

TANZANIA / JUDGMENT

EMMANUEL MADUHU VS MWATIMBA VILLAGE Final

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY AT SHINYANGA CIVIL CASE NO. 10 OF 2023 (ORIGINAL
JURISDICTION) EMMANUEL MADUHU MBITI PLAINTIFF
VERSUS

1. MWANTIMBA VILLAGE COUNCIL
2. MALI MCHENYA
3. BUHURU LUTANDULA
4. SHOTO KIDUBU DEFENDANTS
5. PIMBI BUHULA
6. BOYA SAMSONI
7. BARIADI DISTRICT COUNCIL
8. ATTORNEY GENERAL

JUDGMENT

30th July & 2nd September 2024 F.H. MAHIMBALI, J The plaintiff claims ownership of land against the defendants measuring 350 acres located at Mwantimba village, Matongo ward within Bariadi District in Simiyu region whose value is estimated to be 350,000,000/= bordered with; 1 Malongo Mwalugwahwili on the eastern side, Mudiya river, Mayenga Mayuma and Chuma on the western side, way to Masewa on the Northern side and Serengeti game reserve on the southern side. It is alleged that the plaintiff acquired the suit land by clearing the virgin land and operation vijiji in the years 1969 and 1975 respectively and part of it by purchasing from various individuals. That since 1969 throughout until the year 2011 the plaintiff was lawfully occupying and using the suit land without interference from any person. In 2011 the first defendant under the leadership of the second defendant claimed that the plaintiff's land belongs to the village, thus took away ownership of the suit land unlawfully. On the similar vein the 2,3,4, 5 and 6 defendants on 9/7/2011 in coraboration with a traditional group well known as Dagashida, without any colour of

right unlawfully entered into possession of the disputed land and destroyed various properties of the plaintiff. Being the case the plaintiff after other necessary efforts had failed to reconcile the situation, filed this suit. Basing on the above facts, the plaintiff claims for the following reliefs jointly and severally against the defendants;

- i. Declaration that the said land in dispute belongs to the plaintiff. ii. An order for eviction of the defendants from the disputed land. 2 iii. A declaration that the defendants have maliciously damaged the plaintiff's properties iv. The defendants to pay the plaintiff sum of Tanzania Shillings Three Hundreds Twenty Seven Million Three Hundred Thousand (TZS 327,300,000/=) for malicious damages of various properties specific claims.
- v. Order for compensation to the plaintiff for unlawfully entering possession into the plaintiff's land vi. Order for restoring back ownership of the said land vii. Payment of general damage as- may be assessed by the court viii. Costs of the suit ix. Any other reliefs as the court may deem fit and just to grant for interests of justice. All in all, the legal stand on any legal claim before a court of law is this: Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts do exist. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side. Thus, it is trite law that a burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person. That notwithstanding, in civil matters, a fact is said to be proved, if its existence is established by a preponderance of probability (see section 3(2) b, 110 and 112 of the Tanzanian Evidence Act, Cap 6, R.E 2022). A mere saying in court is not a proof of a fact and thus does not accord a litigant with a legal right but only when he or she establishes the existence of the said facts by a preponderance of probability. Only a party with heavier evidence is to be pronounced a winner for a legal claim before a court of law. At the hearing of this case, the plaintiff was represented by Mr. Geoffrey M. Tuli, learned advocate while the 1st, 7th and 8th defendants enjoyed the legal services of Mr. Mussa Mpogole learned State Attorney. The 2nd -6th defendants, didn't appear in court for their defense, so the suit proceeded exparte against them. In determining the suit, four issues for court's deliberation were framed namely;
- i. Who is the lawful owner of the disputed land between the plaintiff and 1st defendant. ii. Whether the 1st defendant trespassed to the disputed land and caused damages. iii. Whether the plaintiff is entitled to 327,300,000/= as compensation of the damages caused (if the answer to issue no, two is in affirmative. iv. To what reliefs are the parties entitled to. 4 The plaintiff's case had a total of five witnesses namely; Emmanuel Maduhu Mbiti (PW1), Kitwima Busungu (PW2), Mayenga Mayuma (PW3), Robert Mbulela Makinda (PW4), and Samson Katambi (PW5). For the 1st, 7th and 8th defendants' case there were three witnesses namely; Ndaro Mohamed Ndaro (DW1), Manabu Madeni Mabula (DW2), and Kija Selasini (DW3). PW1, Emmanuel Maduhu Mbiti, testified that he claims his parcel of land unlawfully acquired by Mwantimba village council. The said land is within Mwantimba hamlet in Mwantimba village in Matongo Ward in Bariadi District. The said land is approximated to be

350 acres with approximation value of 350,000,000/- it is bordered by Mr. Mayenga on Western part, Eastern part by Mr. Malongo Malogwabili, Northern part is bordered by Serengeti Park and on Southern part is bordered by a foot pass to Masewa village. The said land was just a virgin land. He acquired it in 1969 by clearing a bush/virgin land. Apart from clearing virgin land, another portion of it he got by purchasing it from other villagers. Amongst the persons he bought from were: Musa, Polepole, Lunyeng'e. The proof of purchase was the sale agreements from them which was approved by the local leaders. The said documents believed to be purchase receipts between Emmanuel Mbiti and Sylvester M. Lyando, Polepole and Musa Lunyenye were collectively admitted and marked as exhibit P1 of the case. He also averred that, he cleared the bush measured 995 acres. By that 5 time, this land situated within Matongo village. By that time (1969) the area was within Matongo village and Mwantimba. It has also been established that, earlier on 9/4/2002 the plaintiff had gone to Matongo village Council for them to authorise ownership of his land. He was then issued with the office letter recognising him as the owner of that land area. According to the facts of the case, before 2008, it appears Mwantimba Village, was part of Matongo village, the former being a hamlet to the latter. Following the pasture issue, the Matongo village council leaders approached the plaintiff for purposes of providing a pass from his area for purposes of animal corridor in the village. For that purpose, he issued an area not exceeding 100 acres out of the 995 acres. Later in 2009, the Matongo village did split into two: Matongo to Mwantimba. Therefore, some of the plaintiff's acres remained into Matongo village and others fell into Mwantimba village. The 100 acres given to Matongo village for animals' corridor; then fell into the Mwantimba village who then claimed it to be its and started dividing it for agricultural and pastoralism to the villagers. It is astonishing further that the Mwantimba village government instead of only taking the 100 acres had been issued for animals' corridor, they had taken more land approximately 350 acres. After this invasion, the plaintiff registered his 6 concern to Mwantimba village government that the said land belongs to him and not theirs. Further in 2011, some villagers from Mwantimba village, (9/7/2011) invaded his land which situate at Matongo village and burnt his two tractors, one lorry, fence, Milling Machine, 20 bags of Maize and his house. The said destruction caused damages amounting 300,300,000/-Tshs. By that time, he was not there but his wife and children. They ordered them to lay down and they were canned like school pupils. Following that information, he informed the District Commissioner of Bariadi who ordered police to go and investigate the matter at the scene. They were satisfied that there was such a destruction. They guarded the area until next day where the security committee of the district had ordered that he should be given the said land. In August 2011, he was handed over with the said land as he was well known to be the owner of the said land. He was given a total of 1600 acres of land though he had only 350 acres, as the district government decided to give him more land for his good uses. He tendered P2 exhibit (minute's meeting of Mwantimba village council authorising the said grant to him which was admitted as exhibit P2). PW1 testified further that after being given the said land by Mwantimba village council, some of those invaders continued using that land. Thus, emerged land dispute hence this suit for the claims of recovery of his land. 7 When PW1 was cross examined as to who is

mandated to allocate village land to any land user, the plaintiff replied that as between village council and village Assembly the organ with legal mandate to allocate village land is village Assembly and not village council. He also stated that he cleared area equivalent to 900 acres. The total land in exhibit P. 1 is 18 acres. But the invaded land is about 1013 acres which he was authorized to own. He however stated that in 1964, there were no village authorities but in 1976. With that meeting of Mwantimba village, its convening was as per DC'S directives. PW2 - Kitwima Busungu, stated that he is now a retired public officer - VEO. In 1999, he was shifted to Matongo village in Bariadi District. As VEO of Matongo village, in April, 2002 he recalls that Mr. Emmanuel Maduhu (PW1) visited his office and was asked to convene a village council for purposes of approving his land in which he was owning for agricultural activities. The said farm was 995 acres. The village council was convened and discussed about his application. As he was farming there for a long time and that all council members knew the said farm well, they unanimously agreed that it was his lawful farm. The proof of that unanimous approval was the minutes of the said meeting in which they had approved (exhibit P2). He worked at that office for four years and later shifted to Itilima. In 2010, he returned to Matongo at the capacity as WEO. As WEO in 2011, he received a call 8 from DC Bariadi that at Mzee Maduhu Mbiti has his various properties been burnt by fire by unknown persons. So, the DC directed him to go to the scene, where he met and other leaders and villagers who witnessed the burnt properties such as tractors, lorry, fence, maize bags etc. All the suspects were then arrested and later charged. Amongst the suspects arrested were the village chairperson of Matongo/Mwantimba and another person. The invaders had forcedly put their own boundaries of sisal plants splitting the farm of Mzee Maduhu Mbiti. The splitting of villages was done in 2009. As who is the recognized owner of the said land, PW2 could not mince words as he boldly said that the described land in dispute is in Mwantimba village, and that it belongs to PW1. The claim by Mwantimba village council that the disputed land is theirs is not true. Since originally that land belonged to Matongo village (prior to the splitting), it cannot as a matter of law be of Mwantimba village council as the same was already allocated to the plaintiff. The said 995 acres he got them by clearing the bush. PW3, Mayenga Mayuma, testified that in 1984 had a land at Igabanhilo village – Bariadi. This village borders with Matongo village. His land had been 85 acres. PW1 was neighbour to his farm. He recalls that PW1's farm had been about 1000 acres' size but he does not remember when PW1 got that land but in 9 late 1970's, he had already been owning that land. In 2011, he was at his home village Igebu. He remembers there was fire burn of various properties of PW1. The land in dispute is thus at the border between Mwantimba and Matongo villages. That land belongs to PW1. In 1984, the whole of that area in dispute fell into Matongo village. Following the village splitting, part of it went to Mwantimba village. The pass between his farm and that of PW1 is about 30 paces width away. The dispute is 100 acres he issued to Matongo village. PW4 - Robert Mbulela Makinda, stated that he lives at Matongo village in Matongo Ward in Bariadi District since 1966. He knows PW1, he is their villager and a large farmer. That himself - PW4 used to do some casual labours to PW1's large farm. PW1 owns a large farm approximately not less than 900 acres. By 2002, PW4 was health attendant and thus village council member. He elaborated

that on 9/4/2002, there was a village council meeting in which they were discussing the application of PW1 to approve his land allocation for purposes of getting customary right of occupancy. In that meeting they approved his ownership as there was no any dispute on that. In 2009, PW4 was elected as village chairperson of Matongo village council. Thus, in 2009, these two hamlets: Mwantimba and Mabuma together formed Mwantimba village. After the spilt of Matongo to Mwantimba village, part of PW1 land fell into Mwantimba village. The portion of land that fell into Mwantimba village belongs to PW1 was not less than 10 600 acres. As village chair of Matongo village, in 2011, the chair person of Mwantimba village approached him to discuss the land in dispute between Mwantimba village and PW1. It is the area which had a size of about 100 acres. Following the split of the two villages, Mwantimba village wanted to use it for other land uses while PW1 resisted, claiming that it should return to him a whole of it. PW4 advised them to sit together with the two villages (Matongo and Mwantimba) and resolve the matter. As to his knowledge, the said discussion was not convened as proposed. Surprisingly, the Mwantimba villagers decided to invade; and planted some sisal plants by force into the farm of PW1 to demarcate the new boundaries. In the course, emerged destruction in which various properties of PW1 were burnt by fire to ashes. Thus, the disputed land falls within Mwantimba village which is about 350 acres and it belongs to PW1 from the beginning despite the village split. PW4 also added that, the PW1 was not applying for land but only recognition that he is the owner. For him to own the said land it was the mandate of the village Assembly after the village council had sanctioned it. That process was not yet finalized, however, did not deny him with the usufructuary right of the said land he lawfully acquired it. PW5 Samson Katambi, certified that he lives at Matongo Bariadi, he is there since 1960. He knows PW1 who went at Matongo village in 1969 and started clearing bush land. He cleared land of an estimated size of 900's acres. He then started cultivating maize crops. In 1977, PW1 was requested by the villagers of 11 Matongo to provide a pass for their domestic animals' corridor while going to grazing. He had provided almost 100 acres. In 2009, there was a split of villages from Matongo to Mwantimba village. After the said split, PW1's farm fell into two villages: one portion in Matongo village and the other at new established Mwantimba village. The Mwantimba village had a big plot of about 600s acres while Matongo village remained with only 300's acres. Following the village split to Mwantimba village, the land given by PW1 for animal corridor remained with Mwantimba village. In 2011, the Mwantimba villagers had taken the 100 acres given for animal corridor and additional land of not less than 200's acres of land belonging to PW1 and divided it amongst themselves as farm areas. The said land (300's acres) on eastern part is bordered by Malongo Maghuwabili, Western part he was bordered by Mayenga Mayuma and Chumaz. On southern part, he was bordering with a foot way/pass to Mwantimba – Masewa village. On the northern part, he was bordered by Serengeti National Park and river Mudia. After the Mwantimba villagers had invaded the land of Mzee Emmanuel Mbiti, they fired his crops, vehicles (Scania, tractors), fence and his house. The claim by Mwantimba village Council that the land is theirs, is not true as that land has been actively been used by PW1 all the time. By the way even Mwantimba village council was just established recently. When cross examined, PW5 stated that in 2009, he was living at

Matongo village- Mwabasieyi hamlet. PW1 was also living at Mwabasieyi hamlet. From 1969, he became his neighbour. He got that 12 land by clearing the bush in 1969 and PW5 saw him clearing the bush land. He also bought some land from Mayenga Suzi, Mangawili Machamay. In 2007 the villagers from Matongo village approached PW1 for purposes of providing animal pass of which he consented thereto. On the side of the defendants' case DW1, Ndaro Mohamedi Ndaro, averred that he is a government employee, employed in 2020 by DED Bariadi as WEO of Matongo. He further contended that when it comes to village land it is the matter of all the Village Assembly. Though its management is under village council, but the final authority is vested to the Village Assembly. Thus, with land allocation, all applications are received by the village council who upon discussion and deliberation, will finally call the Village Assembly meeting for the final resolution. All land applications that don't go to the Village Assembly are not lawfully owned as the same was not granted to anyone. The Village Assembly's mandate to land application is limited to 50 acres only as will be deliberated by the village council. With P1 exhibit, it appears to be sales agreement of land between Mr. Emanuel Mbiti and some villagers witnessed by hamlet chair. On exhibit P1, he commented that the land description is not there (boundaries). The hamlet chair is not a competent officer to witness sale agreement. Thus, this Court should consider this document as legally violated. 13 With exhibit P.2, it is a covering letter bearing village council's minutes' granting land to Mr. Emmanuel M.M. Matembe equivalent to 1600 acres of land. In the said minutes meeting, (exhibit P2) is of Mwantimba Village Council's meeting granting a total of 1600 acres of land to Mr. Emanuel M.M Mbete. That was not proper in law, as it ought to have been sanctioned by the Village assembly. He has not seen the said application before the VEO or WDC and later the Village Assembly. What he has seen are just documents that are legally not authoritative in approving possession/ownership of village land as proclaimed. He also stated that he has been VEO of Matongo village since 2020, on 9th June 2020, as WEO he received a notice from DED Bariadi to Mr. Emanuel Mbiti that he should hand over a total of 350 acres to Mwantimba Village Council. After the said notice, he made follow up to the VEO Mwantimba village who told him that there was a land case at Maswa DLHT between Mwantimba Village Council and the said Emanuel Mbiti in which the village council won the case for the claim of 350 acres of land. After the said verdict, the land is with the Village Council of Mwantimba for village use. During cross examination, DW1 admitted to have not stated how the said village council obtained the said land. The land dispute is known its size. As per the exhibit P.2, the Village Council was handing over the land to Mr. Emanuel Mbiti. It was by the directive of the Hon DC that he should be given. The village land is the property of the village. The sale transaction of land must be witnessed by the village chairperson. As per section 14 63(1) of the Land Act, disposition of land by customary law is witnessed by Village Chairperson as per section 20(1) of the Village Land Act. Documents in Exhibit P.1 is dated 1997. As per exhibits P.1, the disposition was dated 1997 prior to coming into force the village Land Act and the Land Act. DW2, Manabu Madeni Mabula, a chairperson of Mwantimba Village Council since 2019. With exhibit P.1, he stated that the one who can supervise disposition of village land is the village chairperson. With this exhibit P1, which is supervised by hamlet chair be discarded

as it does not qualify in law. He further testified that the invader of the suit land is one Emmanuel Maduhu Mbiti. His neighbours are: on eastern side is Emmanuel Mbiti, on western part is Mr. Chumaz who later sold it to Ligima, Mr. Samora Nola and river, on northern part there is Serengeti National Park, southern part is Buhuru Lutandula, Joseph Mchembagula, Mzee Zili. The said land is now owned by Mwantimba village. The said land traces its origin from 1974 when the land was under Matongo village. Part of that land was allocated for livestock. As per village land certificate, it describes all the area that is owned by Mwantimba Village Council. The said certificate is dated 2020. He tendered the Land Certificate of Mwantimba Village Council (DE1 exhibit). He further added that in the map, the land in dispute is located extreme right – eastern part. Likewise, is Mzee Mbiti's land, also is allocated at extreme right - Western part). In 2008 Mr. Emanuel Maduhu had invaded into the open land of the village. The leaders sat and discussed the said invasion whereas the said 15 boundaries were adjusted. Later in 2009, two villages were established from Matongo village: Seralia and Mwantimba villages. Thus, the open space which was owned by village council, fell into Mwantimba Village. Mzee Emanuel's land and the village land remained safe. DW3, Kija Selasini fortified that the village land of Mwantimba village was invaded by the Mzee Emmanuel. He started his invasion in 2008 by taking the village land for his pastoral activities and also agricultural land. The invasion story started in 2008 when pastoralists were chased by Mzee Emmanuel. This necessitated the convening of Village Assembly meeting. The land dispute in essence belongs to the village. Prior to Mwantimba village, the said Mwantimba was part of Matongo village. It was in 2009 when Mwantimba village was established. The total area by then was about 600 acres. But the land in dispute is now approximated to be 350 acres. The neighbours to that land, in northern is Serengeti national Park, on southern part is the residence of Mzee Ziri, Mangwala Lutandula, Joseph Nchemba Gwaa, on western part is Samora Nola (from Chumaz), Mzee Ligima, river, on western is Mzee Emanuel Mbiti. In 2009, Mzee Emanuel was expanding to the village land by extending beyond the alovera plants. He testified further, that the land of Emanuel Mbiti to the best of his knowledge cannot exceed 600 acres. 16 When cross examined, DW3 stated that he knows Mr. Mbiti since 1988 when he was involving with agricultural activities. By that time, it was in Matongo village. Mr. Mbiti had been owning a big area of land. In 2009, there was village split in which Mwantimba village was born. The total land of Mzee Mbiti that had fallen into Mwantimba village was estimated to 500 acres of land. Originally, that land belonged to Mwantimba and Matongo villages. Having heard both parties on merit, I have now to determine this suit based on evidence before this Court. In my determination of the matter, I shall be guided by the following principles of law. One, is that in civil cases, the burden of proof lies on the person who alleges anything in his favour as founded in section 110 of the Evidence Act. Two, is that the burden of proof envisaged above is on the balance of probabilities (See 3(2) b, of the Tanzania Evidence Act) and as stated in various decisions, including Anthony Masanga v. Penina Mama Mgesi and Another, Civil Appeal No. 118 of 2014 and Hamza Byarumshengo v. Fulgencia Manyika and 4 Others, Civil Appeal No. 33 of 2017 (both unreported). Now, starting with the first issue as “who is lawful owner of the disputed land between the Plaintiff and 1st Defendant”. 17 The plaintiff's evidence reveals that the

disputed land was acquired by PW1 through clearing the virgin land and purchasing from some people between the years 1969 and 1975 (see also exhibit P1 and P2). Thus, from that time, the plaintiff had continued using it in agricultural activities. It was in this time also, the plaintiff had applied for approval of ownership of the suit land to Matongo Village Council which verified the same as every person had known the plaintiff to be a rightful owner of the disputed land. This is vivid through the village called Mwatimba village, whereby part of land of the plaintiff that had fallen to Mwatimba village but he continued to utilize it. See the Plaintiff's testimony vide PW1, PW2, PW3 and PW4 and exhibits P1 and P2 and that of DW3. Whereas, in between, the plaintiff was followed by Matongo village leaders and asked for pass way for animals of which he granted them 100 acres. In the year 2011 the 2,3,4, 4 and 6th defendants in collaboration with other traditional group (Dagashida) trespassed the disputed land and destroyed plaintiff's properties therein and thus claimed the disputed land belongs to the first defendant. This was evidenced by plaintiff's witnesses and exhibit P2. The defendants' testimonies are on resistance of testimonies by the plaintiff. To them the disputed land is owned by the first defendant. It is provided that in the 2009 it is the time which the Mwatimba village was merged from Matongo Village. It is however undisputed that the suit land was acquired in 1969 but the only problem is that the disposition was illegal as the disposition of land 18 to the plaintiff was done by the village Council and not the village assembly contrary to the requirements of the law. However, the defendants' evidence reveal that it is the PW1 in 2008 invaded the said land as sketched and managed the disputed land owned by the first defendant. Now, upon a thorough digest of the contending evidence by both parties, what exercises minds of this Court are; whether Mwatimba village in 1969 had an authority to own land, whether in 1969 the disposition of village land required village assembly and whether the plaintiff purchased the suit land via village council? First, I should set forth that, it is undisputed that Mwatimba village was established in 2009, this is evidenced by witnesses of both parties and on 21/9/2020 was assigned with certificate of control over village land, exhibit DE1. It is therefore tremendous to state that the Mwatimba village in 1969 had any legal mandate over the matters pertaining to land other than the Matongo Village. Mindful, Matongo village is not in any claim of the suit land and does not dispute that the plaintiff has a derivative right of the suit land. Since the first person to possess the suit land was the plaintiff, then Mwatimba village ought to have compensated PW1 for it to have equitable right over the suit land. See *Shaban Masai vs. Hassan Mchoro* (1967) H.C.D 329 19 The defense argument that the Mwatimba Village after its land had been invaded by the PW1 decided to sue him, was a mere statement which cannot be accorded any weight as it ought to have been fully established by evidence. As to whether the Village Council had no power to dispose the village land. Currently the Land law clearly provides that despite the village council conferred with jurisdiction over village land matters yet cannot dispose/allocate it without approval of the village assembly. See section 8 (5) of the Village Land Act. I think it is important now to discuss ways in which citizens can obtain land in Tanzania. These are; by allocation, clearing of virgin forest, purchase, and gift. Seemingly, as this case I am booked to discuss the three ways which are; by clearing virgin forest, allocation and purchase and by way of Operation vijiji/ujamaa Clearing of

vacant areas has been deemed to be one of the best ways of asserting ownership in Land. The one who was first to clear and settle on the land was given priority in determining instance of ownership. The clearing of virgin forest was crucial way of acquiring some of permanent rights over land. See Rashid bin Ali vs Bakari bin Kayanda, (1941) Governor's Appeal No.31, Silanga Kimenanga vs Mevongori Mosoni, 1962, James R.Wand Fimbo G.M, pp. 299 -300. 20 By way of purchase, although there were no formularised and market-based rules for land disposition as are in existence today. Land could be still be acquired during the pre colonial era through purchase. See Leonance Mutalindwa vs. Mariadina Edward (1987) TZHC 23 (10 August 1987). By allocation, is where local authority/ land village authority confers ownership over the land to an individual. see the case of Bartholomew Ndyanabo vs Petronida Ndyamukama, (1968) HCD 339. In 1975, the Ujamaa Villages (Registration, Designation and Administration) Act, was enacted. Although the Act did not contain provision of land tenure such provision was included in subsidiary legislation (GN No.25 of 1974) as directives. In the Directives, functions of allocating land to villages and Ujamaa villages was assigned to the District Development Council, see Directive 5 and 9. The village council then allocated farmland to households according to need and ability to develop it. Mindful neither District Development Council nor the Village Council were land allocating authority under either in customary law or under land statutes. Thus, such land could be not held under customary law. The village Council of the Ujamaa Village was required to acquire rights of occupancy in respect of land within the limits of the village and no other person had customary tenure. See Directives (2). The land was acquired as granted right of occupancy and not customary right of occupancy. Therefore, the bulk of land some of it was 21 allocated to peasant residents therein for carrying on husbandly to meet domestic requirements. Now, with the view above, back to the case at hand, the plaintiff's evidence provides that he acquired the suit land through clearing the virgin forest, purchase from the people and through operation vijiji/ujamaa, this is in accordance with evidence of PW1, PW2, PW3 and PW4 and exhibit P1. The defence evidence is not in resistance with the testimonies of the plaintiff's evidence on the modality of acquisition of the suit land. The only problem with the defence is that the allocation of land by Mwatimba Village Council and the purchase by the plaintiff was illegal. In my thorough studying, perhaps the argument by defence side is misconceived. In early 1975's the current Land Laws were not in place and that the allocation of land were generally governed by Directives, customary laws and operation Vijiji. Thus, a person acquired land via those ways had a deemed over the said land. Since it is not disputed the plaintiff to have acquired land via those ways is therefore wisely that the disputed land belongs to the plaintiff. Mindful, it was not formularized as it is today. Therefore, the land acquired by the plaintiff through clearing virgin forest, purchase and operation vijiji were lawfully acquired. 22 It is the plaintiff's testimonies that he acquired the suit land by clearing the bush and purchasing part of it from some people. But in the mid, PW1 decided to seek for approval of ownership of the suit land from Matongo village Council (P.2 exhibit), which after its deliberation approved the ownership of the disputed land on the facts that it had been in occupation by PW1 for so such long time and every person knows the situation. Does this act entail disposition of land? The answer is no,

only recognition. Section 12 of the Village Land Act, Cap 114 R.E 2022, enacts the provision on the division and recognition of the village land. It reads: 12.-(1) Village land shall be divided into–

- (a) land which is occupied and used or available for occupation and use on a community and public basis, to be known as communal village land, by all villagers and any other persons who are, with the agreement of the village council, living and working in the village whether those persons are occupying and using village land under a derivative right or not and that communal village land shall not be made available for individual occupation and use by any person through a grant of a communal or individual customary right of occupancy or a derivative right or any other disposition; 23
- (b) land which is being occupied or used by an individual or family or group of persons under customary law; or
- (c) land which may be made available for communal or individual occupation and use through allocation by the village council in accordance with the provisions of this Part. [Emphasis in bold is mine]. According to law, it is the village council which shall be responsible for the management of all village land. In doing so, the village council is mandatorily supposed to exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land. In my considered view, the fact that Mr. Emmanuel Mbiti Maduhu has been in use of that land since 1969, 1997 (P1 exhibit), has not been challenged. The fact that he does not own a certificate of title or customary right of occupancy certificate over the said land, does not in law make him dispossessed of his long right use over the said land after he has been in use of it for more than 12 continuous years (see section 7(1) (e) read together with section 14(1) and (2) of the Village Land Act). He has a vested right over the said land, and any authority including the President if wishes that land to be used for other public 24 or investment use, shall comply to the law governing the acquisition of land. He is thus, shall be entitled to receive full, fair and prompt compensation from the loss or diminution of the value of that land and the buildings and other improvement on it. I say so, being guided by the principles of National Land Policy enshrined under section 3(1)(g) of the Village Land Act which takes into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest. Interestingly, the defence side is complaining that the plaintiff in 2008 trespassed the village reserved land, the act made them to react against the plaintiff for preservation of the village reserved land. Under this juncture I would like to state that the complaint by defence side is devoid of any merit. I say so because the contemplated Mwantimba Village was established in 2009 and its land mapped in 2020, see exhibit DE1. How could it make such a land claim on trespass for 2008 while it was not yet established? The plaintiff had alluded that he acquired the disputed land in 1969 and 1975 before the establishment of Mwatimba village. If that is the case, do the defendants have rights over the suit land? The answer is no, and cannot complain over the

suit land. They had no such mandate as the first defendant was not yet in occupation of the said land any how perhaps vide Matongo Village Council who fortunately recognize him as their villager and investor. 25 Therefore, in winding up of the first issue, it is pidgin that the plaintiff is a lawful owner of the disputed land and thus the first defendant her citizens/ subjects trespassed into the disputed land. The above position also responds the second issue affirmatively. In responding to the third issue as to Whether the plaintiff is entitled to 327,300,000/= as compensation of the damages caused (if the answer to issue no, two is in affirmative. The law in our jurisdiction, as pronounced in various decisions of this Court and the Court of Appeal, is that, as a matter of principle, once pleaded, specific damages call for strict proof thereof. See Solvochem Holland BV vs. Chang Quing International Investment Co. Ltd, Comm. Case No.63 of 2020 (Unreported), Zuberi Augustino Mugabe vs. Anicet Mugabe [1992] T.L.R. 137 and that of Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu, Civil Appeal No.87 of 2020. In the instance case, the plaintiff had pleaded that the invasion of the disputed land caused damages as his properties were destroyed and caused much chaos to his family. Many things were burnt and was left with nothing. His wife and children were beaten and intimidated. To him the saga caused damages amounted to Tshs 327,300,000/=. He further stated that during the destruction 26 he was not present but only his wife and children were present. The DC was informed and police attended to scene. In my formed view, this head of special damages has not been proved sufficiently even on a balance of probability as required in the case of this kind. This is vividly the all-plaintiff's witnesses had only mentioned the said damages but did not detail how the Tshs 327,300,000/= emerged. I may agree that there was mass destruction of the plaintiff's properties but the same has not vividly proved before this Court other than merely being mentioned. Therefore, I will not grant the relief pleaded. To what relies are the parties entitled thereto. As well detailed when discussing issues No.1 &2, the reliefs equitable to the plaintiff is recovery of his disputed land as correctly admitted by DW3 that the disputed land is 350 acres, and therefore, the defendants be evicted. However, for the public interests, I would first urge the parties to have their own arrangement for compensation of the plaintiff for them to have peaceful enjoyment of land by all public. I say so basing on our National Land Policy which require that all persons exercising powers under the land laws amongst other things have regard in regulating the amount of land that any one person or corporate body may occupy or use; ee Mulbadaw Village Council and 67 Others vs. National Agricultural and 27 food Corporation, (1984) TLR 15, Shaban Masai vs Hassan Mchoro (supra). All that notwithstanding the harm and loss had already been caused and suffered. The plaintiff is decreed to be rightful owner of the disputed land and the defendants be evicted from the disputed land unless his recognized interests over the said land are safe guarded by law on full, fair and prompt compensation as his interest in land has value and that value must be taken into consideration in any transaction affecting that interest. As to what damages has been occasioned to the Plaintiff on none use of his 350 acres, I feel hesitant to make such an award. I had expected for him to tell the court how the trespass of his land by the 1st to 6th defendants have made him got what damages in between the alleged invasion/trespass and today. Nevertheless, all considered I ward the plaintiff the sum of Tshs 5,000,000/= as general

damages from the trespassing by the 2nd to 6th defendants as they are disposed that land. As per nature of this suit, parties shall bear their own costs. DATED at SHINYANGA this 2nd day of September, 2024. 28 F.H. Mahimbali 29 30

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