

TANZANIA / JUDGMENT

LAND CASE NO

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB- REGISTRY AT MUSOMA LAND CASE NO. 04
OF 2023 MODESTA MAHANDO MATIKO & 27 OTHERS..... PLAINTIFFS VERSUS
NORTH MARA GOLD MINE LIMITED..... DEFENDANT

JUDGMENT

16 July & 28th August, 2024 M, L, KOMBA. J.: This case was heard in two modes. First the plaintiffs' case was heard with the aid of case handling system owned by Judiciary of Tanzania, Transcribe and Translate System (TTS) and defendant's case was conducted in a normal hearing method due to withheld reasons. Plaintiffs herein whose full names and numbers appear at the last page of this judgment are jointly and severally claim against the defendant for the payment of TZS. 9,786,000,000/= being compensation (based on the current prevailing land market rates, construction rates and market rate for other destroyed properties as obtaining within Tarime District in respect of their lands, buildings, crops, and other items that have been unlawfully and Page 1 of 44 forcefully acquired by the defendant. The plaintiff has itemized claim by each plaintiff and pray for this court to; declared the action by the defendant is unlawful and violates plaintiffs' rights; restrain the defendant, its agent and workers from continuing to access and utilize the impugned land pending final determination of this matter; order payment of TZS 9,786,000,000/=, subsistence allowance, general damage, punitive damage plus interest. Defendant filed WSD on 3rd March 2023 in which he disputed the claimed amount of TZS 9,786,000,000/ arguing that it was exaggerated amount. However, it was noted that the said suit premises were occupied by some of the mentioned plaintiffs and that some of them (plaintiffs) their due amount (less to the one claimed) have already been collected and other amount is ready for collection at the defendant account office on which they can collect being full and final payment on compensation as per paragraphs 4.1.1, 4.1.5, 4.2, 4.3, 4.4., 4.5, 4.6, 4.9, 4.10.1, 4.11, 4.13, 4.15, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.24, 4.26 and 4.27 while responding to the plaint. This court noted the defence and partly admission of some plaintiffs' claims by the defendant hence on 24th April 2023 entered judgment on admission to the extent of TZS 173,990,816/= out of the claimed amount of TZS Page 2 of 44 9,786,000,000/=. The remaining amount which plaintiffs need to prove in trial is TZS 9,612,009,184 as the figure which was also reminded by counsel for the plaintiff in final submission. What made the parties before this court is valuation process which was conducted by Chief Government Valuer under the request by the defendant at Komarera and Kewanja village in Tarime District, Mara Region in the year 2021 in respect of the plaintiffs who occupied

the land that the defendant owns, special Mining License No. 17/96. After completion of the valuation process and starting compensation payment due to all occupiers, plaintiffs above named were dissatisfied with the valuation process (as seen at paragraph 8 of the plaint) and the amount allocated and or paid to them hence this suit. Plaintiffs are claiming among other things, statutory allowances such as accommodation, disturbance allowance, transport allowance and net profit for loss of use of their respective piece of land. From the testimony, each plaintiff has different claim as some of them were allocated some money as compensation and refused, some have received compensation and claim for some more while others were not compensated. We shall see the claim by each plaintiff. Page 3 of 44 After the preliminaries, the matter went on full trial where plaintiffs had legal service of Mr. Juvenalis Motete and defendant hired Mr. Lubango Shiduki both learned advocates. Hearing of this suit was done in two methods as hinted early; plaintiffs' case was conducted via Transcribe and Translate System (TTS) owned and operated by Judiciary of Tanzania and defence case was conducted normally by handwritten recording in an open court. Parties agreed and this court recorded seven issues to be considered in determination this matter as follows;

1. Whether the valuation process complied with the law and procedures.
2. Whether defendant alienated and acquired plaintiffs' land.
3. Whether defendant destroyed plaintiffs' crops, food and other items.
4. If the 3d and 3d are answered in affirmative, whether the defendant did so lawful.
5. Whether plaintiffs were entitled to compensation with respect to their landed properties crops and food, If so, how much.
6. Whether defendant has obligation to resettle plaintiffs.
7. To what relief are the parties entitled. To prove their case, all plaintiffs testified in court with addition of one witness who was not plaintiff and make a total of 29 witnesses. In their testimony, plaintiffs complain that they were not aware of the evaluation Page 4 of 44 process and its commencement, all of them were notified the evaluation and right to claim compensation as per law on the day when inspection of properties were done via Form No 69 but only two plaintiffs manage to tender it and admitted as Exh P1 and Exh P2. After the inspection all plaintiffs informed this court that they were given Land form No. 3 in which they signed, most of them did not tender copy except 23rd plaintiff who had two forms with IDN 338 and 337 which were admitted as Exh P3 collectively. None of the plaintiffs complained of the procedures in valuation serve for the complain that they were not aware of the valuation and the intention of the defendant over the disputed land. Reading the plaint at paragraph 12, plaintiffs are complaining of acquisition and alienation from their land without full adequate and prompt compensation. They further claim for statutory allowances which are accommodation, transport and disturbance allowances and loss of profit allowance. During hearing, plaintiffs claim for payment of amount of money as compensation which all of them (plaintiffs) declared that amount claimed is estimation of

the value of their properties. However, some of plaintiffs had different issues as follows.

Page 5 of 44 The 9th plaintiff (Filomena M. Magaiwa) informed this court that her correct IDN was 3481 and not the one written in plaint. And she claimed for approximately 5 acres of land in which had two houses, trees and grazing land. She claims TZS 330,000,000/ as a compensation. In response defendant testimony show the 9th plaintiff by the name of Filomena M. Magaiwa was identified via number IDN 514T2 and was paid. The same testimony was given by the 16th plaintiff (Msabi Pius) that IDN 3560 was written mistakenly in the plaint and inform this court that the correct IDN was 3590 and in his land, there was 6 msonge house and 3 normal house and trees. He claims TZS 320,000,000/ for exhausted improvement. To the contrary, defendant claimed that the IDN 3560 was assigned to a different person called Maria Mniko Bhoke and provide the proof of the IDN together with a picture of a person. The claim by the 12th plaintiff (Chacha Mhando Matiko) is for one acre although in plaint he claims 14 acre in which there was a house. He denied to have a suit land in District Land and Housing Tribunal for Tarime (DLHT). On the other side, defendant testified that they don't have that number in the project and wanted further proof from plaintiff. Page 6 of 44 Petro Mwita Rhobi is the 25th plaintiff testified as PW 23 with IDN 219 and claimed for TZS 150,000,000/ owning 1/2 acre as shown in plaint although in his testimony he notified this court he owned 1/4 acre which had four houses, trees and maize crops. On the other side, defendant informed this court that IDN 219 was assigned to Peter Samson Imori who is not plaintiff in this suit. However, defendant further testified that they have a person affected with the project with the name Peter Mwita Rhobi (Not Petro) who has four (4) IDNs which are 419 A, 421, 457 and 399. In the land which was identified by number 419A there was building. Peter Mwita Rhobi through IDN 219 has no claims as he collected his money. The 14th and the 23rd plaintiffs (Anna Gichogo Chacha and Peter Mhando Matiko respectively) informed this court they have received the money as compensation from the defendant but they complained of underpayment. Generally, plaintiffs' claims based on procedures and amount of compensation given and or offered to their respective pieces of land and exhausted improvement. In WSD defendants claim the process was done as per law and blamed some of the plaintiffs who did not adhere to the cutoff date as announced Page 7 of 44 in the public/sensitization meeting on 28/05/2020 and later on notice to public was issued by Tarime District Authorities then Exh DI was placed on the village office noticeboard. Satellite images of the area was taken on 30/5/2020. However, before commencement of the valuation, defendant pleaded the villagers to continue with speculative development on the land including building new houses. It is in record that plaintiffs were notified right to claim compensation through form No. 69 which was issued on the date they visited plaintiffs houses for valuation. There was another meeting on 26 June 2021 in which rates of various compensation were read including the price per acre in finding a base of compensation and schedule of rate was prepared and used as approved by Chief Government Valuer before sensitization meeting. Inspection of villagers' property (PAP) started on 28/06/2021 as valuers took over from the private Company. In their defence defendant had four witnesses. It was the testimony of DW1 Charles Jackson Moremi a land surveyor who testified that land owners were informed of the process through form number

69, their rights to claim compensation. In this case Form No. 69 has his name and recognized as Exh P1 and P2. He elaborated in length the procedure involved in compulsory purchase of land as the one did in Komarera village. Page 8 of 44 He testified that the whole process involves the land officer who is vested with powers under Valuation and Valuers Registration Act of 2016 and its Regulation, Valuation and Valuers Regulation, GN No. 136 of 2018. He said, before the process the market value of the land has to be identified, the affected area has to be demarcated and sensitization meeting be conducted for the purpose of informing People Affected with the Project (PAP) their rights and to stop further development. He testified further that the cutoff date for further development was provided by the District Director who also chaired the sensitization meeting. Plaintiffs who failed to obey the cutoff date or moratorium and continue with development, he insisted that defendant consider it as new development which were not included in compensation. This witness tendered the public notice which was issued by the District Director which was admitted as Exh DI in which the District Director informing citizens the cutoff date to be 28 May 2020. Mr. Moremi went of testifying that the valuation was supervised by Rashid Mageta from the Office of Chief Government Valuer (DW 3) This witness insisted that valuation is the process which starts by the sensitization meeting and finalized by payment. In the case at hand every Person Affected with the Project (PAP) has different dates of payment of Page 9 of 44 compensation which was affected after authorization by the Chief Government Valuer. In case there was dissatisfaction on the side of plaintiffs, he said there is supplementary valuation and even an independent valuer is used and the final valuation report may be compered. During cross examination this witness insisted that PAP were aware of the process that's why they found them in their premises and they signed Forms although he confirms that he did not tender minutes of the 28th May 2020. James Bunyanyembe Yunge appeared as DW2, by the time of valuation this witness was Ingwe Division Officer (Afisa Tarafa) which has ten (10) wards and 34 villages including Komarera. His testimony was to the effect that after defendant identified the area for expanding their mining activities, they express their intention to expand the activities to other areas and informed Council Director and District Commissioner. Then a public meeting was organized on 28/05/2020 and the District Commissioner warned plaintiffs not to develop the identified area for expansion of mining activities. It was his testimony that in a public meeting participants had a long discussion over acquisition and compensation and finally citizens Page 10 of 44 agreed the acquisition. The whole process was supervised by the ward peace committee to make sure there was peace all the time but evaluation he said, was done by valuers. Mr. Bunyanyembe further informed this court that the process stopped like one year and it resumed later. During cross examination he testified that minutes of the public meeting were recorded by Village Executive Officer and that rates to be applicable were read in the meeting and participants discussed and reached consensus. He did not remember sequence of events as he lost the dates and they had no record (Minutes). DW3 Rashid Juma Mageta, a land valuer working with the Ministry of Land and Human Settlement Department of valuation and he is a valuer by profession. His testimony was to the effect that the Chief Government Valuer was contracted to conduct valuation after the failure of

the private company. The task was given via letters. Exh D2 from the defendant Company to Chief Government Valuer and in June 2021 they started valuation as continuation from where the company ended and PAP were notified. He continues testifying that they identify the area by demarcation before the valuation started. They used RTK for taking GPS and houses and crops were counted in each place they visited while making sure various Page 11 of 44 forms were distributed including form No. 3 in which they recorded all what was found in specific land inspected. About participation, witness was confident that all people/owners of properties were found in their respective places/piece of land as all signed land form No. 3 although they delayed to show up on due date, according to him, they wanted crops which were planted after the cutoff date to grow up. He further informed this court they requested and given satellite images taken on 30/05/2020 and compare with actual situation on the ground during inspection. There followed a desk work where calculations were made basing on rates as agreed and what was found on site, there was disclosure of what was rated and PAP were invited to know what were the rates in respective properties. It was his testimony that some of PAP understand the rates while others did not. Then he said the final form was signed by village leader, Ward executive Officer, District Commissioner and then Chief Government Valuer. He elaborated that forms/report were prepared in 26 Volumes which was divided into two and make a total of 56 books of final valuation report. Upon disclosure if a person is dissatisfied, he said re valuation may be conducted and report prepared. Page 12 of 44 This witness tendered form No. 3 which was admitted as exhibit D3 and explained that after preparation of Form No 3 there follows form No 4 which has calculation on what was recorded in form No. 3 and the form No. 4 is used to prepare compensation schedule (Hati ya Fidya) which has final amount of payment. All documents as annexed to WSD was tendered by this witness and admitted, these are Form no. 4, form No. 69, survey form and compensation schedule which were admitted and marked as exh D4, D5, D6 and D7 respectively. During cross examination he informed this court that PAP opted for cash payment while in the meeting though he confirmed he did not tender any minutes. He identified the Exh D2 which is a letter from defendant to CGV requesting the service. From exhibit he explained the area covered in the project is approximately hector 414.83 which is equal to 4148300 square meters. While insisted the evaluation started on May,2020 he failed to mention names of the team and he confirmed that the team had no agriculture specialist. About Land Form No. 69 he confirmed it was issued while team was on site, each individual has his or her date of receiving it. This witness further testified that Form No. 3 was issued during valuation and has a list of items inspected by valuer at the site but not every item Page 13 of 44 listed is compensable under the law. He went on testified that in valuation, rates were prepared in 2020 but for the crop rates issued was prepared in the year 2012 because it was the available rates and the updating has been made in 2023 while the growth rate regulation was passed in the year

2018. About graves which were found in the disputed land he explained that they were removed by Public Health Officer under the Graves Removal Act of 1969 and the owner were only paid gratuity. Still on the rates, he explains the rate used on land to be Tsh. 250,000/ per

square meter. About the cutoff date he cited section 53 of Valuation and valuer Registration Act of 2016 to be relevant and the commencement date is guided by Valuation and Valuers Regulation GN. No. 136 of 2018 by that time there was private company engaged for that purpose. Analysing the law and their duties he said under Regulation 64 the valuer has the duty to prepare or convene sensitization meeting, to explain the method used in valuation, to explain to PAP value rates applicable, inform PAP their entitlement and provide the cutoff date. During sensitization meeting the village leaders were responsible to make sure citizen participated in the meeting. Witness informed the base of payment to be the cutoff date that's why some features in Form No. 3 were not paid but Page 14 of 44 they were recorded while confirming that the plants with growth rate 15 % were not paid with assumption that they were planted after 28th May 2020 although they were found on site in June 2021. When further cross examined about forms used, he elaborated form No. 2 was not used as all PAP accepted the valuation process. He explained inspection done to each plaintiff, what was recorded and what was calculated in Form no. 4. He went on and elaborate that disturbance allowance is paid to people who affected by valuation and who owns land, transport allowance is paid to those who were supposed to shift from their homes, that means, is paid to occupied houses and the same is to accommodation allowance which is paid per number of rooms in vacated house and is paid for 36 months. He confirmed further that no plaintiff was paid loss of profit allowance because they have failed to prove that he or she was doing business and paying Government Tax. He explains each plaintiff and his claim against what was paid or what was the compensation amount due. He also denied to have claims against plaintiffs who had no IDN. Ibrahim Nasoro Matala testified as DW4, he is a geo-informatics by profession. He testified that defendant company was in need of 652 acres Page 15 of 44 for expansion of his activities and the acres were marked at Komarera village. He testified further that the valuation process started in May 2020 where the NMG appointed White K. Night Company which was led by Dr. Gohe to conduct evaluation of the properties in the identified area and on 28/05/2020 the notice was issued to occupiers of the identified land in the public meeting via the office of the District Director. Then he said valuation began. It was his testimony that the valuation process did not continue due to speculation activities done by citizens and threatening valuers. Following those actions the White K. Night Company failed to proceed and notified the NMG his action of stopping the activities and eventually she stopped. The process resumed in the year 2021 it was the Chief Government Valuer (CGV) who conducted valuation following the advice from various institutions. He acknowledges the security service provided by police and the District Security Committee. In the valuation process he participated in handing coordinates of the affected area to the valuation team together with satellite image created May 30, 2020 for valuers to know the status of the area after the notice to public. He further testified he gave the satellite image which was created June 2021 for their use and was also involved in supervising payment. Page 16 of 44 Elaborating on the Satellite image he informed this court that satellite images were obtained via Sesri Company which is mandated to create that image in Tanzania. The image is available in bite format and go/format wherefore a "lif" program is used upon downloading the image.

Specifically, he was involved in transforming the program and interpretation of the same via Arc-Gis before submitting images to CGV staff in readable version. When completed their task Mr. Nasoro testified that CGV staff prepared 52 books where each book was prepared on different date and was approved differently. Mr. Nasoro went on testified that Satellite images which was translated has I dates, 30/05/2020 and June, 2021, they have north arrow, they have i coordinates system of the area identified, they have boundaries of properties and names of citizens, the name of the person who plot (print) that is, his name. Upon identification the images were admitted as Exh D8 collectively. Then he interpreted images admitted that yellow lines mean piece of land of affected area in Komarera village and red lines are piece of land whose owner has filed the case. He went on testifying that Images show building before notice (moratorium) and the status after 28 June, 2021 while the valuation was in progress. In both the images show roof of Page 17 of 44 buildings found on the pointed area as the image was taken from above. He said brown colour in the image is ground and green colour is vegetation there is also roof of the building but to know the building it need a person to visit the targeted area where he can see the building and take coordinates to identify the land in which property is situated, he insisted. This witness elaborated about Compensation agreement (which was prepared for internal use) that has the amount a PAP is paid and supposed to be signed by the affected person, village leader, ward leader and the accountant/cashier. When a person signs the compensation agreement means he accept the valuation and the amount of payment done and has to leave the disputed land. Compensation for seven plaintiffs were admitted as Exhibit D9 collectively. He informed some PAP collected payment while others did not collect their money and remained in the land. After completion of valuation and when the money was ready for collection, they seek for assistance from the office of the District Commissioner for him to assist the NMG to enter into possession of the disputed land as buildings were unoccupied. He further clarified the differences between the hector and acres as used in Exh D2 and informed this court that the area in which NMG is occupying currently is less than that indicated in the Exh D2. Page 18 of 44 When cross examined this witness informed this court that they allow people to be paid and decide where to go. He further informed this court that defendant being a Mineral License holder he had resettlement plan that why they were allowed to conduct evaluation and all were done as per law. He insisted that mineral is a public wealth it cannot be shared with any person. He clarified that the valuation started by the private company before taken by the CGV and it was May 2020. About satellite images he clarified that in the project there is only one image and the rest is copy. When he had a copy, he edited by colouring already existed lines to differentiate other boundaries from the boundaries of plaintiffs' land. He insisted that the size of the land and the size of tree cannot be accessed via satellite image. This makes the end of the witness testimony. As captured, plaintiff claim the process contravened the law and they were underpaid while defendant insisted everything was done as per dictates of law. After finalization of taking witness testimony counsel applied and were granted leave to file final written submission and both complied with time given. Page 19 of 44 The general principle of the law as per section 3 and 110 of the Evidence Act, Cap 6 R. E 2022 is

that, he who allege must prove. This being the civil suit, the standard is to the balance of probabilities. See Magambo J. Masato & Others vs Esther Amos Bulaya & Others (Civil Appeal No. 199 of 2016) [2017] TZCA 183 (28 July 2017) and Maria Amandus Kavishe vs Norah Waziri Mzeru (Administratrix of the Estate of the late Si Ivan us Mzeru) and Another (Civil Appeal No. 365 of 2019)

- [2023] TZCA 31 (20 February 2023). Basing on contest of the parties in this suit raised seven issues as quoted previously. The issue now is whether the plaintiffs have managed to prove their claims. On the first place, the counsel for plaintiffs raised two legal issues in his final submission, first; the verification of the WSD and second; valuation number of 9th and 16th plaintiffs. On the first point he submitted that the WSD was signed by Melkiory Philemon Ngido as a Country Manager of the defendant but he submitted further that DW4 who is employee of the defendant informed this court that defendant has no such a title and prayed this court to find there was Page 20 of 44 no WSD filed as the one in court was filed by the stranger. First of all, DW4 is not human resource Officer of the defendant so as to know all employees and the organography of the defendant offices. Further informing this court on the status of some of the personnel officer is not final verification of the status because the party was not heard as per famous latin maxim audi alteram partem. I find the point raised need proof and it was raised not at the proper time. On the second point, valuation number as seen in the plaint were erratic and prayed to make correction as during hearing, they presented different valuation numbers as was noted few minutes before they testified. In the plaint the 9th plaintiff indicates her valuation number to be IDN 701, in final submission counsel for plaintiff submitted that her number Is 3481 which was the same number mentioned during hearing. The 16th plaintiff indicated his number to be 3560 but his counsel prayed to be noted as 3590 and even during hearing he testified that his correct identification number is 3590. On the other side defendant recognizes the 9th plaintiff with name of Filomena Matinde Magaiwa who was identified with number 514T2 and was paid her compensation. They have annex in the WSD the proof of payment Page 21 of 44 and valuation number which was used during valuation together with a photograph of FILOMENA holding a check. Further, Exh D9 show Filomena Matinde Magaiwa is among PAP who was identified with IDN 514T2. The 16th plaintiff, Msabi Pius corrected his number during hearing to be noted as 3590 and not 3560 as in plaint. By the time he corrects his number, defendants were already filed WSD and informed this court that IDN 3560 was assigned to a different person called Maria Mniko Bhoke and provided the proof of the IDN together with a picture of the said person, some people call it shifting a goal post. In legal fraternity it was already agreed that parties are bound by their own pleadings. See Swila Secondary School vs. Japhet Petro, Civil Appeal No. 362 of 2019 and Saulo Malima vs Petro Kingoni (Civil Appeal No. 154 of 2022)
- [2024] TZCA 436 (11 June 2024). What was written in the plaint is taken to be correct and is the position of this court. Following that legal position basing on pleading, I find the 9th and 16th plaintiff has no claims against defendant. The 25th plaintiff introduced himself in the plaint as Petro Mwita Rhobi with IDN 219. During hearing defendant informed this court

that the person affected by the project is called Peter Mwita Rhobi (Not Petro) who has Page 22 of 44 four pieces of land and therefore they had four IDN which are 419 A, 421, 457 and 399. In the land which was identified by number 419A there was building. Peter Mwita Rhobi through IDN 219 has no claims as he collected his money. Following that confusion in names, this court wanted to verify the name of the 25th plaintiff and ordered him to show any of his Identity card with the name is written in plaint but he failed. In justifying their position, defendant contended that they have the name of Peter Mwita Rhobi whom they paid and the faces are similar with the one who is called . Petro (this court had opportunity to see a Photograph from the record of defendant). I find the 25th plaintiff has no genuine claims as he failed to prove his name when he denied the one which appear in defendant's record. Chacha Mahando Matiko is the 12th plaintiff who identified himself by IDN 1285 claim to own % acre in which there was a house. During cross ■ examination he confirmed to have a land case at Tarime District Land and Housing Tribunal claiming ownership of a piece of land. On the other side, defendant testified that they don't have number 1285 in the project and wanted further proof from plaintiff. Basing on the background that there was a land case in which the 12th plaintiff claim ownership over a piece of Page 23 of 44 land located in Komerera, I don't find a reason why not to believe defendant that 12th plaintiff was not among the PAP as pleaded in WSD because the land in which he was claiming was owned by a different person who is not among the plaintiffs. Defendant too raised legal issue in his final written submission that 25th and 28th plaintiff who are not able to read neither to write and disown their signature during hearing prayed this court to note that they did not sign the plaint neither verify it as per dictates of Order VI of the CPC. I have heard and read the testimony of the 28th plaintiff, Mgaya Bisaku Chacha who appeared as PW27 during hearing on 17 April 2024 she informed this court she cannot read and she was wandering who put her name in plaint after she confirmed that she did not even put the thumb sign. That means, as submitted by council for defendant, claims by the 28th plaintiff is not proper before this court as she did not sign the plaint neither verify it as provided under Order VI. The claims by the 28th plaintiff is hereby struck out. Further I have heard the testimony of the 25th plaintiff, Petro Mwita Rhobi. While in court Petro did not testify on ability to read neither to write, so the Page 24 of 44 claim by defendant that 25th plaintiff cannot read and write and therefore did not sign plaint is not proved. After being done with the preliminaries and exclude five plaintiffs, 9th, 12th, 16th, 25th, 28th, I now will start to analyse issues as raise and recorded by this court. I shall analyse in serially as required by the practice. See Firmon Mlowe vs Republic (Criminal Appeal 504 of 2020)

[2023] 2022] TZCA 694. About compliance of the law as in 1st issue, both parties agreed that valuation took place. All plaintiffs informed this court that they were not aware of the valuation process and they were not aware if their lands were subject to acquisition by the defendant as there was no notice neither public meeting to inform them although, they participated in the identification of their properties. I have decided to start with the issue of sensitization because in sensitization is when public becomes aware of what will

happen, when, how and for how long. Defendant claim that the meeting was convened on 28 May, 2020 and citizen were informed of the project and their rights including rates to be used. DW2 informed this court that meeting was convened by the District Commissioner while DW4 informed this court that the meeting was convened by District/ Town Page 25 of 44 Director and the notice to public was issued by the Town Director as per Exh DI. Defendant have failed to explain exactly what was communicated to citizen on that date and they tendered no minutes to assist this court to know what transpired in the said meeting if at all it was convened. In their final submission, counsel for defendant submitted that plaintiff failed to prove that there was a meeting except Defendant witness who elaborated the whole procedure. On the other side Mr. Motete who represented plaintiff complained that no sensitization meeting was conducted and therefore plaintiffs were not informed purpose of the valuation, procedure and the duration. I had the time to read relevant provisions of law regarding sensitization meeting and what is supposed to be communicated. The Regulation 57 of The Valuation and Valuers (General) Regulations, GN No 136 of 2018 (the Regulation) which were made under section 70 of The Valuation and Valuers Registration Act, NO.7 of 2016 (The Act) reads; 57.-(1) Valuation for compensation purpose shall be preceded by sensitization meetings.

- (2) Sensitization meeting shall:- (a) be attended by a Valuer; (b) convey the purpose of valuation, procedures involved, duration of the Page 26 of 44 exercise, the rates applicable in valuation, legal rights and obligations. 64.-(1) In undertaking valuation for compensation a Valuer shall: A)..... b)..... c).....
- (d) participate or convene in sensitization and awareness meetings for all interested parties; and
- (i) make known the purposes of the exercise, name of the acquiring authority; (ii) inform coverage of the project area; (Hi) define compensable items; (iv) describe the valuation methodology to be used;
- (v) share value rates to be applied; (vi) make known all statutory entitlements and obligations; (vii) give cutoff date and entitlements to people affected with the project; (viii) indicate duration of the exercise; (ix) oversee distribution of statutory forms;
- (x) any other relevant information stakeholders might require. : Plaintiffs complained of the information while defendant informed this court that there was a meeting which was attended by the Valuer who based in Tarime District. At this stage, it was the defendants who was supposed to : disapprove allegation by the plaintiffs by tendering minutes and list of Page 27 of 44 attendants as they denied happening of the event. Exh. DI alone is not enough as there is no attendance neither minute to prove what was discussed including information conveyed to PAP as listed at Regulation 64(d). Specifically, regulation 64(d) (vii) as cited above provides that it is the duty of the valuer to give cutoff date to all interested parties. Exh. DI was not issued by the Valuer and I find the cutoff date was not announced to PAP. Plaintiffs complained that they were visited by surprise when inspection of properties was done. On the other side, DW 3 confirmed all plaintiffs were given notice of valuation,

acquisition and right to claim compensation for properties on the day they were visited for inspection which is contrary to regulation 6 of Land (Compensation Claim) Regulation, 2001 that PAP shall be notified the date when their assessment shall be conducted and submit their claim. This was not done. One may ask if that prejudice plaintiffs. Awareness of the date could help them prepare their claims which could be verified against inspection done by the defendant. Moreover, the law and its regulation were enacted so as to be adhered. While I am still on the first issue, I now turn to form number 3 (F.3) which is prepared under regulation 64(l)(e)(iv) of the Regulation and is supposed Page 28 of 44 to be filled by Land Surveyor. In the case at hand, F. 3 was tendered and admitted as Exh D3. The testimony of the DW3 was to the effect that not every property listed in F.3 was compensated. He informed this court that the compensable items are found in F.4 which has calculation of the amount for compensation. During cross examination this witness informed this court that during inspection they record everything in F.3 and later on in F.4, valuers select and list properties which were on the ground before cutoff date as per their record. As previously analysed, defendant failed to pronounce cutoff date and the plaintiff were aware of the process on the date they were visited for inspection and when they were given F. 69 (Exh D5) which was issued under The Land (Compensation Claim) Regulation GN. No 79 of 2001. Basing on that position, I find the cutoff date as per regulation 53(3) is the date the plaintiff properties was inspected and all items which were found during inspection were eligible for compensation as there was no cut cutoff date. Furthermore, regulation 64(l)(e)(iv) direct that a valuer shall inspect and record compensable items in form No. 3. There are no words defendant can use in convincing this court that items listed in F.3 are not subject to compensation because the regulation is clear all what is Page 29 of 44 recorded in F.3 are compassable items and that is the position of this court. By not paying plaintiff all items as found in F.3 amount to violation of the law. About removing graves, the 2nd, 8th, and 15th complained the graves which were found in their land was not compensated. I have read the Grave Removal Act together with Public Health Act and find that act of removing graves is supervision of the Ministry responsible for health. Under section 9 only the interested party is allowed to remove the remaining of the body and that person may be paid subject to expression to the Minister of his intention to remove the remaining. None of the plaintiff notified the Minister of their intention to remove remaining of their loved once. Further to that, section 9(4) of the Graves Act directs every claim of compensation for removing graves to be in writing. I find there is no law contravened on this aspect rather, plaintiff did not apply to relevant Authority for leave to remove graves. Because they did not remove the remaining, they cannot claim for payment. DW3 testified that PAP whose area had graves were paid gratuity. I find that was enough consideration. Rates used in payment were revealed during cross examination. DW3 confirmed and informed this court that crop rates used was issued in 2012 Page 30 of 44 as there was no other rates available for use. It is the duty of the Chief Government Valuer to prepared crop value rates under regulation 52 of the Regulation and not the defendant. I find defendant are not responsible on updating rates and they should not be blamed as they complied with the law by that time. In their final submission counsel for plaintiffs complained absence of instruction form client to valuer to

undertake the project as among the violation of law. This court admitted Exh. D2 which are letters to and from the valuer concerning valuation and valuers visited the targeted area. Further, plaintiffs participated in the valuation process as all signed F. 3 that means they (plaintiffs) were aware of the process of valuation and they participated. Generally, on the first issue I find some of the law and procedure were ■ violated and the 1st issue is answered in affirmative to the extent of above ' analysis. The second issue is Whether defendant alienated and acquired plaintiffs' land. Plaintiffs, specifically 11th (Samwel Kibe), 3rd (Ahmed Msira), 6th (Emmanuel Chacha), 4th (Kisiri Wambura Kisiri), 18th (Ryoba Kichonge) and Page 31 of 44 20th (Nchama Iroga Christopher) informed this court that their property was destroyed, houses demolished and the defendant fenced the disputed land. To compliment this DW4 confirmed in his testimony when cross examined that the affected area is fenced, there is no building and defendant's activities is going on and clarified that clearance of the area was done by the Government. I find so far as it is the defendant who is in occupation of the disputed land then, the land is in their possession. The issue now is how they acquired the disputed land. Plaintiffs did not deny that there was a valuation process which was carried by the defendant. Plaintiffs cooperate by identifying and counting their properties including trees. That means it was undisputed fact that valuation took place. During hearing Mbusiro Roswe Nyamacha 2nd, Ahmed Ibrahim Msira 3rd, Kisiri Wambura Kisiri 4th, Emmanuel Wambura Chacha 6th, Samweli Marwa Kibe 11th, Ryoba Gichonge Nyamatende 18th , Nchama Iroga Christopher 20th, Lilian Nyamaina 21st, Chacha Wambura Nyankena 22nd, Stephen Wambura Chacha 26th and Wema Razack Maningo 27th, plaintiffs testified that they were aware that the list of names to be compensated were in the village office, they went to the office and after knowing the amount they decided not to sign the check. However, IDN Page 32 of 44 0339,0340 and 0341 Modesta Mahando Matiko 1st plaintiff, IDN 586 Chacha Mohabe Mwita 15th, IDN 0514T2, Filomena Matinde Magaiwa 9th, IDN 1873 Ana Gichogo Chacha 14th, IDN 0337 and 0338 Peter Mahando Matiko 23rd, IDN 588 Lawe Chacha Mhabe 5th and Mgesi Nyangombe Range and others as per Exh D9 were paid. That confirm what was testified by DW3 that payment was prepared and was ready to be collected but some plaintiffs refuse to collect the money. This court finds the process was finalized, payments were ready for collection and therefore it cannot be termed as alienation because plaintiffs refused to collect the allocated amount. The third issue was whether defendant destroyed plaintiffs' crops, food and other items. As analysed in 1st and 2nd issue, it is undisputed fact that valuation was conducted so that defendant can expand its activities, valuers visited plaintiffs' land and identify properties which were recorded in F.3 for compensation. Notice was provided to PAP to collect money as compensation but they did not and so far as the process of valuation completed and some of the plaintiffs refused to vacate from the disputed land then, defendant used other alternatives to occupy the land. Due to different motives in land use, from the record, defendant make sure the land was cleared and their activities are in progress. It was not proved if Page 33 of 44 houses were demolished by defendant staff, however, so far as the land is currently occupied by defendant, I find the demolition and destruction of crops favored defendant. The fourth issue is if the 2nd and 3rd are answered in affirmative, whether the defendant did so lawful. I

have analyzed the two referred issues differently. The finding of this court is plaintiffs refused to collect money as compensation and demolition favored defendant. Further, lawfulness of the process has been analysed in the first issue. Generally, plaintiffs were supposed to leave the affected land after payment of compensation. Some of plaintiffs received compensation while others did not go to collect their money. The issue that what amount was supposed to be paid has also analysed in 1st ground when this court analysed compensable items. Some of the procedures by the defendant were contrary to the law. The fifth issue is whether the plaintiffs were entitled to compensation with respect to their landed properties, crops and food, if so, how much. There are two sub issues in this issue. One sub issue is entitlement. In final submission counsel for defendant conceded that plaintiffs are entitled to compensation and this was the claim in plaint too and I find so far as the disputed land is in occupation of the defendant, plaintiffs who were found Page 34 of 44 in the disputed land are entitled to compensation as per The Land (Compensation Claims) Regulations of 2001. Second sub issue is how much. Plaintiffs were claiming TZS 9,786,000,000/=. After the judgment in admission the remaining amount which plaintiffs supposed to prove is TZS 9,612,009,184/. Let us see what does the law provides. Compensation is guided by the law, Land (Compensation Claims) Regulations of 2001 thus; 5(2) Without prejudice to the generality of the above, the compensation that may be claimed by any person that occupying land shall be-

- (a) the value of unexhausted Improvements on the land he is occupying;
- (b) grazing land From the cited regulation, plaintiffs are entitled compensation for exhausted improvement over the land. In the first issue was analysed and decided that the notice to PAP was issued on the day of inspection and that as per this court position, the inspection date is considered as a cutoff date because it is when PAP were aware of the project. Further, basing on regulation 64(l)(e)(iv) of the Regulation as previous analysed, F.3 has been prepared to records all compensable items. Basing from that cited regulation, all items recorded in F.3 must be compensated because they Page 35 of 44 were found in the premises of the plaintiff. That is, F. 3 has exhausted improvement done by plaintiffs. Further, DW3 informed this court that crops with the growth rate of 15% was not compensable due to the assumption that the said crops were grown after the cutoff date. So far as this court has ruled out on the cutoff date, all crops which were recorded at 15% has to be compensated as per law which was in operation by that time. Another area which I find necessary to elaborate its quantum and nature of payment is transportation, accommodation, disturbance and loss of profit allowances. In plaint, plaintiffs claimed these allowances and defendant elaborated during hearing when and to whom the allowances are to be paid. Starting with transportation and accommodation allowance. By its name, this is allowance payable to PAP whose houses were in occupation. Transportation is for moving the family form one point to another and 36 months accommodation allowance is paid for the occupied house as they vacate their own house. DW3 elaborated and it is the position of this court that plaintiffs whose houses were found unoccupied are not entitled to accommodation and transportation allowance as per regulation 12 and Page 36 of 44 on

addition to that, rates to be used is as provided by regulation 13 and 16 respectively. Loss of profit allowance is provided under regulation 14 of the Regulations and was elaborated by DW3 during cross examination that loss of profit allowance was not paid to any plaintiff or not suggested to be paid because it was not proved during inspection that plaintiffs were doing business and were paying tax. A profit can be determined basing on business declared and proved not because it is the allowance provide under the law, other factors too have to be considered. During hearing of this case, none of plaintiffs prove this claim by submitting audited accounts or proof of paying Government Tax. This court further agree with the defendant that disturbance allowance is paid to every person whose land is affected in any way by the project be it he lost crops or buildings or bare land. The amount is supposed to be calculated as per regulation 15 of the Regulations. After being done with crops, transportation, accommodation, disturbance and loss of profit, I find the rates allocated to those items are acceptable and the plaintiffs are, except those who had no claims, entitled to compensation on those categories. Page 37 of 44 The sixth issues to be determined is whether the defendant has obligation to resettle plaintiffs. In the final submission plaintiffs claimed for resettlement while defendant submitted that it is not their duty to resettle plaintiffs. I have read the Land (Compensation Claim) Regulation, specifically regulation 10 it provides; 10(1) Compensation shall take the form of monetary compensation.

- (2) Without prejudice to the generality of the above, compensation may, at the option of the government, take the form of all or a combination of or any of the following-
 - (a) a plot of land of comparable quality extent and productive potential to the land lost;
 - (b) a building or buildings of comparable quality extent and use comparable to the building or buildings lost;
 - (c) plants and seedlings;
 - (d) regular supplies of grain and other basic foodstuffs for a specified time. The regulation which regulates compensation on land provides the compensation is on monetary term, other means is option. This is specific legislation on compensation for land and I find there is no need to resort to other laws while there is specific law and regulation on compensation. See Barclays Bank T. Limited vs Ayyam Matessa (Civil Appeal No. 481 of Page 38 of 44

2020) [2022] TZCA 189. However, the settled position of his court is that when it is confirmed that person is a lawful owner of the land, he is entitled to fair and reasonable compensation after evaluation. For the purpose of this case, record of valuation may be obtained in Form Number 3 and it has to be on the base of payment. I have further read the plaint by the plaintiffs as filed on 27 January 2023, the plaint has 16 prayers and none of the prayer is about resettlement. It is already settled that parties are bound by their own pleadings as was in Herieth Kasidi vs Agustino Bushiri (Civil Appeal No. 480 of 2020)

[2023] TZCA 17767. The court went further and expand the principle in the year 2024 in Saulo Malima vs Petro Klngoni (supra) that; '.....rules of pleadings that insist, not only parties are bound by pleadings but also the court It is worth noting that, pleadings represent a litigant's facts upon which he/she claims a legal relief or disproves the claims of his opponent.' See also Salim Said Mtomekela' vs Mohamed Abdallah Mohamed, Civil Appeal No. 149 of 2019 [2023] TZCA 15 (15th February, 2023). As explained resettlement was not among the claim in the plaint and therefore it cannot be entertained at this stage. Page 39 of 44 What reliefs are parties entitled is next and last issue to analyse. As indicated, some laws and procedures were not followed in the whole process of valuation of 23 plaintiffs as analysed in this case. That fact alone does not confer plaintiffs' reliefs as claimed as they (plaintiffs) have the duty to prove their claims. Amongl6 prayers by plaintiffs this court decide as follows;

- (a) As some of the plaintiffs' properties were not subject to compensation, the acquisition done by defendant was and is unlawful till when fair compensation is done basing on the properties found in the land owned by plaintiffs as per Land form number 3 and as per analysis done in the first issue.
- (b) For the peaceful enjoyment of the land as it is fenced and occupied by defendant, paragraph (a) above has to be implemented immediately after the calculation and in any way, it should not be more than 12 months from the date of this decision.
- (c) All plaintiffs failed to justify the amount they claim as the amount was estimation and lacks backup. However, it is hereby ordered that the compensation of properties found on plaintiffs' land as recorded in Land form Number 3 should be as per current laws and regulations. Page 40 of 44
- (d) I order transport and accommodation allowance to be paid to all occupied houses of the plaintiffs herein and which are affected by the project basing on the nature of the vacated houses and the market value. Rates and other procedures to be followed as per current legal regime.
- (e) Transport allowance has been covered in (d) above.
- (f) I order disturbance allowance to be paid to plaintiffs who are affected by valuation as per dictate of law and regulations governing evaluation and on the basis of above analysis of issues.
- (g) Plaintiffs demand for payment of loss of profit for non-use of the acquired properties. Profit is business-oriented word which means a financial gain. This payment is possible only when it is proved that plaintiff or several plaintiffs were doing business and as analysed none of the plaintiff in this case proved he was doing business, no TEN was tendered neither audited account supplied during hearing. I find plaintiffs are not entitled to this payment.

- (h) The subsistence allowance claimed has no justification as plaintiffs were aware of the project since the inspection was conducted. I find plaintiffs had time to plan for their livelihood. However, this court has ordered payment of accommodation and disturbance allowances as found in (d) and (f) above. It has to be known that subsistence allowances include accommodation. Page 41 of 44
- (i) Plaintiffs claimed payment of General damage. The general damage may be awarded if there is inconvenience caused by defendant and when it is proved that plaintiffs have suffered loss or inconvenience, be it physical or discomfort. See Baco and Ayubu Co. Ltd vs Permanent Secretary Ministry of Defence, Commercial Case No. 40 of 2015 and Antony Ngoo vs Kitinda Kimaro, Civil Appeal No. 25 of 2014. In the case at hand, I find plaintiffs are entitled to general damage for distress and hardship they have incurred in the whole process of valuation and underpayment; and this court award TZS 10,000,000/ to each plaintiff with exclusion of plaintiffs number 9, 12, 16, 25 and 28 whom this court have ruled that they do not have the case against defendant.
- (j) Basing on the precedent in Baco vs Ayubu case and Khamis Muhidin Musa case, punitive damage and general damage are the same which I have granted in paragraph (i) above.
- (k) This court further award interest to plaintiffs on the principal amount awarded at this section at the Bank of Tanzania rate on the date of judgment, interest period to cover from first date of demolition to the date of judgment. (I) Plaintiff are claiming payment of 10% of stake in the intended project by defendant. I refrain from awarding the claim basing on Page 42 of 44 the percentage of the intended project because, defendant as a holder of Special Mining License has exclusive mineral right over the area.
- (m) I order defendant to pay costs of the case.
- (n) I refrain from ordering interest on costs because costs of the case are administered in different application. It is so ordered. Dated at MUSOMA this 28th day of August, 2024 Ruling delivered in chamber in the presence of plaintiffs who appeared in person while defendant was represented by Mr. Lubango Shiduki, and advocate. M. L. KO MBA Judge 28th August, 2024 Page 43 of 44 LIST OF PLAINTIFFS MODESTA MAHANDO
- MATIKO..... 1st PLAINTIFF MBUSIRO ROSWE
 NYAMBACHA..... 2nd PLAINTIFF AHMED IBRAHIM
 MSIRA..... 3rd PLAINTIFF KISIRI WAMBURA
 KISIRI..... 4th PLAINTIFF LAWE CHACHA
 MHABE..... 5th PLAINTIFF EMMANUEL WAMBURA
 CHACHA 6th PLAINTIFF SUZANA BHOKE RANGE..... 7th PLAINTIFF MUBUSI MARWA
 CHACHA 8th PLAINTIFF FILOMENA M. MAGAIWA.... ,9th PLAINTIFF
 CHACHA NYAISARI CHACHA 10th plaintiff
- - -Ju SAMWEL MARWA KIBE..... . 11TM plaintiff CHACHA MAHANDO MATIKO
 12th plaintiff MUGOSI SAGIRE KIMURU 13th plaintiff ANNA GICHOGO
 CHACHA..... 14TM PLAINTIFF CHACHA MOHABE MWITA 15TM

PLAINTIFF MSABI PIUS..... 16TM PLAINTIFF
MAGRETH P. PIUS..... 17TM PLAINTIFF RYوبا
GICHONGE NYAMATENDE.....18TM PLAINTIFF KEMERO MARWA
MACHOLI..... 19TM PLAINTIFF NCHAMA IROGA
CHRISTOPHER..... 20TMPLAINTIFF LILIAN
NYAMAINA..... 21stPLAINTIFF CHACHA
WAMBURA NYANKENA..... 22ndPLAINTIFF PETER
MAHANDO MATIKO..... 23rdPLAINTIFF MGESI
NYANG'OMBE RANGE..... 24TMPLAINTIFF PETRO
MWITA RHOB..... 25TMPLAINTIFF STEVEN
WAMBURA CHACHA..... 26TMPLAINTIFF WEMA
RAZACK MANINGO..... 27TMPLAINTIFF MGAYA
BISAKU CHACHA..... 28TMPLAINTIFF IV Page 44 of
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