

TANZANIA / JUDGMENT

shaban said mkumba vs temeke municipal council 2020 tzhclandd 3948 10 december 2020

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 383 OF 2017 SHABAN SAID MKUMBA..... PLAINTIFF VERSUS TEMEKE MUNICIPAL COUNCIL..... DEFENDANT

JUDGMENT

Date of order: 19/11/2020 Date of Judgment: 10/12/2020 NDUNGURU, J. The Plaintiff in this case one Shabani Said Mkumba prays for Judgment and Decree against the Defendant as follows:-

- (i) Declaration that, the Plaintiff is the lawful owner of the suit land. (ii) A declaration that, the act of the Defendant to acquire the Plaintiff's land without compensation is unlawful and illegal act. (iii) An order for eviction of the Defendant from the plaintiff's land to leave vacant possession for plaintiff's peaceful enjoyment. i (iv) An order of demolishing every structure constructed by the Defendant on the suit land.
- (v) General damage as may be assessed by the court. (vi) Costs of the suit. In the alternative the Plaintiff prays for Judgment and Decree in the following;

Orders:

- (i) A declaration that, the suit land was a lawful property of the Plaintiff. (ii) A declaration that, the acquisition of the land by the Defendant which was made without full, fair and prompt compensation is unlawful and unjust. (iii) An Order against the Defendant to pay full, fair and prompt compensation to the tune of Tshs. 768,098,101.8 being compensation for land, crops and disturbance allowance. (iv) An order of paying interest of 31% of the total amount claimed of Tshs.768, 098,101.8 from the date of this suit to the date of final settlement.
- (v) Payment of general damage as may be assessed by the court. (vi) Payment of interest of the decretal sum amount from the date of judgment to the date of final settlement. 2 (vii) Any other reliefs) as this court may be pleased to grant. Briefly the historical background of the

dispute can be recapped from the pleadings of the parties. That, the Plaintiff is a customary owner of the piece of land measured 4,800 square meters situated at Kijichi area in Temeke Municipality. That being in enjoyment of the suit land for more than 60 years, sometimes in the year 2001 the Defendant developed interest of constructing the Ward office and public road, at the suit land the defendant approached the plaintiff for the purpose of securing his consent. The fact that, the project was designed for social development and the plaintiff had his right of compensation did not object the offer. The plaintiff promised to offer the suit land provided that, he is fairly fully and promptly compensated. At the time the Defendant acquired the plaintiff's land, the same had several crops both seasonal and permanent such as coconut trees, cashew nuts, Mango trees, Orange trees, Apple trees, Pineapple and Misonobari trees. That, from the year 2001 when the defendant shown her interest on the plaintiffs land did not do anything as far as compensation is concerned till 3 the year 2013 when the plaintiff was forcefully evicted from the land by the defendant on explanation that the land has already been acquired by the defendant and any other issues related to compensation to be resolved later. That, the Plaintiff's crop were destroyed and finally the defendant constructed the Kijichi Ward Office without paying due compensation to Plaintiff. However, even after having acquired the Plaintiff's land, the defendant kept on promising to compensate the defendant and the promise was never fulfilled thus this case. Basing on the pleadings filed in this court by respective parties two issues were raised to guide the court to reach to the just decision. The issues raised were:-

- (i) Who is the lawful owner of the disputed property? (ii) If the first issue is answered in favor of the Plaintiff, whether the Plaintiff is entitled to compensation by the Defendant and to what tune. (iii) To what reliefs) that the parties are entitled to. In determining this case, I am going to resolve the above raised issues vis-avis the evidence available on record. 4 To start with the first issue, tracing the root of his ownership of the suit land it was the evidence of (Plaintiff) PW1 that he inherited the said land from his ancestors long time ago as the suit belonged to his grandfather which later passed to the grandfather then later to his father and finally to him. That, he has lived at the suit land long ago ever since he was born, that the said land was his source of livelihood as he used to cultivate several crops permanent and seasonal. The suit land had mangoes, coconuts, oranges, cashewnut trees, Pineapples, Guava and Misonobari trees. The evidence of PW1 (the plaintiff) is corroborated by evidence of one Juma Khalid Bufu (PW 2). The evidence of PW2 is to the effect that he is the neighbour of PW1 in the suit land. That PW1 has been in the suit land ever since, he was born and he used to cultivate seasonal and permanent crops. In 2014 the land was taken by the Municipal council for the purpose of constructing Ward Office, apart from the Ward Office the council had also constructed two roads in the said land. Similar was the testimony of PW3 who said to have known PW1 for almost 58 years ago. That ever since he knew PW1, he was living at that 5 land and he used to cultivate permanent and seasonal crops but later the suit land was acquired by the Municipal Council for building Ward Office. In the defence DW1, the Senior Land Officer from the Defendant's office was of the testimony that, having received complaint from PW1 she with her fellow visited the scene to identify the suit, its

size and crops which were there, her evidence is further that, they prepared valuation report for the purpose of compensation and submitted it to the Municipal Director for compensating PW1 but compensation was on crops which were in the suit land but the plaintiff is not yet paid to date and that was in 2017. When cross examined, DW1 said the suit land of the plaintiff was acquired for building Kijichi Ward Office. From the above piece of evidence it is undisputable that the question of ownership of the land suit is not at issue, the defendant does not challenge the ownership of the suit land on the part of the Plaintiff. In the premises I will be right to hold that, the Plaintiff is the lawful owner of the suit land. I so hold that the plaintiff is the lawful owner of the land in dispute which had been acquired by the defendant. 6 The second issue is whether the plaintiff is entitled to compensation by the defendant and to what tune. The pleadings of both the plaintiff and defendant reveal that, there is no dispute that the plaintiff's land having been acquired by the defendant he is entitled to compensation. The same is revealed in the correspondences which took place between the Plaintiff and Defendant (Exhibit "PI"), but the land being acquired in 2014 the Defendant has never paid heed to the statutory obligation to compensate the Plaintiff. As testified by DW1 that the valuation having been done, the valuation report was submitted to the Municipal Director for compensation process. DW1 told the Court that she does not know why the plaintiff has not been compensated to date., Further, the evidence of DW1 is to the effect that, following the valuation done, the plaintiff was to be compensated only the crops which were planted on the suit land not the land itself. To my view that was not proper. To my view land is a real property, that is to say land has value by itself, It being a property it is protected by the provision of Article 24 of the United Republic of Tanzania Constitution. The provision gives right to own 7 property and protection of the said property It is therefore that the value of land itself must be taken into account even if it could be a bare land. I am aware that the defendant has powers to acquire land from an individual for the public interest. I so hold the acquisition done was for public service purpose which fits the requirements of the provision of section 4(1) of the Land Acquisition Act, 1967 (R.E. 2002) see also the case of Agro Industries Ltd. V. Attorney General [1994] TLR 43 in which the Court of Appeal citing the lead note in B.P. Bhatt and Another versus Habib Rajan (1958) E.A 536 in defining is the phrase "public interest". Notwithstanding the fact that acquisition was done, by the defendant who has power to acquire land, the fact that having acquired the suit land no fair compensation was done, such act was unlawful and illegal. The law on acquisition of land is very clear that the acquisition becomes lawful upon payment of compensation. The fact that the defendant has already made construction to the disputed land which the Plaintiff at paragraph 3 of the plaint claims for recovery, I find that the Plaintiff being entitled to compensation, it is the right time for him to be compensated as prayed in the alternative prayers. 8 The question at hand now is to what tune should the Plaintiff be compensated DW1 in her testimony told the court that the valuation done was related to crops only which I have stated is not proper, but again the valuation report DW1 was referring has never been tendered in court. Again, the Plaintiff at paragraph 22 of the plaint claims to be paid a compensation to the tune of Tshs.768, 098,101. 8. Like the defendant, the Plaintiff has never stated in his evidence the basis on how he reached into

such a figure. That being the case the court finds that the figure mentioned by the Plaintiff is not founded. The court cannot bless it to be a fair amount that the Plaintiff is entitled to be compensated though is entitled to compensation. Having so said, I find that the Plaintiff has succeeded to prove his case to the balance of probability. I hereby declare the plaintiff is a lawful owner of the suit land. Further, the acquisition of land by the defendant which was made without full and fair, compensation is unlawful. I further hold that the independent valuer be engaged by the Plaintiff who will make valuation in corroboration with the land officer of the defendant. 9 The compensation be paid according to the valuation report which will be done by an independent valuer upon getting verification and approval from the Chief Government Valuer. Further the plaintiff be paid a general damage to tune of 30,000,000/= for not using his land which was the source of his livelihood from 2014, to date. Costs to follow event. It is so ordered. D.B. NDUNGURU JUDGE 10/12/2020 io

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