

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

LAND CASE NO. 08 OF 2021

**MTAITA MCHARO MCHOME 1ST PLAINTIFF
RICHARD CLEMENT MABULA (RICHARD SIMON) 2ND PLAINTIFF
FELIN CHARLES 3RD PLAINTIFF
GERVAS SIMON BUPAMBA 4TH PLAINTIFF
VERONICA SIMON BUPAMBA 5TH PLAINTIFF
PAULO SIMON BUPAMBA 6TH PLAINTIFF
MARTINA PASKALI MAGUNGULI 7TH PLAINTIFF
HELENA MAGANGA HALAMA 8TH PLAINTIFF
ALLY SELEMANI MACHEMBA 9TH PLAINTIFF
ABDALLAH MASHAKA SEFU 10TH PLAINTIFF
ROSE JAPHET KAFUMA 11TH PLAINTIFF
EMELDA A. RWAKATARE 12TH PLAINTIFF
YOHANA SATIEL MWARIEGO 13TH PLAINTIFF**

VERSUS

SAEED YESALAM SAEED DEFENDANT

Date of last order: 08/12/2022

Date of Judgment: 21/12/2022

JUDGMENT

I. ARUFANI, J

The plaintiffs' claims against the defendant are for declaratory orders that they are the lawful owners of their respective pieces of land located at Lulanzi, Picha ya Ndege Area within Kibaha District in Coast

Region and the defendant is a trespasser to their lands by virtue of his unlawful occupation of the land in dispute from 2019. They are praying for a perpetual injunction directing the defendant, his workmen, agent or any other person claiming authority from him to refrain from interfering and trespassing their lands and general damages as shall be assessed by the court.

On the other hand, the defendant disputed the claim of the plaintiffs and stated the land in dispute measuring 78 acres was the property of his late father, Yeslam Said Bin Kleb and the defendant is the administrator of the estate of his late father. The defendant prayed the plaintiffs' claims be dismissed with costs. While the plaintiffs were represented in the matter by Mr. Iddi Mrema, learned advocate, the defendant was represented by Mr. Peter Nyangi, learned advocate. The issues framed for determination in this suit are as follows: -

1. Whether the plaintiffs are lawful owner of the land in dispute.
2. Whether the defendant is a trespasser to the land in dispute.
3. Whether the disputed land is within the boundaries fixed by the land Surveyor and Mapping.
4. To what reliefs the parties are entitled.

In a bid to substantiate their claims and establish the above framed issues, nine witnesses testified on the side of the plaintiffs and five

witnesses testified on the defendant's side. In addition to the witnesses called by the parties the court also called one witness in the matter. The plaintiffs' witnesses who testified before the court and the mark given to them in brackets are Richard Clement Mabula (Richard Simon) (PW1), Martina Paskali Magunguli (PW2), Mtaita Mcharo Mchome (PW3), Gervas Simon Bupamba (PW4), Helena Maganga Halama (PW5), Godfrey Anyigwilile Mwaipopo (PW6), Yusuph Ndumbaro (PW7), Abdallah Mashaka Sefu (PW8) and Thobias Shilole (PW9). The witnesses testified on the defendant's side and the mark given to them are Saeed Yeslam Saeed (DW1), Najib Yeslam Saeed (DW2), Upendo Kiwelu (DW3), Maria Verse D'souza (DW4) and Tatu Shomari (DW5). The court's witness is Twaha Khalifa Nkulo (CW1).

Richard Simon (PW1) and Gervas Simon Bupamba (PW4) who are relatives told the court the root of title of their lands in dispute is inheritance from their late parents namely Simon Bupamba and their mother namely Marina Bado Fumbuka who were their biological father and mother respectively. They said the size of the land of their parents is about 34.5 to 35 acres and they acquired the same by clearing the bush in 1960s and continued to use the stated land for agriculture and livestock keeping until when they died.

They said after death of their mother, Marina Bado Fumbuka who died in 2017, PW1 was appointed to be administrator of estate of their late mother. They said after PW1 being granted letters of administration of estate of their parents which was admitted in the case as exhibit P3, he distributed the estate left by their late mother to the heirs of their parents. PW1 and PW4 said that, the land they inherited from their parents is bordering the land of the father of the defendant who is now a deceased on the southern side. They said the boundary of their land and that of the late father of the defendant is the valley and a tree namely Mkongowe.

Mtaita Mcharo Mchome (PW3) said he was given the land in dispute which is measuring about three acres by the members of the family of Simon Bupamba and Marina Bado Fumbuka. He said his relationship with the family of Simon Bupamba is that the late Marina Bado Fumbuka was the sister of his mother. On her side, Martina Paskali Magunguli (PW2) said to have purchased her piece of land which is about 20 acres from Elizabeth Mpanduji in 1970. She said her neighbours are Mwaliego Satiel and the late Simon Bupamba.

On her side Helana Maganga Halama (PW5) said she cleared the forest at the land in dispute in 1960s. She said she used to cultivate the land from when she cleared the same until when the dispute ensued. She

stated that, when the late father of the defendant purchased his farm, he found them at the land in Dispute and there has never been any quarrel between them and the defendant's late father.

Abdallah Mashaka Sefu (PW8) said he purchased his land in dispute in 2003 from Said Yohana which its size is four acres. He said while the late father of the defendant was using his farm for livestock keeping, on their side they were using their land for agriculture. He said he is not living at Lulanzi area, Picha ya Ndege Street but he is living at Machinjioni Village which is adjacent to Lulanzi area. PW1, PW2, PW3, PW4, PW5 and PW8 who are 2nd, 7th, 1st, 4th, 8th, and 10th plaintiffs in the present suit respectively told the court that, in 2019 the defendant trespassed into their lands. They said the defendant brought a grader on their land which made ways (Mkuza) on their land. They said thereafter the defendant brought Land Surveyors from Kibaha Municipal Council to survey their lands and put beacons thereon and said they were told by the said land surveyors that they were sent by the defendant to do the said work.

PW1, PW3, PW4 and PW5 told the court that, after seeing their land had been invaded, they reported the said event to their Street Government Office and after failing to get solution of their dispute they went to the Ward Office to seek for solution of their dispute without success. Thereafter, they reported the matter to the office of the District

Commissioner which tried to resolve their dispute without success. They said their dispute went up to the Ministry of Lands without success and at last they filed the present suit in the court.

Godfrey Anyigwilile Mwaipopo, (PW6) said he was the chairman of Lulanzi Street Government from 2000 until 2014. He said he know the case before the court is about land dispute between the citizens of Lulanzi Street where he was a leader and the defendant. He said the citizens of Lulanzi Street are complaining the defendant has trespassed into their land and started to survey their land without their consent and put red flags on their land. He said he became aware of the said dispute after the dispute being reported to the District Commissioner who convened a meeting which involved all people who had been leaders of the area in dispute including himself and the street leader who was in office.

He said after that meeting the DC formulated a committee of finding settlement of the said dispute. He said the complainants were required to bring their documents of showing they are owner of the land they were claiming had been trespassed by the defendant. PW6 said the defendant stated he didn't want them in the said committee as they know the land in dispute and another committee was formulated. He said there were other committees which were formulated at the level of the members of

Parliament and Ministry of Lands to find a solution for the said dispute but they failed to settle the dispute.

Thobias Shilole, (PW9) said is a resident of Lulanzi area, Picha ya Ndege Street within Kibaha District and he started living at that area as an ordinary citizen from 2002. He said in 2014 he was elected Chairman of Lulanzi Street and continued to hold that post until 2019. He said he know the dispute between the parties and stated the members of the family of the late Yeslam Saeed had invaded the land of their neighbours and claimed were their land.

He stated he became aware of the dispute as the citizens whose land had been invaded went to complain at his office. He said he attempted to settle the dispute without success and thereafter the matter was referred to the District Commissioner who attempted to settle the dispute and after failing to succeed he advised the complainants to take their complaint to the court. He said the dispute was caused by the defendant who did not know the boundaries of the farm of his late father.

He said there is one old man who said is the one sold the land in dispute to the father of the defendant who was called to show the boundaries of the farm of the defendant's late father. PW9 said that, after being seeing he was speaking the truth he was removed from his post of being Chairman of Lulanzi Street. He said the land in dispute was being

used for agriculture, livestock keeping and people are living in that land. He said the people who are living on the land in dispute are members of the family of Simon Bupamba, Mwaliego, Maganga and Chalemba.

He said he was told by the person sold the land in dispute to the father of the defendant that the land he sold to the father of the defendant was about 48 to 50 acres. He said the lands of the plaintiffs are not surveyed but the defendant trespassed the same and started to survey the same. He said the defendant prayed to be authorised to survey the land of his late father and after being authorised he used the stated opportunity to trespass on the land of other people. When he was cross examined by the counsel for the defendant, he said he went to Lulanzi area in 2002 and after going there he found the father of the defendant had already acquired the land at Lulanzi area.

Yusuph Ndumbaro (PW7) told the court that, he had a land at Lulanzi Area where he was conducting farming and livestock keeping activities from 1963 until 1975 when he sold his land to the father of the defendant. He said after selling the land to the father of the defendant he shifted to Makumbusho area in Dar es Salaam Region where he is now living. He said his neighbours at the land in dispute were Simon Bupamba and Juma Kasiri on the Northern side. He said on the southern side there was graves and on the eastern side there was one Limbalipile. He said he

sold his land measuring about 48 to 50 acres to only one person who was the father of the defendant. He said he know Simon Bupamba as he was his neighbour but he doesn't know the defendant who is the child of Yeslam Saeed Bin Kleb.

He said three years ago he was followed by citizens from Lulanzi area who told him their lands had been trespassed by the defendant. He said he was requested to go to the land in dispute to show the boundaries of the land he sold to the father of the defendant. He said he found some of his neighbours are still living at their area. He said to have shown the boundaries of the land he sold to the father of the defendant as he was requested.

He said he sold his land to the father of the defendant before ten cell leader and said there was no child of the late Yeslam Saeed who witnessed when he was selling his land to the father of the defendant. When he was cross examined by the counsel for the defendant he said after selling the land to the father of the defendant, the father of the defendant failed develop the land and the citizens invaded the land and started cultivating the farm as the late father of the defendant was not using it.

In his defence the defendant who testified as DW1 told the court that, the land in dispute was the farm of his late father. He said the land

in dispute has a certificate of title No. 31069 and it was registered as Farma No. 16 located at Lulanzi area within Kibaha Township. The said certificate of title together with search report dated 08th June, 2021 were admitted in the case as exhibit D2 collectively. He said his father is now a deceased and said in 2009 he was appointed and granted letters of administration of the estate of his late father and the copy of the letters of administration of the estate of his late father was admitted in the case as exhibit D3.

When he was cross examined by the counsel for the plaintiffs, he said in 2018 he discovered there were people who were selling the land of his late father. He said after discovering the stated illegal sale of the land of his late father he didn't go to court but he reported the matter to the District Commissioner. He said he was appointed by Kariakoo Primary Court in Probate and Administration Cause No. 188 of 2009 to administer the estate of his late father.

He said he has been sued in this court by the plaintiffs as a trespasser as he is administrator of the estate of his late father. He said he knows his late father bought the land in dispute from PW7 but he doesn't know the size of the farm sold to his father by PW7. He said exhibit D2 shows the size of the farm of his late father was 41.94 Hectares which is more than 48 to 50 acres sold to his late father by PW7. He said he

don't know from whom the other lands which make the size of the farm of his father to be 41.94 Hectares was purchased.

He said he is the one directed the farm of his late father to be surveyed as he was directed by the Kibaha Municipal Council to survey the farm and divide the same into plots as farms were no longer required in the town plan. He said the survey started in 2017 and in 2018 they put beacons on the boundaries of the farm of his late father. He said he was given a letter of surveying his land by the leader of the street where the land is located. He said he know PW9 as is the one gave him a letter of seeking for the survey of the farm of his late father. He said he went to the land in dispute in 2019 after the people started uprooting the beacons put on the boundaries of the land of his late father.

He denied to have surveyed the land of the plaintiffs and said is the one directed the land surveyors from Kibaha Municipal Council to survey the land of his late father. He said he is the one showed the Land Surveyors the boundaries of the farm of his late father. He said his late father was not living at the land in dispute but he was living at Tumbi area known as Kibaha Irrigation Centre. He stated that, though he stated in his defence the size of the land of his late father is 78 acres but that was just an estimation.

He said the people started to trespass the farm of his late father after surveying the same and divided the same into plots. He said he know PW4 as he was taking care of their cattle and said he was living in the house of Mariam Rupia and PW1 was a watchman in the house of Haji who was husband of Mariam Rupia. He said PW1 has no land and said he don't know the neighbours of the farm of his late father.

Najib Yeslam Saeed who testified as DW2 is the defendant's young brother and said the land in dispute was the farm of his late father. He said after the death of his father DW1 was appointed to administer the estate of their late father and particularly the farm in dispute which was being used for livestock activities. When he was cross examined by the counsel for the plaintiff, he said his father purchased the land in dispute in 1979 but he doesn't know from whom the land was purchased. He said he don't know the neighbours of the land of his late father and he don't know the size of the land of his late father.

Upendo Kihwelu who testified as DW3 told the court she is employed by Kibaha Municipal Council as a Land Officer and said she was sent by her office to come to testify in this case. She said according to the record they have in their office the owner of the land in dispute is Yeslam Saeed Bin Kleb. She said the mentioned person was issued with certificate of title No. 31069 to own the land for ninety nine years from 1st October,

1985. She said the certificate of title was taken to the Registrar of Title on 2nd November, 1985 and registered on 20th January, 1986. She said the land was registered as Farm No. 16 located at Lulanzi area within Kibaha District and was for agriculture and pastoralism. She was shown exhibit P2 and said is the one issued to the late Yeslam Saeed Bin Kleb and said the size of the farm is 41.94 Hectares which is equivalent to 419,400 square metres and equivalent to 104.8 acres.

When she was cross examined by the counsel for the plaintiff, she said she was employed on 31st January, 2003 and started working at Kibaha Municipal Council as Land Officer from 2020. She said she does not know the neighbours of the land in dispute but she knows the size of the land in dispute. She explained the procedures required to be followed in seeking for certificate of occupancy of a land and said in the file she has there is no documents showing how the registered owner of the land in dispute acquired the same. She said there is a sketch map of the land in dispute in the file but she does not know who drew the same. She said she has not seen any problem which is making the certificate of title to be invalid.

She said the person with a certificate of occupancy is normally deemed to be the owner of a concerned land. She said her evidence is basing on the file of their office. She said if a person wants to change use

of the land is required to return the previous certificate to their office so that he can be issued with another certificate. She said the certificate of occupancy of the land in dispute has not been returned to their office. She went on saying that, she doesn't know if the defendant has surveyed the land in dispute.

Maria Verse D'Souza testified as DW4 and told the court that, she know the land of the father of the defendant as it is neighbour to the land measuring 32 acres given to her by her grandmother and said the father of the defendant gave them the way of going to their land. She said when her grandmother gave her the stated land, Simon Bupamba was taking care of the land given to her and after being given the land, Simon Bupamba shifted to the land of Albano Rupia. She said Albano Rupia gave his land to his daughter namely Mariam and said Simon Bupamba and PW4 have no land at the area in dispute but they were working on the people's farm.

When she was cross examined by the counsel for the plaintiff, she said she was given the land she has mentioned by her grandmother on 10th June, 1992. She said she knows the boundaries of the farm of the father of the defendant but not both sides. She said she is not disputing PW7 sold the land measuring 48 to 50 acres. She said she don't know other neighbours who sold the land to the father of the defendant. She

said she was told by DW1 that he has decided to survey the farm of his late father as people were trespassing on it. She said her land has dispute as some of the plaintiffs have sold the same to other people.

Tatu Shomari Kondo testified as DW5 and stated she started knowing the father of the defendant from when she was a young girl as they were living neighbour to the land in dispute and she used to go to fetch water from the farm of the father of the defendant. She said after being married she became neighbour of the farm of the father of the defendant. She said the father of the defendant put placards and beacons on his land but the people broke the beacons and buried them underneath. She said the persons trespassed the land of the father of the defendant were PW4 and other people. She said after seeing the said trespass she notified the defendant.

When she was cross examined by the counsel for the plaintiff, she said her husband is Ismail Bilali and said she does not know from when her husband started being neighbour of the father of the defendant. She said she don't know the size of the land in dispute and said she know it is a bear land which has no any house or anything. She said she know the parents of PW1 and PW4 as they were living at Lulanzi. She added that, the land in dispute has been surveyed and cartapillar track was used to put a fire break way and DW1 has put beacons on the land in dispute.

She said some of the trespassers have planted bananas, pineapples and other crops on the land in dispute.

Twaha Khalifa Nkulo was summoned by the court from the office of the Commissioner for Lands as a court witness and testified in the matter as CW1. He came with a map of the land registered as farm No. 16 and said the farm has plan number E1315/37 and its registration number is 20792. He said the size of the map is 41.94 Hectares and the land is located at Lulanzi Kibaha District. He said he was ready to go to show the points of boundaries of the farm appearing in the map he tendered in the court and admitted in the case as exhibit C1.

Upon being cross examined by the counsel for the plaintiff he said he has obtained exhibit C1 from the Office of the Commissioner for Lands at Kibaha Town Council. He said he doesn't know if the land in dispute has been surveyed and divided into plots. He said the issue of ownership of the land and certificate of occupancy is supposed to be proved by the Land Officer and said he has come to testify on the survey of the land in dispute. He said C1 was approved and registered on the same date.

After giving his evidence the court went to the land in dispute with the parties and their advocates and the witness to be shown the points of boundaries of the farm No. 16 which its map was admitted in the case as exhibit C1. The court recalled PW7 to go with the court to the land in

dispute for the purposes of showing the boundaries of the farm he sold to the father of the defendant.

Upon going to the land in dispute and shown the points of boundaries of the farm of the father of the defendant it was seeing it is only the land claimed by PW1, PW3 and Veronica Simon Bupamba (who did not testify in the matter) which are within the land registered as farm No. 16. The rest of the land of the plaintiffs were found are out of the surveyed points of boundaries of the farm No. 16 issued to the father of the defendant.

At the end of hearing of the evidence adduced in the matter, the counsel for the defendant prayed and allowed to file in the court his final submission but the counsel for the plaintiff did not file final submission on their part. The counsel for the defendant gave a concise statement of the case and addressed the issues framed for determination in the matter. To avoid unnecessary repetition of what the counsel for the defendant has stated in his final submission I will be referring to his submission in the course of determining the issues framed in the matter.

The court has carefully considered the evidence adduced in this case by both sides as summarized hereinabove and it has painstakingly considered the final submission filed in the court by the counsel for the defendant. The court has found before going to the determination of the

issues framed in the present suit it is proper to state at this juncture that, as rightly stated in the final submission of the counsel for the defendant the position of the law as provided under section 110 (1) and (2) together with section 112 of the Evidence Act is very clear that, whoever desires any court to give judgment in his or her favour is required to prove the facts he has alleged are in existence. The stated position of the law was emphasized by the Court of Appeal in the case of **Abdul Karim Haji V. Raymond Nchimbi Alois & Another**, Civil Appeal No. 99 of 2004 (unreported) where it was stated that: -

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

It was also stated by the Court of Appeal in the case of **Anthony M. Masanga V. Penina (Mama Gesi) & Another**, Civil Appeal No. 118 of 2014 that, the party with legal burden also bears the evidential burden on the balance of probabilities. That being the position of the law the court has found the plaintiffs have legal and evidential burden to prove they are lawful owners of the lands in dispute and the defendant has trespassed into their lands and caused the damages they are claiming from the defendant.

While being guided by the position of the law stated hereinabove the court has found proper to start with the third issue which states

whether the land in dispute is within the boundaries fixed by the land Surveyor and Mapping. The court has found the evidence adduced in the case to show whether land in dispute is within or out of the boundaries fixed by the land Surveyor and Mapping is the evidence of CW1 who was asked by the court to show the boundaries of the land registered in exhibit C1 as the land owned by the late father of the defendant.

After the court going to the land in dispute with the parties and their advocates and shown the boundaries of the land surveyed and registered in exhibit D2 as the property of the defendant's late father as appearing in exhibit C1, it has found the lands claimed by the three plaintiffs namely Mtaita Mcharo Mchome (PW3), Gervas Simon Bupamba (PW4) and Veronica Simon Bupamba are within the land surveyed and registered as Farm No. 16 with certificate of occupancy number 31069 located at Lulanzi Street within Kibaha District which was admitted in the case as exhibit D2. The lands claimed by the rest of the plaintiffs were found to be out of the farm of the land registered as the property of the defendant's late father appearing in exhibit C1.

Since there is no any other evidence adduced in the court by the plaintiffs or defendant to dispute or contradict the evidence given by CW1 in relation to the boundaries of the land surveyed and registered in the name of the father of the defendant appearing in exhibit C1, the court

has found the answer to the third issue is supposed to be partly in affirmative and partly not in affirmative. The court has arrived to the stated finding after seeing the land claimed by PW3, PW4 and Veronica as the lands they alleged was trespassed by the defendant is within the land surveyed and mapped as the land of the defendant's late father as appearing in exhibit C1.

The court has found the rest of the lands claimed by the rest of the plaintiffs are their lands and were trespassed by the defendant are not within the boundaries of the land surveyed and registered in the name of the father of the defendant. That shows part of the land claimed by the three plaintiffs mentioned hereinabove is within the boundaries fixed by the land Surveyor and Mapping admitted in the case as exhibit C1 and part of the lands claimed by the rest of the plaintiffs are out of the stated boundaries.

The above finding moves the court back to the first and second issues which states whether the plaintiffs are lawful owners of the land in dispute and whether the defendant trespassed into the lands in dispute and I will deal with those issues jointly as they are so much interrelated.

The court has found that, as stated hereinabove some of the plaintiffs like PW1 and PW4 stated in their evidence that, they inherited the land in dispute from their parents who acquired the said land by

clearing the bushes in 1960s. On his side PW3 said he was given the land in dispute by the family of Simon Bupamba. On her side PW5 said she acquired the land in dispute after clearing the bushes in 1960s. While PW2 said she bought her land from Elizabeth Mpanduji, PW8 said to have bought his land in 2003 from Said Yohana. On his side the defendant and his witnesses said the land which its boundaries are as fixed by exhibit C1 is the property of his late father.

That being the evidence received by the court from both sides, the court has found as it has already been stated it is only the lands of PW3, PW4 and Veronica which is within the boundaries fixed by Surveyor and Mapping appearing in exhibit C1 and the rest of the land claimed by the rest of the plaintiffs is out of the stated boundaries, there is nothing which can make it to fail to find the plaintiffs whose lands are out of the boundaries fixed by exhibit C1 are lawful owners of their respective lands. The court has come to the stated finding after seeing even the defendant himself has not disputed the land of his late father is the land found within the boundaries fixed by exhibit C1 and not beyond. The court has found the dispute is on the land claimed by PW3, PW4 and Veronica which is within the boundaries fixed by exhibit C1.

As the stated dispute is based on ownership of the land the court has found proper to start by looking on how a lawful owner of a registered

land is supposed to be recognized under the law. The court has found section 2 of the Land Registration Act, Cap 334 R.E 2019 defines the owner of a registered land to be as follows: -

"Owner" means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered."

The position of the law stated in the above quoted provision of the law is also echoed under section 40 of the same Land Registration Act which states that, a certificate of title shall be admissible as evidence of several matters therein contained. To the view of this court that includes size of the land, boundaries, location, ownership, terms of occupancy and information pertaining to survey of the land. The court has found it was also stated in the case of **Amina Majid Ambali & Others V. Ramdhani Juma**, Civil Appeal No. 35 of 2019, CAT at Mwanza (unreported) that, when two persons have competing interest in a landed property, the person with a certificate of occupancy will always be taken to be a lawful owner unless it is proved that the certificate of occupancy was unlawfully obtained.

That being the position of the law the court has found that, as the lands claimed by the mentioned three plaintiffs are within the land registered in the name of the defendant's late father as evidenced by

exhibits D2 and C1, the question to determine here is whether the mentioned three plaintiffs have managed to establish registration of ownership of the land in dispute in the name of the defendant's late father was unlawfully obtained so as to move the court to declare they are lawful owners of the land in dispute.

The court has found the evidence adduced in the matter by almost all plaintiffs' witnesses stated the land claimed by PW3, PW4 and Veronica Simon Bupamba was inherited from the estate of the late Marina Bado Fumbuka who cleared the bush with her husband, the late Simon Bupamba in 1960s and used the same until when they died. The court has also found the evidence adduced by PW7 shows the land he sold to the father of the defendant was about 48 to 50 acres which is smaller than the land indicated in exhibits D2 and C1 which is 41.94 hectares. In addition to that the court has also found the evidence of PW7 shows the land claimed by PW3, PW4 and Veronica Simon Bupamba is out of the land he sold to the father of the defendant.

Despite the afore stated evidence the court has found there is no clear and sufficient evidence adduced by the plaintiffs or defendant to show how the land claimed by the mentioned three plaintiffs were unlawfully included in the land registered in the name of the defendant's late father so as to say as held in the case of **Amina Majid Ambali &**

Others (supra) that the land in dispute is the property of the mentioned three plaintiffs and not the property of the defendant's late father.

The court has come to the view that, as it was stated by all plaintiffs' witnesses that the defendant's late father was in a good relationship with all of his neighbours, he wouldn't have sought to register the land in dispute into his name without being resisted by the alleged owners (the parents of PW1, PW4 and Veronica) who in 1985 when the land in dispute was registered in the name of the defendant's late father were all alive. To the view of this court the stated registration was done in the knowledge of the alleged previous owners and they didn't resist the same until when they met their death. As the stated persons did not resist registration of the said land in the name of the defendants late father and they didn't claim for the same until when they died it cannot be said registration of the said land in the name of the defendant's late father was done unlawfully.

The court has also found that, as said by DW4 and shown to the court during the visit of the locus in quo the land in dispute is a bare land with no any house or person living therein. That makes the court to be of the view that, although it was said by the plaintiffs who testified before the court that the plaintiffs were using the land in dispute for agriculture and animal husbandry but that is not enough to establish the land was the

property of the late Marina Bado Fumbuka and Simon Pubamba so that it can be said it was lawfully inherited from them by the mentioned three plaintiffs. To the contrary the court has taken the view that, as stated by PW7 the people who were cultivating the stated land were doing so after seeing the defendant's late father was not using the land or he has failed to develop the same.

The court has been of the view that, as the mentioned three plaintiffs alleges they are the lawful owners of the land in dispute, then as provided under sections 110 and 112 of the Evidence Act cited earlier in this judgement, they had a burden to prove on balance of probability that the land they are claiming from the defendant was the property of their late parents and not the property of the defendant's late father so as to move the court to enter judgment they are seeking from this court in their favour.

The above stated finding caused the court to come to the view that, as the land of the late father of the defendant is a registered land and there is no evidence adduced in the court to prove the certificate of occupancy issued to the father of the defendant in respect of the land which its boundaries are identified by exhibit C1 was unlawfully obtained, then there is no justifiable evidence which can move it to find PW3, PW4 and Veronica are lawful owner of the land found is within the land

registered in the name of the defendant's late father and it is not the property of the defendant's late father.

The court has found that, although DW3 said there is no document in their file showing how the father of the defendant acquired the land in dispute but she put it clear in her evidence that, the stated deficiency cannot invalidate the certificate of occupancy issued in favour of the father of the defendant. The court has also found the evidence of DW3 and CW1 was very consistent that the land registered in exhibit D2 and appearing in exhibit C1 was the property of the defendant's late father and not anybody else.

In the premises the court has come to the settled view that, the evidence adduced in the matter at hand has not managed to establish PW3, PW4 and Veronica who appeared in the plaint as the first, fourth and fifth plaintiffs are lawful owner of the land in dispute. Consequently, the court has found the first issue is supposed to be answered partly in positive that, with exception of the first, fourth and fifth plaintiffs the rest of the plaintiffs are lawful owners of their respective lands which were found to be out of the boundaries fixed by the Surveyor and Mapping appearing in exhibit C1 and the first, fourth and fifth plaintiffs are not lawful owners of the land they claimed from the defendant which was

found is within the boundaries fixed by the Surveyor and Mapping appearing in the stated exhibit.

Coming to the last issue relating to the reliefs prayed by the plaintiffs who have been found are lawful owner of the lands they alleged were trespassed by the defendant the court has found the stated plaintiffs prayed to be declared they are the lawful owners of their respective lands and the defendant be declared is a trespasser to their land. They are also praying for general damages for the wrong alleged was committed by the defendant.

The court has found that, although there is sufficient evidence to establish the defendant trespassed into the lands of the plaintiffs whose lands were found are out of the boundaries fixed by the land Surveyor and Mapping by making ways and dividing the same into plots but there is no any evidence adduced in the court to prove any damages suffered by the mentioned plaintiffs due to the alleged trespass. The court has found there is no any witness said what was damaged by the stated trespass and instead of that the witnesses just said the plaintiffs were stopped to continue to cultivate their lands without saying which crops they were cultivating in their respective lands and how much they were yielding from their lands.

To the view of this court the plaintiffs were duty bound to adduce before the court sufficient evidence to establish the damages they have suffered so as to enable the court to see how much general damages is supposed to be awarded to them. The court has come to the stated view after seeing it was stated in the case of **Anthony Ngoo & Another V. Kitindi Kimaro**, Civil Appeal No. 25 of 2014, CAT at Arusha (unreported) that:-

"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award".

Since there is no evidence to prove any damage suffered by the plaintiffs whose lands were trespassed by the defendant, the court has found there is no justification for granting the plaintiffs the claim of general damages claimed in their relief clause. Basing on all what I have stated hereinabove the court has found appropriate to enter judgment in the case at hand as follows: -

- (1) That, with exception of the first, fourth and fifth plaintiffs, the rest of the plaintiffs are hereby declared they are lawful owners of their respective lands they have claimed from the defendant.

- (2) The defendant is declared is a trespasser to the lands of the plaintiffs who have been found are lawful owners of the land they are claiming from the defendant.
- (3) That, the first, fourth and fifth plaintiffs are hereby declared they are not lawful owners of the land they have claimed from the defendant.
- (4) That, the defendant is declared is not a trespasser to the land claimed from him by the first, fourth and fifth plaintiffs as is a land owned lawfully by the defendants late father hence their claims are hereby dismissed in their entirety.
- (5) Each party is ordered to bear his own costs.

It is so ordered.

Dated at Dar es Salaam this 21st day of December, 2022



I. Arufani
I. Arufani

JUDGE

21/12/2022

Court:

Judgment delivered today 21st day of December, 2022 in the presence of Mr. Iddi Mrema, advocate for the plaintiffs and in the presence of Mr. Peter Nyangi, advocate for the defendant. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

21/12/2022