained the contents of all exhibits tendered.

Ms. Godfrey had nothing to cross examine DW3.

Under cross examination by Mr. Simeo, DW3 told the court that in the previous cases, the Government was not involved at all and their certificate was never cancelled.



Under re-examination by Mr. Kagashe, DW3 explained to court how the contents of exhibits tendered.

Next witness for defence was **Mr. KIHUMBI MUSA KULAKULE** (to be referred in these proceedings as '**DW4**'). DW4 under affirmation told the court that he knows all the plaintiffs in this case. According to DW4, the disputed land is legally owned by the 2<sup>nd</sup> defendant since 1998 after being allocated by land authorities. DW4 pointed out that before the disputed plot was surveyed, was used by villagers under the permission of the village authorities. DW4 went on telling the court that, the plaintiffs were in other plots apart from the disputed plot and even those who invaded the disputed plot tried to sue the 2<sup>nd</sup> defendant in vain.

Ms. Godfrey and Mr. Simeo for the 4<sup>th</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants respectively had nothing to cross examined DW4.

Under cross examination by Mr. Sogomba, DW4 told the court that the allocation of the plot to the 2<sup>nd</sup> defendant was not a secret and was involved. DW4 told the court that the survey was done in 1997 by the 3<sup>rd</sup> defendant.

Equally, Mr. Kagashe has nothing to re-examined DW5.



The last witness for defence was **Mr. STEVEN AMBROCE KUNDI** (to be referred as 'DW5') for 3<sup>rd</sup> and 5<sup>th</sup> defendants. DW5 under oath told the court that he works with the 3<sup>rd</sup> defendant as valuer. DW5 went on telling the court that the disputed plot which is at Buhanda Ward is legally owned by the 2<sup>nd</sup> defendant since 1998 by virtues of allocation done by Regional Land office by then. DW5 identified exhibit D4 and prayed that it forms part of the 3<sup>rd</sup> and 5<sup>th</sup> defendants' defence. According to DW5, the plaintiffs have never been to their office for any complaint.

Further testimony of DW5 was that before 2001, the acquisition of land was governed by Land Ordinance of 1923 which was that land is public property save for an unexhaustive improvements which the former owner was obliged to be compensated.

Under cross examination by Ms. Geoffrey, DW5 told the court that during that time all procedures were followed and no complaint was lodged for non-compensation.

Under cross examination by Mr. Kagashe, DW5 told the court that the owner of land if her/his land is taken after survey was to be compensated only on unexhaustive improvements and to him this suit has been instituted after elapse of 22 years.



Under cross examination by Mr. Sogomba, DW5 told the court that he works with Land office of the 3<sup>rd</sup> defendant who is the custodian of all land allocation documents. Shown the documents tendered and the names, DW5 could not explain why the documents had varied names. DW5 under serious questioning told the court that in this case all procedures were followed and anything done on surveyed plot without permit is unlawful. However, DW5 admitted that failure to tender the approved map will deny the court to know what exactly happened in the plot by then. DW5 pointed out that the size of the plot is 2.9 hectares.

Under re-examination by Mr. Simeo, DW5 insisted that the lawful owner of the land in dispute is the 2<sup>nd</sup> defendant.

This marked the end of hearing of this hotly contested land dispute. Given the nature of the case, this court ordered and directed parties' learned counsel to file their respective final written submissions arguing and answering both legal and factual issues involved in this suit. I sincerely commend them for their input and in the course of answering issues, will consider them but for avoidance of already long judgement will not reproduce them here. It suffices to say all are taken into account and given the weight they deserve.



The noble task of this court now is to determine the merits or otherwise of this suit. However, before going into answering the issues framed and agreed between parties, I have noted some facts not in dispute, which in a way will assist this court to answer the issues. These are; **one**, there is no dispute that in 2018, the 4<sup>th</sup> defendant under the instructions of the DLHT of Kigoma at the instance of the 2<sup>nd</sup> defendant entered into the disputed land in execution of decree in Land Appeal No.12 of 2015 demolished several houses and evicted all persons from the boundaries of the disputed plot. **Two**, there is equally no dispute that the disputed land is situated at Buhanda Ward within Kigoma-Ujiji Municipality.

It should be noted as well that the provisions of section 110 of Tanzania Evidence Act [Cap 6 R.E.2022] will guide this court that whoever alleges must prove before a court can a make a finding in his or her favour.

However, what is in serious dispute is the ownership of the disputed land between the plaintiffs and the 2<sup>nd</sup> defendant and if survey alleged to been done, was lawfully done.

The first issue was couched that ***"whether the plaintiffs are legal owners of the suit land?"*** Mr. Sogomba in his final submissions premised his arguments supported by pleadings that the plaintiffs' ownership is based on customary right of occupancy dating back to

1983, 1985 and inheritance in 2002 by the plaintiffs' respectively until 2018 when the demolition was conducted by the 1<sup>st</sup> and 4<sup>th</sup> defendant.

According to Mr. Sogomba, much as the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have failed to prove that survey was conducted in 1997 by failure to tender notice to general public, approved map and notice of acquiring land and in the absence of payment of compensation and concluded that the first issue should be answered in the positive that the plaintiffs are lawful owners of the disputed properties.

On the other part, Mr. Kabuguzi for the 1<sup>st</sup> and 4<sup>th</sup> defendants argued that looking at the evidence of the plaintiffs are shaky and contradictory rendering the case unproven to the standard required in civil cases by all plaintiffs. According to Mr. Kabuguzi, none of the plaintiff tendered any certificate of customary rights but mere assertions not supported by any evidence.

Mr. Kagashe was of the strong submissions that the plaintiffs did not prove their case and gave reasons that in 1998 after being allocated the disputed land, beacons and pillars were put surrounding the plot but none rose to complain. More so, in 2012 when the dispute arose which dispute involved Moshi Sadick Ndimuligo and Said Athman but the plaintiffs were not among the trespassers and much as the street

chairman was involved why not include the now plaintiffs, and the plaintiffs failed to establish the size of the land which shows that their claims are baseless. To support his stance, the learned advocate cited the case of **RAMADHAN KAMBI MKINGA vs. RAMADHAN SAID [1985]TLR 140** in which it was held that the respondent is not entitled to compensation for the an unexhaustive and improvement because he did not enter upon the appellant's land in good faith.

On his part, Mr. Simeo for the 3<sup>rd</sup> and 5<sup>th</sup> defendants briefly submitted that since survey was done in 1997 the plaintiffs conduct shows that they were not there, or even if were there, then, their rights were extinguished and much as the allocation of the same to the 2<sup>nd</sup> defendant has never been resisted since then, no way they can be declared lawful owners. To support his stance cited the case of **MWALIMU OMARY AND ANOTHER vs. OMARI BILAL [1990] TLR 9.**

the above reasons, the learned advocates for the defendants urged court to answer the first issue in the negative.

ing carefully and seriously considered the pleadings, the testimonies both sides and final written submissions by learned counsel for ies, with due respect to Mr. Sogomba, I am inclined to answer the

first issue in the negative. I will explain. **One**, starting with pleadings, the plaintiffs claimed that the size of their plots were; 1<sup>st</sup> plaintiff 100 metres and 70 metres but nothing was tendered to prove the alleged size in this court, the 2<sup>nd</sup> plaintiff claimed the size of her land to be 62 metres and 46 metres but exhibit P1 had different figure to which she claimed and the 3<sup>rd</sup> plaintiff claimed 4 acres but equally failed to prove that size of the land in dispute. So none of the plaintiff proved on balance of probability of the size of the land claimed. **Two**, none of the plaintiffs' witnesses, (plaintiffs inclusive) proved the claim of Tshs.240,000,000.00 claimed as value of the land and houses demolished. These being specific claims, one would expect the plaintiffs to lead and strictly prove each shilling claimed. This was not done in this case. **Three**, none of the plaintiff tendered any receipt of payment of property tax from all the years they claimed to construct and owned the demolished houses. **Four**, the evidence of 2<sup>nd</sup> and 3<sup>rd</sup> defendants, in particular, exhibits D3 and D4 proves that the owners of Plot No.718 Mwasenga Block 'PB' is the 2<sup>nd</sup> defendant and not the plaintiffs whose allegation suffers from want of evidence to the contrary and in the absence of evidence that exhibit D3 and D4 were obtained by fraud or forgery this fact remained unchallenged.



On the totality of the above reasons, I am inclined and increasingly to find that the plaintiffs utterly failed to prove that they customarily owned the size of the land claimed in the plaint, hence, obliged to answer the first issue in the negative.

This takes me to the second issue which was couched that **"whether the procedure for allocation and survey were lawful."** Mr. Sogomba for the plaintiffs argued and faulted the grant of plot No. 718 block 'PB' to the 2<sup>nd</sup> defendant for reasons that is not registered and as such lack capacity to be granted land and that did not obtain from Administrator General before same was to be granted the disputed land. In support of his stance cited section 8(1) of the Trustee Incorporation Act, [Cap 318 R.E.2019] on capacity to sue or be sued and the cases of **KANISA LA ANGLIKANA UJIJI vs. SAMSON HEGUYE, LABOUR REVISION APPLICATION NO.5 OF 2019 (KIGOMA) HC (UNREPORTED) AND MULBADAW VILLAGE COUNCIL AND 67 OTHERS vs. NAFCO [1984] TLR 15.**

On the strength of the above reasons, the learned advocate for the plaintiffs requested this court to find that the 2<sup>nd</sup> issue be answered in the negative that the whole process of surveying and allocating the disputed property to the 2<sup>nd</sup> defendant was a nullity.



Mr. Kabuguzi for the 1<sup>st</sup> and 4<sup>th</sup> defendants argued that the variance in names was well explained by DW1 and DW5 and in the certificate of registration by the 2<sup>nd</sup> defendant was just written as seen exhibits D1 short form but were referring to the same legal entity as in exhibit D4.

On that note the learned advocate urged this court to find no fault in the survey and subsequent allocation and answer the 2<sup>nd</sup> issue in the affirmative.

Mr. Kaghashe for the 2<sup>nd</sup> defendant argued that the names in exhibit D1 and exhibit D2 were written in short but were meant to refer the 'BARAZA KUU LA JUMUIYA YA TAASISI ZA KIISLAM TANZANIA' written in short as 'WADHAMINI WA BARAZA KUU'. According to Mr. Kaghashe, the plaintiffs were not in the suit land by 1998 and concluded that the survey and subsequent allocation of the disputed plot to the 2<sup>nd</sup> defendant was lawful.

With the above arguments the learned advocate for the 2<sup>nd</sup> urged this court to find the 2<sup>nd</sup> issue in the affirmative that the survey and allocation was lawful done.

Ms. Simeo for the 3<sup>rd</sup> and 5<sup>th</sup> defendants briefly argued that much as the survey and allocation was done using old Land Ordinance of 1923, the



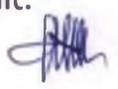
plaintiffs if were customary occupiers never applied for allocation and the allocation done by the 2<sup>nd</sup> defendant is lawful.

Having carefully considered this issue alongside with the evidence on record, I am inclined; with due respect to Mr. Sogomba, to agree with the learned advocates for the defendants that no evidence was tendered by the plaintiffs to show to the contrary that the survey and allocation exhibit D1 to the 2<sup>nd</sup> defendant was fraught. I will endeavour to explain.

**One**, much as the explanation between exhibit D1 and exhibit D4 was amply explained to the satisfaction of this court by both DW1 and DW5, I see no reasons to fault the survey and allocation granted to the 2<sup>nd</sup> defendant.

On that note, I find the 2<sup>nd</sup> issue in the affirmative that the survey and allocation was lawful.

This takes me to the 3<sup>rd</sup> and 4<sup>th</sup> issues which I prefer to answer them jointly and were couched that **"whether the act of demolition of the plaintiffs' houses by the defendants were lawful"** and **"whether the plaintiffs deserve any compensation?"**. Given my findings in the first issue in the negative, then, these issues with due respect to the plaintiffs' counsel, dies a natural death in the circumstances of this suit.



Much as the plaintiffs failed to prove ownership then any demolition, was lawful done.

This trickles this suit to the last and usual issue which was couched that **“what reliefs parties are entitled to”**? The plaintiffs prayed that this court be pleased allows this suit as prayed in the plaint, while the defendants prayed that this court be pleased to dismiss this suit with costs. Given my findings in the above issues, the plaintiffs’ prayers are untenable. In the circumstances and without much ado this suit is amenable to be dismissed as I hereby do. This suit is hereby dismissed with costs to the defendants.

It is so ordered.

Dated at Kigoma this 15<sup>th</sup> day of December, 2022.



A handwritten signature in blue ink, appearing to read "S. M. Magoiga", is written over a horizontal line. There are some additional scribbles and marks to the right of the signature.

**S. M. MAGOIGA**

**JUDGE**

**15/12/2022**