

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

**LAND CASE NO. 98 OF 2017**

**MAGRETH EPHRAIM KAWA .....1<sup>ST</sup> PLAINTIFF  
JOHN J. H. NTAGWABIRA .....2<sup>ND</sup> PLAINTIFF  
JOSHUA S. KAZI .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**VICTOR RAPHAEL LUVENA .....DEFENDANT**

**JUDGMENT**

**03/ & 11/12/2020**

**RUMANYIKA, J.**

Magreth Ephraim Kawa, John H, H, Ntagwabira and Joshua S. Kazi (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants) respectively with respect to three plots at Kimele area, Mapinga Village, Bagamoyo district (the disputed plots), against Victor Raphael Luvena (the defendant) they prayed for a declaratory order that they owned it customarily, an order of vacant possession, permanent injunctions and costs.

Messrs Simon Patrick and Hamza Matonge, learned counsel appeared for the plaintiffs and defendant respectively. It is at this stage equally worthy noted that Ms. Consolata Mololele, learned counsel assisted advocate Patrick.

The three (3) issues framed and adopted by the court on 08/10/2020 essentially (1) Who lawfully owned the disputed plots (2) Whether the defendant has trespassed into the plaintiffs' land (3) The reliefs that the parties are entitled to.

Pw1 Joshua Kazi (35) stated that he purchased say an acre (no any other description) of the disputed plot for shs. 1.0 Million from Mwanaidi Mussa in 2010 (copy of the sale agreement-Exh."P1" but having had erected a chicken hut, grown some trees and effected some other developments, the defendant just stormed in also claiming title and he pulled them all down.

Pw2, Ephraim Kawa (69) stated that in this he represented his wife (the 1<sup>st</sup> plaintiff) now indisposed and bed ridden to whom say 2.5 acres of the disputed plots belonged (copy of the deed of powers of attorney – Exh. "P3"). That she purchased it for shs. 200,000/= in 2003 from the late elderly Pazi (Copy of the sale agreement - Exh. "P3") .But for no reasons the defendant just invaded it in 2016 and claimed title whereby he destroyed the growing trees and the existing poles on boundaries, that in terms of location and description Exh. "P3" was silent but they knew the plots physically as one Omary Tego a local leader also witnessed the agreement.

Pw3, Vivian Buhara (45) stated that in this case, and with respect to one of the disputed plots say 2.0 acres of it she represented husband (the 2<sup>nd</sup> plaintiff) now a way abroad (copy of the deed of powers of attorney – Exh. "P4") that the spouses purchased the plot in October, 2007 for shs. 500,000/= from one Ringo Mohamed (copy of the sale agreement

and annexures – Exh. “P5”) collectively a local leader having had dully identified the vendor. That in the South, North, East and West neighbors were Mama Kimabi, Haroub Mbelwa, and Ally Kapwela respectively but then from nowhere the defendant just stormed in also claiming title. I pray as per reliefs in the plaint. Pw3 further contended.

Pw4, Cornel Yuvent Ndimila (60), stated that he was a retired land surveyor who formerly worked with the Ministry of Lands and Human Settlements for the period of 1981 – 2<sup>nd</sup> February, 2020. That following the court order of 25.9.2018, having been dully assigned, he surveyed the land with a view to establishing physical location of Farm No. 1553 Mapinga Village, Bagamoyo one eventually it was found distinct from the plaintiffs’ plots. The local leaders witnessed and confirmed it as such (copies of the survey report, a sketch plan and a satellite image-Exh. P6) collectively.

Dw1, Abdallah Said Mchangwa (45) stated that since 2013 he resided at Mapinga Village Bagamoyo for the last six (6) years one of the Masaki Kimele cluster local members “mjumbe”. That the defendant having had procured and occupied the land for quite sometimes, the plaintiff also arrived much as the latters’ plots extended to the defendant’s farm. That if anything, one Haroub had and the subsequent occupiers had been just blackmailed because the disputed land belonged to the defendant.

Dw2, Ponsian Pius Msasa (56) stated that in 1996, but in his absence the defendant who was his brother’s son he purchased a parcel of land which measured 8.5 acres (not 11.0 acres) from the elderly Pazi of Kimele cluster, Mapinga ward. That just at a later stage he only saw copy of the sale agreement. That with respect to the parcel of land in the year

2012 there arose a dispute between the defendant and one Haroub but the later lost the war and battle.

Dw3, Salum Said (54) stated that he was born and brought up at Mapinga village Bagamoyo and was the local village executive officer for the years 1993 – 1999 that with regard to the disputed land which he knew too he witnessed a sale agreement in 1996 where the defendant purchased 8.0 acres from one Sultan Omary Pazi. That as a member of the local authorities with respect to the land in 1997 they approved the defendant's application for survey then in 2012 application for change of use from a mere shamba to residential purposes only in 2013 to have the dispute reported to him.

Dw4, Victor Raphael Luvena (44) stated that with regard to the present case, the disputed land belonged to him as he purchased 8.0 acres of it for shs. 1.0 million from one Sultan Pazi in 1996 and the local cluster executive officer also witnessed the agreement (as per Photostat copy) much as advocate Julius Ndanzi who had conducted of the case initially still retained the original records (only for identified purposes copies of the sale agreement and receipt were admitted as ID "D1") collectively. That the reason for difference between the pleaded 11.3 acres and 8.0 acres stated in the sale agreement, was that the actual one was 11.3 acres which was not established until such time when the plot was surveyed in 1997 (only for identified purposes copy of the sketch map was admitted as ID – D2) but on arrival from studies abroad in 2007 he just found that the said Sultan Pazi had re sold the land to one Haroub and the plaintiffs. The defendant further testified that upon scrutiny, discussion and Haroub's

apology, he (the defendant) compensated the blackmailed Haroub with an alternative plot. That initially the parties had a case in the ward tribunal, then an appeal in District Land and Housing Tribunal but the plaintiffs lost the battles all through (Photostat copy of the Ward Tribunal's judgment admitted as ID "D5") that by the court order dated April, 2019 and for retrieval of the disputed boundaries, on that one the land authorities were done but for the defendant's discontents and or doubts on the report (Exh. "P6") the latter having had complained to and the permanent secretary to the responsible Ministry nullified it all in writing and directed for a fresh exercise (copies of Dw4's and the secretary's letters admitted as ID "D4") collectively.

At least it is an undeniable fact that as distinguished from the others, having had been surveyed now the defendant's land it became Farm No. 1553 its size may have been 11.3 acres or even more bigger yes, but both the defendant and the surveyors should have done it all only within limits of 8.0 acres sold to him (according to the sale agreement- ID "D1" and testimonies of Dw2 an Dw3 beyond which, chances of the others' (inclusive of the plaintiff's plots being encroached wouldn't have been ruled out leave alone with respect to the plaintiff's plot or apparently the extra 3.3 acres the vendor Sultan Pazi having had passed no title to the defendant. More so I am guided by provisions of Section 101 of the Evidence Act Cap 6 RE 2019. The issue of the survey/ sketch map now showing 11.3 as the actual acreage it is neither here nor there much it is not a survey map or a sketch map as the case may be that constituted a letter of offer, certificate of title or substitute thereof. As Pw4 put it, the possibilities of the plaintiff's plots and that of the defendant's Farm no.

1553 being different all together they were not eliminated. Second, whether or not but following the court the exercise to confirm boundaries it was improperly conducted and there followed the mother ministry's direction to do it all over again (ID "D4") but the direction hadn't been complied with it is immaterial in my considered opinion.

With all that said, without more words the plaintiffs have proved their case on balance of probabilities. The suit succeeds with costs. It is so ordered.

Right of appeal explained.

**S. M. RUMANYIKA**  
**JUDGE**  
**11/12/2020**

The judgment delivered under my hand and seal of the court in chambers this 11/12/2020 in the presence of Ms. Consolata Malolela, learned counsel for the plaintiff and Mr. Hamza Matongo, learned counsel for the defendant.



  
**S. H. SIMFUKWE**  
**DEPUTY REGISTRAR**  
**11/12/2020**