

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

CONSOLIDATED LAND CASES NO. 122 AND 286 OF 2016

DONOLD CHRISTIAN TEMBA 1ST PLAINTIFF

KULWA GODFREY KYOVECHO 2ND PLAINTIFF

VERSUS

FERDINAND TEMBA t/a MORIO MOTEL AND CAMPSITE ... 1ST DEFENDANT

GREENLIGHT SACCOS LTD 2ND DEFENDANT

Date of last Order: 29/04/2022

Date of Judgment: 03/06/2022

JUDGMENT

I. ARUFANI, J

This judgment is for consolidated Land Case No. 122 of 2016 whereby the plaintiff is Donald Christian Temba and the defendant is Ferdinand Temba t/a Morio Motel and Campsite and Land Case No. 286 of 2016 whereby the plaintiff is Kulwa Godfrey Kyovecho and the defendants are Greenlight Saccos Ltd and Ferdinand Donald Temba. After the two cases being consolidated the court has found for the purpose of avoid confusion in referring the parties in the judgment it is proper to refer Donald Christian Temba as the first plaintiff and Kulwa Godfrey Kyovecho as the second plaintiff. On the other hand, Ferdinand Temba t/a Morio Motel and Campsite will be referred as the first defendant and Greenlight Saccos Ltd as the second defendant.

The background of this matter as can be deduced from the pleadings filed in this court by the parties is to the effect that, the second

plaintiff (Kulwa Godfrey Kyovecho) averred he was the original owner of two acres of land located at Kikwalaza Mikumi Urban Area of Kilosa District in Morogoro Region (hereinafter to be referred as the land in dispute). The second plaintiff was a member of the second defendant from 20th January, 2006. On 26th June, 2008 the second plaintiff obtained a loan facility of Tshs. 15,000,000/= from the second defendant which was supposed to be repaid within twelve months with interest of 24% per annum and serviceable in equal monthly instalment of Tshs 1,550,000. The loan was secured by various securities including the second plaintiff's house built on the land in dispute. The total principal amount plus interest to be repaid within the stated period of time was Tshs. 18,600,000/=

The second plaintiff avers that, on 9th March, 2009 he was allowed by Mikumi Village Council to survey the land in dispute and through the said survey the land in dispute was divided into five plots namely Plots No. 7, 8, 9, 10 and 11 Block "H" Kikwalaza – Mikumi Urban Area. The area which the house offered as a loan security situates was described as Plot No. 11 Block "H" Kikwalaza – Mikumi Urban Area. On 25th May, 2009 certificates of right of occupancy in respect of the above referred plots were issued to the second plaintiff. On 15th July, 2009 which was immediately after obtaining the above referred certificates of occupancy

the second plaintiff sold three plots namely Plot No. 8, 9 and 10 to one Flower Mosha.

The second plaintiff averred that, up to May, 2010 he had already repaid his loan to the second defendant at the sum of Tshs. 14,800,000/= leaving outstanding balance of Tshs. 3,800,000/=. The second plaintiff stated that, on 24th August, 2013 before transferring ownership of the plots he sold to Flower Mosha to her the second defendant sold the whole land comprised in Plots No. 7, 8, 9, 10 and 11 Block "H" Kikwalaza Mikumi Urban Area to the first defendant (Ferdinand Donald Temba t/a Morio Motel and Campsite) on ground that the second plaintiff had defaulted to repay the loan facility advanced to him.

The second plaintiff claimed that, the act of the second defendant to sale his whole land to the first defendant is unlawful and unenforceable because the sale was executed while the second plaintiff had already repaid the whole outstanding loan. The claims of the second plaintiff against the defendants is for declaration that, the purported sale of his land by the defendants is ineffectual, null and void and he is the lawful owner of the referred plots of land. He is also claiming for an order of evicting the first defendant from the land and payment of general damages, interests and costs of the suit.

On his side the first plaintiff (Donald Christian Temba) contended that, on 25th April, 2007 the second plaintiff sold part of his farm to him. He avers further that, in 2009/2010 himself together with all other land owners at Kikwalaza – Mikumi Urban Area conduct a joint survey of their lands. Following the said survey each one was allocated with surveyed plots which were issued in accordance with the Kilosa District Survey Land Plan. He stated that, he was issued with Certificates of Titles number, 89501 and 89502 in respect of Plot No. 5 and 6, Block "H" at Kikwalaza – Mikumi Urban Area.

The first plaintiff contended further that, on June, 2014 he discovered the first defendant had encroached into his above-mentioned plots of land and built thereon commercial buildings which he ran as a motel famously known as Morio Motel and Campsite. He stated that, the act of the first defendant did seriously interfere with his constitutional right. He stated further that, the act of the first defendant caused him to suffer a very serious financial loss as he has failed to continue with his development plans over the said plots due to the fact that the costs of construction are escalating. The first plaintiff claims against the first defendant is for declaration that the first defendant is a trespasser to his land. He is also praying for order of demolition of the first defendant's structures on the plots in dispute plus general damages.

The first defendant stated in his written statement of defence against the plaint of the first plaintiff that, the land in dispute was lawfully mortgaged to the second defendant by the second plaintiff in 2008. He admitted that, the land was surveyed by Kilosa District Council. He vehemently disputed the claims of the first plaintiff by contending that, he cannot vacate from the land in dispute as he is a bona fide purchaser of the suit land from the second defendant. At the end he prayed the first plaintiff's claims against him to be dismissed with costs.

The first and second defendants contended in relation to the claims of the second plaintiff that, the sale agreement executed between them in relation to the suit land was legally executed and all process of sale through public auction was effectual. They stated that, the second plaintiff was aware of the sale of the suit land through public auction after the second plaintiff defaulted to repay an outstanding loan advanced to him by the second defendant. They said there is no negligence act on either of the defendants and the sale was executed lawfully. They stated that, at the time of sale of the land in dispute it was un-surveyed land therefore no damages suffered by the second plaintiff.

The defendants stated that, the second plaintiff never paid an outstanding amount of the loan he borrowed from the second defendant. They stated that, at the time of selling the land in dispute the outstanding

balance of loan plus interest had reached Tshs. 18,915,000/=. The defendants averred that the second defendant has never entered into oral agreement with the second plaintiff for the purpose of recovery of outstanding balance of loan. They went on averring that, the purported act of the second plaintiff to survey his two acres of land and subdivide the same into Plots numbers 7, 8, 9, 10 and 11 Block "H" Mikumi Urban Area is illegal and unjustifiable because the second plaintiff knew he had placed his un-surveyed piece of land to the second defendant as a security for the loan advanced to him by the second defendant.

The defendants averred further that, the averment by the second plaintiff that the house in dispute was at one plot only at the time when the sale agreement between the defendants was executed is baseless and unenforceable because at the material time of selling the house there was no plots divided therefrom and the house was situating on un-surveyed land. They stated that, as the first defendant was a bona fide purchaser there was no need of seeking for consent of using the land in dispute from the second plaintiff. At the end the defendants prayed the second plaintiff claims against them be dismissed with costs.

The issues framed for determination in this matter in relation to Land case No. 122 of 2016 are as follows: -

(1) Who is the lawful owner of the disputed property?

- (2) Whether the defendant has trespassed into the plaintiff's land.*
- (3) To what reliefs are the parties entitled.*

The issues framed for determination in respect of Land Case No. 286 of 2016 are as follow: -

- (1) Whether the plaintiff is the lawful owner of the land comprising of Plots Nos. 7, 8, 9, 10 and 11, Block "H" Kikwalaza – Mikumi Urban Area.*
- (2) (a) whether the sale agreement between the first and second defendants over the disputed property was lawful and legally valid. If it is in affirmative,*
 - (b) whether the sale agreement is thus operative and enforceable.*
 - (c) whether the sale agreement extinguished the plaintiffs title over the disputed land*
- (3) whether the plaintiff suffered damages*
- (4) To what reliefs are the parties entitled.*

The hearing of the case commenced before my learned sister Opiyo, J whereby the plaintiffs were represented by Mr. Nazario Michael, learned advocate and the defendants were represented by Mr. Erick Rweyemamu, learned advocate. After hearing the plaintiffs' evidence which was adduced by four witnesses, the plaintiffs closed their case and the case was adjourned to another date for hearing the defendants' evidence. Before the defendants started to adduce their evidence, the court was informed the first defendant died on 24th October, 2020. That caused the

case to be adjourned to await appointment of the first defendant's legal representative.

Following the transfer of Honourable Opiyo, J to another station the case was reassigned to me to continue from where she had reached. After the case being reassigned to me the effort to get the first defendant's legal representative proved futile as there is nobody was ready to appear in the court to represent him as required by the law. That caused the court to order the first defendant's case has abate under Order XXII Rule 4 (3) of the Civil Procedure Code, Cap 33 R.E 2019 read together with item 16 of Part II of the Schedule to the Law of Limitation Act, Cap 89, R.E 2019. After the effort to serve the second defendant being made and the second defendant failed to appear in the court to adduce their evidence the court decided to proceed to prepare the present judgment by basing on the evidence already adduced in the case by four plaintiffs' witnesses.

The second plaintiff, **Kulwa Godfrey Kyovecho** testified as PW1 and told the court that, from 20th January, 2006 he was a member of the second defendant and he tendered to the court his membership book which was admitted in the case as exhibit P1. He said one of the conditions of being member of the second defendant was to buy shares and he said to have purchased 100 shares costing Tshs. 5,000,000/= as appearing in

the entries of 26th June, 2008 in exhibit P1. He said they were benefiting by loans which were being issued by the second defendant to its members.

He said in 2006 he borrowed Tshs. 3,000,000/= and in 2007 he borrowed Tshs. 7,500,000/= which he repaid in full. He said in 2008 he borrowed Tshs. 15,000,000/= and the agreement for the said loan was admitted in the case as exhibit P2. He said in order to get the loan one was required to have three members of the Saccos as his guarantors of the loan and he must have security for the loan. He said his guarantors were Sophia Juma Hassan, Mrisho Ramadhani Mrisho and Maria William John. He said the security for the loan of Tshs. 15,000,000/= advanced to him by the second defendant was his shares valued Tshs. 5,000,000/=: his serving of Tshs. 9,250/= and a house at Kikwalaza Mikumi Urban Area valued Tshs. 25,000,000/=. He also said to have secured the loan with his spare parts shop worth ten million shillings.

He said he was repaying Tshs. 1,500,000/= on monthly basis and he was required to complete repaying the loan within twelve months. He said he paid about $\frac{3}{4}$ of the loan and after his business shacked, he reported the same to the second defendant who allowed him to reschedule repayment of the loan. He said he completed repaying the

loan in 2010 and he tendered to the court payment receipts which were admitted in the case as exhibit P3.

He said he repaid Tshs. 13.4 million shillings and he was supposed to repay Tshs. 18.6 million shillings. He said he went to the second defendants' office on 20th October, 2009 for repayment of Tshs. 1,000,000/= but he was told by Michael Mguruta who was the second defendant's Cashier that, there was no receipts and told him the same would have been issued to him upon being procured. He said on May, 2010 when his loan was Tshs. 4,000,000/= he asked the second defendant to offset the loan with his shares which was Tshs. 5,000,000/= and Michael Mguruta agreed.

PW1 said his land in dispute was about two acres and in 2009 he applied for its survey and his application was granted. The land in dispute was surveyed and divided into seven plots. He said the five plots which were 11, 10, 9, 8 and 7 were in his name and plots number 5 and 6 were for the first plaintiff. He tendered to the court the titled deed of Plot No. 11 which was admitted in the case as exhibit P4 and copies of the title deeds for Plots numbers 7, 8, 9 and 10 were admitted in the case as exhibit P5 collectively. He said the plot he used as a security for the loan was Plot No. 11 Block "H" Kikwalaza – Mikumi Urban Area.

He said on 25th April, 2007 he sold part of his land which was in the size of 86 by 80 steps to the first plaintiff at the price of Tshs. 6,000,000/= and it was before the land being surveyed and before getting the loan from the second defendant. He said the sale was done before Hon. Hellena Nyambura, Mikumi Primary Court's Magistrate and witnessed by Joel Joseph Nyambura who testified in the matter as PW3. He also said that, when he was taking the loan, the land in dispute had not been surveyed and after the land being surveyed, he notified the second defendant. He said in 2013 when he was at Tunduma the second defendant sold his house and the whole land in dispute to the first defendant.

He said he was not given any notice of selling the land in dispute by the second defendant and no notice was issued to his guarantors. He disputed to have gone to the second defendant on 2nd June, 2011 to discuss about the outstanding loan. He said he was just informed by good Samaritans about the sale of his house and the land in dispute. He said he was informed his house was sold at the price of Tshs. 18,000,000/= while at the time of taking the loan the value of the house was Tshs. 25,000,000/=. He said at the time of sale of the house, its value was Tshs. 93,000,000/=. He tendered valuation report of the house issued on July, 2009 which was admitted in the case as exhibit P6.

He said the sale of his house caused to him a lot of mental anguish. He said he lost his properties which were in the house which were beds, mattress, wardrobes and sofa sets and as the house was broken by the first defendant, he is the one took his properties which its total value is Tshs. 100,000,000/=. He said the first defendant took his entire land and not the Plot which has the house. He said the first defendant took also the plots of the first plaintiff. He said the second defendant sold his house and land to the first defendant illegally as he had already fully repaid the loan. He said he is praying for restoration of his property through declaration order that he is the lawful owner of the house and land in dispute. He is also praying for compensation of the loses he incurred together with the costs of the suit.

Cheyo Paulo Nkelege who testified in the matter as PW2 told the court he is an Authorised Land Officer working at Kilosa District in Morogoro Region. He said his concern is about the ownership of Plots numbers 5 and 6, Block "H" Kikwalaza Mikumi Urban Area. He said according to their record, in 2009 the second plaintiff was owning seven plots of land with numbers 5, 6, 7, 8, 9, 10 and 11, Block "H" Kikwalaza Mikumi Urban Area. He said in 2010 the second plaintiff transferred his two plots of land namely Plots numbers. 5 and 6 to the first plaintiff by way of sale.

He said in 2015 there was a notice that the first plaintiff's plots had been invaded by the first defendant and their office issued a letter to stop the first defendant to continue with construction he was doing as the land was a surveyed land and he had no building permit. PW2 said that, the first defendant told them he was validly constructing on the land in dispute as he purchased the same from the second defendant. He said their role is to make sure the surveyed plots are being developed by the one with valid ownership and with building permit. He said the power to sale the land in dispute was done irregularly as the one who was supposed to sale the land if it was mortgaged is the owner of the land. He said they were not even aware that the land in dispute had been mortgaged. He said the survey process was valid as they received village minutes approving a request for the survey. He said they do not transfer un-surveyed land.

On his side the first plaintiff, **Donald Christian Temba** testified as PW4 and told the court that, he is suing the first defendant for trespassing into his piece of land situates on plots numbers 5 and 6, Block "H" Kikwalaza Mikumi Urban Area. He said on 25th April, 2007 he purchased un-surveyed land from the second plaintiff measuring 46 by 80 paces for a consideration of six million shillings. He said the sale was done before Primary Court Magistrate namely Hellena Nyambura and was witnessed by Joel Isidory Nyambura (PW3), Herman Mbugu, Godfrey Ndosi and

Abubakar Mhagama. He said at the entrance of the land he purchased, there was a house of PW1 which was intended to be used for guest house.

He said after purchasing the land he stayed for about two years and in 2009 he was informed by PW1 that, there was a survey process that was in progress in the area. He said to have allowed PW1 to proceed with the process and he contributed in the expenses and told him that, upon completion of the process a letter of offer should be issued in his name. He said by that time PW1 had already initiated the survey process at the Village Authority and he proceed with the process until when he got his offer and in 2010, he got his title deed for plots numbers. 5 and 6.

He tendered to the court two letters of offer for plots numbers 5 and 6 together with copy of title deeds for the said plots issued in his name and were admitted in the case as exhibit P7 collectively. He said he wanted to construct a hostel for VETA students in the plots. He went on saying that, he had collected at the plots various building materials valued Tshs. 18,000,000/= and he had started construction of foundation of hostel buildings and planted various trees on the plots. He stated that, after the first defendant trespassed into his plots in 2013, he followed him with his friend namely Abubakar to ask him why he had trespassed into his land. He said the first defendant told him he purchased the land in dispute from the second defendant through public auction.

He said he was told the second defendant is the one sold his plots of land to the first defendant and it was sold after PW1 failed to repay the loan facility advanced to him by the second defendant. He said he didn't know if PW1 had a loan and when he asked him if he offered the land he sold to him as a security for the loan, PW1 told him he mortgaged only the house and not the whole land. He said the first defendant destroyed all of his beacons and his fence and he used all of his building materials he had put onto his plots of land claiming the same were belonging to PW1.

He went on saying that, he reported the matter at Kilosa District Land Office where he was given a letter of stopping the first defendant from continuing with construction on his plots of land but the first defendant continued with the construction. He tendered a copy of the said stop order to the court and it was admitted in the case as exhibit P8. He also said he reported the matter to Mikumi Town Council who served the first defendant with a letter which was admitted in the case as exhibit P9.

Thereafter he decided to file the present case in the court. He said he failed to repay the loan facility of forty million shillings he borrowed from NBC for developing the land in dispute. He also failed to fulfil his project in an agreement he entered with VETA students for hostel construction. He prayed the court to declare him the lawful owner of the

two plots of land, compensation for his building materials used by the first defendant, payment of general damages at the tune of Tshs. 100,000,000/= for the mental anguish he suffered plus the costs of the case.

After considering the evidence adduced before the court by the plaintiffs' witnesses and after going through the pleadings filed in the court by the parties the court has found proper for coherence purposes to start with the second issue raised in Land Case No. 286 of 2016. I will continue with the second issue raised in the Land case No. 122 of 2016 and followed by the first issues framed in both cases. Thereafter I will deal with the third issue framed in Land Case No. 286 of 2016 and finally I will deal with the third issue framed in Land Case No. 122 of 2016 and fourth issue framed in Land Case No. 286 of 2016.

The court has found it is undisputed fact that the second plaintiff was the original owner of the land in dispute. It is also undisputed fact that on 26th June, 2008 the second plaintiff obtained a loan facility of Tshs. 15,000,000/= from the second defendant which was supposed to be repaid within a period of twelve months together with interest of 24%. It is also not disputed that the second plaintiff offered his various property including a house built on land in dispute as a security for the loan. The

dispute is whether the sale agreement between the defendants over the land in dispute was lawful and legally valid.

The court has also found that, as stated by the second plaintiff the second defendant sold the land in dispute to the first defendant on ground that the second plaintiff defaulted to repay the loan advanced to him by the second defendant. The second plaintiff stated in his testimony that, he managed to repay Tshs. 13.4 million shillings out of the sum of Tshs. 18.6 million shillings he was supposed to repay to the second defendant. He stated further that on 20th October, 2009 he paid Tshs. 1,000,000/= to the second defendant's cashier namely Michael Mguruta but he was not issued with a receipt as the receipt book had not been procured.

The court has found the second plaintiff stated further that, on May, 2010 when his debt was Tshs. 4,000,000/= he told the above mentioned second defendant's Cahier to use the balance of his shares which by that time was Tshs. 5,000,000/= to clear his debt and the Cashier agreed. The issue here is whether the evidence of PW1 is credible and can be accepted. The court has found the issue of believing a witness or not was considered by the Court of Appeal of Tanzania in the case of **Goodluck Kyando V. R**, [2006] TLR 363 and stated at page 367 that: -

"It is a trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."

While being guided by the position of the law stated in the above quoted case the court has failed to see any good and cogent reason which can make it to disbelieve and accept the evidence of PW1 as credible evidence because it has also not been rebutted by any other evidence. The court has found the evidence of PW1 shows he was not indebted to the second defendant as his evidence referred hereinabove shows he fully repaid the loan he obtained from the second defendant.

The above finding of the court caused the court to come to the view that, the sale agreement between the defendants was not lawful and is legally not valid as when the land in dispute was sold to the second defendant the second plaintiff had already repaid the loan in full. If the sale agreement between the defendants was not lawful and legally valid it is crystal that the answer to the second part of the second issue framed in Land Case No. 286 of 2016 is that, the sale agreement between the defendants is thus not operative and enforceable. The above finding also lead the court to answer the last part of the second issue framed in Land case No. 286 of 2016 that the sale agreement entered by the defendants did not extinguish the second plaintiff's title over the land in dispute as the sale agreement was not lawful and is not legally valid.

It is now an opportune time to go to the second issue framed in the Land Case No. 122 of 2016 which asks whether the first defendant trespassed into the land of the first plaintiff. The court has found that, PW1 and PW4 stated categorically in their evidence that, on 25th April, 2007, PW1 sold part of the land in dispute to PW4 and the said sale agreement was witnessed by PW1, PW3 and PW4. As testified by PW1, PW2 and PW4 the said land was later on registered as plots numbers 5 and 6 Block "H" Kikwalaza Mikumi Urban Area.

While being led by the above referred evidence the court has found that, as the land mentioned hereinabove was lawfully sold to PW4 by PW1 on 25th April, 2007, it is obvious that the act of the first defendant to enter into the mentioned land on ground that it was sold to him by the second defendant after PW1 failed to repay the loan he was given on 26th June, 2008 cannot be equated with anything else than trespass to the land of PW4. The court has arrived to the above finding after seeing that, the land which PW4 is claiming was trespassed by the first defendant was sold to him on 25th April, 2007 which is before PW1 entered into the loan agreement (exhibit P2) on 26th June, 2008 which was averred was the basis of the second defendant to sell the land in dispute to the first defendant.

The court has found that, although it was held in the case of **Jela Kalinga V. Omari Karumwana**, [1991] TLR 67 that one of the defence against an action for trespass to land is a claim by the defendant that he had right to the possession of the land at the time of the alleged trespass or that he acted under any authority of some person having such a right but the said defence cannot assist the first defendant as the court has already found the second defendant had no justifiable right to sell the land in dispute to the first defendant.

The court has also found that, the first defendant had no justification of entering into the land sold to PW4 by PW1 because as appearing in exhibit P2, what was offered by PW4 as a security for the loan was only his house and there is nowhere stated the house and the whole land in dispute was offered as a security for the loan. Therefore, although the land in dispute was not under description of plots number at the time of the house being mortgaged as a security for the loan but it was not stated the loan was secured by land in dispute but by the house. In the premises the court has found the act of the first defendant to enter into the land of PW4 without his consent and do whatever he did on the land of PW4 was a trespass to the land of PW4.

With regards to the first issues framed in both cases which asks whether the plaintiffs are lawful owner of the land in dispute the court

has found that, as stated by PW1 and PW4 they were the lawful owner of the land in dispute before the second defendant sold the land in dispute to the first defendant. The evidence of PW1 and PW4 is supported by the evidence of PW2 and PW3 together with exhibits P4, P5 and P7 which shows they are lawful owners of the land in dispute.

The court has found that, although it is not disputed the land in dispute was surveyed and the mentioned exhibits P4, P5 and P7 were issued after PW1 obtained the loan from the second defendant but the court has found exhibit P2 shows what was mortgaged by PW1 was the house and not together with the whole land in dispute. It is the view of this court that, even if it would have been said the second defendant had justification of selling the house of PW1 as he defaulted to repay the loan but he had no justification of selling the whole land in dispute to the first defendant.

The court has arrived to the above stated finding after seeing that, as stated earlier in this judgment and as stated by PW1 in his testimony the second defendant ought to sale the house which is built on Plot No. 11 Block "H" Kikwalaza Mikumi Urban Area alone and not together with other plots numbers 5, 6, 7, 8, 9 and 10 owned lawfully by PW1 and PW4 which are on the land which is not stated anywhere in the loan agreement was offered as security for the loan.

By taking into consideration the court has already found the sale of the house to the first defendant by the second defendant on ground of default of PW1 to repay the loan was unlawful and was not legally valid the court has found that, the first plaintiff is lawful owner of the land described as plots numbers 5 and 6 Block "H" Kikwalaza Mikumu Urban Area and the second plaintiff is the lawful owner of the land described as plots numbers 7, 8, 9, 10 and 11, Block "H" Kikwalaza Mikumi Urban Area. Therefore, the first issues in both cases are answered in affirmative that the plaintiffs are lawful owner of the respective lands.

As for the third issue raised in Land Case No. 286 of 2016 which asks whether the second plaintiff suffered damages the court has found the damages the second plaintiff is claiming from the defendants is general damages which he quantified at the tune of Tshs. 100,000,000/=. The court has found the position of the law in relation to claim of general damages to be awarded to a party in a suit is that, there must be evidence adduced in a case to justify the same to be awarded. The stated position of the law can be seeing in the case of **Anthony Ngoo & Another V. Kitindi Kimaro**, Civil Appeal No. 25 of 2014, CAT at Arusha (unreported) where it was stated that: -

"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence

on record able to justify the award. The judge has discretion in the award of general damages”.

While being guided by the position of the law stated in the above cited case the court has found that, the second plaintiff stated in his testimony that, the act of the second defendant to sell his house to the first defendant caused him to suffer mental anguish and he lost his properties which were in the house which were beds, mattress, wardrobes and sofa sets. Although the second plaintiff did not state how much of the mentioned properties get lost and what was the value of each of the mentioned properties but as his evidence is uncontroverted there is no reason which can make the court to find he didn't suffer any damage.

The court has also found the first plaintiff claims for general damages of Tshs. 300,000,000/= for the trespass committed by the first defendant on his plots of land. The evidence of PW4 shows he stated he had collected building materials on his plots valued Tshs. 18,000,000/=. However, there is no any evidence adduced to show how the said amount was arrived. Although trespass is a tort which is actionable per se but the first plaintiff was required to adduce some evidence which would have shown how much he has suffered because of the trespass committed by the first defendant on his plots of land.

Coming to the last issue in both cases which asks to what reliefs the parties are entitled the court has found that, as it has found the sale of the land in dispute to the first defendant was unlawful and legally invalid, and as the court has already found the plaintiffs are lawful owner of the respective land, the court has found the reliefs deserve to be granted to the parties are as follows: -

- (1) The purported sale of the first plaintiff's land described as plots numbers 5 and 6 and the second plaintiff's land described as plots numbers 7, 8, 9, 10 and 11 Block "H" Kikwalaza Mikumi Urban Area to the first defendant by the second defendant is declared ineffectual, null and void.
- (2) The first plaintiff is declared the lawful owner of the plots number 5 and 6, Block "H" Kikwalaza Mikumi Urban Area and the second defendant is declared the lawful owner of the plots described as Plots numbers 7, 8, 9, 10 and 11 Block "H" Kikwalaza Mikumi Urban Area.
- (3) The first defendant is declared is a trespasser to the land of the first plaintiff.
- (4) The structures built by the first defendant on the first plaintiff's plots be demolished.

- (5) Any servant or person acting on behalf of the first defendant be evicted from the plots of the plaintiffs.
- (6) Each plaintiff is awarded general damages of Tshs. 20,000,000/= which will make the total general damages awarded to both plaintiffs to be Tshs. 40,000,000/= and the same be paid by both defendants.
- (7) The plaintiffs are awarded interest of the amount stated in paragraph (6) above at the court rate of 7% from the date of delivery of this judgment to the date of full payment and
- (8) The plaintiffs to get the costs they have incurred in the suit.

Order accordingly,

Dated at Dar es Salaam this 3rd day of June, 2022


I. Arufani
Judge
03/06/2022

Court:

Judgement delivered today 3rd day of June, 2022 in the presence of Ms. Josepha Tewa, advocate for the plaintiffs and in the absence of the defendants. Right of appeal to the court of Appeal is fully explained to the parties.




I. Arufani
Judge
03/06/2022