

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT MWANZA LAND CASE NUMBER 15 OF 2008 ANGELINA LUG:ELEKA ----- PLAINTIFF VERSUS

1. THE DED Sengerema DC----- 1st DEFENDANT
2. BRIGITTE GAETJE ----- 2nd DEFENDANT

JUDGMENT

15/08 & 18/09/2014 S. S. MWANGESI J.: The crux of the suit at hand is centered on a construction erected at the village of Kamanga within the District of Sengerema in Mwanza Region, which according to the available evidence, was targeted for being a Health Centre, and/or dispensary to serve 1

- the people of Kamanga village. According to the plaintiff, she was the think tank behind such a move, an idea which however, was frustrated before its accomplishment, following the death of one Klaus Gaetje, which did give way to the intrusion of the defendants herein to the project. As a result of such intrusion and frustration to her project, the plaintiff is requesting for judgment and decree against the defendants jointly and severally for first, payment of an amount of TZs 400,000,000/=, say four hundred million, being special damages for the unexhausted improvements, which she has effected on the disputed landed property. Second, payment of TZs two hundred million (200,000,000/=), being compensation for loss of medical services' profit and psychological stress. Third, the plaintiff prays to be paid the cost of this suit and interest on the decretal amount, and any other and further reliefs, which this Court might deem fit and judicious to grant. The claims by the plaintiff have been denied in their entirety by both defendants in their separate written statements of defense. And upon mediation in terms of the provision of Order VIIIA and VIIIB of the Civil Procedure Code Act, Cap 33 having failed, it was agreed between the contesting parties and approved by the Court that, the suit at hand does give rise to basically about six issues that is to say, first, whether the plaintiff started and operated Upendo Health MCH Clinic Dispensary at Kamanga area. Second, whether the late Klaus Gaetje offered his un-surveyed plot of land at Kamanga to the plaintiff. Third, if the second issue above is answered in the affirmative, then as to whether the plaintiff did develop the said plot of land. Fourth, whether the first and second defendants, did encroach onto the plot of land,

belonging to the plaintiff. Fifth, whether the plaintiff has suffered damages as a result of her plot of land being encroached by the two. And the last issue, which is the general one is, to what reliefs each of the part to the suit is entitled to. In order to establish her claims, the plaintiff did rely on the testimony of two witnesses that is, herself and one John Kaneneja Bulilo. Testifying under oath, the plaintiff has told the Court that, in the year 1995, she did start an MCH Clinic services at 2 Kamanga village. The services were being conducted in a building, which she had rented from Umoja wa Wanawake Tanzania known by its acronym as "UWT". She deposed further to the effect that, in running the services, she was being assisted by one Mr. George Webber, who apart from financing her did as well assist her to secure some friends and sponsors within and outside Mwanza. The plaintiff has gone on to narrate that, in the year 1996 she started a process of getting her own building. As a first step, she did go to see the District Commissioner of Sengerema District one Mama Sanka; from whom she sought some assistance to secure a plot of land. In response, the District Commissioner did write a letter to her financier assuring him that, a plot of land for her (plaintiff's) project would be secured. Thereafter, in the year 1997, people from the Land Office of Sengerema District, did visit the area at Kamanga surveyed it and placed some beacons thereon. The plaintiff has deposed further to the effect that, the process was however, interrupted by some villagers, who claimed that the surveyed area did belong to them, and that they had not been consulted before the exercise of surveying got started. As a result, the whole exercise about the intended survey did end there. It has been testified further by the plaintiff that, the flopping of the exercise of survey of the area did to some extent frustrate her. Upon explaining her predicament to one Klaus Gaetje, he did sympathize with her. This was from the fact that, even some of his workers were being served at her clinic. As a result, Klaus Gaetje did assign to her part of his un-surveyed plot of land within Kamanga village, in the presence of Said Kazoya and Said Kaneneja. Thereafter, she did commence construction of the disputed building, which was done slowly depending on the availability of funds, until the year 2006, which was after the death of Klaus Gaetje, when the dispute at hand did surface. It all started by being asked by one Fortunatus Masha, on how she had secured the plot of land, on which her construction was being carried out. On telling him that she had been given by Klaus Gaetje, he did tell her that, he also had similar plans of constructing his building nearby. Fortunatus Masha did then advise her that, it would be prudent if she went to introduce herself to the second defendant, who was the then owner of Kamanga Ferry Company, following the death of her husband. In compliance with the advice which she had obtained from Fortunatus Masha, the plaintiff has told the Court that, she did go to see the second defendant, introduced herself, and told her what had been going on at her site. Upon hearing such story, the second defendant did tell her that, she did not want to see her anymore in that area. She was further required to stop her project forthwith as nobody recognized her there. From such ultimatum from the second defendant, she did leave and went to seek some advice from other people. The advice which she did get from those people was to lodge a suit in Court. And, while in the course of lodging the suit, she was informed that, her building was in the process of being handed over to the District Council of Sengerema by the second

defendant. Her complaint to different authorities did prove futile as the building was ultimately handed over to the District Council, who happens to be the first defendant. It has been the contention of the plaintiff that, the exchange of hands of her building at Kamanga village between the defendants has been done illegally and that, there had been some attempts to change the structure of the building, which was prevented by the order of the Court. Her prayer before this Court is thus for return of her building even though its structure has partly been altered and costs as well as other costs, which have been indicated in her plaint. In support of what she has averred here in Court, the plaintiff has tendered as exhibits the following documents, exhibit P1, an agreement for sponsorship between Doctor Ngallaba S. E. and the plaintiff, exhibit P2, a letter which was written by the District Commissioner, exhibit P3 collectively, drawings of the structure of the disputed building, exhibit P4, the bill of quantities for the disputed building, exhibit P5 collectively her different still pictures taken at the disputed building, exhibit P6 collectively, different receipts of materials bought for the construction of the disputed building, exhibit P7, her letter of complaint to the District Commissioner, exhibit P8 her notice of intention to sue, and exhibit P9, her statutory notice to sue. When the plaintiff was cross-examined by learned Counsel Mr. Ndaro for the first defendant regarding the mason who constructed the building, she did tell the Court that, they were being hired by George Webber, because he was the one who incurred most of the expenses incurred in building the disputed construction, while on her part, she did just contribute to some. She has further told the Court that, her understanding with George Webber regarding such construction was made orally. And as regards the bill of quantities which she has tendered as exhibit, she has averred that, the same were prepared in the year 2008, and that they were prepared under the instruction of George Webber on her behalf. The testimony of John Kaneja who testified as the second witness for the plaintiff, has been to the effect that, he knows the plaintiff since the year 1995, when she did start to provide services of a dispensary to people living in Kamanga village, where he was the Chairman by then, in a rented house. In the year 1997, the plaintiff did go to his office and asked for a plot of land to construct her own building for the provision of the dispensary services, which she was doing. She did however turn down the offer which the office did advance to her, on the reason that, the area was not conducive because it was too close to the lake. After such rejection of the village offer, the plaintiff did tell them that, she would look for another alternative. At a later date, the witness has gone on to tell the Court, the late Klaus Gaetje did to go to their office and inquired, if the plaintiff (Angelina Rugeleka), had been conducting the services of a dispensary in the village. Upon answering his question in the affirmative, Klaus Gaetje did leave and proceeded with his plans with the plaintiff. When the witness was asked on cross-examination if he happened to be involved in the process of Klaus Gaetje giving a plot of land to the plaintiff, his answer was in the negative that, he was not. That was the end of the case for the plaintiff. 5 The defense by the first defendant has based on the testimonies of four witnesses. The testimony of Tadeo Venance was the first. Being led by learned Counsel Mr. Stamili Ndaro, his deposition has been to the effect that, he lives at Kamanga village, at hamlet "B", since he was born in the year 1964. He claimed to know the

late Klaus Gaetje, who happened to be his neighbor and the owner of Kamanga Ferry Company. The same happened to be his neighbor after he had purchased plots of land, which were previously owned by his local neighbors. Among those local neighbors was Bishop Daud Batezi, from whom, the purchase of his plot of land was made through him. Other neighbors included, Hilary Machimuhenda, Faustin Bukanya, Bulilo Kaneja, Mohamed Batambula and others. The witness has deposed further that, at a distance of about thirty (30) meters or so from his homestead, the late Klaus Gaetje did construct a big building, which has already been roofed, of which according to the information which he got from the late Klaus Gaetje himself, was intended to be used for Hospital services for his employees as well as the villagers around. It has been testified further by the witness that, the construction of the said building was done by a certain European National, who was assigned by Klaus Gaetje. The said constructor in the course of constructing the building at issue had requested part of his area, to be used in preserving sand used in the construction, which was being collected by the local people from around that area. Some of such sand still lies there on his plot of land to date. Masatu Kuboja gave his evidence as the second witness for the first defendant. His story has been that, he is an employee of Kamanga Ferry Limited, where he was employed since the year 1995 by the late Klaus Gaetje. Narrating on the disputed construction, the witness has told the Court that in the year 1995, the late Klaus Gaetje did buy a plot of land from Bulilo Kaneja at the price of TZs 500,000/=. As the area was a bush, he looked for people to clear it. He the witness and one Ramadhan, who was hailing from Singida, were the ones, who were assigned to clear the area at the 6 payment of TZs 18,000/= per month. The task did take them about six months to accomplish. Upon completion, of clearing the area, both the two were shifted to work at the garage. In the year 1997, the late Klaus Gaetje did purchase another nearby plot of land from one Faustine Mahendeka Bukanya at the price of TZs 200,000/=. Thereafter, he did start construction of a building, which he told them that would be used for Hospital services. The construction work was assigned to the supervision of a European woman going by the name of Sister Christine, who was being assisted by one George. The masonry was performed by Fanuel, Masanja and Mikidadi. At the material time, at the garage where he had been working, there was a store, where cement for the company was being preserved and he the witness was the one taking care of it. When cement was being taken from the store, he was the one, who counted the number of bags of cement taken out. As regards the sand which was being used for construction, the witness has deposed to the effect that, as a sign of involving the villagers 'around in the construction of the Hospital, which was being constructed to serve them, the late Klaus Gaetje did invite the local villagers to collect it for payment. The witness has stated further that, at one point in time, he was sent by the late Klaus Gaetje to collect a generator from Kisumu in Kenya for supplying electricity. In 1999, he the witness did travel with the late Klaus Gaetje to Kisumu to buy corks for water connection, where he did also buy iron sheets for roofing his construction. And, when they returned with those iron sheets, apart from being used for roofing the intended building, some were used at Yacht Club here in Mwanza, while others were used for roofing a school at Sengerema. The witness has concluded his story by stating that, before he could accomplish his project, the

late Klaus Gaetje, did die in an accident, while he was in Uganda. As regards the plaintiff in this case~ the witness has told the Court that, he heard severally the name of Angelina, who was commonly known as Mama Vick. He claimed the same to have been introduced to Klaus Gaetje by Sister Christine, at a time when they went together at the site at issue. On the said date, the witness claimed to have overheard Sister Christine telling the late Klaus Gaetje that, upon completion of the construction of his Hospital, he had to employ her because she was an experienced Nurse. And when the late Klaus Gaetje asked her as to how that could be possible if she was-already an employee of the Government, Mama Vick was heard to state that, she was about to retire from the Government services. When the witness was asked by the plaintiff on cross-examination, if he was aware of a dispensary. known as Upendo, the witness did respond to the effect that, he was aware of it, as it was operating at the building of Umoja wa Wanawake Tanzania (UWT) there at Kamanga village. The third witness for the first defendant has been one Mathew Ndalahwa Rubongeja. He has told the Court that, he lives at Katunguru Ward in Sengerema District, where he is the Councilor. He claimed also to be the Chairman of the District Council of Sengerema since the year 2006 to date. In the year 2008, the Councilor of ~ Nyamatongo Ward in the company of a representative of Kamanga Ferry Company Limited by the name of Brigitte Defloor, who happens to be the second defendant and one Dickson Magiri, did go to tell the District Council of Sengerema that, Kamanga Ferry Limited, had decided to give to the Village Government of Kamanga, a construction, which had been intended by Kamanga Ferry Limited to be used as a Hospital. He, the witness and other members of the District Council of Sengerema did visit the locus in quo to inspect. Upon being satisfied that, the building was good, it was their resolution that, it was a healthy idea regard being to the fact that, the villagers there had no any ' health facilities around. They did thus welcome the idea and accepted the offer. They did thereafter request the offer to be reduced into writing. On the 15th day of March 2008, after the offer had been reduced into a form of Memorandum of Understanding between Sengerema District Council and Kamanga Ferry Limited, the deal was signed. He the witness and the District Executive Director of Sengerema, did sign on behalf of the District Council of Sengerema, while on behalf of Kamanga Ferry Limited, Brigitte Dennys Defloor, who happened to be the Managing Director of Kamanga Ferry' did sign on behalf of the Company and Sifael Muguli, who happened to be the Solicitor of Sengerema District Council did witness the deal. He has tendered as exhibit D11 the said memorandum of understanding. Thereafter, the witness has gone on to testify, the District Council did engage in accomplishing the construction of the building that included, fixing doors, plastering, flooring etc, only to be stopped as a result of this suit. He has concluded his testimony by stating that, the building was lawfully handed over to the Council and the suit at hand is without any founded bases. The Court has thus been urged to dismiss it with cost. Fanuel Jafari Lanka did depose as the fourth and last witness for the first defendant. He has informed the Court that, he is a mason. In the year 1995, he happens to be engaged by Sister Christine in her construction work at Montessori College at Kawekamo. She appears to have been impressed by his work and therefore, in the year 1996, she did send him to VETA to polish his masonry artisan. Upon completion, in the year 1997, Sister

Christine did tell him and his colleagues that, there was work to be performed at Kamanga area, where a dispensary had to be constructed. She did take them to the site, where the owner one Klaus Gaetje did take them around the area that is, the witness, Sister Christine and one Fideli Cleophas. Upon studying the drawings, they did accept to undertake the task. The witness has deposed further that, their work was being supervised by Sister Christine and on the part of the owner of the building they were being visited by Klaus Gaetje, who also paid them. In case of absence of Klaus Gaetje, there was one Mama Kihekker, who happened to be the mother of Klaus Gaetje, who would take place. As regards the building materials, the witness has told the Court that, sand and stones were collected by the local villagers around, while the cement was being preserved in a container, which was near the ferry. In case they happened to run short of cement and Klaus Gaetje was not around, they had been directed to ask for it from the store which was at the garage. 9 In around the year 2002 or so, when the construction was in progress, Klaus Gaetje did travel to Uganda. During his absence, they started to experience shortage of building materials as well as funds. At a later time, Sister Christine did require them to stop the construction, and await his return. In the meantime, they were assigned another activity at Ukerewe. While still at Ukerewe, they did get information to the effect that, Klaus Gaetje was no more. And that marked the end of the involvement of the witness in the disputed construction even though, in the company of Sister Christine, he claimed to have attended the funeral ceremonies of the late Klaus Gaetje. When the second defendant was required to enter her defense, her learned Counsel Mr. Malango has told the Court that, she is currently attending treatment overseas. The fact that it is not known as to when she might get well and return to give her defense, it has been his view that, it might take a long time before her attendance in Court gets secured. To that end, he has asked the Court to do away with her oral testimony in Court and proceed to consider the merit of the case depending on the evidence which has been received in Court. However, in unison with his learned brother representing the first defendant as well as the plaintiff, they have all asked for time to file their final submissions, a prayer which has been granted by the Court. The contents of their submissions will be referred to whenever the need does arise in the cause of answering the issues, which were framed at the commencement of hearing this matter above. The first issue is whether the plaintiff started and operated Upendo Health Clinic Dispensary at Kamanga. In establishing such fact, the plaintiff has relied on her oral testimony in Court as well as exhibit P1 that is, an agreement for sponsorship which she had entered with one Doctor Ngallaba S. E. on the 04th April 1997. On the other hand, the learned Counsel for the first defendant has submitted that, this issue has to be answered in the negative because the plaintiff has failed to establish it. In his view, to establish her contention, the plaintiff ought to have tendered a certificate of registration of the alleged dispensary and a business license to establish that, it had indeed been in operation. The absence of such documents has rendered the plaintiff to have failed to discharge her burden in terms of the provision of section 61 and 100 both of the Law of Evidence Act, Cap 06. It is a requirement of law, under the provision of section 110 of the Law of Evidence Act that, whoever desires the Court to resolve something in his/her favor, she/he has to establish

it. In its own words the provision is worded thus: "{1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." In the instant matter, it has been the averment of the plaintiff that, she started . . an MCH clinic, which operated in the commercial name of "Upendo MCH Clinic Dispensary". The sponsorship agreement with Doctor Ngassaba, which she has tendered as exhibit has little importance if any to establish such fact. To the contrary as it has been contended by the learned Counsel for the first defendant, she ought to have ' . , established such fact by a registration certificate of the ,said clinic appearing in her name, which unfortunately has not been done. Additionally, the fact that she argued that she was operating it commercially as contained in paragraph five (5) of her plaint, . . . undoubtedly, she had a license to that effect. Unfortunately again, there has been no such a thing. Even though the contention by the plaintiff to the effect that, she had _ be~n giving . clinic health services at Upendo Dispensary at Kamanga has been .. corroborated by the testimony of PW2 (John Kaneja Bulilo) as well as that of DW1 ' (Tadeo Venance), .the _same could not establish ownership to the clinic as she might have been employed by the owner of such clinic to give the services. I am thus in . agreement with what has been submitted by the . learned Counsel for the first defendant that, the plaintiff has in the instant matter failed to establish her contention that, she started and operated Upendo MCH clinic dispensary. The first issue is thus answered in the negative. 11 The second issue is whether the late Klaus Gaetje did offer an un-surveyed plot of land to the plaintiff. In narrating the circumstances leading to her being given a plot ~ of land by the late Klaus Gaetje, the plaintiff has told the Court that, it was alter the villagers of Kamanga had frustrated the plan, which had been initiated by the District Commissioner of Sengerema to survey the area at Kamanga and allocate a plot to her for construction of her intended dispensary. Having narrated such incident to the late Klaus Gaetje, he became concerned and as a result, he did' freely allocate her the plot of land at issue in the presence of John Kuneja. Even though in his testimony in Court as PW2, the said John Kuneja Bulilo, did decline to have witnessed such transaction between the plaintiff and _the late Klaus Gaetje, I find no bases for this issue to detain me much, regard being to the fact that, the alleged giver is dead, while the receiver is the one alive, who is contending so. In my view, the basic question is whether, the plot of land given to the plaintiff by the late Klaus Gaetje is the one, where the disputed landed property has been constructed. This is the concern of the third issue. I would thus answer the second issue in the affirmative that, the plaintiff was given by the late Klaus Ga_etje a plot of land on an un-surveyed area at Kamanga village. yhe second issue having been an.?wered in the affirmative, it paves way for deliberation of the third issue, which is whether there was any development made by the plaintiff on the plot of land given to her by the late Klaus Gaetje. It is unfortunate that, the plot of land alleged to have given to the plaintiff by the late Klaus Gaetje had no any particular identity. However, the fact that, the plaintiff told the Court that, the said plot of land is where she did construct the disputed landed property. I will understand the said plot for time being as the one comprising the disputed landed property. With that line of reasoning, the issue thus is whether the plaintiff was the one who built the disputed. property. To establish that she is the one who built the disputed property, the

plaintiff has tendered a number of documents to establish so. These documents included, drawings of the structure of the disputed landed property, that is, exhibit P3, bill of quantities 12 . . that is, exhibit P4, still pictures that is; exhibit PS and different receipts, establishing purchases of different building materials that is, exhibit P6. These documents have on the other hand been strongly resisted by the learned Counsel for the first defendant that, they do not establish the contention by the plaintiff that, she did build the building at issue. Starting with the still pictures, it has been his view that, they are irrelevant as they could be taken by any person even a passerby. I am in agreement with such argument of the learned Counsel that, the still pictures have nothing to assist in establishing that, the plaintiff did construct the disputed landed structures. Then there have been the drawings of the structures of the disputed property, which have been named "Proposed Upendo MCH Clinic". Because the area on which it was to be built had not yet been surveyed, there is neither Plot number nor Block, but within Kamanga village in Sengerema District. The client has been indicated to Mrs. Angelina Lugereka, who happens to be the plaintiff, and the one who prepared them was Nicholas Architects and Associates of Mwanza. The same was prepared in January

1996. The learned Counsel for the first defendant has doubted the documents that, they might have not concerned the disputed plot of land. I find sense in the contention by the learned Counsel. This is from the fact that, the efforts by the plaintiff to secure a plot of land for construction of her own dispensary started in the year 1997. The same thus means that, she did secure the plot of land from the late Klaus Gaetje sometimes ~ after early 1997. Since the drawings under discussion were prepared in January 1996, " they could not have been prepared for a plot of land which had not yet been secured. That being the case, the drawings (exhibit P3) are of little assistance if any to establish "that, the plaintiff was the one who constructed the disputed landed property. Bills of quantities are other documents which have been relied upon by the plaintiff to establish construction of the disputed landed property. As earlier indicated . . . above, the same is headed "Bill of Quantities for Proposed Construction of Upendo Clinic" on unnamed plot of land and Block; The same was prepared by HCD and Planners Limited on the 22 nd May 2008. At the material time, the dispute on the ' 13 0: ... disputed landed property between the plaintiff and the defendants had already started, and it had already exchanged hands from the second defendant to the first defendant, a handing over which was done on the 15th March 2008 as per exhibit D1. Undoubtedly as it has been submitted by the learned Counsel for the first defendant, the same was prepared for the purposes of the case and not the construction of the structure which by then was almost complete. Lastly, there have been receipts of purchase of building materials, which have been tendered to establish that, the plaintiff did use those materials to construct the disputed landed property. I have failed to find any aid from these receipts in establishing the contention of the plaintiff because, in the first place, those receipts are not in the name of the plaintiff, secondly, even if they were to appear in the plaintiff's name there is no evidence to establish that, those materials were not used in the construction of any other building other than the one being currently

disputed. And furthermore, those receipts involve a very small amount of money when compared to the value of the whole construction. Be that as it might be, it is my finding that the plaintiff has failed to establish that, she is the one who effected development on the disputed plot of land. To the contrary, there was evidence from Tadeo. Venance, who told the Court that, he was the neighbor 'Of the late Klaus Gaetje and that he happened to be told by the deceased during his livelihood, his plans . for the disputed construction while constructing it that, he intended to use it as a Hospital for his workers as well as neighborir:ig villagers. Then there was the testimony of DW2 Masatu Kuboja, whose testimony was to the first that, he had been an employee of the late Klaus Gaetje for a long period from when he acquired the plot of land on where the disputed construction got erected and further that, happened even -to' preserve some materials which were being used in the construction of the disputed landed property. But of more importanc;e has been the testimony of Fanuel Jafari Londa, who has deposed to the· effect that, he was among the masons, who constructed the disputed 14 landed property fro~ the. ~cratch, after b~ing _assigned by Christine Klapper~ who· was contracted by the late Klaus Gaetje to undertake· the construction work of the said . . building. His testimony has been so. detailed and has convinced this · Court · on preponderance of probabilities that, what he has told the Court is what did actually transpire. The totality of the testimonies of the three witnesses above, moves this Court to answer the third issue posed above in the negative that, the plaintiff was not the one ' .who developed the disputed landed property. Whether the first defendant and the second defendant did encroach onto the . . plot of land belonging to the plaintiff is the gist of the fourth issue. It has been the contention of the· plaintiff that, the· act" by the· second defendant to grant what was 'J termed proposed hea_lth center, to the first defendant under the pretext of "memorandum of understanding as contained in exhibit DI, was nothing other than illegally dispossessing her lawfully acquired property. Even though it has already been answered in the thir~ issue above that, the plaintiff has no any justifiable claim of right over the alleged property beca·use_ she was not the one who developed it, the learned Counsel for the second defendant has as well raised a question of law that, his client has improperly been impeaded in the claims by the plaintiff. He has argued that, even if the claims by the plaintiff were to be genuine, it was improper to contend that, his · client was personally liable in the act, which she was acting on behalf of the company. • Reliance to this argument has been sought from the provision of section 38 (b) of the Company's Act Cap 212; as well as the decision in the case of Shaw and~sons (Stalford) Ltd Versus Peter John Shaw [1935]2 KB 113. I am in agreement with what has been submitted by the learned Counsel of the second defendant that, a company is a distinct legal entity from its share holders and/or directors. The fact that the parties. in exhibit D1 that is, the memorandum of understanding was between· the first defendant and Kamanga Ferry Limited, then it was -improper for the· plaintiff to allege that, the deal was between the first defendant and . the second defendant. The second defendant could not stand on behalf of Kamanga 15 Ferry Ltd, at best she could stand if joined with Kamanga Ferry Limited. Nevertheless, the fact that it has already been held above that, the plaintiff did develop the disputed landed property the fourth issue is answered in the negative that,

there was no any encroachment by the first defendant and any other person, on the property of the plaintiff. This answer also goes on to answer the fifth issue, which is whether the plaintiff did suffer any damages as a result of the c;1ct by the defendants. As there was eo,~~oachm~nt to any of her properties, she did not suffer any damages. · The last issue did concern the reliefs which each party to this suit is entitled to. In this suit, the plaintiff was claiming for special damages against the defendants at the tune of TZs 400,000,000/=. It is the law that for··special damages to be awarded they have to sufficiently established {see; Hosia Lalata Versus Gibson Zumba Mwasote

[1980] TLR 154). In the instant matter, .the plaintiff has . failed to establish such damages. The plaintiff was also praying for general damages, which would have been assessed by the Court upon having established that, .the de2fendants had really caused damages to her. Since it has not been established, the Court has nothing to assess for her. In the ultimate therefore, the plaintiff is not entitled to all reliefs which she had asked for from the Court. To the contrary she is liable to be condemned to bear the . cost of this suit. Nonetheless, regard being to her condition as .observed .. by the Court, r would not condemn her to bear the costs for the suit. In lieu thereof, I would order that, each party will bear its own costs. Order accordingly. S. S. Mwangesi JUDGE 16

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