IN THE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: GALEBA, J.A., MGEYEKWA, J.A. And MLACHA, J.A.)

CIVIL APPEAL NO. 666 OF 2024

MUHISI YUSUPH..... 1ST APPELLANT
ISACK MAGALATA ..... 2nd APPELLANT
SWEDI SHABAAN HASSAN ..... 3rd APPELLANT

VERSUS

URAMBO DISTRICT COUNCIL ..... 1ST RESPONDENT
ATTORNEY GENERAL ..... 2ND RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania, at Tabora)

(Kadilu, J.)

dated the 31st May, 2024
in
Land Case No. 2 of 2023

JUDGMENT OF THE COURT

1st & 15th October, 2025

MGEYEKWA, J.A.:

The appellants, Muhisi Yusuph, Isack Magalata and Swedi Shaaban Hassan (the first, second and third appellants respectively) are appealing against the decision of the High Court of Tanzania at Tabora, dated 31st May, 2024, wherein the learned trial Judge dismissed the appellants' suit in its entirety, with costs.

The factual background giving rise to the appeal, as discerned from the record of appeal, may be briefly stated as follows: By a plaint filed in the High Court and subsequently amended on 12th April,

2024, the appellants alleged that sometimes in 1978, before the formal establishment of Urambo District Council, the local authority had permitted certain individuals to construct and operate business stalls (the disputed premises) at Urambo Central Market area. It was their contention that the permission was granted on the basis that each businessman would own the stall he had built, with the right to sell, lease or otherwise dispose of the same.

Following the establishment of Urambo District Council, the said local government authority allegedly acknowledged the ownership of the original stallholders and began to collect levies from them. The first and second appellants claimed to have lawfully purchased their respective disputed premises from the original stall owners, whereas the third appellant alleged that he had inherited his stall from his late father. All three appellants claimed that they continued to pay levies to the first respondent.

It was the appellants' further claim that on 22nd April, 2021, the first respondent unlawfully classified them as tenants and demanded arrears of rent in the sum of TZS 135,000.00 from each appellant. They rejected the demand on the premise that they were owners of the business premises and not tenants thereof. Subsequently, on 7th May, 2021, the first respondent demolished the appellants' disputed

premises. It was alleged that during the course of the said demolition, the first respondent unlawfully destroyed and or confiscated goods and cash belonging to the appellants. Lists of the purportedly seized items were annexed to the amended plaint.

On the basis of the foregoing, the appellants prayed for the following reliefs: (i) a declaratory order that they were the lawful owners of the business stalls; (ii) a declaration that the demolition and confiscation of their properties by the respondent was unlawful; (iii) an award of general damages in the respective sums of TZS 51,240,000.00, TZS 25,073,000.00 and TZS 38,148,000.00 for the first, second and third appellants respectively; (iv) interest at the rate of 20% per annum on the said amounts; and (v) compensation for the loss suffered.

Upon being served with the amended plaint, the respondent filed a written statement of defence disputing the appellants' claims in toto. The respondent contended, *inter alia*, that the disputed premises were constructed on public land, and lawfully owned by the first respondent and evidenced by a Certificate of Title in the name of the first respondent. It was further asserted that the first respondent had never conveyed ownership of the land or the disputed premises to the appellants and that no lawful sale of the disputed premises had taken

place, as the alleged vendors held no transferable interest. The respondent maintained that the disputed premises were temporary structures constructed on public land and that the principle of *quicquid plantatur solo, solo cedit* applied. It was thus argued that the appellants were lawfully subjected to rent and that the demolition was justified owing to their failure to vacate the premises despite notice.

At the commencement of the trial, the following issues were framed for determination:

1. *Whether the appellants were lawful owners of the business stalls in dispute;*
2. *Whether the respondent was justified in demolishing the said business stalls and destroying the properties therein; and*
3. *Whether the appellants suffered any loss attributable to the impugned actions of the respondent and, if so, what reliefs they were entitled to.*

Having evaluated the oral and documentary evidence adduced by the parties, in her judgment, the learned Judge answered all three issues in the negative. The trial court held that the appellants failed to establish lawful ownership of the disputed premises, there being no evidence of any transfer of title from the first respondent to the appellants or their alleged predecessors in title. The court further found that the demolition was carried out pursuant to proper notice

and in exercise of the respondent's rights over its land. The trial court further found that the appellants had failed to prove their alleged loss. Consequently, the trial court concluded that the appellants were not entitled to the reliefs sought. The suit was accordingly dismissed in its entirety.

Dissatisfied, the appellants preferred the instant appeal to the Court seeking to assail the decision of the High Court initially based on six grounds, but as it will become obvious in due course, this appeal is predicated on five grounds of appeal which are paraphrased as follows:

1. *That, the learned trial Judge erred in law and in fact in holding that the Appellants had not proved that they were the owners of the business stalls.*
2. *That, since it was not disputed that at the time when the dispute arose, the first respondent had not acquired a certificate of title over the suit land, and the learned trial Judge erred in law and in fact in holding that the respondent was the lawful owner of the suit land.*
3. *That, the learned trial Judge erred in law in proceeding on an assumption that the respondents' notices of intention to demolish the appellants' stalls were lawful notices.*
4. *That, the learned trial Judge erred in law in holding that the appellants voluntarily assumed the loss of their properties*

because they refused to take precautions to mitigate such loss after being duly notified.

5. *That, the learned trial Judge erred in law in holding that in the circumstances of the case, the appellants were not entitled to damages from the respondents.*

At the hearing of the appeal before us, the appellants enlisted the legal representation of Mr. Mugaya Mtaki assisted by Mr. Akram Magoti, both learned advocates, whereas the respondents were represented by Ms. Grace Lupondo, learned Senior State Attorney, who teamed up with Mr. Mussa Mpogole, learned Senior State Attorney and Mr. Gureni Mapande, learned State Attorney.

On taking the floor, on the first and second grounds of the appeal which were argued conjointly, Mr. Mtaki faulted the learned trial Judge's finding that the appellants had no proprietary rights in the disputed premises, submitting that the conclusion was erroneous.

According to Mr. Mtaki, the appellants lawfully acquired the disputed premises by purchasing them from their predecessors and had, since acquisition, consistently paid the requisite levies to the first respondent. To support his contention, he referred us to exhibit P8, a letter from the first respondent addressed to the appellants' business association, CHAWABISOKUU. He particularly drew our attention to paragraph 2 of the letter which states, in part, that "*...mmiliki halali*

wa kibanda hicho ni yule aliyejenga kile kibanda", which he translated to mean that ownership of a business stall vests in the person who constructed it. It was his submission that exhibit P8 unequivocally indicated that ownership of a stall was vested in the person who constructed it, and further, that DW2, in his testimony, acknowledged the appellants as the rightful owners of the disputed premises.

Upon being probed by the Court whether the sale agreements had been admitted into evidence, Mr. Mtaki conceded that they had been excluded on procedural grounds. Nonetheless, he maintained that the trial court had found that the appellants were not trespassers. In his view, the appellants were licensees who had constructed the disputed premises with the first respondent's consent. To reinforce this submission, he cited the decisions of **G.F. Kassam v. H.M. Walji & Rukiya A. Walji** [1998] T. L. R 207 and **Sebastian Ngimbwa v. Edwin Y. Shitindi & Another**, Civil Appeal No. 211 of 2022 [2025] TZCA 332 (TanzLII). In the latter case, the Court held that licensees cannot be treated as tenants or subjected to eviction or rent demands in the absence of a landlord-tenant relationship.

On the third, fourth, and sixth grounds, the learned counsel contended that the trial Judge erred in law in holding that the demolition was lawful. He argued that the procedure outlined in

exhibit P8 was not followed, as demolition occurred prior to securing finances for the construction of a model market, contrary to the first respondent's promise and assurance. Mr. Mtaki contended that the appellants' stalls were removed in their absence, without prior notice, and without consultation or involvement of the local leadership. He valiantly argued that the removal exercise was selectively applied, as other traders within the same area were not removed.

The learned counsel further submitted that the eviction notice was undated and served without prior warning, thereby taking the appellants by surprise and depriving them of a fair opportunity to take necessary steps to safeguard their interests. He contended that the entire eviction process was marred not only by procedural irregularities and discriminatory treatment but also amounted to a violation of Article 24 of the Constitution of the United Republic of Tanzania, 1977 which guarantees the right to property, and Article 107A (1), which enjoins courts to administer justice free from undue technicalities.

With respect to the claim for damages, Mr. Mtaki faulted the trial Judge for failure to award compensation. He maintained that, given the unlawful demolition, the appellants were entitled to damages. Each appellant, he submitted, adduced specific evidence of loss,

referring to exhibits P4, P6, and P7 itemised inventories of destroyed goods. In conclusion, Mr. Mtaki urged the Court to allow the appeal in its entirety and grant the reliefs sought by the appellants.

Ms. Lupondo, on the other hand, opposed the appeal, maintaining that, it was without merit. She supported the High Court's decision as sound in both reasoning and outcome, arguing that the appellants failed to discharge the burden of proof. She submitted that the first and second appellants did not dispute the fact that they had not constructed the disputed premises, and failure to call the alleged vendors as material witnesses, was fatal. She further noted that the third appellant had equally failed to adduce evidence to establish that he had inherited the stall. Citing **Hemed Said v. Mohamed Mbilu** [1984] T.L.R. 113, she argued that such omissions warrant an adverse inference.

Regarding exhibit P8, Ms. Lupondo submitted that it conferred no ownership rights, as it was addressed to CHAWABISOKUU and not to the appellants individually. Further, there was no proof that the appellants were members of the association. She contended that they were mere tenants who defaulted on rent and thus became trespassers.

On the allegation that the appellants were licensees, Ms. Lupondo submitted that the appellants bore the burden to prove their status through documentary or other cogent evidence, which they failed to discharge. She cited **Geita Gold Mining Ltd & Another v. Ignas Athanas**, Civil Appeal No. 227 of 2017 [2019] TZCA 702 (TanzLII), to underscore that the existence of a licensee must be proved by the party asserting it.

On the third, fourth, and sixth grounds, she argued that the demolition was lawful, as the appellants had defaulted on payment of rent. She relied on **Lawrence Magesa t/a Jopen Pharmacy v. Fatuma Omary & Another**, Civil Appeal No. 333 of 2019 [2022] TZCA 605 (TanzLII), and argued that trespassers were not entitled to any notice before eviction. She noted that exhibit P1, a demand notice for TZS 135,000.00 in arrears, had been served and acknowledged by the appellants, who nonetheless failed to comply, thereby assuming the risk of loss.

Concerning the appellants' claim for damages, Ms. Lupondo contended that the appellants did not prove actual loss. She submitted that the goods were preserved for collection, and while exhibits P4, P6, and P7 listed the alleged losses, no receipts or ownership documents were tendered in support.

In rejoinder, Mr. Magoti reiterated their submissions and added that the trial court erred in treating the huts as part of the land, contending that they were temporary movable chattels, not fixtures. He further argued that the issue of licensee by conduct arose from the evidence and was therefore a matter the trial court was obliged to address in its judgment.

Before determining this appeal, from the outset, we wish to observe that since the matter before us is a first appeal, the Court is duty-bound to reconsider and re-evaluate the entire evidence afresh and may draw its own conclusions. See: **Okeno vs Republic** (1972) E.A. 32. However, such mandate must be exercised with great care and caution. The jurisdiction may be exercised if there is no evidence to support a particular conclusion, or if it is shown that the trial judge failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong. See the case of **Peters v. Sunday Post Limited** (1958) E.A 424).

On the first and second grounds, it is undisputed fact that none of the appellants constructed the disputed structures, as admitted in their testimonies. Their claims of ownership rested on alleged purchase or inheritance, neither of which was supported by documentary proof. Crucially, the vendors were not called to testify, a

serious omission warranting an adverse inference in terms of the principle in **Hemed Said** (supra), as rightly submitted by Ms. Lupondo.

The appellants relied on exhibit P8 to assert ownership of the disputed premises. However, that letter merely confirms that the first respondent retained ownership of the land and permitted temporary construction and use of the disputed premises, an arrangement more indicative of a licensee than ownership. Also, as rightly submitted by Ms. Lupondo, the appellants tendered no sale agreements or documentary proof to support their claims. Their position rested on bare assertions. As the trial court properly observed, mere possession, however long, does not confer ownership. The law is clear: under section 110 of TEA that, the burden of proof lies on the party who asserts a fact. That burden, in our considered view, was not discharged. In **Paulina Samson Ndawavya v. Theresia Thomasi Madaha**, Civil Appeal No. 45 of 2017 [2019] TZCA 453 (TanzLII), the Court reaffirmed that the burden of proof rests with the party asserting, and only shifts it once discharged. It held:

> *"It is again trite that burden of proof never shifts to the adverse party until the party on whom onus lies discharges his and that the burden of*

proof is not diluted on account of the weakness of the opposite party's case."

Moreover, the appellants' invocation of the issue of licensee is misconceived. A close reading of their pleadings reveals no express or implied reference to a licensee. Their case, as pleaded, was firmly anchored on the claims of ownership both of the land and the structures thereon. It is trite law that parties are bound by their pleadings and that a court is not entitled to determine or grant relief on matters that were neither pleaded nor proved. This cardinal principle was underscored by this Court in **The Registered Trustees of Roman Catholic Archdiocese of Dar Es Salaam v. Sophia Kamani**, Civil Appeal No. 158 of 2015 (unreported), wherein the Court, citing with approval the Nigerian decision in **Adetoun Oladeji (NIG) v. Nigeria Breweries** PLS S/CI/2002, where it was held that:

" *...it is now a very trite principle of law that parties are bound by the pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of the pleadings, goes to no issue and must be disregarded."*

We entirely agree with the above position. In the instant case, the claim of licensee was not part of the appellants' case at the trial.

It surfaced belatedly on appeal and, as such, amounted to an afterthought. The learned trial Judge cannot be faulted for declining to pronounce on an issue that was never raised for determination. Accordingly, the first and second grounds of appeal are devoid of merit, and are hereby dismissed.

We turn to the third, fourth, and sixth grounds, which were also argued together. At the outset, we observe that the appellants acknowledged the respondent as their landlord but admitted rent arrears for nine months. This default, in our considered view, constituted a breach of their tenancy obligations. It follows that their continued occupation without payment rendered them trespassers in the eyes of the law, hence, not entitled to any notice before eviction and assume the risk of loss. See for instance, the case of **Lawrence Magesa t/a Jopen Pharmacy v. Fatuma Omary & Another** (supra), the Court cited case of **Princess Nadia (1998) Ltd v. Remency Shikusiry Tarimo,** Civil Appeal No. 242 of (2018) (unreported), and held that:

> *"We once again agree with the learned advocate for the respondents that since it was proved that* ***the appellant was a trespasser, she had no right to benefit from her wrongful act.*** *At worst,* ***the appellant***

> ***assumed the risk arising from her unlawful occupation of the premises.*** *Just as she was* ***not entitled to any notice before eviction, she had no right to claim any compensation from the forceful eviction.***" [Emphasis added]

In the present case, exhibit P1 shows a rent demand of TZS 135,000.00, which the appellants acknowledged to receive the demand notice, but willfully refused to pay. Therefore, we find that the trial Judge correctly found that the appellants voluntarily assumed the risk by defying a lawful demand and continuing in unlawful occupation.

With regard to the lawfulness of the demolition, we are not persuaded by the appellants' contention that the exercise was rendered unlawful merely by the alleged failure to involve local leaders. In our view, any procedural irregularities, assuming they existed, are outweighed by the appellants' unlawful occupation of the premises and their failure to discharge their obligations under the tenancy. It bears emphasis that the law does not afford trespassers the luxury of prescribing the manner or timing of their eviction.

As for the alleged assurance that the demolition would be deferred until government funding for a permanent market became

available, even assuming such an assurance was made, we are unable to accept that it absolved the appellants of their duty to pay rent. Simply put, the obligation to pay rent remained intact.

On the issue of damages, the trial court rightly declined to grant the appellants' claims, citing the absence of evidence establishing either the occurrence of loss or the value of the alleged goods. It is trite law that an award of damages must be grounded on an actionable wrong and supported by credible proof of loss. In the present case, the appellants neither tendered receipts, inventories, nor any other documentary evidence to demonstrate ownership or the value of the goods they claimed were destroyed. Consequently, their claims for damages were bound to fail. The principle that special damages must be specifically pleaded and strictly proved, as underscored in **Simac Limited v. TPB Bank PLC**, Civil Appeal No. 171 of 2018 [2023] TZCA 173 (TanzLII), squarely applies in the present case.

Moreover, the submission by the learned Senior State Attorney that the goods in question were not destroyed but were safely stored, and that the appellants declined to collect them, remained unchallenged. This uncontroverted position further undermines the

claims. We find no basis to fault the trial court's reasoning or conclusion. Accordingly, these grounds collapse.

The net result is that this appeal fails in its entirety for lack of merit. Costs are awarded to the respondent.

It is so ordered.

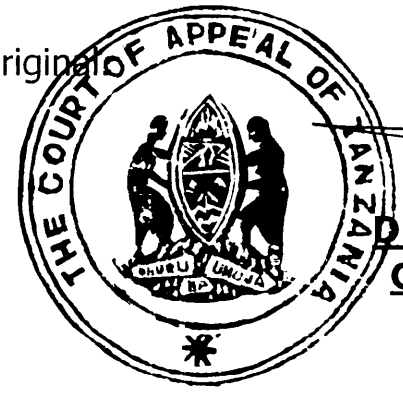
DATED at **TABORA** this 13th day of October, 2025.

Z. N. GALEBA
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

L. M. MLACHA
JUSTICE OF APPEAL

The Judgment delivered this 15th day of October, 2025 in the presence of Mr. Akram Magoti, learned advocate for appellants, Mr. Samwel Mahuma, Learned State Attorney for the Respondent and Ms. Janekisa Bukuku, Court Clerk, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL