

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

LAND CASE NO. 145 OF 2018

ESTHER BEDA AMULI (as Attorney of HARRIET
CATHERINE MWALWALA the administratrix of the estate of
the late BEDA JONATHAN AMULI).....**PLAINTIFF**

VERSUS

TANZANIA NATIONAL ROADS AGENCY.....1ST DEFENDANT
ATTORNEY GENERAL.....2ND DEFENDANT

Date of Last Order: 28.03.2022
Judgment: 04.04.2022

JUDGMENT

V.L. MAKANI, J

The plaintiff, ESTHER BEDA AMULI, has instituted this suit as an attorney of Harriet Catherine Mwalwala, the administratrix of the estate of the late BEDA JONATHAN AMULI.

In her plaint she is praying for orders against the defendants jointly and severally as follows:

- 1. An order for payment of compensation of TZS 3,000,000,000/= being the value of the demolished property.*
- 2. General damages to tunes at TZSD 1,000,000,000/=.*

3. Costs of the suit, and;

4. Any other reliefs.

In this matter the plaintiff was represented by Mr. Manyama, Advocate while Ms. Angela Lushagara, State Attorney represented the defendants. The plaintiff presented two witnesses, that is, the plaintiff herself (**PW1**) and Juma Hassan Mkombozi (**PW2**); while the defendants presented only one witness namely, Johnson Rutechura (**DW1**).

The framed issues were as follows:

- 1. Whether the demolition of the suit premises, namely Plot No. 17 Block A, Mbezi Luis, Dar es Salaam (CT No. 21056) (the **suit premises**) was lawful.*
- 2. To what reliefs are the parties entitled.*

PW1 told the court that the owner of the suit premises was her father Beda Jonathan Amuli who died on 10/07/2016. He said her sister Harrieth Catherine Mwalwala was appointed the administratrix of the estate of her deceased father but she lives in Mombasa and so she appointed her as her attorney to prosecute this case under Power of Attorney (**Exhibit P1**). **PW1** said his father was owner of the suit premises since 1967 and was granted a Certificate of Title CT. No. 21056 (**Exhibit P3**) in respect of the suit premises. He said on the

said plot there was a residential house, staff quarters, cow sheds and a hall as a business office. She said according to the Valuation Report dated 12/08/1999 (**Exhibit P4**) the value of the suit premises was TZS 1,345,000,000/=. She went on saying that on 15/05/2017 they received a letter from TANROADS as a Notice for demolition of the suit premises (**Exhibit P5**). **PW1** said they (with her sister Harrieth) went to TANROADS, but they were advised to file a case in court and the court ordered injunction until the matter is resolved. She said they therefore filed a Notice of Intention to file a suit (**Exhibit P6**). She said TANROADS disobeyed the court Order of injunction which was affixed to the walls of the suit premises and they on 20/10/2017 proceeded to demolish the suit premises. She prayed for the court to order compensation of TZS 3,000,000,000/=.

On cross-examination **PW1** said that plot is in Morogoro road currently adjacent to Daladala Stand in Mbezi Luis. She said initially it was one plot but in 1982 there was a road in the middle of the plot, so it was divided into two, one remained with their father and the other one was sold to an Arab. She said the road which passed through the plot was the new Morogoro road and the suit premises

was **30 metres** from the middle of the road. She said before his death there was communication between his father and TANROADS.

PW2 said he was resident of Mbezi Luis since 1967. He said he knew the late Beda Amuli as he was his neighbour. He said the new Morogoro road touched on the late Beda Amuli's plot and the aim of the new road was to do away with the many corners on the road. He said construction of the new road started in 1975 to 1982. He said before the construction Mr. Beda Amuli had a discussion with the then President Mwalimu Nyerere about the road construction and the agreement was for Mr. Beda to be paid TZS 380,000/= for compensation for the crops and not the house as the expansion touched on the crops only. He said the house of the late Beda Amuli was demolished in 2017 and to his understanding the new Magufuli Bus Stand is on the late Beda Amuli's plot.

On cross examination **PW2** said the construction of the road was intended for development and there was no issue because it was lawfully constructed. The main discussion between the late Mr. Beda and the former President was basically on the construction of the road and he came to see him as they were also friends. The discussions

were oral there were no minutes or any proof of what was discussed. He observed that the 1973-1982 was the second phase and the measurements for the road reserve was 30 metres from the middle of the road in each side. He said in 2004 TANROADS did other measurements at **121 metres** from the middle of the road in each side. He said after the 2017 that is when the plaintiff sued TANROADS and the case was decided in their favour and the decision was for them to be paid compensation and other costs.

DW1 as an employee of TANROADS said his duties are to supervise projects and to protect and maintain roads' safety. He said the history of Morogoro road went through the phase of Highway Roads Ordinance of 1932, the Highway Act, 1967 and currently the Roads Act, 2007. He said he knew the late Beda Amuli. His main claim was that his house was not in the road reserve. He said after the claim TANROADS went to take measurements and it found that the suit premises was within the road reserve. He said the beacon was actually behind his house. He said it was not only the late Beda Amuli's house that was demolished but there were more than 1,088 houses demolished in that exercise. He said the suit premises was in Mbezi Mwisho on the right side opposite the daladala stand. He said

the house was within road reserve by virtue of the law. He said they were a lot of public notices and the houses to be demolished were marked "x". He said in 2017 TANROADS had to demolish the suit premises because there was a project of 8 lanes road from Stop Over to Kiluvya.

On cross examination he said that TANROADS is not the authority that grants Right of Occupancy and the Ministry of Lands is not supposed to issue Title Deeds within the road reserve. He said when people enter into and develop in a road reserve TANROADS do not do anything until the government wants that area for use. The people are then notified so that they can leave vacant these areas. He said there were notification in newspapers of 2004, 2006, 2014, 2016 and the last was 2017. **DW1** said on re-examination that the current law that is the Road Act, 2007 states that the road reserve has to be 30 metres from all sides. He further clarified to the court that TANROADS is connected with Ministry of Lands as a government institution, but each institution is guided by its own regulations. He further said where there is need for compensation in any instance the relevant institution is supposed to make the payments.

Final submissions on behalf of the plaintiff were drawn and filed by Mr. Manyama. As regards the issue whether the demolition of the suit premises was lawful, Mr. Manyama said that it is not in controversy that the suit land was owned by the late Beda Amul as per the Certificate of Title (**Exhibit P3**). He said to get a Certificate of Title there are procedures to be followed; one the owner has to apply to the Director of Survey and Mapping of the Ministry of Lands once the land is surveyed using machines and the survey plan has to be approved. The Commissioner for Lands cannot issue a Certificate of Title over a piece of land without a survey plan being approved. He said land within the road reserve cannot be surveyed because this cannot be allowed by the Director of Survey and Mapping. He said if the suit land was within the road reserve, then no Certificate of Title would have been issued. He said the historical background by **PW2** reflected that the current Morogoro Road passing through the suit land was constructed in 1975 to 1982 while the suit land had already been occupied by the late Beda Amul. He said **PW2** testified that the suit land was surveyed, and a Certificate of Title was issued because it was not in the road reserve. He said **PW2** said Mbezi Luis was a village duly registered and that is why the land was surveyed and was not within the road reserve. He said **PW2** was the 8th plaintiff in the

case of **Proches Elela Tarimo & Others vs. the Permanent Secretary, Ministry for Works & Attorney General, Land Case No. 80 of 2005 (HC-Land Division)** (unreported) which was in favour of the plaintiffs. He said since the suit land was surveyed, and a Certificate of Title issued then demolition of the suit premises without compensation was contrary to the section 11(1) of the Land Acquisition Act No. 47 of 1967. He concluded by submitting that the plaintiff is entitled to payment of compensation for loss suffered in respect of the land acquired for the road expansion as testified by **DW1** to the tune of TZS 3,000,000/=. He also prayed for the costs of the suit.

In final submissions Ms. Lushagara, State Attorney submitted on the first issue that though **PW1** and **PW2** stated that there was a meeting between the late Beda Amul and the former president Mwalimu Nyerere about construction of the road which would affect the suit land, but they are no minutes to justify the meetings and there is no document to justify the TZS 3,000,000,000/= claim by plaintiff such as building permit, bill of quantity and the like. She said the Certificate of Title was issued in 1976 when Morogoro road was already in existence and there was no evidence produced by **PW1** and **PW2** to

suggest that the 1st Defendant was involved in the survey. There was no proof either that the suit land was allocated to the late Beda Amul by the Ujamaa Village Council in 1970s or was issued Customary Right of Occupancy by Mbezi Luis Village Council in 1970s or was among the villagers who were shifted to reside in Mbezi Luis under the Ujamaa Villagization process in 1970s. She strongly submitted that having a Certificate of Title issued by the Commissioner for Lands does not legalise ownership of the road reserve which is apparent under the control and supervision of the 1st defendant unless cogent evidence is produced to the contrary. The land therefore remains under the control of TANROADS which she said is as provided under Regulations 29(1) and (2) and 30(1)(a) of the Roads Management Regulations GN. No. 21 of 2009 that the management and control of the road and the road reserve shall be the responsibility of the road authority. She said the notice to demolish the suit premises was therefore issued legally by TANROADS.

Ms. Lushagara said according to the testimony of **DW1** the land in dispute falls within the description of Item 3 of the Schedule to the Highway Ordinance and there was no dispute to that fact. She said according to the plaint at paragraph 6 the land was acquired by the

late Beda Amul through purchase from Mzizima District Council, but she said there was no evidence to prove that. She said since the use and occupation of the suit premises was unlawful it follows that the notice to demolition of the suit premises was legal. She said in a similar case of **Masnon Shaba & 143 Others vs. Ministry of Works and Attorney General, Land Case No. 201 of 2005 (HC-Land Division)** (unreported) the issuance and services of notices to vacate, was necessary step to ensure that the highway and road reserve were protected from all kinds of intrusive activities or illegal occupation and use.

On whether the plaintiff suffered loss learned State Attorney said it was the duty of the plaintiff to prove the case to justify the amount of TZS 3,000,000,000/= as value of the demolished suit premises. She said unfortunately there was no evidence to support this prayer. She said specific damages must be pleaded and proved as in the case of **Bambrass Star Service Station vs. Mr. Fatuma Mwale [2002] TLR 390.**

In conclusion Ms. Lushagara said the plaintiff failed to prove the case in terms of section 110(1)(2) and 111 of the Evidence Act CAP 6 RE

2019. She said the plaintiff failed to dispute the existence of the Morogoro road since enactment of the Highway Ordinance 1932 and that there was old and new Morogoro road and she has failed to prove that her father was indeed in occupation of the land in dispute since 1930s or the land was allocated to him during Ujamaa Village formation and she has failed to prove that the value of the subject matter is worth the amount claimed of TZS 3,000,000,000/=. She completed by saying that the plaintiff has failed to discharge the duty of proving the case as well as the general and specific damages occasioned as required by the law. She prayed for the suit to be dismissed with costs.

As correctly stated by Ms. Lushagara the guiding principle which will lead the court to consider the issues raised is that whoever desires a court to give judgment in his/her favour, has to prove that those facts exist. This is under the sections 110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2019. 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."

Thus, the burden of proof is at the required standard of balance probabilities on the party who alleges (see the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported)).

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the plaintiff. What this court is to decide upon is whether the burden of proof has been sufficiently discharged.

The first issue is whether the demolition was lawful. According to the plaintiff's evidence on record, the main reason for the unlawfulness of the demolition was that since the suit land was surveyed, and a Certificate of Title issued then demolition of the suit premises without compensation was contrary to the law. In his submissions Mr. Manyama said a Certificate of Title would not have been issued within a road reserve.

It is not in dispute that the plaintiff's father Beda Jonathan Amuli was the owner of the suit land and a Certificate of Title (**Exhibit P3**) was issued to confirm the grant thereof. There is also no dispute that the

premises on the suit land were demolished to pave way for the expansion of the road. The plaintiff argued that the suit premises could not be on the road reserve when they had a Certificate of Title from the Ministry of Lands. Indeed, as stated above, the Certificate of Title in the name Jonathan Beda Amuli tendered and admitted in court as **Exhibit P3** was allegedly valid and still in existence. However, the plaintiff did not lead evidence to establish that the said Certificate of Title was free from the allegation that the suit premises subject of the certificate was within the road reserve area. There was no evidence from the Commissioner for Lands, which is the authority that granted the Certificate of Title, to prove that at the time the late Jonathan Beda Amuli was granted the land it was not in the road reserve area and further if there were set conditions excluding him from compliance of the road safety rules. In any case, even if there was such evidence, the Ministry of Lands were not made party to this suit as such even if an order were to be granted it would not be effective. In other words, if for instance this court holds that the suit premises were not in the road reserve, the decree is likely to be an empty decree as the necessary party was not impleaded (see **Tanzania Railways Corporation (TRC) vs GBP (T) Limited, Civil Appeal No. 218 of 2020 (CAT-Tabora)**(unreported)).

Further, according to the Roads Act, 2007 a road reserve area is land specified by the Minister lying on either side of the road measured from the centre from such road (section 3 and 13(1) of the said Act).

The Roads Management Regulations, 2009 provides:

Subject to sub regulation (2), the various clauses of roads shall have the following road reserve widths, namely:

- (a) Trunk roads and regional roads sixty metres consisting of thirty metres from either side of the centre of roadway for single carriage way roads;
- (b) Trunk roads and regional roads sixty metres consisting of thirty metres from either side of the centre of the median for dual carriage way roads;
- (c) Collector roads 40 metres consisting of 20 metres from either side of the centre of the roadway.
- (d) Feeder roads, 30 metres consisting of 15 metres from either side of the centreline of the roadway, and Community roads 25 metres consisting of 12.5 metres from either side of the centre line of the roadway.

It was evidence of **PW1** that the suit premises were 30 meters from the middle of road. But **PW2** in his testimony said in 2004 the road

reserve was increased to 121 meters from the middle of the road and **DW1** supported this by stating that the beacon of the road reserve was behind the suit premises and hence the suit premises was within the road reserve. As said herein above, the one who alleges must prove, the plaintiff's evidence on this fact was doubtful as the testimony of **PW1** and **PW2** differed and there was nothing concrete presented to prove that indeed the suit premises were safely away from the road reserve area as claimed. For this reason, the demolition was lawful as the suit premises were within the road reserve.

The plaintiff also claimed that the demolition was contrary to the stop order that was issued by this court. But I have revisited the records, it is true that there was an interim injunction that was issued pending the hearing of the application in Misc. Land Application No. 659 of 2017 (before Mgonya, J). This application was struck out on 21/09/2017 after the plaintiff conceding to the preliminary objection that was raised. On 20/10/2017 that is when the demolition was conducted. There was therefore no stop order when the demolition was conducted. There was another attempt for orders for temporary injunction in Misc. Land Application No. 758 of 2018. But this application was also dismissed on 04/04/2019 (Hon. De Mello, J). In

essence therefore, there was no stop order at the time the demolition was conducted or at all and so the 1st defendant at the time of demolition did not go contrary to any order of court as there was none. For the reasons above, the first issue is thus answered in the affirmative.

Now, to what reliefs are parties entitled to? The plaintiff claimed for compensation to the tune of TZS 3,000,000,000/= but having failed to establish that the demolition was unlawful then the said claim cannot stand. The plaintiff also claimed for damages to the tune of TZS 1,000,000,000/=. 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**). 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** (supra). During hearing, the plaintiff only tendered the Valuation Report, but there was no further explanation to support the

report on how the amount was arrived at. Subsequently, the claimed damages were not proved as such I find it unnecessary to award any damages to the plaintiff and I hold as such.

In the end result and for the reasons I have strived to address, I hold that the plaintiff has failed to prove his case and is not entitled to the reliefs prayed in the plaint. Consequently, the suit is hereby dismissed with costs.

It is so ordered.

V.L. Makani
V.L. MAKANI
JUDGE
04/04/2022

