

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND CASE NO. 8 OF 2022
(Originating from High Court of Tanzania (Original Jurisdiction))

SPILAUS MGANYIZI ISSACK.....PLAINTIFF

VERSUS

REGISTRAR OF TITTLE.....1ST DEFENDANT

COMMISSIONER FOR LANDS.....2ND DEFENDANT

KAHAMA MUNICIPAL COUNCIL.....3RD DEFENDANT

FEBIC INVESTMENT LTD.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

Date of last Order: 01/11/2023
Date of Judgment: 08/11/2023

B.E.K. Mganga, J.

Brief facts of this case are that, on 31st August 2022, Spilaus Mganyizi Issack, the abovenamed plaintiff, filed this case against the defendants alleging that he is the lawful owner of a piece of land located at Nyasubi area within Kahama Municipality. It is alleged by the plaintiff that, 1st, 2nd, 3rd, and 5th defendants allocated the said land to the 4th defendant and issued the later with a Certificate of Title without

compensation. Based on that claim, plaintiff is praying the court (i) to issue a declaration order that he is the lawful owner of the dispute land, (ii) a declaration order that the Certificate of Title issued to the 4th defendant is nullity, (iii) a declaration order that allocation of the disputed land to the 4th defendant is illegal and void and (iv) that defendants be ordered to pay costs of this case.

The 1st, 2nd, 3rd, and 5th defendants, in their written statement of defence, denied all claims raised by the plaintiff. The 4th defendant was served through publications, but she did not file her written statement of defence, as a result, on 25th July 2023, this court issued an order that the case will proceed ex-parte against her.

Since 1st, 2nd, 3rd and 5th defendants disputed the claims by the plaintiff, four issues were drafted and agreed by the parties namely, (i) whether plaintiff is the lawful owner of the disputed property, (ii) whether the 4th defendant was allocated the disputed property by the 1st, 2nd and 3rd defendants, (iii) if the answer (ii) above is in affirmative, whether compensation was made to the plaintiff and (iv) to what relief(s) are the parties entitled to.

To prove the abovementioned issues, Spilaus Mganyizi Issack, plaintiff testified as PW1 and called Bakari Shabani who testified as PW2. In his evidence, plaintiff (PW1) stated that, on 20th April 2005, he

purchased the disputed land from Mabula Gripa at the consideration of Twenty Million Tanzanian Shillings (TZS 20,000,000/=) only. He added that, among the person who witnessed sale agreement (exhibit P1) was Ally Ruwa who was the Hamlet leader. He added that, the said Ally Ruwa died ten years ago. He went on that, the said land is about two acres and that borders Leah Mayala in the West, a road in the East, S.D.A church in the North and a road in the South. PW1 stated further that, after the said purchase, he piled up stones on the disputed land and continued to conducting farming activities from 2005 up to now. He added that, at the time of purchase, the land was bare.

It was further evidence of PW1 that, in 2007, one Obeid Mikael fenced the disputed land alleging that he was allocated the said land by land officers. He also testified that, another dispute between himself and the said Obeid Mikael arose in 2019. He went on that, he reported to police, as a result, the said Obeid Mikael was arrested and sent at Kahama police station. That, at Kahama Police station, they were required to produce proof of ownership, but the said Obeid Mikael did not show up till today. PW1 testified further that, in 2019 he filed land application No. 109 of 2018 before the District Land and Housing Tribunal against Obeid Mikael and that, the matter was heard and decided ex-parte in his favour (exhibit P2 and P3). He went on that, the

District Land and Housing Tribunal at Kahama issued a letter to the authorized land officer at Kahama so that the disputed land can be registered in his name. He stated further that, the authorized land officer at Kahama refused to register him as the owner because FEBIC Investment Ltd was not party to the case (exhibit P4).

PW1 testified further that, in 2020 he filed Application No. 90 of 2020 before the Land and Housing Tribunal for Kahama against FEBIC Investment Ltd, Leya Mahela and Obeid Mikael. He added that, all respondents did not enter appearance, but the application was struck out for being incompetent (exhibit P5).

In his evidence, PW1 also stated that, he was informed that Mabula John, the one who sold the disputed land to him, died five years ago and that, relatives of the said Mabula John are in Kahama. He added that, all other persons who witnessed sale have left Kahama. In his evidence in chief, PW1 stated that, Leah Mahela is his neighbour and that, she has never stayed on the disputed land. He testified further that, he has filed this case because 3rd defendant refused to register him as the owner of the disputed land and that, he was not consulted at the time of survey of his land before allocating to the 4th defendant. He added that, the government has not compensated him. He prayed that

the Certificate of Title issued in favour of FABIC Investment Limited be nullified and that the case be decided in his favour with costs.

When he was cross examined by State Attorney for the 1st, 2nd, 3rd, and 5th defendants, PW1 stated that, at the time of purchase of the disputed land, there were no neighbours who witnessed sale of the disputed land on 20th April 2005. PW1 admitted that, Leah Mahela who is his neighbour, did not also witness the said sale. He stated further that, those who witnessed the said sale came from far away. He also stated that, at the time of purchase of the dispute land, there was a road in the East and South, and in the North, there was nothing. He added that, the area was known as Nyakato and is within Kahama town ward. He stated further that, in 2019, he filed the dispute against obeid Mikael who fenced the area in 2007.

On further cross examination, PW1 stated that, he doesn't know Felister Maduhu, Julius Masolwa, Bruno Simon, Elizabeth Mwehya, Ismail Tungaraza, Joseph Paul and Tumain Mboje. He further stated that, he knows only those who witnessed sale of the disputed land. He admitted that he knows Jeremiah John because he signed on the sale agreement but died about ten years ago. He stated that, at the time of sale, Jeremiah John did not tell him that he had a land at that area. He added that, Jeremiah John witnessed because he knew the area. He further

stated that, it was not possible for him to know whether, Mabula Gripa who sold the disputed land was the owner but believed because the said Mabula Gripa told him that it was a family land and sale was witnessed by Ally Ruwa, the Hamlet leader.

When he was further cross examined, PW1 stated that, in 2007, the 1st, 2nd, and 3rd defendants allocated illegally the disputed land to the 4th defendant. PW1 admitted that the dispute arose in 2007 and that, at all that time, he did not file a case against the 1st, 2nd, and 3rd defendants. He further admitted that he only filed the case against 1st, 2nd, and 3rd defendants in 2022. He stated that, from 2007 to 2022 is almost fifteen (15) years.

When cross examined as to why the name of Jeremiah John is handwritten while names of all other witnesses were typed, PW1 stated that, the said name of Jeremiah John was added by Ally Ruwa and made Jeremiah John to sign. When he was asked as to why he has not joined Obeid Mikael in this case, PW1 replied that the case against Obeid Mikael was decided before the District Land and Housing Tribunal at Kahama. PW1 stated further that, Mabula Gripa had no wife and that at the time of sale, both Mabula John Gripa and Jeremiah John were aged between 20 and 28 years old. He further stated that, Mabula John Gripa died while in Mpanda and Jeremiah John died while at Nyakato -

Nyansubi Kahama. He added that, both Mabula John Gripa and Jeremiah John had no houses. He also stated that, he resides 4KM from the disputed land and that, he doesn't know that owners of the areas around disputed land have been compensated. He further stated that, he doesn't know that in 2007 a meeting was held to compensate owners of land. He further denied knowing FEBIC investment Ltd but admitted that, he knows FABIC Investment Ltd which owns a fenced land almost (200) two hundred meters from the disputed land.

While under re-examination, PW1 stated that, those who witnessed sale were residing three (3) kms away from the disputed land. He stated that, Leah Mahela refused to witness sale because she did not want disturbance with the government. That, at the time of sale, there was no proper road but were mere passages. Jeremiah John was handwritten to put strength that he is related to John Mabula, the seller. He also stated that it was only in 2019 through the letter of the 3rd defendant, he became aware that the land is survey.

It was evidence of Bakari Shabani (PW2) that he resides at Nyakato Nyansubi Kahama since 2004 and that, from 2005 up to now, he is the ten-cell leader at the said area. He also testified that, he knows Spilaus @ Bijampola, the plaintiff, since 2005 because the later is farming on the area/land that was owned by mzee Gripa. He added that,

in May 2005, Spilaus @ Bijampola informed him that he has bought the land that was owned by mzee Gripa and that, he will continue to cultivate it. PW2 stated further that, plaintiff showed him sale agreement and that, he (PW2) inquired from Mzee Gripa and the later admitted to have sold the said land to the plaintiff. PW2 also stated that, mzee Gripa was aged almost 50 years. He added that, Spilaus @ Bijampola continued to cultivate the said land from 2005 up to 2022. PW2 stated further that, Mzee Gripa died either in 2015 or 2016 while at Nyakato area with Kahama. He admitted to know one John Mabula who, he stated that, was nephew to mzee Gripa. PW2 stated that between 2017 and 2018 the said John Mabula moved to Mpanda.

PW2 stated further that, he resides ten to twenty (10 to 20) meters from the disputed land and that, it is his first time to know existence of the dispute on the disputes land. He also stated that, the disputed land, in the North borders a road, in West borders mama Mahela, in East borders a road and in South borders born again church and a fence for crude oil.

PW2 stated further that, his house is in Southwest of the disputed land and that has been there since 2004. He also testified that, between 2005 and 2010, he participated in issues relating to survey of the area. He added that, between 2005 and 2010 survey was done near

the area owned by S.DA. Church. He went on that, the land that was surveyed was owned by Michael Nalemi. He also stated that, FABIC investment Ltd has a fenced land near to his house.

PW2 stated further that, at the time Spilaus @ Bijampola bought the disputed land in 2005, the only neighbours were Ismail Nakomolwa and mama Mahela because, other neighbours were 35 meters away. He went on that; it is only 25 to 30 paces from his house to the plot owned by FABIC Investment Ltd.

Testifying under cross examination, PW2 stated that, in 2003 he brought a surveyed plot from mama Maduhu and that, that is the plot on which he resides. He also stated that, it is 20 Meters from the said plot to the disputed land. He admitted that, at the time of sale of the disputed land he was a ten-cell leader. He went on that, sale was done before Ally Ruwa, the Hamlet leader. When PW2 was shown exhibit P1 he stated that the contract was between John Gripa and Spilaus Mganyizi Issack.

PW2 further stated that, between 2005 and 2010 came FABIC Investment Ltd with a grader and cleared the area near to the crude oil pipeline. He added that, FABIC Investment Ltd was ordered to negotiate with owner of pieces of lands, but he doesn't know the result thereof. PW2 also stated that, he doesn't know Felister Maduhu, Elizabeth

Mwehwa, Jeremiah John and Julius Masolwa but knows Bruno Simon who is residing at Mchungu area, Ismail Tungaraza, who was residing almost 50 meters in the area where the grader of FABIC Investment destroyed crops, Tumain Mboje, who died 5 years ago and that the later had a plot in the area destroyed by FABIS Investment.

When further cross examined by Mr. Mpogole State Attorney, PW2 stated that, he is not aware that the disputed land is surveyed. In further cross examination, he stated that it is three to five (3 to 5) meters from the area of mama Mahela to the disputed land and that, it is almost 100 – 150 meters from the plot of mama Mahela to Michael Nalemi. He went on that, it is 20 – 30 meters from the plot of mama Mahela to his house. He stated further that his plot is No. 178 Nyansubi Block "O" Kahama. He maintained that he bought the said plot in 2003 while it was already surveyed. He added that, all Nyasubi area is at block "O" Nyasubi Kahama.

PW2 admitted that he didn't know any dispute until when he was called in court today. He remembers to have attended a meeting that was chaired by Hassan Mwendo and that, in the said meeting, FABIC Investment was ordered to compensate owners of various plots.

Testifying on behalf of the 1st, 2nd, 3rd, and 5th defendants, Yahaya Msangi, the principal Land Surveyor stationed at Kahama stated that, in

1998, Nyasubi area within Kahama was surveyed and Town Planning drawing No. 13/8/1298 were issued. He added that, the said area is Block "O" and has plots No. 124 to 154 Plot No. 152. He stated further that, plot No. 152 block "O" Nyasumbi Kahama was surveyed in July 2007 and approved survey was in August 2007. He went on that, the size of plot No. 152 block 'O' Nyasumbi, Kahama is 1 acre. He added that, the size of plot No. 152 is 4379m². He described the boundaries of plot No. 152 that in South, it borders plot No. 153 which is an open space, in East, West and North it borders roads.

When he was cross examined by counsel for the plaintiff, DW1 stated that, according to their official record, the area was surveyed because an individual wanted to build nursery school and a hostel. He admitted that, the said area was initially owned by individuals, but he did not have record as who were the owners. He admitted that, if the area is occupied by individuals, it must be surveyed first then owners can be compensated.

On his part, Yusuph Shabani Luhumba (DW2) testified that, plot No. 152 block "O" Nyasubi Kahama is owned by FABIC Investment Ltd. He went on that, in 2007 the said FABIC Investment Ltd applied to be issued two plots namely, one for hotel and the other for nursery school. He added that, based on that application, 4th defendant was issued with

offer from plots No. 152 and No. 154 for nursery school and hotel respectively. He went on that, the two offer were issued in 2007. He testified further that, in 2009 the said FABIC Investment was issued with Certificate of Title No. 47179 for plot No. 152. He also testified that, initially, the area was owned by eight (8) individuals who are Felister Maduhu, Julius Masolwa, Bruno Simon, Elizabeth Mwahya, Ismail Tungaraza, Joseph and Tumain Mboje and that they were compensated. DW2 tendered the minutes of the meeting held on 2nd August 2011 before local government leaders as exhibit D5 showing that the said individuals were compensated.

It was further evidence of DW2 that, on 30th December 2020, plaintiff applied for survey of the disputed area and register it his name, but he was informed that the said land has been surveyed and is owned by FABIC Investment Ltd. He added that, plaintiff was notified that previous owners were compensated.

When under cross examination, DW2 stated that, valuation was done, identification of previous owners was made and that, compensation was done in 2011. During re-examination, DW2 maintained that valuation of the disputed land was done by the District Valuer and that owners were compensated.

In his final submissions, Mr. Denis Machui, learned counsel for the plaintiff submitted that, evidence of both PW1 and PW2 proved that plaintiff acquired the disputed land from Mabula John Gripa hence he has interest in the disputed land. Counsel further submitted that plaintiff was supposed to be compensated after the said land was acquired and allocated to the 4th defendant. Counsel for the plaintiff further submitted that, procedures for compensation of previous owners were not followed. He added that, there is no evidence to show how previous owner of the disputed plot were identified and that valuation was not done because valuation report was not tendered. He strongly submitted that; the disputed plot was illegally allocated to the 4th defendant. He went on that, though 1st, 2nd, 3rd, and 5th defendants have tendered an exhibit showing the names of the persons who, allegedly were compensated, those individuals were not called as witness to prove that they were paid. He therefore, prayed plaintiff be granted the reliefs he has prayed.

On the other hand, in his final submissions, Mr. Mussa Mpogole, learned State Attorney for the 1st, 2nd, 3rd and 5th defendants submitted that, plaintiff did not prove that he was the owner of the disputed land. He submitted further that, in the plaint plaintiff did not state the size and boundaries or descriptions of the land he alleged belongs to him but

was allocated to the 4th defendant. Counsel went on that plaintiff simply mentioned in his evidence in chief the size and location of the disputed plot. Learned State Attorney submitted further that, that is contrary to the provisions of Order VII Rule 1 of the Civil Procedure Code [Cap. 33 R.E. 2019] that requires pleading to contain descriptions. He added that, even sale agreement (exhibit P1) does not show location of the said land and does not show boundaries. He cited the case of ***Lupembe village Government Ikolo Ward Kyela District and Another versus Bethlehemu Mwandafwa and 5 others***, Civil Appeal No. 377 of 2020, CAT (unreported) to cement on his submissions that failure to indicate/show particulars of the disputed land is fatal. He added that, evidence of the plaintiff (PW1) departed from his previous pleading and referred the court to ***Lupembe's case*** (supra).

It was further submitted by the learned State Attorney that, plaintiff has failed to prove that he is the owner of the disputed land due to incompleteness of exhibit P1 because, it does not describe the said land and its size. He added that, exhibit P1 has violated the provisions of section 64 of the Land Act [Cap 113 R.E. 2019] hence exhibit P1 is not enforceable.

It was further submitted on behalf of the 1st, 2nd, 3rd, and 5th defendants that, plaintiff has failed to prove his case at balance of

probabilities that he is the owner of the disputed land and that the said land is the one that was allocated to the 4th defendant. To bolster his submissions, learned State Attorney cited the case of ***Antony M. Masanga v. Peniria (mama Mgesi) and another***, Civil Appeal No. 118 of 2014, CAT (unreported). He submitted further that, evidence of DW1 and DW2 has proved that plot No. 152 block "O" Nyasubi Kahama was allocated to FABIC Investment Ltd after complying with procedures for allocation of land. He added that, evidence of both DW1 and DW2 is supported by exhibits D1, to D7.

Learned State Attorney also submitted that, the person in possession of Certificate of Title is the lawful owner unlike the one without a certificate of title. He added that, 4th defendant was issued with a Certificate of Title after compliance with all procedures of compensation and that compensation was done at the lower level (street) as per exhibit D1 to D7. To cement on his submission, State Attorney cited the case of ***Nicholaus Mwaipyana vs. The Registered Trustees of Little Sisters of Jesus Tanzania***, Civil Appeal No. 276 of 2020, CAT (unreported) and the provisions of section 40 of the Land Registrations Act. He strongly submitted that; the 4th defendant was lawfully allocated plot No. 152 block 'O' Nyasubi area Kahama. State

Attorney answered the 1st issue is in the negative and the 2nd issue is in the positive.

On the 3rd issue, State Attorney submitted that, plaintiff is not entitled to compensation. He added that, the prayer for compensation is time barred because in his evidence and plaint, plaintiff shows that the dispute arose in 2007 and that he filed this case 15 years after the said allocation. He added that, exhibit P4 shows that plaintiff was notified in 2020 that the disputed plot was allocated to FABIC Investment Ltd. He went on that, in terms of item 1 of the schedule to the Law of Limitation Act [Cap 89 R.E. 2019], claims for compensation must be made within 12 months from the date the course of action arose. State Attorney cited the provisions of section 3 of Cap 89 R.E. 2019 (*supra*) and the case of ***Kigoma Ujiji Municipal Council V. Ulimwengu Rashid t/a Ujiji mark foundation***, Civil Appeal No. 222 of 2020, CAT (unreported) and prayed the claim for compensation be dismissed for being time barred. He added that, the prayer for compensation is not amongst the plaintiff's prayer in the plaint.

On the 4th issue, Mr. Mpogole submitted that, since plaintiff has failed to prove his case, status quo of plot No. 152 Block" O" Nyasubi Kahama be maintained. He concluded by praying that the suit be dismissed with costs.

I have considered evidence and submissions made on behalf of the parties in this case and find that, it is undisputed that 4th defendant was allocated the disputed land by 1st, 2nd, and 3rd defendants. I therefore answer the 2nd issue namely, whether the 4th defendant was allocated the disputed property by the 1st, 2nd, and 3rd defendants in affirmative.

In the bid to prove the 1st issue namely, whether plaintiff is the lawful owner of the disputed property, PW1 stated that he bought the said land from Mabula John Gripa on 20th April 2005 and tendered sale agreement (exhibit P1) to that effect. I have examined exhibit P1 and find that it does not describe location of the plot that was purchased by the plaintiff. It is unclear whether the said land is at Nyasubi Kahama or it is somewhere else. Though in paragraph 8 of the plaint pleaded that he bought the disputed land located at Nyasubi Kahama Town from Mabula John Gripa in 2005, exhibit P1 cannot prove that the plot that was allocated to the 4th defendant is the same as the one plaintiff purchased from Mabula John Gripa in 2005. I am of that considered view because said sale agreement (exhibit P1) reads in part: -

"YAH: HATI YA MAUZIANO YA SHAMBA LENYE UKUBWA WA HEKARI
MOJA NA SEHEMU

Mimi Mabula John Gripa ninauza shamba langu ndugu Spilaus Mganyizi Isacka wa Nyihogo Kahama mjini kwa makubaliano ya shilingi Milioni Ishirini tu (20,000,000/=) bila kushawishiwa na mtu yeyote nikiwa na akili zangu timamu bila kulazimishwa.

Makubaliano haya yamefanyika mbele ya mwenyekiti wa kitongoji cha Nyasubi.

Jina la Mwenyekiti wa Kitongoji

Ally Ruwa. Saini.....

Muhuri.....

1. Muuzaji: Mabula John sahihi.....

2. Mnunuzi: Spilaus Mganyizi Sahihi....

Mashahidi

1. Hamisi Kimaro sahihi.....

2. Stadius Kamgasha Sahihi....

3. Mama Salume Sahihi.....

4. Jeremiah John Sahihi....."

All the aforementioned persons appended their signatures save for Mabula John who signed by thumb. A stamp of Chairperson of Nyasubi Hamlet Kahama Town was also stamped.

It is my view, that exhibit P1 is not conclusive that the disputed area is the one and the same plaintiff bought from Mabula John Gripa. Exhibit P1 does not describe the size, location and boundaries of the land purchased by the plaintiff from Mabula John Gripa in 2005. The provisions of Rule 3 of Order VII of the Civil Procedure Code [Cap. 33 R.E. 2019] is loud and clear as it provides: -

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case

such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number.”

In the case at hand, apart from showing that the disputed land is at Nyasubi and that it was purchased from Mabula John Gripa, plaintiff did not give its description i.e., boundaries that would have identified it. The same applies to exhibit P1. Based on exhibit P1, anyone can come and claim to be owner of any plot of land alleging that he /she bought from the said Mabula John Gripa. In fact, the Court of Appeal was faced with a similar situation in the case of [**Martin Fredrick Rajab vs Ilemela Municipal Council & Another**](#) (Civil Appeal 197 of 2019) [2022] TZCA 434 (unreported) and after thorough consideration of evidence it held:-

"From what was pleaded by the appellant, it is glaring that the description of the suit property was not given because neither the size nor neighbouring owners of pieces of land among others, were stated in the plaint. This was not proper and we agree with the learned trial Judge and Mr. Mrisha that, it was incumbent on the appellant to state in the plaint the description of the suit property which is in terms of the dictates of Order 7 rule 3 of the Civil Procedure Code [CAP 33 R.E 2019]... This is evident in the sale agreements ... which, besides showing the names of the sellers, buyer, the respective prices and those who witnessed the sale including PW4, nothing is stated on the location, size and neighbours to the said suit property. Therefore, the size of 5600 square meters in the appellant's evidence is not compatible with the sale agreements exhibited at the trial which is against the dictates of section 100 (1) of the Evidence Act ..."

In his evidence, PW1 admitted that all the aforementioned witnesses were not neighbours to the disputed land. More so, Bakari Shabani (PW2) who testified that he resides 10 to 20 meters from the disputed land was not called to witness the said sale on 20th April 2005. Reasons for not calling PW2 to witness the said sale was not disclosed by both PW1 and PW2.

It is beyond imagination that PW2 who stayed at that area since 2004 and in 2005 was the ten-cell leader, was not called to witness the said sale. In fact, in his evidence under cross examination, PW1 stated that the said sale was witnessed by witnesses who were staying 3 kilometers away from the disputed land. He further admitted that neighbours such as Leah Mahela, were not called to witness the said sale. In his evidence, PW2 stated that, in 2005, the only neighbours to the disputed area were Ismail Nakomolwa and mama Mahela because other neighbours were 35 meters away from the disputed land. The issue that comes in my mind is, why did plaintiff leave all these neighbours and call those who were staying 3 kilometers away to witness the said sale. The only reason offered by the plaintiff (PW1) while giving evidence under re-examination for not calling Leah Mahela is that, she later refused to witness sale because she did not want disturbance with the government. It is my view that, said Leah Mahela

refused to witness the said sale with a valid reason as she might be aware of the truth of what was going on, if at all she was called and refused. There are no reasons offered as to why both PW2 and Ismail Nakomolwa were not called to witness the said sale. It is my view that, neighbours were supposed to be involved as witnesses to said sale as it was held in the case of [Anthony M. Masanga vs Penina \(mama Mgesi\) and Another](#) (Civil Appeal 118 of 2014) [2015] TZCA 556(unreported). Since plaintiff failed to involve neighbours to witness the alleged sale agreement (exhibit P1) and the said exhibit does not describe the size and location of the disputed plot, I hold that he has failed to prove that he is the owner of the disputed land. More so, as quoted hereinabove, exhibit P1 does not show that the land plaintiff claims to have bought from Mabula John Gripa is situated at Nyasubi and that it is the same as the disputed land.

I have carefully examined evidence of PW2 and PW1 and find that there are exaggerations and a clear desire to tell lies. In reaching that conclusion, I am guided by what was held by the Court of Appeal in the case of ***Patrick s/o Sanga v. The Republic***, Criminal Appeal No. 213 of 2008, (unreported) that: -

"...To us, there are many and varied good reasons for not believing a witness. These may include the fact that the witness has given improbable

evidence; he/she has demonstrated a manifest intention or desire to lie; the evidence has been materially contradicted by another witness or witnesses; the evidence is laden with embellishments than facts; the witness has exhibited a clear partiality in order to deceive or achieve certain ends, etc...".

It is my view that, exhibit P1 was just created to serve the purpose. I am of that view because, it shows that the alleged sale was done in 2005 and that the purchase price was Twenty Million Tanzanian Shillings (TZS 20,000,000/=) for the size of the land described in exhibit P1. In my view, there are embellishment in exhibit P1 with intention of deceiving. If at all in 2005 the land that is not more than two acres at Kahama was sold at Twenty Million Tanzanian Shillings (TZS 20,000,000/=), then, in 2023 the said land is sold at billions of Tanzanian shillings.

Apart from the foregoing, there is doubts that plaintiff acquired the land in question. It is clear from evidence of the plaintiff (PW1) that three persons out of those who signed the said sale agreement (exhibit P1) and that the whereabouts of the remaining three others is not known. In other words, out of the seven people who signed the sale agreement (exhibit P1) it is only the plaintiff who, it can be said conclusively that he is lucky for being alive and is whereabouts for being known. It seems, plaintiff is the only lucky and favoured person by God

for being alive and his whereabouts being easily established. The report that three people including the sale and the alleged close relative of the sale have died and the report that three others who signed the said sale agreement are untraceable, creates more doubt and many questions as to why neighbours to the disputed plot were not called as witnesses to the sale agreement. The possibility is, the said exhibit P1 was just created to give room to plaintiff to claim ownership of the disputed plot knowing that they will not be called as witnesses. Otherwise, there is no plausible explanation as to why the herein mentioned neighbours including PW2 who was the ten-cell leader were not called to witness sale.

In addition to the foregoing, there is contradiction in evidence of PW1 and PW2 that cannot be reconciled as to the age of the said Mabula John Grippa, the seller of the disputed land. It was evidence of PW1 that Mabula John Grippa was aged between 20 and 28 years but, PW2 stated that the said Mabula John Grippa was aged between 50 to 60 years. In my view, that big difference of age of the alleged seller shows that there are lies in evidence of these witnesses.

For the foregoing, I answer the 1st issue in the negative that plaintiff has failed to prove that he is the owner of the disputed land.

In his evidence, PW1 prayed to be compensated by the 1st, 2nd, 3rd, 3rd, and 5th defendants. It is my considered view that, since plaintiff has failed to prove his case, he is not entitled to the relief he claimed. More so, the prayer for compensation was not amongst his prayers in the plaint as it was correctly submitted by Mr. Mpogole State Attorney. Even if assumed that it was, of which it was not, yet, the same cannot be entertained because it was time barred. Plaintiff was notified on 07th January 2020 through exhibit P4 that the said plot has been allocated to the 4th defendant but filed this case on 3rd August 2022 while 12 months provided for under item 1 of the schedule to the Law of Limitation Act [Cap 89 R.E. 2019] has expired. This court has no jurisdiction to grant that relief. See the case of *Kigoma Ujiji Municipal Council vs Ulimwengu Rashid t/a Ujiji Mark Foundation* (Civil Appeal No. 222 of 2020) [2023] TZCA 131(unreported).

In the plaint, plaintiff prayed to be declared as the lawful owner of the disputed land, allocation of the disputed land to the 4th defendant be declared as illegal and certificate of title issued to the 4th defendant be nullified. As pointed hereinabove, plaintiff has failed to prove that he had prior interest in the disputed plot. Since 4th defendant has a Certificate of Title, she is taken to be the lawful owner as it was held in the case of *Nicholaus Mwaipyana vs The Registered Trustees of*

Little Sisters of Jesus Tanzania (Civil Appeal No.276 of 2020) [2023]

TZCA 17578. In **Mwaipyana's case** (Supra) the Court of Appeal held inter-alia that: -

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate of title is always to be taken the lawful owner unless it is proved that the certificate was not lawfully obtained."

For all what I have discussed hereinabove, I dismiss this case with costs and hold that the said land is lawfully owned by the 4th defendant and that the Certificate of Title was legally issued to the said 4th defendant.

Dated at Shinyanga on this 08th November, 2023.



B. E. K. Mganga
JUDGE

Judgment delivered on this 08th November 2023 in chambers in the presence of Denis Machui, Advocate for the Plaintiff and Mussa Mpogole, State Attorney for the 1st, 2nd, 3rd, and 5th Defendants.



B. E. K. Mganga
JUDGE

