IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

LAND CASE No. 51 OF 2017

DANIEL KANGATI..... 1ST PLAINTIFF
ELIAS MANG'ERA BORO ..... 2ND PLAINTIFF
MAJANI PASTORY ..... 3RD PLAINTIFF
JOHNSON MATIBU CHACHA ..... 4TH PLAINTIFF
BUHURU DICKSON MATOLORA..... 5TH PLAINTIFF
DAUD MAGOIGA NYATUTU..... 6TH PLAINTIFF
NYAMWERO M. KACHIRA ..... 7TH PLAINTIFF
THOMAS SIONG'O ..... 8TH PLAINTIFF
MWENGE CHACHA ..... 9TH PLAINTIFF
SIMION NYATUTU ..... 10TH PLAINTIFF

VERSUS

SERENGETI DISTRICT COUNCIL..... DEFENDANT

JUDGMENT

15th October, 2020 & 05th January, 2021

TIGANGA, J

In this case, the plaintiffs, individual natural persons all residing in Serengeti District, in Mara region, through the service of Clarity Law Chambers and Advocates of Mwanza sues the defendant, a Local

ORIGINAL

Government Authority established under the Local Government (Urban Authorities) Act [Cap 288 R.E 2002] for the following orders;

i) An order directing the payment of a total sum of Tanzania shillings 312,000,000/= being compensation for loss of properties, disturbance allowance, accommodation allowance and transport allowance,
ii) An order directing payment of Tanzania shillings 100,000,000/= being compensation for general damages for sufferings sustained by the claimants during the period they were denied use of their land,
iii) Payment of interest at a commercial rate of 30% from the date of the cause of action to the date of judgment,
iv) Payment of interest at a court rate of 12% from the date of judgment to the date of satisfaction of the decree.
v) Costs of the suit, and
vi) Any other relief (s) this Honourable court may deem fit to grant.

The background information of this case is that in the year 2006, the Government of the United Republic of Tanzania, through the respondent intended to acquire land in Kisangura, Kebosongo, Mugumu Mjini and Rwamchanga wards on the area commonly known as along Manchira dam for construction of Manchira dam.

ORIGINAL

After such an intention, the defendant through the local leaders informed all people who were in occupation of the land which was intended for such construction. The defendant also sent its valuer who conducted evaluation of the area. After such evaluation the defendant effected payment of compensation in respect of the land and development made thereon.

It seems, the current plaintiffs were not satisfied with the amount they were paid, they complained in various government offices which included the office of the District commissioner, Regional commissioner, and Honourable Prime Minister. Their complaint did not yield the results they expected; consequently, they decided to file this case claiming the order mentioned herein above.

After this case was filed and served to the defendant, he filed the written statement of defence in which, she generally disputed the claim and put the plaintiffs to strict proof of the allegations. It further averred that, the plaintiffs have not proved by evidence that in any case, they were the beneficiaries of Manchira dam project, because they have attached no any relevant document to prove the ownership of the lands which were

ORIGINAL

acquired. The defendant averred that the plaintiff has no cause of action against the defendant and the claim is hopelessly time barred.

It was also averred that the plaintiffs are not in the list of the beneficiaries signed by one Kimulika Galikunga the District Executive Director and addressed to Njelwa Advocate. It was also pleaded in the written statement of defence, that this is not a representative suit to some of the plaintiffs notably 1st, 2nd and 7th as their names were not published in Nipashe and Mtanzania news papers dated 26/08/2010, it was pleaded that the said plaintif's names need to be expunged.

The defendant also averred that the plaintiff are not entitled to the alleged specific or special damages of Tshs. 312,000,000/=, general damages of Tshs. 100,000,000/=, any interest and other reliefs prayed in the plaint. The completion of pleadings was followed by framing of issues where the following issues were framed;

i) Whether the plaintiffs have cause of action against the defendant,
ii) Whether the plaintiff's claims against the defendant is not time barred,
iii) Whether the plaintiff were the lawful owner of the suit land,

ORIGINAL

iv) Whether plaintiff's were adequately compensated by the defendant,
v) Whether the defendant followed the legal procedures for compensating the plaintiff's and evicting them from the suit land,
vi) To what reliefs are the parties entitled from the court.

Throughout the trial, the plaintiffs were represented by Mr. Boniphace Sariro, Advocate, while the defendant was represented by Mr. Maganiko Musabi, Advocate and solicitor of the defendant. In the effort to prove the claim, the plaintiff's called nine witnesses; these witnesses and their respective evidence are as follows;

Daniel Kangati Makuru, a resident of Rwamchanga village in Manchira Ward which is in Serengeti District, testified as PW1, he said to have been informed by the District Water Engineer, Ward Executive Officer and later by the District Commissioner in a meeting called by him, of the government's intention to acquire his piece of land for development purpose that is for constructing of Manchira Dam. According to him, those affected by the construction were to be re - allocated and paid compensation. He testified to have actually participated in the evaluation process in which his three houses built using burnt blocks, sisal plant planted and other natural tree were identified, evaluated and a schedule

ORIGINAL

for compensation prepared. After the process was over, he was called and handed over the cheque of Tshs. 1,850,000/=(one million, eight hundred and fifty thousand). He tendered the payment voucher and the same was admitted as exhibit P1. His complaint is that he was paid less amount or underpaid, as he was supposed to be paid Tshs. 70,000,000/= (seventy millions).

Following that state of affairs they complained in various public offices including the office of the Regional commissioner, the Minister responsible for water and Prime Minister, but their complaint did not yield any fruitful results, they consequently filed a case before the High Court which was heard and determined by Hon. Gwae, J Land Case No. 14/11 the judgment was tendered as exhibit, P2.

He prayed the court to order that he be paid what he was entitled. On cross examination he said he although he signed the evaluation form voluntarily and shifted from the land, he was not satisfied by the amount he was paid. He said his land was 35 acres, he was supposed to be paid 70, 000,000/= for compensating him his property.

ORIGINAL

Buhuru Dickson Matorola, a resident of Rwamchanga village in Manchira Ward, within Serengeti District testified as PW2. He said in his testimony that he owned a land around Manchira dam, his land was acquired by the government, it had five houses thereon, toilets, two kraal, timber, ground trees and 14 acres farm as well as 360 sisal plants and a number of fruit trees. He said he was paid Tshs. 1,994,736/= he tendered exhibit P3 a payment voucher to prove that. His complaint was that he was underpaid as he was supposed to be paid a total of Tshs. 45,000,000/=. Just like PW1, they together complained in various public office but they were not listened. On cross examination he said the assessment of Tshs. 45,000,000/= is based on his opinion, but he has not used an independent valuer.

Elias Mangera Boraye testified as PW3, his evidence also relates with that of PW1 and PW2, his main complaint being that, his land measuring 50 acres, the houses thereon, toilets and 500 grown trees, were acquired by the government with a very little compensation of Tshs. 5, 830,740/= which in his opinion was an underpay via exhibit P4. He said he was supposed to be paid Tshs. 50,000,000/= in his opinion. Following that

ORIGINAL

underpayment, they complained to the Prime Minister through exhibit P5, and the Prime Minister directed the Regional Commissioner through exhibit P6 to make follow up and resolve the dispute. He prayed for an order for compensation of Tshs. 50,000,000/=. On cross examination he said he was supposed to be paid Tshs. 2,000,000/= per acre.

Johnson Malibu Chacha, testified as PW4, his complaint is that his 20 acres land together with 3 sisal trees/plant, 40 orange trees thereon were acquired and he was paid Tshs. 500,000/=, the amount which he considers as an underpaid as opposed to Tshs. 35,000,000/= which he was entitled. He admitted to have participated in evaluation and to have signed the evaluation form but the amount he was paid does not match with the the value of his acquired properties.

Mwenge Changa, testified as PW5, he claim to have his 11 acres of land along Manchira dam on which, there were fruit trees and five houses mud prepared and grass thatched roofed, but he was given a cheque of Tshs. 500,000/= while in his opinion, he was supposed to be paid Tshs. 40,000,000/=. He nevertheless received the money after being so advised by the Ward Executive Officer pending being paid another amount which

ORIGINAL

was not paid. He asked for an order to be paid according to what he deserved. He said they were told by one Magori, the valuer that, the payment was Tshs. 3,000,000/= per acre, which was not paid as such.

Nyamwero Moses Kachira testified as PW6, his complaint is that his four acres land was acquired along Manchira dam. According to him he was supposed to be paid Tshs. 8,000,000/= but he was paid Tshs. 488,880/= without having regard to a number of grownup trees. He said together with the unexhausted improvement, he was supposed to be paid Tshs. 35,000,000/=, but was paid Tshs. 488,880/=.

Majani Pastory Majani testified as PW7, just like other plaintiffs, his ten (10) acres land were acquired in a compulsory acquisition for purposes of constructing Manchira dam, that land had a number of Eucalyptus trees, sisal and other fruits trees. It was a Shamba in which cassava and maize were grown. According to him, he complains because, he was paid Tshs. 1,600,000/= which is underpayment as one house alone costed him Tshs. 4,000,000/= while other two houses costed him Tshs. 300,000/= each.

ORIGINAL

He said they were promised to be paid subsistence allowance, but were not paid. He asks the court to order that he be paid Ths. 38,000,000/= which in his opinion was the due amount which he was supposed to be paid. On cross examination, he said did not bring up receipt for purchasing materials for construction of the houses because its long time he could not manage to find the receipt.

Daudi Magoiga Nyatutu, testified as PW8, his complaint was that his 24 acres was acquired in a compulsory acquisition of land on which Manchira dam was supposed to be built. However, he complains to be underpaid by being paid Tshs. 1,200,000/= instead of Tshs. 24,000,000/= which he was supposed to be paid. He prayed for an order to be paid Tshs. 24,000,000/=.

Simon Nyatutu testified as PW9 a peasant of Kebosongo village, his complaint was that the government took his land with a very little compensation. That land was at a place where Manchira dam was constructed. He said his land was 25 acres; he participated in the evaluation process and was expecting to be paid, Tshs. 24,000,000/= which is equivalent to Tshs. 1,000,000/= per one acre, but instead, he was

ORIGINAL

paid Ths. 1,800,600/=. He asked for the court to order the defendant pay balance of Tshs. 22,199,400/=.

That marked the plaintiff's case, it was followed by the defence which was presented through two witnesses namely Victoria Makuru Magige and Bhoke Marco Ruhinda who testified as DW1 and DW2 respectively. DW1, was Ward Executive Officer of Manchira ward, one of the wards in which Manchira dam was constructed, when the evaluation, acquisition of land and consequential construction of Manchira dam was done. He said the whole exercise was supervised by Daniel Ole Lenga, the then District Commissioner of Serengeti District and the valuer was one Magori who was an expert from Tabora Land college, while the construction was done under Engineer Mwakilasa. It is her further testimony that Magori was assisted by the village chairmen, as well as the Ward Executive officers of the respective wards. The exercise started with the identification of the owners by each of them standing and showing his land, the size, and properties therein were listed including the grown up crops, houses and trees.

ORIGINAL

After the identification and listing of the properties on the form, then the valuer went to evaluate. After some days the evaluation results were out, and basing on the evaluation report of every individual the District Executive Director prepared payment of compensation and each individual went and received what was prepared. He said at the time of evaluation, the acres at Manchira was about Tshs. 200,000/= or Tshs. 250,000/=. The payment was effected by each individual being given cheque.

As the Ward Executive Officer she participated in the evaluation of the properties of Buhuru Dickson Matorola, Daudi Magoiga Nyatutu and Simon Nyatutu and that everyone was paid according to the evaluation report, therefore no body was underpaid. She said Magori was an expert in evaluation and therefore he had no reason to doubt him. She said no body went to his office complaining to be under paid and as the local leader, those with complaint were supposed to start at her level, according to her, she said was not aware of any complaint by any of the beneficiaries in her ward.

She said those who complained to the Regional and District Commissioners through exhibit P6 were also given copies of the evaluation

ORIGINAL

form, she mentioned them to be Mwenge Chacha, Simon Nyatutu, Daniel Kangati, Buhuru Matorola and David Magoiga Nyatutu. She said as the Ward Executive Officer she heard the valuer saying that the price as per evaluation was ranging from Tshs. 50,000/= to 100,000 per acre.

DW2 was Bhoke Marko Ruhinda, a Ward Executive Officer for Mugumu urban in the year 2007. In his sworn testimony, he said he was present when the identification of properties at Manchira area was done. He said his duty was to make sure that what was recorded is what the person deserved, and in recording the properties, every trees or development on the land was taken into account. He said from his ward, Elias Mang'era Boroye, Majani Pastory and Johnson Matibu Chacha were among the people from his ward who benefited with the evaluation and compensation; and that both received compensation according to what they deserved according to the valuation. He said he was made to know that in 2007 one acre was estimated to be sold or valued at Tshs. 200,000/= to 250,000/=.

He submitted that he did not hear the promise of paying disturbance allowance, neither did he hear a promise of transport allowance. He said

ORIGINAL

the money they were told was supposed to be used to buy other land somewhere else and settle, therefore according to him, what they were paid is what they deserved according to the valuation. DW1 said at the end that the claim is frivolous; he prayed the same to be dismissed.

On cross examination PW2 said the valuer conducted evaluation and the plaintiff participated in the valuation exercise, they received the money but did not complain against the money they received. On further cross examination, he said he later while in court, realised that exhibit P6 contained a complaint of those who said were underpaid and exhibit P5 was a complaint letter to the Prime Minister over the same subject. However according to DW1, the complaint did not follow procedures, he said he was always present on daily basis when the valuation was carried out; therefore he witnessed the whole process of valuation to be fair and participatory.

On re - examination he said in the complaint letter only Majani Pastory and Elias Boroye were there, but Daniel Kangati, Dickson and Mwenge Chacha were not among the people who complained. Those who complained according to him their complaint was that their pieces of lands

ORIGINAL

were not properly evaluated, in the sense that the acres valuated were not made clear.

That marked the defence case as well. Parties were given opportunity to file final closing submissions, in his submission, the counsel for the plaintiff narrated in a summary of evidence on record, and urged this court to find that the suit was filed in time as the cause of action arose in 2007 and the case was filed on 22/08/2017, which is within 12 years as required by items 18 and 22 of part I of the schedule to the Law of Limitation Act [Cap 89 RE 2019]. Regarding the issue whether the plaintiff were the lawful owners of the land in dispute, he prayed the court to find so because the evidence proves irresistibly that they were the owners that is why they were compensated.

Regarding the third issue as to whether the plaintiffs were adequately compensated or not, he urged the court to find that they were not, as the compensation was to be in respect of land itself, moving expenses that is transport allowance, accommodation and disturbance allowance, which were not paid.

ORIGINAL

Further more, he submitted that the plaintiff issued a notice to produce but the defendant did not provides such documents which had they been provided they would have shaded light on the truthfulness of the case. Further to that, he reminded the court that the defendant did not call important witnesses like the valuer, commissioner for lands, the District Executive Director, the District Commissioner, the Water Engineer and Land Officer. He submitted that the non calling of such important witnesses was a trick to hide the truth. He thus urged the court to draw adverse inference against the defendant. He cited and relied on the authority in the case of **Said Juma @ Tembo and Another vs The Republic,** Criminal Appeal No. 332/2014 CAT at DSM (unreported) where the court quoted with approval the decision in the case of **Boniface Kundakila Tarimo vs** The Republic, Criminal Appeal No.351 of 2008 at page 19 in which it was held *inter alia* that;

> *"It is now settled law that where a witness who is in a better position to explain some missing links in the parties case is not called without any sufficient reason being shown by the party, an adverse inference may be drawn against that party even if such inference is only permissible one"*

ORIGINAL

It is his contention that had these witnesses been called, then the court would have been put to light regarding the issue whether the parties were adequately compensated or not.

Regarding the 4th issue which is whether the defendant followed legal procedure for compensating the plaintiff and evicting them from the suit land, the counsel submitted that the procedure was not followed as underlined under Regulation 4 of the Land (Compensation Claims) Regulations GN No. 79 of 2001 and Regulations 8 (B) of the Village Land Regulation GN No. 86 of 2001, as well as section 4 of the Village Land Act [Cap 114 R.E 2019]. He also referred to section 4 and 6 of the Village Land Act (supra), regulations 20 and 21 of GN No. 86 of 2001 (supra) and Village Land Form 14 of the 1st schedule to GN No. 86 of 2001.

Further to that, he also made reference to regulations 11 and 12 of the GN No. 86 and Regulation 5 (1) of GN No. 79 of 2001. It was his submission that the underlying procedures were not followed, and the evaluation which was valid and transparent was to be conducted, what was done by one Mzee Magori was a mere inspection and listing of the properties which cannot be called evaluation as in the evaluation the

ORIGINAL

plaintiffs were supposed to file respective claims which they did not do. At the end, he urged the court to find that the procedure for compensation after acquisition of land was not followed.

Regarding issue the number 5 he asked the court to order that the plaintiff be paid each relief sought in the plaint as the plaintiff has proved the claim at the required standard.

Mr. Maganiko Musabi, learned solicitor who was representing the defendant submitted that the suit is founded on the claim for compensation which is provided under the 1st schedule, item 1 of the Law of Limitation Act, [Cap 89 R. E. 2019] which provides for time limit for compensation to be one year, and that since the suit was instituted after the lapse of so many years, then under section 3 (1) of the Law of Limitations Act [Cap 89 R.E 2019], the suit deserves to be dismissed. He submitted that had their claim been genuine, plaintiff would have invoked section 14 (1) of the Law of Limitations Act (supra), to extend time within which the applicant can file the suit did not do so. He submitted that the plaintiff's admit in their evidence that the valuer conducted evaluation which followed the

ORIGINAL

procedure; the same was approved by the Chief Government valuer and was later signed by the Mara Regional Commissioner for compensation.

Addressing the evidence given by the plaintiff in the proof of their claim, he submitted that the plaintiff did not at all give evidence to prove their claim and could not by their evidence challenge the validity of the valuation done by valuer.

He made reference to regulation 51 (1) of the Evaluation of Valuers (General) Regulation 2018, GN No. 136 of 2018, published on 23/03/2018 which provision empowers the Chief Government valuer to verify or make a physical review of any evaluation which has been completed. He may do so upon complain or on his own motion, in the circumstances described under that provision. He reminded this court that under Regulation 52 (1) of the same regulation, the powers for the chief government valuer to determine and prepare crops value by consulting a number of government and non government institutions dealing with agriculture and crops, which its validity should exceed five years as directed by sub regulations (4) and (5) as well as the criteria to take into consideration in determining the value as provided by sub regulation (8) (a) - (9).

ORIGINAL

He also reminded the court of the Chief Government valuer in determining the land value rates basing on market research and assume custodianship of the record, which also gives the criteria to be used to determine the land value as provided under regulation 53 (1) and (4) of the same regulation.

Having informed this court the powers bestowed in the Chief Government Valuer, he reminded the court that the plaintiff were therefore supposed to lodge their complaint to the Chief Government Valuer who would intervene the matter as stipulated under regulation 51 (1) of the Evaluation and valuers and (General regulation), 2018.

Last he reminded the court the cardinal principle that whoever alleges must prove, as provided under section 112 of the Evidence Act [Cap 6 R.E 2019], that the burden of proof as to any particular facts lies on the person who wishes the court to believe in the existence of that fact. He submitted that, no any of the plaintiff who has managed to prove his case at the required standard.

ORIGINAL

He asked the court to dismiss the suit and declare that the plaintiffs are not entitled to get any other compensation other than what they were paid, and they be condemned to pay costs of the suit.

That being what the parties have stuffed the court with, in their effort to prove and disprove the claim, in the final closing submission there is one legal issue which was raised by the parties, that is whether the claim suit was within time or not. This was also framed as issue number 2 in the issues framed. That having been framed in form of the preliminary objection on point of law, I will for convenience purpose start with it. Now was a suit within time or out of time?

Mr. Maganiko terms this suit to have a base on compensation which its time limit is provided under the 1st schedule to the Law of Limitation Act [Cap 89 R.E 2019], while Mr. Sariro, learned counsel, for the plaintiff terms this case as a normal land case which its time limit is provided under the 1st schedule, item 22 of the schedule which has its time limit 12 years.

Now, the issue is whether the land in question is a land matter or the suit founded on compensation. In my considered view, this is a land matter

ORIGINAL

for two main reasons, one, it was registered as a Land Case in court, two, the claim emanates from the interest in the land, that the evaluation was not properly conducted and it was conducted without following proper procedures. In my considered view, these are claims founded on land dispute as opposed to the compensation with its time limit on the item 1 of the 1st schedule to the Law of limitation Act, (supra) which provides as follows;-

> *"For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law"*

The suit at hand is founded on the interest on land, not for omitting to do or for doing; it is a pure land dispute which its time limit is provided under item 22 of the first schedule. The suit was therefore filed within time. The first is answered in affirmative that the suit was not time barred.

Now back to the first issue which is whether the plaintiff has the cause of action against the defendant? On that I have found it proper to bring to light the meaning of the cause of action, my senior brother, Hon. Kalegeya, J (as he then was) in the case of **Domin P. K. G. Mshana vs Almas Chande and The Attorney General**, Civil Case No. 68 of 1994 - HC - DSM relied on a persuasive

ORIGINAL

commentary by Mulla, on Civil Procedure, 13th Edition which gives the meaning of cause of action to mean;

> *"Every fact which if traversed it would be necessary for the plaintiff to prove in order to support his right to the judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to an immediate judgment must be part of the cause of action.* ***It is in other words a bundle of facts which is necessary for the plaintiff to prove in order to succeed in the suit. But it has no relationship whatever to the defence, which may be set up by the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour***" Emphasis added

As earlier on pointed out, the plaint and the evidence adduced by the plaintiffs shows that the plaintiffs were owners of land which was acquired

ORIGINAL

by the defendant on behalf of the central government for development purposes. The acquisition was to go with compensation and it is the quantum of compensation which is challenged before this court. That in my opinion constitutes a cause of action within the meaning of the authority of the case of **Domin P. K. G. Mshana vs Almas Chande and The Attorney General** (supra). That means the 1st issue is thus resolved in affirmative.

The third issue is whether the plaintiffs were the lawful owners of land in question. This issue need not detain me because, from the evidence, the ownership of the land in question by the plaintiff has not been seriously contradicted. Further to that the defendant and the plaintiff were not quarrelling for the ownership of land. It is obvious that the land before being acquired by the defendant was owned and occupied by the people. The people who proved by oral evidence that they were the owners are the plaintiffs. Their testimony was supported by some other evidence like exhibit P1, P3 and P4 showing that their land was evaluated and they were paid compensation which they were not satisfied. That in my opinion, proves that the plaintiff were the lawful owners of the land

ORIGINAL

acquired for construction of Manchira dam in the year 2006 - 2007. The 3rd issue is resolved in affirmative as well.

Now the next issue is whether the plaintiffs were adequately compensated or not? This seems to be the main issue in dispute. The plaintiffs are not disputing to be compensated, but what they complain is that they were insufficiently compensated. It was expected of them to state and prove what is adequate or sufficient amount which when paid to them would be to their satisfaction. In their evidence, each plaintiff complained that the evaluation done did not come up with the proper and actual amount which is equivalent or proportional with the value and size of land which was acquired.

The plaint did not itemise the claims of every individual plaintiff, it pleaded generally and claimed a total of Tshs. 312,000,000/= being compensation and Tshs. 100,000,000/= as a general damage in respect of all plaintiffs. However, in the evidence, each plaintiff who testified categorically told the court, what he was paid and what he was not paid. Daniel Kangati Makuru said he was paid Tshs. 1,850,000/= through cheque and payment voucher, he tendered as exhibit P1 to prove that, he said he was supposed to be paid Tshs. 70,000,000/= therefore though did not

ORIGINAL

categorically state, but that by necessary implication means he claims a balance of Tshs. 68,150,000/=. He said his land was 35 acres, when asked on which base does he claim such amount, he said by then, the value of one acre was Tshs. 2,000,000/. However, he had no base of where he got that value.

That was also the position of Buhuru Dickson Matorola, DW2 who claimed to own 14 acres farm with 360 sisal plants, but was paid Tshs. 1,994,736/= instead of Tshs. 45,000,000/= which he think he was supposed to be paid, he also said that amount of Tshs. 45,000,000/= was based on his personal opinion, not on any expert opinion. Just like PW1, he still claim Tshs. 43,005,264/= as unpaid balance. Elias Magera Boroyi PW3 was paid Tshs. 5, 830,740/= instead of Tshs. 50,000,000/= which base on the assumption that they were supposed to be paid Tshs. 2,000,000/= per acre, it means the unpaid balance is Tshs. 44,169,260/=.

Johnson Matibu Chacha PW4 claimed to be owning 20 acres, with some few planted trees, he was paid Tshs. 500,000/= while in his opinion, he was supposed to be paid Tshs. 35,000,000/= that means the unpaid balance is Tshs. 34,500,000/= Mwenge Chacha PW5 also complains to be paid Ths. 500,000/= while in his opinion he was supposed to be paid Ths.

ORIGINAL

40,000,000/=, that means he claims the unpaid balance of Tshs. 39,500,000/=. He said his claim is based on what they were told by the valuer that the value of one acre was Tshs. 2,000,000/=.

Further to that, Nyamwero Moses Kachira, the PW6, his complaint is that he was paid Tshs. 488,880/= instead of Tshs. 8,000,000/= without taking into regard the development he had effected on the land, which when computed together he was supposed to be paid Tshs. 35,000,000/=. That means he claim Tshs. 34,511,120/= as unpaid balance.

Majani Pastory Majani PW7 just like other plaintiffs his 10 acres of land was acquired and he was paid only 1,600,000/=, while he was supposed to be paid Tshs. 38,000,000/=. He said so because the houses costed him Tshs. 4,300,000/= plus other unexhausted improvement done on the land, then he deserved much higher amount. Although he has not stated what he claims, but he meant he is supposed to be paid the balance of Tshs. 36,400,000/=. On cross examination, he said he did not bring up the receipt he used to purchase the building materials.

Daud Magoiga Nyatutu,, PW8 said had 24 acres before acquisition but that he was paid only Ths. 1,200,000/= instead of Tshs 24,000,000/=

ORIGINAL

which he was supposed to be paid, he claims the unpaid balance of Tshs. 22,800,000/= while Simon Nyatutu, the PW9, complains to be paid Tshs. 1,800,600/= instead of Tshs. 24,000,000/=, this means he claims Tshs. 22,199,400/=.

Computing each and every claim of all plaintiffs, they are cumulatively totaling the Tshs. 271,235,044/=.

Now, it is a principle of law according to sections 111 and 112 read together with section 3 (2) (b) all of the Evidence Act [Cap 6 R.E 2019] that the plaintiff has the burden of proving his claim on the balance of probabilities.

These provisions were interpreted in the case of **Anthony M. Masanga vs (1) Penina (Mama Mgesi) (2) Lucia (Mama Anna),** Civil Appeal No. 118 of 2014, CAT, where it was held *inter alia* that;

> *"In civil cases the burden of proof lies on the party who alleges anything in his favour. It is common knowledge that in civil proceedings the party with legal burden also bears the evidential burden and standard in each case is on the balance of probabilities"*

ORIGINAL

In this case the plaintiffs are the ones who allege that they were underpaid or compensated inadequately, so the burden of proof was and still is on their shoulders to prove that they were supposed to be paid the amount they have alleged. Now, the issue is whether they have proved such facts at the required standard?

The prayers in the plaint are in two forms, one in the form of special damages where Tshs. 312,000,000/= is claimed, and two, in the form of general damages where Tshs. 100,000,000/= is claimed. It is also trite law that the claim which is in the form of special or specific damage, must be specifically pleaded and strictly proved, as held in the decision of **Zuberi Agustino vs Anicet Mugabe,** [1992] TLR 173 and **Stanbic Bank Tanzania Limited vs Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001-CAT (unreported) as referred with approval in the case of **Director Moshi Municipal Council vs Stanlenard Mnes and Roispepeace Sospiter**, Civil Appeal No. 246 of 2017, CAT

Now the issue is whether the plaintiffs did specifically plead and strictly prove the special damages of Tshs. 271,235,044/=? With all due respect to the plaintiffs, the special damage in question was not specifically pleaded in the plaint and was not strictly proved by evidence. I hold so

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because, reading between lines the whole amended plaint, I find the amount so claimed to be mentioned in paragraph 4 of the Amended plaint, it is not categorically stated out of the pleaded amount of Tshs. 312,000,000/= in the said paragraph 4, what is compensation for loss of properties, what amount are for disturbance allowance, which one is for accommodation and transport allowance and for who. It was also not stated, out of the said amount what is the claim of each plaintiff. This shortcoming is also reflected even in the evidence by the plaintiffs as the question of what amount was for which item among the mentioned items has not been resolved by evidence. This means, the claimed amount had not been strictly proved by evidence. Now what is the consequence of not pleading specifically and proving strictly?

In the already cited case of **Director Moshi Municipal Council vs Stanlenard Mnesi and Roisipe peace Sospiter (supra)**. The Court of Appeal held at page 17 that;

> *"Once such a claim is neither pleaded specifically not strictly proven, it fails. There would be no point for requiring such a claim to be specifically pleaded and strictly prove if, upon failure to establish it, the claimant would still be awarded a*

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reduced quantum of special damages as was in the instant appeal".

This claim in this case having been not specifically pleaded and strictly proved, it cannot stand, it deserves nothing but to be dismissed for want of proof.

Regarding issue number (v) which is whether the defendant followed legal procedures for compensating the plaintiff and evicting them from the suit land? This being the allegation by the plaintiff that the defendant did not follow procedure in compensating the plaintiff, it was also supposed to be proved by the plaintiff by demonstrating to the court how the procedure was supposed to be and whether the non compliance with the procedures prejudiced them. This also, not being proved then the whole suit fails.

Now what reliefs are the parties entitled? Considering the findings on the preceding issues above, it goes without saying that parties are entitled to the dismissal of the suit for want of merit and proof of the claim. The suit is therefore dismissed with costs.

It is accordingly ordered

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DATED at **MWANZA**, on this 05th day of January 2021

J. C. Tiganga

Judge

05/01/2021

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