

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 98 OF 2022

PETER PETER JUNIOR PLAINTIFF

VERSUS

GENIAL INTRNATIONAL COMPANY LIMITED 1ST DEFENDANT

ELIZABETH KOKUGONZA KYAKULA 2ND DEFENDANT

BLUEBAY AQUACULTURE FARM COMPANY LIMITED ... 3RD DEFENDANT

GEORGE PETER ULAYA 4TH DEFENDANT

LAMECK GIDION LWEGASHORA 5TH DEFENDANT

PAULO ANDREA MAYOGA 6TH DEFENDANT

RAHEL FUGO 7TH DEFENDANT

FRANCISCO MLIGO 8TH DEFENDANT

KINONDONI MUNICIPAL COUNCIL 9TH DEFENDANT

COMMISSIONER FOR LANDS 10TH DEFENDANT

THE REGISTRAR OF TITLES 11TH DEFENDANT

ATTORNEY GENERAL 12TH DEFENDANT

GENIE INTERNATIONAL COMPANY LIMITED 13TH DEFENDANT

Date of last Order: 03/07/2023

Date of Judgment: 19/10/2023

JUDGMENT

I. ARUFANI, J.

The plaintiff filed in this court the suit at hand praying for judgment and decree against the defendants as follows: -

- i. Declaration that the piece of land located at Mabwepande in Plot No. 1 – 84 Block C surveyed and registered in the name of the first and thirteen defendants belongs to him,*
- ii. The first defendant's Certificates of Right of Occupancy in Plots Nos. 1 – 84 titled numbers 139878, 126053, 159877,*

126779, 128470, 126753 were obtained by fraud as the laid down procedure governing acquisition, survey and registration of land was not followed as the company was not in existence,

- iii. The survey conducted by the first, second and ninth defendants on Plots Nos. 1 – 84 is null and void,*
- iv. The sale and transfer of title to third, fourth, fifth, seventh, and eighth defendants made by the first defendant is null and void,*
- v. The grant of right of occupancy to first and second defendants made by ninth, tenth and eleventh defendants in the suit land is null and void,*
- vi. Grant of two acres by the village of Mabwepande under the ninth defendant to the 6th defendant be declared is null and void,*
- vii. An order of demolition of building erected therein by defendants and any other person under instruction of the first, second and sixth defendants,*
- viii. The order of eviction from the suit land,*
- ix. Costs of the suit,*
- x. General damages of Tshs 50,000,000/= for loss of use of land and disturbance be ordered to be paid by each defendant save for ninth, tenth, eleventh and twelfth defendants and*
- xi. Any other reliefs the court may deem fit and just to grant.*

While the plaintiff was represented in the matter by Mr. Mlyambelele Ng'weli, learned advocate, the first, second, fifth, eighth, and thirteenth defendants were represented by Mr. Nereus Mutongore and Mr. Jamaldin

Ngole, learned advocates. The ninth, tenth, eleventh and twelfth defendants were represented by Ms. Debora Mcharo, learned State Attorney. Hearing of the matter proceeded ex parte against the third, fourth, sixth and seventh defendants as they were duly served but failed to appear in the court.

The issues framed for determination in this matter are as follows: -

- 1. Who is the lawful owner of plots Nos. 1 – 84, Block C, Mabwepande, Kinondoni District, Dar es Salaam Region*
- 2. Whether the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 13th defendants are trespasser to the suit land.*
- 3. To what reliefs are the parties entitled.*

By consent of the counsel for the parties hearing of the matter was conducted by way of witnesses written statements pursuant to Order XVIII Rule 2 of the Civil Procedure Code, Cap 33 R.E 2019 as amended by GN No. 761 of 2021. In the course of substantiating his claims the plaintiff testified himself and called other four witnesses and tendered five documentary exhibits. On the side of the defendants three witnesses testified in the matter and tendered ten documentary exhibits.

The plaintiff, **Peter Peter Junior** testified as **PW1** and stated in the written statement of his evidence which was adopted in the case as his evidence in chief that, in 1990's he cleared undeveloped land measuring four acres at Mabwepande Village by cutting bushes for the purpose of

establishing a farm for agricultural purposes. He said the neighbours of the land he cleared were Kilamwaka Mbonde on the South, a walk way on the West, Juma Makolongo on the North and Ally Tindwa on the East.

He said on 10th March, 2004 he increased the size of his farm by purchasing eight (8) acres of land from his neighbour Kilamwaka Mbonde Alli at a consideration of Tshs. 5,600,000/= and make the size of his farm to be twelve (12) acres of land. He tendered to the court the sale agreement of buying the land from Kilamwaka Mbonde Alli and it was admitted in the case as exhibit P1. He said after buying the stated land his neighbours were Mr. Mbongola on the East, Kilamwaka Alli on the West, Mr Ali Mbongola on the North and Mr. Kyakula on the South.

He called **Ali Said Mbonde** who testified as **PW2** and said Kilamwaka Mbonde Alli was the brother of his father namely Said Mbonde. He said he remember in 1990s his family was living at Mabwepande Area where his father and his brother (Kilamwaka Mbonde) had land which were neighbour to each other and they acquired the stated land by way of clearing bushes of undeveloped land. He said he know PW1 was also residing at Mabwepande Area and had a farm he acquired by way of adverse possession after clearing undeveloped land.

He said the land of PW1 was bordering the land of Kilamwaka Mbonde on the Southern side, a walk way on the Western side, Juma Makolongo

on the Northern side and Ally Tindwa on the Eastern side. PW2 said in 1998 his father sold his entire land which was measuring three acres to one Kyakula and they shifted to Mwalusembe Area which is within Mkuranga District. He said on 10th March, 2004 PW1 purchased eight (8) acres of land from Kilamwaka Mbonde.

PW1 called **Chande Andallah Mbonde** who testified as **PW3** and said Kilamwaka Mbonde Alli was his father. He said he remember in 1990s PW1 had a land which was bordering with the land of his father which was at Mabwepande Area. He mentioned the neighbours of the land of PW1 to be Kilamwaka Mbonde on the South, a walk way on the West, Juma Makolongo on the North and Ally Tindwa on the East. PW3 said he remember on 10th March, 2004 his father Kilamwaka Mbonde sold part of his farm measuring eight (8) acres to PW1. PW3 said after PW1 purchased the land from his father, his new neighbours became Mr. Mbongola on the East, Kilamwaka Mbonde Alli on the West, Mr. Ally and Mbongola on the North and Mr. Kyakula on the South.

Other witnesses called by the plaintiff were **Omary Kitwanga** and **Abdallah Omari Kunja** who testified as **PW4** and **PW5** respectively. While PW4 said he was the former Secretary of Mabwepande Village, PW5 said he was the former Chairman of Mabwepande Village. PW5 said he was the leader at Mabwepande Village from 2004 to 2009. PW5 said he

know Kilamwaka Mbonde Alli was a resident of Mabwepande Village from the year 1972 and he had parcels of land at Mabwepande Village. He said he also know PW1 as he had a farm at Mabwepande village since the year 1990. PW5 said he remember on 10th March, 2004 PW1 purchased farm measuring eight (8) acres from Kilamwaka Mbonde Alli and make the total size of his farm to be twelve (12) acres.

PW4 said he remember on March, 2004 he was followed by five people who were Kilamwaka Mbonde Alli, Salum Mauti (Hamlet leader) and PW1. He said the mentioned people were together with other two people who were introduced to him by the names of Mohamed Shaweji Kimbunga and Sophia Hemed. He said the mentioned people told him their intention of going to him was to request him as the leader of their area to witness sale agreement of the land which Kilamwaka Mbonde Alli was selling to PW1. PW4 said to have agreed to witness the said sale agreement which was also witnessed by Salum Mauti and other witnesses from the vendor and the purchaser.

PW1 stated in his evidence that, on 20th October, 2018 the first, second, third, fourth, fifth, seventh and eighth defendants trespassed into his farm and started erecting structures thereon. He stated after making follow up he discovered his entire land was surveyed by the first, second and ninth defendants without giving him any notice or involving him in

the stated survey and no neighbour or Area leader was involved in the stated survey. PW4 and PW5 said they were not informed or involved in the survey alleged was conducted in the farm of PW1.

PW1, PW4 and PW5 said the stated survey lead into making of Survey Plan No. E 333/102, Certificate of Occupancy with Certificates of Title (CT) No. 126779, L.O 407233, KMC/LD/55767, Certificate of Occupancy with Certificate of Title (CT) No. 127126, L.O 407244, KMC/LD/55781, Certificate of Occupancy with Certificate of Title (CT) No. 159877, L.O 407232, KMC/LD/55775, Certificate of Occupancy with Certificate of Title (CT) No. 128470, L.O 351856, L.O NO. 53533.

PW1 said after discovering the stated encroachment on his farm he reported to his Local Government authority whereby PW5 gave him a letter of reporting the event to the police station. The letter given to him by PW5 was admitted in the case as exhibit P5. He said after the policemen scrutinized his complaint; they advised him to file civil case in the court.

He further stated in his statement that, there was a time the sixth defendant claimed to be the owner of his twelve acres of land and the sixth defendant filed land dispute at Mabwepande Ward Tribunal. He said the sixth defendant was declared is the lawful owner of the mentioned twelve acres of land. PW1 said as he was aggrieved by the decision of the

Ward Tribunal, he appealed to Kinondoni District Land and Housing Tribunal through Land Appeal No. 6 of 2021. He said the District Tribunal set aside the decision of the Ward Tribunal and stated in its decision that they were at liberty to file a fresh suit in the court and the stated judgment was admitted in the case as exhibit P4

PW1 stated that, after making further follow up of the encroachment done to his land, he found the first and thirteenth defendants had moved the ninth defendant to believe his land belonged to them by virtue of a decision made on 21st June, 2000 whereby the first, second and thirteenth defendants were not parties. He said the first and second defendants defrauded the ninth defendant to survey his farm and mislead the tenth and eleventh defendants to give consent for registration and issuance of the Certificates of Titles mentioned hereinabove to them. He said the first and second defendants sold the land in dispute to the third, fourth, fifth, seventh and eighth defendants and mislead the tenth and eleventh defendants to issue certificates of occupancy of the land in dispute to them.

PW1 said in the course of making follow up of his land he made official search in the Ministry of Lands and found the Certificates of Titles in respect of his landed property were issued on 1st January, 2010 to the first defendant whose incorporation through change of name was made

on 29th June, 2012. He stated that shows the certificates of title in respect of the land in dispute were issued to the first defendant two years before being into existence. The search orders of the investigation he made at the Ministry of Land together with bank paying slips for the stated search orders were collectively admitted in the case as exhibit P3.

PW1 said in a bid to claim for his farm he issued a ninety days statutory notice of suing the Government Agencies which blessed the fraudulent acts committed by the first and second defendants of dispossessing him his land. The stated ninety days statutory notice was admitted in the case as exhibit P2. Thereafter the plaintiff filed the present suit in the court after withdrawn Land Case No. 90 of 2018 he had filed in the court. At the end he prayed the reliefs listed in his plaint be granted.

Omary Rwegasira Buyuya testified on the side of the defendants as **DW1** and stated in his statement that, he is an officer of the first defendant. He said he is the son of Mr. Josephat Rwechungura Kyakula and his mother was the late Ajira Kyakula. He said sometimes in 1983 and 1988 his late father purchased various parcels of land in Mabwepande, Bunju Area, Kinondoni, Dar es Salaam from various owners. He tendered eight sale agreements of the land alleged were purchased by his late father and were admitted in the case as exhibits D1 collectively. He said by the year 1988 the aggregate size of the farm of his late father was 70

acres and said his late father planned to use the stated land for agricultural purposes.

He stated his late father formulated a limited liability company known as Rugaju Limited which was incorporated on 12th February, 1992 which its Certificate of incorporation was admitted in the case as exhibit D2. He stated after incorporation of the mentioned company his father wrote a letter to Mabwepande Local Authority to be allowed to register his land in the name of Rugaju Limited and his request was accepted. The stated letters were admitted in the case as exhibit D3 collectively. He said his father passed away on 5th February, 1999 before registering the farm into the name of Rugaju Limited.

He said after the death of his father, his mother Ajira Kyakula was granted letters of administration of the estate of her late husband which was admitted in the case as exhibit D4. He stated after his mother being granted letters of administration of the estate of his late father one Kassim Kilindilo claimed to possess eight (8) acres of land which was belonging to the late Josephat Kyakula. He said the dispute was taken to Mabwepande Village Council whereby the dispute was resolved in favour of his mother, Ajira Kyakula. He stated the foregoing mentioned land dispute is the one the plaintiff refers at paragraph 12 of his statement.

He said after determination of the stated dispute his mother continued to take care of the farm left by the late Josephat Kyakula until 2008 when she decided to survey the entire landed property to convert the same into a real estate business. He said his mother requested Mbwepande Village Authority to introduce her to Kinondoni District Authority as the owner of the entire landed property. He said the request of his mother was accepted and permitted to survey the land of her late husband. The letters relating to the stated request and the reply made thereof were admitted in the case as exhibit D5 collectively.

He went on stating that, after performing her duty as administratrix of the estate of the deceased, his mother formulated a limited liability company namely Genie International Company Limited which was incorporated on 7th December, 2009. The Certificate of incorporation of the mentioned company was admitted in the case as exhibit D6. He said after incorporation of the mentioned company his mother transferred the entire landed property left by Josephat Kyakula to Genie International Company Limited.

He said later on the Directors and shareholders of Genie International Company Limited passed a resolution to change the name of the company from Genie International Company Limited to Genial International Co. Ltd and the stated changes was done via certificate of change of name dated

29th June 2012 which was admitted in the case as exhibit D7. He said the stated changes of name caused some of the Certificate of Title of the land to be issued in the former name of the company and others in the later name.

He said after obtaining Certificates of Titles of the landed property the first defendant sold some plots of the land to various people including the 3rd, 4th, 5th, 7th and 8th defendants. He said the first defendant has never sold any piece of land to six defendant and said the six defendant is a trespasser to the land and the first defendant has filed the suit in the Kinondoni District Land and Housing Tribunal against him and the suit was stayed pending hearing and determination of the present suit. He prayed the plaintiff's suit be dismissed in its entirety with costs.

Other witnesses brought to the court by the defendants are **Jane Mwaipyana** and **Adelfrida Lekule** who testified as **DW2** and **DW3** respectively. While DW2 said she is a Land Officer working at Kinondoni Municipal Council, DW3 said she is a Land Officer working at the office of the Assistant Commissioner for Lands for Dar es Salaam Zone. DW3 said the plaintiff is not lawful owner of the land in dispute and DW2 said the land in dispute is owned by the first defendant. DW2 said the first defendant applied to survey the land in dispute and after the ownership of the land being verified by the neighbours and local Government

Officers, the land was surveyed and the first defendant was granted Certificates of Occupancy for some surveyed pieces of land in Plots No. 1 – 84 Block C Mabwepande Area.

DW2 tendered to the court the sketch plan of the land in dispute and form for verifying ownership of the land and were admitted in the case as exhibits D8 and D9 respectively. DW3 said there is no any element of fraud or influence made by the ninth, tenth, eleventh and twelfth defendants in granting ownership of the land to the thirteenth defendant. He stated that, the Commissioner for Lands based on the history of the land in dispute and several correspondences between Kinondoni Municipal Council and Commissioner for Lands to grant ownership of the land to the third defendant. The correspondences letters between the Kinondoni Municipal Director and the Commissioner for Lands were admitted in the case as exhibits D10 collectively.

After receiving the evidence from both sides, the counsel for the parties prayed and allowed to file in the court their closing or final submissions. I commend all the counsel who filed their closing submission in the matter as they will give enormous light to the court in determination of the suit before the court. To avoid making this judgment unnecessarily long I will not reproduce the submissions of the counsel for the parties in

this judgment but I will be referring to the arguments contained therein in the course of determine the issues framed for determination in this suit.

I will start with the first issue framed for determination in the matter which states who is the lawful owner of plots Nos. 1 – 84, Block C, Mabwepande, Kinondoni District, Dar es Salaam Region. The court has found it is proper to state at this juncture that, as rightly stated in the submissions filed in the court by the counsel for the parties it is a position of the law as provided under sections 110 and 111 of the Evidence Act, Cap 6 R.E 2002 that, the burden of proof in civil cases lies on the person alleges existence of a certain fact.

The principle of the law laid in the above provisions of the law has been affirmed by our courts in number of cases including the cases cited in the submissions filed in the court by the counsel for the parties. Another case where the afore stated position of the law was emphasized is the case of **Godfrey Sayi V. Anna Siame** (as Legal Representative of the late **Mary Mndolwa**), Civil Appeal No. 114 of 2014, CAT at Mwanza (unreported) where it was stated that: -

"It is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of

sections 110 and 111 of the Law of Evidence Act [Cap 6 R.E. 2002] which among other things states: -

110. Whoever desires any court to give judgment as of any legal right or liability depending on existence of facts which he asserts must prove that those facts exist.

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

Together with the principle of the law stated hereinabove it is to the view of this court proper to state here that, the standard of proof in civil cases as provided under section 3 (2) (b) of the Evidence Act and stated in number of cases which some of them are the cases of **Jackson Sifael Mtares V. Director of Public Prosecutions**, Civil Appeal No. 180 of 2019, CAT at DSM and **Anthony M. Masanga V. Penina (Mama Mgesi) and Another**, Civil Appeal No. 118 of 2014, CAT at Mwanza (Both unreported) is on preponderance or balance of probability. While being guided by the above stated principle of the law the court has found its task is to determine whether the plaintiff who alleges is the owner of the land in dispute has managed to discharge the duty laid on his shoulder of proving his allegations on the stated standard that he is the lawful owner of the land in dispute.

In discharging the stated legal duty, the plaintiff who testified in the matter as PW1 told the court in his testimony that, he acquired the first part of his land which was four acres in 1990 by clearing bushes at the land in dispute. He said to have acquired the second part of his land measuring eight acres in 2004 by purchasing the same from Kilamwaka Mbonde Alli at the price of Tshs. 5,600,000/= and he tendered to the court the sale agreement of the stated land which was admitted in the case as exhibited P1.

Starting with the four acres of the land which PW1 said he cleared bushes in 1990 to acquire the same, he mentioned his neighbours to be Kilamwaka Mbonde on the South, a walk way on the West, Juma Makolongo on the North and Ally Tindwa on the East. The court has found there is no any of the stated neighbour was called by PW1 to support his evidence that he acquired the stated land by clearing the bushes on the mentioned year of 1990.

The court has found that, although PW1 called PW2 and PW3 to support his evidence that he acquired four acres of land by clearing bushes and the stated witnesses said their father and uncle were neighbours to PW1 but when they were cross examined by the counsel for the defendants, they said they didn't know when PW1 cleared the bushes to get his first four acres of land. They just said they know PW1

had a land measuring four acres at Mabwepande Village. The court has also found that, although PW5 said he was the leader of Mabwepande Village which later on changed into Mabwepande Street from 2004 to 2019, he said he know PW1 was owning a land at Mabwepande Village from 1990 but he didn't say anywhere in his evidence how PW1 acquired the land he said he was owning at Mabwepande Village from the year 1990.

While taking into consideration the position of the matter stated hereinabove the court has found that, although PW1 said before clearing the bushes to get the stated four acres of the land, he got assurance from the village leaders and neighbours of the land that the land he cleared was unoccupied, but there is no any evidence adduced in the court by the stated neighbours or village leaders to support what was said by PW1. The stated situation caused the court to find that, the evidence of DW1 together with the sale agreements of his late father to purchase the land in dispute from various people from 1983 to 1988 which were admitted in the case as exhibits D1 collectively, shows the land in dispute was not unoccupied land but it was in occupation of the father of DW1 before PW1 acquired the same as unoccupied land in 1990.

Coming to the eight acres of the land PW1 said to have purchased from Kilamwaka Mbonde Alli in 2004 and make the size of his land to be

twelve acres, PW1 said his neighbours were Mr. Mbongola on the East, Kilamwaka Alli on the West, Mr Ali Mbongola on the North and Mr. Kyakula on the South. The court has found PW1 called PW2, PW3, PW4 and PW5 and tendered to the court the sale agreement for buying the stated land which was admitted in the case as exhibit P1 to support his evidence. After considering the evidence of the mentioned witnesses and what is stated in exhibit P1 the court has found it has not managed to establish the stated land which was sold to PW1 in 2004 was the property of Kilimwaka Mbonde Alli and not the land of Josephat Kyakula which he acquired by buying the same from various people from 1983 to 1988.

The court has come to the stated finding after seeing that, although PW3 who was the son of the vendor said his father sold the stated eight acres of the land to PW1 in 2004 and he went with his father to the village office to witness the stated sale agreement being signed but he is not appearing anywhere in exhibit P1 as a witness of the stated sale of the land to PW1. The court has found even PW2 who said Kilamwaka Mbonde Alli was the brother of his father namely Saidi Mbonde, he said he was not present when the land was sold to PW1 as his father had already sold their land from 1988 and they had already shifted to Mwalusembe Area within Mkuranga District from the mentioned year.

The court has found PW3 said he know the land sold to PW1 as he used to cultivate the same with other members of his family when they were living at Mabwepande and after shifting to Mwalusembe within Mkuranga District he used to go back to visit the brother of his father and became aware the land had been sold to PW1. The court has found it cannot be said the evidence of this witness has established there is a land sold to PW1 by his uncle because he has not said how his uncle acquired the said land and he was not present when the land was sold to PW1 which make his evidence to be a mere hearsay. It is the view of this court that, even if he saw his uncle cultivating the said land but that is not sufficient enough to establish the person cultivating the land is the owner of the land is cultivating.

The court has found in supporting his evidence that he bought the stated land from Kilamwaka Mbonde Alli, PW1 called PW4 who said to have witnessed the stated sale agreement. The court has found the stated PW4 said to have witnessed the stated sale agreement after being followed at his office by PW1 who was together with the vendor of the land and other people and requested him to witness the sale agreement. Apart from PW4 there is no any other person appeared in the court to testify on what was stated to the court by PW1. The court has found neither the neighbours of the stated land nor people mentioned were with

PW1 on the date of signing the sale agreement brought to the court to testify that the land PW1 said was sold to him by the stated vendor was the property of the stated vendor.

The court has found that, although PW4 said he witnessed the sale agreement entered by PW1 and Kilamwaka Mbonde Alli but he said to have done so at his office and said it was after being informed by Salum Mauti that the land in dispute was the property of Kilimwaka Mbonde Alli. The evidence of PW4 is also affected by the way he impersonated himself in witnessing the stated sale agreement. The court has found as stated by the counsel for the defendants while PW4 said when he was required to witness the stated sale agreement, he was Mabwepande Village Secretary, but he signed the sale agreement as the Village Chairman and not as the Village Secretary or even Acting Village Chairman.

The court has found that, even if it will be said the impersonation done by PW4 did not affect the stated sale agreement but the court has found as stated in the submissions of the counsel for the defendants, by the time when the sale agreement was entered, Mabwepande Area had already been declared is a town planning area since the year 1993 vide GN No. 231 of 1993. The court has found it was stated in the case of **Hassan Amiri Hemed & Others V. Lake Oil Ltd (T) & Another**, Land Case No. 84 of 2020, HC Land Div at DSM (unreported) that, as

Mabwepande area was declared by the above cited law to be a town planning area, then after the stated declaration the Mabwepande Village Council had no power to allocate land to anybody.

If Mabwepande Village Council had no power to allocate land from 1993 when their area was declared it is a town planning area, it is the view of this court that, in 2004 the Village leaders had no power or mandate of approving or witnessing the sale agreement entered by PW1 and the mentioned vendor in their capacity as village leaders. The effect of the stated position of the law is that, witnessing of the sale agreement entered by the PW1 and Kilamwaka Mbonde Alli cannot be taken it has legalized or added value to the sale agreement alleged was entered by the stated persons appearing in exhibit P1.

Apart from the above finding that the evidence adduced by the plaintiff and his witnesses has not managed to establish the plaintiff lawfully purchased the land in dispute from Kilamwaka Mbonde Alli but as argued in the submission of the counsel for the defendants and as appearing in exhibit P4 which is a judgment of Kinondoni District Land and Housing Tribunal delivered in Land Appeal No. 06 of 2021, filed in the mentioned tribunal by the plaintiff against one Paulo Andrea Mayonga it shows the plaintiff stated to have bought his land from Juma Kulamwaka and not from Kilamwaka Mbonde Alli. Since the plaintiff did not give any

explanation to show the said judgment was not about land in the present case the court has found it has raised doubt to the evidence of the plaintiff as to whether he really bought the land in dispute from Kilamwaka Mbonde Alli.

The court has found the counsel for the plaintiff challenged the defence and evidence of the defendants by basing on various grounds. He argued the defendants who alleged to have derived their title to the land in dispute from Josephat Kyakula did not adduce any evidence to justify they are owners of the land in dispute as no neighbour or local leader was called to support their case. The court has found it is true that the defendants did not call any neighbour or local leader to support their case and their evidence.

However, the court has found as already stated hereinabove the evidence adduced by the witnesses called by the plaintiff have not managed to prove on balance of probability that the plaintiff is the lawful owner of the land in dispute. The court has come to the stated view after seeing the evidence adduced by DW1 and specifically exhibit D1 shows Josephat Kyakula purchased the land in dispute from various people from 1983 to 1988 as appearing in exhibit D1 which was before the plaintiff cleared the first part of the land, he stated it was unoccupied in 1990 and before purchasing the other part of the land in dispute in 2004.

The counsel for the plaintiff challenged the survey conducted in the land in dispute by framing an issue he labelled as the second issue framed in the matter while the record of the matter shows that was not among the issues framed for determined in the matter. The court has found the record of the matter shows as stated earlier in this judgment the second issue framed for determination in the matter is whether with exception of the 9th, 10th, 11th and 12th defendants the rest of the defendants are trespasser to the land in dispute. Since the counsel for the 9th, 10th, 11th and 12th defendants has also submitted on the stated issue relating to the survey of the land in dispute the court has found it is proper to determine the same.

The counsel for the plaintiff stated in his submission that the 1st, 9th, 10th, 11th and 13th defendants corroborated to unlawfully survey the land in dispute. He argued the stated situation is supported by the evidence adduced by both sides. He argued the evidence adduced in the matter shows there was no neighbour or local government leader who was involved in the exercise of surveying the land in dispute alleged to have been conducted by the defendants mentioned hereinabove. The court has found it is true as argued by the counsel for the plaintiff that the evidence by PW4 and PW5 who said they were Mabwepande Village Leaders in 2000s shows they said they were not involved in the exercise of surveying

the land in dispute which they said they recognized the plaintiff as its lawful owner.

The court is also in agreement with the counsel for the plaintiff that the position of the law as stated in the case of **Obed Mtei V. Rukia Omari**, [1989] TLR 111 requires before a survey of a piece of land is done and finalized, a third-party interest must be protected. The court is also in agreement with counsel for the plaintiff that non-compliance with the stated position of the law as stated in the case of **Senkoro & Others V. Eliambuya Lyimo** (Administrator of the Estate of the late **Fredrick Lyimo**) Civil Appeal No. 16th of 2017 CAT at DSM (unreported) renders the resultant survey plan invalid.

However, the court has found the evidence adduced in the matter by DW2 and specifically exhibits D5 and D9 tendered in the case by DW2 shows the neighbours of the land in dispute and local leaders of the area where the land in dispute is located were involved in the exercise of surveying the land in dispute. The court has found that, although the counsel for the plaintiff challenged authenticity of exhibit 9 from the time of being admitted in the case as evidence but it shows it was witnessed by the neighbours and the local leaders who were Street Chairman, Street Executive Officer, Ward Councillor and the Ward Executive Officer for Mabwepande Ward.

Although there are some entries in exhibit D9 showing they were entered in the exhibit after being photocopied like the information and signatures of the Ward Councillor and the opinion of the Land Officer, which the counsel for the plaintiff used to challenge authenticity of the said exhibit, but the court has failed to believe all of the local leaders whose names and signatures appears in exhibit D9 conspired to authorize the survey of the land in dispute to be carried out unlawfully. The court has found as stated by DW2 the stated exhibit D9 satisfied the condition requiring involvement of neighbours and local area leaders before a survey is conducted in an area intended to be surveyed. The stated exhibit make the court to come to the view that, there is nothing material in the case to make it to find the survey of the land in dispute was made unlawfully.

The counsel for the plaintiff went on challenging the defence of the defendants by stating the first and thirteenth defendants used fraudulent acts to defraud the ownership of the plaintiff to the land in dispute. It has been a long-time trite law that, when allegation of fraud is raised in civil cases it is required to be proved on higher standard than the proof required in normal civil cases. The stated position of the law can be seeing in the case of **Omari Yusufu V. Rahma Ahmed Abdulkadr**, [1987] TLR 169 where the Court of Appeal held that: -

"When the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary civil cases."

In showing the first and thirteenth defendants committed the alleged fraud the counsel for the plaintiff stated in his final submission that, the official searches conducted by the plaintiff in respect of the Certificates of Title numbers 127126 and 159877 which were admitted in the case as exhibit P3 shows they were issued to the first defendant in 2010 when it was before the first defendant came into existence in 2012. The counsel for the plaintiff submitted that shows there was fraud committed by the first and thirteenth defendants in acquiring the title deed on the land in dispute as it brings no sense for a company whose name came into existence in 2012 would have been registered as the owner of the land in dispute two years before coming into existence.

The counsel for the plaintiff argued in his final submission that the alleged existence of fraudulent acts committed by the first and thirteenth defendants was never disputed by the defendants and the plaintiff was not cross examined on such allegation. The court has found it is not true that the stated allegation was not disputed by the defendants. The court has found the evidence of DW1 shows he stated clearly at paragraphs 16, 17 and 18 of his evidence how the entire landed property of his late father

was transferred to the thirteenth defendants and how the thirteenth defendants' name was changed into the first defendant. DW1 stated further at paragraph 19 of his evidence that it is because of the stated changes that some of the titles in respect of the land in dispute were issued in the name of the first defendant and others in the name of the thirteenth defendant.

The court has found that, although exhibit P3 shows the owner of some of the certificate of title is the first defendant who came into existence in 2012 and the certificates of title were for 99 years from 2010 which was before the first defendant came into existence but that is not enough to establish the stated certificate were issued fraudulently. The court has found the person who could have explained why the stated certificates were issued in the name of the first defendant before being incorporated were DW2 and DW3. However, the stated witnesses were not cross examined to explain or clarify the stated situation so as to establish it was done fraudulently and not otherwise.

The court has found even if it will be said, as there no explanation as to why the stated certificates were issued in the name of the first defendant before being incorporated then they were issued fraudulently, the question is what about the certificates which were issued in the name of the thirteenth defendant who was in existence at the time of being

issued. Are they going to be taken they were also issued fraudulently or not. The stated questions which cannot be answered by the evidence or submission filed in the case by the parties makes the court to find there is no sufficient material evidence to establish the certificate of title issued in the name of the first defendant were issued fraudulently.

The court has found as the first issue requires the court to determine who is the lawful owner of the land in dispute, the court is in agreement with the counsel for the plaintiff that the court cannot declare the defendants are lawful owners of the land in dispute because there is nowhere in their pleadings they have prayed for the stated order. The court has come to the stated finding after seeing the position of the law as stated in the cases of **National Bank of Commerce Limited V. Stephen Kyando T/A Sky Intertrade**, Civil Appeal No. 162 of 2019 and **Melchiades John Mwenda V. Gizelle Mbagu** (Administratrix of the estate of **John Japhet Mbagu**) & **Two Others**, Civil Appeal No. 57 of 2018 CAT at DSM (unreported) cited in the submission of the counsel for the plaintiff is very clear that, a relief not prayed for cannot be granted by the court.

However, as the plaintiff is the one alleges is the lawful owner of the land in dispute and as stated in the cases of **Godfrey Sayi** (supra) a person alleges has a duty to prove existence of the alleged fact, the court

has found in the light of all what I have stated hereinabove the plaintiff has not managed to establish he is the lawful owner of the land in dispute. To the contrary the court has found as argued by the counsel for the defendants, section 2 of the Land Registration Act, Cap 334 R.E 2019 define the owner in relation to any estate or interest as the person for the time being in whose name the estate or interest is registered. Since the owners of the land in dispute for the time being is registered in the names of the first and thirteenth defendants the court has found the first issue is supposed to be answered in negative that the plaintiff is not the lawful owner of the land in dispute.

Coming to the second issue framed for determination in the matter which asks whether the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 13th defendants are trespasser to the land in dispute the court has found that, in the light of the finding made in the first issue, there is nothing else which can make the court to find the mentioned defendants are trespasser to the land in dispute. That make the court to find the answer to the second issue is supposed to be answered in negative that the mentioned defendants are not trespassers to the land in dispute.

As for the last issue relating to the reliefs the parties are entitled the court has found that, having found the plaintiff has failed to establish to the standard required by the law that he is the lawful owner of the land

in dispute, the relief which can be granted in the matter is the one prayed by the defendants that the matter be dismissed. Consequently, the plaintiff's suit is hereby dismissed in its entirety for being unsubstantiated and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 19th day of October, 2023



Court:


I. Arufani
JUDGE
19/10/2023

Judgment delivered today 19th day of October, 2023 in the presence of the plaintiff in person, Mr. Jamaldin Ngole, learned advocate for the 1st, 2nd, 5th, 8th and 13th defendants, Ms. Debora Mcharo, learned Senior State Attorney for the 9th, 10th, 11th and 12th defendants and in the absence of the 3rd, 4th, 6th and 7th defendants. Right of appeal to the Court of Appeal is fully explained.




I. Arufani
JUDGE
19/10/2023