

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LAND DIVISION AT DAR ES SALAAM LAND CASE NO. 150 OF 2023 ABILLAH RASHIDI
SADI COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
KIBAHA DISTRICT COUNCIL RESPONDENT / DEFENDANT

JUDGMENT

LALTAIKA, J, The crux of this suit is a piece of land measuring 148 acres situated in Mlandizi, Kibaha District, Pwani Region. The area is known for its proximity to one of the mighty rivers that crisscross Tanzania namely Ruvu. The Plaintiffs are natural persons who described themselves as peasant farmers specifically wheat growers (wakulima wa mpunga) and locals of the area. By way of a representative suit, they instituted these proceedings against the Defendants for Judgment and Decree as follows: (i) A declaration that the Plaintiffs are the rightful owners of the farms covering about 148 acres located at Mlandizi Kibaha District, Coast Region. (ii) A declaration that the Defendants are trespassers and ought to be restrained permanently from interfering from the suit land. (iii) An order for the Defendants to pay the Plaintiffs costs for damage and loss incurred by Plaintiffs for not utilizing their farms to the tune of Tshs. 200,000,000/= (iv) General damage at the rate to be assessed by the Court (v) Interest on (iv) above at the commercial rate of 21 per annum from the date of entry to the date of execution. (vi) Interest on the decretal sum at the Courts rate of 7 percent from the date of judgement to the date of satisfaction of decree (vii) Cost to be provided for (viii) Any other orders or reliefs as the Court may deem fit and just to grant. Hearing took place physically (oral submissions) and lasted from the 19/09/2024 on commencement of the Plaintiff's case to 22/11/2024 when the Defendants' prayer to close their case was granted. Representation by counsel was as follows: Mr. Bugeza Mutalemwa, learned Advocate appeared for Page. 1 the plaintiffs. Messrs. Elias Evelius Mwendwa and Emanuel Mkwe, learned State Attorneys represented the Defendants. I take this opportunity to register my sincere appreciation to Counsel for both parties. They worked very hard while maintaining professional etiquettes even when arguments got highly heated. Let me say in passing that Mr. Mutalemwa told me that he would like to be referred to by his first name, Bugeza. The reason? It is difficult for him to build his "trademark" as a firebrand real property litigator because the Roll of Advocates in our country bears too many people called Mutalemwa.

Since this Judgment emanates from REAL PROPERTY as opposed to an INTELLECTUAL PROPERTY proceeding, I leave that to IP experts to advise him on matters trademark and goodwill. Our focus here is on REAL property. A brief background to make it easy to connect the competing arguments can be summarized as follows: In 1970's the government of Tanzania nationalized a piece of land hitherto belonging to a foreign national. Shortly after that nationalization, a program called Operation Vijiji was launched. It required establishment of rural economies and active participation in agriculture (the backbone of the economy or "uti wa mgongo" wa Uchumi as it was popularly referred to in Kiswahili). The plaintiffs assert that the suit land was allocated to them for farming. They averred that they had been in occupation of the land for decades, (some of them personally and others having inherited the pieces from their deceased parents) using it for agricultural activities, and that their rights had been unlawfully extinguished by the first Defendant. The defendants on the other hand, strongly disagree. Their version of the story is that the suit land was allocated to Ruvu Secondary School which was then under the Ministry of Education. The defendants went on to claim that due to a process called devolution "ugatuzi" ownership and administration of schools moved from the Ministry of Education to local governments. The new owner namely the 1st Defendant, they claimed, decided to survey the land and allocate it to other Tanzanians. Premised on the above competing narratives, the following issues were agreed upon to guide this Court:

- (1) Whether the Plaintiffs are the lawful owners of the farms with 148 acres located at Mlandizi within Kibaha District, Pwani. (2) Whether the survey carried out by the 1st Defendant was lawful. (3) What reliefs are the parties entitled to. Pursuant to the principle obtained in our jurisdiction that he who alleges must prove (See section 110 of the Evidence Act Cap 6 R.E. 2019), as articulated by the Court of Appeal of Tanzania in BERELIA KARANGIRANGI VS. ASTERIA NYALAMBWA CIVIL APPEAL No 237 of 2017 (unreported) the ball was on the court of the plaintiffs to prove existence of the facts alleged to enable this court to give verdict as prayed. On closure of the Plaintiffs' case, the Defendants' case commenced. I choose to Page. 2 allow the Witnesses speak before I come back to analyze the evidence presented, the applicable law and conclude with a resultant verdict. I will use the common shorthand PW- for Plaintiff's Witness and DW for Defendant's Witness. Let me say that although a handful of exhibits were admitted as evidence, only those considered essential to build the case will be referenced in this Judgment. Exhibits such as a letter of intention to sue the Government addressed to the Attorney General only had utility at commencement of the case. PW1, Abilahi Rashidi Sadi, a 48-year-old resident of Mlandizi, Kibaha, testified that the plaintiffs were claiming ownership of 148 acres of land situated in Mlandizi, Kibaha District, Pwani Region. He described the location of the land, stating that it was near Mlandizi Police Station, bordered by the Old Morogoro Road and the New Morogoro Road, with Ruvu Girls Secondary School to the west and the property of one Musa Athumani Ngoo to the south. He also mentioned that the plaintiffs hailed from different hamlets, including Njiapanda JKT, Mtambani, Mtongani, and Kilangalanga. PW1 explained that the suit land had been acquired from an Arab named Almahad, and while some plaintiffs had inherited their plots from their parents, others had been allocated land during Operation Vijiji, a government initiative

from 1970-1975 that distributed land to villagers. PW1 stated that the village authorities of Mlandizi had assigned land to the plaintiffs, with each individual receiving between one and two acres. He stated that the plaintiffs had been in continuous possession of the land for over forty years. He categorized the plaintiffs based on their location within the disputed land: plaintiffs 1-30 occupied the northern section near the police station, plaintiffs 31-50 were in the southern section, plaintiffs 51-70 were on the western side, and the remaining plaintiffs were on the eastern side. PW1 recalled that in 2012, officials from the first Defendant's office arrived on the suit land and began mounting stones to demarcate new boundaries. He explained that the officials measured the land and placed beacons in areas that had already been marked, despite the fact that rice crops were growing there. This action, he asserted, resulted in the destruction of crops, causing financial loss and psychological distress to the farmers. PW1 estimated the total loss at Tshs. 200 million and prayed for an order requiring the Defendants to compensate them. PW1 recounted that following the incident, he and the other plaintiffs reported the matter to the Ward Executive Officer (WEO) of Kilangalanga, who convened a meeting with local residents (wananchi) to discuss the issue. The meeting resolved that another meeting should be held with experts from the first Defendant's office. The court admitted the Minutes dated 24/03/2012 and 28/03/2012 as Exhibit P3. PW1 testified that the plaintiffs also escalated their complaint to the Ministry of Lands, Housing, and Human Settlements, which subsequently issued a letter to the first Defendant instructing him to provide historical background on the suit land and refrain from allocating plots, as Page. 3 doing so would violate town planning laws. The court admitted the Ministry of Lands' Letter dated 6/6/2013 as Exhibit P5. PW1 testified that the matter gained media attention, and a journalist from Majira newspaper interviewed the then Acting Director of the first Defendant's office, Ado Mwakuga. The interview was published in the Majira edition of 25/03/2013, under the headline: "WANANCHI KUIBURUZA HALMASHAURI YA WILAYA YA KIBAHA MAHAKAMANI". With no objection from the State Attorney, the court admitted the Majira newspaper dated 25/03/2013 (ISSN No. 0856-5086) as Exhibit P6. PW1 concluded his testimony by stating that the plaintiffs had done everything within their power to resolve the dispute through administrative and legal channels, but the first Defendant had persisted in ignoring their claims. The plaintiffs were therefore seeking judicial intervention to confirm their ownership of the 148 acres and compel the first Defendant to compensate them for the destruction of their crops. Throughout, the court admitted a total of 6 Exhibits. PW1, during cross-examination, admitted uncertainty about the first time they filed a case in court but confirmed that it was not their first time. He acknowledged that their current claim concerned 148 acres, distinct from a prior case involving 260 acres. He recognized discrepancies between the demand notice and the plaint but maintained that the present case should be judged on its own merits. When questioned further, PW1 confirmed that he owned one acre of the disputed land, acquired in 2000, while the larger claim related to land allegedly acquired between 1970 and 1975. He insisted that there was no contradiction in his statements and affirmed that the claimants, totalling 99, were represented by two individuals. However, he admitted that he had not provided documentary proof of his land acquisition in court. PW1 identified multiple claimants and

their land holdings, detailing their locations, acquisition periods, and neighboring properties. However, he acknowledged the lack of documentary evidence in court to support their claims. He referenced documents, including minutes from a 2012 public meeting, to demonstrate local concerns about land surveying and allocation. During re-examination by Mr. B. Mutalemwa, PW1 clarified that they had merely notified the 1st Defendant of their intention to take legal action in the event that negotiations failed. He stated that their claims in court were based on the general manner in which they had acquired land during Operation Vijiji in the 1970s. He also explained that when he mentioned the year 2000, he was referring to the way he had personally acquired his farm from his father. PW2, Seif Ally Luwembe, testified that he resided in Mlandizi, Mtongani Hamlet, Kibaha, and worked as a peasant. He stated that he and 99 fellow plaintiffs had received land allocations through Page. 4 Operation Vijiji (1970–1975) after the government confiscated land from an investor, Ali Mahdi, and redistributed it for agricultural use. According to PW2, the village government allocated the land in plots of one to two acres per person, depending on the land's condition. He personally received approximately two acres on the southern side of the suit land, bordering Hemedi Kasumni to the south and Mrisho to the west. He had continuously farmed the land from the time of allocation until the dispute arose in February 2012. The dispute, he explained, began when Kibaha District Council staff entered the land, erected beacons, and destroyed crops, particularly rice. Seeking clarification, he and his colleagues reported the matter to the Ward Executive Officer (WEO), who promised to convene a meeting between the plaintiffs and the Council's representatives. The first meeting, held on 24th March 2012, he recalled, resulted in an agreement to halt the land survey, and a second meeting on 28th March 2012 resolved that the Council should remove the beacons within two weeks. However, the Council failed to comply, prompting the plaintiffs to issue a notice of intention to sue and later file a case in court. They sought a declaration of ownership over 148 acres, an order for the return of their land, and TZS 200 million in compensation for destroyed crops and litigation expenses. During cross-examination by Mr. Mwendwa, SSA, PW2 reaffirmed that their land was acquired through Operation Vijiji. Although he could not recall his exact age at the time, he confirmed that he was now 70 years old and had been an adult during the allocation. He admitted that he had no written proof of the confiscation from the investor but maintained that the government was aware of the process, and their names were recorded in the village office. PW2 testified further that he had been physically present when land was distributed and that the process had been overseen by the village chairman, Mzee Saidi Domo, and the village council. The allocation process lasted from 1970 to 1975, and he received his share in 1970. He clarified that he was a villager, not a leader, and participated in the process, though he was not present every day. Regarding his representation of 97 other plaintiffs, he acknowledged that not all received their land on the same day and that he had not been present for every allocation. However, he insisted that this did not undermine the credibility of his testimony. He affirmed that the plaintiffs had documented their respective land sizes and that he had personally witnessed many of them receiving their plots. He admitted that he had no official document from Operation Vijiji, but he argued that the law itself was their document, as it

established the rights of those allocated land. He described Operation Vijiji as a government-sanctioned process that legally empowered their ownership. During further cross-examination by Mr. Mkwe, PW2 reaffirmed that the land was acquired between 1970 and 1975. While some plaintiffs had not been present at that time, they later inherited the land from their parents. He confirmed that he had not been present for every day of the allocation process. Regarding the 2012 meetings with the District Council, PW2 stated that they were convened to address Page. 5 the Council's invasion of their land. Some plaintiffs attended the meetings, though he could not recall the exact number. The meetings resolved to halt the land survey and later involved officials from the Director's Office Land Department. While the dispute was discussed, individual plaintiffs' names were not mentioned, as the matter was addressed collectively. He confirmed that minutes of the meetings were recorded and that the WEO represented the DED. He maintained that an agreement was reached with 99 plaintiffs participating, though not all could attend every meeting. PW2 further stated that it was documented that the beacons should be removed within two weeks, but the Council never complied. During re-examination by Mr. Mutalemwa, PW2 reiterated that all the people he represented had received their land in his presence and that he was familiar with their respective areas. He emphasized that Operation Vijiji was legally empowered to allocate land, which he regarded as his certificate of ownership. PW3, Chande Abdallah Mtanga, testified that he was a resident of Usalama Hamlet, Mtongani Ward, Kibaha District, Pwani Region, and worked as a peasant farmer. He previously served as the Hamlet Chairman of Mlandizi Kati (2004–2009) before the area was subdivided into four Hamlets: Usalama, Kaloleni, Mlandizi Kati, and Mtambani. His role as Chairman had been to serve as a link between the government and the wananchi. He recalled that upon his election in 2004, he was shown the boundaries of Mlandizi Kati Hamlet, which included farmland and school land. He emphasized that the suit land was designated for farmers and that the District Council had no land in the area. When introduced to the boundaries, he had not been informed of any Council-owned land, only the school land and farmland allocated to the wananchi. He described the western boundary as being marked by "Mikenge" trees, and confirmed that the plaintiffs had been farming, particularly rice, in the area since those years. He further recalled that in 2007/2008, the school land was still a bush, located to the west of the suit land. Some villagers had sought temporary use of the school land, and after consulting the Hamlet leadership, letters were issued to them for temporary farming. He himself had borrowed an acre of land to farm as he did not own farmland. This arrangement continued until 2009, when he stepped down as Chairman. He reaffirmed that the suit land rightfully belonged to the plaintiffs. During cross-examination, PW3 stated that he had served as a public official as Mtaa Chairman but was unaware of the legal procedures for testifying against the government. He acknowledged that he was no longer a chairman and had not obtained an official permit to testify but emphasized that he had not been paid to testify and had travelled at his own expense. He explained that during his tenure, he had inquired about the plaintiffs' land ownership and was informed by Village Leaders that the land had been allocated through Operation Vijiji (1970–1975). He Page. 6 stated that this information was conveyed to him as

part of the leadership transition, and that land handovers were conducted physically, without documents, but were remembered by those in leadership. He had followed the same procedure when handing over responsibilities to his successor. He also noted that boundaries were marked with trees in the past due to the lack of surveying equipment, but the Mikenge trees were later replaced by a road leading to the District Council. He confirmed that the suit land was situated in three Hamlets—Mtongani, Usalama, and Mtambani—which had previously been part of Mlandizi Kati. He asserted that the District Council had not participated in the land allocation, as the Village Council had been responsible for setting boundaries. He emphasized that while some governmental activities required official minutes, others did not, and in his understanding, land boundary handovers did not necessitate formal documentation. As Hamlet Chairman, he had recorded minutes for meetings, but he did not know the legal criteria for when documentation was required. PW4, Mussa Athumani Ngoo, a 79-year-old peasant from Mlandizi, recalled that during Operesheni Vijiji in the 1970s, land was allocated to the plaintiffs by Village Councils to provide farmland for the landless. He personally witnessed this process as a village resident and neighbour to the suit land. He identified Mr. Saidi Domo as the Village Chairman at the time, assisted by Shaaban Tegule Dimwazi. He asserted that the plaintiffs had lawfully received the land. During cross-examination, PW4 stated he was born in Morogoro in 1945 and moved to Mlandizi in 1951. He was 25 years old when he witnessed the land allocation in 1970, which continued for about two years. He insisted he was truthful and had no reason to lie. Though not part of the allocation team, he had observed the process, remembering four individuals who received land. He described how some people were allocated one to three acres, depending on family size. While testifying for 97 plaintiffs, he could name only four but stated he could recognize others if he saw them. PW4 clarified that the Village Chairman, Land Officer, and committee members had overseen the land distribution, though he was uncertain about written records. He emphasized that he was testifying based on his own observations. He acknowledged that a factory and houses had since been built on the suit land, stating that the houses were constructed during President Kikwete's tenure. He confirmed complaints had been raised with District authorities regarding the factory. When asked about Ruvu Secondary School, PW4 stated he knew the school but was unaware of any land dispute involving it. He confirmed that villagers had farmed on school land but could not verify its official ownership. He also recalled that the villagers had voluntarily donated land for school construction around 1972 and that the suit land was separate from the school area. Page. 7 During re-examination, PW4 reaffirmed that the land allocation was an ongoing process spanning up to five years. He clarified that he had meant he knew all the plaintiffs, not necessarily every landowner in the area. He stood by his account of the historical land distribution in the village. This marked the closure of the Plaintiffs' case and commencement of the Defendants' case as described below. Juliana Cyprian Chimazi, a 59-year-old resident of Mlandizi and Headmistress of Ruvu Secondary School, testified regarding her background, responsibilities, and the land in dispute. She stated that she had been employed as a teacher since June 1, 1988, with her first posting at Mpanda Girls

Secondary School in what was then Rukwa Region, now Katavi Region. In 2019, she was transferred to Ruvu Secondary School, where she assumed the role of Headmistress. As part of her responsibilities, she supervised teaching and learning activities, managed human resources and school property, including infrastructure and the environment, and oversaw school finances, particularly ensuring that capitation grants received from the government were properly utilized. Upon her transfer to Ruvu Secondary School, she was formally handed over the school's properties, including land and relevant TP drawings or maps, which helped her understand the school's boundaries. The handover was conducted by the School Management Team, as her predecessor had retired. She described the land in dispute as comprising 2,490 acres, situated in Mlandizi Area, between Mlandizi and Ruvu Darajani. DW1 explained that the land started shortly after Mlandizi police station and extended to Kisabi Area, where the District Council's office was located. It was bisected by Morogoro Road, with the second half extending to Meena's Area, reaching the old Morogoro Road and Ruvu JKT at the intersection of the main road. To the west, it bordered Dimara, formerly known as DAFCO. She asserted that the land was initially owned by the Ministry of Education but was later transferred to the Kibaha District Council in 2009 following the government's devolution policy. She claimed that this transfer could be proven through a sketch map that indicated the boundaries of the land. To support her testimony, she sought to tender the sketch map as evidence. Counsel for the opposing party, Mr. Mutalemwa, did not object but requested that its authenticity be ascertained. The court subsequently admitted the document and marked it as Exhibit D1. On description, she referred to the box containing the plan and stated that the map had been drawn by Kitwana S. Mzee, who had certified that the survey was conducted according to regulations. She identified key details on the document, including the date July 1, 1977, a signature with the title "Surveyor, Coast Region," and the registered plan number 17613. Displaying enviable attention to details, DW1 further explained that the school had been constructed by the Cuban government under the leadership of the late Fidel Castro as part of the Ujamaa na Kujitegemea Programme. Additionally, Page. 8 the land contained surveyed areas designated by the Kibaha District Council for infrastructure development. She noted that a high-voltage power line crossed the land, connecting Dar es Salaam to Morogoro and beyond, and that a portion of the TAZAMA Pipeline, which links Tanzania and Zambia, ran through the land. Over time, local villagers had requested permission to cultivate portions of the land to prevent it from becoming overgrown. She stated that the procedure required applicants to submit a formal request letter to the Headmistress of Ruvu Secondary School via their respective village chairpersons. This process, she confirmed, was still in place. She explained that she could identify such letters based on the signatures of the respective village chairpersons and the address of the Head of School. She clarified that the documents were photocopies rather than originals, as the original copies had been misplaced during the renovation of the main school building. Despite this, she sought to have the letters admitted as evidence. A total of 65 letters were admitted as Exhibit D2. She referred to one of the letters, identifying it as having been written by Ally Mohamed, bearing the postal address P.O. Box 187 Mlandizi, and dated December 22,

2008. It was addressed to the Headmistress of Ruvu Secondary School via the Chairperson of Mlandizi B Village and bore a signature and stamp. During cross-examination, she confirmed that she was a teacher by profession, specializing in English and Kiswahili, and had basic arithmetic skills. She maintained that the 2,490 acres of land belonged to Ruvu Secondary School, though she admitted that the name "Ruvu Secondary School" was not explicitly mentioned in the land documents, which only referred to a "secondary school." She clarified that the recorded 1.57016 acres on the map referred to Ruvu Secondary School, and when considering all records, the total land area amounted to 2,491.57016 acres. She confirmed that the school buildings were located within the demarcated school area, with no other school buildings existing outside those boundaries. DW1 admitted that while the land had been transferred due to devolution, she was unaware of the specific legal provisions governing the process and had no documentary proof of its transfer to TAMISEMI. Regarding claims by local farmers, she stated that she had no knowledge of demands made against Kibaha District Council. However, she acknowledged that the map contained a section labelled "Villager's Farm," covering 139 acres, which she interpreted as land allocated to villagers. When asked whether Kibaha District Council had the authority to prevent villagers from farming on the designated "Villager's Farm," she stated that she had no knowledge of such a designation but maintained that the map showed the entire land belonged to the District Council. She denied dragging villagers into the dispute and reiterated that she had been handed over the land in 2019 when it was already under the Page. 9 ownership of Kibaha District Council following devolution. She admitted that she was unaware of whether proper legal procedures were followed during the land survey. However, she noted that some boundary marks were visible on the land. She conceded that maps typically required a key for interpretation and that the present map lacked clear boundary indicators and natural resource markings. DW2, Grayson Mutagwaba, a 45-year-old resident of Kimara Suka, Dar-es-Salaam, and a Land Surveyor with Kibaha District Council stated that he had been employed since 2009, accumulating 15 years of experience in land surveying. His duties, he explained, involved supervising land survey activities within Kibaha District Council. He provided a detailed account of the land surveying procedure, emphasizing that it began at the village level, where village leaders held meetings and recorded minutes to determine whether a survey application was approved. He further explained that neighboring landowners had to confirm consultation, and a compiled file would be submitted to the Ministry of Lands for approval, with the survey plan ultimately stamped and signed by the Director of Survey and Mapping. DW2 elaborated on the cancellation of previous surveys, stating that if a piece of land had been surveyed as a farm, its survey had to be formally cancelled before it could be subdivided. He provided an example where urban development (Mipango Miji) required the preparation of a town plan alongside the old farm survey before cancellation. He further clarified that when dealing with government-owned land, village authorities were not involved, as the land already belonged to the District Council. Addressing the dispute before the court, DW2 stated that it concerned 2,490 acres of land acquired by the District Council from the Ministry of Education in 2009 as part of the transfer of schools to local

governments. He testified that the District Council had prepared a detailed town plan between 2011 and 2012, after which plots were surveyed, sold, and developed by some purchasers, including the District Council itself. He asserted that the dispute arose because some villagers, who had previously been allocated farming areas by the school, were now claiming ownership of the land. DW2 identified and described various survey and planning documents prepared by the Kibaha District Council, including a sketch map numbered 19/MLZ/20/2011, which had been certified by the Assistant Director. He requested its admission as evidence, and the court granted the request, marking it as Exhibit D1. He also identified another town plan document prepared by the Planning Division of the District Council. After a heated debate, the document was admitted as Exhibit D3. Continuing his testimony, DW2 identified a document titled Kisabi Layout III Mlandizi Township Authority, which bore drawing number 19/MLZ/20/032011 and had been certified on 23/8/2023. Describing the geographical positioning of the suit land, he testified that it was bisected by the Morogoro Road and Page. 10 further divided by the old Morogoro Road, with the northern half containing over 600 surveyed and sold plots. Referring to a 1980 map, he asserted that the disputed 2,490 acres were under the District Council, whereas a Villager's Farm (139 acres), LIDA's Farm (2,630 acres), and a secondary school (44 acres) were not within the Council's jurisdiction. He emphasized that the plaintiffs had no rightful claim to the land, as they had been allowed to farm there temporarily but did not own it. During cross-examination, DW2 insisted that the Kisabi project had not encroached on land claimed by the wananchi. When asked about the plaintiffs' claims, he admitted he did not know the specific size of land they claimed or when they acquired it, but he maintained that the disputed land belonged to the District Council. He rejected suggestions of inconsistencies in his testimony and asserted the accuracy of the Council's survey map. I have carefully revised the testimonies and carefully examined the exhibits admitted as evidence. I have also read the final submissions prepared by the learned Advocate. I am not going to reproduce them here, but I must admit that they added great value to this judgment. The main issue for determination is whether the Plaintiffs have established ownership over the disputed land on a balance of probabilities. As already stated, proof in civil cases is on a balance of probabilities. The Plaintiffs only needed to make a compelling and reasonably sound case. In land law, proof of ownership requires several ingredients. For purposes of this case, I will deal with four "elements" namely description of the suit land, legitimate acquisition and historical and effective possession or acquisition. I will describe each of these elements briefly before proceeding to assess them with the facts and evidence adduced. A plaintiff needs to be well acquainted with the land he has laid claim on. Unnecessary hesitations and lack basic information can easily be taken to his disadvantage. In this case the plaintiffs claim that the land measures 149 acres. They described the area as farmland "mashamba yam punga". It turns out that in their previous claim they demanded 260 acres. It transpired in the visit to the locus in quo that the suit land is not farmland as such. Permanent settlements going back many years were found and one of the major roads in our country, the Morogoro Road allegedly cut through the area. It was also apparent that the suit land did not look like land owned by individuals as

there was no mark or any boundaries. All the 4 Witnesses only mechanically subdivided the land into one to two acres. The Defendant relied on two key witnesses (DW1 and DW2) and documentary evidence. DW1, a seasoned teacher in her last days before retirement made a compelling case that the suit land was actually a small portion of the land lawfully transferred to the Council from the Ministry of Education in 2009, following the decentralization of schools. DW2, a land surveyor from Kibaha District Page. 11 Council, provided a detailed account of the land survey and planning process undertaken between 2011 and 2012. He testified that the land had been surveyed and incorporated into a town planning scheme, with portions being sold and developed. He presented a certified survey map and a town planning layout, marked as Exhibits D1 and D3, both of which were official documents signed by the Director of Survey and Mapping. It is my finding that the Plaintiff's have failed to meet this criterion. Coming to the second element namely legitimate acquisition, the Plaintiffs sought to use historical accounts of the famous Operation Vijiji. While the story sounded interesting from a historical point of view, it remains unconvincing. In those years, the population was too small to allocate 100 plus families mere 100 or so acres. PW's have also tried their best to show that they inherited the land from their departed parents, but this is not backed up with any tangible evidence. The Defendants, on the other hand, made a compelling case on the devolution process that saw schools (and their landed property) hitherto under the Ministry of Education transferred to local government. I have no doubt that this was a legitimate land acquisition process and makes policy and legal sense. I must admit however that it appears no legal historian has chosen to document such a major shift in our country that took place in 2009. It would be interesting to read from a legal historian's point of view, how overwhelming such a change was in the first five years. Let me come to the last element namely historical possession or occupation. The Plaintiffs testified that they were the one's who had allocated the land for the school in the first place. They claimed that such land did not include the suit land. As alluded to earlier, effective occupation of the suit land by the Plaintiffs is very hard to establish. DW's argument that the villagers were only permitted to grow temporary crops therein is more compelling. DW2 also clarified that the cancellation of previous surveys was necessary before new plans could be implemented, and that the disputed land had undergone a legally sanctioned planning and allocation process. In a simple language, when the decision was made to convert the land from a "farm" to "plots" another survey was necessary. This answers the issue on legality. On the evidence produced, the Plaintiffs relied entirely on oral testimony, with regards to the description, acquisition and possession of the land. The documentary exhibits tendered only built the case that there was a dispute. Such documents were neither specific to the suit land nor conferred any right. Such evidence which was not corroborated by any legal or administrative document weakened the Plaintiff's case further. The Defendant, on the other hand, provided officially certified documents, including survey maps, a town planning scheme, and land transfer records, all of which were duly Page. 12 authenticated and showed that the land belonged to the Kibaha District Council. Given the overwhelming strength of the Defendant's evidence compared to the weak and unsupported claims of the

Plaintiff, this court finds that the Plaintiff has failed to establish ownership over the disputed land on a balance of probabilities. The evidence they presented was remote, inconsistent, and significantly weaker than the clear, documentary-supported case presented by the Defendant. Accordingly, the Plaintiff's case is dismissed for lack of merit. I make no order as to cost. It is so ordered. Court: Judgment delivered this 24th day of March 2024 in the Presence Messrs. Mutalemwa Bugeza and Mutahab Hassan, learned Advocates for the Plaintiffs of Ms. Winifrida Kalua, learned State Attorney for the Defendants Dated at DAR ES SALAAM this 25th of March 2025 . E. I LALTAIKA JUDGE OF THE HIGH COURT Page. 13

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