

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO. 13 OF 2021

ALAKAAI ALAUNONI LAIZER.....PLAINTIFF

VERSUS

- 1. ZEFANIA CHAULA.....1ST DEFENDANT**
- 2. ROSEMARY DICKSON.....2ND DEFENDANT**
- 3. TUMAINI LUKUMAY.....3RD DEFENDANT**
- 4. ISAYA KIMAI.....4TH DEFENDANT**
- 5. AGNES GABRIEL.....5TH DEFENDANT**
- 6. WILLIAM NJOKE.....6TH DEFENDANT**
- 7. LOTA SARIWAKI NJOKE.....7TH DEFENDANT**

JUDGMENT

25/07/2023 & 18/10/2023

GWAE, J

The plaintiff, Alakaai Alaunoni Laizer a farmer as well as a pastoralist and a resident of Namalulu Village within Naberera Ward, has filed this suit against the defendants on the claim that, he is the lawful owner of the land measuring 100 acres allocated to him by the Namalulu Village Council on 26/03/1994. His claim against the 1st defendant is that in his capacity as a District Commissioner without any legal power and ultra vires, directed the 2nd, 3rd, 4th and 5th defendants to hand over to the 6th

and 7th defendants 40 acres out of 100 acres his belonging. It is therefore the plaintiff's prayer for judgment and decree against the defendants jointly and severally on the following reliefs;

1. An order that the suit land measuring 40 acres is part of the plaintiff's land measuring 100 acres.
2. An order of vacant possession of the suit land to the plaintiff.
3. An eviction order against the 6th and 7th defendants from the suit land.
4. A permanent and perpetual order of injunction against the defendants from interfering with quiet enjoyment of the suit land by the plaintiff.
5. An order for general damages for trespass to be assessed by this Court.
6. Costs of the suit to be paid to the plaintiff by the defendants.
7. Any other reliefs this Court may deem fit and just to grant.

In defending the suit filed against them, the 6th and 7th defendants filed their joint written statement of defence disputing the plaintiff's allegations against them. It was their contentions that, the land in dispute measuring 40 acres belongs to them and that, each one of them was allocated 20 acres by the Namalulu Village Council on the 12th day of April 1994.

The 6th and 7th defendant further averred that that the 1st defendant while resolving the dispute between them and the plaintiff, it was finally

decided that they each 6th and 7th defendant should remain with 20 acres and the plaintiff to remain with 60 acres. Finally, the defendants prayed that the suit be dismissed and plaintiff be ordered to bear the costs of the suit. However, it should be recollected that the trial of this case proceeded ex-parte against the 1st 2nd, 4th and 5th defendants and an order dated 8th April 2022 to that effect was made as they were evidently served through Mwananchi Newspapers of 29th January 2022.

Throughout the hearing of this suit, the learned advocates namely; Mr. John Lundu assisted by Mr. Stephano James represented the plaintiff, on the other hand, the 6th and 7th defendants were represented by Mr. Deogratus Njau, the learned counsel. Order VIII D Rule 40 (1) of the Civil Procedure Code, Cap 33, Revised Edition, 2019 (CPC) was complied with. The following issues were consequently framed;

1. Whether the 6th and 7th defendants were given pieces of land in the suit land, measuring 40 acres by the 1st to 5th defendants.
2. Who is the lawful owner (s) of the suit land?
3. What reliefs are the parties entitled to?

In proving his claims against the defendants, the plaintiff summoned four witnesses including himself who appeared for testimonial purposes as PW1. Through his sworn testimony, PW1 stated that, he acquired his

land measuring 100 acres in 1994 through allocation by the Namalulu Village Council after the approval of the Village General Assembly. The plaintiff went on adducing that, after the allocation he was given a letter of offer dated 26th March 1994 (PE1). The plaintiff also testified that, he has been in peacefully using his land for both cultivation and pastoralism until 2021 when he was informed by the 2nd defendant, the then Namalulu Village Executive Office through a letter dated 17th March 2021. The 2nd defendant was instructed by the 1st defendant to divide his farm and hand over to the 6th and 7th defendant 20 acres each. To substantiate his testimony, PW1 tendered the letter, PE2.

Following the instructions of the 1st defendant through exhibit PE2, the plaintiff also wrote a 14 days' notice to the 1st defendant directing him to revoke his directives to the 2nd defendant. The plaintiff also testified that he issued a demand notice, PE3. The plaintiff additionally testified that, he was aggrieved by defendants' acts of dividing his farm measuring 100 acres that is why he filed this suit against all the defendants praying this court to declare him as the lawful owner of the suit land and evict all those who have invaded it.

Corroborating the evidence adduced by the plaintiff, PW2 and PW3 stated that, the plaintiff herein was allocated the land measuring 100 by

the Namalulu Village Council together with other villagers including the 6th and 7th defendants whose farms, according to him, are not within the plaintiff's land.

On the other hand, the 1^{6th} and 7th defendant entered their defence and summoned four (4) witnesses. These are; William Njoke (DW1), Lota Sariwaki Njoke (DW2), Mathayo Oromboi (DW3) and Michael Tikoeli (DW4). The evidence by defence witnesses is essentially establishing that, the 6th and 7th defendants were allocated the land in dispute by the Village Council after the approval by the Village General Assembly where by each one was allocated 20 acres. That, both were issued with letters of offer for the 6th and 7th defendant of 12th April 1994 which were admitted in court and marked as DE1 and DE2 respectively.

The defence also testified that as there was a land dispute between the 6th and 7th defendants and the plaintiff, the 1st defendant convened a meeting to resolve the dispute and thereafter he gave directives that the two defendants to be given 20 acres each. In reinforcing the defence evidence, DW3 testified that he was a chairperson of the Namalulu Village since 1994 to 2004. Therefore, he was present at the time the 6th and 7th defendants were allocated 20 acres each and he also signed the letters of offer issued to them. He also stated that, the names appearing in the

letters of offer are for the 6th and 7th defendants before their baptism. Moreover, DW3 also faulted the exhibit PE1 stating that, the purported chairperson, Elias Malamia was not a chairperson by then as he was a chairperson from 1989 to 1992 and 2004 to 2009. DW3 also challenged the allocation of 100 acres to the plaintiff by stating that, the allocation was invalid as the village council has no authority to allocate 100 acres to one person. Lastly, DW3 challenged the signature of the purported VEO stating that it was a forged one as he had worked with him, so he is familiar with his signature.

On his part, DW4 he testified that he was a member of the Namalulu Village Council, on his part he contended that the plaintiff herein was not among the villagers who were allocated the land and that he has trespassed his land together with that of 6th and 7th defendants.

After close of the parties' case, the court made a visit of suit land and there were court's observations such as the suit land is part of the 100 acres and it is a clear land, which has not been cultivated. The following boundaries were also observed; north it is bordered with a valley separating Namalulu village and Naberera village, from east it is bordered with the farm of Michael, from west there was a road and southward there

is a farm belonging to one Saitoti. The plaintiff's residential house was also at the far west side of the suit land.

The parties' advocates also sought and obtained leave to file their respective closing submissions. I shall however consider the same as a guidance towards composition of this judgment.

Having briefly summarized the parties' evidence, it is now the noble duty of the court to determine issues framed as herein under;

The 1st issue, whether the 6th and 7th defendants were given pieces of land in the suit land, measuring 40 acres by the 1st to 5th defendants?

Considering the evidence adduced by both parties, it goes without saying that, both parties do not dispute the fact that, the 1st defendant in his capacity as a District Commissioner convened a meeting to resolve the land dispute between the parties. It is also clear that, the 1st defendant thereafter gave directions to the 2nd defendant (VEO) through a letter dated 17th March 2021 (PE2) with effect that, the 6th and 7th defendants should be given 20 acres each and the remaining acres to be given to the plaintiff. For the purpose of clarity, parts of the 1st defendant's letter (**PE2**) directing the 2nd defendant are reproduced herein under;

"Mkuu wa wilaya amenielekeza kuwa William Njooke na mwenzake wapewe ekari 20 kila mmoja, jumla ekari 40 ya shamba lililoendelezwa eneo litakalobaki apewe ndugu Alakai.....yoyote ambaye hatakubaliana na maelekezo hayo anashauriwa awasilishe malalamiko yake katika mahakama ya ardhi..

According to the wording of the 1st defendant's directives through PE2, it seems that, it was directed that the plaintiff be given 40 acres, 20 acres each and the plaintiff was to remain with 60 acres out of 100 acres. However, the letter, PE2 does not support the defendants' assertions that, it was ordered by the 1st defendant that, they should remain with 40 acres allocated to them. The letter envisages that, there was a dispute between the parties over the parcel of land measuring 100-104 acres. In my view, the 1st to 5th defendants' acts were not meant as a conclusive or absolute giving 40 acres to the 5th and 6th defendants as there is a clause allowing a party aggrieved by such administrative allocation to refer the matter to land court. The 1st defendant's directives were mutual efforts to resolve the dispute between the parties that is why there was also advice from the office of the 1st defendant that, if any disputant is aggrieved with the directive he could file a matter before land court. Therefore, the 1st issue is answered not in affirmative.

Coming to the second issue, who is the lawful owner of the suit land?

It is elementary principle that in civil cases, the burden of proof lies on the party who alleges anything in his or her favour. However, it should also be remembered that the standard of proof in civil cases is on the balance of probabilities. This position has been consistently emphasized in a chain of judicial decisions in the case of **Siraj Din vs. Ali Mohamed Khan** (1957) 1 EA 25 for example, it was observed;

"The quantum of proof ordinarily required in civil litigation is not such as resolves all doubt whatsoever but such as establishes a preponderance of probability in favour of one party or the other."

See also section 110 and section 3 of Tanzania Evidence Act, Cap 6, Revised Edition, 2019 and the case of **Manager, NBC, Tarime vs. Enock m. Chacha** (1993) TLR 228 where it was held that it is a cardinal principle of law that, in civil cases there must be proof on the balance of the probabilities.

This being the position of the law, in the matter at hand, the plaintiff being the one who alleges to be the owner of the disputed land measuring 40 acres unlike the 6th and the 7th defendant has such duty. The question

that follows is whether the plaintiff has successfully discharged his duty to prove the facts he alleges in his favour.

It is the evidence of the plaintiffs' case that he is the lawful owner of the land measuring 100 acres with the following boundaries; from East there is one Michael Tikoeli, from West there is a road, from North there is Naberera village boundary and from South there is Saitoti Olikalai. The pleadings and evidence adduced by him are as confirmed by the court's visitation of the locus in quo. It is the further testimony of the plaintiff that the Namalulu Village Council effected his allocation after the approval of the Village General Assembly.

I have made a thorough analysis of plaintiff's letter of offer, PE1 and the following are the court's observations:- **First**, it is with a letterhead titled "Namalulu Village Development Council allocating the plaintiff with a piece of land measuring 100 acres. **Secondly**, the letter of offer also gave clear descriptions as earlier explained and **thirdly**, the Village chairperson of the Namalulu Village, one Elias Malamia and the Village Executive Officer of Namalulu village, one Abraham Suunguya, signed the letter of the plaintiff's offer.

On the other hand, I have closely examined the evidence adduced by the 6th and 7th defendants in proving ownership of the disputed land

especially documentary evidence (DE1 and DE2). I have come up with the following observations;

1. The letters of offer indicate that they were respectively issued to ones Saris Njoke and Alatasaruaki Njoke **and not** William Njoke and Lota Sariwaki Njoke, the names appearing in this suit.
2. The letters of offer bear the letterhead "Lengipaje Village Development Council Kiteto District" but purporting to have been issued by Namalulu Village Council- Arusha, which is **different from Lengipaje Village.**
3. The said letters (DE1 and DE2) bear seals of Lengipaje Village Council Simanjiro-**Manyara**, surprisingly, not in Arusha as appearing in the address
4. Letters of offer issued to the 6th and 7th defendant did not give descriptions of the land except the statement that they were allocated the suit land located at Olkiloriti.
5. Letters offer entail that the 6th and 7th defendants were allocated the land by the Namalulu Village Council but the same was signed by the chairperson of the Lengipaje village and Village Executive Officer of the Lengipaje.

I have further considered the defence evidence in respect of the noted discrepancies such as, name of Lengijape Village Council instead of Malulu Village. The defence in the apprehended contradictions is found alleging that Legijape was a traditional name and that the names appearing in the letters of offers (DE1 &DE2) were that of the 6th and 7th defendants before being baptized. Perhaps it was so; however, there are a lot to be desired.

I would think that contentions by the defence in respect of the change of their former names ought to have been backed up with deed polls, proving that there were changes of names

Similarly, Manyara Region was not in existence in 1994. I am holding so simply because Manyara Region was established in the year 2002 by virtue of Regions and District (Establishment Procedure Act) No. 12 of 1994, GN No. 367 of 2002. More so, the purported indication of Manyara Region is absolutely wrong since it was none-existent as per the law establishing it, above all the defence witnesses when cross-examined admitted that fact. I am urged by the 5th and 6th defendant's counsel through his closing submission to adhere to section 88 (2) of the Evidence Act (supra) to presume DE1 and DE2 to be genuine but I decline doing so for the reasons

stated especially that, there no Region known as Manyara in the year 1994.

Likewise, if as testified by DW3, that, the offers were issued later on when Manyara Region was established, then letters of offers issued in favour of the 5th and 6th defendant would not bear the dates of 12th April 1994. Thus, the defence pertaining letters of offer (DE &DE2) is seriously questionable.

The parties also raised the issue on whether Namalulu Village Council would allocate the plaintiff more than 50 acres in the course of trial. However, that should not curtail me since the law applicable by then was not Village Land Act, No. 5 of 1999 (Village Land Act, Cap 114, Revised Edition, 2019.) Suffices, to hold that every allocation of a piece of land made by Namalulu Village Council in the year 1994 to the date of the commencement of Village Land Act (supra) is valid by virtue of section 16 of the Act.

From the above analysis, this court is satisfied that, unlike the 6th and 7th defendant, the plaintiff herein has sufficiently proved his case on the balance of probability that, the disputed land measuring 40 acres belongs to him.

Having determined the 1st and 2nd issues, next issue for consideration is on the reliefs that the parties are entitled to. As the plaintiff herein has successfully proved his case, this court orders the following reliefs against the defendants;

1. That, the suit land measuring 40 acres is part of the plaintiff's land measuring 100 acres. Hence, the plaintiff is declared the lawful owner of the disputed land measuring 40 acres
2. That, the 6th and 7th defendants to give vacant possession of the suit land.
3. A permanent injunction is issued against the 6th and 7th defendants and any other person (s) from interfering the suit land.
4. Costs of the suit to be borne by the defendants jointly and severally.

It is so ordered.

DATED and **DELIVERED** at **ARUSHA** this 18th October 2023


MOHAMED R. GWAE
JUDGE

Court: Right of Appeal is fully explained




MOHAMED R. GWAE
JUDGE