

TANZANIA / JUDGMENT

kera komeyo makeseni 8 others vs kilimanjaro regional commissioner and another 2024 tzhc 237 14 february 2024

COURT
TZHCDECIDED
14 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MOSHI AT MOSHI MISCELLANEOUS CIVIL CAUSE NO.2 OF 2023 IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION AND IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, CAP 310, AS AMENDED IN 2019 AND IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DISPOSSESSION OF THE INDIGENOUS VILLAGERS LAND (PURPORTED TANZANIA AIRPORTS AUTHORITY LAND) (DECLARATION) ORDER OF THE 1ST RESPONDENT BETWEEN KERA KOMEYO MAKESENI..... 1ST APPLICANT SANING'O LESWANYA MOLLEL..... 2ND APPLICANT NGOTETO LESW ANY A MOLLEL..... 3RD APPLICANT KISHILI SHAWISHI MOLLEL4TH APPLICANT MATHIAS LEKANGAI MAMASITA..... 5TH APPLICANT LOISHIYE PAULO MOLLEL (As a legal person representative of N DOOK K I M EJA M OLLEL 6TH APPLICANT ZAWADI PINIEL KIVUYO..... 7TH APPLICANT ELIUPENDO SIRIA LOODO..... 8TH APPLICANT LUCAS KILIMBEI SIRIA.....9TH APPLICANT VERSUS KILIMANJARO REGIONAL COMMISSIONER..... 1ST RESPONDENT THE ATTORNEY GENERAL..... 2ND RESPONDENT 1

RULING

7th December 2023 & 14th February, 2024 A.P.KILIMI, J.: Applicants herein are residents of Sanya station and Tindigani villages, Kia Ward, Hai District, Kilimanjaro Region Tanzania. They have moved this court for judicial review after being aggrieved by the order/declaration of the first respondent who is the Kilimanjaro Regional Commissioner declaring the dispossession of their indigenous land, when he declared that the same belongs to Tanzania Airports Authority (hereinafter KIA) which is a government entity therefore belong to the Government. In the above esteem the applicants pray for the following reliefs; -

1. An order for certiorari, to call for, examine, quash and declare the dispossession of the indigenous villager's land (purported Tanzania Airports Authority) (declaration) Order, of the 1st Respondent, 02nd November 2022 to have been promulgated wrongly on grounds of illegality, irrationality, Unreasonableness, violation of principle of natural justice and procedural impropriety.
 2. An order for prohibition against the 1st Respondent from unlawfully removing, harassing and intimidating the Applicants from eight (8) villages covering almost 11 ,000 Hectares as Tanzania Airports Authority (KIA) area.
 3. Any other relief, as the court may deem just and equitable to grant. 2 The Applicants filed in this court a chamber summons made under Section 2(3) of the Judicature and Application of Laws Act, (CAP 358 RE 2019); Section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous provisions) Act, [CAP 310 As Amended in 2019 Rule 8(1)
- (a) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (GN. No. 324 of 2014) supported by Applicants' affidavits and Statement in support of the Application. The same was reciprocated by the counter affidavit of 1st respondent State Attorney. Before I dwell into the merit of this application, I find necessary to appreciate the facts albeit in brief discerned from parties' pleadings which gave rise to this contention. The applicants being among many inhabitants of the above said locality, on 02nd November 2022 heard the first respondent declaring the land they possessed as indigenous belongs to KIA therefore a government property. They further allege that the effect of the said order affects 8 villages covering over 11, 000 Hectares within Meru District in Arusha Region and Hai District in Kilimanjaro Region which includes Sanya Station, Mtakuja, Tindigani, Chemka, Samaria, Malula, Majengo, and Kaloleni Villages. In this area the applicants have 3 established permanent settlement and depend for pasture and cultural life. They further deposed that the said order of dispossessing their land was issued contrary to the law because the first respondent had no authority to declare their village land to belong to Kilimanjaro International Airport area. On the other hand, the respondents are contesting that there is no any order in existence capable of being quashed by this court. They further contended that what the 1st Respondent did was not a declaration but informed the applicants on what the Government was undertaking concerning re-affirmation of the boundaries of Kilimanjaro International Airport area, and if anyone is found to be within the limits of the boundaries knowingly or unknowingly his interests shall be determined before he or she is ordered to vacate the premise and no force has been used by the 1st Respondent to such effect. The respondents further contended that the 1st Respondent never promulgated the Kilimanjaro International Airport area. This is because the right of occupancy over the mentioned area was issued by the Commissioner for Lands under Granted Right of Occupancy. In respect to the applicants' joint statement, the grounds on which the reliefs are sought are to the effect that; first, the 1st 4 Respondent acted in excess of jurisdiction in the promulgation of the Tanzania Airports Authority (KIA) Area (Declaration) Order, issued on 2nd December 2022 as he had no power in law or

otherwise to declare any village land as the airport lands. Second; he acted against the rules of natural justice, by proceeding to declare the said order without making consultation with the villagers. Third; his action was irrationally by taking the land which has been in occupation and used for sustainable activities of the inhabitants used as homes, pastureland, cultural and spiritual sites. Fourth, he has already made the Decision without consultation to the villagers since his officers had started erecting beacons on the land, and they do so arbitrary by force and intimidation using the armed forces. Fifth; his decision was mala fide because he used irrelevant consideration such as the area will be used for purposes of expanding and investing of the airport estate. And lastly, the decision made to promulgate the said area as airport was made against legitimate expectation of the inhabitants of the Eight (8) villages, since all have been under the protection of the law which allows them to stay in the impugned area. At the hearing of the appeal, all applicants had the service of Mr. Jeremiah Mjema learned advocate, whereas all respondents were 5 represented by Mr. Yohana Marco learned State Attorney and it was agreed this matter be argued by way of written submissions. In support of the application, Mr. Mjema commenced by introducing the applicants herein that are residents of villages namely Sanya station, Mtakuja, Tindigani and Chemka in Hai District, Kilimanjaro Region, and both contend dispossessing of their land by the 1st Respondent order/declaration issued on 02nd day of November 2022 that their land belongs to Tanzania Airports Authority (KIA) which is a government entity and therefore the land is a government land. The counsel also prayed applicants' affidavits, annexure including documents and videos in the flash disc together with certificate of authenticity attached to form part of his submission. The counsel further maintained that the said order was aired on various broadcasting media and its video link is <https://www.youtube.com/watch?v=5Qz7v5dsSuM>, and the order impacted 8 villages covering over 11,000 square kilometres of which Four

- (4) Villages are in MERU District in Arusha Region and Four (4) Villages are Hai District in Kilimanjaro Region. He was also his contention that applicants pray for an order for Certiorari to quash the said order because 6 has been issued in excess of powers, illegally, irrationally, unreasonably in violation of the principle of natural justice and with procedural impropriety and mala fide made. Moreover, pray for an order of prohibition to prohibit the 1st respondent from unlawful evicting, harassing, and intimidating residents residing on above said locality Mr. Mjema further submitted that following the said declaration, there is an illegal and purported valuation exercise for the purposes of compensation and the security personnel who have threaten inhabitants to forcefully and violently evicting resident people within the land surrounding the airport Area, and on 09th November, 2022, the process of demarcating boundaries commenced without prior being informed and the same used intimidation by army and police officers. It was also learned counsel contention that, by so doing there is abuse of laws and procedures, arbitrariness, mala fide and gross interference of people's rights, because once the Village land exist then the Regional Commissioner is precluded from promulgate any area to be the land of a certain government entity. Therefore, the said order neither was his role nor proved that there was

a resolution from the cabinet for him to enforce. Also, the counsel contended 7 that if at all the said land belongs to KIA why doing the valuation to compensate the trespassers? In respect to the principles requiring the above order sought to be granted, Mr. Mjema submitted that Court in judicial review acts to supervise other branches of the state not exceed their statutory powers, hence causing those bodies to comply with the law so as individuals receive just and fair treatment in compliance with the law. To buttress his contention the applicants' counsel invited me to observe foreign cases in *Chief Constable of North Wales Police vs Evans* (1982) 1 WLR 1155; *Minerva Mills Ltd vs Union of India* (1980) 3 SCC 625 at 677-678; *P. Sambamurthy vs Union of India* (1987) 1; *Maneka Gandhi vs Union of India* AIR 1978 SC 597; *L. Hirday Narain Vs Income Tax Officer, Bareilly*; 1971 AIR 33; and *Council for Civil Service Union vs Minister of Civil Service* (1985) AC 374 which was referred in Tanzania case of *Lausa Alfa Salum and 106 others vs Minister for Land and National Housing Corporation* (1992) TLR 293 (TZHC). Thus, he concluded that the order issued by the first respondent was ultra vires hence the need to be quashed as requirement of principle in *Sinai Mirumbe and another vs Muhere Chacha* (1990) TLR 54. 8 In respect to the need of consultation, the applicants' counsel argued that the 1st respondent did not consult either to local authorities or impacted community members including the Applicants before issuing the said order which is contrary to the principles of natural justice because no views were given from impacted inhabitants. The counsel asked me to seek the persuasion from the foreign case of *The Mayor and Corporation of Port Louis vs The Honourable Attorney General* 1964 AC. In regard to the order of prohibition sought, Mr. Mjema added that Applicants pray the same be issued in order to prevent any illegal establishment of airport area over the suit land upon issuance of Certiorari so as the inhabitants of the eight (8) impacted village land to continue access peacefully their homes and grassing areas illegally prevented by the conduct of the 1st Respondent. He insisted that according to the applicant's affidavits, the demarcation started and purported compensation process shows it is a continuous process which attract judicial control by way of prohibition. To fortify his assertion, the counsel has persuaded me by the case of *Abdi Athumani & 9 others vs DC Tunduru & 3 others Consolidated Misc. Civil Cause No.2 & 3 of 1987*. 9 Responding to the above submissions Mr. Marco learned State Attorney contended that according to the principle in *Sanai Murumbe and Another vs. Muhere Chacha* (supra), the order for certiorari and prohibition to be granted an impugned action or decision must be attached to the application, but in this application nothing attached. He further contended the annexures pleaded by the applicants do not correspond to the ones attached to their affidavits. He gave example as annexures KKL-1, KKL-3 and KKL-4 stated in the 1st applicant's affidavit are nowhere to be found. Similarly, annexures SLM-1 and SML-2 in the 2nd applicant's affidavit, annexures NLM-1, NLM-3 and NLM-4 in the 3rd applicant's affidavit are also nowhere to be found. And the remaining affidavits also suffer the same destiny. Mr. Marco further contended that, links stated in the applicants' affidavits, may not be permanent because the sources of it is not controlled by any party. Also, the attached flash disk labelled as annexure KKL' is not mentioned in the applicants' affidavits, thus the data embedded on it does not meet to the requirements under section 18 (2) of the Electronic Transactions Act, 2015,

because no counter affidavits filed showing the manner in which the data message in the flash disk was generated, stored 10 or communicated; maintained and the identification of the originator in a bid to ascertain its reliability and authenticity. He further said in attached disk has two video clips; one shows is edited news commentary which require certification of editor. Furthermore, in respect to annexure 'KKL' Mr. Marco contended even if the same is treated as decision subject of Certiorari, when is played it, it shows the first respondent addresses the gathering at KIA, the event which was covered by the press, that the decision is for reaffirm/secure the boundaries of the disputed premise which was issued by the cabinet of Ministers chaired by the President which was stated in para 5 of joint counter affidavit and never refuted by the applicants. He added that the information given by the first respondent does not amount to dispossession of the KIA residents' land, the decision is about to re-secure the boundaries and that if any person is affected, shall be compensated regardless of whether they had encroached into the KIA area or not. Therefore Mr. Marko disputed under above circumstances grounds stated in Sinai Murumbe's case (supra) were not complied, since there is nothing to be quashed. 11 In respect to the prayer for prohibition. Mr. Marco argued that given the circumstances of this case the order of prohibition cannot be issued because the issue of acquisition of land by the Government is by virtue of Part II of the Land Acquisition Act [Cap. 118 R.E 2019]. Therefore, under the said circumstances, the order of prohibition is not justified to be issued by this court, thus prayed the same to be dismissed for lack of substance. In brief rejoinder Mr. Mjema submitted that since the respondents have admitted that the 1st respondent gave decision to secure the boundaries of the disputed premises which was issued by the cabinet of Ministers chaired by the President as para 5 of their joint affidavit, but the counsel further insisted that Government works on paper, there is no any proof substantiating the purported decision of the Cabinet of Ministers Chaired by the President , which mandated the 1st Respondent to issue such declaration, therefore, it goes without saying that the 1st Respondent acted ultra vires to the functions of his office, thus his order need to be quashed. In respect to the video clip which is recorded in a flash disk, Mr. Mjema argued that the first applicant had filed a Certificate of authenticity 12 of video clips downloaded from social media showing the Kilimanjaro Regional Commissioner declaring applicants land to be KIA area and use of force on 21st February, 2023, and the Video Clips which is referred here has the link quoted as annexure KKL-1, KKL-3, and KKL-4, SLM-1, SLM-2, and SLM-3, NLM-1, NLM-3, and NLM-4, KSM-1, KSM-3, and KSM-4, MLL-1, MLL-2 and MLL-3, LML-1, LML-3 and LML-4, ZKL-1, ZKL-2 and ZKL-3, ELL-1, ELL-3, and ELL-4, LSL-1, LSL-2 and LSL-3 and it is attached to the Application; Mr. Mjema further deposed that the same explains the manner in which the flash disk was generated, stored, maintained and communicated thus qualifying to be accorded evidential weight by this Court, since it is reliable and authentic. In respected to the case cited by the respondent's counsel of Attorney General and 2 others vs Bob Chacha Wangwe, (supra), Mr. Mjema distinguished it with this case for the fact that. In that case the court dealt with photograph in electronic evidence but in this case, it is a Flash Disk/video clips and in the said case there was no Certificate verifying the authenticity of the photographs while in this case there is Certificate to authenticate the flash Disk containing

video clips. 13 Mr. Mjema further maintained that the said link and flash disk supplied to the court met the requirement of admitting of electronic evidence as per section 18 of The Electronic Transaction Act and Section 3B (1),(b) of the Civil Procedure code cap 33 R.E. 2019 which resurrect the use of technology in administration justice and the same shows that the impugned order was issued. To buttress his assertion, Mr. Mjema referred to me the decision of this court in Zanj Spice Limited vs Zuri Organics Ltd and Another [2023] TZHC 19416; Andrea Zakayo Mungure & 7 Others vs Kilimanjaro Regional Commissioner & Another [2023] TZHC 19847 and Kera Komeyo Makeseni and 8 Others vs Kilimanjaro Regional Commissioner and Another [2023] TZHC 243 (both in TANZLII). Having summarized the above submissions by both parties, now I have considered applicants' prayers and their joint statements, they both pray for order of certiorari and prohibition. To start with the prayer for certiorari, It is a trite law as referred by both learned counsels above, the requisites for this order to be issued was stated in the case of Sanai Murumbe and Another vs Muhere Chacha (supra) in which it was held inter alia that; 14 "i) An order of certiorari is one issue by the High court to quash the proceedings of and decision of a subordinate court of tribunal or public authority where, among other there is no right of appeal. ii) The High Court is entitled to investigate the proceedings of lower courts or tribunals or public authorities on any of the following ground apparent on record.

- a. Taking into account matters which it ought not to have taken into account.
- b. Not taking into account matters which it ought to have taken into account.
- c. Lack or excess of jurisdiction.
- d. Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it.
- e. Rules of natural justice have been violated.
- f. "Illegality of procedure or decision." [Emphasis supplied] From the above stance, the order of certiorari will be issued to control administrative decisions only to statutory authorities or where the administrative authority has acted in excess of its statutory power. Thus, 15 causes statutory tribunal or Government body applies the law correctly which in fact ensure the proper functioning of the machinery of Government (see In Re: Application by Bukoba Gymkhana Club

[1963] EA 478). Second prohibition is a legal order issued by this court to prevent a lower court or tribunal or government official or administrative body from exceeding its jurisdiction or exercising a power that it doesn't have legally. According to the joint statement of the applicants, they allege the 1st respondent on 2nd December 2022 issued an order/ declaration that their land as airport land of KIA while he has no such power and did not adhere to the principles of natural justice before issuing the said order. In lieu of this statement, I have entirely considered the applicants' affidavit and respondents supporting counter affidavit, I find conveniently the following issues be the point for determinations by this court. First, whether the 1st respondent issued an order/ declaration pronouncing

applicants' village land belong to KIA as Government entity, and second if the first issue is answered in affirmative, whether there is justifiable reason to grant the order for prohibition sought. 16 The words used by the applicants are order and declaration. It is a common ground that an order is a command or directions while According to Black's Law Dictionary 8th Edn. A declaration is defined to mean a formal statement, proclamation, or announcement, especially embodied in an instrument. In respect to land the same Book define declaration to mean a document that governs legal rights to certain types of real property, such as a condominium or a residential subdivision. I am aware that Government directives moves on papers as rightly said by the applicants' counsel when attempted to convince this court that no document substantiating the decision of the Cabinet of Ministers Chaired by the President in respect to the disputed land. Also, indeed in this matter, the same reciprocate to applicants themselves, they did not exhibit any document envisaging the said declaration was issued by the first respondent. However, since the applicants are alleging that pursuant to the said order, on 09th November, 2022, the process of demarcating boundaries started by using army and police officers. Thus, it convinces the applicants to believe that, it is the said order by the first respondent is on progression in alienating their motherland. In that regard, even if no documentation to the alleged order, it is also my view this court for the 17 sake of justice must investigate and inform the applicants whom have knocked the door of this court aggrieved by the said order and decide accordingly. The rationale of doing so is because this court is backed by inherent power of exercising its supervisory jurisdiction over proceedings and decisions of inferior tribunals or other authorities, bodies or persons charges with the performance of public acts and duties, when their orders are challenged. (See Felix Mselle vs. Minister for Labour and Youth and three others [2002] TLR 437 and John Mwombeki Byombariwa vs. Regional Commissioner, Kagera and Another, High Court of Tanzania at Mwanza, Miscellaneous Civil Cause No 22 of 1986 at Mwanza (unreported). Hence, to start with the manner the said order was delivered. The applicants have exhibited by supplying a video link which is <https://www.youtube.com/watch?v=5Qz7v5dsSuM> which was also saved in a flash disk and exhibited as annexure KK. This was disputed strongly by the respondent counsel that the above electronic documentation did not meet the requirement of section 18 (2) of the Electronic Transaction act. Cap.442 R.E.2022. But he admitted that 18 the 1st respondent conducted the alleged meeting and did not issue any declaration rather than informing the applicants and other villagers on the plan of the government to re-affirm of KIA wherein anyone found to be within the limits of the boundaries knowingly or unknowingly his interests shall be determined before he or she is ordered to vacate the premise. In my view of the above circumstances, sensibly I find suitable to inquire on the mode the order was issued taking regard the kernel embedded under section 18 (1) of the Electronic Transaction act is to consider the use of technology in evidence. To implement the above gist section 18 (2) of the, Electronic Transactions Act, provides for the factors in determining admissibility and evidential weight of a data message, which are first; the reliability of manner in which the data message was generated, stored or communicated. Second; the reliability of manner in which the integrity of the data message was

maintained. Third; the manner in which its originator was identified; and fourth; any other factor that may be relevant in assessing the weight of evidence. I have considered the affidavit filed by the applicants, the first applicant exhibited by swearing a certificate titled certificate of authenticity of video clips downloaded from social media showing kilimanjaro Regional 19 Commissioner declaring KIA area and use of force, therein avowed that the 1st Respondent on the 02nd of November 2022 issued the (Declaration) Order that their village land is KIA land which is a government entity, and the same order was televise/aired on various broadcasting media. Including video link <https://www.youtube.com/watch?v=5Qz7v5dsSuM> also in another link which is <https://www.youtube.com/watch?v=5Qz7v5dsSuM> and another link <https://www.youtube.com/watch?v=5Qz7v5dsSuM> . He further averred that he has downloaded the said video clips using a device working properly and stored into flash disk which was exhibited as KK-annex, and the saved video clips have not been altered or changed, or modified in any manner from the original downloaded clips. At the end of the said certificate, he has certified that the reliability of the manner of the above-named video clips are as good as the original video clips uploaded on the site used for download. I have considered the above averment, in my view, I am settled data stored in a flash disk met the requirement of the above stated law and I am settled it is admissible. Nevertheless, the data which now is aired in the video link <https://www.youtube.com/watch?v=5Qz7v5dsSuM> and another link <https://www.youtube.com/watch?v=5Qz7v5dsSuM> , as rightly submitted by Mr. Marco that links stated in the applicants' affidavits, may not be permanent because the sources of it is not controlled by the applicant, thus it is also my view cannot be admissible under circumstances of this case because it is found direct in the domain of the YouTube server which the applicants are not maintainer or protector or host of the said server, therefore after the first applicant downloaded it and saved accordingly, he therefore can't know or assure this court that the same data remained in the YouTube streaming remained intact and was not altered or tempered. Now, be that as it may, in the line of the above attitude, I have played the above flash disk, it is a video showing the first respondent addressing the villagers, I have acutely heard what he said, I entirely agree with Mr. Marco that the first respondent did not issue any order or declaration to alienate the applicant's land. This is because, Firstly; what I have heard after listening the said flash disc reflects the averment in paragraph five and six of the first respondent's State Attorney affidavit who was present at the said meeting, that 1st Respondent thereat nothing did than informing the villagers gathered that the Government is undertaking to re-affirm the boundaries of Kilimanjaro International Airport and that if any villager is found to be within the limits of the boundaries knowingly or unknowingly his interests shall be determined before he or 21 she is ordered to vacate the premise, then he urged for villagers to show cooperation in that government operation. Secondly, what he informed villagers of re- affirming the boundaries of KIA is backed by the Granted Right of Occupancy issued to KIA by the Commissioner for Lands and exhibited in paragraph 10 of the first respondent's State Attorney affidavit as annexure M-1. The same shows the boundaries need to be re- affirmed by the Government. Therefore, in this regard the first respondent in my view was not declaring or alienating applicants land but merely informing them the exercise to be conducted as per

requirement of the law granted the said Right of Occupancy to KIA. Thirdly, in view of what he stated at the said public meeting, the first respondent was exercising his duty as Regional Commissioner of the said locality, as a peace keeper of the area, I think he was right and obliged to make his people aware of anything the Government intend to do, taking regard the operation itself to be conducted deal with issues of land which touches long possession of individuals who might have stayed within the surveyed land unknowingly, thus to curb misunderstandings between them and land officers personnel being cascaded by Commissioner of Lands at local Authorities level when doing re-affirming 22 of the said land boundaries, to my view it was correct to inform the inhabitants residing in that area. This power of safeguarding peace and ensuring government entities enforces the law of this land is given to the first respondent by virtue section 5 of The Regional Administration Act of 1997 Chapter 97 of the Laws which was amended by the Local Government Laws (Miscellaneous Amendments) Act, 2006 and the same provides that; "5 (1) The Regional Commissioner shall be the principal representative of the Government within the area of the region for which he is appointed and for that purpose all the executive functions of Government in relation to that region shall be exercised by or through the Regional Commissioner.

- (2) In furtherance of the objects and provisions of subsection (1), the Regional Commissioner shall be responsible for securing the maintenance of law and order in the region, determining the specific direction of efforts in implementing the general policies of the Government in the region and for the exercise and discharge of such other functions and duties as are conferred or imposed upon him by or under this Act or any other written law.
- 23
- (3) For purposes of this section, it shall be the duty of the Regional Commissioner to facilitate and assist local government authorities in the region to undertake and discharge their responsibilities by: -
- (a) providing and securing the enabling environment for successful performance by them of their duties and functions;
 - (b) ensuring compliance by all persons and authorities with appropriate government decisions, guidelines and regulations in relation to the promotion of the local government system;
 - (c) doing all such acts and things as shall facilitate or secure the effective, efficient and lawful execution by the local authorities of their statutory or incidental functions."
- Fourth, the applicants' allegation that on 09th November, 2022 the process of demarcating boundaries started, in my settled view it is unjustified in respect to whom is responsible, because the applicants did not settle or prove to the satisfaction of this court, if at all those Government officers demarcating boundaries were executing directives from first respondent and not that of Commissioner for Lands who granted 24 the Right of Occupancy issued to KIA (annexure M-1) hence as Granter of that right is accountable for implementation of the law of land Act which entails once an area is planned and surveyed needs to be demarcated,

therefore exercising statutory duty. Be as it may, I am not in agreement with the counsel for applicant contending that if at all the said land belong to KIA why the government is struggling with compensation, it is my considered opinion a mere declaration that the land is planned, and the process of compensation is started does not mean that the former existed right is extinguished. (See Methusela Paul Nyagwaswa vs Christopher Mbote Nyirabu [1985] TLR 103 CAT. In the premises, and observations stated above, all cases concerning a writ of certiorari referred by the applicants' counsel are distinguishable from the circumstances of this matter. Hence, I am settled that there is no order or declaration issued by the first respondent alienating applicants land to be quashed by this court as prayed by the applicant, thus the first issue is answered not in affirmative. 25 The second order sought is prohibition, Mr. Marco as submitted above invited me not to consider issuing the order of prohibition because the issue of acquisition of land by the Government is by virtue of Part II of the Land Acquisition Act [Cap. 118 R.E 2019]. Therefore, in the circumstances of this case, the order of prohibition is not justified to be issued. I am not in agreement with the position taken by the learned counsel for the Respondent, since it is not settled the circumstances existed when the said land was planned to be KIA area, I think there are facts to be proved in such respect. But be it as it may, A writ of Prohibition can only lie in cases where the proceedings are still pending before a judicial, quasi- judicial authority or Government Body. Thus, there should be something left to prohibit. In the instant matter the first issue is answered that the first respondent did not issue any order or declaration alienating applicants land therefore there is no order in force to be prohibited as per requirement of this writ to be issued. Therefore, in the circumstances the prayed writ of Prohibition cannot be granted by this court. 26 Having discussed and found as above, I am satisfied that the applicants' application did not meet the conditions for grant of the sought writ of certiorari and prohibition. In the circumstances, this application is devoid of merit. I therefore hereby accordingly dismiss the same in its entirety. From the nature of the parties' dispute, I order that each shall bear their own costs. It so ordered. DATED at MOSHI this 14th day of February, 2024. X JUDGE Signed by: A. P. KILIMI Court: - Judgment delivered today on 14th day of February, 2024 in the presence of Mr. Moses Muyingi State Attorney for all respondents. Mr. Salehe Salehe holding brief of Mr. Jeremiah Mjema for Applicants. Applicants also present. Sgd: A. P. KILIMI JUDGE 14/02/2024 27 Court: - Right of Appeal duly explained. Sgd: A. P. KILIMI JUDGE 14/02/2024 28

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