

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

LAND CASE NO. 144 OF 2017

JAMES ABIUD NYAKISAGANE.....PLAINTIFF

VERSUS

TANZANIA ELECTRICAL SUPPLY COMPANY..... DEFENDANT

Date of Last Submissions: 10.12.2021
Date of Judgment: 28.02.2022

JUDGMENT

V.L. MAKANI, J

The plaintiff JAMES ABIUD NYAKISAGANE is praying for the following orders:

- 1. Compensation of TZS 358,200,000/= in respect of the land that was not paid for and as per computation demand schedule.*
- 2. Compensation in respect of a two roomed hut total cost TZS. 6,000,000/=.*
- 3. Payment of loss of income of TZS. 9,090,000/= for the period from 12th February, 2016 up to 31st March, 2017.*
- 4. That the defendant be condemned to pay general damages of 40% of total amount payable as the court may deem fit.*

5. Interest at 8% of the total amount which was payable to the plaintiff from the date of order to vacate on 19th February, 2016 to final date of settlement which is 19th September, 2016.

6. Interest on TZS. 118,129,000/= at 8% per annum from the 19th September, 2017 to the date of final settlement.

According to the plaint, the plaintiff is owner of a parcel of land measuring 5976 square meters located at Kivule Magole "A" within Ilala Municipality (the **suit property**). The claim by the plaintiff is for compensation of 1476 square meters which remained unpaid, and further compensation in respect of two roomed hut ("**banda**"), business frames which were to be rented at TZS 50,000/= per room for the period from 2011 to 2016. The compensation arose when the defendant (**TANESCO**) acquired land including the plaintiff's land situated along the present High Voltage Electric Line for purposes of electricity project of the Kilwa – Dar es Salaam Transmission Line (the **Project**). The plaintiff claims that the defendant erroneously effected compensation of TZS 118,129,000/= for only 4500 square meters leaving 1476 square meters unpaid for which is the basis of the present suit in court.

The following issues were drawn as per Order XIV Rule 1(5) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**):

- a) Whether the plaintiff is entitled to the extra compensation that he has claimed.*
- b) Whether the plaintiff is entitled to loss of income.*
- c) Whether the plaintiff is entitled to general damages.*
- d) To what reliefs are the parties entitled.*

The plaintiff was the first witness (**PW1**). He said he was the owner of the suit property. He said in 2010 they (the plaintiff and villagers within the area) were approached by TANESCO and were told not to develop their land as TANESCO wanted the area for gas project. He said TANESCO wanted his area of about 5976 square meters and a valuation was conducted. He said in 2014 TANESCO once again came and confirmed that the previous valuation was proper, and he signed Form No. 1. He said meetings were convened and in 19/02/2016 TANESCO came with cameras, cheques and notices to vacate. He said they were given dummy cheques and photographs of each resident were taken. He said the dummy cheques were collected but they were not paid until 19/02/2016 after several meetings were convened and the press was called to hear their grievances. He said

the amount deposited in his account was TZS 118,000,000/= and he later realized that the amount did not correspond to the land acquired as he was paid for only 4,500 square meters instead of 5,697 square meters. He said the amount paid was less 1,476 square meters. He said he also discovered that the market value was not proper. According to him in 2010/2011 TANESCO said they would pay TZS 8,000 per square meter, but that amount was too low. He said the amount was increased to TZS 20,000/= in 2014 but by his own research land in Ilala is viable for compensation at 75,000/= per square meter. He said the research was conducted at the Land Offices, but the Land Officers could not give him a letter to confirm this fact.

PW1 also said he had frames of business which were not roofed, a *banda* with two rooms and roofed with corrugated iron. He said the *banda* was given a spot value of TZS 6,000,000/= but in time of payment this was not featured. He also said that there was an agreement by TANESCO that payment would be made within 3 months and in case of delay an interest of 8% of the principal amount would be payable. He said the interest for the delay was not paid when TANESCO deposited the principal amount of TZS

118,000,000/=. He thus prayed for the amount of TZS 9,432,000/= as interest to be paid. He also said since he was barred from continuing with his business then he is supposed to be paid TZS 9,090,000/= as loss of income. He said if he were to be paid for all the land that was taken then he would have fetched an amount of TZS 358,200,000/=.

PW1 said he complained to TANESCO, but they directed him to Ilala Municipal Council and the Director told him that what has been paid is what he is entitled. He however found the compensation to be unsatisfactory according to the law. He tendered the following documents which were admitted as exhibits:

1. A letter from TANESCO to plaintiff dated 19/02/2016 (**Exhibit P1**).
2. A letter from TANESCO dated 08/11/2016 (**Exhibit P2**).
3. A letter from the plaintiff to TANESCO dated 28/11/2016 (**Exhibit P3**).
4. Letter from TANESCO dated 23/12/2016 (**Exhibit P4**).
5. Letter by the plaintiff to Ilala Municipal Council dated 23/02/2017 (**Exhibit P5**).
6. Letter by Ilala Municipal Council dated 08/03/2017 (**Exhibit P6**).

7. Copy of Valuation Form (VAL Form No. 1) (**Exhibit P7**).
8. Original Payment Schedule (**Exhibit P8**).

On cross-examination **PW1** said he signed the acceptance of the payment (**Exhibit P2**) and agreed to payment according to the payment schedule (**Exhibit P8**) because he had family problems which needed money. He further said though he signed **Exhibit P2** he did not make any efforts to get the Valuation Form No. 1 (**Exhibit 7**). He said he has claimed TZS 6,000,000/= as spot value for the *banda* because he was told so by the Valuers but he did not have any written proof. He also said he did not have any proof that the market value of land in Ilala was TZS 75,000/=. He said the claim of 358,200,000/= is based on TZS 75,000/= per square meters of 5,976 square meters less the amount he was paid. Answering clarification questions by the court, **PW1** said the frames were yet to be complete but he was expecting to get at least TZS 50,000/= each for the three rooms. He said after payment on 19/02/2016 he left the suit property and TANESCO took over.

PW2 was Lucas Mwale. He said the plaintiff is his boss and he was the watchman of the property since 2009. He said he was the one living in the *banda* but when the Valuers came he had to move to another house that was built by his boss. On cross examination he said in 2010 after the valuation, the *banda* fell. He said since TANESCO have taken over he has not been to the suit property, but he lives adjacent to the said area.

The evidence by Asteria Charles Mkara (**PW3**) and Filbert Mngabo Nikumbara (**PW4**) were almost similar to that of the plaintiff. That in 2014 TANESCO conducted valuation and assessment on payment and in September, 2016 they started paying compensation to residents, and the plaintiff complained to be paid less 1,000 square meters. **PW3** and **PW4** said, in the meetings held by TANESCO the plaintiff was told he would be paid TZS 75,000 per square meter and be compensated of his "banda" and toilet at TZS 6,000,000/= but he was not paid. On cross examination the witnesses admitted that they have no written complaints from the plaintiff, and they did not have proof that TANESCO would pay TZS 75,000/= per square meter or compensation of TZS 6,000,000/= for the "banda though they insisted that the complaint by the plaintiff was true.

The first witness for the defendant's case was Mgeni Athmani Malongo (**DW1**). He said he was the Survey Technician of TANESCO. He said the project for construction of transmission lines from Kilwa to Dar es Salaam was first handled by Kilwa Energy and then the project was handed over to TANESCO. He said there was valuation and assessment conducted and thereafter in 2015 payments commenced. He said before a person was paid, he had to go to the Valuer so that he confirms the assessment, then the person signs and endorses with a thumbprint and he is then paid. He said the payment exercise had a lot of complaints though the residents had agreed and had signed for payment. He said there was another team that was created to take care of the complaints. He pointed out that **Exhibit P8** was used for the payment as it was part of the Valuation/Assessment Report and further that TANESCO paid according to the said **Exhibit P8**.

On cross examination he said he was not sure if the plaintiff placed any complaints to TANESCO. He confirmed that the only payment made was for the 4,500 square meters but he was not sure if the land was 5,900 square meters and whether compensation for 1,476 square meters was yet to be paid.

DW2 was Colman Ernest Kisima, a Valuer currently with Tanzania Railways Corporation but before he was with the Ministry of Lands at Municipal Council Ilala. He said he knew the plaintiff as one of the people compensated in respect of the Project. He said the Project was initially being handled by Kilwa Energy but was transferred to TANESCO. He said he participated in the valuation and assessment of compensation for the affected citizens.

He said the assessment was redone because it was discovered that the initial company handling the valuation and assessment on behalf of Kilwa Energy failed to do it properly and so valuation had to be done afresh from Kilwa to Kinyerezi. He said the exercise incorporated local leaders and after valuation and assessment payment started in 2015. He said a team of Valuers went to solve complaints and some of the citizens were paid additional compensation. He said in 2016 the plaintiff with several others complained to the Municipal Council but were advised to go to TANESCO who were the payers of the compensation. He said unfortunately, the Municipal Council did not receive any information/directives from TANESCO in respect of the case of the

plaintiff. **DW2** said in this present case compensation was in respect of buildings, crops, land and loss of accommodation and profit. He said loss of profit was payable were there was proof of audited accounts or information from TRA and this was paid for 36 months. He said for shops that were not complete there was no compensation that was payable. He said there was also 8% disturbance on valuation on development and value of land. He said the plaintiff was not paid loss of business because there was no business. He said the procedure for compensation was that after the Regional Commissioner signing then compensation had to be paid within six months. He said in this case the Regional Commissioner signed on 22/06/2015 and payment started in September 2015 (**Exhibit P6**). According to **DW2** there was a Verification Report (**Exhibit D1 and D2**) which were reduced to VAL Form 1, a summary of the Report. He said he was involved in the payment of the compensation and once a person signs for compensation and there is a problem, he was advised to write a complaint letter. If all was well then, a cheque was issued, and a photograph taken. He said the plaintiff was not among those who were listed to have handed in a complaint. He observed that one could hand in a complaint within 12 years but if he was not listed then TANESCO could not have given directives for the

complaint to be addressed. He said the plaintiff's complaint was in February, 2017 but there was no directives so he was referred back to TANESCO.

On cross-examination **DW2** said that the plaintiff was not paid development and disturbance allowance. He said according to **Exhibit 8** he was paid loss of profit at TZS 200,000/= and loss of accommodation at TZS 700,000/= and spot valuation of the toilet was charged at TZS 1,000,000/=. He said there was no payment of interest because the plaintiff did not complain and TANESCO did not give directives to the Municipal for action.

The plaintiff's advocate Mr. Venance Victor was the only one who filed Final Submissions. The learned advocate repeated the evidence by the plaintiffs and emphasized that the land of the plaintiff according to **Exhibit P7** was measured at 5976 square meters, but he was paid less 1476 square meters and that amounted to TZS 29,520,000/= at the rate of TZS 20,000/= per square meter.

He said another complaint by the plaintiff was that he was not compensated for the building at TZS 6,000,000/=. He said only the

toilet was paid for but not the house. He pointed out that there was a house as **PW2** was living in the said house. He said this was a fatal omission while **Exhibit P7** refers a spot value of "nyumba ndogo" at TZS 1,000,000/= however, the Valuer said the spot value was TZS 6,000,000/=.

Mr. Venance Victor said another complaint was that the compensation was not paid within the required time. He said the amount of TZS 118,129,000/= was delayed and so the plaintiff was supposed to be paid interest at 8% of the paid amount. He said according to **Exhibit D1** compensation was supposed to be paid within six months and was subject to interest as specified by section 3(f) and (g) of the Land Act and Regulation 13(1)-(3) of GN. 78/2001 and Regulation 19 of GN 86 of 2001. He said there was no proof from **DW1** or **DW2** that there was payment of the interest after the lapse of the six months. He said **PW3** the local leader testified that during the meetings TANESCO promised to pay interest of 8% if there was delay in payment of the compensation. He said also **DW2** admitted that there was a delay of two months in the payment of the compensation to the plaintiff. He said non-payment of the interest has been substantiated by **Exhibits P7, P8, D1** and **D2** and the

testimony of **PW1, PW2, PW3, DW1** and **DW2**. He said interest payable according to the evidence was **TZS 9,450,320/=** and this was not paid.

As for the complaint of payment of TZS 75,000/= per square meter Mr. Venance Victor said the law that governs fair compensation for unexhausted improvement is section 3(1)(f)(g) of the Land Act, Compensation Regulations GN.78 of 2001, Land Acquisition Act No. 47 of 1967 and Article 24 of the Constitution. He also cited the case of **Attorney General vs. Lohay Akonaay & Joseph Lohay [1995] TLR 80** and **Ntiyehela Boneka vs. Kijini Cha Ujamaa Mutala [1988] TLR 56**. He said due to prolonged delay in payment of compensation the payment of TZS 20,000/= which was the rate applicable in 2011 was not fair. He said at the meetings the rate of the value of the land was said to be TZS 75,000/= per square meter. He thus prayed for the value of land to be calculated at that rate and in terms of the 5967 square meters of the land of the plaintiff less the amount already paid. He said the plaintiff has managed to prove his case in terms of section 110 of the Evidence Act CAP 6 RE 2019 and his evidence is heavier than that of the defendant according to the case of **Hemed Said vs. Mohamed Mbilu [1984] TLR 113**.

He prayed for a decree to be entered for the plaintiffs in terms of all reliefs that were prayed in the plaint as they form part of the submissions.

Having narrated the evidence by the parties herein, and having gone through the final submissions by Counsel, I will now endeavour to consider the issues agreed and recorded and I shall be guided by the principle that he who alleges is the one responsible to prove his allegations (see **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004** (unreported)). This principle has been encompassed in sections 110 (1) (2) and 112 of the Law of Evidence Act. It was further held in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) that the party with legal burden also bears the evidential burden on the balance of probabilities.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the plaintiff who must prove that he is entitled to the additional compensation and compensation to loss of income. On the other hand, what the court

is to decide upon is whether the burden of proof has been sufficiently discharged.

As regards the first issue I have noted that the additional payment features in the following categories that: (i) that the plaintiff was paid less than the measure of the suit land, (ii) that there was no payment of the house which was on the suit land at TZS 6,000,000/=, (iii) that the plaintiff was entitled to interest of 8% for delayed payment, and (iv) the plaintiff is entitled to TZS 75,000/= per square meters instead of the paid amount of TZS 20,000 per square meters.

It is the plaintiff's claim that the suit land was 5976 square meters but he was compensated for only 4500 square meters. According to the defendant the plaintiff was paid after approval and endorsement by the Government Valuer and the respective Government officials as required by the law. Indeed, according to **Exhibit P7** the suit land was measured at 5976 square meters (99.6 x 60). It is also reflected in **Exhibit P8** that the plaintiff agreed to the assessment for compensation of the listed items including compensation for 4500 square meters and the payable amount was TZS 118,129,000/=. Further, endorsed next to the amount paid is the thumbprint of the

plaintiff. It is also reflected in **Exhibit D2** that the plaintiff signed acknowledgement of payment of the said TZS 118,129,000/= on 19/02/2016 (see item **401** of the said **Exhibit D2**).

Now, according to the exhibits that have been tendered the claim of the additional payment of compensation was firstly claimed by the plaintiff vide his letter dated 19/10/2016. This is about 8 months after confirmation and consent to payment of the compensation as assessed by TANESCO working with the Municipal Council of Ilala. According to **DW2** who was part of the valuation, assessment, payment and handling of complaints, payment is not effected, unless there is confirmation from the person who has been assessed that all is well. If there is a complaint, then it is worked upon and then payment is made. In other words, payment is not made unless the respective person has confirmed and assented that the assessment is proper. In this present case the plaintiff confirmed by his thumbprint that the payment was proper as reflected in **Exhibit P8** that is why he was eligible for payment as per **Exhibit D2** which payment he duly signed as received. This part of evidence by **DW2** was not shaken and the plaintiff himself in cross examination admitted that he consented to the assessment and payment of TZS

118,129,000/= because of family problems. This is also the case of TZS 6,000,000/= for the house/building on the suit land because the plaintiff saw the assessment and he did not raise this complaint to be worked upon before payment is made. The fact that there was consent for the amount paid means the plaintiff was satisfied with what was assessed, and in any case, he had a duty to check what was payable to him vis a viz what he had listed for compensation. In that regard the plaintiff having assented to the assessment and payment he is thus estopped from claiming for any additional payment. In my considered view, the claim of additional payment was an afterthought and these claims by the plaintiff have no merit and are rejected.

As for the interest it is apparent that the Valuation Report (s) stated that after six months the compensation values are subject to interest. This is also supported by Regulation 19(2) of the Village Land Regulation, 2001 GN No. 86 of 2001 provides:

19(1) the interest upon any compensation shall be paid by the Government or the local government authority only where there is no prompt payment of compensation made.

(2) for purposes of computing interest payable upon compensation "prompt payment of compensation"

means payment of compensation within six months after the subject land has been acquired or revoked.

(3) where amount of compensation remains unpaid for six months after acquisition or revocation, interest at the average percentage rate of interest offered by commercial banks on fixed deposits shall be recoverable until such compensation is paid.

According to the evidence on record, the compensation was due for payment after all the government officials signed the Compensation Schedules which according to **Exhibit D2** and attachment **K1** to **Exhibit P2** was 22/06/2015. The plaintiff was paid on 19/02/2016 that is about 8 months. As correctly said by **DW2** there was a delay of payment of the compensation by two months. Subsequently, the plaintiff is entitled to payment **TZS 9,450,320** as prayed being interest for two months at 8% of the principal amount.

The plaintiff claimed that the value of the suit land was TZS 75,000/= per square meter. I wish to state at the outset that the plaintiff did not tender any document to prove this claim. According to him the amount was suggested to him by Land Officers but there was no supporting document. It was the words of the plaintiff against everyone else. Mr. Venance said according to law a person must be compensated fairly, but I am of the view that fairness is where there

is a foundation, one cannot calculate value of land from the air without the supporting market rates. This claim has no merit and it is also rejected.

The second and third issues will be addressed together. The plaintiff claimed loss of income of TZS 9,090,000/=. He said the house at the suit land had business frames and he would have earned rent at TZS 50,000/= for the three frames. According to Regulation 15 of the Village Land Regulations monthly profit of the business carried out on the land shall be assessed and evidenced by audited accounts where necessary. The plaintiff did not have any document to prove that indeed he had rented out the three frames. In any case, the court cannot award loss on profits that are anticipated because the plaintiff did not have business and they have never been any business to lay foundation of the loss. This claim therefore has no merit and is rejected.

As for the claim for general damages, it is trite law that the court discretionarily awards general damages after taking into consideration all relevant factors of the case (see the case of **Cooper Motor Corporation Limited vs. Moshi Arusha Occupational**

Health Services [1990] TLR 96) also see the case of **Antony Ngoo and Denis Antony Ngoo vs Kitinda Kimaro**, Civil Appeal **No. 35 of 2014 (CAT-Arusha)** (unreported). Once the amount in general damages is specified as is in the present case, it ceases to be general but specific damages which ought to be pleaded and proved. (See **Zuberi Augustino vs. Anicet Mugabe [1992] TLR 137**) and **Masolele General Supplies vs. African Inland Church [1994] TLR 192** and **Bamprass Star Service Station vs. Mrs. Fatuma Mwale [2000] TLR 96**).

As is evident in the reliefs sought and in the evidence, the plaintiff prayed for an award of general damages at 40% of the amount payable. This means the general damages prayed for by the plaintiff ceased to be general and became specific and therefore were subject to proof. The plaintiff said he suffered disturbance and stress when following up this matter. The plaintiff, however, did not explain how he arrived at 40% and the basis thereof. Consequently, the claimed damages were not specifically proved, and therefore the plaintiff is not entitled to the damages claimed or at all.

Now, to what reliefs are the parties entitled? As established hereinabove, the plaintiff is only entitled to interest for delayed payment as prayed at **TZS 9,450,320/=** (Tanzania Shillings **Nine Million, Four Hundred Fifty Thousand, Three Hundred and Twenty** Only). The other reliefs are hereby dismissed. In the result, the suit succeeds to the extent stated hereinabove. The plaintiff did not make any prayer for costs in his plaint. In view thereof and consequent to the outcome herein, there shall be no order as to costs.

It is so ordered.


V.L. MAKANI
JUDGE
28/02/2022

