

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 231 OF 2022

EXAUD AUGUSTINO KWAYU.....PLAINTIFF

VERSUS

SAMWEL APPOLLO ADIERO.....1ST DEFENDANT

CRDB BANK PLC LIMITED.....2ND DEFENDANT

**COMRADE AUCTIONMART AND
COURT BROKERS LIMITED.....3RD DEFENDANT**

SIMON AGENCY LIMITED.....4TH DEFENDANT

JUDGMENT

16/4/2024 to 25/04/2024

E.B. LUVANDA, J

The Plaintiff above mentioned is claiming against the First, Second, Third and Fourth Defendants jointly and/or severally for the following reliefs:

1. A declaration that the registration of the certificate of title number 47627, Plot No. 161/2/4 Kurasini in the name of the First Defendant is null and void as the public auction conducted by the Third Defendant is illegal;
2. The declaration that the Second Defendant has no contractual agreement with the Plaintiff as there was no legal mortgage to guarantee any loan advanced to the Fourth Defendant by the Second Defendant;
3. The declaration that the Fourth Defendant is liable to indemnify the Plaintiff for the loss suffered for misrepresentation;

4. Payment of specific damages to the tune of Tsh 400,000,000 for loss of income due to the denial of the right to use the property from December 2015 to the date of judgment;
5. Payment of Tsh 4,000,000 per day from the 1st July, 2020 to the date of judgment;
6. Payment of Tsh 300,000,000 being special damages for fraudulent misrepresentation as pleaded in paragraph 25(A), 3 and 4 of the plaint;
7. Payment of interest on the decretal amount at the court's rate from the date of the judgment to the date of payment in full;
8. Payment of general damages as may be assessed by the honorable court;
9. Costs; and
10. Any other relief as this honorable (sic) may deem fit and just to grant.

This suit proceeded in the absence of the Fourth Defendant who defaulted to enter appearance.

For purpose of having a clear picture of sequence of events, I better preface the summary of facts in chronological order.

The dispute of this matter revolves the creation of mortgage over the property described as Plot No. 161/2/4 registered under certificate of title number 47627, exhibit P5. According to exhibit P5 suggest that the Registrar of Titles registered

the said mortgage in favour the Second Defendant on 30/07/2004 to secure unspecified amount. Along exhibit P5, the Plaintiff who testified as PW1 asserted that he consented for his title deed exhibit P5 to be mortgaged to secure a loan a sum of Tsh 500,000,000, to this end he signed a mortgage of a right of occupancy dated 22/01/2005 exhibit P6, for that purpose. PW1 accused the Second Defendant to had altered a year in exhibit P6 to read 2005 instead of 2004. The Second Defendant contended that a mortgage registered in exhibit P5 was for unspecified amount, where the borrower (Fourth Defendant) borrowed Tsh 500,000,000 in 2004, Tsh 1,848,100,000 in 2005 and Tsh 3,500,000,000 in 2006, all secured by the same mortgage under the phrase of unspecified amount reflected in exhibit P5.

It is to be noted that a loan a sum of Tsh 3,500,000,000 was alleged to have been on default by the borrower, hence the Second Defendant entailed recovery measures with ultimate sale of the suit plot to the First Defendant, alleged sold vide a public auction conducted on 13/11/2012 as per the testimony of Isah M. Bendera (DW3) who is the auctioneer and Samwel Appollo Odiero (DW2) who was the highest bidder and protest to be a bonafide purchaser.

The Plaintiff (PW1) faulted the whole process of mortgaging and ultimately sale of the suit property on the following reasons: One, he disowned mortgaging exhibit P5 to secure a sum of Tsh 3,500,000,000 reflected in the offer letter

exhibit P9, instead claim to have mortgaged his title exhibit P5 for a loan of Tsh 500,000,000 as per the mortgage deed exhibit P6 which reflects a specific amount. However, the learned Counsel for the Second Defendant referred PW1 to his plaint in Commercial Case No.138 of 2012 annexure B to the Second Defendant's written statement of defence, that the Plaintiff herein had admitted to have pledged the suit property as security for the loan facility advanced to the Fourth Defendant herein; Two, he alleged to have entered into an agreement with the borrower (Fourth Defendant) for withdrawal of his certificate of title vide a memorandum of understanding dated 18/05/2006 exhibit P2; Three, PW1 dispelled a fact of being a shareholder or director of the Fourth Defendant and relied on the extract of detailed information from the Registrar of Companies dated 22/10/2021 exhibit P3, although exhibit P2 suggests PW1 was a shareholder with a total of 45 ordinary shares, and exhibit P2 was executed for the purpose of PW1 withdrawing from shareholding and refund of his share capital a sum of Tsh 268,000,000; Four, PW1 asserted that at the time of conducting an action over the suit property on 13/11/2012 there was an order exhibit P16 for stoppage of auction issued by Tembeke District Land and Housing Tribunal on the same date at 08.30 hours and served to the Second Defendant at Azikiwe Office before 10.00 hours, but DW1 asserted receiving the order at 12.00 hours, and DW3 alleged seeing the said order at 13.00 hours, arguing

the order was long overdue and overtaken by event (indeed a summons for the next event was received by DW3 on 13/11/12 at 13.34 hours, as per exhibit P17). It is said to have been obsolete for reason that the auction was said to have been complete at 11.00 hours and already DW2 had paid the 25%. However, there was no evidence from PW1 regarding serving an order before 10.00 hours; Five, PW1 asserted that the general public as well as the First Defendant being or ought to be aware and knowledge that all areas of Kurasini Mivinjeni where the suit property is situated, was designated for a dry port under the Export Processing Zone (EPZ), as per Government Notice No. 54 of 2002 exhibit P8 which declared it have a redevelopment plan, also in the Daily News dated 4/12/2007 exhibit P15 which was a notice for payment of compensation. On defence in respect of new development brought by PW1 vide exhibit P8 and P15, DW1 heaped blame to PW1 for being dishonest and conman to consent mortgaging exhibit P5 knowing that the land was acquired. DW2 defended that there was no mention of either the suit property or PW1 in exhibit P8 and P15.

It is in record that DW2 was struggling to take actual possession of the suit land due to resistance from PW1's agents/people, DW2 alleged to had installed an industry for manufacturing nail, which however alleged was dismantled and demolished by Temeke Municipal Council. This entailed DW2 to sue Temeke

Municipal Council vide Land Case No. 23 of 2018 before this Court as per a plaint exhibit P10 and written statement of defence embedded with notice of preliminary objection exhibit P11. To his (DW2) dismay the suit was dismissed following nonattendance of his advocate for three consecutive times.

Meanwhile, PW1 managed to participate in the project of EPZ including in the exercise of valuation, identification of residents and owner of the suit property and finally in 2015 PW1 pocketed a sum of Tsh 515,846,880.00 as compensation from Temeke Municipal Council, invariably for acquisition of the suit property. PW1 crafted a letter demanding to have been swindled and paid less compensation as if a suit property was for residential while his property was commercial running some garages as per a letter exhibit P4. To the contrary, exhibit P6 suggest the suit property was a matrimonial home. This fact regarding PW1 pocketing a sum of Tsh 515,846,880,.00 angered more DW2, who alleged lodged a complaint at Police contemplating possible forgery, querying as to how PW1 could manage to pocket compensation in 2015, while DW2 was the registered owner of the suit property from 4/09/2013 as per exhibit P5. This led PW1 to be dragged and indicted before a criminal court on 9/07/2020 but was discharged under *nolle prosequi* on 18/07/2022 as per court proceedings/order exhibit P1. Hence a claim of Tsh 4,000,000 per day from 1st

to 18th July 2020 alleged suffered for being remanded in prison following a report and arrest by DW2.

On defence, DW1 asserted that in the memorandum of settlement dated 21/07/2014 exhibit D1 and consent decree dated 11/08/2014, which were in respect of Commercial Case No. 138 of 2012 where PW1 and the Fourth Defendant herein were the First and Third Plaintiff therein, PW1 were precluded to file any suit in respect of the same subject matter.

In totality at paragraph twenty-nine of the amended plaint, the Plaintiff pleaded that the acts of the Defendants amount to trespass to the Plaintiff's land and in consequence of the trespass, the Plaintiff suffered damages.

At the final pretrial conference, five issues were framed. However, on 4/10/2023 another issue was added making a total of six issues. The following were issues agreed upon: One, Whether the Plaintiff had a valid title in respect of the disputed property with CT number 47627 Plot No. 161/2/4 at the time of mortgage to the Second Defendant; Two, whether there was valid mortgage to the tune of Tsh 3.5 billion by the Plaintiff in favour of the Second Defendant over Plot No. 161/2/4 Kurasini Area within Dar es Salaam; Three, whether there was valid auction of the Plot No. 161/2/4, Kurasini Area within Dar es Salaam; Four, whether the Fourth Defendant is liable to indemnify the Plaintiff in loss

suffered if any; Five, whether the First Defendant is a bonafide purchaser of the suit property; Six, to what reliefs are parties entitled to.

Issue number one. Essentially this issue was introduced following new development brought in by the amended plaint amid examination in chief of PW1, where on 1/09/2023 the Plaintiff filed the amended plaint pleading facts relating to existence of exhibit P8 and P15. As aforesaid, exhibit P8 had the effects of declaring Kurasini to have Redevelopment Plan for the purpose of Town and Country Planning Ordinance.

Professor G.M. Fimbo, in his book Essays in Land Law Tanzania, at page 71, commented that,

'The Town and Country Planning Ordinance, Cap 378 makes elaborate provisions on urban development. The Ordinance empowers the relevant Minister to declare an area to be a planning area. Once an area is so declared "no person shall develop any land within a planning area without planning consent"

At page 72 which is more relevant to this issue, the author went on to say,

'The declaration of an area as a planning area does not affect the customary title or right of occupancy granted under the Land Ordinance'

The learned Counsel for Plaintiff overlooked to make comment/submission on this aspect. The learned Counsel for the Second and Third Defendant was of

the view that upon publication of the GN 54/2002 on 25-01-2002 the Plaintiff ceased to be the lawful owner of the suit property, arguing the suit property reverted back to the Government through the Ministry of Lands. The learned Counsel went on to submit that the fact that the suit property was acquired by the Government in 2002 and the Plaintiff was paid compensation in 2015 clearly show that the Plaintiff had no property to mortgage to the Second Defendant in favour of the Fourth Defendant in July 2004 as evidence by exhibit P5 to secure unspecified amount of loan a sum of Tshs. 3,500,000,000.00.

However, owing to the commentary by Professor Fimbo above, I am unable to ascribe to the proposition by the learned Counsel.

Therefore, it can be said with absolute certainty that a proclamation of Kurasini as Redevelopment Plan had no consequential effects of invalidating granted right of occupancy in exhibit P5. Hence even after publication of GN 54 of 2002 the Plaintiff still had a valid title over the suit plot.

Issue number two, whether there was valid mortgage to the tune of Tsh 3.5 billion by the Plaintiff in favour of the Second Defendant over Plot No. 161/2/4 Kurasini Area within Dar es Salaam. In his testimony, PW1 distanced from this loan on three theories: One, he did not consent for his property to be mortgaged for this loan (relying on exhibit P6), neither variation created thereon; Two, he was neither a director nor shareholder of the Fourth Defendant (relying on

exhibit P2 and P3); Three, the area was declared to be a development plan (relying on exhibit P8 and P15).

The Second Defendant on the other hand maintained that exhibit P5 a mortgage therein was registered for unspecified amount, connoting a sum of Tsh 3,500,000,000 was covered therein. Also relied on exhibit D1 and D2 where the Plaintiff alleged signed under the capacity of a director of the Fourth Defendant herein.

It is true that exhibit P6 was in respect of a specified amount of 500,000,000. However, this argument is easily defeated by existence of exhibit P5 which PW1 conceded was registered prior execution of exhibit P6. Exhibit P5 reflect a mortgage was registered for unspecified amount. Therefore, the terms contained in exhibit P6 cannot supplant what was contemplated and registered in exhibit P5.

Admittedly exhibit P2 which was executed on 18/05/2006 reflect PW1 was refunded his share meaning was exonerated from liability of shareholding. Indeed, at clause 7 in exhibit P2, it was made clear that PW1 is withdrawing the shareholder's security in respect of house No. 161/2/4 deposited with CRDB Bank Ltd in the form of Fixed Deposit Receipt (FDR).

However there is still a glaring question to the effect that if PW1 did not consent to mortgage his title for the disputed loan of 3.5 billion, and if his title ought to

be discharged upon execution of exhibit P2, now why and how he sued the Second Defendant herein in Commercial Case No. 138 of 2012 filed in 2012 for a claim pleading a loan of Tsh 3,500,100,000 and conceding mortgaging exhibit P5, and signed the memorandum of settlement exhibit D1?

When was cross-examined by the Mr. Deogratus Lyimo Kirita learned Counsel for First, Second and Third Defendants regarding signing exhibit D1, PW1 was recorded to had said,

'I signed this deed of settlement because before in 2014 I was part of directors of that company that is Simon Agency as such I was merely added, they merely settled, I read a document and I saw my properties was not included, I therefore signed. I was a director of Simon Agency in 2004. I was not a director as such, I landed money to Simon Robert Kisenka as such I was a mere signatory, I landed money to Simon Kisenka and handed over my title deed, as such I was a signatory but I was not a director as per MEMART'

The uncertainty of a version of evidence of PW1 creates doubt.

To my view, the evidence suggest that the Plaintiff had either actual or constructive notice or knowledge of this disputed loan Tsh 3.5 billion. And if he says he did not consent for any other subsequent loan following a memorandum of understanding vide exhibit P2, it means at the time when the borrower to wit the Fourth Defendant was borrowing this sum on 2/08/2006 as per exhibit P9,

the Plaintiff ought to have been in actual possession of his title deed or discharge of his title for a loan in exhibit P5. This is because, as hinted above, exhibit P9 suggest was a new loan, did not make any cross reference or assume variation on a loan of exhibit P6. Therefore, in law the Plaintiff was under obligation and duty to claim back his title deed exhibit P5. Failure of which, it means his claim which was filed in this Court on 6/09/2022 would be caught under the web of limitation.

When I invited the learned Counsel for both parties to address me on this aspect, the learned Counsel for Second Defendant submitted that under clause 7 of the exhibit P2 which was executed on 18th May, 2006, the Fourth Defendant was supposed within three months from the date of execution of the exhibit P2, to withdraw or cause to be withdrawn the Plaintiff's security in respect of the property on Plot No. 161/2/4, the subject of the suit. He submitted that the three months expired on 17th August, 2006. He submitted that it is evident that the Fourth Defendant did not withdraw or cause to be withdrawn the said security for reason that on 2nd August, 2006 his application for credit facilities of Tshs. 3,500,000,000.00 was granted as per exhibit P9. He submitted that under exhibit P9 clause 7(1), the security which was supposed to be withdrawn within 15 days from the date of exhibit P9 was offered as security. The learned Counsel submitted that the cause of action arising from

the failure by the Fourth Defendant to withdraw the security as per clause 7 of exhibit P2 arose on 17th August, 2006 after expiry of three months when the Fourth Defendant failed to withdraw or cause to be withdrawn the security offered. He submitted that the claim challenging the legality of the mortgage as the Plaintiff has done in this case, is time barred, citing Paragraph 17 Part 1 of the Schedule of the Law of Limitation Act, Cap 86 (sic, 89) R.E. 2019. He submitted that the Plaintiff was supposed to institute the suit within 12 years from 17th August, 2006 which period expired on 16th August, 2018. He submitted that the Plaintiff's suit is therefore hopelessly time barred.

The learned Counsel for Plaintiff submitted that the Second and Fourth Defendant in a letter of offer for a loan of Tsh 3,500,000,000 are accused to have fraudulently represented that the Plaintiff was the director of the Fourth Defendant and that could execute a director's guarantee. He submitted that since there is an allegation of fraud raised in the plaint, even if there might be issue of time limit, that point cannot be raised in terms of section 26 Cap 89 (supra), for an argument that time start to run from when the fraud was discovered.

I outrightly differ with the proposition of the learned Counsel for Plaintiff. For one thing the learned Counsel was unable to tell as to when the alleged fraud was discovered. For another thing, the learned Counsel did not say if there was

any fraud or concealment at the time of executing exhibit P2, neither stated if the Plaintiff signed it by mistake.

As I have hinted above, a claim challenging the legality of mortgage in respect of a loan of Tsh 3,500,000,000 is barred by limitation, specifically under the provision of item 17 Part 1 of the Schedule to Cap 89 (supra), which provide that a period of limitation for suit to redeem land in possession of a mortgagee, to be twelve years.

Therefore, this suit is time barred. This is because it was filed beyond a period of twelve years (counting from when the cause of action arose on 8/8/2006 where the Second Defendant will be assumed to have breached the contract for continuing withholding and using exhibit P5 without the consent of PW1. This is in terms of clause 7 in exhibit P2. In other words, the cause of action arose on 8/08/2006 and a period of limitation to claim title under mortgage being a period of twelve years which is available for suing for action arising from mortgage expired on 8/08/2018.

Regarding a last theory that the area was declared a development plan (relying on exhibit P8 and P15). Arguably exhibit P8 and P15 was a general notice to the general public, for which it is presumed that the whole world was made aware that the suit property was affected by the GN exhibit P8. However, PW1 is placed at a primary duty of having knowledge and was expected to disclose

that fact at the time of signing a mortgage exhibit P6. However, for reason best known to the Plaintiff, he concealed this fact, and went beyond to pocket the compensation effected as essential final step towards the acquisition of the suit property in 2015.

The effects of exhibit P8 and P15 to exhibit P5 and P6, would be the same which I have deliberated when discussing on ground number one above. To my view, the same cannot be said to had the same effects as acquisition or else invalidating exhibit P5. Rather to my view had the effects of merely creating an encumbrance to the registration of the mortgage thus affecting or impeding recovery measures or detrimental to the bonafide purchasers like DW2. And on the other hand, had the effects of disposing or exposing the Plaintiff being untrusted man. In fact, his conduct when taken in conjunction of his answers to the cross-examination above, render a devastating effects to his credibility generally and the evidence adduced before this Court as a whole.

Issue number three, whether there was valid auction of the Plot No. 161/2/4, Kurasini Area within Dar es Salaam. The main contention on this issue, was a hinged on the fact that there was no default notice; at the time of sale, there was a court order for stoppage of auction; payment of 75% was made beyond a period of fourteen days.

Regarding a statutory notice, DW1 asserted that the same was issued, however was not forthcoming for court appraisal. Essentially no default notice was made available or tendered in these proceedings. However, I will revamp later to this theme when deliberating on issue number five hereinbelow.

Regarding a question that the auction was conducted in defiance of Tribunal orders for stoppage the same. This issue was at large and for all purpose deliberated when I was prefacing the facts giving raise to this suit. According to the records, PW1 asserted that at the time of conducting an action over the suit property on 13/11/2012 there was an order exhibit P16 for stoppage of auction issued by Temeke District Land and Housing Tribunal on the same date at 08.30 hours and served to the Second Defendant at Azikiwe Office before 10.00 hours. On defence DW1 asserted receiving the order at 12.00 hours, and DW3 alleged seeing the said order at 13.00 hours, arguing the order was long overdue and overtaken by event, as the auction was complete at 11.00 hours and already DW2 had paid the 25%. Indeed, a summons for the next event was received by DW3 on 13/11/12 at 13.34 hours, as per exhibit P17. There was no clarification from PW1 if exhibit P17 was served along with exhibit P16 or afterwards. To my view, this point could be answered conclusively upon production of evidence of service of the alleged order. But there was no evidence from PW1 regarding serving an order before 10.00 hours. Therefore,

it will be hardly impossible for this Court to fault DW3 without a tangible evidence.

There was an issue of payment payments of 75% that it was made beyond a period of fourteen days. DW1 insisted that it was paid within fourteen days. However, on cross-examination by Mr. Edward Chuwa learned Counsel for the Plaintiff, when was referred to his previous testimony in the proceedings before the criminal court in exhibit P1 at page 42 first paragraph, DW1 disowned a version of testimony which reflect he asserted that a 75% of the bidding price was paid after expiry of fourteen days. But on re-examination, DW2 clarified that he transferred a sum of Tsh 67,500,000 being 75% on 26/11/2012, from his account at Bank M to the account of CRDB. It was the explanation of DW2 that due to technical glitch that amount was not transferred, as a result on 4/12/2012 he was asked by CRDB staff to pay it in cash. To my view, technically DW2 discharged his duty of effecting payment within fourteen days, only that it was not complete due to malfunction or fault on the system as aforesaid.

I skip issue number four, the same will be deliberated along with the last issue for reliefs.

Issue number five, whether the First Defendant is a bonafide purchaser of the suit property. As alluded above, DW2 protested to be a bonafide purchaser. On cross examination DW2 asserted that there was no dispute in 2013, and that

he did not go into details as to who is indebted, and why defaulted, neither made inquiry at the hamlet office at Kurasini prior purchasing. To my view all these questions including a question as to whether or not a statutory notice was issued or served, are taken care by the law which protect bonafide purchaser generally. I will start with the provision of section 51(1) of the Cap 334 (supra), with marginal notes, transfers in exercise of power of sale,

'A bonafide purchaser for value of a registered estate from a lander selling in professed exercise of his power of sale shall not be bound, nor shall the Registrar when a transfer is presented for registration be bound, to inquire whether default has occurred, or whether any notice has been duly served or otherwise into the propriety or regularity of any such sale, but the Registrar shall serve notice of such transfer on the owner of the estate and shall suspend registration of such transfer for one month from the date of such notice, and at the expiration as at the date of presentation, unless in the meanwhile the High Court shall otherwise order, and thereafter the transfer shall not be defeasible by reason that default had not occurred, or that any notice was not duly served or on account of any impropriety or irregularity in the sale'

The same provision is given effect in the Land Act, Cap113 R.E. 2019, section 135(1)(b), (2)(c) and (3) with marginal notes, protection of purchaser,

(1)(b) a person claiming the mortgaged land through the person who purchases mortgaged land from the mortgagee or receiver,

including a person claiming through the mortgagee where the mortgagee is the purchaser where, in such a case, the person so claiming obtained the mortgaged land in good faith and for value

(2) A person to whom this section applies-

(a) ...N.A...

(b)...N.A....

(c) is not obliged to inquire whether there has been a default by the mortgagor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before completion of the sale, he has actual notice that there has not been a default by the mortgagor, or that a notice has not been duly served or that the sale is in some way unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the mortgagee of which that person has actual or constructive notice'

Therefore, irrespective of defect or non-issuance or service of a statutory default notice, still DW2 is protected under the law.

It therefore goes without much gain saying that the First Defendant is a bonafide purchaser.

Issue number six, as to what reliefs are parties entitled. I shall start with issue number four, whether the Fourth Defendant is liable to indemnify the Plaintiff

in loss suffered if any. In his testimony PW1 particularized that he claim a sum of Tsh 200,000,000 caused by the fraudulent misrepresentation by the Fourth Defendant to the Second Defendant to the effects that PW1 was a shareholder and that he will sign a guarantee for payment of Tsh 3,500,000,000/=.

It is true that in exhibit P9 at clause 7(i), the Fourth Defendant endorsed that a loan of Tsh 3,500,000,000 will be secured by first charge LM over CT No. 47627, LO No. 164359, Plot No. 161/2/4 Kurasini Area, Dar es Salaam in the name of Exaud Augustine Kwayu. Exhibit P9 is dated 2/08/2006, meaning it was executed after execution of deed for withdrawal of a suit property exhibit P5 which was made vide exhibit P2 which was executed on 18/05/2006.

However, to my view, the ultimate grant of this relief depended exclusively on the determination of the second issue. Having ruled that the claim over mortgage exhibit P5 is time barred, this kind of remedy become unavailable to the Plaintiff. Regard being when deliberating issue number two, I have ruled that a claim contesting mortgage of exhibit P5 is hopelessly time barred.

In his testimony, PW1 claimed payment of specific damages a sum of Tsh 400,000,000 for loss of income due to the denial of the right to use the property from December 2015; payment of Tsh 300,000,000 being special damages for fraudulently misrepresentation by the Fourth Defendant for non-disclosing a fact that PW1 is no longer shareholder nor the director of the Fourth Defendant.

I have already ruled that a claim pertaining to exhibit P9 and P5 are time barred, meaning there is no relief which can be granted to the Plaintiff.

PW1 claimed against the First Defendant for payment of 4,000,000 per day from 1/07/2020 being a period he was remanded in remand prison following the report and arrest by the First Defendant. In his testimony, PW1 asserted that on 10/06/2015 he was arrested by the Police and taken to the Central Police Station on allegations made by the First Defendant, and made a statement over his land located at Kurasini Area. Thereafter PW1 asserted that in July 2020 he was arrested by Police and put into custody and on 9/07/2020 he was taken to the Resident Magistrate's Court of Dar es Salaam at Kisutu and charged in Criminal Case No. 96 of 2020 and he was remanded at Keko Prison without bail until July 2021 when he was released on bail and continued to attend court until on 18/07/2022 when *nolle prosequi* was entered. In this version there is no mention of the First Defendant. Neither stated facts showing that the arrest effected in July 2020 was in connection with a previous report alleged made by the First Defendant on 10/06/2015. In fact, there is no evidence vindicating what triggered his arrest and detention on the alleged July 2020 being after elapse of five years counting from when the First Defendant was alleged to had made a report to the Police on 10/05/2015. Therefore, a claim of payment of 4,000,000 per day from 1/07/2020, is legally unfounded.

Above it was not stated as to why the Plaintiff charged a sum of Tsh 4,000,000 neither explained being it special or general damages. To my view, pleading it specifically suggest is a some sort of special damages, which the rule require it to be strictly proved. Herein there was no proof whatsoever as to how and why PW1 is entitled payment of Tsh 4,000,000 per day from 1/7/2020 to the date of judgment herein, being a total of 1,211 days times Tsh 4,000,000 equal to a grand total of Tsh. 4,844,000,000/= which is an exorbitant sum PW1 wish this Court decree in his favour as against the First Defendant who is an individual. Such a claim or amount is non justiciable in the circumstances of this case. I therefore go along the argument of the learned Counsel for the First, Second, Third Defendant, that the Plaintiff has totally failed to prove his case and claims. The suit is dismissed with costs.

E.B. LUVANDA
JUDGE
25/04/2024

Judgment delivered in the presence of the Plaintiff, Mr. Deogratius John Lyimo Kirita and Mr. Alfred Kirita learned Advocates for the First, Second and Third Defendants and in absence of the Fourth Defendant.



E.B. LUVANDA
JUDGE
25/04/2024