

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

**LAND CASE NO. 13 OF 2018**

**AL HUSHOOM INVESTMENT (T) LTD.....PLAINTIFF**

**VERSUS**

**WILSON MICHAEL.....1<sup>ST</sup> DEFENDANT**  
**MURATAZA HAMAD.....2<sup>ND</sup> DEFENDANT**  
**ISIHAKA MECKDAD.....3<sup>RD</sup> DEFENDANT**  
**ANTHONY JOHN.....4<sup>TH</sup> DEFENDANT**  
**HAMIS MECDAD.....5<sup>TH</sup> DEFENDANT**  
**JOHN WILLIAM.....6<sup>TH</sup> DEFENDANT**  
**MOHAMED SALUM.....7<sup>TH</sup> DEFENDANT**  
**BASHIRU SELEMAN.....8<sup>TH</sup> DEFENDANT**  
**ROBERT IVAN.....9<sup>TH</sup> DEFENDANT**

Date of Order: 10.03.2021  
Date of Judgment: 30.04.2021

**JUDGMENT**

**V.L. MAKANI, J**

The plaintiff in this suit is AL HUSHOOM INVESTMENT (T) LIMITED.

The plaintiff company is praying for judgement and decree against

the defendants as follows:

- 1. Declaration that the plaintiff is the lawful owner of all that parcel of land known as Boko Estate situated at Boko area, Kinondoni District, Dar es Salaam comprised under Certificate of Title No.26470.*
- 2. A permanent injunctive order restraining the Defendants from entering in or at any part or parcel of land constituting Boko Estate, Boko area, Kinondoni*

*District, Dar es Salaam comprised under Certificate of Title No.26470.*

- 3. General damages to the tune of Shillings Five Hundred Million (Tshs.500,000,000/=) or any amount as this court may assess and deem fit.*
- 4. Costs of this suit to be borne by the defendant.*
- 5. Any other and or further relief this honourable court may deem just in the circumstances.*

Briefly stated, the plaintiff's claim against the defendants is for declaration that the defendants are trespassers and are in illegal occupation of the piece of land known as Boko Estate situated at Boko area, Kinondoni District, Dar es Salaam comprised under Certificate of Title No.26470 (the **suit land**). According to the plaint it is alleged that the plaintiff company purchased the suit land from Boko Estate (1979) Limited for mining purposes where the plaintiff company has a permit from the Ministry of Minerals. However, the plaintiff company alleged that in February 2016 the defendants invaded the suit land and started digging building materials including rocks and gravel.

The plaintiff was represented by Mr. Egidi S.M. Mkoba, Advocate and he fielded 2 witnesses who were Idd Salum Mwajala (**PW1**) the

supervisor of the Plaintiff's company and Rajabu Sagafu (**PW2**), a member of the local government of Boko. Upon closure of plaintiff's case, two witnesses were summoned by the court to assist namely, Happiness Nyamhanga Lucas (**CW1**), a Land Officer of Kinondoni Municipal Council and Waziri Masoud Mganga Registration Officer from the Office of Registrar of Titles. The defendants did not enter appearance despite being served several times. The matter therefore proceeded ex-parte against the defendants for failure to enter appearance though duly served.

The issues that were drawn in the course of the hearing were follows:

- 1. Whether the plaintiff is the lawful owner of all that piece of the suit land.*
- 2. Whether the defendants have trespassed into the suit land.*
- 3. To what reliefs are the parties entitled.*

**PW1** Idd Salum Mwajala is the supervisor of the plaintiff's company said the company deals with mining activities. He further said that the suit land is owned by the company and the said land was bought from Boko Estates (1979) Limited. He said that the suit land is situated at Kinondoni District near Prisons and Twiga cement and is surveyed

with Certificate of Title No.26470 (**Exhibit P4**). He said the said Certificate of Title has been offered to the Bank as security for a loan taken by the company. He said that the company is using the area for excavation of rocks and gravel with permits from the Ministry of Minerals (**Exhibit P1 and P2**). The witness **PW1** went on to tell this court that in February 2016 a group of people from the neighbourhood invaded the suit land and started to dig rocks and gravel. He said he reported the issue to the Ward leaders in Bunju and together with the Local Street Chairman and they were advised to go to Tegeta Police post who advised them to come to the court. He said that the defendants are still in the suit land and have done a lot of destruction. He presented four photographs of the invaded areas and destruction caused as (**Exhibit P3**). He prayed that the trespassers be removed from the area, compensation to the tune of 500 million shillings and costs of the case.

When cross examined by the court, he replied that **Exhibit P1** one of the Mining Permits has no validity once you are given. And that the Mining Permit **Exhibit P2** is valid for seven years from the date of issue which is 15/10/2013. He said that all the licences are for mining

of building materials. He added that the trespassers are nine defendants who allege to be the owners of the suit land.

**PW2** Rajabu Sagafu the member of the Local Authority in Boko testified that the suit land is within the area in which he is a leader. He said that the plaintiff's company excavate gravel and building rocks. He said that he cannot estimate the area, but it is a big area. He said that **PW1** is the supervisor of the plaintiff's company within the area. He said that he went to the area to tell the trespassers to move from there but they refused and successful went to the police where the trespassers promised to leave but they did not do so. He said that there are boundaries to show that the suit land belongs to the Plaintiff and that the trespassers invaded the area.

When cross examined by the court, he said that the area by the plaintiff company has barbed wires and they were cut and destroyed by the trespassers who proceeded to mine the gravel in the area.

Before the closure of the plaintiff's case, Mr.Mkoba prayed to recall **PW1** so as to tender the certified copy of the Certificate of Title. **PW1** told the court that the Certificate of Title is with the Bank and that

upon follow up he could not get the original because it is still held by the Bank as security. He said that he was given a certified copy (**Exhibit P4**). He added that the suit land was transferred to the plaintiff company on 24/10/2002 from Boko Estates after sale and it is stamped by the Land office to confirm the transfer.

**CW1** was Happiness Nyamhanga Lucas. She said that the suit land is in Boko and it is near the sea with CT No.26470, LO 65895 issued by Commissioner for Lands Dar es Salaam on 01/01/1981 for a term of 99 years. She said that the owner is the plaintiff and that she knows about the ownership from the files at the office and also from the data base in which she could access and read the files from Registrar of titles and the access is only for land officers. She further testified that she was employed in 2012 and was informed about the trespass. She said that nothing much could be done as there was already a case in the court by the plaintiff. She said further that the trespassers are digging sands for business. She insisted that the suit land is not yet developed but the plaintiff is the owner by virtue of Certificate of title and it is in the plaintiff's name. When cross examined by Mr. Mkoba, she said that she cannot remember all the conditions in the

Certificate of Title. She further said that the plaintiff being the lawful owner is the one paying for land taxes.

**CW2** was Waziri Masoud Mganga. He said that the plaintiff is the current owner of the suit land which measures 70.26 hectares. He said that the initial owner was Boko Estates (1979) Limited who got the same on 12/08/1981 and transferred the land to the plaintiff on 24/01/2002 for a term of 99 years. He said that the OC-CID for Kinondoni wrote a letter dated 12/07/2019 (**Exhibit C1**) to the Registrar seeking for information on ownership of the suit land. He said that the letter was responded to on 30/07/2019 (**Exhibit C2**) stating categorically that the plaintiff company is the lawful owner of the suit land. He said that there is unspecified amount of loan by the plaintiff from NBC Limited which loan has not been discharged. He said the loan was registered on 08/09/2010. Further he said the transfer of the suit land to the plaintiff company was by virtue of sale by Boko (1979) Investment Limited.

In his final submission, Mr. Mkoba said that the evidence from both plaintiff's witnesses (**PW1** and **PW2**) and that of the two court witnesses (**CW1** and **CW2**) is abundant to prove that the plaintiff is

the lawful owner of the suit land. They have shown how the transfer from the original owner to the plaintiff was affected. On the other hand, he said the defendants opted not to take part in the trial, as a result there is no material evidence or at all, which would tend to contradict that of the plaintiff. He admitted that the plaintiff has not shown why the amount of general damages should be TZS 500,000,000/= however he said that damages as shown in photographs calls for some amount of that compensation by way of general damages. He said that the law provides that general damages need not be specifically pleaded or proved in which he relied on the case of **Zuberi Augustino Vs Anicet Mugabe (1992) TLR 137.**

Having heard the evidence by the plaintiff the court will now endeavour to analyse the evidence in line with the issues that were raised.

It is a cardinal principal of law under the Law of Evidence Act CAP 6 RE 2019 that whoever desires a court to give judgment in his/her favour; he/she must prove that those facts exist. Section 110 (1) (2) and 112 of the Law of Evidence Act. These provisions place the burden of proof to whoever desires the court to give judgment as to

any legal right or liability dependent on existence of facts which he/she ascertain. In the case of **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004** (unreported) the Court of Appeal held that:

*"..... it is an elementary principle that he who alleges is the one responsible to prove his allegations"*

Also, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) it was held that the party with legal burden also bears the evidential burden on the balance of probabilities. In the present case, though the defendants did not enter appearance, the plaintiff had that duty to prove the case to the standard required in civil cases of balance of probabilities.

According to Section 2 of the Land Registration Act CAP 334 RE 2019 the word "owner" means:

*"in relation to any estate or interests the person for the time being in whose name that estate or interest is registered."*

This position was replicated in the case of **Salum Mateyo Vs. Mohamed Mateyo (1987) TLR 111**. This means, any presentation

of a registered interest in land is a prima facie evidence that the person so registered is the lawful owner of the said land. The position was reiterated in the case cited of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma Civil appeal No. 35 of 2019 (CAT-Mwanza)** where the Court of Appeal stated:

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

This judgment cited the book of **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W Tenga and Dr. S.J. Mramba Law Africa Dar es Salaam, 2017 at page 330 where it was said:

*"...the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."*

It was the testimony of **PW1, PW2, CW1** and **CW2** that the suit land belonged to the plaintiff company. They all confirmed that the suit land was transferred from Boko Estates Limited to the plaintiff company and this is confirmed by **Exhibit P4** which is Certificate of

Title No.26470. The records from the offices of **CW1** and **CW2** show that the plaintiff is the lawful owner of the suit land. The testimonies were not controverted at all. The testimonies by plaintiff's side ties with the exhibits presented. As started above, **CW1** and **CW2** both confirm that the suit land belongs to the plaintiff company and has been registered in his name. The Certificate of Title which is a prima facie evidence of ownership coupled with the evidence of **PW1, PW2, CW1** and **CW2** that was not controverted is clear proof that the suit land belongs to the plaintiff company. The first issue is therefore in affirmative.

On the second issue it is obvious that the defendants trespassed the suit land. The testimony of **PW1** that the trespass occurred in 2016 and that he reported the matter to the Ward office in Bunju was corroborated by **PW2** the member of Local Authority of Boko Ward and **CW1** the Land Officer from Kinondoni Municipal. **PW2** being a member of the Local Government of Bunju Ward cemented PW1's evidence that he himself went to the suit land and asked the trespassers to move out of the suit land where they did not obey. The matter then got to the police and ultimately in court. The police were also forced to make enquiries at the Ministry of Lands as evidenced

by **Exhibit C1** and **C2**. On such strong and unshaken evidence of trespass by the defendant, nothing contrary to the reality that the alleged trespass has now been proved by the heavier and uncontroverted evidence of the plaintiff against defendants who waived their rights to defend. The second issue is as well answered in the affirmative.

The final issue is to what reliefs are the parties entitled to. As it has been established above that the defendants trespassed the suit land. The plaintiff claims general damages to the tune of Tsh 500,000,000/=. The law is very clear that the court discretionary awards general damages after taking into consideration all relevant factors of the case, this position was stated in the case of **Cooper Motor Corporation Limited vs Moshi Arusha Occupational Health Services (1990) TLR 96**. In his case the plaintiff has explained how the defendants invaded his land cut and destroyed the barbed wire and started to excavate rocks and gravel. I have gone through the photographs (**Exhibit P3**) it shows excavation on the suit land but does not show that it is by the defendants. There are no photographs showing the defendants at work. Indeed, as per the evidence, the plaintiff had acquired the suit land, amongst other

purposes, for mining activities and was granted mining permit by the Ministry of Minerals (**Exhibits P1 and P2**) but they did not state if the plaintiff company was in actual business before the invasion and PW1 was not led to give evidence to this fact. According to the plaintiff's testimony, the barbed wires surrounding the suit land were also destroyed by the defendants, but the extent of the damage was not stated. It is apparent that the plaintiff incurred loss since the invasion in 2016 for not using the suit land but at least the plaintiff ought to have given a background for which to assist the court in making its discretion. Certainly, there are damages on the part of the plaintiff company and considering that general damages are discretionary then the plaintiff company would be awarded a minimal amount of **TZS 50,000,000/=** as general damages.

In the end result and for the reasons which I have endeavored to address above, it is hereby decreed as follows:

1. That the plaintiff is declared the lawful owner of all that parcel of land known as Boko Estate situated at Boko area, Kinondoni District, Dar es Salaam comprised under Certificate of Title No.26470.

2. The defendants are forthwith required to vacate the suit land and are hereby restrained from entering in or at any part or parcel of land constituting Boko Estate, Boko area, Kinondoni District, Dar es Salaam comprised under Certificate of Title No.26470.
3. The defendants shall pay general damages to the tune of TZS **50,000,000/=**.
4. The cost of this suit shall be borne by defendants.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**30/04/2021**