

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

LAND CASE NO. 80 OF 2005

1ST RPROCHES ELEZA TARIMO
2ND ADAM SADIKI NSHORO
3RD METHREW KIMARIO
4TH FELIX MARANDU
5TH LUDOVIC MATEI
6TH ANESS LYIMO
7TH MSHAMU OMARY NGAJUA
8TH JUMA MKOMBOZI
9TH JAMAL SAID & 64 OTHERS

.....PLAINTIFF

VERSUS

1ST THE PERMANENT SECRETARY
MINISTRY FOR WORKS

1ST DEFENDANT

2) THE ATTORNEY GENERAL

2ND DEFENDANT

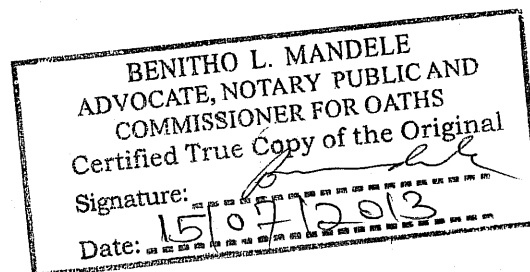
JUDGEMENT

S.B. Bongole, J:

12/4 & 31/5/2013

This case has been brought before this court as from the 2nd day of May 2005 a date it was instituted.

The named 9 plaintiffs above are suing the defendants in a representative capacity for themselves and on behalf of 64 others pursuant to this court order dated the 4th February 2005.



The plaintiffs allege to be lawful owners of different parcels of lands and properties thereon which are identified by the numbers and descriptions as follows:-

1) PROCES ELIEZA TARIMO	-	392,420,66 Form no 960
2) YUSUPH KIBRA	-	405(Form No. 883)
3) ADAM SADIKI NSHORO	-	406(Form No. 882)
4) METHEW KIMARIO	-	0052
5) OMARY KAHEMA	-	670
6) AFIDHI HASSAN YUSUPH	-	394
7) COSAN ELIFAN	-	462
8) JUMA MKOMBOZI	-	402
9) THEONEST KITANDA	-	421
10) TATU MOHAMED	-	0668 and 0669
11) JAMAL SAIDI	-	2188
12) JUMA HASSAN JUMA	-	430
13) REGINALD P. KESSY	-	604
14) WILLIAM MORIS	-	404
15) ARRON MPILI	-	602
16) LUDOVICK MATEE	-	605
17) ESTER NYAMIZI	-	419
18) IZADINI KALOKOLA	-	608
19) SALUM MNEMKA	-	659
20) FEMARA COMPANY LTD	-	401
21) SIKITIKO KONDO	-	147
22) BINTI SELEMANI	-	615
23) HAMISI M. KAWENZA	-	395
24) SAMWEL KYAMO	-	639
25) ELIMRINGI MASAWE	-	-
26) DEODAT TARIMO	-	391
27) DISMAS MAKUWA	-	624
28) EVARISTI S.M. TESSA	-	051
29) BERNARD MLATI KISANGA	-	418
30) PETER JAJI	-	144
31) FELIX BENDERA	-	393
32) SELESTINE KIMARO	-	058
33) WILLIAM CHISUWI	-	665
34) GOD MASAWE	-	667
35) SIMBA A. MBENA	-	678
36) PETER TARIMO	-	147
37) MUSSA H. RINDANO	-	500
38) AYUBU SELEMANI	-	345
39) DENIS MAUBE	-	396

40) DENIS MAUBE	-	673
41) LATU KASIMU	-	677
42) SAID ALLY NDUMBO	-	370
43) SAID NGONYANI	-	663 & 297
44) MAMA MSAUTA	-	423 & 635
45) ASHA NASORO	-	412
46) IBRAHIM KITEMO	-	-
47) MWAJUMA NSAFIRI	-	618
48) PROSPER BARONGO	-	612
49) OMARY RAMADHANI	-	413
50) HARUNA KABIRA	-	414
51) KASIMU SAID KAMBENGA	-	628
52) GENES FRANCIS TAIRO	-	0611
53) ERICK CHRISTIAN KAVISHE	-	-
54) SAID OMARY MANGO	-	425
55) NICOLAUS KIYABO	-	620
56) YAHAY DAUDI MBURA	-	429
57) SHARIFU S. A. ALLAWI	-	431
58) EZIEKIEL MRUMA	-	427
59) BEDA JOSEPH	-	403
60) EMANUEL MLINGI	-	0604
61) PAULO MAGAZI	-	426
62) MICHAEL WAMBURA	-	-
63) HEAVEN J. MBUYA	-	0627
64) ROZI KAZINGOMA	-	397
65) CHALE ANDREW	-	054
66) MICHAEL MRUMA	-	1187
67) SAID MOHAMED	-	666
68) MARK URASSA	-	397
69) TABU SIMBA	-	6662 & 0657 & 0658
70) SAMWEL SEKIMWELI	-	056
71) MWAJUMA RAMADHANI	-	055
72) MAX ELIAS KONJERA	-	137

The alleged plaintiff's parcels of land are located at Mbezi Luis Area which was an Ujamaa Village vide Certificate of Registration No. DSM VC. 8. That they acquired the said parcels of land before 1970 and during the period of Vilagilization which was popularly know as Operation Ujamaa Village which forced

the plaintiffs to move from different parts of Dar es Salaam and settle at Mbezi Village so as to be closure to social service as water, hospital and schools. That these social services (water, hospitals and schools) were built within an area which is now claimed to be a road reserve to wit, the Primary School building and the Ward executive officers office are now marked "X" and due for demolition. That some of the plaintiff namely Yusuph Kibira, Adam Sadiki Nshoro and Proches Eleza Tarimo managed to apply for and obtained certificates of titles. Further that they have been paying Government and other social service providers different rates levies in terms of water and electricity bills, land and house rents. Further more that the plaintiffs have been using their respective properties for residential and commercial purposes and some of them have mortgaged the same and obtained Bank loans.

That in the year 1999 and 2000 the 2nd defendant eye-marked some of the plaintiffs houses and marked on them "X" with a demarcation within which those plaintiffs could demolish on ground that part of their buildings were within 25m on the road reserve.

That sometimes on 11th August, 2004 the 1st defendant issued to the plaintiffs a seven days notice of demolition of the plaintiffs building which were located within 400 feet (121.92mt) on ground that the said buildings were within Road Reserve.

From the plaintiff's averments regarding lawful occupation of the premises, they state that the defendants notices are unjustifiable and without any base, hence if not revoked, the plaintiffs stand to suffer great loss. That the said notices made the plaintiffs to suffer serious loss of income as many tenants to their houses decided to vacate and others have refused to pay any further rent and more serious some of the plaintiffs have failed to secure loans from bank which they had started processing under the hope that their properties will be mortgaged. Further more that the plaintiffs have suffered mentally as throughout the period of the notices, they have been placed under the fear of loosing their properties which they have created throughout their lives with great difficulties and hard working.

The plaintiffs therefore prayed before this court for orders and reliefs in the following manner and style:-

- (a) That this Honourable court be pleased to declare the plaintiffs as rightful owners of the suit land.
- (b) That this Honourable court be pleased to annul the defendants notices dated 11.8.2004.
- (c) That the defendant be ordered to compensate the plaintiffs for the loss of rent and mesne profit which have occurred since the date of notice till the date of judgment.
- (d) That the defendants be ordered to pay compensation for undue mental sufferings the plaintiffs have suffered from the date of the notice.
- (e) Costs of this suit.

IN ALTERNATIVE:

- (f) The defendants be ordered to make full and fair compensation to the plaintiffs for their parcels of land and any developments made thereon according to the valuation made and which may be made.
- (g) That if compensation in (d) above is made the plaintiff be given a period of 36 months to find alternative and suitable places of accommodation.
- (h) Any other reliefs and orders that this Honourable court shall deem fit to grant.

In the Written Statement of Defence filed by the defendants, they disputed the plaintiffs claims and state that the 73 plaintiffs have no claim of right over a road reserve land. That the registration of Ujamaa Village known as Mbezi has nothing to do with the road reserve land as the registration Certificate of the alleged village does not confer better title over a statutory road reserve land. Further that the provisions of various social service including schools and hospital building along and or within the road reserve land do not negate the statutory provisions of being a road reserve land. Equally payment of levies for various social services do not confer entitlement over the disputed land. Finally that the marking "X" or "Bomoa" in the year 1999 and 2000 do not negate the statutory lengths of meters 121.92 of the road reserve land.

The defendants therefore prayed for the dismissal of the plaintiffs case and any other reliefs and orders should the court feel just to grant.

In this case, the plaintiffs have the legal service of Mr. Mandele learned Advocate and where as Ms Sia Mrema Senior

State Attorney and Mr. Pius Mboya Principal State Attorney represents the defendants.

Both parties framed and conceded to the following issues:-

- 1) Whether the land in dispute is a road reserve.
- 2) Whether the plaintiffs are lawful occupying the said land.

If yes, then what are the remedies available.

- 3) What reliefs are the parties entitled to.

In support of the plaintiff's case four (4) witnesses testified. Mr. Proches Eleza Tarimo featured as "PW1". He testified to be a resident of Mbezi Luis, Kinondoni District Dar es Salaam along Morogoro road. That he stands in Court on his own behalf and that of 73 others as they have similar complaints against the defendants pursuant to this court's permission dated 4th February 2005.

That he knows the rest of the plaintiffs he represents together with their respective properties because they are his neighbours and they have been meeting several times discussing about the claim.

That in 1979 he was given a piece of land by the late Masham Omari who was by then a Village Secretary, later, he said to have purchased another adjacent piece of land from Mr. Abdulla Lutambi. He said to have processed and applied to have his land be surveyed so that he gets title.

That equally several plaintiffs naimely Deodatus Eliza Tarimo, Adam Mshoro, Yusuph Kibira and Felix Marandu processed to have their plots surveyed where upon the villages approval, they forwarded their request to the Minister, who permitted survey to be carried on. That he was shown a map showing the area and those along Morogoro road. He tendered the said map as Exhibit "P1."

That he and Deodat Eleza Tarimo were given Certificates of Title with no. 36601 and 36602 respectively which he tendered them collectively as Exhibit "P2". Also copies of Certificates of titles of Mr. Mshoro and Yusufu whose originals are held in Banks were received for identification as identification "P3" collectively. i.e. CT No. 32054.

Speaking on exhibit "P1" he said to be a map of Mbezi Luis residential area where the Morogoro road is shown with figure circled (60) which was explained to mean the width of the road and its reserve in meters. That it was measured 30 meters each side from the centre of the road. That all the residential structures are shown to be outside the 60 meters area.

That this map i.e. exh. "P1" was approved by Director of Town Planning and accepted by Urban Planning Committee on the 29th August, 1995.

He said, between 1999 and 2000, there was an exercise to build the Morogoro Road where Officers from TANROADS Agency went to certify the boundaries. In the course of the exercise he said measurements were made with tapes, indicating the road reserve boundary. That any house that exceeded into their area was marked "X" and on upright line arrow was drawing with words "Bomoa mpaka hapa".

That some houses were demolished by the owners to the extent shown while others were demolished by Tanroads Agents.

That his house was not involved in the exercise but he has come in court with other claiming because notices were sent to all requiring them to move from the area for a distance of over 90 metres either side of the road in excess of the 60 metres. He tendered the Tanroads notices dated 4th August, 2004 73 copies collectively as exhibit "P4".

That this notices refers to Act of 1967 dated the 5th May, 1967.

That the said Morogoro road specified did not pass at Mbezi but it passed through Pugu, Mwakanga Mbeena Zamozi to Morogoro. That it was followed by the other road which started from Askari Monument, Magomeni and Kimara. The said road just before the present is visible in various areas as Kimara Stop Over to the left and reappears at Suca Hotel into the present road.

That at Mbezi area there is a turn off to left through Makondeni and re-appears at Petrol Station at Mbezi Luis and then reappears at Mbezi Inn. That these road pieces are referred to as "Old Morogoro road". That this Old Morogoro road ceased to be used after the road construction project which was

completed in 1972 by Nelo Tier Company. He added, that after 1972, another construction was carried on in 1989 which did not follow exactly the old road.

That what he knows is that the 1967 measurement must concern the roads before that and it does not affect the roads as from 1989 construction.

He said, what the plaintiffs pray is that if the area they have to move from is needed for the road, then they should have justice be done to them by being duly compensated. That as all the plaintiffs are 60 meters distant, they are not in a road reserve area.

They pray for compensation he said because most of the plaintiff have suffered loss after being served with the notices as tenant abandoned their rooms whereas other tenants refused to pay rent in view of 7 days notices. Further that the area they occupy has now remain stagnant of development. That he personally was denied bank overdraft following the Tanroad notices. That they also pray for interests from date of notices up to payment or as the Court may order.

In the alternative he said, if the area is no longer wanted, they would pray to be paid damages for inconveniences and as the court will deem fit to grant them.

In person, he said he had a plan of building a Tourist Hotel and he had processed bank loan. He tendered the valuation report, compensation assessment and valuation of his proposed Hotel documents collectively as Exhibit P.5. He also tendered a notice of intention to sue the Government made in August 2005 as an Exhibit "P.6."

Lastly he testified to have knowledge of the existence of the High Way Act 1967 as the law Govern high ways.

Mr. MSHAMU OMARI featured as PW2". He testified to have being living in Mbezi Luis Since 1974 having migrated from Luguruni in Compliance with Villagization policy organized in 1972/73.

That the idea of Villagization policy was to allow people to live together where social amenities such as school, Hospitals,

Water and roads could be provided for. That people from different parts of Kinondoni District were forced to move to the chosen areas Mbezi Luis be one of them. He said to have resisted to abide by the exercise where he was arrested and detained at Magomeni Police Station in 1974. That the District commissioner by the name "NKOSWE" released him and others from detention and took them up to Kibamba Ward Office and addressed them to choose which of the areas they would wish to move where he choose Mbezi. That at Mbezi each of them was allocated a plot by the Ward Executive Officer and the District Commissioner. That the plots were measured at 35x70 feet from the road edges. That the plot he was allocated is now in dispute. That by then the Morogoro road was inexistence where the land officers marked the reserve area with threes and especial stone (Beacons) which marks were on the road end of the present high way. That the school was extended which is located behind his residence. Further that Village Government structures were as well built but also are subject of the demolition.

He said, formerly there existed Public Works Department (PWD) which was responsible for roads of which its works are now done by TANROADS. That the PWD kept the road reserve

area clean by cutting down grass and ensured that the reserve area is not intruded as they never allow anything to be grown.

That he is ready to move from his plot if the Government will provide for him another organized area and upon valuing his house and compensate him. That his plot is 30 paces from the road and since 1974 he has never been bothered except with the Tanroads notices issued to them which is the subject of this case.

"PW3" JUMA HASSAN MKOMBOZI testified to be a resident of Mbezi since 1972 having moved from Kibaha to Mbezi for farming activities. He said to have arrived at Mbezi using the Old Mrogoro road which is no longer in use although it was a main road from Morogoro to Dar es Salaam. He said, it is no longer in use because between 1972-89 the new road was constructed which is in present use.

That in 1974 Mbezi village was established and he participated in its establishment having a post of Village Executive Officer. That his duties among others were to discuss about applications for farming land; to supervise sale of plots and farms and to oversee land ownership do not cross or extend to the

road reserve area. Further he said to be a custodian of the Village documentations. That Mbezi Village was put in place by the Central Government and was registered with a Certificate of registration No. Dsm V CV.8 of 1976. He tendered the Certificate as an exhibit "P7". That the said Village was to be known as "Mbezi Ujamaa Village". That this village had title over land and so it had power to allocate land to people who applied for various uses and dues to the village was paid by the villagers for various activities and receipts were accordingly issued.

He tendered 5 pieces Original receipts and Bound copies of receipts of the plaintiffs collectively as Exhibit "P8."

He added that the Central Government in moving them to the village they showed them the boundaries as well as that of road reserve. He said the extent was 30 meters from the centre of the road on either side where Mango trees, Mkunge trees were planted to mark the end of the road reserve. As claimant he said their houses are outside the road reserve.

Further more he said, the documents he has some are in relation with sale Agreements of some claimants in this case. He

produced the photocopies of the sale Agreements as Identification "P9".

That from 1972 to date none of the villagers have been compensated except those of Kibamba and Kimara who were compensated in 2007. That the Villagers who were brought in 1972 during villagerization were not in the compensation list because they were placed outside the road reserve. The ones who were compensated were those who had crops on land where the road now passes measuring 60 metres width. He tendered a DVD Compact cassette containing narrations and photographs of the area in disputed as an Exhibit "P9".

"PW4" Mr. Ezekiel Adamu Mruma testified to be a resident of Mbezi Mzigani and he started living in that area as from 1968. That he is in Court following Tanroad Order of demolishing his building without been compensated. He said to have occupied his area and made a lot of improvements and so if Tanroad wants to expand the roads, they have to consult them and compensate them as they are not trespassers of Road reserve area.

That what he knows is that the road reserve area at Mbezi is 30 meters from the Centre of the road as he received that information from the Tanroad officials and from the Ministry of Lands. He added that Tanroad has paid compensation to Mr. Adamu Magai, Beda Amuri and Sharif Alawi who are his neighbours why the same is not done to the plaintiffs.

In support of the defence case, Major Martin Mafita featured as "DW1". He testified to be working with Tanroads as a Construction and Maintenance Engineer. He said to have participated in the exercise of issuing notices to the plaintiffs who were residing in road reserve area at Mbezi Luis. That the road reserve area at Mbezi Luis is 400fts or 121.92 meters in all sides of the road. That these measurements are derived or described in the Highway Ordinance 1967.

Mbezi area he said to be within Kimara Stop Over to Kibaha which is 400fts which is to be measured at the middle of the road 400fts each side. So he said the plaintiffs' claims are not justified as they are within the 400fts hence trespassers of the road reserve area.

Further that a Village cannot be registered over a road reserve area as it was registered in 1976 whereas the law existed since 1967. He said, whatever followed after the Highway Ordinance law ought to be outside the road reserve area. In the same vain he said Certificate of titles could not be issued over a road reserve area.

That on the 4th August, 2004 he issued notices to the plaintiffs who were residing in the specified road recerve area by giving them 14 days i.e. two weeks to vacate from the said area and where before the expiration of the two weeks the plaintiffs instituted this case against Tanroad where an Injunctive Order was issued against Tanroad. That the Court order has been respected by Tanroad and no any house that has been demolished by them nor have they compensate any individual occupying the road reserve area.

That the Highway Ordinance talks of Morogoro road and it does not talk of Old Morogoro road equally he said it talks of 400 feets at Mbezi and not 30 metres. That the marks and the planted trees existed do not show the boundaries but were meant to reinforce the law which existed since 1967.

Further more that the plaintiff were not allowed to develop the area because it was not their property and so any inconvenience born by the plaintiff was of their fault in trespassing into the road reserve area.

He therefore prayed that all the plaintiffs' prayer in the plaint be dismissed with costs and further the plaintiffs be ordered to pay damages for the inconvenience they caused to the defendants.

He admitted to have been travelling from Dar es Salaam to Morogoro where he has seen in some areas where the present road pass in different area from the former Old Morogoro road and even in other parts old bridges were left aside. However he said, he is not aware if in 1969 there was a road construction which changed the way out and alignment of the Morogoro road. He finally said the Certificate of title are issued by the Commissioner for lands in compliance with the law which governs him.

At the end of hearing of this case, learned counsels for both parties made a prayer of filing final submission in support which was granted.

In perusing the submissions, I found that the learned State Attorneys raised some extraneous issues and or challenged the procedure adopted in the conduct of this case by the court. I find it pertinent to address on the procedural issues raised before embarking on the merits of the case.

It is trite clear that the plaintiffs were permitted by this court on the 4th February, 2005 to represent 69 others. Among the 73 plaintiffs, 4 plaintiffs testified in support of their case and on behalf of others. The learned State Attorneys allege that the plaintiffs case has not been established under a representative capacity as every plaintiff has to prove his claim on the standard required by law i.e. on a balance of probability.

That in a situation like the one at hand every plaintiff was in law required to strictly prove his claim for ownership of the land in dispute.

That every plaintiff was to prove as to when his rights on the land had started, personal evidence was to be given of the property he claims to own. That the right to defend and protect ones property is of paramount importance which was never exercised by the plaintiff. That failure by the Plaintiffs to give evidence one by one, on that their grievances is all about and the nature and value of the properties claimed dis-entitles the plaintiffs from consideration and award of the decision by the Court.

In support of their proposition they cited cases of the Court of Appeal of Tanzania being:

1. The Attorney General and Mathias Nyuki and 15 others civil Case No. 32 of 2006 (Unreported) where it was held

"In this case, apart from "PW1" the individual claims of the respondents had not been proved.

Therefore it was not proper for the learned Judge to take it that the case of PW1" applied In every respect to each of the claimants, the Respondents."

2. Haruna Mponjio and 292 others Vs Tanzania Portland
Company Ltd. C.AT Civil appeal No. 10/2007.

I must put it clear that during hearing of this case, Mr. Mandele Advocate made a prayer of calling all the Plaintiffs to testify in this case following the decision in the case of Haruna Mponji (Supra) which was made in 2008. The request was resisted by Ms Sia Mrema Senior State Attorney in this way. I quote:

"I do not think the issues framed and matters recorded as not in dispute did not cover all of the plaintiffs. The issues is not of Ownership but how are they in occupation of the road reserve area."

Following the above statement, Mr. Mandele withdrew his prayer. It is now amazing that the very people who resisted have now changed the direction and opposing what they objected. In other words, they blow cool and Warm at the same time. This court is not an area where such ;practice of double standards will be stomachached.

However, from the nature and the circumstances of this case, Mrs Sia Mrema was correct in her proposition as the facts of this case are different from that in the Hanna Mponji's case and in fact the issues and matters recorded not in dispute had covered all the plaintiffs. For clarity they read:-

MEMORANDUM OF MATTERS NOT IN DISPUTE

The following matters have been agreed upon by the parties as matters not in dispute:-

1. That the plaintiffs occupy various parcels of land at Mbezi Luis Area, The area is along Morogoro road.
2. That the land which is occupied by the Plaintiffs was acquired after the exercise of Compensation which was made prior to the year 1972.
3. That in the year 1974, 1975 and 1976 villagelization exercise (Operation Vijiji vya Ujamaa) took place where the plaintiffs amongst others, were move to present area which is said was reserved as road reserve.
4. That on 1.12.1976 the area in dispute was registered as Ujamaa Village vide Certificate No. DS CV.8.

5. That in the year 1997, the 1st defendant carried out an exercise of road expansion (Ubungo - Chalinze road) and houses along Morogoro Road were marked "X" and finally demolished as being erected on the road reserve.
6. That the first defendant relied on the Rules Regulating road Reserve which were made in the year 1967.
7. That the area occupied by the plaintiffs is also regulated by the town and Country planning laws.

From the issues framed and from the enumerated facts/matters which were agreed to be not in dispute all the plaintiffs are in total coverage as a point in controversy is not ownership because the plaintiffs have been owning and occupying the disputed area since 1970's. wherefore the challenge raised by the State Attorney has no merit and I accordingly ignore it.

Equally, the learned state attorney challenged the procedure adopted in by the Court during Visit in Locus in quo and the recording of the VCD which was admitted as an Exhibit "P9".

It is on record of the proceedings that on the 13th March, 2013 Mr. Mandele learned Advocate made a prayer of re-calling

"PW3" for the purpose of producing/tendering the recorded VCD as an exhibit which was recorded during the visit in Loqus in quo.

"PW3" was recalled where he stated I quote

"The order that was given by the Court was to take photograph of the area in dispute.

Two parties were present at the time of taking the Video. I can mention those who attended who attended who were the parties in this case i.e. the plaintiffs and the Government who are the defendants. They all attended. The photographs taken were recorded in a Video cassette. I pray to tender the Video Cassette as an Exhibit.

Ms Sia Mrema:

I have no objection.

Court: *The DVD admitted as an exhibit "P9".*

The quoted passage shows that the defendants participated fully in the visit and recording of the video otherwise Ms Sia

Mrema Senior State Attorney could have objected the tendering of the VCD as an exhibit

Further more, Ms Sia Mrema was availed a chance of Cross examining "PW3" when he was recalled. Hence, the challenge of the procedure by the learned State Attorney in their final submission on this point is baseless and of no effect in the preparation of this judgement..

From the evidence on record, it is trite that the plaintiff's are in occupation of the land in dispute as exhibited by Exh. "P4" being notices issued to all the plaintiffs originating from the 1st defendant. It is also crystal clear that the Government Notice No. 161 specified and declared the land in disputed to be a road reserve area. It provides as follows.

"The trunk road running from Dar es Salaam via Msolwa, Ubena Zomozi and Pangawe is hereby declared to include all land, not being private property, which lies within distance from the Centre of the road specified in the schedule hereto,

SCHEDULE

<i>United Nations Road to Miles 6.22 (Ex Dsm</i>		<i>75feet</i>
<i>Miles 6.22 to 10.02</i>	-	<i>300 feet</i>
<i>Miles 10.02 - 23.12</i>	-	<i>400 feet</i>
<i>Miles 23.12 - 43.12</i>	-	<i>75 feet</i>
<i>Miles 43.12 to 44.12 (Ruvu Bridge)</i>	-	<i>300 feet</i>
<i>Remainder of the road to Morogoro</i>	-	<i>75 feet</i>

The land in dispute falls under item 3 of the schedule.

The plaintiffs testified to have occupied the land in dispute by 1970's following the government Policy of Ujamaa Village. "PW4" stated how the land was allocated to the plaintiffs. Some of the plaintiffs were forced to shift from their areas to Mbezi Luis and those who resisted were detained he testified. This Village was duly registered and the villagers the plaintiffs inclusive were provided by the Government the social amenities such as water, hospitals, government offices and schools. Among the schools put in place in the road reserve area are Mbezi Luis Primary School and Upendo Primary School. Some of the plaintiffs managed to survey their parcels of the land that

were allocated to them and obtained Certificates of titles which were duly registered by the commissioner for Lands. Further, roads construction projects with a view of expanding the Morogoro road were carried on where beacons were inserted 30 meters from the Centre of the road and whereas, the plaintiffs and the two Primary schools were outside the inserted beacons. What do all these means. Should this court construe that the plaintiffs were as from 1970's to date trespassers while they were allocated and or stationed in the land in dispute in compliance with the government Policy of Ujamaa Village? Should this court also construe that the two Primary Schools built in the alleged land in dispute by the same Government institutions to be trespassers?

Further more, on the 15th may, 1999. The President of the United Republic of Tanzania who is the trustee for and on behalf of all the Citizen of Tanzania of whom the Pubic Land is vested (See s.4 of the Land Act) did assent the coming into operation of the Village Land Act, 1999 No. 5 of 1999.

Under the Village Land Act ((Supra)

S15(1) Provides:-

"An allocation of land made to a person or Group of persons residing in the required to move to and reside in a village at any time between the 1st day of January 1970 and the 31st day of December, 1977, whether made under and in pursuance of a law or contrary to or in disregard of any law, is hereby confirmed to be and to have always been a valid allocation capable of and in law giving rise to rights and obligations in the party to whom the allocation was made and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that allocation.

(2) a granted right of Occupancy made to a person or group of persons residing in or required to move to and reside in a Village at any time between the 1st day of January 1970 and the 31st day of December, 1977 whether granted in accordance with the procedures of the Land Ordinance or not, and whether registered under and in accordance with the provisions of

the Land Registered Ordinance, or not is hereby confirmed to be and to have always been from the true of the grant a valid granted right and obligations in the grantee as from the date of the grant and extinguishing any rights and obligations vested in any person, under any law which may have existed in that land prior to that grant.

(3) A written offer of a granted right of Occupancy or a letter of offer of a granted right of Occupancy issued by an officer authorized to do so, made to a person or group of persons residing in a village between the 1st day of January 1970 and the thirty first day of December, 1977 whether made in accordance with the provisions of the Land Ordinance, or not, and whether registered under and in accordance with the provisions of the registration of documents Ordinance, or not is hereby confirmed to be and to have always been a valid offer or as the case may be, a valid letter of offer which may at any time before the 1st day

of January 2000 be acted upon so as to create a right of Occupancy and that customary right of Occupancy shall extinguish any rights and obligations vested in any person by any law which may have existed prior to the written offer of or the letter of offer for a granted right of Occupancy.

(4) The interest in land created by an allocation (i) refers and the right of Occupancy to which subsection (2) refers are hereby confirmed to be and to have always been a customary Right of Occupancy."

Furthermore, the said Act, Confirmed the validity of allocation of land made by Village councils since the 1st January 1978. It provides:-

16. "For the avoidance of doubt and in order to facilitate security of tenure and contribute to the development of Village Land, the Provisions of Section 15 other than subsection(2) and (3), shall apply to any and every allocation of village

land made by village Council or by any other authority on and after the 1st day of January 1978 until the commencement of this Act as if for the dates referred to in subsection (1) of that section, there were substituted the dates between the 1st day of January 1978 and the date of Commencement of this Act."

From the wordings of the cited law, I would agree with Mr. Mandeles submission that the Villagezation process disregarded the Highway Ordinance, 1967 and particularly the GN No. 161 of 1967 which become invalid to the extent of Inconsistency with S.15 of the Village Land Act (supra).

The revelation is therefore that s.15 and 16 of the Village Land Act with regard to this case, expressly extinguished rights and interests vested in the Land in dispute by GN No. 161 of 1967 and confirmed and created validity to the plaintiffs who were allocated the same by the relevant authorities during and after the Villagezation process.

It would require the Labours of Sisyplus to persuade me to agree with the defendant contention that the Land in dispute is a road reserve and the plaintiffs are trespassers.

The Honorable two Assessors who presided with me in this case are of the unanimous opinion which I subscribe in total that the plaintiffs are lawfully occupying the land in dispute having lawfully allocated the same by competent Authority of which its validity was confirmed under the Village Land Act.

In the upshot, this court is satisfied that the plaintiffs have established their case in the required standard to the extent of the claim and reliefs sought in prayers item (a)(b) and (e).

However, the plaintiffs claim and the subsequent prayers in items (c) and (d) have not been proved in the standard required by the law, hence the same are rejected

In the alternative, and without prejudice to the a foregoing should the defendant be interested with the land in dispute as a road reserve, they should give notice of Intention to transfer the village Land to reserve Land by filing Village Land Form No. 8 in compliance with S.4 of the Village Land Act, 1999 (Act, 1999 (Act

No. 5 of 1999) and the Village Land Regulations 2002. In compliance thereto, the relevant authorities shall notify the plaintiffs in accordance with the Law and whereas the plaintiffs shall be compelled to claim compensation by filing Village Land Form No. 15 and present it to the relevant authorities for Actions.

All in all, I hereby declare the Plaintiffs lawful owners of the Land in dispute and the notice issued to them by the defendants dated 11th August, 2004 are annulled accordingly. Should the defendants be interested with the Land in dispute, they are hereby Ordered to comply with the directives I have given above and whereas the Plaintiffs shall be compelled to comply with as well.

The plaintiffs claims are therefore granted to that extent with costs.




S. B. Bongole
J U D G E
31/05/2013

Date 31/05/2013

Coram: Hon. S.B. Bongole, J.

For the Plaintiffs : Mr. Mwalelwa Innocent

For the Defendants: Absent

1st Assessor: Teophil Kabwogi

2nd Assessor: Christopher

B/c: Tenzi

Court: Judgement delivered in the presence of Mr. Mwelelwa Innocent learned Advocate for the plaintiffs and in the absence of the defendants this 31st day of May, 2013 in my presence.

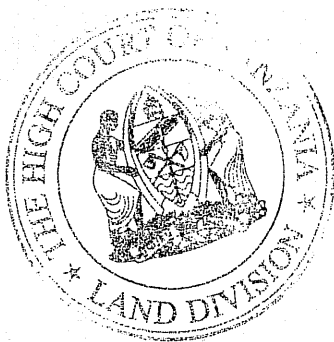


S. B. Bongole

J U D G E

31/05/2013

Right of appeal explained.



S. B. Bongole

J U D G E

31/05/2013

