

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**LAND CASE NO. 128 OF 2012**

**JUSTINE PAUL MUKABI AND 50 OTHERS ..... PLAINTIFFS**

**VERSUS**

**NYASO ENTERPRISES CO. LTD.....1<sup>ST</sup> DEFENDANT**

**COAST AUCTION MART CO. LTD &  
COURT BROKERS.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**I. ARUFANI, J.**

The plaintiffs prays for judgment and decree against the defendants for a declaration that, the plaintiffs are lawful owners and occupiers of un-surveyed land situated at Bwawani Mapinga Village within Bagamoyo District in Coast Region and the defendants are trespassers, intruders and illegal occupiers of the land. They also prays for the order of evicting the defendants or any other person residing thereto, general damages, payment of TZS 100,000,000/= as a compensation to each house of the plaintiffs demolished by the defendants, interest at commercial and court rates of 12% and costs of the suit.

The brief history of the dispute as appeared in the pleadings of the parties is to the effect that, the plaintiffs averred to be the lawful owners of the land in dispute as some of them have lived in the land for a long time after being granted the land by the village as

mashamba pori and others bought the lands from the indigenous in the presence of the village leaders and they had built the residential houses thereto. It is stated in the plaint that, on July 2010 the first defendant reported to Mapinga Police Station that some people had invaded their farm and that report caused some people to be arrested and charged before District Court of Bagamoyo in Criminal Case No. 213 of 2010 for criminal trespass to the land and removal of boundaries.

On 28<sup>th</sup> day of December, 2011 the trial court delivered its judgment in the said criminal case and the accused persons were convicted and sentenced to serve twelve months imprisonment. Subsequent to the conviction and sentence, the trial court issued an order of evicting the trespassers from the land. On 30<sup>th</sup> day of December, 2011 the second defendant issued to the convicts a seven day notice to vacant from the land they had trespassed. The plaintiffs stated further that, on 6<sup>th</sup> day of January, 2012 the defendants demolished the houses of the plaintiffs in the case at hand who were not parties in the above mentioned criminal case and were not covered by the notice which was issued. It is stated in the plaint that, the demolition of the plaintiffs' house caused them to suffer mental and psychological tortures and decided to sue the defendants in this court for the above mentioned reliefs.

On the other hand the first defendant stated to be the lawful owner of the land in dispute after being given the same by its original owner and stated the same was surveyed ten years ago and issued with the title deed with No 55676. The first defendant stated that, on

mashamba pori and others bought the lands from the indigenous in the presence of the village leaders and they had built the residential houses thereto. It is stated in the plaint that, on July 2010 the first defendant reported to Mapinga Police Station that some people had invaded their farm and that report caused some people to be arrested and charged before District Court of Bagamoyo in Criminal Case No. 213 of 2010 for criminal trespass to the land and removal of boundaries.

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the 29<sup>th</sup> day of May, 2010 a group of people popularly known as *Mungiki* invaded the land in dispute and threatened to kill their watchman. It is stated by the first defendant that, the said people started to divide the land among themselves and some of them uprooted the boundary beacons and destroyed the trees which had been planted on the land. The matter was reported to Mapinga Police station and about five people were arrested in the farm and others were arrested later on while others succeeded to flee away. The people who were arrested were arraigned before the District Court of Bagamoyo with the offence of criminal trespass to the land and were convicted and sentenced to serve twelve months imprisonment.

The defendants stated that, the trial court ordered the removal of the trespassers and invaders from the suit land and the same was executed accordingly and said the order of execution has never been challenged to date. They stated further that, the plaintiffs have never had peaceful occupation of the land in dispute and were trespassers to the land hence their removal from the land in dispute was proper and they cannot claim any damages. Finally the defendants prayed the suit to be dismissed with costs. During the hearing of the case the plaintiffs were represented by Miss Victoria Paulo, learned advocate and was assisted by Mr. Francis Makota, learned advocate. While the first defendant was represented by Mr. Barnabas Luguwa, learned advocate the second defendant was represented by Mr. Aloyce Sekule, learned advocate. Four witnesses testified on the side of the plaintiffs and two witnesses testified on the side of the defendants.

Issa Muhibu Kibwana, (PW1) told the court is the resident of Kwa kibosha Mapinga area from 1968 and is the chairman of Kwa kibosha hamlet from 2000. He said that, he know some of the plaintiffs whose houses were demolished and said the houses which were demolished are at Kwa kibosha and Bwawani area within Mapinga village. He stated further that, the houses were demolished in 2012 and the owners of the demolished houses had lived in that area for long time. He said he don't know the first defendant and his office was not informed about the exercise of demolishing the houses in his hamlet. He explained the procedures of applying for surveying the land in the village and said for the whole period of his leadership he has never been involved in any meeting of discussing and approving an application from the first defendant to survey the land in their hamlet or village.

When PW1 was cross examined by Mr. Aloyce Sekule he said that, after the houses of his people being demolished he advised them to follow the legal course to pursue their claims. He stated further that, when he reported the matter to their Village Executive officer, he was told by the Village Executive officer that, there was an order of the court which ordered the houses to be demolished. He said there is an area called Bwawani in Mapinga Village but there is no village called Bwawani Farmers Village. He said the residents whose houses were demolished were indigenous of that area as some of them inherited the land from their parents and others purchased the land from the indigenous. He denied to have witnessed the sale

agreements of the land sold to the plaintiffs and he don't know who sold the land to them.

He also said it might be possible that, the first defendant purchased the land in dispute in the similar way but he don't know who sold the land to them and he don't know if the first defendant has title deed of the land. When he was cross examined by Mr. Luguwa he said Mzee Kibosha was his uncle and he used to hear somebody called Bonaventura Salala but he don't him. He said he don't know if the first defendant had any relationship with the family of Bonaventura Salala. When he was re-examined by Mr. Francis Makota he said the area of Bonaventure Salala is not the area of dispute but is a different area. He said procedurally all sale of land in the village is supposed to be made through the village authority to avoid future conflict.

Ramadhani Said Kalenga, (PW2) told the court is complaining about demolition of their houses and the act of being evicted from their land without any lawful order of evicting them from their land. He said their houses were demolished and their properties were destroyed by the defendants. He said the size of the land in dispute is about fifteen acres and it has never been surveyed and they inherited the same from their father. He said the owners of the houses demolished were about 119 but only 52 out of them have managed to come to court.

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to demolition their houses. He said there was a notice affixed on a mangoes tree which is on the side of their road and the same was in relation to the case which was between the first defendant and their neighbours who were charged and convicted for criminal trespass to the land of the first defendant. The copy of the notice was admitted in the case as an exhibit P1. He said that, as the notice was not directed to them they didn't take any action. He said on 6<sup>th</sup> day of January, 2012 the defendants demolished their houses and damaged their properties. He testified further that, after the demolition of their houses they reported to PW1 who advised them to go to court. He prayed the court to order the defendants to pay them the reliefs prayed in the plaint.

When he was cross examined by Mr. Aloyce Sekule he said that, his name is Ramadhani Juma and Ramadhani Said Kalenga was his uncle and is the one sold the land to him but is now a deceased. He said in their area they elected their own leaders and made their own receipts for the contributions which were making but they don't know where the contributions are kept. He said the houses at Kwa kibosha area were not demolished. He said he purchased his land on 26<sup>th</sup> day of May, 2011 and build his house thereon by using concrete blocks and roofed the same by using southern roofing tiles and was demolished on 6<sup>th</sup> day of January, 2012.

Justine Paul Munabi, (PW3) who is referred in the plaint as Justine Paul Mukabi told the court that, he is the owner of the house demolished by the first defendant at Bwawani Mappinga area. He said to have purchased the plot of land where the house was demolished



from Nuru S. Rwambo and said more than hundred houses were demolished in their area. He said he was living in the house with his family when it was demolished and he didn't manage to rescue anything from the house. He said his house was self-contained as it had sitting room, dining room, kitchen, master bed room, two bed rooms and public toilet. PW3 tendered to the court the copy of sale agreement of the land he purchased from Nuru S. Rwambo and the same was admitted in the case as an exhibit P2.

He said the value of his house was not less than TZS 120,000,000/=. He said he had drilled a water bore hole and he was selling water. He said on 30<sup>th</sup> day of January, 2011 they saw a notice (exhibit P1) which was affixed on the mangoes tree but after making a follow up they discovered the notice was directed to the people who were on the other side of their area. He said as the notice was not directed to them he didn't take any action. On 6<sup>th</sup> day of February, 2011 their houses were demolished. He said when his house was demolished he was not at home but he was informed by the member of his family through mobile phone. He prayed the court to recognize them as the lawful owner of the land in dispute and the defendants who are trespassers to be ordered to vacate from the land. He also prays the court to order the first defendant to pay TZS 100,000,000/= for each house which was demolished and the costs of the suit.

When he was cross examined by Mr. Aloyce Sekule he said his real name is Justine Paulo Munabi and *Mukabi* is a typing error. He said before purchasing the land the vendor of the land, Nuru S. Rwambo and the leaders of the area told him the vendor was an

indigenous of that area. He said he has not seen the vendor who sold the land to him because after the house being demolished she ran and he don't know where she is living now. He said there is no valuation done to the houses which were demolished but he estimated the value of the house and included the value of the furniture which were destroyed. He said he built the house from 2010 when he purchased the land and entered into the house in 2011. He said he has not gone to VEO of their village to report the event and he don't know if their village chairman knows they have a case in court.

Saidi Mohamed Manjura, (PW4) told the court that, he started living at Mapinga from 1978 and he was the chairman of Mapinga Village from 2004 up to 2014. He said that, he came to know the area of Bwawani when the instant dispute emerged and previously he used to know the area as Kwa Kibosha hamlet which is within Mapinga village. He said from when he was elected village chairman, there is nobody applied to survey his land in their village and explained the procedure of applying for leave of surveying a land in the village.

He said in 2012 he was informed by the police who had gone to maintain peace and security in the exercise of demolishing houses at Kwa Kibosha hamlet that, the exercise was carried out in execution of the order issued by the District Court of Bagamoyo. He said that, when the owners of the demolished houses went to complain to him he told them that, the houses were demolished under the order of the court but he had not seen the court's order. He said when he was

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He said in 2012 he was informed by the police who had gone to maintain peace and security in the exercise of demolishing houses at Kwa Kibosha hamlet that, the exercise was carried out in execution of the order issued by the District Court of Bagamoyo. He said that, when the owners of the demolished houses went to complain to him he told them that, the houses were demolished under the order of the court but he had not seen the court's order. He said when he was

elected village chairman he found people living in that area. He testified further that, he don't know the value of the houses demolished and he don't how many houses were demolished.

When PW4 was cross examined by the counsel for the defendants he said that, when he was elected chairman, Mapinga village had six hamlets which were Mtambani, Kwa Kibosha, Kiaraka, Kihere, Udindifu and Changuhela. He said that, each hamlet has its own stamp and they can witness sale of a land but after sale the parties are supposed to go to the village office to report their sale agreement. He said he don't know Bwawani Farmers village and he came to hear that name after the house being demolished. He said that, according to their village's record, Bawani area has never been surveyed. He said after being informed by the policemen he went to the area of event and found the houses demolished were at Kwa Kibosha hamlet.

He said the receipts used to collect any money in their District are obtained from the District Council and said he don't know the receipts used by the plaintiffs and said he cannot talk about them. He said he know the company known as Nyaso which has land owned jointly but is in the village called Kondo which is bordering with their village. He said he has not seen anywhere in their record stated Nyaso has land in their village. He said some of the houses which were demolished were finished and people were living therein and others were still under construction and were made by concrete bricks. When he was re-examined by Mr. Francis Makota he said that,

Bawani Farmers Village and Kwa Kibosha are the same area but they used different names to refer to the said area.

Robert Mabuga, (DW1) testified on the side of the defendants and told the court that, he is a businessman and they have a company registered in the name of Nyaso Enterprises Company Limited which its shareholders are himself as Robert Mabuga, Robert Salala, John Salala and Benadeta Salala. He said the first owner of the land in dispute was Bonaventure Anthony Salala who was his uncle and the father of the rest of the shareholders of their company. He testified that, the said Bonaventura Anthony Salala was living at Mapinga hamlet and thereafter he shifted to Mikocheni area and when he became old he left the land in dispute to his children and consented the same to be entered into their company.

He said the land in dispute is bordering with Baobab Secondary School and its size is about 18,640 square meters. He said the land in dispute was surveyed and on the 31<sup>st</sup> day of March, 2004, the Ministry of Land issued to their company the certificate of occupancy with No. 55676 which was admitted in the case as an exhibit D1. He said in 2010 he received a phone call from his watchman that, there was a group of people who had invaded their land and after getting the information he reported the event at Mapinga police station. After reporting and showing the policemen their certificate of occupancy of the land in dispute they went to the land where they found a group of people who after seeing the policemen they started running and they managed to arrest nine out of the said invaders. He said when

they checked the boundaries mark of the land they found they had been removed.

DW1 told the court that, the people who were arrested were arraigned before the District Court of Bagamoyo in criminal case No. 213 of 2010 with criminal trespass and were convicted and sentenced to serve one year imprisonment. The copy of the judgment of the District Court in the said criminal case was admitted in the case as an exhibit D2. He said that, after the judgment the trial court ordered the trespasser to be removed from the land and the letter from Bagamoyo District Court dated 30<sup>th</sup> day of December, 2011 directing the second defendant to execute the order of the court was admitted in the case as an exhibit D3. He said that, when Mr. Pius from the second defendant's company went to remove the trespassers from the land he found three houses built on the land and other area had been cultivated.

He said the court broker found the roof of the said houses were made by grasses and one of the house which was being used as the office of Bwawani Famers Village had a flag of CCM. He said the stated three houses were demolished on 6<sup>th</sup> day of January, 2012 by the second defendant who was executing the order of the court and the exercise was supervised by OCD of Bagamoyo. He said the exercise took short period as the houses demolished were only three and there was no any house built by concrete bricks and roofed by using corrugated iron sheet as alleged by the plaintiffs' witnesses. He said he has not seen any valuation report for any house alleged to have been demolished. He said further that, the houses demolished

were within Mapinga village and not out of that village. DW1 prayed the court to declare the area is a lawful property of the first defendant.

When cross examined by Miss Victoria Paulo he said that, according to exhibit D1 the current owner of the land in dispute is Dr. Livingstone Memorial and Bagamoyo Zoological Park limited. He said they sold the land and the same was transferred to the new owner after the criminal case filed in the District Court of Bagamoyo and the application which had been filed in this court by the plaintiffs being determined and think the dispute had come to an end. He said the watchman of their farm was Joseph and the invaders demolished his house after entering into the land. He said the three houses were built after the invaders trespassed onto the land. He said they had planted teak trees and coconut trees and were cultivating paddy in the farm.

He said the District Court of Bagamoyo decided that, the first defendant is the lawful owner of the land in dispute and the people who were found in the farm are the one who were served with notice to vacate from the land. He said that, he has nothing to prove they acquired the land in dispute from Bonaventure Anthony Salala. He said that, in surveying the land they followed all the required procedure as they were given village minutes authorizing them to survey the land but he has not produced the minutes in court as he thought the certificate of title would have been enough to establish their ownership to the land. He said Bonaventure Anthony Salala was allocated the land in dispute by the village authority and he gave the

land to his children so that they can develop the same. He said the trespassers entered onto the land in 2010 when the case was in court.

When he was re-examined by Mr. Aloyce Sekule he said that, when they sold the land to the new owner the case at hand had already been instituted in court. He said there is no any other civil case which was filed in court to determine the ownership of the land in dispute except this one. He said the land was given to them by Bonaventure Anthony Salala through family arrangement. Ibrahim Abraham Mbonde, (DW2) told the court is a councilor of Mapinga Ward. He said there is no village in the ward is serving but hamlets which are Mtambani, Kwa Kibosha, kimele, kiharaka, kiembeni, udindifu, Tungutungu and Changwahela. He said that, some of the plaintiffs have their permanent residence in his ward and others have no permanent residence in his ward.

He said the ward was formulated after merging Mapinga village and Kiharaka Village. He said there has never been an area called Bwawani Mapinga or Mapinga Bwawani Village in his ward. He said he don't know anything in relation to the sale of the land in dispute as his office is not dealing with sale of the land. He said that is the duty of the hamlets and after sale of the land the hamlet is required to submit to the ward office part of the development levy they got from selling the land. He said he don't know if there was a house valued TZS 100,000,000/= which was demolished in the land in dispute. He said to have become aware of the existence of the parties'



dispute in 2012 before being elected councilor of the ward and after seeing the houses being demolished.

He said to have heard there was a case in the District Court of Bagamoyo but he don't know was about what. He said after that case being determined he didn't hear anything else until when he was summoned to testify in this case. He stated further that, the area which is in dispute is the area of Kwa Kibosha. He said the receipts annexed to the plaint as VLC 2 were not issued by the District Council as they have no District Council's emblem. He said as he was the chairman of Mtambani ward and not Kwa Kibosha ward he has no knowledge of any application for survey and registration of the land in dispute. He said he don't know when people started living in the land in dispute.

He said though there were people who were living in that area for long time but most of the people had gone to the area recently. He said there were about twenty to twenty five families in the area but is not sure about the number of residents of that area. He also said he don't know if the area is surveyed and he don't know who is the real owner of the land in dispute as he came to know the area while is already in dispute. After hearing the evidence from both sides the counsel for the parties prayed and allowed to file in court their final submission. I will not restate what the counsel for the parties stated in their submission but I will be referring to them in the course of determining the issues framed for determination in this matter which are as follows:-

- (1) Who is the rightful owner of the land in dispute?
- (2) Whether the person who distributed the farms to the plaintiffs had authority to do so.
- (3) Whether the land in dispute is a registered land.
- (4) Whether title deed No. 55676 relates to the land in dispute.
- (5) Whether the demolition of the houses of the plaintiffs by the second defendant was procedural and lawful.
- (6) What relief(s) the parties are entitled.

After considering the above issues, the court has found it cannot start with the first issue as the answer to the first issue depends to a great extent to the answers which will be arrived in the second, third and fourth issues. In the premises I will start with the second issue and thereafter I will proceed with the subsequent issues. The court has considered the submission of the counsel for the plaintiffs in respect of the second issue where she stated the plaintiffs did not tell the court were distributed the land by any authority but after going through the plaint the court has found paragraph six of the plaint states clearly that, the plaintiffs lived in the land in dispute for long time after being granted the same by the village as "*mashamba pori*".

Therefore the argument by the plaintiffs' learned counsel that, there is nowhere the plaintiffs stated were distributed the land by any authority is not true as is contrary to what is stated in the mentioned paragraph of the plaint. Since there is no any witness testified before the court the plaintiffs were distributed the land by any authority and as the counsel for the plaintiffs stated in her submission there is no

any plaintiff stated to have been allocated the land by any authority then it is the finding of this court that, it has not been proved there is any plaintiff who was distributed the land in dispute by any authority. In the premises the court has found the second issue is supposed to be answered in negative.

Coming to the third and fourth issues which are asking whether the land in dispute is a registered land and whether the certificate of title No. 55676 is in respect of the land in dispute the court has found that, despite the fact that, PW1 said he has not seeing any application made to his office by the first defendant for permission to survey the land in dispute but the court has found DW1 stated that, after the first defendant acquired the land in dispute from its previous owner it applied for the same to be surveyed and it was surveyed in 2003 and the certificate of title with No. 55676 which was admitted in this case as an exhibit D1 was issued to the first defendant for the land in dispute in 2004. This shows when survey was conducted PW1 had not been elected to be chairman of Mapinga Village as he was elected in 2004.

As DW1 adduced evidence to show the land in dispute is registered land as evidenced by exhibit D1 and there is no any evidence adduced from the office which issued the said exhibit to prove the land in dispute is not a registered land and exhibit D1 was not issued in respect of the land in dispute the court has found the plaintiffs have not been able to prove the land in dispute is not registered land and exhibit D1 was not issued in respect of the land in dispute. In the light of what is stated hereinabove the court has

found there is no sufficient evidence adduced by the plaintiffs to prove the land in dispute is not a registered land and Certificate of Title No. 55676 was not issued in respect of the land in dispute.

Back to the first issue the learned counsel for the plaintiffs submitted that, the plaintiffs are rightful owner of the land in dispute and their ownership to the land in dispute is established by some of the plaintiffs to be residents to the land in dispute for long time and others is by way of purchasing the land from the indigenious. In rebuttal the counsel for the defendants submitted that, the rightful owner of the land in dispute is the first defendant as it acquired the land from the previous owner, who was Bonaventure Anthony Salala and after acquiring the same they applied for the same to be surveyed and after being surveyed the first defendant was issued with certificate of title which was admitted in the case as an exhibit D1.

The court has considered the evidence adduced before this court by both sides in an attempt to prove who is the rightful owner of the land in dispute between the plaintiffs and the defendants and come to the finding that, despite the fact that the plaintiffs in the matter at hand are fifty one but only two out of all the plaintiffs testified before the court. Although the learned counsel for the plaintiffs stated in her submission that they prayed to the court for only few plaintiffs to testify before the court on behalf of others but there is nowhere in the record of the court is stated the said prayer was made to the court and granted.

Even if the prayer was made to the court and granted, what matter as provided under section 143 of the Evidence Act 1967, Cap 6 R.E 2002 is not the number of witnesses testified before the court as there is no particular number of witnesses required to prove any fact in issue before the court but whether the evidence adduced before the court by the witnesses testified before the court managed to prove the existence of the fact required to be proved. Nevertheless, the law as provided under section 110 (1) of the Evidence Act, Cap 11 R.E 2002 states clearly that; whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

In addition to that section 119 of the Evidence Act states clearly that, when the question is whether any person is owner of anything to which he is shown to be in possession, the burden of proving that he is not the owner is on the person who asserts that he is not the owner. Since the plaintiffs asserted in the plaint are the rightful owner of the land in dispute it was their duty to prove the first defendant is not the owner of the land.

By being led by the above provisions of the law the court has considered the argument made in the submission of the learned counsel for the plaintiffs that, some of the plaintiffs acquired the ownership of the land in dispute by being indigenous to the land for long time and were allocated the land by the village authority and find that, there is no any of the plaintiffs indicated in the plaint to have acquired the ownership of the land by being indigenous testified before the court to establish his ownership to the land. The two

plaintiffs who testified before the court as PW2 and PW3 falls into the category of the 1<sup>st</sup> up to 32<sup>nd</sup> plaintiffs who as stated in paragraph six of the plaint they acquired their ownership to the land by purchasing the same from the indigenous.

However, though it is stated in the plaint the mentioned witnesses acquired their ownership to the land by purchasing the same from the indigenous but the evidence of PW2 who told the court his name is Ramadhani Saidi Kalenga is not tallying with what he stated in his testimony he made before the court. The court has found that, while PW2 told the court in his testimony he was born at Mapinga village and he inherited the land in dispute from his parents but paragraph six of the plaint shows Ramadhani S. Kalenga is among the plaintiffs who purchased the land from the indigenous. His testimony that he inherited the land from his parents is in contradiction with what is stated in paragraph six of the plaint and its annexure VLC 1 which shows Ramadhani S. Kalenga purchased the land from Yohana D. Mwakitwila on 26<sup>th</sup> day of May, 2011. If he inherited the land from his parents how comes that paragraph six of the plaint and annexure VLC 1 are stating he purchased the land from the above mentioned vendor.

Another contradiction observed by the court in the evidence of PW2 as rightly submitted by the learned counsel for the defendants in his submission is that, while PW2 told the court his name is Ramadhani Saidi Kalenga but when he was cross examined by the learned counsel for the defendants he told the court his name is Ramadhani Juma and not Ramadhani Saidi Kalenga. He told the

court further that, Ramadhani Saidi Kalenga is now a deceased person hence he cannot come to court to testify. He didn't even tell the court he was testifying before the court on behalf of Ramadhani S. Kalenga on a capacity of being his administrator or on what capacity. All these contradictions observed in the testimony of PW2 caused the court to find as rightly submitted by the learned counsel for the defendants, this is not a witness whose evidence can be relied upon by the court to find he has managed to establish his ownership to the land or ownership of any other plaintiff to the land in dispute.

Coming to the evidence of PW3 who told the court he purchased the land from Nuru S. Rwambo he tendered to the court the copy of the sale agreement of the land and the same was admitted in the case as an exhibit P2. The court has considered his testimony and come to the finding that, his ownership to the land in dispute is questionable. The court has entertained doubt to the authenticity of the sale agreement of the land entered between PW3 and Nuru S. Rwambo after seeing PW3 told the court he cannot call the vendor sold the land to him to testify before the court on his side as after the vendor seeing the houses in their area had being demolished she ran away and PW3 do not know where she is up to now. The court has failed to understand if the said vendor was the lawful owner of the land why she ran after seeing the houses been demolished.

This makes the court to come to the finding that, even if it is true that PW3 purchased the land from the mentioned vendor but there is no evidence to establish the vendor was the lawful owner of the land sold to PW3. It is the view of this court that, it might be possible the said vendor was one of the trespassers to the land and

the land she sold to PW3 was not her lawful property. The court has also entertained doubt after seeing even Bawani Famer Village which is indicated as the authority used to witness sale of the land to PW3 and other plaintiffs was not recognized by PW1, PW4 and DW2 as the lawful authority which would have performed the duty of witnessing the alleged sale agreements.

The court has also entertained doubt on the sale agreement of the land used to establish ownership of the land to PW3 after seeing that, as stated in the written statement of defence of the first defendant and testified by DW1 the sale agreement between PW3 and Nuru was entered at the time when the first defendant had already reported to Mapinga Police station that, the land had been invaded by “*Mungiki*” and some of the said “*Mungiki*” had already been arrested and charged in the District Court of Bagamoyo with an offence of criminal trespass to the land. The court has found exhibit P2 shows PW3 entered into the sale agreement with Nuru S. Rwambo on the 2<sup>nd</sup> day of November, 2010 while as stated by DW1 the first defendant had already reported to Mapinga Police Station from 29<sup>th</sup> day of May, 2010 that, the land had been invaded by trespassers and criminal case No. 213 of 2010 had already been filed in the District Court of Bagamoyo against the trespassers who were arrested.

Back to the evidence of PW1 who told the court is the Chairman of Kwa Kibosha hamlet where is alleged the houses of the plaintiffs were demolished and stated he know some of the plaintiffs in the case as the indigenious of that area but he didn't mention to the court who among the plaintiffs he know and whose house was demolished in



the land in dispute and what was the value of any of the demolished houses. The evidence of this witness together with that of PW4 who told the court is the chairman of Mapinga village from 2004 and that of DW2 who told the court is the councilor of Mapinga Ward was given in a very general way as it does not show who among the plaintiffs his house was demolished while it was not within the farm of the first defendant. Each of them testified before the court that, they know some of the plaintiffs without telling the court who among the plaintiffs is known to them and who is not known to them. Under that circumstances it has been difficult for this court to find their evidence managed to prove ownership of any of the plaintiff to the land in dispute.

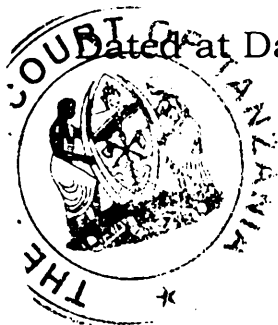
Since section 119 of the Evidence Act place the duty to prove a person who asserting is the owner of anything to the person who is disputing the said person is not the owner of the said thing then it is the finding of this court that, the plaintiffs have failed to discharge their duty as stipulated in the said provision of the law which for clarity purpose state as follows:-

*“When the question is whether any person is owner of anything to which he is shown to be in possession, the burden of proving that he is not the owner is on the person who asserts that he is not the owner.”*

As for the fifth issue which is asking whether demolition of the houses of the plaintiffs done by the second defendant was procedural and lawful the court has found that, as the plaintiffs have failed to

prove their ownership to the land in dispute where is alleged the houses were demolished there is no way it can be said the demolition was not procedural and lawful. The court has arrived to the above finding after seeing there is no any plaintiff managed to establish his house was demolished by the second defendant unlawfully. To the contrary the court has found DW1 stated in his testimony and without being disputed that, the houses demolished by the second defendant were temporary houses made by mud and grasses which were built in their farm by the trespassers who some of them were arrested, charged and convicted for criminal trespass to the land. In the upshot the court has failed to see how it can say the demolition was not procedural and lawful.

In the strength of all what has been stated hereinabove the court has found the plaintiffs have failed to prove the claims they filed in this court against the defendants. Consequently, the plaintiffs' suit is accordingly dismissed with costs.



Dated at Dar es Salaam this 20<sup>th</sup> day of April, 2018

*I. Arufani*  
**I. ARUFANI**  
**JUDGE**  
**20/04/2018**