

TANZANIA / JUDGMENT

20171122 TZHC Dar es Salaam

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22 November 2017

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' IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM
CIVIL CASE NO. 276 OF 2012 JOYCE GAUDENCE MALILAE..... PLAINTIFF
VERSUS THE PERMANENT SECRETARY PRIME MINISTER'S OFFICE 1 sT
DEFENDANT THE ATTORNEY GENERAL..... 2N° DEFENDANT (I

JUDGMENT

MKASIMONGWA, J. The Plaintiff JOYCE GAUDENCE MALILAE, sues the PERMANENT SECRETARY PRIME MINISTER'S OFFICE and the ATIORNEY GENERAL (1 st and 2 nd Defendants, respectively) for a claim out of which she prays for Judgment and Decree as follows: -

1. Payment of a total sum of Tshs. 33;500,000/= less Tshs. 683,000/= being compensation for the damages sustained
 - I upon her properties .
2. Interest at court's rate on the above sum from the date of · Judgment till payment in full of the decretal sum.
3. Costs of the suit
4. Any other relief(s) deemed just to be granted to the plaintiff. 1 The Defendants disputed to the claim. They contend in defence that the Plaintiff was paid Tshs. 683,000/= being compensation 1n respect of a certain destruction of her house by the bomb blasts. When the suit came up for the Final Pre-Trial Conference the following were framed as issues for determination.
 1. Whether the plaintiff, one of the victims of the Bomb blast occurred on 29/4/2009 at the TPDF Camp Mbagala, Kizuiani Dar es Salaam was adequately compensated by the 1st Defendant.
 2. To what reliefs the plaintiff is entitled. With a view to establishing the plaintiffs case two witnesses testified in court. They are Joyce Gaudence Malilae (PW 1) and Kaishaza Pius Bengesi (PW2), the retired Civil Servant and Valuer working with the Trace Associate Company, Dar es Salaam, respectively. In short the plaintiffs case is as that on the 29 th April, 2009 there was bomb blasts at the Tanzania Peoples Defence Force (TPDF) Mbagala,

Kizuiani, Dar es Salaam Camp; which caused J destruction to various people's properties. Among the properties are two houses belonging to the plaintiff. Following the destruction, Government officials came and valued the damages people had suffered for compensation purposes. Based on the valuation done the plaintiff was paid Tshs. 113,000/= by cheque being compensation. PW1 complained for the amount was too low from which complaint her houses were revaluated by one Mr. 2 " Rweyemamu. The later promised to submit his findings to Temeke Municipal Council. PW1 was later, called and paid Tshs. 570,000/= only again by cheque. PW1 identified in court the two cheques with their respective payment vouchers. She then tendered them in evidence and accordingly admitted marked as Exhibit Pl collectively. PW1 was still not satisfied with the total amount of Tshs. 683,000/= paid to her as compensation. She therefore engaged Mr ... Magesa (deceased), learned advocate, to pursue her rights. It is when they engaged the valuer (PW2) to value the premises and come up with the Valuation Report. According to PW2 the valuation was for compensation payment purpose and there were no local guidelines to guide the process. As such PW2 resorted to the International Evaluation Standards, 6 th Edition, 2003, GUIDANCE NOTICE NO. 7

- CONSIDERATION OF HAZARDOUS AND TOXICS IN VALUATION. According to the guidelines PW2 looked at the market value of the property prior and after the alleged destructions hence applied the Depreciated Replacement Costs Method of Evaluation. At the premises, PW1 detected the following damages.
 1. Cracks on the walls
 2. Bulging of the ceiling and walls
 3. Some Iron sheets were damaged
 4. A toilet was damaged
 5. Ceiling was damaged Pw2 assessed the market value depreciated at 70% which he valued at Tshs. 33,500,000/=. The Evaluation Report was availed to 3 the plaintiff (PW1) anrj_ the later_ ide_n~ified_ a~d tendered in court as Id Pl. PW2 identified Id. Pl to the court to be the Evaluation Report he prepared upon being so requested by the plaintiff whom he knew through the services of Mr. Magesa, Advocate. PW2 tendered the Report in court as Exhibit and the same was admitted marked Exhibit P2. PW1 therefore prays the court for payment of Tshs. 33,500,000/= being compensation, interest on that sum and costs of the suit. On being cross examined by Mr. Nyakiha, the learned State Attorney, PW2 told the court that the house in question was not completely damaged. He did not submit the Report for approval by the Chief Government Valuer for the law does not oblige him to do so. On the other hand, the defence case is made of the testimonies of NYAMCHEGE ANNA NANAI (DW1) and HERBERT ANATORY MWOLEKA (DW2), the Retired Assistant Director Operation and Coordination of Calamities Department and the Valuer working with Temeke Municipal Council, respectively. The Defence case is as that on the 29 th of April, 2009 there were bomb blasts occurred at Kizuiani, TPDF Camp from which some people sustained injuries and

some properties were damaged. There was therefore called for the National Disasters Committee meeting to decide what appropriate steps should be taken. The meeting resolved that the victims should be served at their premises in collaboration with the Red Cross Society. It was also resolved that the victims should 4 immediately be provided with Medical Services as well as food. There was later formed a team comprised of Government Valuers, Engineers, Land Surveyors, Security Services Officers and Local Government Leaders to assess the effects of the event. PW2 was one of the team members and PW 1 was involved in the team. She (PW 1) received and compiled Field Reports and prepared payment schedule by looking at the property's actual damages and plus 25% of the costs of the damages. The payment schedule was subject to approval by the National Disasters Committee after it had passed through the Chief Government Valuer and the Regional Commissioner's Office. After having been approved the Report was sent to the Treasury for payment. There was again put in place a Complaints Desk so that peoples with complaint could be heard. The case is also to the effect that the plaintiff was one of the victims. She was first paid a sum of Tshs. 113,000/=. She complained showing that she has been underpaid. PW2 told the court that following the complaint, they reviewed the process to see if there was any substance in the complaint. They came back to the premises and reviewed the evaluation and found she is entitled to the payment of Tshs. 570,000/= on top of Tshs. 113,000/= already paid. The amount was paid, after again the Evaluation Report had been approved by the chief Government Valuer as it is required by the law. As to why the amount had raised from that shown in the former Evaluation Report, it was said that there was destructions resulted from when the Army decided to destroy the other remaining bombs hence reevaluation was ordered. In September, 5 , ' 2010 the matter was brought to an end. Anyone with complaint after September, 2010 could bring the complaint through the District Commissioners. That is all evidence in this matter in which Mr. Daniel Nyakiha the learned State Attorney and Mr. Jamhuri Johnson appeared for the Defendants and plaintiff respectively. The learned counsels prayed and were granted leave filed their final written submissions which will be considered in determining the matter. From the evidence I gather it that on the 29 th of April, 2009 there were bomb blasts occurred at Kizuiani, Dar es Salaam TPDF Camp. The Bombs destructed, among others, the plaintiffs house. It is not disputed that the Government decided to compensate for the destruction in which case the plaintiff was paid a total sum of Tshs. 683,500/=. This came after the Government had evaluated the destruction. The plaintiff is dissatisfied by the amount compensated and according to her the destruction valued at Tshs. 33,500,000/=. This is in accordance with the Evaluation done by private valuer - PW2). The issue to be decided is whether the plaintiff was adequately compensated. Before dealing with the issue in his submission, the counsel for the plaintiff contended that the process towards payment of the compensation was not participatory. He said, the plaintiff was not involved in the valuation of the house in question, The learned counsel added that the valuation was not done in accordance with the provisions of Regulation 6 (c) of the Land (Compensation 6 ' Claims) Regulations, 2001 (G.N No. 79 of 2011) which reads as follows:- "R. 6 The Commissioner or the authorized officer shall cause a notice to be published on a public notice board and save notice in a prescribed form on

every occupier.

(a) .. .

(b) .. .

- (c) requiring the occupier to appear physically on such date, time and place where assessment shall be made" Let it be noted that Regulation 3 of the Regulations provides for the Application of the Land (Compensation Claims) Regulations, 2001 (G.N No. 79 of 2001). The same is in the following words "These Regulation shall apply to all applications or claims for compensation against the Government or local government authority or any public body or institution under the Act who may claim for compensation." Regulation 4 lists the persons who may claim for compensation. The list does not cover the plaintiff. The later cannot, therefore, successfully assert that the Defendants did not observe the provisions of Regulation 6 (2) of the Regulation (G.N 79/2001). Whether the compensation paid to the plaintiff was adequate or not, the plaintiff answerers it that it was inadequate. The basis 7 for the answer is the Evaluation Report tended in Court as Exhibit P2. It is in my considered opinion that the Report was properly prepared in terms of Regulation 5 of the Land (Assessment of the Value of Land for Compensation) Regulation, (G.N No. 7 of 2001) in that, the same was prepared by PW2 who is a qualified valuer. In his submission Mr. Nyakiha contended that, the/report (Exhibit P2) lacks any legal basis for it contravenes the provisions of Regulation 6 of the G.N No. 79 of 2001 which is couched in mandatory words as follows:- "Every assessment of the value of the land and unexhausted improvement for the purposes of payment of compensation by Government or Local Government Authority shall be verified by the Chief Valuer of the Government or his representative" In evidence, upon being cross examined by Mr. Nyakiha, PW2 stated that:- "... the law does not oblige the evaluation report to be approved by the Chief Government Valuer. The Report was not approved by the Chief Government valuer". In his submission, Mr. Jamhuri contended that the plaintiff hired a Private Valuer to prepare a Valuation Report on the loss suffered after the bomb blast. However, though the report was presented for consideration of the compensation, it was internationally ignored by the Defendants. Having gone through the adduced evidence and the submission, it is clear, as again PW2 8 admits, that the Evaluation Report (Exhibit P2) which in my view is the basis of this suit was not verified by the Chief Government Valuer or his representative as the law mandatorily requires. There are circumstances where it is not necessary that the Evaluation Report be verified by the Chief Government Valuer before it is acted upon. However, where a qualified valuer makes assessment of the value of land and unexhausted improvement for the purposes of payment of compensation by Government or Local Government Authority, the assessment must be verified by the Chief Valuer of the Government or his representative. An assessment of the value of land and unexhausted improvement prepared for purposes of payment of compensation by the government or Local Government Authority which has not been verified by the Chief valuer of the Government or his Representative will remain of no legal effect. Such a report cannot sustain legal proceedings in the claim for compensation against

the Government. In the light of the above discussion this suit lacks legal basis. The same fails and it is accordingly dismissed. I have considered the prayer for costs, I find this is the proper case for the Court to order each party to bear his/her own costs. Dated at Dar es Salaam this 22 nd of November, 2017. ,., · UR,---->, E.J.~ ~ ~ ~ ,,,,. JUDGE -C, ::r.: •~n.ild~,...~ '):• z 22/11/2017 ,_\\)) _,_.,,,..... ~/ ·∴. <. * '-----~~---~-,,,..... . '/' 9 Court: Judgment delivered in Chambers this 22 nd of November, in the presence of Miss Rehema Mtulya (S / A) for the Defendants and Lilian Malilae, the plaintiffs daughter who has reported that the plaintiff is sick and could not make it to the court. Right of Appeal is explained. ,.- E.J.~~a '\\. JUDGE L ~; I} I y 22/11/2017 ~,~.,~...!'. ~~ '!.. ,_,,,,,,, 10

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Prepared on 14 October 2026 · Esheria