

TANZANIA / JUDGMENT

KERIKA OLOIYO Edited 222

COURT
TANZLII

DECIDED
13 February 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI LAND CASE NO. 5529 OF 2024 KERIKA OLOIYO
LENDOLOK..... 1st PLAINTIFF NDEREE KOPEJO KUNDAYO.....
2nd PLAINTIFF SESILI SOKOYOTI NGOTO..... 3rd PLAINTIFF PARESOI NJURU
KILONGOSI.....4th PLAINTIFF KIYONDO NGINANYI
MENG'ORU.....5th PLAINTIFF VERSUS EMMANUEL
MPOSI..... 1st DEFENDANT SIWAJIBU
KILANGWA..... 2nd DEFENDANT ROBERT
MADINGA..... 3rd DEFENDANT SANGANENA
MBOGO..... 4th DEFENDANT NOEL
MBULA..... 5th DEFENDANT MOI NGANENA
MBOGO..... 6th DEFENDANT PORINO
NYARUSI..... 7th DEFENDANT LETANGA
KILOGOMBI..... 8th DEFENDANT HILARI NGANENA
MBOGO..... 9th DEFENDANT BOSCO
DANDA..... 10TM DEFENDANT SEBIGA
CHAMWERA..... 11TM DEFENDANT TINO
NYWAGI..... 12TM DEFENDANT KOSI MASAI
NG'ORO..... 13TM DEFENDANT FESTO NGANENA
MBOGO..... 14TM DEFENDANT SOTELI
MKALAWA..... 15TM DEFENDANT

JUDGMENT

12th Dec. 2024 & 13th February, 2025 Kahyoza, J. In 2014 Engusero Sidani village designed the Village Land Use Plan for ten years from 2014 - 2024. The Village Land Use Plan came as a result of conflicts between farmers (crop producers) and pastoralist (livestock keepers) which climaxed into killing of 5 pastoralists in 2014. To prevent further conflicts, a team of experts from Kiteto district council and the National Land Planning Commission (a team of experts) worked with Engusero Sidani village to design the Village Land Use Plan to allocate land for crop production live stock keeping and other activities. The process ended up with the Village Land Use Plan titled "Mpango wa Matumizi Bora ya Ardhi

- Kijiji cha Engusero Sidani Kata ya Dongo, Tarafa ya Sunya, Wilaya ya Kiteto". Kerika Oloiyo Lendolok, Nderee Kopejo Kundayo, Sesili Sokoyoti Ngoto, Paresoi Njuru Kilongosi, Kiyondo Nginanyi Meng'oru (the Plaintiffs), some of the resident of Engusero Sidani keeping livestock alleged that soon after the Village Assembly approved the Village Land Use Plan, the crop producers uprooted the sign boards and invaded the land designed as grazing land. The crop producers who invaded pastures and cultivated crops are Emmanuel Mposi, Emmanuel Mposi, 2 Siwajibu Kilangwa, Robert Madinga, Sanganena Mbogo, Noeli Mbula, Moi Nganena Mbogo, Porino Nyarusi, Letanga Kilogombi, Hilari Nganena Mbogo, Bosco Danda, Sebiga Chamwera, Tino Nywagi, Kosi Masai Ng'oro, Festo Nganena Mbogo, Soteli Mkalawa (the Defendants). The plaintiffs complained against the invasion to various officers including the Prime Minister's Office. As no solution was attained the Plaintiffs instituted the current suit alleging that the defendants who without colour of right on diverse dates invading the land set aside as pastures. They prayed for one, an order declaring the defendants as trespassers to the plaintiff's suit land; two, an order for compensation to tune of Tzs. 500,000,000.00; three, permanent injunction order; four, an order for payment of general damages as may be assessed by the court; five, an order for payment of interest at the rate of 12% from October, 2019 to the date of full payment, and finally, an order to the defendants to pay costs. The defendants denied the existence of a valid and accepted Village Land Use Plan for Engusero Sidan Village. They contended that the villagers denied the Village Land Use Plan at the first instance. They contended further that there was no village Assembly held which approved the plan as the meeting held on 10th December, 2014 was void as there was no village 3 leaders as village Council had been resolved as it was time for "local government election". Based on the rival arguments raised in the parties' pleadings, the court framed and the parties agreed to the following issues;
1. Whether there exists for 2014 - 2024 Land Use Plan for Engusero village.
 2. Whether Land Use Plan set aside a land for pasturing and pastoral activities,
 3. Whether the defendants being farmers trespassed onto the land set aside for pastoral activities and conducted farming activities.
 4. To what reliefs are parties entitled to? A brief background is that in August 2014 arose conflict between crop producers and animal keepers causing death of five pastoralist and the farmers seizure of around 1000 herds of cattle. According to Kombo Salum Abed (Pwl) the Village Executive Officer of Engusero Sidani Village at that time, the village designed the Village Land Use Plan as means of eliminating conflicts. He contended that after the conflict and killing, it was resolved that they should design the Village Land Use Plan to set aside the land for crop production and grazing areas. On 02.12.2014 the team of experts visited Engusero Sidani village with the view of meeting with villagers. At that time there was no village council 4 as it had been dissolved following the pending "local government election" (Local government election referred to in the judgment and proceedings imply election of the chairman and members of the village council or of the Mtaa committee). For sake of convenience, I will refer to the election as local government election. As there were

no village council the team of experts in Land Use Plan advised Kombo S. Abel (Pw1) to convene the Village Assembly. The Village Assembly convened and nominated Abed Kinyua as acting chairman and nominated eight people to form the Village Land Use Plan Management Committee (VLUP Committee). Kombo S. Abed (Pw1) deposed that the Village Assembly nominated 8 people who joined a team of experts to design the Village Land Use Plan. After 7 days from the date of appointing the VLUP Committee, that was on 10.12.2014, the Village Assembly reconvened to receive recommendations from the VLUP Committee and the team of experts. The team of experts and VLUP Committee presented the recommendations and the draft Land Use Plan. The Village Assembly did not endorse the plan. The General Village Assembly resolved to appoint five people from crop producers and 5 people from the pastoralist group to review the draft Land Use Plan (especially the boundaries between the crop producers and 5 pastoralists). The General Village Assembly was adjourned to give time to the newly appointed committee to review the draft Village Land Use Plan. The plaintiffs' and defendants' witnesses deposed that a team of ten people were composed of Kiringa, Paresoi, Kiongozi, Kiondo, Kerika, Parakinyoto and Joseph Tandama who represented pastoralist. Samwel Wanda represented the crop growers, (who was the chairman in 2024) Majenda Kipuzi (Chipugi) (who signed the minutes after election and assuming office of the village chairman). Dickson Sekwao and Kinyonyu. The VLUP Committee the team of experts reported to the Village General Assembly on that day. Following the endorsement of the Village Land Use Plan, they demarcated the land and erected sign boards and passed By-Laws. According to Baraheza Fredrick Titi (Pw4) the land officer from Kiteto District Council told the district council endorsed the By-laws. He deposed the Engusero Sidan designed and approved the Village Land Use Plan with the technical help of team from the National Land Use Planning Commission. Bareheza Fredrick Titi (Pw4) deposed further that, the Village Land Use Plan provided for the boundaries of the land set aside as pastures. The boundaries were on the, North - Embolei Matambuzi (communal forestry), South- Dodoma Region, West-Legoit village residential area, land for crop 6 production and communal forestry, and East-Legoit village residential area, crop production area and communal forestry. Bareheza Fredrick Titi (Pw4) made clear that when he visited Engusero Sidan on 2.07.2024, when he learnt of the existence of this case, using GPS he noted that, the farmers had invaded the land set aside as pastures by the Village Land Use Plan. The defendants did not challenge the events which happened in December, 2014 except the allegations that the Village General Assembly endorsed the draft Land Use Plan. Daniel Jeremia Kandu (Dw9) deposed that after VLUP Committee and team of experts presented the recommendations, the Village Assembly did not approve them. They resolved nominate a committee of 10 people to review the boundaries between the proposed crop production area and pastures. The meeting was postponed to give the 10 people's committee to deliberate. During cross- examination, Daniel Jeremia Kandu (Dw9) deposed that, the 10-people's committee reached a consensus and presented the amended Village Land Use Plan. He contended that the village Assembly denied the amended Village Land Use Plan. Ally Said Lwanga (Dw10) deposed that it was Kombo S. Abel (Pw1), the VEO who supervised the exercise of designing the village Land Use Plan. 7 He contended that he

was in the first VLUP Committee, which presented a plan which the Village Assembly refused and appointed a committee of 10 persons. He deposed that the Village Assembly did not accept the proposal of 10 people's committee. He added that on the following day, they went for Mr. Abeid Kinyua who chaired the meeting to request him to sign the minutes of the village assembly meeting held 10.12.2014, he refused as he did not know whether the village Land Use Plan was approved. In short, the defence evidence was that, the 10 people's committee's Village Land Use Plan were not accepted and the reason was that the committees proposed part of land used for crops production to be set aside as pastures. The defence deposed that the minutes of the Village General Assembly were fabricated as Abed Kinyua, a person who chaired the meeting on 10.12.2014 did not sign the minutes. Soteri Chrispin Mkalawa (Dw4) deposed that after the election, newly elected village council convened on 15.5.2015. They wrote a letter to the DED asking him to re-consider the Village Land Use Plan. The DED did not give them any feedback. Maria Tulian (Dw5), supported a contention that, crop growers' land was to be turned into pasture as she deposed that she was told to vacate her land as it was set aside as pasture. Musa Filemon Dyangulu (Dw6), 8 Palino Vitalis (Dw7), Nurdin Shaban Malua (Dw8) Cosmas Zakeho (Dw3), supported the position that the Village Assembly did not pass the Village Land Use Plan. Festo Mbogo Nganena (Dwl) deposed like other defence witnesses that the Village General Assembly did not approve the Village Land Use Plan. He added that on 15.5.2015, the village council held the meeting to consider the Village Land Plan but did not reach a consensus. He tendered the minutes of the village council meeting held on 15.5.2015 as part of Exhibit D.1. Given the evidence on record, there are undisputed facts and disputed facts to which I will make my determination or identify them as follows; one, the suit land is the village land no one has a right to claim individual or private ownership. There is no person to this case who produced evidence that the village council allocated the land to him. Thus, parties to this suit had usufruct right. I did not find evidence to prove that the defendants' claims that they had occupied the disputed land for a long period of time. For that reason, the allegation was not proved but even if it was proved, that the defendants had occupied the disputed land for a long period. That alone would not have given them title. The land, the defendants are occupying is the village land that is public land. The law is settled that no person shall 9 acquire public land adverse possession. Section 38 of the Law of Limitation Act, [Cap. 89 R.E. 2019] states that; 38 (1) Notwithstanding anything contained in this Act- fa) no person shall become entitled to an estate or interest in any public land by adverse possession; Section 2 of the Law of Limitation Act, (supra) defines the public land as follows- "public land" means any land which is not held, or deemed by the provisions of the Government Leaseholds (Conversion to Rights of Occupancy) Act to be held, under a right of occupancy, or under customary law, or under the provisions of section 5 of the Customary Leaseholds (Enfranchisement) Act; The disputed land is the public land, that is the village land as none of the defendants testified that he or she owned the land under customary law. Thus, the defendants cannot and did not acquire public land by adverse possession notwithstanding the period they occupied the land peacefully. Two, it is undisputed that the plaintiffs, the pastoralists, occupy grazing lands communally as any pastoralist has a right to access the

pastures, unlike the defendants, the farmers, who occupy the land individually. In addition, the pastoralists move from one location to the other, on daily basis. Thus, it is very easy to invade pastures than crop production land, as the usufruct right of the pastoralist is not proved by presence. io Three, I found it established that the Village Assembly approved the land use plan on 10.12.2014 which were proposed by the ten men VLUM committee and the team of experts. Both, the plaintiffs and the defendants witnesses deposed that the team of experts and the eight men VLUM committee presented the land use plan, the Village Assembly did not endorse it. They appointed the ten men VLUM committee composed of five pastoralists and five crop producers to review the boundaries between the land set aside as pastures and farming areas. The Village Assembly did not have issues with other proposals. Kombo S. Abed (Pw1), Nderree K Kundayo, (Pw2), Paresoi Njuru (Pw3), Selili (Cecilia Omari (Pw5) Kerika Oloiyo Lendolok, (Pw6), Kiyundo Nginyanyi Meng'oru (Pw7), and Lerumbe Lebabu Mollel (Pw8) (the plaintiffs' witnesses) including the village executive officer who was the secretary deposed that the Village Assembly accepted the ten men VLUM committee's land use plan proposal. They added that based on the approved boundaries, the team of experts and the ten men VLUM committee demarcated the boundaries and erected sign boards. Dw1 Festo Mbogo Nganena, Dw2 Samwel Kwanda, Dw3 Cosmas Zakeho Kipera, Dw5 Maria Tuliani Nganema, Dw6 Musa Filemon Dyamgulu, Dw8 Nurdin Shaban Malua, Dw9 Daniel Jeremia Kandu, and Dw10 Ally Said Lwanga (some of the defence) witness deposed that the assembly did not 11 approve the proposal which the ten men VLUM committee presented. Polino Vitalis (Dw7) deposed that people dispersed before the ten men VLUM committee presented their recommendations as chaos ensued. Soteri Crispin (Dw4) deposed that, the Village Assembly did not appoint a ten men committee and that if it did appoint, it did so after he had left the area. The defence gave conflicting evidence, thus, weakening their credibility. For that reason, the defence evidence was weaker than the plaintiffs' evidence. In addition, the plaintiffs' and the defendants' witnesses agree that Majenda Chipugi was among the five persons who represented the crop growers to review the boundaries between the land set aside as pastures and crop production areas. They also agree that Majenda Chipugi after he was elected as the village chairman, signed Village assembly minutes which approved the land use plan. If the Village Assembly did not approve the Village Land Use Plan, Majenda Chipugi, who was part of 5 people from the crop producers would not have signed the minutes. The defendants' witnesses deposed that Mr. Abel, who chaired the Village Assembly meeting on 10.12.2025 refused to sign the minutes as Village Assembly did not approve the plan. I do not subscribe to that contention as Abel was appointed to chair the meeting in the absence of the village chairman, after the village chairperson was elected the new chairperson had mandate to sign 12 the minutes. Mr. Majenda Chipugi, the newly appointed village chairperson attended the Village Assembly meeting on 10.12.2014 and he was among the persons who reviewed the boundaries proposed in the Village Land Use Plan and presented the outcome. He represented the crop growers (the defendants) in the committee. He was aware of the resolution the Village Assembly attained. He signed the minutes well-informed of the resolutions. Since he was in a committee from the crop procurers, the defendants' team,

there is no evidence that he betrayed them. The defendants did not summon him to testify. I am entitled to draw adverse inference, that the defendants knew that if they summoned him, he would have testified against them. The evidence of Kombo S. Abel, (Pwl) the village executive officer and the secretary of the Village Assembly meeting is another piece of evidence proving that the Village Assembly approved the Land Use Plan. Festo Mboga Nganena (Dwl) tendered the minutes on 15.5.2015 where the village council resolved to request the DED to review the Village Land Use Plan. If the Village Land Use Plan had not been approved, the village council would not have requested the DED for an opportunity to review it. To cup it all, the law is clear that if the Village Assemblies refuses to approve the village land use plan, it should write to the ward development committee (WDC) and the district council to notify them of such refusal. 13 There is no evidence that the Village Assembly complied with that law. Section 35 of the Land Use Planning Act, 2007 [Cap. 117] (the LUPA) reads-

35. (1) Village land use plans shall be submitted to Village Assemblies for approval and on receipt thereof may be approved subject to such conditions or modifications as they may consider necessary, provided that resource sector management plans shall be approved by the relevant Village Assemblies meeting in joint session for the purpose.
- (2) Where the Village Assembly refuses to approve the plan it shall, in writing and within fourteen days, notify the Ward Development Committee and the District Council of such refusal. (Emphasis added) I am therefore of the firm view that, the Village Assembly approved the Village Land Use Plan on 10.12.2014 as alleged by the plaintiffs. Four, indisputably, on 2.12.2014 when a team from Kiteto District Executive Director's office and the National Land Use Planning Commission (a team of experts) visited Engusero Sidan village, to commence the process of designing a village land use plan, there was no functional village council. The village council was dissolved as it was during the election "local government in 2014". The process of designing the village land use plan commenced in the absence of the functional village council. It is trite law that, it is the village council which has mandate to recommend to the Village 14 Assembly which portions of the village land shall set aside as communal village land and for what purposes. Section 13 of the Village Land Act, [Cap. 114 R.E. 2019] (the VLA) provides that- "13.-(1) The village council shall recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes.
- (2) The recommendations of the village council may be put forward as-
 - (a) a land use plan for the village or part of it;
 - (b) specific recommendations on specific portions of village land; or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (3) The district council shall provide advice and guidance to village councils on the exercise of their functions under this section.

- (4) A village council shall, when exercising functions under this section, have regard to any advice and guidance provided under subsection (3).
- (5) On receipt of the recommendations of the village council under this section, the Village Assembly shall-
 - (a) approve;
 - (b) approve with amendments;
 - (c) refer back for further consideration; or
 - (d) reject, 15 the recommendations and where the village assembly rejects the recommendations, the village council shall bring forward, as soon as may be, different recommendations.
- (6) The village council shall maintain a register of communal village land in accordance with any rules which may be prescribed.
- (7) Any land which has been set aside by a village council or village assembly for community or public occupation and use or any land which is and has been, since the formation of the village, habitually used whether as a matter of practice or under customary law or regarded by village residents as available for use as community or public land before the enactment of this Act, shall be deemed by this Act to be communal village land approved as such by the Village Assembly and shall be registered by the village council under subsection (6).
- (8) Where there is a dispute between a person occupying land which is claimed as communal village land under subsection (7) and the village council, the Minister may, on being satisfied that-
 - (a) the dispute cannot be resolved through the organs of village government; or
 - (b) the continuation of the dispute may lead to serious disruption in the village, exercise his powers or direct the Commissioner to exercise his powers under the provisions of subsections (6) to
- (10) of section 8 of this Act in relation to that dispute." 16 In addition, the village council is one the planning authorities established under section 18 of the Land Use Planning Act, 2007, [Cap. 117] (the LUPA). Section 18 states that-
 18. -(1) For the purpose of this Act, planning authorities shall include-
 - (a) a village council; (b)a district council; (c)the National Land Use Commission; and
 - (d) any such body or organ which the Minister may, by order published in the Gazette, declare to be a planning authority or joint planning authority.
 - (2) For avoidance of doubt, a village council shall attain the status of a planning authority for a village which conforms to the requirements set out under the Sixth Schedule to this Act.

- (3) . Without prejudice to subsection (1), the village council shall brief the Ward Development Committee having jurisdiction in the area where the village is situated, on land use planning. Reading section 13 of the VLA together with section 18(1) of the LUPA, I am of the position that no Village Land Use Plan would be properly designed and implemented without involving the village council. It is obvious that at the time of designing the Village Land Use Plan of Engusero Sidan village, there was no functional village council as it was the election period, thus, the outgoing village council had ceased to function. The exercise commenced in the absence of the functional village council but it was completed after 17 the new village council had come into operation, that is why, the newly elected village chairperson signed the minutes of the Village Assembly meeting which approved the land use plan. Thus, the Village Land Use Plan was designed without involving the authority mandated by law to plan the land use. Five, apart from the VLA and the LUPA, the Guidelines for Participatory Village Land Use Planning, Administration and Management (the Guidelines) govern and the designing of Village Land Use Plan. The Guidelines are issued under section 28(2) of the LUPA. Section 22 of the LUPA declares the village council to be the village land use planning authority and directs that village council's composition, procedure and functioning to be as provided under section 12 and 13 of the VLA and the Guidelines. For the sake of clarity, I quote- "22—(1) Every village council shall be a village land use planning authority for the respective village.
- (2) The Composition, procedure and functioning of the village council shall be as provided by sections 12 and 13 of the Village Land Act, and the Guidelines for Participatory Village Land Use Planning” The Guidelines provides for institutions responsible for Village Land Use Plan at the village level as the Village Assembly, the village council, the 18 Village Land Use and management committee (the VLUM committee). The Guidelines for Participatory Village Land Use Planning, Administration and Management in Tanzania, Second Edition, 2011, provides (see page 10) for Village level institutions and mandate as follows- "(a)The Village Assembly is the main decision-making and approval institution at the village level and identifies, through participatory ways, issues and problems which are of priority for the village community. (b)The Village Council has the executive powers and responsibilities for land-use planning and may have to delegate some of its tasks concerning land matters to the Village Land Use Management (VLUM) committee.
- (c) The VLUM committee works together with the PLUM team and receives on-the-job training to become sufficiently experienced to carry out the required tasks during and after the presence of the PLUM team members in the village. The VLUM committee can also be assigned to become the Village Adjudication Committee (Section 53 Village Land Act)." Indisputably, one institution, that is the village council, was not involved in designing the Village Land Use Plan. Failure to involve the village council in the process of designing Village Land Use Plan excluded the planning authority in the whole process and violated the VLA, the LUPA, and the Guidelines. 19 Six, the defendants' witnesses refuted the plaintiffs' witnesses' testimony that the Village Assembly, after approving the Village Land Use Plan on 10.12.2024, passed the By-laws titled "Sheria Ndogo za Usimamizi wa Mpango wa Matumizi

Bora) za Halmashauri ya Kijiji cha Engusero Sidani za Mwaka 2014." Whether the Village Assembly passed the Bye- Laws or not it is the question of evidence. The plaintiffs and the defendants tendered copies of By-Laws. However, to prove that the Village Assembly, made By- laws is very simply, it is by production a certificate by the village secretary under his hand and official seal of the village council to the effect that the By-laws were passed and approved by the appropriate authority. See section 171 of the Local Government (District Authorities) Act, [Cap. 287 R.E. 2002] which states that- "777. Whenever it becomes necessary to prove the authenticity, and validity of any by-law made by a village council, a certificate by the village secretary under his hand and official seal of the village council to the effect that the by-law was passed and approved by the appropriate authority as required by the provisions of this Part shall be conclusive evidence of the authenticity and validity of the by-law or by-laws in question. "(Emphasis added) I had a cursory review of the by-laws attached to Exh. P.1 and Exh.DI, which depict that they were not only signed by the village chairman together 20 with the village secretary and stamped, but also, the By-laws were signed by the chairman of the district council and the district executive director of Kiteto. I am, of the firm opinion that, the Village Assembly did pass the by- laws on 10.12.2014. The defendants' witnesses deposed that the rules did not exist as they were not enforced. I wish to state that failure to enforce the given law or the extent of violation of the law is not a proof that such law does not exist. I am of the firm view that the Village Assembly made by-laws for enforcement of the Village Land Use Plan. The defendants' witnesses testified that the Village Land Use Plan took the land they used to grow crops and turned it to pastures without due compensation. I wish to mention by-way of passing that, there is no dispute that the land in dispute is the village land. The defendants had no title to the disputed land. They had no evidence to prove that the village authorities allocated or permitted them to use the disputed land. I have discussed above that no person can acquire public land by adverse possession, for that reason the defendants did not acquire the public land in dispute by occupation and use of the land in dispute notwithstanding, the period of their occupation. They are no more than trespassers. A trespasser has no right to benefit from his own wrongful act of trespass as the Court of Appeal held in *Princess 21 Nadia (1998) Ltd vs Remency Shikusiry Tarimo & Others* (Civil Appeal No.242 of 2018) [2021] TZCA 249 (9 June 2021). It observed that- "Lastly, we once again agree with the learned advocate for the respondents that since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises. Just as she was not entitled to any notice before eviction, she had no right to claim any compensation from the forceful eviction." The defendants' witness, Samwel Kwanda (Dw2), who heard the testimony. (Pw1) and (Pw2) deposed that the Village Land Use Plan was presented to the Ward Development Council (WDC) which refused to approve it. He added that Hon. Mnyeti, who was the Regional Commissioner (RC) at that time declared the Village Land Use Plan a nullity. It was therefore non-enforceable. In addition, he testified that, the RC wrote a letter to the village assembly to reconsider the Village Land Use Plan in 2019. I do not see the reason to disqualify Samwel Kwanda (Dw2) for having heard the evidence of Kombo Salum Abed (Pw1) and Nderee

Kopejo Kundayo (Pw2). There is no slight indication that the testimonies of (Pw1) and (Pw2) influenced him. 22 I considered the contention that the RC nullified the Village Land Use Plan and permitted the crop producers to occupy the land set aside as pastures. Without much ado, I wish to point out that the RC had no mandate to nullify the Village Land Use Plan. It is the Minister responsible for matters relating to land administration who has mandate to nullify the plan. See section 38 of LUPA. Section 38 states that- "38—(1) Subject to the provisions of this section, the Commission may, in such manner as may be prescribed, submit to the Minister proposals for the revocation or modification of an approved plan on any of the following grounds -

- (a) that there are practical difficulties in the execution or enforcement of the approved plan;
 - (b) that there has been a change of circumstances including change of use since the plan was approved;
 - (c) that stakeholders, with good reason, demand it; and
 - (d) that subsequent reviews and evaluations require it." In addition, the law provides for the remedy to persons aggrieved by the Village Land Use Plan like the defendants. The remedy is to appeal against the Village Land Use Plan. Section 58 of the LUPA provides to aggrieved person as follows- "58 -(1) An individual or group of persons aggrieved by the-
 - (a) terms of an approved land use plan under this Act; 23
 - (b) imposition of any condition, limitation or restriction in a land use plan under this Act;
 - (c) revocation, suspension or variation of land use plan under this Act;
 - (d) assessment of the amount of compensation to be paid in respect of any acquisition of land or interest therein under this Act;
 - (e) amount of money required to be paid as a fee under this Act;
 - (f) imposition of an enforcement order, may appeal to the Tribunal having jurisdiction over land matters within the planning area or to the High Court.
 - (2) Notwithstanding the generality of subsection (1), appeals under this section shall, in the case of matters arising from-
 - (a) Village Land Use Plan, be lodged with the Village Land Council;
 - (b) district land use plans, be lodged with the District Land and Housing Tribunal; and
 - (c) regional, zonal and national land use plans, be lodged with the High Court (Land Division).
- The defendants' act of taking of the law into their own hands was illegal and unwarranted. Further, since the RC had no mandate to revoke the Village Land Use Plan, for that reason, the Village Land Use Plan was not revoked. 24 Was the WDC's rejection of the Village Land Use Plan effective? Samwel Kwanda (Dw2) deposed that the WDC's considered the Village Land Use Plan and rejected it. He had no evidence from the WDC to prove that it rejected

the plan. Having gone through the law, I find it was not upon the WDC to approve the Village Land Plan. The WDC's right was to get a brief from the village council regarding the Village Land Use Plan. For clarity's sake, I quote section 18(3) of the LUPA, as follows- "18.(3) Without prejudice to subsection (1), the village council shall brief the Ward Development Committee having jurisdiction in the area where the village is situated, on land use planning." (Emphasis added) Given the above law, the WDC having been briefed regarding the Village Land Use Plan, it usurped its mandate to reject the plan, if it did so. I am of the view that the WDC's decision to reject the plan was ineffectual null and void ab initio, hence, it did not affect the validity of the Village Land Use Plan. Was the Village Land Use Plan in existence? The unpeaceable evidence on record discussed above, was that the Village Assembly passed the Village Land Use Plan on 10.12.2014 and the VLUP committee with the team of expert erected sign boards. There are no 25 doubts that the village council, which is the village planning authority was not involved in the process of designing the Village Land Use Plan. Although, it was not mandatory to publish the Village Land Plan, there is no evidence that the Village Land Use Plan was published or that it was not practicable to publish it. Section 36 of the LUPA, imposes, where practicable, the duty of publishing the notice, after the Village Assembly has approved the Village Land Use Plan, that the plan has been approved. It states that- "36. The Minister shall-

- (a) within fourteen days after he has approved a plan under sections 34; and,
- (b) as soon as a plan has been approved by the Village Assembly under Section 35, where practicable, cause to be published, a notice to the effect that the plan has been approved with or without modification and may be inspected at the places and times specified in the notice during normal working hours." I am of the firm position that, non-participation of the village council which is the village land planning authority under sections 22 and 33 of the LUPA, read together with section 8 of the VLA, to prepare its Village Land Use Plan, rendered the plan futile. Consequently, the Village Land Use Plan of Engusero was voidable but void ab initio, as claimed by the defendants. It means there existed the Village Land Use Plan, though, designed in violation of the law. The fact that it was made in violation of the law renders it voidable. It may be revoked by the authorized mandate. My answer to the first issue is that there existed the Engusero 2014 to 2024 Village Land Use Plan. Whether the Engusero 2014 to 2024 Village Land Use Plan which was or was not effectual as it was designed in violation of clear procedures. Did the village land use plan set aside the land for pasturing and pastoral activities? I will not dwell on this issue, witnesses of both sides do agree that the Village Land Use Plan set aside land for pasturing and pastoral. The defendants alleged that the source of conflict was that the land formerly used for crop production was set aside as pastures and without compensation. The defendants therefore agree that the Village Land Use Plan did set aside pastures. Did the defendants (the farmers) trespass onto the land set aside as pastures? The answer is in affirmation that given the evidence discussed above, the defendants, who were farmers, trespassed to the land set aside as pastures. Bareheza Frederick Titi (Pw4), the land surveyor from Kiteto DED's office, gave uncontradictory evidence that he visited the disputed land on 2.7.2024. He did so after

he learnt that there was a suit in court. Using GPS, Bareheza Fredrick Titi (Pw4) found that the land in dispute was part of the 27 land set aside as grazing land and found that the farmers had invaded it. He visited the disputed land in the presence of one pastoralist, he could not mention his name and in the presence of Emmanuel, the first defendant, Ally Samwel, the fifth defendant and one Daniel who is not a party to the suit. Bareheza Frederick Titi (Pw4), described the boundaries of the grazing land as North- Embolei Motambosi Communal forest reserve, South Dodoma Region, West- Legoit village and residential area and social service land, crop production land and the village forest, East- Laiseru and Loltepesi village. He insisted that the grazing land was part of the Village Land Use Plan. The defendants do not contest that the Village Land Use Plan did set aside pastures but they contend that the disputed land was crop production land which were turned into pastures. I wish to restate my position that the suit land was the village land. No defendant tendered evidence on how he acquired land apart from tilling the virgin land in the registered village, which did not give them title without the involvement of the village council. It is settled that no one would acquire land in the registered land before or after the Village Land Act came into operation in the registered village council without the village land allocating the land to him or her. See the National Agricultural and Food Corporation V Mulbadaw Village Council and Others [1985] TLR 88, Directions Under the Villages and Ujamaa Villages 28 (Registration, Designation, and Administration) Act, [1975] G.N. 168/75, para 5(2), and section 8 of the Village Land Act. Finally, I find that, the defendants invaded the land set aside in the Village Land Use Plan as pastures and cultivated it. To what reliefs are the parties entitled to? I have found that the land in dispute was the village land, thus, no one had title to it, for that reason, no one would claim compensation for trespass. I therefore, refrain from awarding any compensation. In addition, having found that the Village Assembly approved the Village Land Use Plan, which set aside the disputed land as pastures and that the defendants trespassed to the disputed land, I hesitate to order the defendants to vacate as the procedure for passing the Village Land Use Plan was violated. It is my opinion that the violation of the laid down procedure rendered Village Land Use Plan not enforceable. I refrain from enforcing it or granting the permanent injunction to restraining the defendants from interfering with the disputed land. It is my hope and prayer that the village council assisted by the National Land Use Planning Commission will immediately take step to design the Village Land Use Plan according to law. In the end, I find that the plaintiffs have succeed to prove that there existed the 2014 to 2024 Village Land Used Plan for Engusero village, 29 although it was designed without adhering to the law, thus, not enforceable. The suit is allowed that extent. I make no order as to costs no one is to blame. The defendants took the law into their own hands instead of seeking the revocation of the Village Land Use Plan as per the law, they precipitated the institution of the current suit. They are not permitted to benefit from their own wrongs by awarding them costs cannot benefit to be awarded costs. The plaintiffs too, have partly succeeded. I order accordingly. Dated at Babati, this 13th day of February, 2025. J.R. Kahyoza JUDGE Court: Judgment delivered in the virtual presence of the Mr. Masami advocate for the Plaintiffs and Mr. Boneventura advocate for the defendants. B/C Mr. Shedrack (RMA) present. J.R. Kahyoza

JUDGE

13. 02.2025 30

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/326094/source_file/921621aa71b728ca/KERIKA_OLOIYO_Edited_222.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/kerika-oloiyo-lendolok-v-emmanuel-mposi-villagelanduseplanning-tanzlii-2025

Prepared on 13 October 2026 · Esheria