

TANZANIA / JUDGMENT

daniel wilson chacha and 30others vs nyamitita village council and dagmar wittine 2021 tzhc 3627 17 may 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF MUSOMA AT MUSOMA LAND CASE No. 02 OF 2020 DANIEL WILSON
CHACHA 1st PLAINTIFF KERETO NYAKETI
MUSESE..... 2ndPLAINTIFF JOSEPHAT CHRISTIANO
CHACHA.....3rdPLAINTIFF MAKURU
MAGERE..... 4TMPLAINTIFF MARO
GETINA..... 5TMPLAINTIFF MWENGE
WAMBURA..... 6thPLAINTIFF JOSEPH
ZAKARIA..... 7thPLAINTIFF WAISE
MWIKWABHE 8th PLAINTIFF EDWARD C.
CHACHA..... 9thPLAINTIFF ERIJA
ODIAMBO.....10thPLAINTIFF NYAMWAYA
MAIGE..... 11thPLAINTIFF NYAHENDE
RICHARD..... 12thPLAINTIFF CHACHA C.
MASWE 13TM PLAINTIFF KISIKA
MAIGE..... 14TMPLAINTIFF KISWERI
GETUMBE..... 15TMPLAINTIFF MAIGE
GIRISI..... 16TM PLAINTIFF TATU
MAIGE.....17TMPLAINTIFF MORONI
MWITA..... 18TMPLAINTIFF MWITA
SARICO..... 19TMPLAINTIFF KICHERE
CHACHA..... 20TMPLAINTIFF MAGEMBE
MAGURIATI.....21stPLAINTIFF NGASA
NYAMHANGA..... 22ndPLAINTIFF MWAJUMA
JULIUS..... 23rdPLAINTIFF MAKURU
MAIGE..... 24TMPLAINTIFF MOREMI
NYAWARA..... 25TMPLAINTIFF PENINA Y.
BOTTO..... 26TMPLAINTIFF JUMA MWITA
GENDA..... 27TMPLAINTIFF WANGOTO

ADAMU..... 28TM PLAINTIFF NYABHAGAKA
 ERIJA.....29TM PLAINTIFF JUMA
 WILLISON.....30TM PLAINTIFF ALBINUS
 GETILI..... 31st PLAINTIFF 1 MKAMI
 GILISI..... 32nd PLAINTIFF KISAKA
 MAIGE..... 33rd PLAINTIFF KEHENGU WAMBURA
 GENTO..... 34th PLAINTIFF EMANUEL SASI..... 35th
 PLAINTIFF EERSI MANTAGE..... 36TM PLAINTIFF CHARLES
 WILLISONI..... 37TM PLAINTIFF NYAKWE
 MAIGI..... 38TM PLAINTIFF OBWANGA KABWAO
 ODODO..... 39TM PLAINTIFF Versus NYAMITITA VILLAGE
 COUNCIL..... 1st DEFENDANT DAGMAR WITTINE..... 2nd
 DEFENDANT

JUDGMENT

14th April & 17th May, 2021 Kahyoza, J.: Daniel Wilson Chacha and 38 others Plaintiffs sued Nyamitita Village Council and Dagmar Wittine praying among other things to be declared owners of the suit land and a declaration that the allocation of the suit land by the first defendant to the second defendant is unlawful. The plaintiffs further, prayed for vacant possession of the suit land and general damages to be assessed by the Court. The defendants resisted the claim contending that the plaintiffs trespassed to the forest reserve as they were not legally allocated to the suit land. The defendants contended that the plaintiffs are not entitled to damages as they invaded the suit land. The issues framed by the Court and agreed by the parties were as follows-

1. Whether the plaintiffs are the lawfully owners of the disputed land.
2. Whether the defendant unlawful trespassed to the suit land.
3. Whether the plaintiff claim is not time barred.
4. What reliefs are the parties entitled to? A brief background is that, the Plaintiffs at different times occupied the suit land without first being allocated by the relevant village authorities. The first defendant ordered them to vacate. They knocked the door of the High Court Mwanza District registry seeking a declaration that they are lawful owners of the suit land, a permanent injunction, and other remedies. Later, the High Court Mwanza District registry transferred the suit to Musoma District Registry. Are the plaintiffs the lawful owners of the disputed land? It is not disputed that the plaintiffs at various times occupied the virgin land the property of either Kenyana or Nyamitta village without allocation from the relevant village authorities. There is no dispute that Nyamittita village was registered in 1999 before that Nyamittita village was one of the hamlets of Kenyana village. The plaintiffs stated that they owned the suit land measuring 1224 acres over a long period of time ranging between 10 to 30 years and that all that time they were in peaceful occupation, using the land for agricultural and pastoral activities. The plaintiffs alleged that the disputes arose in May 2017 when the first Defendant convened the meeting and announced that the land in dispute is

reserved area and also that the second defendant will use it for bee keeping for the benefit all villagers of Nyamitita village. 3 Daniel Wilson Chacha (Pw1) deposed that he owns approximately 20 acres of land within the disputed land from 1995. He acquired a virgin land in 1995, cleared and occupied it. He deposed that he uses the land for farming and raising cattle. He added that the dispute arose on 6/05/2017 when the village chairman ordered them to vacate. Daniel Wilson Chacha (Pw1) tendered a notice of intension to sue as exhibit P.1. Daniel Wilson Chacha (Pw1) while being cross-examined, deposed that he occupied the disputed land without any resistance from the village leaders. Josephat Christiano Chacha (Pw2) deposed that he is a peasant and a resident of Nyamittita village. He owns the disputed land from 1995. He found a virgin land and occupied it. He occupies between 8-10 acres of the disputed land. He cultivates food crops and keeps cattle. He added that he has a family of 15 people. He deposed further that the second defendant was a trespasser. Maro Getina (Pw3) (67yrs) deposed that he was a resident of Nyamittita from 1982, at that time Nyamittita village was one of the hamlets of Kenya village. In 1996, he found an open land, tiled, and occupied it. Before that time, he was staying at another place which is not subject of dispute. He owns 25 acres of land where he cultivates food T crops and raises cattle. He testified that he occupied the disputed land peacefully from 1996 to 2017. On the 6/5/2017 the Village Council of Nyamittita convened a meeting and informed them that the land he occupied was part of the forest reserve. He testified that was the beginning of the dispute. Joseph Zakaria Parongo (Pw4) deposed that he started staying at Nyamittita Village in 1998 before that he was residing at Mugumu Serengeti. He found an open land and tilled it. Joseph Zakaria Parongo (Pw4)'s land is about 8-10 acres. He cultivates food crops and keeps cattle. He testified that during those old days, people used to acquire land by tilling a virgin land. He added that in 2017 the village chairman ordered them to vacate. During the cross-examination, he stated that he heard about the water project in 2016. Waise Mwikwabe (Pw5) (49yrs) deposed that he lived at the disputed land from 1987. She was staying with her husband. She found her husband occupying the disputed land. She occupies around 8 acres of land with 12 family members. During cross-examination, she testified that her husband died in 1988. Edward Christian Chacha (Pw6) testified that he was a resident of Nyamittita from 1995. Before that he was living at Kamana area. He owns a land, which I is between 10-11 acres. He is a peasant. He cultivates maize, millet, cassava, and sweet potatoes. He keeps goats, cows, and hens. He occupied the disputed land when it was part of Kenya village and that he did not face resistance from the village authorities. Erija Adiabo (Pw7) (55yrs) testified that he occupied the disputed land from 1997 and that at that time Nyamittita village was not in existence. He tilled a virgin land and started cultivating crops. He stated that his land is around 15 acres. He added that in 2017 the village chairman ordered them to vacate. He prayed to be declared a lawful owner and an order to bar the defendants from interfering with their peaceful enjoyment. He deposed that he was ready to vacate upon being paid 5 compensation. During cross-examination, he denied to occupy the land from 2014. He denied cutting trees for burning charcoal. Nyamwaya Maige (Pw8) (51yrs) deposed that he owed a piece of land at Nyamittita from 1997. He owns around 50 acres. He acquired the land in question by tilling a virgin land. He testified that he had five

houses at that place. He had three local stores (vihenge). He has 15 members of the family. He deposed that he did not face resistance in 1997 when he occupied the land for the first time. Later, in 2017 the chairman of Nyamittita village informed him that his land has been earmarked as the forest reserve. Kisaga Maige (Pw9) (48yrs) deposed that he owned the disputed land from 1997. At that time, the land was part of Kenya village. He deposed further that he acquired 15 acres of land. He found a virgin land, tilled, and started cultivating. He added that he did not get any objection from the village leaders at the time he took possession of the disputed land. He testified that the dispute commenced in 2017. Kisaga Maige (Pw9) told the Court that the defendant's order to vacate his land disturbed him, he halted all his development activities. He prayed the Court to declare him the owner of the suit premises and the defendants to pay him costs of this case. Nyabagara Erija (Pw10) (44yrs) deposed he is a resident of Nyamittita village from 1997. He owns a piece of land measuring around 9- 10 acres. He obtained the land by tilling a virgin land. He did not face resistance from the Kenya village leaders at the time he occupied the land. He added that the dispute started in 2017 when the first defendant's leaders convened a meeting and announced that they had set aside his land as forest reserve. He deposed that he was not involved in the process that declared his land a forest reserve. He prayed for declaration that he is a lawful owner of the suit land and to prevent the defendant from disturbing them. During cross-examination, he denied to move to the disputed area in

2014. He deposed in 1997 he was a resident of Bujora. Kisweri Kitumbe (Pw11) (43yrs) deposed that he is a resident of Nyamittita village from 1997. Before that time, he was residing at Kenya. He owned 10 acres of land. He added that he did not apply for land from Kenya Village authorities as there was no such a requirement to at that time. He testified that he had four houses at that place. He further testified that the dispute arose in 2017 when the first defendant ordered him to vacate on the contending that his land was a forest reserve. Maige Girisi (Pw12) (53yrs) deposed that he is a resident of Nyamittita from 1988. Before that he was living at Kenya. He owns around 80 acres of land. He found a virgin land cleared it for farming, grazing and for settlement. He contended that he had a family of 30 people, 50 cows, 30 goats, 5 donkeys and 30 hens. Wangoto Adam (PW13), 82 years old, deposed that he is a resident of Nyamitita from 1984. At that time, there was no village. It was a bush. He owns 6 acres of land. He found and occupied a virgin land. Wangoto Adam (PW13)'s family is composed of 6 members. He deposed that he * planted trees and grew food crops without facing resistance. He testified that the dispute commenced in 2017 after the 1st defendant convened a meeting and ordered them to vacate. 7 Magembe Maguriati (PW14), 42 years old, deposed that he is a resident of Nyamittita from 1996, at that time he was staying with his parents. He owns 13 acres of land which he obtained in 1996 by clearing a bush and building his house. The houses he built are occupied by nine people. He added that he uses the land for growing food crops and raising herds of cattle. He contended that the dispute arose in 2017 when he was required to vacate his land. Ngasa Nyamuhanga (PW15), 45 years old was another witness who deposed that he is a resident at Nyamitita since 1994. He was staying with his parents. In 1996, he became independent

from his parents. He acquired 10 acres of land by clearing a virgin land. He deposed that at that time his village was known as Kenya. It was his testimony that, at that time there were no elaborate procedures of acquiring land. He denied to own any other land apart from the disputed, during cross-examination. Morami Mwita (PW16), 40 years old deposed that he was a resident of Nyamitita from 1992. At that time, he was living with his relative Mwita Chacha Mwita. He started living independently in 1996. He acquired a virgin piece of land cleared it and used that land for farming and keeping herds of cattle. The land is about 25 acres. He owns three houses thatched with grasses and one house thatched with corrugated iron sheets. During cross-examination, Marami Mwita (PW16) deposed that he got the disputed land when he was 16 years old. Eersi Mantange (PW17), 59 years old deposed that in 1978 he started living independently. He first settled at Majimoto up to 1980. In 1980, he moved to Nyamitita where he acquired the land and started living there. He owns around 100 or 99 acres of land. At that time Nyamitita village was one of the hamlets of Kenya village. He faced no resistance from Kenya village leaders. He keeps 136 cows, 4 donkeys and 4 pigs and part of his land is used for farming. He contended that the dispute commenced in 2017 when he was ordered to vacate. He prayed for a declaration that he is the owner of the land in dispute and that the defendants be ordered to compensate him. He denied to have moved to the disputed land in 2014, during cross-examination. Keroto Nyaketi (PW18) deposed that he got his land measuring between 4-5 acres in 2004. He found a virgin land cleared and occupied it. He faced no resistance from the village leaders. He occupied the land peacefully until 2017 when the first defendant required him to vacate. Mwenge Wambura (PW19) 45 years old deposed that he resident at the disputed land from 1997. He owns 8 acres of land which he acquired by tilling a virgin land. He deposed that there were no procedures for obtaining land at that time and that he got no resistance from the village leaders. He denied to start staying at the disputed land in 2007 but he stated that he was born and brought up at that place, during cross examination. Mwita Sariro (PW20), 42 years old, deposed he was at Nyamitita and in 2004 he commenced his independent life, and acquired a piece of land. His land is about 12 acres. He acquired land using the procedures, which were there at that time. He also deposed that he occupied land from 1999. 9 Mwita Sariro (PW20) denied to know a woman called Nyangwe and accepted to know Maige Girisi, one of the plaintiffs. Morami Nyawara (PW21) (50yr) deposed that he is a resident of Nyamitita from 2017. He deposed that he was born in 1996 at that time Nyamitita village was part of Kenya village. He deposed further that he started his independent life in 2002. He possesses 6 acres of land, which he acquired by tilling a virgin land. He told the Court that he keeps herds of cattle and uses the land for farming. He testified that the dispute commenced in 2019 or 2018. He told this Court during cross-examination that his land was part of the disputed land. Albinus Getere (PW22), 60 years old deposed that he is a resident of Nyamitita from 1994. His land is about 50 acres. He occupied the disputed land from 1994 to 2017 when the conflict commenced. During cross-examination, he stressed that his land was part of the disputed land. He started that he had 20 acres at another place, which is not subject of dispute. Emmanuel Sasi (PW23), 43 years, deposed that he started living independently in 1997. He owned 50 acres of land. He

acquired the land by clearing a virgin land and by occupying it. He did not apply to the village authorities for allocation of the land. He deposed that he had 8 houses and 20 family members. Emmanuel Sasi (PW23) deposed, during cross-examination, that at the time he acquired the land the procedure for acquiring land was by tilling the virgin land and occupying it. Mussa Gabriel (50yrs) (Dwl), deposed that he was • born and brought up at Nyamittita village at that time Nyamittita village was part of io Kenyana village. He is a peasant, growing food crops and keeping herds of cattle. In 2020 became the chairman of Nyamittita village. Mussa Gabriel (Dwl) deposed that he knew Daniel Wilson Chacha, who is a resident of Nyamittita and that he came to Nyamittita from Bunda - Monchomwero village in 2016. Daniel Wilson Chacha went to Nyamittita village and stayed with his relative. Later, Daniel Wilson Chacha invaded the land as he did not follow any procedure to aquire the land. He trespassed to the village land in 2016. Mussa Gabriel (Dwl) testified that to acquire land, one had to apply to the village authorities. The interested person had to write to the village council. Thereafter, village council had to submit the applicant's letter to the general assembly of the village for consideration. Daniel Chacha did not follow the procedure. Nyamittita village was formerly part of Kenyana village. He described that the procedures of obtaining land were the same. Daniel Chacha entered the virgin land, cut down trees and processed charcoal. Mussa Gabriel (Dwl) prayed Daniel Wilson's claim to be dismissed as it is unlawful and that the land he occupies is the village land. Mussa Gabriel (Dwl) deposed that he knew Josephat Chirstiano 4 Chacha third plaintiff. He started living on the disputed land from 2017. Joseph Christiano Chacha resides in the forest reserve of Nyamittita. Nyamittita forest reserve was set aside in 2001 by Nyamittita village. It was reserved by village council and later the general assembly meeting. Third plaintiff Josephat did not apply for land. He trespassed. Mussa Gabriel (Dwl) denied to know Joseph Zakaria. Joseph Zakaria resides in Nyamittita forest reserve. Mussa Gabriel (Dwl) deposed that Joseph Zakaria was cutting down trees surrounding the water sources. 11 Joseph Zakaria came at that place in 2017. He entered the forest and started undertaking economic activities. The village council and the general assembly did not permit him to occupy the forest reserve. Mussa Gabriel (Dwl) deposed that he knew Mwikwabe Waise, who resides at Nyamittita hamlet. He has been residing there since 2016, when he moved from Kenyana village. It is not true that he has been living at that place from 1980. He started residing at that place from 2016. He trespassed to the land he is occupying. He did not follow the laid down procedures of acquiring land. He did not apply for land. He has no right to claim the dispute land. Mussa Gabriel (Dwl) deposed that he knew Edward C. Chacha. He resides in Nyamittita forest reserve. He lived there since 2016. He refuted Edward C. Chacha's testimony that he occupied the disputed land from

1995. He added Edward C. Chacha resided at Kirumi area before he moved to Naymittita village. Nyamittita village authorities did not allocate to Edward C. Chacha the disputed land. Edward C. Chacha trespassed to the land he is occupying. The village leaders wrote him a letter requesting him to vacate. He has no any colour of right to the disputed land. Mussa Gabriel (Dwl) knew Elija Andiago who is a resident of Buhoro hamlet and that he moved to

Nyamittita village since 2003. It is not true that Elija stated leaving at Buhoro from 1997. Elija moved to Buhoro hamlet from Burunga village. Nyamittita village was registered in 1999. The village was registered before Elija shifted to that place. Elija invaded the village land. Elija did not follow the laid down procedures. Elija has no right to claim anything. Elija should not be declared owner of the disputed land. Mussa Gabriel (Dwl) denied to know Dagmar. He only heard about her name. Mussa Gabriel (Dwl) deposed that the bee keeping project was the village project. Dagmar was a sponsor. Dagmar had nothing to do with the bee keeping project. Mussa Gabriel (Dwl) deposed that he knew Nyamwaya Maige resident of Nyamittita village from 2002. He shifted from Gantamome village. Gantamome village is within Busawe ward. He deposed that it was not true that Nyamwaya moved from Kenya to Nyamittita village. Nyamwaya Maige trespassed to 50 acres of land he occupies. Mussa Gabriel (Dwl) deposed that he knew Kisaka Maige. He has been a resident Nyamittita village from 2002. He moved from Gantamome village to Nyamittita with his friend Nyamwaya. He invaded 15 acres of land belonging to Nyamittita village. The village Council wrote him a letter requiring him to vacate. Kisaka has no right to the disputed land. Mussa Gabriel (Dwl) prayed that Kisaka Maige should not be declared the owner of the disputed land and that he had no right to be compensated. Mussa Gabriel (Dwl) further testified that he knew Kisweri Kitumbe and that he started residing in Nyamittita village from 2016. Mussa Gabriel (Dwl) deposed that he did not know where he came from. He added that he invaded 10 acres of land, he was occupying. The Village Council and the Village General Assembly did not land to Kisweri Kitumbe. Mussa Gabriel (Dwl) deposed that he knew Maige Girisi. He lived at Nyamittita since 2000 and prior to that he resided at Kenya village, which was within Nyamittita hamlet, where he lives to the date he testified. He testified that Maige Girisi's land was not subject of dispute, that is the land he owned before 2000. He sold his land and moved and occupied the disputed land from 2017. He refuted the evidence that Maige Girisi occupied the disputed land of about 80 acres from 1987 or 1988. He occupied the dispute land from 2017. Maige Girisi did follow any procedure to obtain land he is claiming. Veronica C. Rukanda (DW2), a lawyer deposed that she educated and sensitized Nyamittita people on how to prepare bye-laws and conserve land or forest. They educated members of the committee. She was with other officers from Serengeti District Council. She deposed that land was surveyed after the conservation committee was appointed. It was approved in May 2017. She deposed after the bye-laws were created after the land was surveyed. Deus Hemeti (DW3), a Secretary of Kimei Bee-keeping Group, deposed that Serengeti District Council assisted them to start the Bee-keeping Project for the benefit of members of the Group and all villagers. They harvested honey once and bought 20 more bee-hives. The Council gave them 30 bee-hives. Deus Hemet (DW3) deposed that he knew Kereto and that he invaded the forest in 2018. Selonga Maro Chacha (DW4) a member of the Village Council deposed that some plaintiffs trespassed to the village land while in search for pastures. He specified that Kereto invaded the village land looking for pasture. At first, he settled to his brother-in-law's land and later invaded the land he occupies. Selonga Maro Chacha (DW4) further deposed that the village had projects such the irrigation project and the Domestic water supply project. The source for water for

both projects was Nyamittita forest. Mafuru Makweba Sagati (DW5), a village executive officer deposed that the plaintiffs are invaders and that they invaded the village forest in

2017. He explained the Nyamittita village had bye-laws and the village land plan in place. He could not tender the by-laws and the village land plan as he had a photocopy. He deposed that Edward C. Zakaria was a citizen of Kenya and they reported to the Migration Department about questionable citizenship of Edward C. Zakaria. He deposed that he knew Erija, Nyawaya Maige, Maige Girisi, Moroni Mwita Mwita Sarico and Kichele Chacha. He deposed that Kichele Chacha vacated the disputed land after he received a letter from the village council requiring him to vacate. Mafuru Makweba Sagati (DW5) added that he knew all the plaintiffs except Erasi Matange unless that person's name was Elias Matange. During cross examination, Mafuru Makweba Sagati (DW5), deposed that Maige I Girisi, Moroni Mwita, Makuru Maige and Ngaga Nyamhanga Tatu, Maige invaded the forest in 2014 and Mwita Saliko, Kichele Chacha, Magembe Magulyati Mwajuma and Penina Yohana invaded the forest in 2015. William Chacha (Dw6) explained the procedure of obtaining land. He deposed that he was a resident of the Nyamittita village from 1984 and a member of the village council from 2014 to 2019. He deposed that he knew all the plaintiffs and that they are invaders. He added that Makuru Magere left his land he occupied lawfully and moved to the forest reserve. He testified that Joseph Zakaria is a citizen of Kenya, relocated from Kisii to 15 Nyamittita. He deposed that Magembe Magulyati has a piece of land near the water source. During cross-examination, William Chacha (Dw6) deposed that Nyamittita was well kept before the plaintiffs invaded it. Daudi Joel Swila (Dw7), a forest officer Mugumu district. He deposed that the plaintiffs invaded the forest destroying various types of trees and some of which are very rare species. The last defence witness was Mahembe Magoye (Dw8) who lived in Nyamittita village from 1982. He deposed that he was a village chairman from 2010 to 2020. He explained that during his tenure a person who wanted land had to apply to the village council. The village council considered the application and submitted it to the village general assembly for approval or otherwise. He deposed that Nyamittita village assembly resolved to preserve Nyamittita forest reserve in 2017. He deposed that there are two village projects having the source of water from Nyamittita forest reserve, Domestic Water Supply Project and the Irrigation Scheme Project. Mahembe Magoye (Dw8) deposed that he knew Maige- Girisi and that he came from Busuli village. He added that Maige Girisi married Kereto's sister. He deposed that Joseph C. Chacha relocated to Nyamittita from Tarime. As to Makuru Magere, Mahembe Magoye (Dw8) deposed that he had two pieces of land and none of them is within the disputed land. He added that Maro Getina had no land within the disputed land. He 1r stated that Joseph Zakaria is not a citizen of Tanzania as he came from Kenya. Mahembe Magoye (Dw8) testified further that Waise Mwikwabe, Kisaka Maige, Chacha C. Maswe and Nyahende Richard do not own the disputed land. As to Erija Odiambo, he deposed that he invaded the disputed land in 2014. He described Kisweri Getumbe as the trespasser, who went to Nyamittita village with Kitegi. Kitegi left him behind. He added that he knew Maige Girisi, who is married to four wives. He knew Moroni Mwita who owns a garden in the forest reserve. Mahembe Magoye (Dw8)

gave further evidence Kichere Chacha and Ngasa Nyamuhanga have no land within the forest reserve. He added that Magembe Magulyati has a garden at the water source. As to Mwajuma Julius, Mahembe Magoye (Dw8) deposed that she invaded the disputed land in 2016 or 2017. He testified that Makuru Maige is dead and that Makuru Maige did own a disputed piece land. He deposed that Penina Yohan did not own land in the disputed land. He added that Penina Yohana wrote a letter to withdraw herself from the pending case. Mahembe Magoye (Dw8) deposed that Juma Mwita Genda invaded two acres of land. Wangoto Adam invaded the land in the forest reserve. Juma Wilson did not invade the disputed land. He deposed that Albinus Getili has a garden in the forest reserve. Mukami Girisi is Albinus Getili's wife. Mahembe Magoye (Dw8) testified that he knew Emmanuel Sasi, Kahengu Wambura Gento. Deposed that Wambura did not own the 17 disputed land whereas Emmanuel Sasa owns 10 acres of the disputed land. He added that he did not know Erasi Matagnge but Elias Matange. Elias Matange came from Majimoto. He described Charles Wilson as Juma wilson's younger brother and that person is not an invader. Mahembe Magoye (Dw8) testified further that he knew Nyakwe Girisi. Nyakwe Girisi is the wife of Maige Girisi and that she is trespassed to the village land. He refuted the allegation that Obwanga Kabao owned a piece of land in the disputed land. He finalised his evidence by deposing that he knew the second defendant, Dagmar. She financed the Bee- Keeping Project. Briefly the plaintiffs who testified showed that they acquired the disputed land by tilling the virgin land and occupying at different times. The defence witnesses refuted the plaintiffs' allegation testifying that they plaintiffs invaded the land recently from 2014 to 2017. They added that the plaintiffs invaded the forest reserve and the source of water for the irrigation scheme project and domestic water supply projects. The defence witnesses mentioned a third project as the Bee-keeping projects. Are the plaintiffs the lawful owners of the disputed land? I will commence with the first issue whether the plaintiffs are the lawful owners of the disputed land. It is agreed by both sides in this case that the plaintiffs at various points of time found the virgin land, cleared the land for agricultural activities, and set aside part of the land for pastoral activities. Most of the plaintiffs deposed that they occupied the disputed land from 1997 when the land was part of the Kenya village land. Nyamittiti village was one of the hamlets of Kenya village. In short, the defence was that the plaintiffs invaded the disputed land. They did not obtain the land by following the laid down procedures. The defence was that plaintiffs invaded the disputed land between 2014 and 2017. The first defendant wanted to preserve its land which was the catchment area and source for water supply for domestic use. The urge to protect water sources came from the fact the government set put two projects; one, an irrigation scheme project and two, domestic water supply project. Nyamittita river was the source of water for both projects. The defence evidence shows that all the plaintiffs acquired the land without complying with the laid down procedures. That notwithstanding, the first defendant did not order all plaintiffs to vacate as some of them did occupy land in the land identified as the source of water, the catchment area, or the forest reserve. I venture I answering the five issue I wish to point out here Before that the plaintiffs may be categorized into three groups; one, those who did not testify; two, those who testified but their lands are not part of the disputed

lands; three, the ones who testified and their lands are subject of this dispute. I, without much ado, find the plaintiffs who did not testify to have failed to prove their claims. The defence evidence was that some of the plaintiffs Withdrew from the case as they either had no land within the forest reserve area or knew they invaded the land and vacated. The plaintiffs who never testified, Makuru Magere, Kereto Nyaketi Musese, Mwenge Wambura, Chacha C. Maswe, Nyahende Richard, Tatu Maige, 19 Mwajuma Julius, Makuru Maige, Penina Y. Botto, Juma Mwita Genda, Juma Wilson, Kehengu Wambura Gento, Kisika Maige, Charles Wilson, Nyakwe Maigi and Obwanga Kabwao Odogo. It is settled law that a person may act and represent another person, but there is no law or legal enactment, which can permit a person to testify in place of another. The plaintiffs who never testified their cases never got off the ground, as the Court of Appeal held in National Agricultural and Food Corporation V Mulbadaw Village Council and Others [1985] TLR 88. For that reason, I dismiss the claims of Makuru Magere, Chacha C. Maswe, Nyahende Richard, Tatu Maige, Mwajuma Julius, Makuru Maige, Penina Y. Botto, Juma Mwita Genda, Juma Wilson, Kehengu Wambura Gento, Kisika Maige, Charles Wilson, Nyakwe Maigi and Obwanga Kabwao Odogo for want of evidence. I am aware of the fact that some of the plaintiffs withdrew from the conduct of the case and informed the first defendant in writing that fact would not affect the findings. That done I will consider the plaintiffs who testified claiming that the land they own is subject of dispute while the defence witnesses depicted that they have no dispute with them. The defendants' twb principal witnesses Mussa Gabriel (Dwl) and Mahemba Magore (Dw8) testified that lands Maro Getina (Pw3), Waise Mwikwabe (Pw5), Kisaga Maige (Pw9), Ngasa Nyamuhanga and Morami Nyawara occupy are not subject of any dispute. I find their land not subject of any dispute. I however, hesitate to hold that Maro Getina (Pw3), Waise Mwikwabe (Pw5), Kisaga Maige (Pw9), Ngasa Nyamuhanga and Morami Nyawara are the lawful owners of the land they occupy as I do not find evidence to so concluded. I will hold that they had no cause of action against the defendants. I dismiss their claims for want of cause of action. The third category of plaintiffs are the ones, who testified and whose pieces of land are subject of dispute. Those plaintiffs are Daniel Wilson Chacha (Pw1), Josephat Christiano Chacha (Pw2), Joseph Zakaria Parongo (Pw4), Edward Christian Chacha (Pw6), Erija Adiabo (Pw7) (55yrs), Nyamwaya Maige (Pw8), Nyabagaka Erija (Pw10), Kisweri Kitumbe (Pw11), Maige Girisi (Pw12), Wangoto Adam (PW13), Magembe t Maguriati (PW14), Morami Mwita (PW16), Eersi Mantange (PW17), Keroto Nyaketi (Pw 18), Mwenge Wambura (Pw19), Mwita Sariro (PW20), Albinus Getere (PW22) and Emmanuel Sasi (PW23). It is vital to observe here that the defence witnesses deposed that a big part of Albinus Getere (PW22) land is not subject of dispute, as the only contested land is around six acres out of 50 acres. The plaintiffs summoned twenty-three (23) witnesses to prove the claim whereas the defence summoned eight (8) to disapprove the claim. Each plaintiff appeared to establish his or her separate and distinct claim. It is proper to say that each plaintiff gave his or her own evidence and called no witness to support his or her case. On the defendants' part, there were eight witnesses to prove that the plaintiffs were trespassers. I will now, consider the evidence of both sides. It is clear that the plaintiffs found the virgin land, cleared, and occupied the land

for agricultural or pastoral activities. The plaintiffs' evidence is that they occupied the land before Nyamittita village was registered, except two plaintiffs; Keroto Nyaketi (Pw 18) and Mwita Sariro (PW20) who deposed that they occupied the disputed land in 2004. Both sides do agree that 21 Nyamittita village was registered in 1999. They all agree that before Nyamittita village was registered Nyamittita was one of the hamlets of Kenyana village. To answer the first issue, I will ask myself two more question; one, whether the plaintiffs acquired ownership after occupying the disputed land for long period of time peacefully; and two, whether there are bye-laws declaring the disputed land the forest reserve. I will commence with the later. I examined the procedure the first defendant took make bye laws and declare the disputed land a forest reserve. The defence witnesses were not at one as to when the forest was declared reserve. Mussa Gabriel (Dwl) deposed that the process commenced in '2001 and Mahemba Magore (Dw8) deposed that the village general assembly passed a resolution in 2007 to make Nyamittita forest a reserve forest. Veronica C. Rukanda (DW2) explained the process Nyamittita adopted to pass the resolution to preserve Nyamittita forest. She gave contradicting evidence with that of Mussa Gabriel (Dwl). Mussa Gabriel (Dwl) deposed that there was land use plan from 2001 while Veronica C. Rukanda (DW2)'s evidence showed no land plan was in place before 2017. Land used plan was put in place after consultative meetings held in 2017. The procedure for land plan is provided by section 13 of the Village Land Act, Cap. 114 R.E as follows- "13.-(1) The village council shall recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes.

- (2) The recommendations of the village council may be put forward as- 22
 - (a) a land use plan for the village or part of it;
 - (b) specific recommendations on specific portions of village land; or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (3) The district council shall provide advice and guidance to village councils on the exercise of their functions under this section.
- (4) A village council shall, when exercising functions under this section, have regard to any advice and guidance provided under subsection (3)." I It is unfortunate that the first defendant did not produce minutes prove that the Council or Village assembly complied with the above procedures in putting in place the land use plan, reserving Nyamittita forest. The defence witnesses alleged that there was a land use plan they ought to have proved it. That notwithstanding, the defence proved that some of the plaintiffs occupied the land within the proximity of the banks of the river. This fact was clearly seen when the Court visited the scene. Those plaintiffs, to mention a few are Moroni Mwita and Magembe Magulyati are occupying the land against the law. I find that the defendants proved that the plaintiffs illegally occupy the land. Section 57 the Environmental Management Act, 2004 provides that "57. -(1) Subject to subsection (2), no human activities of a permanent nature or which may, by their nature, likely to compromise or adversely affect conservation and, or

the protection of ocean or natural take shorelines, river bank, water dam or reservoir, shall be conducted within sixty metres/' 23 I find that the defendant did not establish that the plaintiffs occupied the land set aside for forest reserve but established that the some of them are occupying land in violation of the Environmental Management Act. I now answer second question, whether the plaintiffs acquired ownership after occupying the undisputed land for long period of time peacefully. I will not dwell much on the issue whether the plaintiffs occupied the land after the Village Land Act, Cap. 114 came into operation of not as I find it settled that once the village was registered the management of the village land became the function of the village council. See the National Agricultural and Food Corporation V Mulbadaw Village Council and Others (supra) and G.N. 168/75, para 5(2) provides as follows- "(2) subject to availability of arable land, the Village Council shall allot a piece of farmland to every kaya in the village according to need and ability to develop it. The Village Council shall have power to determine the structural pattern of farms in the village and the use thereof." There is yet another proof that once the village is registered the management of the had vested in the village council. This position is found in the determination of the Court of Appeal in the case Metthuselah Paul Nyagwaswa vs Christopher Mbote Nyirabu [1985] TLR 103. The Court found that there was no transferred because the village council did not approve it. It stated- "rights to land held in a registered village could only be transferred with the approval of the Village Council... the sate to the appellant, for lack of approval, was void and of no effect." Arguing by analogy, if the Court of Appeal held that there was no lawful transfer of land in the registered village in the absence village council's approval, I do not hesitate to hold that there would be not lawful occupation of the land without the blessings of the village council in the registered.village. Thus, the position before and after the Village Land Act [Cap. 114 R.E. 2019] came into operation is similar that, no person would legally occupy or acquire land without the involvement of the village council. The * deference is that under the law the village council upon receipt of an application makes the recommendation for approval or otherwise to the village general assembly. See section 8 of the Village Land Act. There is no doubt that the plaintiffs occupied the disputed land without the involvement of the village council and without approval from the village general assembly for those who occupied land after the Village Land Act came into operation. Thus, they did not lawfully occupy the disputed tend. The plaintiffs contended that they have occupied the land for long time undisturbed. Although, this was not proved as the defendants called witnesses *to show that the plaintiffs invaded the disputed land between 2014 and 2017. Even if, I am to hold that the plaintiffs proved to occupy the land for quite a long period that would not entitled them to be declared lawful owners of the suit land. Section 38 of the Law of Limitation Act, [Cap. 89 R.E. 2019] stipulated no person shall acquire public land by adverse possession. It states that- 25 38 (1) Notwithstanding anything contained in this Act-

- (a) no person shall become entitled to an estate or interest in any public land by adverse possession; Section 2 of the Law of Limitation Act, (supra) defines the public land as follows- "public land" means any land which is not held, or deemed by the provisions of the

Government Leaseholds (Conversion to Rights of Occupancy) Act to be held, under a right of occupancy, or under customary law, or under the provisions of section' 5 of the Customary Leaseholds (Enfranchisement) Act; The disputed land is the public land, that is the village land as none of the plaintiffs testified that he or she owned the land under customary law. Thus, the plaintiffs cannot acquire public land by adverse possession notwithstanding the period they occupied the land peacefully. Eventually, I find that the first defendant did not trespass to the plaintiffs' land as the land belonged to the Nyamittita village from the date it was registered and prior, it belonged to Kenya village. However, it must be pointed out here that I was not convinced that the first defendant passed bye-laws or declared the specified area as forest reserve. The defendants' witnesses did not tender the bye-laws. The third issue was whether the plaintiffs' claim is not overtaken by time. The plaintiffs deposed that the dispute ensued in 2017 when the first defendant ordered them to vacate. The defence refuted the contention that it ordered the plaintiffs to vacate in 2017. For that reason, I find that the plaintiffs' claim is not overtaken by time. 26 Lastly, I will answer the issue to what reliefs are the parties entitled to. Parties are entitled to-

- 1) The plaintiffs Daniel Wilson Chacha (Pw1), Josephat Christiano Chacha (Pw2), Joseph Zakaria Parongo (Pw4), Edward Christian Chacha (Pw6), Erija Adiabo (Pw7) (55yrs), Nyamwaya Maige (Pw8), Nyabagaka Erija (Pw10), Kisweri Kitumbe (Pw11), Maige Girisi (Pw12), Wangoto Adam (Pw13), Magembe Maguriati (Pw14), Morami Mwita (Pw16), Eersi Mantange (Pw17), Keroto Nyaketi (Pw 18), Mwenge Wambura (Pw19), Mwita Sariro (Pw20), (Pw22) and Emmanuel Sasi (Pw23) failed to establish that they are lawfully entitled to the land they are occupying. While Albinus Getere (Pw22) did not establish title to the six acres out of 50 acres which are subject of dispute. They have no right to occupy the land unless they legitimize their occupation.
- 2) The plaintiffs whose land are not subject of dispute have a right to enjoy the land but I hesitate to declare them the lawful owners as * there was no evidence to establish their title. Those plaintiffs are Maro Getina (Pw3), Waise Mwikwabe (Pw5), Kisaga Maige (Pw9), Ngasa Nyamuhanga and Morami Nyawara. They may also need also to legalize their occupation.
- 3) I dismiss the claims of the following plaintiffs who never testified Makuru Magere, Chacha C. Maswe, Nyahende Richard, Tatu Maige, Mwajuma Julius, Makuru Maige, Penina Y. Botto, Juma Mwita Genda, Juma Wilson, Kehengu Wambura Gento, Kisika Maige, Charles Wilson, Nyakwe Maigi and Obwanga Kabwao Odogo. The plaintiffs 27 under this category are considered as if they never instituted a case against the defendants.
- 4) Plaintiffs who occupy land within 60 metres from the surface river banks and water reservoirs should stop immediately after harvesting the seasons crops. I find just to give them time to harvest seasons crops due to the fact the first defendant acquiesced to the invasion. They are occupying those areas against the law. In the end, I find the plaintiffs' claim not established. However, given the nature of this case I am of the view that each party should bear its own costs. The circumstances of this case are; one, that first defendant did not establish that she legally passed the bye-laws. She failed to produce a copy; and two, the

first defendant delayed to take action against the plaintiffs after they invaded the disputed land. It is accordingly ordered. J.R. Kahyoza JUDGE 17/05/2021 Court:-Judgment delivered in the presence of the first plaintiff Mr. Daniel Wilson Chacha and the second plaintiff, Mr. Kereto Nyakieto and' Mr. Mussa Gabriel, the Chairman of the first defendant and Ms. Veronica C. Rukanda for the defendants. B/C Ms. Tenga present. 28 J.R. Kahyoza JUDGE 17/05/2021 COURT: Parties shall obtain a copy one week from today as I am travelling on the 18lh May, 2021. J.R. Kahyoza JUDGE 17/05/2021 29

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