

TANZANIA / JUDGMENT

HSK SAFARI LTD DR

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29 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI CIVIL CASE NO. 2 OF 2022 HSK SAFARIS
LTD..... 1st PLAINTIFF DR. HAMISI
KIBOLA..... 2nd PLAINTIFF VERSUS MR. ALEXANDER SAID PASTORY
MNYETI..... 1st DEFENDANT BELINDA SUMARI..... 2nd
DEFENDANT SALEH SALUM AL AMRY..... 3rd DEFENDANT AND THE
MINISTER OF NATURAL RESOURCES AND TOURISM..... 1st
THIRD PARTY THE ATTORNEY GENERAL.....2nd THIRD PARTY

JUDGMENT

2(P June & 29th July, 2024 Kahyoza, J. HSK Safari Ltd and Dr. Hamisi Said Kibola (Dr. Kibola) sued Mr. Alexander Pastory Mnyeti (Alexander Mnyeti), Belinda Sumari (Belinda) and Saleh Salum Al-Amry (Saleh) claiming USD 670,280.40 and Tzs. 13,000,000/= as specific claim, payment of general damages, costs, and reliefs this Court deems fit to grant. The plaintiffs' cause of action against the defendants is the abuse of office leading to loss of business, pecuniary penalties, unwarranted travel costs and destruction of property. HSK Safari Ltd was allocated hunting block within Simanjiro Game Controlled area in Simanjiro district (Lokonwa hunting block or camp). The Plaintiffs held a valid concession over that hunting block. Dr. Kibola, the 1 second plaintiff was the managing director of HSK Safari Ltd. It was alleged in December, 2019 the first defendant set up a Committee or Commission to inquiry into poaching activities taking place at the hunting block operated by HSK Safari Ltd. Following the report of the Committee or Commission, the National Task Force on Anti-Poaching carried to another hunting block owned by HSK Safari Ltd, which was Mungata (Mangata) Wildlife Management Area. The operation carried out caused harassment and intimidations to the Plaintiffs' clients and professional hunters. It was further alleged that following the illegal Committee/ Commission formed by the first defendant and instruction, the second plaintiff was arrested and transported to Arusha at high speed at the back of Toyota Land Cruiser for a distance more than 600km and with a road bearing more that 30 road bumps. The second plaintiff was incarcerated at Utalii police post and subjected to unwarranted interrogations. In addition, it was alleged that the first defendant was the Regional commissioner instructed verbally and illegally the second defendant on 19.12.2019 to prohibit the Plaintiffs to enter the hunting camp, which they duly owned. He contended that the plaintiffs remained illegally barred to enter the hunting camp for a period of eight months from 19.12.2019 to August,

2020, the fact which led the Plaintiffs to suffer pecuniary loss. The plaintiffs contended that the first defendants barred them to enter the hunting block while they had a valid entry permit. The plaintiffs alleged further that, the first and second defendants illegally allowed the third defendant to access the first plaintiff's camp and hunting area. The first and second defendants let the third defendant access the camp and hunting area despite the court's order authorizing the second plaintiff to access and exercise control over the hunting area. The plaintiffs took steps to complain and to demand written confirmation and reasons for denying them access in vain. On 26.6.2020 the second plaintiff visited the second defendant requested for written notice of prohibition. The second defendant did not issue the written note. The second plaintiff entered the camp. Shortly after the second plaintiff visited the camp, the second defendant went with militiamen arrested and locked up him in the cells at Emboreet village. Later, she transferred him to Engasmet police station where he was detained and released after two days on self-bond. The plaintiffs alleged that following the defendants' act of denying the plaintiffs access to the camp, they received demand notes from business associates. The plaintiffs complained to the Commission for Human Rights and Good Governance which investigated the complaint (the CHRAGG). The CHRAGG made the findings among other findings that, the first defendant had no authority to establish a Commission of Inquiry and there was no lawful prohibition for the plaintiffs to enter the hunting block. Alexander Pastory Mnyeti (Alexander Mnyeti), the first defendant who was the Regional Commissioner of Manyara Region when the cause of action arose, denied the claims. He denied the allegation of abuse of office. He alleged that he set up an inquiry committee after consultation with Ministry of Natural Resources and Tourism and the National Task force for alleged poaching activities conducted by the plaintiffs at Simanjiro Game Controlled Area (Hunting Block). He alleged that he set up an enquiring committee in his capacity as the Regional Commissioner of Manyara and the chairperson of the Regional Security Committee and he was performing his duties under various laws of the country. Alexander Mnyeti alleged further that the report of the Committee was communicated to the Ministry of Natural Resources and Tourism and to the police. The police took action by instituting Economic charges against Dr. Kibola and seven other persons. He denied to instruct any person to enter the Plaintiffs' hunting block. He refuted the allegations that he allowed Saleh Salum Al-Amry to access HSK Safaris Ltd's hunting block. He denied to arrest and detain Dr. Kibola. 4 He denied the allegations that he transported Dr. Kibola and his workers to Emboreet to lockup them in a small dirty and smelly cell. He denied to make an order to remand or release Dr. Kibola from Engasment police station. Alexander Mnyeti denied all the findings of the Commission for Human Rights and Good Governance (CHRAGG) and demanded strict proof. Ms. Belinda Sumari (Ms. Belinda), a second defendant who was a ward executive officer (WEO) of Emboreet ward at that time, refuted the claims. She admitted to prohibit Dr. Kibola to access Simanjiro Game Controlled Area, on 19.12.2019 following the instructions she received from Alexander Mnyeti. She also admitted that on 26.06.2020 she arrested Dr. Kibola for entering the hunting block with his employees without a permit. She alleged that before she arrested Dr. Kibola on 26.06.2020, she reported to District Commissioner and later received instructions from the Regional Commissioner to arrest Dr. Kibola and take him to Engasment police station. She challenged the findings of CHRAGG and the mode of Communications provided under General Standing

Regulations generally and specifically when curbing crimes. Mr. Saleh Salum Al-Amry the third defendant denied the allegations of abuse office. He contended that HSK Safaris Ltd had a valid business licence 5 issued by the Business Regulation and Licensing Agency for the years 2019 and 2020. He contended that the Plaintiffs sued him because of their bad relationship. Alexander Mnyeti instituted a Third-Party Notice and contending that he had reliefs against the Ministry of Natural Resources and Tourism and the Attorney General. The Third Parties filed the Written Statement of Defence (the WSD) but the court made an order under rule 18 of Order I of the Civil Procedure Code [Cap. 33 R.E. 2019] (the CPC) that the claims between the plaintiffs and the defendants will be heard separately from claims among the 1st defendant and the 1st and 2na Third Parties. Following the allegations in the pleadings, the Court framed and parties agreed on the following issues-

- 1) whether the first and second defendants did illegally deny the plaintiffs access to their hunting block.
- 2) whether the first and second defendants illegally authorized the third defendant to access the first plaintiff's hunting block (Camp) and denied her access.
- 3) To what reliefs are the parties entitled to? Before I reply to the issues, I find it apt to highlight on some issues pertinent to this case. This case revolves around violation of person's right 6 to freedom of movement, right to work and the right to be presumed innocent and treated so until the opposite is proved. These are human rights which must be enjoyed by any human being, including the 2nd plaintiff and defendants in this case. Breach or curtailment of any of the rights identified and not identified must be minima! and as stipulated by law. Right to freedom of movements guarantees a person the right to move from one place to another, thus, arresting and detaining a person amounts to interfering with his right to movement it should be in accordance with the law. In addition, the detention a person should be for a period provided by law or for a reasonable period. Arresting and detaining of a person should not be at the will of the arresting officer. I wish to seek relief under Article 2 of the Universal Declaration of Human Rights, which states that- "Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex language, religion....," Having briefly stated the plaintiffs' claim and the defendants' defence, I wish; one, to thank the parties' advocate for their submissions; two, to put it clear that I will not reproduce the submissions but I will refer to the submissions while answering the issues. 7 Before I commence to answer issues, I find vital to state that there are matter which are not in dispute either from the pleadings or the evidence on record. The fact that HSK Safaris Ltd, the first plaintiff was allocated hunting block in Simanjiro Game Controlled Area. Dr. Kibola, the second plaintiff was one of the directors of HSK Safaris Ltd. HSK Safaris Ltd was allocated two hunting camps, one within Rufiji - Ngarambe Tapika (Mangata Camp) and second one in Simanjiro game controlled area (Lokonwa Camp). It is also not contested that Alexander Mnyeti was the Regional Commissioner of Manyara Region at the time dispute or fracas, which is the bases of this claim, arose. He formed a Commission of "Inquiry" to investigate into hunting activities on Simanjiro Game Controlled

area. Alexander Mnyeti, (Dw3) testified to that extent and tendered exhibit D.1 which is the report of the Commission (RC's Commission). There is no dispute that on 18.12.2019 Alexander Mnyeti, (Dw3) instructed Belinda at (Dw2) to engage security guards to ensure no one enters Lokonwa hunting camp or taking anything from the camp. Belinda notified Dr. Kibola (Pw2) that he had no permission to enter Lokonwa camp and to appear before the Commission. Dr. Kibola (Pw2) deposed and found it proved to Belinda promised to take stern measures if Dr. Kibola defied her instructions. 8 It is not disputed that Dr. Kibola had issues with the Anti-Poaching Squad or unit connected with Mangata hunting camp. The Anti-Poaching unit required him to report to their office. He reporting once and when he reported a second time to Anti-Poaching Squad, he was arrested and transferred to Arusha Utalii college police station where he was reminded. They remanded him at Arusha Utalii college police station from 18th to 25th December, 2019. Considering the evidence on record, I found it proved or not disputed that Belinda prohibited and arrested Dr. Kibola for entering Lokonwa hunting camp in 2020. The dispute is regarding the date when Belinda prohibited Dr. Kibola to enter Lokonwa hunting camp. Belinda (Dw2) deposed that it was on 27.04.2020 between 11:00am and 13:00pm when he arrested Dr. Kibola. Dr. Kibola (Pw2) deposed that Belinda arrested him on 26.06.2020. They both agree that Belinda (Dw2) arrested Dr. Kibola for entering Lokonwa camp. Between the two, I find that the Dr. Kibola more reliable than Belinda (Dw2) because he was the one arrested and detained. Not only that but also, it is on record that Dr. Kibola went to see Belinda with a letter (Exhibit P. 2) which was dated on 23.06.2020. Exhibit P. 2 allowed him to enter Simanjiro Game Controlled area for preparation for camping site. He would 9 not have gone to Belinda in April with Exhibit P. 2 which was dated 23.06.2020. I find it proved that Dr. Kibola was arrested for entering Lokonwa camp in June, 2020. For that reason, Belinda did not tell truth when she deposed that she arrested Dr. Kibola in April, 2020. Further to that, Belinda pleaded in paragraph 12 of her WSD that Dr. Hamisi Said Kibola entered the hunting camp on 26.06.2020 with other persons without permission. I quote "Kwamba Daktari Hamisi Said Kibola tarehe 26.06.2020 aliingia kwenye kitalu na vijana wake bila ruhusa..." I find that Belinda's evidence that it was in April, 2020 when Dr. Kibola entered the hunting camp has no weight. I hold that her evidence was to that extent, unfounded and she lied. (space kubwa) Did Alexander Mnyeti and Belinda deny Dr. Kibola to access the hunting camp? The above said and done, I proceed to answer the issues. The first issue is whether the first and second defendants denied the plaintiffs access to her (first plaintiff's) hunting block. It is not disputed as shown above that Dr. Kibola was arrested at Dar es salaam when he went to report to Anti- Poaching Squad activities involving Mangata hunting camp in Rufiji. He was io wrongfully confined from 18th to 25th December, 2019 by the Anti-Poaching Squad and the National Task Force for Anti-Poaching. Apart from speculations, I did not find evidence to prove how Alexander Mnyeti was involved, if he was, it was very remote. It is not disputed that Alexander Mnyeti who was the Regional Commissioner formed a Commission of Enquiry (the RC's Commission) and directed Belinda to notify Dr. Kibola to appear before the Commission. It was Alexander Mnyeti's order that Dr. Kibola should appear before the RC's Commission at Babati. The fact that Dr. Kibola was arrested at Dar es Salaam,

transported to Arusha Utalii College and detained from 18th to 25th December, it is a proof that Dr. Kibola's arrest was not an account of Alexander Mnyeti's order. If Dr. Kibola's arrest and detention at Arusha police college was a result of Alexander Mnyeti's order, then the Dr. Kibola did not adduce evidence to prove that link. All in all, it is this Court's finding that whoever arrested Dr. Kibola at Dar es Salaam, transported and detained him for seven days at Arusha Utalii Police College violated Dr. Kibola's right of movement. That person or Squad wrongfully confirmed or imprisoned Dr. Kibola. It was lawful for the Anti-Poaching Unit or the Task Force to interrogate Dr. Kibola, but there was no justification having transported him to Arusha detain him for seven days without bail. ii The Court of Appeal in the case of Rev. Christopher Mtikila V. A.G, Civil Appeal No. 27 of 2000 (CAT - Unreported) held that it was unlawful for the police having arrested Rev. Christopher Mtikila on Friday to retain him until Monday on an allegation that courts were not working on weekends. (paragraph) The Court of Appeal was of the view that the police ought to have admitted Rev. Mtikila on bail. In the current case, Dr. Kibola was incarcerated for seven days and released on bail. It could be that the police or the Anti-Poaching Squad wanted more time to investigate. If that was the case, the police or the Anti-Poaching Squad had the following options; one, to grant Dr. Kibola bail after expiry of 24 hours, thus, release him on bail. This duty is casted on the officer in-charge of the police station. It is mandatory for the officer in-charge of police to release a person not charged with the offence punishable by death after the passage of 24 hours, if that person was arrested without warrant. See section 32 (1) of the Criminal Procedure Act, [Cap. 20 R.E. 2022]; two, if a person arrested without warrant is not granted bail after 24 hours, he shall be brought before the court as soon as practicable. The police or the Squad were required to take Dr. Kibola before the court as soon as it possible given the circumstance of the present case. The Squad or the Officer Commanding Station (OCS) 12 did not take Dr. Kibola before the court. They retained him for 7 days and released him thereafter without charging him. It was violation of Dr. Kibola's right of movement, torture, and unlawful confinement. I do not think the OCS or any member of the Anti-Poaching Unit, would have been amused if he was in Dr. Kibola's shoes. The Court of Appeal in Mtikila's case (supra) had the following to say- "The learned trial judge beyond that- the police had locked up the plaintiff beyond the 24 hours allowed by the law without any lawful excuse so the plaintiff suffered false imprisonment. The advocate of the appellant cited the case of Walter versus Alltools Ltd. 1944 Vol. 61 Times Law Reports 39 in which Justice, Lawrence observed: A false Imprisonment does not merely affect a man's liberty, it also affects his reputation. The damage continues until it is caused to cease by an avowal that the imprisonment was false. ... We dismiss the flimsy defence that the appellant had to stay in custody at the police station because the courts do not work on holidays and on weekends. That is indeed the position. But it is, all the more reasonable, and expected of the police, to grant the suspect police bail where the suspects like the appellant had not been charged with any offence at all. Considering the gravity of arbitrarily depriving civilians of their liberty by locking them up, - without a reasonable or probable cause, the awarded damages of 13 only Shs. 200,000/= were manifestly inadequate and on the low side.." It was wrong and violation of the right of freedom of movement to incarcerate Dr. Kibola for seven days, beyond what the law

provides, at Arusha Utalii police college. However, there is no evidence to hold Alexander Mnyeti, Belinda or Saleh Al-Amry (Saleh) for unlawful incarceration of Dr. Kibola at Arusha Utalii college police station for seven days. Tortfeasors who falsely imprisoned Dr. Kibola for seven days at Arusha Utalii police college were not joined in this case. As pointed above, Belinda does not dispute that she prohibited Dr. Kibola to access Lokonwa hunting camp. She first telephoned Dr. Kibola on 18.12.2019 that he was barred to access Lokonwa hunting camp. She warned Dr. Kibola against defying her orders. Alexander Mnyeti admitted during cross examination that he gave oral instructions to Belinda not to let Dr. Kibola enter Lokonwa hunting block. During the cross examination by Belinda's advocate, Alexander Mnyeti (Dw3) testified that it was not upon him give instructions to Belinda to maintain peace and security but it was part of her duties. I had no reason to doubt Dr. Kibola (Pw3) and Belinda that Alexander Mnyeti told Belinda to bar Dr. Kibola to enter Lokonwa camp on 18.12.2019. 14 Alexander Mnyeti deposed that he received information from the whistleblower and setup an Enquiry commission. He agreed to telephone Belinda and inform her about the Commission he had formed. He deposed that he told Belinda to receive the committee and lead it to Lokonwa hunting camp. It is not unfounded that Alexander Mnyeti instructed Belinda not to let Dr. Kibola to Lokonwa camp. Had he not done so he would have required Dr. Kibola to be present when the RC's Commission visited Lokonwa hunting block. It was proper and procedural to enter Lokonwa camp in the presence of the Dr. Kibola. Belinda (Dw2) was categorical that she deployed security guards to ensure no one entered or left Lokonwa hunting Camp. Belinda (Dw2) testified that he notified Dr. Kibola that he was prohibited to enter the Lokonwa hunting camp. Consequently, I find it proved that Alexander Mnyeti and Belinda denied the plaintiffs access to Lokonwa hunting camp in December, 2019. Dr. Kibola (Pw2) deposed that he was denied entry to Lokonwa camp for 9 months. While Belinda (Dw2) deposed that she denied Dr. Kibola access to the camp only for six days from 19- 27.12.2029. She maintained that those were the only days she deployed security guards. During cross examination, she deposed that after she removed security guards she did 15 not notify Dr. Kibola that she had removed the security guards. It is evident that Belinda upon instructions from Alexander Mnyeti barred the plaintiffs to access Lokonwa camp, on 19.12.2019, there is no evidence that the bar was for specific time or for six days as Belinda (Dw2) alleged. It is obvious that if the bar of the prohibition was for specific time, there is no evidence that Belinda did not notify Dr. Kibola. It is true that Belinda removed security guards before June 2020. Lentunga Silanga (Pw1) supported Belinda's contention when he deposed that there were no security guards at Lokonwa camp apart from his friend and himself when Dr. Kibola visited them in June 2020. Thus, Belinda did not deploy guards up to the day Dr. Kibola visited the camp in June, 2020. A fact that he was denied to access the Lokonwa camp in December, 2019 is proved. It is part of Dr. Kibola's evidence that on 26.06.2020 he went to Belinda (Dw2) to notify her that he wanted to enter the camp to prepare for the hunting season, which was due to commence. He presented to her a letter (Exhibit P.2) from Tanzania Wildlife Management Authority (TAWA). Saleh's advocate submitted that the plaintiffs had no licence from TAWA and they were indebted so much so that they could not hunt. He referred to the CHRAGG Report

(Exhibit P.1). He submitted that Dr. Kibola was allowed to 16 enter Lokonwa camp to prepare comping site and supporting Anti-Poaching activities. To the third defendant, even if Dr. Kibola was not denied access he would not have carried hunting activities. Belinda (Dw2) deposed that she prohibited Dr. Kibola to go to the camp until he met people who had prohibited him to enter. There is no doubt it was Alexander who had prohibited Dr. Kibola to enter the camp in December,

2019. Dr. Kibola defied the order and went to the camp. Belinda (Dw2) notified the District Executive Director (DED) and the District Commissioner (DC). After the DC told her not to allow Dr. Kibola to enter the camp. The DC directed her to arrest Dr. Kibola and take him to the Officer Commanding District (OCD) Simanjiro District. She was emphatic that she arrested Dr. Kibola because he defied her order not to enter the camp. She added that to allow Dr. Kibola to enter the camp would have been an insubordination to the Regional Commissioner. Belinda does not dispute that she arrested Dr. Kibola and took him to Orkesument Simanjiro. Dr. Kibola deposed that after Belinda arrested her, she took him to Embcreet village office and later to Engasment police station. Police held Dr. Kibola for two days. After two days the OCS of Orkesument police station released him on self-bond. He ordered him to report to the police station on the following Sunday. He reported on Sunday as ordered and ordered to report the following Thursday. He 17 complied. He reported again on 2nd July, 2021 when the OCS told him that he had no any other instruction as a result he did not require him to report to police station. As discussed above there is no doubt that Belinda denied Dr. Kibola access to the comping site and arrested him. After he was arrested he stayed at the police station for two days. It was submitted by the Saleh's advocate that the plaintiffs had no licence, so the permission to enter the camp was to prepare camping site and to support Anti-Poaching activities. He contended that the plaintiffs had no hunting permit. I have reason to differ with him, but simply put, the fact that the plaintiffs had no hunting permit does not refute the fact that Belinda denied them access to hunting camp and arrested Dr. Kibola to ensure he does not have access. The fact that they had no hunting permit will mitigate the damages. The plaintiffs' complaint is not that the defendants denied them the right to exercise their hunting rights but that they denied them access to the hunting block. I find that Belinda denied Dr. Kibola's access to Lokonwa hunting camp in June, arrested him and caused his imprisonment for two days. As held by the Court of Appeal in Rev. Christopher Mtikila's case, there is no proof of false imprisonment and violation of a person's right to freedom of movement than arresting a person without a warrant, incarcerating him for 18 period of more than 24 hours, and releasing him without charges. It was proved that Belinda (Dw2) WEO arrested Dr. Kibola without an arrest warrant and for no justifiable reason. She also caused his incarceration for two days. It was Belinda (Dw2)'s evidence that she arrested Dr. Kibola because he defied her order that she should not visit his Company's hunting camp. I doubt if that was a lawful order. Did Belinda have mandate to prohibit Dr. Kibola to enter the hunting block after TAWA had permitted him to enter? (See Exhibit P.2). She had no mandate. Alexander Mnyeti (Dw3) deposed that Belinda (Dw2) did not need instructions to take action against

Dr. Kibola, as she had a duty to maintain peace within the area of her jurisdiction. I do not doubt that Belinda (Dw2), the WEO, had a duty to maintain peace, the question is whether there was a violation of peace or any indication of breach of peace by Dr. Kibola's act of entering to the hunting Camp or block? Obviously, there was none. Dr. Kibola had permit from TAWA to enter the hunting camp. I find that Belinda (Dw2) arrested Dr. Kibola without any justification cause and retained him at Emboreet village office for some hours and moved him to OCD Simanjiro without justification. She falsely imprisoned Dr. Kibola at the village office. In *Collins V. Wilcock* (1984) 3 ALL ER 374, false imprisonment was defined as unlawful imposition of restraint on another person's freedom of movement. Belinda did not only deny Dr. Kibola access to the camping area but also falsely imprisoned him. I also find Belinda's act of sending Dr. Kibola to police station, where he was detained for two days as another form of denying him access to the hunting camp. I wonder why did the OCD and the OCS detain Dr. Kibola for two days at police, what crime did he commit? Did they detain him for his safety, or for questioning or waiting for instructions? I wish to remind the police the decision which is not binding to this Court in *White V. WP Brown* (1983) quoted by Vivienne Harp Wood in his book *Principled of Tort Law 4th Edition* - Cavendish Publishing Limited, London 2000, that;- "Detention of people for questioning in respect of crimes which they did not commit, and for which there was no reasonable grounds for suspicion, was false imprisonment" In the present case, Dr. Kibola committed no offence to access his hunting camp and there were no reasonable grounds for suspicion that is why he was not charged. Why then did the OCS and OCD detain him for two days? The record does not bear any answer. The next question is whether Alexander Mnyeti and Saleh took part to deny the plaintiffs access to the hunting area. Belinda pleaded that Alexander Mnyeti instructed her to prohibit Dr. Kibola to access the hunting camp on 19.12.2019. She pleaded the facts under paragraph 7 of her Written Statement of Defence. As to why she denied access to Dr. Kibola, on 26.06.2020 Belinda pleaded that Dr. Kibola entered the hunting camp without permit. She pleaded that she notified the DC and later got instruction from the RC, Alexander Mnyeti to arrest Dr. Kibola and take him to Orkesumet police station. For clarity's sake, I quote para 12 of her WSD. "Kwamba Daktari Hamisi Kibola aliingia kwenye kitalu na vijana wake bi/a ruhusa ndipo a/ipotoa taarifa kwa Mkuu wa Wilaya na baadae kupata maelekezo ya Mkuu wa Mkoa kumkamata na kumpe/eka kituo cha polisi Orkesumet na kazi hiyo aliifanya. Kwa maelezo hayo Mlalamikiwa namba mbili amejibu hoja katika aya ya 22 na 23 ya Hati ya Mdadai ya Walalamikaji" She gave evidence in contravention to her pleadings. Belinda (Dw3) gave evidence that after Dr. Kibola disobeyed her orders not to enter the hunting camp she notified the District Executive Director (the DED) and the DC. The DC instructed her to arrest Dr. Kibola and take him to the OCD of Simanjiro District. She complied. Belinda's evidence contradicted her pleadings. It is cardinal principle of pleadings that parties to the suit should always adhere to what is contained in their pleadings unless an amendment 21 is sought and permitted by court. In *James Funke Gwagilo vs. Attorney General* [2004] TLR, 161 where it was observed that- "whereby we underscored the function of pleadings being to put notice of the case which the opponent has to make lest he is taken by surprise. From that same

decision we reiterated another equally important principle of law that parties are bound by their own pleadings and that no party should be allowed to depart from his pleadings thereby changing his case from which he had originally pleaded." Since Belinda did not seek an amendment, her defence that the DC instructed her to arrest Dr. Kibola carries no weight and the allegation that it was Alexander Mnyeti, the RC who instructed her to arrest Dr. Kibola on 26.6.2020 to deny them access to the hunting camp is not proved. In the end, I find; one, that Alexander Mnyeti and Belinda denied access the Plaintiffs access to the hunting camp on 19.12.2019 by giving Dr. Kibola an order not to enter the hunting block. The order had no express limit; two, that there is no evidence that Alexander Mnyeti instructed Belinda to deny Dr. Kibola access to the hunting camp on 26.06.2020. She may have arrested Dr. Kibola to impress her boss, the RC or out of propensity to violate people's rights enjoyed by some of leaders. She had no justification or 22 instructions to bar Dr. Kibola to enter the camp. Thus, it was Belinda who denied Dr. Kibola to access the hunting block on 26.06.2020. As to whether Saleh gave instructions to Belinda to deny Dr. Kibola access, I find no evidence to establish the allegations. It was a party of Dr. Kibola's evidence that there was no love lost between him and Saleh and Saleh sued the Plaintiffs unsuccessfully. That was not enough to prove that Saleh instructed Alexander Mnyeti and Belinda to deny the Plaintiffs access. Dr. Kibola deposed that Saleh cooperated with people with authority to deny him access. This was a mere allegation, as there was no evidence to prove it. I find that Saleh did not deny Dr. Kibola access to the hunting camp. The fact that they were rivals is not the evidence that Saleh took part to denied Dr. Kibola and the first defendant access. I find that the plaintiffs were barred to access the hunting camp on 19.12.2019 by the Alexander Mnyeti, the RC by instructing Belinda to notify Dr. Kibola not to enter to the camp. The bar was open ended as Belinda (Dw2) did not testify for how long Dr. Kibola was not allowed to enter. The fact that Belinda (Dw2) arrested Dr. Kibola when he entered the hunting block in June, 2020, is a proof that the bar they imposed in December 2019 was still in existence. 23 The last question is whether the first and second defendants had any justification to deny the plaintiffs access to the hunting camp. Belinda (Dw2) deposed that Alexander instructed her to prohibit Dr. Kibola to access the hunting camp as there was a commission probing into the complaint of poaching activities. She deposed that she removed the security guards after the commission visited the hunting block. Dr. Kibola's evidence was that Alexander Mnyeti established a Commission of Inquiry, the act which he had no mandate to do. Alexander Mnyeti (Dw3) deposed that he established on Advisory Committee and not a Commission of Inquiry. To resolve that issue, I resorted to review the report (Exhibit D.1). The introduction to the Exhibit D.1 reads that the RC, Hon. Alexander P. Mnyeti instructed the Regional Administrative Secretary Mr. Musa to form a Commission to probe or inquired into hunting activities conducted by HSK Safaris Ltd. It reads;- "Tarehe 06.12.2019 Mkuu wa Mkoa wa Manyara Mhe. Alexander P. Mnyeti alimuagiza Katibu Tawala Mkoa Ndg. Msaile kuunda Tume kwa aji/i ya kuchunguza shughuli za uwindaji" The introduction makes it clear that, Alexander Mnyeti, the RC established a Commission to probe or inquiry into HSK Safaris Ltd hunting activities not a committee. 24 It was submitted and I agree that it is the President under section 3(1) of

Commission of Inquiry Act, [Cap. 32 of the Laws], who may form a Commission of Inquiry. For sake of argument, let us agree that Alexander Mnyeti formed an Advisory Committee and not a Commission of Inquiry. Was Alexander Mnyeti and Belinda justified to bar the plaintiffs to access the hunting camp? I quickly reply in the negative. Every order made to deny any person his right must be supported by law. Any order made without being backed up by law is an arbitrary order and abuse of one's mandate. I concur with the plaintiff's advocate's submission that "a person or body acting under statutory powers can only exercise so much power as is conferred on it by law and in the manner prescribed in the law. Thus, it can do only those things permitted by the statute to be done." As stated above, Belinda (Dw3) had no mandate, no reasonable cause, and no proof that she was instructed to deny Dr. Kibola's access to the hunting camp on 26.6.2020. In the end, I find the first and second defendants jointly barred the plaintiffs to access the hunting camp on 19.12.2019 and the bar was endless. I find that Belinda, the second defendant prohibited Dr. Kibola to access the 25 hunting camp on 26.06.2020, arrested him illegally and caused his imprisonment unlawfully for two days at Simanjiro police station. Did Alexander Mnyeti and Belinda illegally authorize Saleh to access the hunting camp? The plaintiffs did not tender evidence prove the allegations that the Alexander Mnyeti and Belinda gave Saleh access to the first plaintiffs' hunting camp. Dr. Kibola (Pw2) deposed that when he visited the hunting camp, he found security guards who told him that they were engaged by Saleh to ensure he does not access the Camp. Dr. Kibola (Pw2) did not summons the security guards who told him that Saleh employed them to testify. I find that evidence hearsay evidence to which I attach no value. In addition, Letunga Silanga (Pw1) a security guard employed by Dr. Kibola deposed that on 26.06.2020 when Dr. Kibola visited them there were no other security guards apart from Dr. Kibola (Pw2) employed. I had no reason to doubt Letunga Silanga (Pw1)'s testimony. I find it established that the allegation that Saleh employed guards to bar Dr. Kibola (Pw2) to access the camp unfounded. Both, Belinda (Dw2) and Saleh (Dw1) denied to know each other. Saleh (Dw1) denied to have barred Dr. Kibola or to have worked with Belinda and Alexander Mnyeti to deny Dr. Kibola access or to gain access to the 26 hunting camp. It is common knowledge that from December to the end of June, each year is not a hunting season. Even if, Saleh was given access to the hunting camp, it was for fostering criminal activities which Dr. Kibola should not be heard to complain that Alexander and Belinda gave Saleh advantage to commit criminal activities. All in all, I don't find evidence to prove that Alexander and Belinda authorized Saleh to access the plaintiffs' hunting camp. The Law of Evidence in civil cases, requires a person who alleges to prove the allegations and to do so on the balance of probability. The plaintiffs have not passed the test. Consequently, I determined the second issue negatively that there is no evidence establishing that the first and the second defendants did authorize the third defendant to access the plaintiff hunting camp. What reliefs are the parties entitled to? In view of the undisputed facts and this court's findings. I find that the plaintiffs did not establish any claims against Saleh, the third defendant. The plaintiffs joined him in this case without good cause. I dismiss the plaintiffs' claims against Saleh, the third defendant with costs. The plaintiffs' claims are for specific damages of USD 670,230.40, out

of which USD 591,650.40 was for loss of business, and USD 78,630 being 27 fees and penalties the plaintiffs failed to pay when the defendants barred the plaintiffs to access the hunting area. The plaintiffs claimed Tzs. 13,000,000/= being direct costs the plaintiffs incurred to travel from Dar es Salaam to Babati Manyara and Arusha. The plaintiffs pleaded that they incurred Tzs. 4,000,000/= as direct costs to travel from Dar es Salaam to Babati Manyara to seek an amicable settlement, Tzs. 3,000,000 being direct costs to travel from Dar es Salaam to Emboreet Simanjiro District, Tzs. 2,000,000/= direct costs the plaintiff incurred from Dar es Salaam to Engasmet Simanjiro and Tzs. 4,000,000/= to travel from Dar es Salaam to Arusha. Dr. Kibola (Pw2) deposed that they had agreed with Bunda Safaris Co. Ltd who cancelled the business as the plaintiffs had issues with the government. He tendered a letter (Exhibit P. 6) from Bunda Safaris Ltd canceling the confirmation she had made to bring visitors to the plaintiffs hunting camp. He deposed that the loss of business he suffered was for both hunting areas. He added that during the period he was barred he could not pay fees and penalty amounting to USD 78,000.00. He prayed to be reimbursed for the loss incurred on the package Bunda Safaris Ltd and confirmed. 28 As to the costs of transport, he deposed he made to trips from Dar es Salaam to Babati and that each trip costed Tzs. 2,000,000/=. He deposed that he travelled twice at cost of Tzs. 2,000,000/= from Dar es Salaam to Babati. He travelled from Dar es salaam to Arusha Utalii College police station Arusha 8 times which costed him Tzs. 9 million. The defendants refuted the claims. It is trite law that specific damages must be pleaded and proved specifically and strictly. The Court of Appeal in Peter Joseph Kilibika & Another vs Patric Aloyce Miingi (Civil Appeal No. 37 of 2009) [2012] TZCA 258 (28 May 2012) held that "Special damages have to be specifically pleaded and proved, We would like to emphasize the need to distinguish the difference between special and general damages. The law is very dear, that special damages must be proved specifically and strictly. Lord Mcnaughten in Bolag v Hutchison 1950 A.C. 515 at page 525 laid down what we accept as the correct statement of the law that special damages- "such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly. 29 The Court of Appeal in Peter Joseph Kilibika & Another vs Patric Aloyce Mlingi cited Zuberi Augustino v Anicet Mugabe, [1992] TLR 137 (CA) where it was held that "it is trite law and we need not cite any authority, that special damages must be specifically pleaded and proved." The plaintiffs were required to plead specifically how they incurred the loss of business amounting to USD 591,650.40 and prove specifically. It is not enough to depict that they had agreed with Bunda Safaris to bring hunting tourist which was later cancelled as they heard that the plaintiffs had issues with the government. That evidence did not specifically establish that the plaintiffs were going to benefit from the deal as claimed. It was submitted that the Plaintiff did not even have the hunting licence for period in question. How could they have made profit when they had no hunting licence. In addition, the plaintiffs claimed to suffer specific damages for not operating both hunting blocks which Mangata hunting area in Rufuji and Lokonwa hunting block in Simanjiro game controlled area. There was no clear and specific evidence how the first and second defendants' act of denying the Plaintiffs access Lokonwa hunting area in

Simanjiro affected hunting activities in Mangata hunting block. I cannot rule out that the possibility that Dr. Kibola, the director of first plaintiff was subjected to a 30 situation he could not conduct activities at Mangata hunting block by being arrested and retained. However, such damages ought to have been pleaded and proved specifically. I wish to add that the claim specific damages for loss incurred for failure to operate Mangata hunting block was too remote to be associated with what took place at Lokonwa hunting block. The plaintiffs claimed USD 78,000.00 as fines and penalties they could not pay during the period the defendants denied them access. The Plaintiffs did not plead and prove the claim specifically. The plaintiffs ought to have tendered evidence to prove that how much they liable to pay as penalty and as fees. They would have done that by producing invoices, bills or any document to establish that they were required to pay that amount of money. They were also required to prove when the amount fell due. Dr. Kibola (Pw2) gave no such evidence. I hesitate to grant USD 78,000.00 as specific damages without strict proof. I considered the claims for transport costs from Dar es Salaam to Babati, Engasmet, or Arusha Utalii police college and found that the plaintiffs did not specifically prove them. Dr. Kibola (Pw2) did not provide a breakdown of how he incurred the costs to the tune claimed and support them with evidence. He did not produce receipts for services rendered to him. There is no doubt that Dr. Kibola (Pw2) incurred costs to travel from 31 Dar es salaam to Arusha Utalii police college, Babati or to Engasmet/ Orkarsimeti but he did not specifically establish them. In the end, I find that the plaintiffs did not establish claims for specific damages. I award them no specific damages for want of proof. As to general damages, it trite law that general damages are such damages which the law will presume to be the direct natural or probable consequences of the act complained of. Black's Law Dictionary 4th Edition. In Razia Jaffer Ali v. Ahmed Mohamedali Sewji & 5 Others [2006] TLR 433, the Court referred to the cases of Livingstone v. Rawyards Cool Co. (1880) 5 App. Cas. 25, 39 and Victoria Laundry v. Newman [1947] 2 KB 528, 539 to emphasize the purpose of general damages, which is to put the party who has been injured or who has suffered loss in the same position as he would have been in if he had not sustained the wrong for which he is seeking compensation. There is no doubt that Dr. Kibola (Pw2) was unlawful arrested, confinement and denied access to Lokonwa hunting block. As it has been clearly established in evidence that Dr. Kibola (Pw2) was arrested and confined for over two days. He is entitled to damages for unlawful confinement. It is proved or not disputed that the first and second defendants unlawfully denied the plaintiffs access on 19. 12.2019 for 32 unlimited period. Further, there is evidence that the second defendant denied access to Dr. Kibola (Pw2) on 26th June 2020 when the hunting season was due to open in July. Dr. Kibola did not testify that he had a hunting licence for the hunting season commencing in July 2020. He did not testify that he had one when he was cross-examined. There is no doubt that the plaintiffs were denied access but the fact that they had no hunting licence mitigates damages to be paid for the loss they incurred. Taking all the above into consideration, I award the Plaintiffs Tzs. 15,000,000/= as general damages against the first defendant and the second defendant, to which the first defendant is liable to pay Tzs. 10,000,000/= and the second defendant shall pay Tzs. 5,000,000/=. The second defendant is

ordered to pay general damages for denying the plaintiffs access to the hunting block on 26.06.2020 and for arresting, confining Dr. Kibola for hours within Emboreet village and causing his confinement for two days at Simanjoro police station. The second defendant failed to prove that she obtained instructions from the District Commission or the Regional Commissioner to deny the Plaintiffs access to Lokonwa hunting block and arrest Dr. Kibola, the second Plaintiff. Further, the plaintiffs will have costs of this suit against the first and second defendants. 33 A suit against the third defendant is dismissed with costs against the Plaintiffs. It is ordered accordingly. Dated at Babati, this 29 day of July, 2024. J. R. Kahyoza Judge 29.07.2024 Court: Judgment delivered in the virtual presence of Mr. Edmund adv. for the Plaintiffs, Mr. Ndonjekwa advocate for the First defendant, Mr. Benson for the third defendant and holding Mr. Akaro's brief for the second defendant. Ms. Fatina, B/C present physically. J. R. Kahyoza Judge 29 07.2024 34

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