

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB – REGISTRY)

AT KIGOMA

LAND CASE NO. 21 OF 2022

PAULO SONGATI..... PLAINTIFF

VERSUS

KALINZI VILLAGE COUNCIL.....1st DEFENDANT

KIGOMA DISTRICT COUNCIL.....2nd DEFENDANT

ATTORNEY GENERAL3rd DEFENDANT

JUDGEMENT

8th November & 14th December 2023

Rwizile, J

The plaintiff has filed this land dispute claiming for his land that was allegedly trespassed into by the first defendant, Kalinzi Village Government. Facts, though disputed, state that, he acquired that land and peacefully enjoyed it for over three decades. Sometimes in 2010, under the leadership of Orest Ruzilo as a village leader, encroachment started. Eviction based on discrimination for not being born in that village was spanned. It was further alleged that in 2018, trees were cut and the village started a foundation for a primary school. Feeling could not take that anymore; he filed this case. It was his prayer that the judgment be entered for the following orders;

- i. That the plaintiff be declared the rightful owner of the landed property of ten acres located at Kalinzi village, Kabale within Kigoma Region.
- ii. A declaration that the first defendant is a trespasser to the suit land
- iii. Costs of the case
- iv. Any other relief the court deems just and fit to grant.

The plaintiff has been represented by Mr. Michael Mwangati learned advocate, while the respondents were in the service of Mr. Anold Simeo learned State Attorney being assisted by Mr. Shukuru a principal officer for the first defendant. Two main issues were raised;

- a. Whether the plaintiff is the lawful owner of the suit premises
- b. Whether the first defendant trespassed into the suit premises and
- c. To what reliefs are the parties entitled?

Cast with the onus to prove his case, the plaintiff, Paulo Songati (Pw1) testified and called two other witnesses, Hamimu Batega Lusimbi (Pw2) and Simon Lilenge (Pw3).

In terms of his evidence, Pw1 testified that on 3rd July 1997, successfully applied for land ownership of 10 acres in Kalinzi village. He used to cultivate food crops and planted trees. In 2010, there was a change of village leadership where Oresti Ruzilo was made the new village chairman. It was his evidence that Oresti Ruzilo stopped him from using the land that he had previously enjoyed for decades.

In that land, he added, a foundation was erected for a primary school. Upon complaining to some district leaders, he further testified that it

was ultimately resolved in his favour as per exhibit P1. As shown before, Pw2 rendered support to the plaintiff's case. His evidence is that he was a member of the village social welfare committee in 1997 when the 10 acres of land in dispute was allocated to Pw1. It is his evidence that land is only acquired through making an application to the village government. The plaintiff, among many others according to Pw2, successfully applied and was allocated upon approval 10 acres now in dispute. It was his evidence that the suit land legally belonged to the plaintiff.

To fetch more support Pw3 testified. Pw3 a 98-year-old man, said, Pw2 among others was a member of the village social committee. He testified that; land was allocated by that committee which he chaired. The suit premises, he added, were allocated to the plaintiff in 1997.

On its part, the defence did not sit. Wise Julius Paulo (Dw1), Kasimu Tongo (Dw2), George Kasandeli (Dw3), and Issa Hamis (Dw4), testified. In his evidence, Dw1 told this court that as a member of the village government in 1993, admitted to knowing Paulo Songati who among other people applied for the land in the village. According to him, the plaintiff was allocated one acre of land as others did. He further testified that about 10 acres of land was allocated for military range which in 2009 was changed for school construction. The plaintiff according to his evidence trespassed into that land in 2010 and planted trees which are about 5 or 4 years.

Dw2, a resident of Kalinzi since his birth said Paulo Songati owned one acre as others that was allocated to him in 1997.

It was further testified that he was a member of the village government from 1985 to 1995.

Another piece of evidence in support is from Dw3 another resident of Kalinzi village. He testified that on 11th October 1997, he was allocated land, among other people including the plaintiff that does not exceed an acre. He said, that allocation followed an application and upon approval, necessary fees were paid to the tune of TZS 3,000.00 and receipts were provided.

The last defence witness is Dw4. His evidence was that in 1997, he was allocated land measuring 40 X 70 paces. He added, that Paulo Songati was his neighbour and got a similar portion. They paid TZS 3,000.00 and were given receipts.

Having heard the evidence from both sides, it is time to determine the issues. The highly contested issue as shown before is, who is the rightful owner of the suit premises.

The plaintiff tendered only two documentary exhibits, P1 and P2. P1 is the letter from the Word Executive Officer who tried to settle the dispute. In terms of that letter dated 27.10.2010, the following extract hinted at the nature of the dispute in para 2:

"...Kufuatana na sheria ya ardhi namba 5 ya mwaka 1999, ardhi ni mali ya Kijiji na serikali ya Kijiji ndio yenye mamlaka ya kugawa ardhi yote yaliyo ndani ya milki yake. Madai ya Paulo Songati, ofisi yangu imethibitisha kuwa alipewa eneo hilo na serikali ya nyuma kufuatana na maombi yake. Kwa mantiki hii serikali ya sasa hainabudi kuheshimu maamuzi ya serikali iliyopita..."

The above can be translated as follows

"...Based on the land Act No. 5 of 1999, village land belongs to the village and it is the village government that has the mandate to distribute land in its jurisdiction. My office has proved, Paulo Songati's claims, that he was given the said land by the previous government following his application. Therefore, the current government has to respect decisions made by the past government..."

The above extract only sheds light on how the presence of one Oresti Ruzilo as the new leader of the village sparked this land dispute. It does not prove, however, that the plaintiff owns that land. This piece of evidence has to be weighed with other evidence present in the record. As shown before, it was the evidence of Pw2 and Pw3 that they were in the village government in the material time. It has not been disputed that the two were not holding the posts stated in the village government in 1997.

It was the evidence of Dw1 that exhibit P1 was forged, he further said that he knows the proper signature, yet there is no evidence to prove that forgery. As far as I know, forgery is a criminal offence. It can only be proved beyond reasonable doubt. Apart from simply alleging so, there is no evidence proving what he said was good enough to bank on.

Further, I find a material contradiction between Dw3 and Dw2. Dw3 said that he was given land on the same day with Paulo Songati in the presence of Dw2. Dw2 plainly said, did not take part in land allocation. He was not a member of the village government at that material time.

Apart from this contradiction, still, none of the two was sure, the plaintiff was given one acre of land. In totality, it can be concluded that the evidence of the respondents is tainted with material contradictions. At law, when witnesses have a material contradiction in their evidence, it affects their credibility. In turn, it pulls to bits the whole case.

Considering the foregoing evaluation of the evidence it is crystal clear that on a balance of probability, the plaintiff has proved his case. Judgment is entered for the plaintiff with costs following the event.



A handwritten signature in black ink, appearing to read "ACK. Rwizile", is written over a horizontal line.

ACK. Rwizile

Judge

14.12. 2023