

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 125 OF 2022**

**EXAUD ELIAS MACHANGE1ST PLAINTIFF
CLAUDE PAUL FERDINAND.....2ND PLAINTIFF
THEOBARD MUGANDA.....3RD PLAINTIFF**

VERSUS

**VICTOR STEVEN MANG'ANA
(Being an administrator of the estate of Steven
Mang'ana).....1ST DEFENDANT
KAM COMMERCIAL SERVICES AUCTION MART.....2ND DEFENDANT
JUMA KALEMBO.....3RD DEFENDANT**

JUDGMENT

*Date of last Order: 06/03/2024
Date of Judgment: 26/03/2024*

A. MSAFIRI, J.

The plaintiffs hereinabove have instituted this suit against the defendants as shown above. The plaintiffs claims to be the lawful owners of different pieces of unsurveyed lands in Kilimahewa Juu Street (Mtaa wa Kilimahewa Juu), in Wazo Ward (Salasala) in Kinondoni Municipality in Dar es Salaam the lands which was described as follow;

- i. Exaud Elias Machange(1st plaintiff): owner of unsurveyed plot measured 60x60 (meters) situated at Mtaa wa Kilimahewa Juu Salasala, Wazo Ward(formerly Mtaa wa Salasala, Kunduchi Ward)

Als

- ii. Claud P. Ferdinand (2nd plaintiff): unsurveyed plot measured 18x17x24 paces, situated at Mtaa wa Kilimahewa Juu, Wazo Ward (formerly Mtaa wa Salasala Kunduchi Ward).
- iii. Theobard Muganda (3rd plaintiff): owner of unsurveyed plot measured 35x20 situated at Mtaa wa Kilimahewa Juu, Wazo Ward (formerly known as Mtaa wa Salasala Kunduchi Ward).

The plaintiffs claims that sometimes on 07th June 2019, the 2nd defendant and the deceased father of the 1st defendant invaded the plaintiffs lands claiming that they were executing court decree issued by Hon. Rungwecha dated 21st May 2019 of the Kinondoni District Land and Housing Tribunal. That on 17th March the said defendants demolished all of the houses constructed by the plaintiffs on their lands and left the plaintiffs homeless.

The plaintiffs claims against the defendants jointly and severally is for declaration that the plaintiffs are the lawful owners of the suit lands and the defendants are trespassers, for declaration that the act of the defendants to trespass and demolish the plaintiffs landed properties are unlawful, an order to be issued to the plaintiffs to conduct the valuation of the properties demolished by the defendants at the costs of the defendants, order against the defendants jointly and severally of compensating the plaintiffs, general damages and costs of this suit. *Alls.*

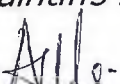
The 1st and 3rd defendants lodged their defense by filing their written statements of defence in which they vehemently denied the claims of the plaintiffs and put them to strict proof.

The 1st defendant filed his written statement of defence in which he claimed that his late father one Stephen Mang'ana was declared the legal owner of the suit land vide Land Application No. 15 of 2008 by the District Land and Housing Tribunal for Kinondoni District (herein shall be referred as the District Tribunal) and the plaintiffs are trespassers. He prayed for the dismissal of the suit with costs.

The 3rd defendant also filed his written statement of defence and despite denying the existence of the claimed decree of the District Tribunal dated 21st May 2019, he supported the reliefs claimed by the plaintiffs and prayed that the same be granted as prayed.

The 2nd defendant was *ex parte* after the court has been satisfied that he was duly served but failed to appear in court and file his defence.

Before the commencement of the trial, six (6) issues were framed and adopted by the Court as the issues in dispute. They are;

- i. Who between the plaintiffs and the 1st defendant is the lawful owner of the suit lands?*
- ii. Whether some of the plaintiffs lawfully purchased the suit lands from the 3rd defendant.* 

- iii. Whether the disputed land falls within the scope of Land Application No. 15 of 2008 at the District Land and Housing Tribunal for Kinondoni at Mwananyamala.*
- iv. Whether the 1st and 2nd defendants trespassed into the plaintiffs' land.*
- v. Whether the demolition of the plaintiffs' property on the suit lands which was done by the 1st and 2nd defendants was lawful.*
- vi. To what reliefs are parties entitled to.*

During the trial, the plaintiffs were represented by Mr Isaac Tasinga, learned advocate. The 1st defendant was represented by Mr Francis Mgare, learned advocate, and the 3rd defendant was represented by Mr. Innocent Mwelelwa, learned advocate. As said earlier the hearing proceeded in absence of the 2nd defendant. After the close of the hearing on all parties, with leave of the Court, the parties filed the final submissions which this Court have taken in consideration while determining this suit. Furthermore, after the hearing in courtroom, the Court visited the locus in quo and the findings will be analysed in determination of the evidence.


Before I start determining the issues by analyzing the adduced evidence both oral and documentary, I would like to emphasize a cardinal principal of law that it is the one who alleges who has mandatory obligation to prove their allegations. This is embedded under Section 110(1), (2) of the Evidence Act, Cap. 6 R.E 2022 which provides; *Acts*

110(1); *whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

• 110(2) *when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

Guided by the said principle of law, I feel that I should point that in civil cases, the law places a burden of proof upon a person who desires a Court to give judgment in his or her favour and such a person who states the existence of facts has to prove existence of those facts. Such fact is said to be proved when in civil matters, its existence is established by a preponderance of probability. (See the decision of the Court of Appeal case of **Ernest Sebastian Mbele vs. Sebastian Sebastian Mbele**, Civil Appeal No.66 of 2019 CAT Iringa (Unreported) in which this cardinal principal on proof on balance of probabilities was set).

In this suit it is therefore the plaintiffs who have the primary duty of proving their claims. I will now determine **the first issue on who between the plaintiffs and the 1st defendant is the lawful owner of the suit lands.**

To establish their claims, the plaintiffs brought a total of eight (8) witnesses with four exhibits. 

PW1 was Exaud Elias Machange, the 1st plaintiff. He said that the 1st and 2nd defendants have invaded his place and demolished his residential house located at Kilimahewa Juu, Wazo Ward, Kinondoni District. That the place is unsurveyed and has a size of 60x60 meters. That his neighbours are Juma Kalembo on the south and west, Mlay on the North and a street road on east. That he got the area by purchasing it from Juma Abdallah Kalembo who is the 3rd defendant on 20th May 2008. He produced a sale agreement attached with the affidavit of Juma Kalembo, the vendor. They were admitted as exhibit P1 collectively. The sale agreement shows that the 1st plaintiff purchased the land for TZS 10 million only.

However, despite the fact that the court admitted the affidavit sworn by Juma Kalembo attached with the sale agreement, the court have noted that the sale agreement was entered on 20th May 2008 while Juma Kalembo affirmed the affidavit in 19th September 2016, about eight years since the agreement of sale was made. The court have observed further that the sale agreement have no description of the suit land but the affidavit which was sworn eight years later, do have description of the suit property. However, as said earlier, the Court visited the disputed land and saw the remnants of the demolished house and the 1st plaintiff pointed to the court the whole of his claimed area which is also claimed by the 1st *Adls.*

defendant. Hence I find that the description in the affidavit attached to the sale agreement fits the description of the disputed land.

PW1 stated further that after buying the land, he constructed a residential house worth TZS 90 million where he was living with his family. That on 07th June 2019, a notice of demolition was affixed on the wall of his house by the 1st and 2nd defendants. It was the order from the Tribunal. He produced the copy of the said order which was admitted as exhibit P2. It is an order from the said Tribunal from Misc. Application No. 113 of 2016 whereby one Steven Mang'ana was a decree holder and Juma Kalembo and 4 others were judgment debtors.

The court have read the admitted order but it does not show the description of the land whose structures are to be demolished. The plaintiff PW1 said that the execution order originates from the decree of 21st May 2019, in Application No. 113 of 2016. He said further that the execution order had no description of his area or his name. It does not describe any location at all.

PW1 stated that the 1st defendant claimed in his written statement of defence that his area was demolished in execution of the Tribunal's decree in the Application No. 15 of 2008. He contended that he was not a party to the said case and the whole proceedings. That the said decree does not mention his name or his landed property location but it name other

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area i.e. Bekako, Tegeta which is a different area from Kilimahewa Juu Street where his land is located.

He said that the demolition was unlawful because first, the order of the Tribunal did not mention his name or the description of the area and second the order of the Tribunal was already out of time.

In cross examination by the counsel for the 3rd defendant, PW1 said that the dispute between Steven Man'gana and Juma Kalembo is on Bekako area and not Kilimahewa and Steven Mang'ana was declared the lawful owner of Bekako area, Salasala and not Kilimahewa Juu area, Tegeta.

In re-examination, PW1 was questioned about the value of the suit land and said that the estimated value is more than TZS 400 Million. He admitted that they did not have Valuation Report but argued that they did not had time to conduct valuation as the time was short, hence they left it to the court to order the valuation.

PW2 was Monica Lucas Timba who said she witnessed the sale of the suit land between the 1st plaintiff and the 3rd defendant and that she was a witness of the 1st plaintiff in the sale. That she was also Chairman of Salasala Street and that in 2014, Salasala Street was divided whereby Kilimahewa Juu Street was established. That the area of the plaintiff is located at Kilimahewa Juu and not Bekako or Benaco. That Kilimahewa

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Juu is far from Benaco area. In cross examination, the witness said she doesn't know Steven Mang'ana.

PW5 was Theobald Francis Muganda, the 3rd plaintiff. His evidence is similar to the evidence of PW1 that he also purchased a piece of land from the 3rd defendant Juma Kalembo on 23rd July 2015 for TZS 2,800,000/=. That the area is unsurveyed and located at Kilimahewa Juu, Wazo Ward, Kinondoni District. He said his neighbours are Vicent on east, Omari Jafari on west, and the street road on south and north sides. He produced a sale agreement which was admitted as exhibit P3.

The sale agreement has no description of the location of the purchased land. But it show that it was witnessed by the Chairman of the Kilimahewa Juu Street who signed and stamped the agreement with the office's official stamp.

PW5 said further that after buying the property, he constructed residential house where he was living in with his family since 2008. That they lived peacefully until 07th June 2019 when he saw an order of the court affixed on the wall of his house. The order was an execution order of the District Tribunal. He did not see who fixed it on the wall. He was shown exhibit P2 and identify it to be same order which was affixed to the houses of the 1st plaintiff, the 2nd plaintiff and him, the 3rd plaintiff. *Alle*

He vehemently contested the correctness of the order exhibit P2 as it did not name any area to be demolished, it did not name his landed property or his name. That the order referred to the decree of the Tribunal of 21st May 2019 but he, PW5 have perused in the records of the Tribunal but could not find it. That the order did not specify which areas or which houses are to be demolished.

PW5 said further that he has read the defence of the 1st defendant which shows that the decree of the District Tribunal follows the decision of the said Tribunal in Application No. 15 of 2008. That he saw the Ruling of the said Application and the parties were Steven Mang'ana vs. Juma Kalembo and others. He contended that he was not a party in the said Application and hence the said Ruling of the District Tribunal does not concern him or his property. He insisted that he was not a trespasser as he has ownership documents which proves that he is the owner of the suit property. In cross examination, he said that following the demolition order, they filed an objection proceedings in the District Tribunal in 02nd March 2020. He said further that when they were waiting for the hearing, his house was demolished on 17th March 2020.

In further cross examination, PW5 stated that his place is at Kilimahewa Juu and not Benaco. That there is a long distance between those two places and that Juma Kalembo who sold him the area, told him

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that there is no dispute in his area but the dispute was at another area known as Benaco.

The 2nd defendant, Claude Paul Ferdinand testified as PW7. He said that his claim is against the acts of the 1st and 2nd defendants to invade his area and demolish his house therein. That his house is located at Kilimahewa Juu Wazo Ward, Kinondoni District, and it is unsurveyed. That on east side, his neighbour was one Mapunda, on west, there is one Ngowi, on the south area there is a road and Dickson Shimba is his neighbour on north side.

PW7 stated further that he got his area by purchasing it from one Dickson Shimba. He produced the documents for purchase which were admitted as exhibit P4 collectively. He said that before purchase of the land, he made inquiry to the neighbours and to the Street Government local leaders who all assured him that the suit land has no any dispute. That he purchased the suit land for TZS 350,000/= and built a house and moved in with his family in 2017.

PW7 said that he lived peacefully with his family until 07th June, 2019 when a notice of demolition was fixed at the door of his house. He didn't know who fixed the notice. That the notice was an execution order of the District Tribunal. He was shown and identified exhibit P2 to be the similar order which was fixed at his door. He contested the correctness of the

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order of the District Tribunal that first; his name was not among the parties in the Order, second; the area does not show the area and the size of execution. That the decree was to be executed within three months from the date of the issue. It was issued on 07th June 2019 hence it was to be executed by 21st July, 2019. However, the said order was executed in 17th March 2020 which was about nine (9) months after the date of the issue. That the order was not valid.

PW7 testified that after demolition, the house was inhabitable and all household items were destroyed. He said that the value of all destroyed properties is estimated at TZS 15 Million. He said further that the valuation of their houses was never done before they were demolished. He said the estimated value of his houses is TZS 100 Million. He prayed for compensation.

PW8 was one Shilungu Hamisi Masesa who testified as the witness of PW7 the 2nd plaintiff. He said that he was a witness of the 2nd plaintiff when he was buying the suit land from Dickson Shimba. He went on to identify the sale agreement exhibit P4. He said that the suit land is located at Kilimahewa Juu.

Having gone through the evidence of the three plaintiffs and their witnesses and the admitted exhibits, it is clear that all the plaintiffs claims that at different times they purchased the unsurveyed pieces of land on

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the area described as Kilimahewa Juu, Salasala, Dar es Salaam. The 1st and 3rd plaintiffs claims to have purchased their areas from Juma Kalembo, the 3rd defendant while the 2nd plaintiff claims to have bought the place from Dickson Shimba.

To know whether the vendors had title to pass to the purchasers it is important to establish where the vendors got the suit land they have sold in the first place. Here the major question is how Juma Kalembo and Dickson Shimba got their areas.


In his evidence, PW7 said that Dickson Shimba got the suit land from buying it from Juma Kalembo. However, there was no any proof of sale agreement between Juma Kalembo and Dickson Shimba although Juma Kalembo stated in his evidence to have sold a piece of his land to Dickson Shimba.

On Juma Kalembo, as observed earlier, he is the 3rd defendant in this matter. In his defence, giving evidence as DW4 he said that he know the three plaintiffs. He said that he knows them after he has sold them pieces of lands from his land which is located at Salasala, Kilimahewa Juu, Wazo Ward, Kinondoni Municipal. He said that he inherited the said land from his late father. That after the death of his father the family meeting was conducted where he was bequeathed all properties left by his father including the Salasala farm which is now in dispute. He produced the

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Minutes of the family meeting and a letter of appointment as administrator of the estate of his late father which were admitted as exhibit D4 and exhibit D5 respectively.


DW4 stated further that his late father got the Salasala farm in 1983. That he wrote a letter requesting to join what was then Mtongani Ujamaa Village which was at Kunduchi Ward. That his late father requested for the land for the purpose of farm and residency. That the request was granted and his late father was allocated a piece of land for farming. He produced a request letter which was admitted in court as exhibit D6 and the allocation letter which was admitted as exhibit D7.

DW4 said that the land which his father was allocated was two pieces of land. One was sized six (6) acres and the other one was measured eight acres. That the six acres are located at Kilimahewa near Benako Primary school and eight acres are located at Kilimahewa Juu. He said that he has sold the eight acres piece of land to various people including Exaud Machange (1st plaintiff), Theobard Muganda (3rd plaintiff) and other people who are not part of this dispute. He stated that after sometime he was told that there was a person claiming that the suit area is his and that his name was Steven Mang'ana and had served the plaintiffs an order of execution. 

DW4 said that he saw the execution order but after reading it he discovered that the order was misplaced as it was affixed on the wrong properties and wrong people. That the 1st and 2nd defendants made execution on the wrong area which was not intended. He admitted to have dispute with Steven Mang'ana on another piece of land which measured six acres located at Benako but not on the eight acres located at Kilimahewa Juu.

He said that he was the lawful owner of the suit land and he sold the disputed piece of land lawfully to the plaintiffs and it was Steven Man'gana who invaded the area.

On cross examination, he was asked by the counsel for the plaintiffs about one Beatus Mtui and he replied that the same lives in the six (6) acres at Benako not at Kilimahewa Juu.

In cross examination by the counsel for the 1st defendant, the 3rd defendant admitted that he had dispute over a land with Steven Mang'ana, the father of the 1st defendant. That the dispute was on the land located at Benako and Steven Mang'ana was declared the owner of that area. That the execution order was for Benako, not Kilimahewa Juu, and that it was wrongly executed at Kilimahewa Juu. He admitted that he has never filed complaint on the invasion of Steven Mang'ana on the disputed area. 

To cement his evidence, the 3rd defendant called one witness namely Hassan Juma Matola who testified as DW5. He said that he knew the 3rd defendant since 1983 when his father the late Abdalla Kalembo was alive. He said that Abdallah Kalembo owned land in two areas namely Kilimahewa Juu and Kilimahewa Chini which is also known as Benako. That the late Kalembo was allocated his pieces of land from CCM Mtongani Branch. That, at that time Mtongani was village within Kunduchi Ward, Kinondoni District.

DW5 estimated the sizes of the two pieces of lands to be about six or seven acres. In cross examination, he was asked about the changes of the names of the areas, and explained that first it started as Mtongani, then Salasala, then Kilimahewa Juu. That nowadays they are four different areas.

I have read exhibit D6 and D7. They show that one Abdallah Issa Kalembo requested and was allocated the piece of land for farming. The allocation was done by Mtongani Ujamaa Village, Kunduchi Ward. It was on 4th February 1983.

The 1st defendant has argued that Mtongani, Kunduchi is different area from Kilimahewa Juu, Salasala. However, there was an evidence from DW8 that the names of the areas have changed over the years. During those times, there was only Kunduchi Ward but over the years, Kunduchi

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Ward has been divided into Wazo Ward, Kunduchi Ward, Mabwepande Ward, Bunju Ward, etc.

It is my view that the geographical location of an area of Mtongani with the names are not the same in 2021 or 2022 as it were in 1983.

After the evidence of the 3rd defendant who claims to have lawfully sold the disputed land to the plaintiffs, the 1st defendant also testified in court to establish his claims that he is the lawful owner of the suit land.

Victor Steven Mang'ana gave his evidence as DW1. He said he is an administrator of the estate of the late Steven Mang'ana who was his father who died in March 2021. He said that his father was the owner of the disputed land from the year 1987 and he bought it from various people he named as Juma, Ismail Mrisho, and Mzee Haroub. He said he had forgot other people. That the area at that time was estimated to measure 17 acres in size. That, at that time, the area was commonly known as Benako, Salasala, Kunduchi Ward, Kinondoni District.

That around 2007-2008, a group of people led by Juma Kalembo invaded the area in dispute. That other people were later to be known as Julius Mallya, Shomari Mrisho, Justin Mtui and Martha Massawe. That the said dispute was over the land at Benako. That following the dispute, an Application No.15 of 2008 was filed in the District Tribunal and the decision was delivered in 2010 whereby his father Steven Mang'ana was

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declared the lawful owner of the suit land, and Juma Kalembo and others were declared the trespassers. He produced the said judgment which was admitted as exhibit D1.

He said further that after the ruling, his father filed for execution at the District Tribunal. It was Application No. 113 of 2016. He identified Exhibit P2. He admitted that the judgment debtors are not the plaintiffs in the present suit. That the District Tribunal appointed the Auctioneer for execution. That as per exhibit P2, the Tribunal gave an order for demolition of the buildings of the judgment debtors and eviction. That in this suit, the Auctioneer has been sued as the 2nd defendant. That after issuing of Notices, the 2nd defendant demolished the houses which were on the area of the dispute. That the execution was effected in 2020.

That after execution, the plaintiffs and others instituted a suit at the District Tribunal challenging the execution. That it was Application No. 216 of 2020 and he tendered the said Application which was admitted as exhibit D2. It was filed on 02nd March, 2020. That the Application was struck out on ground that it was out of time. The said Ruling was admitted as exhibit D3.

DW1 insisted that the decision of Application no. 15 of 2008 had never been challenged hence it still exists. He contended that the claim that there are two different areas is not true as during old days, the whole *Adels*

area was known as Benako, Salasala, Tegeta, Kinondoni District. But after establishment of the streets and Local Street Governments, the area in dispute was changed to Kilimahewa juu, Salasala, Kinondoni District.

He said that the plaintiffs and other people who purchased land from Juma Kalembo were defrauded as the said Kalembo sold them the lands which has dispute and while the case over the said dispute was still pending in the Tribunal.

In analysis of evidence regarding ownership of the disputed land, the the 1st and 3rd plaintiffs claims ownership of the said land and that they lawfully purchased it from Juma Kalembo. The 2nd plaintiff claim to buy the land from Deo Shimba by who bought the same from Juma Kalembo. They have proved their ownership by producing their sale agreements. Juma Kalembo who sold the land to the 1st and 3rd plaintiffs confirmed that and he said that he was also the one who sold the disputed land to Deo Shimba who later sold the same to the 2nd plaintiff.

Juma Kalembo have established his ownership of the disputed unsurveyed land by proving that he got the disputed land from his late father and exhibits D4, and D5 proved that he was appointed the administrator and also inherited the property of his late father. Exhibits D6 and D7, the letters to and from Kijiji cha Ujamaa Mtongani confirms that one Abdallah Issa Kalembo was allocated a farm in Mtongani area

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although the size of the farm was not stated. It is in evidence that the names of the areas have been changing over the time particularly when the Ujamaa Village era ended and the area was planned into Streets. Therefore, the documents which name the area Mtongani Village cannot have the same name in current time. The witness DW4 and DW5 stated that the area which was known as Mtongani Village Ward, Kunduchi Ward is now Salasala Wazo Ward and has been divided into streets among them Kilimahewa Juu Street where the suit land is now located.

On the 1st defendant, he relied on exhibit D1 to establish his ownership. He had no any other evidence beside his oral evidence supported by DW2 Martha Massawe who said she purchased a piece of land from Juma Kalembo only to find that Kalembo was a trespasser and that the land belongs to Steven Man'gana. She said that she bought the said land in 2007 and the area was known then as Salasala, Benako, Kunduchi Ward and later it was known as Benako, Kilimahewa Juu, Wazo Ward. When she was asked in cross examination about the ownership of Steven Man'gana, she replied that Steven Mang'ana showed them the documents of ownership. However there was no any ownership document of Steven Mang'ana which was produced in Court.

As said earlier, the 1st defendant relied on exhibit D1 to establish his ownership. Exhibit D1 is the Ruling of the District Tribunal in Land

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Application No. 15 of 2008 between Steven Mang'ana and Juma Kalembo and others. I have read the said Ruling. The suit land in the Ruling is referred as the land at Bekako, Salasala Tegeta, Kinondoni Municipality. I find that there is ambiguity in the location of the suit property claimed by the 1st defendant as the Ruling which declared him the owner describe the land to be located at Bekako, Salasala, Tegeta, Kinondoni and not Kilimahewa Juu, Salasala, Wazo Ward, Kinondoni.

It is my belief that the 1st defendant in this case failed to establish his ownership of the suit land.


I said earlier that, this Court visited the locus in quo on 15th December, 2023 to ascertain the location of the suit land which is the source of the dispute between the plaintiffs and the defendants. The court saw the ruins of the demolished houses of the three plaintiffs. The court was shown the borders of each area, however there are several changes and the boundaries are not exactly the same as shown in the sale agreements. The court did not see any neighbour as it was said that some of them died and some of them have sold their areas and moved to other places.

There was a contest between the 1st defendant and the 3rd defendant. They both claim to own the same area where the ruins of the demolished houses which were erected by the plaintiffs were seen. Each of the said defendants claim the area was owned by their late fathers. Since it is

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unfortunate that both fathers are not around to confirm the claims, the only proof which could have assisted the court, is the ownership documents beside verbal evidence. The 3rd defendant had documents to establish that his father once owned/ was allocated an area within the then Mtongani Village which was later came to be known as Kilimahewa Juu Street after the area was changed from villages to the streets. However, as said earlier, the 1st defendant had no any other ownership document besides the ruling of Application No.15 of 2008 which declared him the owner of the area known as Bekako.

It was evidenced by some of the witnesses that there is no area called Bekako. That maybe it was meant the word Benako. However the Ruling of the Tribunal has never been corrected to rectify the mistake. There was no evidence from the 1st defendant to show that he has ever moved the Tribunal to correct the alleged mistake.

Furthermore, even if the area could have been Benako, the 1st defendant said that the disputed area was generally known as Benako, Salasala but later after the streets, the area is located at Kilimahewa Juu, Salasala. The 3rd defendant claimed that Benako area and Kilimahewa Juu area are two different areas and that the area of dispute between him and the late Steven Mang'ana was on the Benako area near Benako Primary school. 

The court visited the said Benako area. The court saw the said Benako School and Efatha Church which were areas pointed by the 3rd defendant to be marks of the second area which has size of six (6) acres which he claims to be the area in dispute between him and the late Mang'ana. The 1st defendant was also at the scene and denied vehemently to know the area. He argued that his late father owned the area in dispute at Kilimahewa Juu, Salasala.

In determining the first issue as to who is the owner of the suit property between the plaintiffs and the 1st defendant, I find that on the balance of probability, the weight of evidence by the plaintiffs is heavier than the 1st defendant. The plaintiffs have produced sale agreements to prove their ownership. Although the affidavit attached with the plaintiffs sale agreement exhibit P1 was deposed eight years after the signing of the sale agreement, I find this was not fatal as to render the documents nullity or invalid. The 3rd defendant have produced evidence on how his late father got the disputed area which by then was within Mtongani Village. The court also visited the suit area and was satisfied that there are two areas the one known as Kilimahewa Juu and was about some few kilometers from the other area known as Benako which is near Benako Primary School and Efatha Church. *Aelle*

The only ownership document which the 1st plaintiff had, as said earlier was the District Tribunal Ruling which declares him to be the owner of Bekako, Salasala Tegeta area.

The first issue is answered that the plaintiffs have managed to establish that they are the lawful owners of the land in dispute.

The second issue is automatically answered in affirmative that some of the plaintiffs i.e. the 1st and 3rd plaintiffs lawfully purchased the suit land from the 3rd defendant. It has been established in the evidence that the 3rd defendant was the lawful owner of the suit land which he had inherited from his late father Abdallah Issa Kalembo who also got the area during Ujamaa Villages' era where he was allocated the area by Mtongani Village.

The third issue is whether the disputed land falls within the scope of Land Application No. 15 of 2008 at the District Land and Housing Tribunal for Kinondoni District at Mwananyamala.

I have read the Ruling of the said Application No. 15 of 2008. As I have already determined, the Ruling of the Tribunal awarded ownership to one Steven Mang'ana of the area known as Bekako which is different from the land in dispute claimed by the plaintiffs as Kilimahewa Juu Street, Salasala, Wazo Ward. The court visited and saw all the areas claimed by the plaintiffs. It also visited the other area known as Benako which the 3rd

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defendant claims it is indeed the area which was in dispute between him and the late Man'gana.

Since the Ruling of the District Tribunal name the different area as suit land, then the disputed area which is claimed in the instant case does not fall within the scope of Land Application No. 15 of 2008. In the said Application, the area is Bekako Salasala Tegeta Kinondoni, while in the instant case the disputed area claimed by the plaintiffs is at Kilimahewa, Wazo Ward.

It is my view that the fourth and fifth issues can be determined jointly as they are related. Hence by the power vested to this Court under Order XIV Rule 5(1) of the Civil Procedure Code, Cap 33 R.E 2019, I consolidate the two issues and shall determine them as one.

The issues are on whether the 1st and 2nd defendants trespassed into the plaintiffs land and demolished the plaintiffs' property therein. I find that the issue is answered in affirmative. The reasons are that, the evidence available shows that following the dispute between the late Steven Mang'ana and Juma Kalembo and others in Land Application No.15 of 2008, whereby Steven Mangana was declared the owner of the area named Bekako, Salasala, Tegeta, Kinondoni, the 1st defendant said that his father filed Application No 113 of 2016 for

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execution. The Application was granted and the Tribunal ordered for execution where the 2nd defendant was appointed to conduct execution.

However, the said execution order has several fatal omissions. First it shows that the judgment debtors were ordered by a decree of the District Tribunal dated 21st day of May 2019 to remove or demolish structures. However according to the evidence of 1st defendant, his father filed for execution following the decree of Application No 15 of 2008 which was delivered in 16th Feb 2016. Then where did this decree of 21st May 2019 come from?

Second omission is that Order of the District Tribunal in Misc. Application No. 2016 admitted as exhibit P2 does not describe any particular or specific area to be executed. The plaintiffs are not part to the execution, nor are their suit plots described as suit plots to be demolished. Therefore it is the finding of this court that since the Ruling in Application No.15 of 2008 did not award the 1st defendant the lands of the plaintiffs, then the 1st and 2nd defendants trespassed into the plaintiffs suit land and since the order of Misc. Application No. 113 of 2016 did not name the lands of the plaintiffs as properties to be demolished, then the demolition was unlawful.

The sixth issue is on reliefs entitled by the parties. Having found that the plaintiffs are the lawful owners of the suit land, then they are entitled

Alls

to the said ownership of suit land. I find that the demolition of their properties on the suit land by the 1st and 2nd defendants was unlawful.

On the relief claimed by the plaintiffs on payment of the tenancy costs after their houses were demolished, I find that the plaintiffs failed to establish that they indeed entered the claimed tenancy costs and there is no documentary proof of tenancy or the costs incurred beside mere words of claims by the plaintiffs.

The court also hereby enters perpetual injunction to restrain the defendants to interfere with the plaintiffs' lands in anyway.

On the prayer for payment of general damages to be assessed by the Court, the plaintiffs left the assessment of general damages to the discretion of the Court, as they did not propose how much to be awarded.

In the case of **Anthony Ngoo and Another vs. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported), the Court held that;

"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence able to justify the award. The judge has discretion in the award of general damages. However, the Judge must assign a reason ..."

Basing on the said principle set in the herein above referred case, this Court has to assess the general damages basing on the evidence by the plaintiffs. *Atlls.*

The plaintiffs have demonstrated that their houses were demolished and their properties destroyed therein. The court has been satisfied that the demolition was unlawful. The court also has visited the locus in quo and seen demolished houses. Although the plaintiffs did not establish the expenses and values of the demolished houses, generally they have established that they have incurred huge loss and rendered homeless. Therefore in assessing general damages, this court has considered the fact that indeed, the houses of the plaintiffs were unlawful demolished, the houses were left in ruins and inhabitable. For that reason only, the court has assessed the general damages of TZS 60,000,000/= per each plaintiffs to be paid by the 1st defendant. The costs of the suit also to be borne jointly by the 1st defendant. All these are to be borne by the 1st defendant alone because the 2nd defendant was acting under the instructions of the 1st defendant following the 1st defendant's application for execution on the wrong area.

The prayer of the court order on the plaintiffs to conduct the valuation on their landed properties is disregarded for the reason that it was the duty of the plaintiffs to prepare their own case before filing the matter in court. It is not the duty of the court to make a case for any party. Therefore the plaintiffs are free to conduct the valuation of their properties without seeking for the order of the court. *All.*

Before I pen off, I think I ought to determine on the issue of pecuniary jurisdiction of this Court. Before the takeoff of the hearing of this suit, the 1st defendant through his counsel raised a preliminary objection on the pecuniary jurisdiction of this Court. It was the argument of the counsel for the 1st defendant that the estimated TZS 400 Million in the Plaint does not match the real value of the suit property as per the attached sale agreements by the plaintiffs.

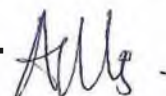
After hearing of the said preliminary objection, this Court overruled the same on the reason that the same invites the evidence to be adduced to prove on whether the estimated value is TZS 400 Million or TZS 13,150,000/= as per the plaintiffs' sale agreements.

Throughout the proceedings and even in his final submissions, the 1st defendant through his counsel has pointed that the value of the properties of the plaintiffs is low contrary to the estimated value and that this court lacks pecuniary jurisdiction.

However, it is my finding that this court has general jurisdiction as provided under the proviso of Section 13 of the Civil Procedure Code, Cap 33 R.E 2019 therefore it has jurisdiction to entertain this matter.

It follows then that the suit is decided in favour of the plaintiffs and it is hereby ordered as follows;

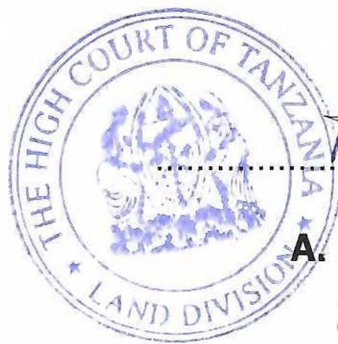
1. It is declared that the plaintiffs are the lawful owners of the suit lands and the defendants are trespassers.



2. It is declared that the acts of the father of the 1st defendant and the 2nd defendant to trespass the plaintiffs' lands and demolish their landed properties was unlawful.
3. The 1st defendant to pay general damages of TZS 60,000,000/= to each of the plaintiff in this suit.
4. An order of perpetual injunction is entered restraining the defendants, their agents, employees or their workmen, not to interfere with the plaintiffs' lands in anyway.
5. The costs of the suit to be borne by the 1st defendant.

It is so ordered.

Right of appeal explained.




A. MSAFIRI
JUDGE

26/3/2024