

TANZANIA / JUDGMENT

SULPIS MELKIORI MATEMU VS GULLAM HASSANALI FADHIL

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7 August 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI LAND CASE NO. 12 OF 2023 SULPIS MELKIORI
MATEMU.....PLAINTIFF VERSUS GULLAM HASSANALI
FADHAL..... 1st DEFENDANT ABRAHAM REHANI
KHALILI..... 2nd DEFENDANT LUCY PAULO
MASALU..... 3rd DEFENDANT OMARY MOHAMED AL-SHATRY @
SHARIFU.....4TH DEFENDANT EUGEN ROBERT
MATEMU..... 5TH DEFENDANT

JUDGMENT

15th July & 07th August, 2024 KAMUZORA, 3 Based on the amended plaint, the Plaintiff claims against the Defendants for the land measuring 556.27 acres located at Ngii hamlet, Kolombo village, Shambarai Ward within Simanjiro District in Manyara region. The Plaintiff alleged to have been allocated the suit land by Kilombo village way back in 1988. According to the Plaintiff, his land was later surveyed and he was issued with a customary right of occupancy in 2013. That, until 2014 he had already cleared 200 acres but in 2015, he was stopped from clearing the land on the claim that there was a Page 1 of 45 dispute over the land. That, the Plaintiff discovered later that his land was trespassed and illegally occupied by the Defendants hence, complained to the village and the district authorities to no avail. He then instituted this case claiming against the Defendants jointly and severally as above stated. The Defendants denied the Plaintiff's claim and claimed to be the rightful owners of the land occupied separately. While the 1st Defendant claimed to own 200 acres allocated to him by the village authority, the 2nd and 3rd Defendants claimed to be joint owners of land measuring 50 acres purchased from different villagers who were allocated land by the village authority. The 4th Defendant claimed to be the owner of land measuring 226 acres purchased from one Jamhuri Hamis Muna and the 5th Defendant claimed to be the owner of the land measuring 10 acres purchased from Makonde Lendare, the vendors being allocated the land by the village authority. Both parties were represented by advocates, while Mr. Reginald Laswai represented the Plaintiff, Mr. Michael Lengitambi represented all the Defendants. When the matter was called for hearing, the following were agreed issues for court's determination;

1. Who is the lawful owner of the disputed land,
2. To what reliefs are the parties entitled. Page 2 of 45 In need to prove the above issues, the Plaintiff's side presented 4 witnesses and 9 documentary exhibits while the defence side presented 8 witnesses and 16 documentary exhibits. Before I go to the determination of the issues, I will briefly recapitulate evidence from the parties. PW1, Sulpis Melkiori Matemu, is the Plaintiff in this case. He testified that he is the owner of the land measuring 556.27 acres located at Kilombero village, Shambarai ward, Ngii hamlet within Simanjiro District in Manyara region valued at TZS. 445,016,000/= (herein to be referred as the suit land). That, the suit land is bordered by Ally on the North, canyon (korongo) on the South, Jamuhuri Muna on the East and Naftael Maturo on the West. He complained that the Defendants in this case trespassed into his land in which Gulam Hassanali Fadhil trespassed into 150 acres, Abraham Reham Khalili and Lucy Paulo Masalu trespassed into 80 acres, Omary Mohamed Sharif trespassed into 250 acres and his nephew Eugen Robert Matemu trespassed into 10 acres. When examined on how he acquired the suit land, PW1 testified that, in 1988 he applied for land allocation at Kilombero village and the application letter was admitted as exhibit PE1. That, his application together with applications from other people were considered by the village general assembly and he was allocated 800 acres land as per the minutes dated 30/6/1988 which was admitted as exhibit PE2. That, the Page 3 of 45 minutes were sent to Kiteto Kibaya for allocation to be approved by the district authority. That, in 1989 the regional land surveyor was directed to survey land for people who were allocated land by the village council and a copy to that letter dated 18/9/1989 was admitted as exhibit PE3. That, in 1999 PW1 wrote a letter to the village authority applying to be issued with ownership documents of the allocated land. That, the surveyed land was verified to be 556.27 acres only and not 800 acres. That, he sent all necessary documents to the land officer of Simanjiro District and on 05/11/2013, he was issued with customary right of occupancy which was admitted as exhibit PE5. That, he cleared 200 acres of land but he found other people clearing part of his land. That, he wrote a letter to the Village Executive Officer (VEO) and was informed that the people who were clearing the land were Mohamed Shariff and Gullam. A letter dated 22/12/2014 was admitted as exhibit PE6. That, he tried to find a solution at the village level to no avail. That, in 2015 he was issued with a letter by the Village Executive Officer of Kilombero village one Komba stopping him from cultivating the farm on account that there were unsettled issues regarding the boundaries and location of his land. A letter to that effect was admitted as exhibit PE7. PW1 further testified that, upon being stopped from developing his land, he complained to the ward, division and district levels. That, the Page 4 of 45 District Commissioner (DC) formed a committee to go through the complaint for there were many land conflicts in that village. That, PW1 was summoned to the meeting and gave them all his documents proving how he acquired the land. That, they investigated and discovered that he had right over that land and they suggested for the land to be handled back to him within 30 days. PW1 also testified that, upon investigation, he discovered that part of his land measuring 150 acres was sold to Gullam and 250 acres was sold to Mohamed Shariff. That, he then learned that in 2021, members of the land allocation

committee of Kilombero village; Jamhuri Muna, Komba, Habibu, Roberth, Rajab and Sara were charged in court for the offence of abuse of powers for selling land illegally and offence of corruption and one of them, Jamhuri Muna was sentenced to serve four years in jail while others were sentenced to pay fine of TZS. 300,000/= each. That, in 2022 he was issued with a letter by the VEO of Kilombero and allowed to continue working in the land as per exhibit PE8. That, since the land was occupied by the Defendants, he decided to institute a case before this court. PW1 further testified that he was affected since he was stopped from clearing the land thus, was unable to develop it for almost 9 years and unable to attain his goals of cultivating peas (dengu). To him, if Page 5 of 45 allowed to work, he could have harvested 200 bags/sacks of peas valued at TZS. 180 million for the period of 9 years. That, he also suffered torture as he was arrested by the police from Babati who wanted his customary right of occupancy for the suit land and was detained for two days in the police cell. That, when released, he was asked to report every Monday to the police station for the period of one month and he was travelling from Arusha to Babati. That, when he was arrested on 17/02/2024, this case was pending before this court and scheduled for hearing on 28/02/2024. When he was recalled, PW1 added that Jamhuri Hamis Muna was the chairman of the land allocation committee and in 2021 he was among the members of the land allocation committee who were charged for criminal offence related to abuse of power in land allocation. The copy of the charge sheet and the judgment were admitted collectively as exhibit PE9. In concluding, the Plaintiff, PW1 prayed to be declared as the lawful owner of the suit land, an order for payment of damages and costs of the case. In addition, he prayed for eviction of the Defendants from the suit land. On being cross examined PW1 also testified that Mohamed Sharrif is one among the trespassers but his son was sued instead because he was the one insisting to own the suit land. That, his application was approved by CCM leader one Helangumu because by that time, CCM Page 6 of 45 leaders had two titles; as government leaders and party leaders until when their powers were separated. That, he applied for 800 acres but the allocation letter did not specify the size of the allocated land. That, at the time of survey, they verified the land and discovered that the land that was shown to him was 556.27 acres. That, the suit land is bordered by Ally, Jamhuri, canyon/seasonal river and Maturo. He added also that, the 2nd, 3rd and 5th Defendants purchased the land while PW1 had already filed the complaint at the District Land and Housing Tribunal but before coming to this court. That, at the time the Defendants trespassed into the farm, he had already cleared 200 acres but currently, he is not cultivating any part of the land. That, he did not sue other people cultivating his land as he did not know them thus, he only sued those he found physically cultivating the land. That, he was allocated suit land in 1988 and started clearing it in 2014 after he retired because as an employee, he was moving from one place to another. That, Maturo's farm was indicated in PW1's map because their land was surveyed the same day. That, the name Sulbis Melkiori indicated in the minutes refers to PW1's but with typing error. That, he sued Omary Mohamed Sharrif because he is the son of Mohamed Sharif and the one occupying the suit land. Page 7 of 45 PW2, Joseph Sungwa Mayunga, testified that he was appointed the village chairman at Kilombero village in 1987. He admitted knowing Sulpis Matemu (the Plaintiff herein) because he participated

in approving the application for allocation of land to the Plaintiff and other applicants. That, the Plaintiff's application was discussed and approved by the village general assembly and the responsible committee for land was directed to show him the land. He identified exhibit PE1 as application letter from the Plaintiff and Exhibit PE2 as minutes of the village general assembly. He explained that, the document indicated that he was the CCM chairman because by that time, in 1988 the chairman had two titles, chairman to the leading party and village chairman and the secretary was responsible to the party and the village leadership. PW2 denied being member of the village general assembly which approved allocation of land to the Defendants. On being cross examined, PW2 testified further that the plaintiff applied for 800 acres but he did not remember the exact size of the land allocated him. That, after being allocated land, the Plaintiff started developing it and when the dispute started, PW2 was no longer the leader. That, he was informed by the Plaintiff that his farm was trespassed into by the Defendants. He admitted that Exhibit PE2 did not indicate the size of the land allocated to each of the applicants. Page 8 of 45 PW3, Ephraim Raphael Mosha, testified that the Plaintiff Sulpis Melkiory Matemu was his fellow farmer at Kilombero village as they were both allocated land in 1988. He identified Exhibit PE2 as the minute of the village general assembly to which his name was also listed. On being cross examined, he admitted that he was not sure of the size of the land applied for and allocated to the Plaintiff and that, the size of the land allocated was not indicated in the minutes. PW4, Marco Damian Michael is the town and village planner and acting head of Land department at Simanjiro District. He explained the procedures to be followed in order to obtain customary right of occupancy which is issued by the District Council. He pointed out that, a person seeking for customary right of occupancy has to present proof of documents on how he acquired the land and for those allocated land by the village they have to present the minutes of the village general assembly approving allocation. That, the survey has to be led by the applicant and witnessed by members of the village committee responsible for land (kamati ya huduma za jamii) who are also members of the village council together with Village Executive Officer. PW4 testified that, the office records at the District Council show that Sulpis Merkiory Matemu was allocated 556.27 acres of land at Kilombero village within Simanjiro District in Manyara Region and was Page 9 of 45 issued with customary right of occupancy in 2013. He identified Exhibit PE5 as the customary right of occupancy which is in the district land registry records. He explained that, the customary right of occupancy was issued after the district land office was satisfied that all procedures were followed. He also identified Exhibit PE1 as the application letter by the Plaintiff to the village council and exhibit PE2 as the minutes by the village general assembly approving allocation of land to the Plaintiff and others. PW4 added that the district land office also acknowledges the documents and the customary right of occupancy issued to the Plaintiff. He however denied being aware of the existence of another customary right of occupancy in their record with No. 2 of 2014 in the name of Mohamed Mahamud Al-Shatry. He explained that, since customary right of occupancy No. 3 was issued in 2013, there is no way Title No. 2 could be issued in 2014. That, number 2 could only be valid if issued before No 3 and not after No. 3 is issued. He added that there couldn't be two customary right of occupancy over the same

land unless one is revoked and proof of change of ownership is submitted to the authority issuing customary right of occupancy which shall order the surrender of the revoked customary right of occupancy before issuing a new one. On being cross examined PW4 added that the sketch was annexed to Exhibit PE5 and not drawn on the right side because it could not fit in Page 10 of 45 the box used for the maps. He admitted not to be responsible for issuing the customary right of occupancy but insisted that the land experts who issued it were satisfied that the procedures were followed before issuance. He also pointed out that while Exhibit PE4 shows that the Plaintiff applied for 800 acres, Exhibit PE2 does not show the size of the land allocated. That, since lay people measure land by foot the surveyor has to verify the size of the land before issuing customary right of occupancy thus, sometimes the size can be more or less than it was estimated. To him, customary rights of occupancy are registered in series and since No. 3 was issued in 2013, No. 2 was supposed to be issued before No. 3 but it shows that it was issued in 2014 after No. 3. On re-examination he added that the survey involved another neighbouring farm thus, the inclusion of that map to the box would mean that the whole land specified in the map belonged to the Plaintiff. He insisted that, attachment of the map is legally allowed and the place where it was prepared does not matter for what matters is that the land was surveyed. After the evidence of PW4, the Plaintiff's case was closed. On the defence side, the first Defendant Gullam Hassanali testified as DW1. According to his evidence, the suit land belongs to him for he was allocated 200 acres of land by the village in 1999. That, his land is located at Kilombero village in Ngii hamlet within Simanjiro District Page 11 of 45 bordered by Christopher on the upper side, Mzee Nicko on the left side and the road on other two sides. He explained that he applied to the village council for 500 acres land but he was allocated 200 acres. His application letter was admitted as exhibit DEI and allocation letter was admitted as exhibit DE2. That, after he was allocated the land, he started to develop it by cultivating part of land and using part of it for cattle grazing and bee keeping. That, he also constructed necessary structures for his activities and worked peacefully until when he was issued with summons by the Plaintiff recently this year, in 2024. DW1 further testified that he had already processed for customary right of occupancy and his land was already surveyed although not yet issued with the customary right of occupancy. The application letter for survey and the minutes approving survey were admitted collectively as exhibit DE3. He also tendered documents showing that he has been participating in village development activities and the same were admitted collectively as exhibits DE4, DE5 and DE6. He also tendered a document showing that he was reminded to pay the land rent and the same was admitted as exhibit DE7. DW1 also testified that after he was issued with a summons, he went to the village and village leaders assured him that the Plaintiff was not the owner of his farm. That, he then asked the members of the village Page 12 of 45 land committee to verify his land and he also involved the surveyor in the process. The correspondence letters to that effect were admitted collectively as exhibit DE8 and the minutes as exhibit DE9. That, after identifying the boundaries and surveying the land, it was discovered that his land was not part of the land claimed by the Plaintiff for it is located 200 metres from the disputed land. The map prepared by his surveyor was admitted as exhibit DE10 showing the 200 acres allegedly

allocated to him by the village authority and 61 acres allegedly purchased from Christopher. That, the village council also confirmed to him that his land did not fall within the land in dispute. When asked about his fellow Defendants, DW1 testified that his land is located one kilometre away from the land owned by the 2nd and 3rd Defendants, three kilometres from the land owned by the 4th Defendant and 500 metres from the land owned by the 5th Defendant. That, the 4th Defendant has customary right of occupancy that was issued to his father and his land is within the land claimed by the Plaintiff. He prayed for this court to dismiss the Plaintiff's claim and declare him the lawful owner of 200 acres allocated to him by the village. He also prayed for permanent injunction against the Plaintiff and his agents from entering into his land and costs of the suit. Page 13 of 45 On being cross examined, DW1 testified that he has never seen the Plaintiff in the farm before for he has no land there. That, he was not aware of the committee formed in 2021 on the dispute over land in that village. He insisted thatc, he was wrongly sued in this case for his land is not part of the land claimed by the Plaintiff. That, he remembers Jamhuri Muna for he was the village chairman and Emmanuel Gabriel Komba as he was the Village Executive Officer but he denied purchasing land from Jamhuri Muna. DW2, Kijana Saloni Lukumay works as the assistant land surveyor in the company called SPVGEO-ICT which was engaged by the 1st Defendant Gullam Hassanali to survey his land in May, 2024. After the 1st Defendant had obtained survey permit from the village authority, he surveyed the land being assisted by another surveyor and came up with survey coordinates. That, they also related the coordinates obtained with those found in the map for the disputed land and discovered that they represented different land from the 1st Defendant's land. He identified Exhibit DE10 as the map they prepared after survey and explained further that they used a system called handheld GPS in survey which its accuracy can give a difference of up to 3 metres. He added that the coordinates cannot be the same for two different areas. He challenged Exhibit PE5 for Page 14 of 45 having a separate map instead of the same being part of the title. He however agreed that the land officer maintains the register for registration of customary right of occupancy and the fact that there cannot be similar title number. On being cross examined, DW2 testified that during survey you may come up with a slight acceptable difference but one area cannot have different coordinates. That, they discovered that the two farms are different and the shortest distance between the two farms is 70 metres as per exhibit DE10. That, they only surveyed the land and their coordinates are yet to be registered. DW3, Omary Mohamed Al-shatry is the 4th Defendant in this case. He testified that he owns 208 acres of land which is located at Kilombero village, Ngii hamlet within Simanjiro District which was given to him by his father one Mohamed Mahmud Al-shatry in 2015. That, his father purchased the land from Jamhuri Hamis Muna and the said land is bordered by Jamhuri at the lower part, the road on the upper part, Jamhuri on the left side and the road on the right part. That, they have cleared and developed the land by cultivating crops and keeping cattle like cows, goats and sheep. That, he had also constructed houses for employees, shelters for cattle and poultry farm houses and purchased Page 15 of 45 different working equipment. He also claimed to have the customary right of occupancy issued in his father's name which however, was not admitted for failure to meet legal

requirements. DW3 further testified that the dispute arose in 2024 when he received summons to appear before this court for the Plaintiff was claiming a farm from him and other Defendants. He admitted knowing other Defendants and explained that the 1st Defendant owns 200 acres and his farm is located far from the land in dispute. That, DW3's farm is located more than 2 kilometres away from the 1st Defendant's farm. That, the 2nd and 3rd Defendants are husband and wife and they purchased their land from the villagers. That, the 5th Defendant is a relative to the Plaintiff and his farm is far from his farm as there are like 20 other people owning land between their farms. DW3 denied knowing the Plaintiff before the suit was filed in court. He prayed for this court to order the Plaintiff not to interfere with his land and pay for costs of the case. On being cross examined, DW3 admitted to have not tendered a contract showing that his father purchased the land from Jamhuri Muna or the document showing that Jamhuri was allocated the land by the village. He claimed that he was given the land on family arrangement and did not know if it was necessary to have a written document. He denied Page 16 of 45 being aware of the DC's committee over the dispute in land and the charging and conviction or sentence passed against Jamhuri Muna for selling the land at Kilombero village. DW4, Lucy Paulo Masalu is the 3rd Defendant in this case. She testified that the 2nd Defendant one Abraham Rehani Khalili is her husband and they jointly own land measuring 50 acres which they purchased from five different people. That, they purchased 10 acres from each of the following people; Lazaro, Aziza, Fatuma, Charles and Mapashi. That, the said farm is bordered by the road on the upper side, Canyon (korongo) on the lower side, Mary on the right side and Hosiana on the left side. That, the people who sold the farms to them were allocated the same by Kilombero village and they had ownership documents which they were issued by the village. The sale agreements were tendered and admitted as exhibits DE11, DE12, DE13, DE14 and DE15. DW4 further testified that, after they purchased the land they developed it, constructed two houses, poultry house, toilet and borehole therein. That, the dispute started in 2024 after they were served with the summons by the Plaintiff claiming the farm. That, they communicated with the village authority and were informed that the land belonged to the village and was legally allocated to the villagers. DW4 claimed that they Page 17 of 45 have been cultivating their land for over six years and the Plaintiff had never complained to them about the farm. Like other two Defendants, DW4 also acknowledged other Defendants in this case as fellow farmers owning land at Ngii area. She prayed for this court to dismiss the claim by the Plaintiff and restrain him from interfering with her land. She also prayed for revocation of customary right of occupancy issued to the Plaintiff and for costs of this suit. On being cross examined, DW4 testified that she purchased the land between 2019 and 2020. That, by the time she purchased the land, the customary right of occupancy was already issued in 2013. That, she admitted that Exhibit DE13 did not indicate the amount paid as purchase price and insisted that they purchased it at TZS. 2 million. She agreed to have pleaded in the written statement of defence that the Plaintiff forged the title but denied to have reported him to the police station. She also denied being aware of the DC committee appointed to deal with land disputes at Kilombero. . . On re-examination she added that the person who sold the land to them signed the documents evidencing to have received the

purchase price which was TZS. 2 million. That, the sale contracts were executed and witnessed by leaders of the village council who made them to believe 'that the sellers were rightful owners of the land they sold to them. Page 18 of 45 DW5, Abraham Rehani Khalili, is the 2nd Defendant in this case. His evidence is similar to that of his wife DW4. He identified the sale agreement, Exhibits DE11 to DE15 which were tendered by DW4 and in addition, he testified that when they complained at the village authority, they were informed that the Plaintiff had no land in that area. To him, the Plaintiff was supposed to sue the village which allocated the land to villagers and which denied to have allocated land to him. He denied to have known the Plaintiff before and prayed for the dismissal of the case with costs. On being cross examined, DW5 added that, his farm is located far from the 4th Defendant's farm and between their farms, there are other farms belonging to other people. He agreed that as per Exhibit PE7, there was a dispute but he was not aware of the dispute until when the case was instituted before this court. That, the dispute was on uncertainty of the location of the Plaintiff's land and if the Plaintiff was to claim, he was supposed to sue those who sold the land to him. DW6, Eugene Roberth Matemtu, is the fifth Defendant in this case. He testified that he owns the land measuring 10 acres located 'at Kilombero Ngii hamlet which he purchased from Makonde Landare in

2020. That, the said Makonde Landare was allocated the land by the village authority and it is bordered by the Canyon on the East side, road Page 19 of 45 on the West, Saseka on South, and Mossess and Kaika Ngardei on the North. The sale document together with the allocation document were admitted collectively as exhibit DE16. DW6 also testified that, after he purchased the land, he cleared it and started cultivating crops and constructed a temporary shelter for employees. That, the dispute arose this year, 2024 when the Plaintiff instituted a claim over his land. He identified the Plaintiff as his uncle but had never made a complaint to any of the family members regarding the farm. DW5 claimed not to be aware if the Plaintiff had a farm at Kilombero village for he has never seen him there. That, when the dispute arose, he visited the village which verified to him that the land belonged to the village before it was allocated to villagers including the person who sold the land to him. DW6 also acknowledged other Defendants as fellow farmers at Kilombero village and added that his farm is located 500 to 600 metres from the 1st Defendant's farm while the 2nd and 3rd Defendants' farm is located 2 to 3 kilometres from his farm. On being cross examined, DW6 also testified that a temporary house is no longer there. That, the Plaintiff is aware that DW5 owns the farm at Simanjiro but DW6 claimed not to be aware of the location of the Plaintiff's farm. That, his farm is located more than 3 kilometres from the 4th Defendant's farm. That, as per Exhibit PE6 it seems that there was a Page 20 of 45 dispute over the land in 2014 and as per exhibit PE7, there was uncertainty on the location and size of Plaintiff's land. He denied to have reported the Plaintiff to the police station for forgery. DW7, Ramadhani Ismail Lyanga, testified that he was a member of the village council from 2014 to 2024 and the chairman to the community service committee responsible for land planning. He explained that the 1st Defendant Gullam Hassanali is the village member at Kilombero village for he was allocated 200 acres of land in 1999 and he

purchased 50 acres from his neighbour Christopher. That, in 2024 they mediated the 1st Defendant and the Plaintiff over the suit land but before 2024, there was no dispute over the land owned by the 1st Defendant. That, the 2nd and 3rd Defendants, Abraham Rahani Khalili and Lucy Paulo Masalu purchased land from villagers who were allocated land by the village. That, the 4th and 5th Defendants Omary Mohamed Al- shatry and Eugene Roberth Matemtu also purchased their land from the villagers who were allocated land by the village. He acknowledged Exhibits DE 11 to DE16 as sale contracts executed at the village office and confirmed that they allocated 10 acres of land to each person as he was the chairman to the committee that allocated land. DW7 further testified that the land which they allocated to the villagers belonged to the village and it was never allocated to the Plaintiff Page 21 of 45 for the village could not allocate 500 acres to one person. He claimed that the Plaintiff's title is not in the village register thus, the Plaintiff is not among the people owning land there. To him, the Plaintiff's title does not exist in their village for it was not approved by the village. He contended that since the Plaintiff worked as the land officer before, he was in a position to influence and obtain customary right of occupancy. He acknowledged that Exhibit PE7 was issued to the Plaintiff to stop him from clearing the farms and was asked to submit proof of ownership but did not comply. That, the Plaintiff was not certain of the location of his farm. That, the farm claimed by the Plaintiff is occupied by not less than 50 people all doing farming activities. DW7 challenged Exhibit PE8 which allowed the Plaintiff to continue developing the farm on account that he was wrongly allowed without involving the village council. He insisted that the Plaintiff trespassed into other people's land and he has sued few people while other people occupying the suit land were not sued. DW7 also testified that Omary Mohamed Sharifu was given the land by his father who purchased it from Jamhuri Hamis. He also acknowledged the existence of customary right of occupancy issued to Omary's father between 2014 and 2015. He also acknowledged that the 1st Defendant applied-for the village to verify and survey his land and Kilombero village council participated in the exercise. That, it was discovered that the Page 22 of 45 IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MANYARA AT BABATI LAND CASE NO. 12 OF 2023 SULPIS MELKIORI

MATEMU.....PLAINTIFF VERSUS GULLAM HASSANALI
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JUDGMENT

15th July & 07th August, 2024 KAMUZORA, J Based on the amended plaint, the Plaintiff claims against the Defendants for the land measuring 556.27 acres located at Ngii hamlet, Kolombero village, Shambarai Ward within Simanjiro District in Manyara region. The Plaintiff alleged to have been allocated the suit land by Kilombero village way back in 1988. According to the

Plaintiff, his land was later surveyed and he was issued with a customary right of occupancy in 2013. That, until 2014 he had already cleared 200 acres but in 2015, he was stopped from clearing the land on the claim that there was a Page 1 of 45 dispute over the land. That, the Plaintiff discovered later that his land was trespassed and illegally occupied by the Defendants hence, complained to the village and the district authorities to no avail. He then instituted this case claiming against the Defendants jointly and severally as above started. The Defendants denied the Plaintiff's claim and claimed to be the rightful owners of the land occupied separately. While the 1st Defendant claimed to own 200 acres allocated to him by the village authority, the 2nd and 3rd Defendants claimed to be joint owners of land measuring 50 acres purchased from different villagers who were allocated land by the village authority. The 4th Defendant claimed to be the owner of land measuring 226 acres purchased from one Jamhuri Hamis Muna and the 5th Defendant claimed to be the owner of the land measuring 10 acres purchased from Makonde Lendare, the vendors being allocated the land by the village authority. Both parties were represented by advocates, while Mr. Reginald Laswai represented the Plaintiff, Mr. Michael Lengitambi represented all the Defendants. When the matter was called for hearing, the following were agreed issues for court's determination; . ,

1. Who is the lawful owner of the disputed land,
2. To what reliefs are the parties entitled. s . Page 2 of 45 In need to prove the above issues, the Plaintiff's side presented 4 witnesses and 9 documentary exhibits while the defence side presented 8 witnesses and 16 documentary exhibits. Before I go to the determination of the issues, I will briefly recapitulate evidence from the parties. PW1, Sulpis Melkiori Matemu, is the Plaintiff in this case. He testified that he is the owner of the land measuring 556.27 acres located at Kilombero village, Shambarai ward, Ngii hamlet within Simanjiro District in Manyara region valued at TZS. 445,016,000/= (herein to be referred as the suit land). That, the suit land is bordered by Ally on the North, canyon (korongo) on the South, Jamuhuri Muna on the East and Naftael Maturo on the West. He complained that the Defendants in this case trespassed into his land in which Gulam Hassanali Fadhal trespassed into 150 acres, Abraham Reham Khalili and Lucy Paulo Masalu trespassed into 80 acres, Omary Mohamed Sharif trespassed into 250 acres and his nephew Eugen Robert Matemu trespassed into 10 acres. When examined on how he acquired the suit land, PW1 testified that, in 1988 he applied for land allocation at Kilombero village and the application letter was admitted as exhibit PE1. That, his application together with applications from other people were considered by the village general assembly and he was allocated 800 acres land as per the minutes dated 30/6/1988 which was admitted as exhibit PE2. That, the Page 3 of 45 minutes were sent to Kiteto Kibaya for allocation to be approved by the district authority. That, in 1989 the regional land surveyor was directed to survey land for people who were allocated land by the village council and a copy to that letter dated 18/9/1989 was admitted as exhibit PE3. That, in 1999 PW1 wrote a letter to the village authority applying to be issued with ownership documents of the allocated land. That, the surveyed land was verified to be 556.27 acres only and not 800 acres. That, he sent all necessary documents to the land officer of Simanjiro District and on 05/11/2013, he was issued with customary right of occupancy

which was admitted as exhibit PE5. That, he cleared 200 acres of land but he found other people clearing part of his land. That, he wrote a letter to the Village Executive Officer (VEO) and was informed that the people who were clearing the land were Mohamed Shariff and Gullam. A letter dated 22/12/2014 was admitted as exhibit PE6. That, he tried to find a solution at the village level to no avail. That, in 2015 he was issued with a letter by the Village Executive Officer of Kilombero village one Komba stopping him from cultivating the farm on account that there were unsettled issues regarding the boundaries and location of his land. A letter to that effect was admitted as exhibit PE7. PW1 further testified that, upon being stopped from developing his land, he'Complained to the ward, division and district levels. That,-the Page 4 of 45 District Commissioner (DC) formed a committee to go through the complaint for there were many land conflicts in that village. That, PW1 was summoned to the meeting and gave them all his documents proving how he acquired the land. That, they investigated and discovered that he had right over that land and they suggested for the land to be handled back to him within 30 days. PW1 also testified that, upon investigation, he discovered that part of his land measuring 150 acres was sold to Gullam and 250 acres was sold to Mohamed Shariff. That, he then learned that in 2021, members of the land allocation committee of Kilombero village; Jamhuri Muna, Komba, Habibu, Roberth, Rajab and Sara were charged in court for the offence of abuse of powers for selling land illegally and offence of corruption and one of them, Jamhuri Muna was sentenced to serve four years in jail while others were sentenced to pay fine of TZS. 300,000/= each. That, in 2022 he was issued with a letter by the VEO of Kilombero and allowed to continue working in the land as per exhibit PE8. That, since the land was occupied by the Defendants, he decided to institute a case before this court. PW1 further testified that he was affected since he was stopped from clearing the land thus, was unable to develop it for almost 9 years and unable to attain his goals of cultivating peas (dengu). To him, if Page 5 of 45 allowed to work, he could have harvested 200 bags/sacks of peas valued at TZS. 180 million for the period of 9 years. That, he also suffered torture as he was arrested by the police from Babati who wanted his customary right of occupancy for the suit land and was detained for two days in the police cell. That, when released, he was asked to report every Monday to the police station for the period of one month and he was travelling from Arusha to Babati. That, when he was arrested on 17/02/2024, this case was pending before this court and scheduled for hearing on 28/02/2024. When he was recalled, PW1 added that Jamhuri Hamis Muna was the chairman of the land allocation committee and in 2021 he was among the members of the land allocation committee who were charged for criminal offence related to abuse of power in land allocation. The copy of the charge sheet and the judgment were admitted collectively as exhibit PE9. In concluding, the Plaintiff, PW1 prayed to be declared as the lawful owner of the suit land, an order for payment of damages and costs of the case. In addition, he prayed for eviction of the Defendants from the suit land. On being cross examined PW1 also testified that Mohamed Sharrif is one among the trespassers but his son was sued instead because he was the one insisting to own the suit land. That, his application was approved by CCM leader one Helangumu because by that time, CCM Page 6 of 45 leaders had two titles; as government leaders and party leaders until when their powers were separated. That, he

applied for 800 acres but the allocation letter did not specify the size of the allocated land. That, at the time of survey, they verified the land and discovered that the land that was shown to him was 556.27 acres. That, the suit land is bordered by Ally, Jamhuri, canyon/seasonal river and Maturo. He added also that, the 2nd, 3rd and 5th Defendants purchased the land while PW1 had already filed the complaint at the District Land and Housing Tribunal but before coming to this court. That, at the time the Defendants trespassed into the farm, he had already cleared 200 acres but currently, he is not cultivating any part of the land. That, he did not sue other people cultivating his land as he did not know them thus, he only sued those he found physically cultivating the land. That, he was allocated suit land in 1988 and started clearing it in 2014 after he retired because as an employee, he was moving from one place to another. That, Maturo's farm was indicated in PW1's map because their land was surveyed the same day. That, the name Sulbis Melkiori indicated in the minutes refers to PW1's but with typing error. That, he sued Omary Mohamed Sharif because he is the son of Mohamed Sharif and the one occupying the suit land. Page 7 of 45 PW2, Joseph Sungwa Mayunga, testified that he was appointed the village chairman at Kilombero village in 1987. He admitted knowing Sulpis Matemu (the Plaintiff herein) because he participated in approving the application for allocation of land to the Plaintiff and other applicants. That, the Plaintiff's application was discussed and approved by the village general assembly and the responsible committee for land was directed to show him the land. He identified exhibit PE1 as application letter from the Plaintiff and Exhibit PE2 as minutes of the village general assembly. He explained that, the document indicated that he was the CCM chairman because by that time, in 1988 the chairman had two titles, chairman to the leading party and village chairman and the secretary was responsible to the party and the village leadership. PW2 denied being member of the village general assembly which approved allocation of land to the Defendants. On being cross examined, PW2 testified further that the plaintiff applied for 800 acres but he did not remember the exact size of the land allocated him. That, after being allocated land, the Plaintiff started developing it and when the dispute started, PW2 was no longer the leader. That, he was informed by the Plaintiff that his farm was trespassed into by the Defendants. He admitted that Exhibit PE2 did not indicate the size of the land allocated to each of the applicants. Page 8 of 45 PW3, Ephraim Raphael Mosha, testified that the Plaintiff Sulpis Melkiorio Matemu was his fellow farmer at Kilombero village as they were both allocated land in 1988. He identified Exhibit PE2 as the minute of the village general assembly to which his name was also listed. On being cross examined, he admitted that he was not sure of the size of the land applied for and allocated to the Plaintiff and that, the size of the land allocated was not indicated in the minutes. PW4, Marco Damian Michael is the town and village planner and acting head of Land department at Simanjiro District. He explained the procedures to be followed in order to obtain customary right of occupancy which is issued by the District Council. He pointed out that, a person seeking for customary right of occupancy has to present proof of documents on how he acquired the land and for those allocated land by the village they have to present the minutes of the village general assembly approving allocation. That, the survey has to be led by the applicant and witnessed by members of the village committee responsible for land

(kamati ya huduma za jamii) who are also members of the village council together with Village Executive Officer. PW4 testified that, the office records at the District Council show that Sulpis Merkiory Matemu was allocated 556.27 acres of land at Kilombero village within Simanjiro District in Manyara Region and was Page 9 of 45 issued with customary right of occupancy in 2013. He identified Exhibit PE5 as the customary right of occupancy which is in the district land registry records. He explained that, the customary right of occupancy was issued after the district land office was satisfied that all procedures were followed. He also identified Exhibit PE1 as the application letter by the Plaintiff to the village council and exhibit PE2 as the minutes by the village general assembly approving allocation of land to the Plaintiff and others. PW4 added that the district land office also acknowledges the documents and the customary right of occupancy issued to the Plaintiff. He however denied being aware of the existence of another customary right of occupancy in their record with No. 2 of 2014 in the name of Mohamed Mahamud Al-Shatry. He explained that, since customary right of occupancy No. 3 was issued in 2013, there is no way Title No. 2 could be issued in 2014. That, number 2 could only be valid if issued before No 3 and not after No. 3 is issued. He added that there couldn't be two customary right of occupancy over the same land unless one is revoked and proof of change of ownership is submitted to the authority issuing customary right of occupancy which shall order the surrender of the revoked customary right of occupancy before issuing a new one. On being cross examined PW4 added that the sketch was annexed to Exhibit PE5 and not drawn on the right side because it could not fit in Page 10 of 45 the box used for the maps. He admitted not to be responsible for issuing the customary right of occupancy but insisted that the land experts who issued it were satisfied that the procedures were followed before issuance. He also pointed out that while Exhibit PE4 shows that the Plaintiff applied for 800 acres, Exhibit PE2 does not show the size of the land allocated. That, since lay people measure land by foot the surveyor has to verify the size of the land before issuing customary right of occupancy thus, sometimes the size can be more or less than it was estimated. To him, customary rights of occupancy are registered in series and since No. 3 was issued in 2013, No. 2 was supposed to be issued before No. 3 but it shows that it was issued in 2014 after No. 3. On re-examination he added that the survey involved another neighbouring farm thus, the inclusion of that map to the box would mean that the whole land specified in the map belonged to the Plaintiff. He insisted that, attachment of the map is legally allowed and the place where it was prepared does not matter for what matters is that the land was surveyed. After the evidence of PW4, the Plaintiff's case was closed. On the defence side, the first Defendant Gullam Hassanali testified as DW1. According to his evidence, the suit land belongs to him for he was allocated 200 acres of land by the village in 1999. That, his land is located at Kilombero village in Ngii hamlet within Simanjiro District Page 11 of 45 bordered by Christopher on the upper side, Mzee Nicko on the left side and the road on other two sides. He explained that he applied to the village council for 500 acres land but he was allocated 200 acres. His application letter was admitted as exhibit DEI and allocation letter was admitted as exhibit DE2. That, after he was allocated the land, he started to develop it by cultivating part of land and using part of it for cattle grazing and bee keeping. That, he also constructed necessary structures for his

activities and worked peacefully until when he was issued with summons by the Plaintiff recently this year, in 2024. DW1 further testified that he had already processed for customary right of occupancy and his land was already surveyed although not yet issued with the customary right of occupancy. The application letter for survey and the minutes approving survey were admitted collectively as exhibit DE3. He also tendered documents showing that he has been participating in village development activities and the same were admitted collectively as exhibits DE4, DE5 and DE6. He also tendered a document showing that he was reminded to pay the land rent and the same was admitted as exhibit DE7. DW1 also testified that after he was issued with a summons, he went to the village and village leaders assured him that the Plaintiff was not the owner of his farm. That, he then asked the members of the village Page 12 of 45 land committee to verify his land and he also involved the surveyor in the process. The correspondence letters to that effect were admitted collectively as exhibit DE8 and the minutes as exhibit DE9. That, after identifying the boundaries and surveying the land, it was discovered that his land was not part of the land claimed by the Plaintiff for it is located 200 metres from the disputed land. The map prepared by his surveyor was admitted as exhibit DE10 showing the 200 acres allegedly allocated to him by the village authority and 61 acres allegedly purchased from Christopher. That, the village council also confirmed to him that his land did not fall within the land in dispute. When asked about his fellow Defendants, DW1 testified that his land is located one kilometre away from the land owned by the 2nd and 3rd Defendants, three kilometres from the land owned by the 4th Defendant and 500 metres from the land owned by the 5th Defendant. That, the 4th Defendant has customary right of occupancy that was issued to his father and his land is within the land claimed by the Plaintiff. He prayed for this court to dismiss the Plaintiff's claim and declare him the lawful owner of 200 acres allocated to him by the village. He also prayed for permanent injunction against the Plaintiff and his agents from entering into his land and costs of the suit. Page 13 of 45 On being cross examined, DW1 testified that he has never seen the Plaintiff in the farm before for he has no land there. That, he was not aware of the committee formed in 2021 on the dispute over land in that village. He insisted thatc, he was wrongly sued in this case for his land is not part of the land claimed by the Plaintiff. That, he remembers Jamhuri Muna for he was the village chairman and Emmanuel Gabriel Komba as he was the Village Executive Officer but he denied purchasing land from Jamhuri Muna. DW2, Kijana Saloni Lukumay works as the assistant land surveyor in the company called SPVGEO-ICT which was engaged by the 1st Defendant Gullam Hassanali to survey his land in May, 2024. After the 1st Defendant had obtained survey permit from the village authority, he surveyed the land being assisted by another surveyor and came up with survey coordinates. That, they also related the coordinates obtained with those found in the map for the disputed land and discovered that they represented different land from the 1st Defendant's land. He identified Exhibit DE10 as the map they prepared after survey and explained further that they used a system called handheld GPS in survey which its accuracy can give a difference of up to 3 metres. He added that the coordinates cannot be the same for two different areas. He challenged Exhibit PE5 for Page 14 of 45 having a separate map instead of the same being part of the title. He

however agreed that the land officer maintains the register for registration of customary right of occupancy and the fact that there cannot be similar title number. On being cross examined, DW2 testified that during survey you may come up with a slight acceptable difference but one area cannot have different coordinates. That, they discovered that the two farms are different and the shortest distance between the two farms is 70 metres as per exhibit DE10. That, they only surveyed the land and their coordinates are yet to be registered. DW3, Omary Mohamed Al-shatry is the 4th Defendant in this case. He testified that he owns 208 acres of land which is located at Kilombero village, Ngii hamlet within Simanjiro District which was given to him by his father one Mohamed Mahmud Al-shatry in 2015. That, his father purchased the land from Jamhuri Hamis Muna and the said land is bordered by Jamhuri at the lower part, the road on the upper part, Jamhuri on the left side and the road on the right part. That, they have cleared and developed the land by cultivating crops and keeping cattle like cows, goats and sheep. That, he had also constructed houses for employees, shelters for cattle and poultry farm houses and purchased Page 15 of 45 different working equipment. He also claimed to have the customary right of occupancy issued in his father's name which however, was not admitted for failure to meet legal requirements. DW3 further testified that the dispute arose in 2024 when he received summons to appear before this court for the Plaintiff was claiming a farm from him and other Defendants. He admitted knowing other Defendants and explained that the 1st Defendant owns 200 acres and his farm is located far from the land in dispute. That, DW3's farm is located more than 2 kilometres away from the 1st Defendant's farm. That, the 2nd and 3rd Defendants are husband and wife and they purchased their land from the villagers. That, the 5th Defendant is a relative to the Plaintiff and his farm is far from his farm as there are like 20 other people owning land between their farms. DW3 denied knowing the Plaintiff before the suit was filed in court. He prayed for this court to order the Plaintiff not to interfere with his land and pay for costs of the case. On being cross examined, DW3 admitted to have not tendered a contract showing that his father purchased the land from Jamhuri Muna or the document showing that Jamhuri was allocated the land by the village. He claimed that he was given the land on family arrangement and did not know if it was necessary to have a written document. He denied Page 16 of 45 being aware of the DC's committee over the dispute in land and the charging and conviction or sentence passed against Jamhuri Muna for selling the land at Kilombero village. DW4, Lucy Paulo Masalu is the 3rd Defendant in this case. She testified that the 2nd Defendant one Abraham Rehani Khalili is her husband and they jointly own land measuring 50 acres which they purchased from five different people. That, they purchased 10 acres from each of the following people; Lazaro, Aziza, Fatuma, Charles and Mapashi. That, the said farm is bordered by the road on the upper side, Canyon (korongo) on the lower side, Mary on the right side and Hosiana on the left side. That, the people who sold the farms to them were allocated the same by Kilombero village and they had ownership documents which they were issued by the village. The sale agreements were tendered and admitted as exhibits DE11, DE12, DE13, DE14 and DE15. DW4 further testified that, after they purchased the land they developed it, constructed two houses, poultry house, toilet and borehole therein. That, the dispute started

in 2024 after they were served with the summons by the Plaintiff claiming the farm. That, they communicated with the village authority and were informed that the land belonged to the village and was legally allocated to the villagers. DW4 claimed that they Page 17 of 45 have been cultivating their land for over six years and the Plaintiff had never complained to them about the farm. Like other two Defendants, DW4 also acknowledged other Defendants in this case as fellow farmers owning land at Ngii area. She prayed for this court to dismiss the claim by the Plaintiff and restrain him from interfering with her land. She also prayed for revocation of customary right of occupancy issued to the Plaintiff and for costs of this suit. On being cross examined, DW4 testified that she purchased the land between 2019 and 2020. That, by the time she purchased the land, the customary right of occupancy was already issued in 2013. That, she admitted that Exhibit DE13 did not indicate the amount paid as purchase price and insisted that they purchased it at TZS. 2 million. She agreed to have pleaded in the written statement of defence that the Plaintiff forged the title but denied to have reported him to the police station. She also denied being aware of the DC committee appointed to deal with land disputes at Kilombero. On re-examination she added that the person who sold the land to them signed the documents evidencing to have received the purchase price which was TZS. 2 million. That, the sale contracts were executed and witnessed by leaders of the village council who made them to believe that the sellers were rightful owners of the land they sold to them. Page 18 of 45 DW5, Abraham Rehani Khalili, is the 2nd Defendant in this case. His evidence is similar to that of his wife DW4. He identified the sale agreement, Exhibits DE11 to DE15 which were tendered by DW4 and in addition, he testified that when they complained at the village authority, they were informed that the Plaintiff had no land in that area. To him, the Plaintiff was supposed to sue the village which allocated the land to villagers and which denied to have allocated land to him. He denied to have known the Plaintiff before and prayed for the dismissal of the case with costs. On being cross examined, DW5 added that, his farm is located far from the 4th Defendant's farm and between their farms, there are other farms belonging to other people. He agreed that as per Exhibit PE7, there was a dispute but he was not aware of the dispute until when the case was instituted before this court. That, the dispute was on uncertainty of the location of the Plaintiff's land and if the Plaintiff was to claim, he was supposed to sue those who sold the land to him. DW6, Eugene Roberth Matem, is the fifth Defendant in this case. He testified that he owns the land measuring 10 acres located at Kilombero Ngii hamlet which he purchased from Makonde Landare in

2020. That, the said Makonde Landare was allocated the land by the village authority and it is bordered by the Canyon on the East side, road Page 19 of 45 on the West, Saseka on South, and Mossess and Kaika Ngardei on the North. The sale document together with the allocation document were admitted collectively as exhibit DE16. DW6 also testified that, after he purchased the land, he cleared it and started cultivating crops and constructed a temporary shelter for employees. That, the dispute arose this year, 2024 when the Plaintiff instituted a claim over his land. He identified the Plaintiff as his uncle but had never made a complaint to any of the family members regarding the farm. DW5 claimed not to be

aware if the Plaintiff had a farm at Kilombero village for he has never seen him there. That, when the dispute arose, he visited the village which verified to him that the land belonged to the village before it was allocated to villagers including the person who sold the land to him. DW6 also acknowledged other Defendants as fellow farmers at Kilombero village and added that his farm is located 500 to 600 metres from the 1st Defendant's farm while the 2nd and 3rd Defendants' farm is located 2 to 3 kilometres from his farm. On being cross examined, DW6 also testified that a temporary house is no longer there. That, the Plaintiff is aware that DW5 owns the farm at Simanjiro but DW6 claimed not to be aware of the location of the Plaintiff's farm. That, his farm is located more than 3 kilometres from the 4th Defendant's farm. That, as per Exhibit PE6 it seems that there was a Page 20 of 45 dispute over the land in 2014 and as per exhibit PE7, there was uncertainty on the location and size of Plaintiff's land. He denied to have reported the Plaintiff to the police station for forgery. DW7, Ramadhani Ismail Lyanga, testified that he was a member of the village council from 2014 to 2024 and the chairman to the community service committee responsible for land planning. He explained that the 1st Defendant Gullam Hassanali is the village member at Kilombero village for he was allocated 200 acres of land in 1999 and he purchased 50 acres from his neighbour Christopher. That, in 2024 they mediated the 1st Defendant and the Plaintiff over the suit land but before 2024, there was no dispute over the land owned by the 1st Defendant. That, the 2nd and 3rd Defendants, Abraham Rahani Khalili and Lucy Paulo Masalu purchased land from villagers who were allocated land by the village. That, the 4th and 5th Defendants Omary Mohamed Al-shatry and Eugene Roberth Matemtu also purchased their land from the villagers who were allocated land by the village. He acknowledged Exhibits DE 11 to DE16 as sale contracts executed at the village office and confirmed that they allocated 10 acres of land to each person as he was the chairman to the committee that allocated land. DW7 further testified that the land which they allocated to the villagers belonged to the village and it was never allocated to the Plaintiff Page 21 of 45 for the village could not allocate 500 acres to one person. He claimed that the Plaintiff's title is not in the village register thus, the Plaintiff is not among the people owning land there. To him, the Plaintiff's title does not exist in their village for it was not approved by the village. He contended that since the Plaintiff worked as the land officer before, he was in a position to influence and obtain customary right of occupancy. He acknowledged that Exhibit PE7 was issued to the Plaintiff to stop him from clearing the farms and was asked to submit proof of ownership but did not comply. That, the Plaintiff was not certain of the location of his farm. That, the farm claimed by the Plaintiff is occupied by not less than 50 people all doing farming activities. DW7 challenged Exhibit PE8 which allowed the Plaintiff to continue developing the farm on account that he was wrongly allowed without involving the village council. He insisted that the Plaintiff trespassed into other people's land and he has sued few people while other people occupying the suit land were not sued. DW7 also testified that Omary Mohamed Sharifu was given the land by his father who purchased it from Jamhuri Hamis. He also acknowledged the existence of customary right of occupancy issued to Omary's father between 2014 and 2015. He also acknowledged that the 1st Defendant applied for the village

to verify and survey his land and Kilombero village council participated in the exercise. That, it was discovered that the Page 22 of 45 Plaintiff and 1st Defendant's farms were in two different locations. He insisted that, if this court will decide to visit the locus, it will discover that the farm owned by the 1st Defendant is different from the farm claimed by the Plaintiff and that, the land claimed by the Plaintiff is owned and occupied by many other people who are not parties to this case. He maintained that, he has been in that village for so long and the Plaintiff has never owned land in that area. On being cross examined, DW7 testified that he started working at the village in 2014. That, in 1988 the village chairman was Mayunga and village secretary was Helangumu. That, Wilfred Ole Paulo was the VEO of Kilombero village for two years. That, Emmanuel Komba was also the VEO while Joshua Kimbei was the village Chairman. He however claimed that they have no powers to sign any document for allocation of land. That, Habibu Juma Dingu held different positions in the village and there was a time he was the assistant VEO. That, Roberth Matua was also a leader and there was a time he was the assistant VEO. That, Khatibu Abdallah Rajabu was a member to the village council and Sara Isack Maula was a member to the village council. DW7 did not know the size of the land owned by Jamhuri Hamis Muna but admitted that Jamhuri sold 200 acres of land to Mohamed Al-shatry between 2013 to 2014. He denied being aware of the criminal charges against Jamhuri Hamis Muna, Habibu Juma Page 23 of 45 Dingu, Roberth Khatibu, Abdallah Rajabu and Sara for the abuse of office. He also denied being aware of any committee appointed by the DC to deal with land disputes at Kilombero. To him, if the customary title is issued without the approval of the village, it means the documents are forged and the title issued by the district land office without being approved by the village office is not legal. He denied the village being responsible for reporting the Plaintiff to the police station for the offence of forgery. DW8, Abdallah Juma Shabani, testified that currently, he is a member of the village council and a member to the community service committee responsible for environmental protection and land use. He knows the 1st Defendant Gullam Hassanali Fadhal as the villager at Kilombero for he was allocated 200 acres of land at Kilombero in 1999 and purchased 50 acres from Christopher. That, Abraham Rehani and Lucy Paulo purchased land from the villagers who were allocated land by the village and Omary Mohamed Al-shatry @ Sharifu was given land by his father who was allocated land by the village. That, Eugen Roberth Matemu purchased land from the villager who was allocated land by the village. That, in 2015 the Plaintiff started clearing the land and the villagers complained to the office for he had entered into their farms. That, the VEO and the village council asked the Plaintiff to stop working and submit evidence of ownership and when he left, he never went back until Page 24 of 45 this year when they heard that he came to court. That, the responsible committee went to the farm and verified the land belonging to the 1st Defendant with the help of two surveyors and they discovered that the 1st Defendant's farm was different from the farm claimed by the Plaintiff. That, Omary Mohamed Sharifu and his father have customary right of occupancy whose copy is maintained at village office. That, the Plaintiff is claiming the land owned by Omary. He claimed that the village council have not met to discuss about survey of land for the Plaintiff Sulpis Matemu. On being

cross examined, DW8 added that in 1988 he was in standard six and did not know the village leaders by that time thus, he knows nothing about what happened in 1988. That, he became a leader to the village council in 2014 thus, when the customary right of occupancy was issued to the Plaintiff, he was not a leader. He added that Jamhuri was the chairman way back and Emanuel Gabriel Komba was the VEO. That, Habibu Juma Dimbui used to be CCM secretary and Robeith Msengi Matua and Sara Isack were villagers but they were never leaders. He denied being aware of the criminal charges and not being aware of the DC's committee of Simanjiro. Having analysed the evidence, I embark into the determination of the issues raised in this case. The first issue is who is the rightful owner Page 25 of 45 of the suit land. There is rival evidence on whether the Defendants are occupying the Plaintiff's land. In his amended plaint, the Plaintiff is claiming the total of 556.27 acres against the Defendants. In his evidence, he claimed that the 1st Defendant trespassed into 150 acres, the 2nd and 3rd Defendants trespassed into 80 acres, the 4th Defendant trespassed into 250 acres while the 5th Defendant trespassed into 10 acres. From his evidence, the Plaintiff applied and was allocated land by the village authority in 1988. Exhibit PE1 which is the application letter dated 25/5/1988 and PE2 which is the minute of the village council meeting dated 30/6/1988 are much relevant. Such evidence was also supported by PW2, Joseph Sungwa Mayunga, the then village chairman of Kilombero whose name is indicated in exhibit PE2 as the chairman to the meeting that approved the allocation of land to the Plaintiff. The Plaintiff's evidence was also supported by PW3, Ephraim Raphael Mosha, who was among the applicants who were allocated land together with the Plaintiff and his name was also listed in exhibit PE2. Subject to exhibit PE3, the Plaintiff was among the people recognised to have been allocated land at Kilombero. The said exhibit is a letter issued on 18/9/1989 from the office of Executive Director of Simanjiro District directing the land officer to survey land for people who were allocated land at Simanjiro and the Plaintiff herein was copied as among the interested parties. Page 26 of 45 It is also in evidence that the Plaintiff processed for survey of his land in 1999 as evidenced by exhibit PE4. He was granted with customary right of occupancy in 2013 and the same was admitted as exhibit PE5. Although the process in obtaining the right of occupancy was questioned by the defence side, PW4 verified to this court that all legal procedures were followed and the same was legally issued by the issuing authority which is Kilombero Village Council and approved by Simanjiro District Council. He acknowledged the existence of the customary right of occupancy in the land registry office at Simanjiro District. Thus, the defence evidence as well as the argument by the defence counsel in his final submission challenging the procedures in issuing the right of occupancy is unmaintainable. The defendants were unable to bring tangible evidence which could make this court to disregard exhibit PE5. The argument that it is not in the village records is unfounded as there is no record submitted to this court showing other customary rights of occupancy in exclusion of that held by the plaintiff. The plaintiff tendered the original customary right of occupancy which was acknowledged by the then leaders who were responsible for issuing it thus, the denial by the current village leaders is unfounded. It must be noted that, the same was verified by the district authority as valid document thus,

its legality could not be challenged without submitting tangible evidence discarding its Page 27 of 45 existence. In that regard and subject to exhibit PE5, this court is satisfied that the Plaintiff was able to prove on balance of probabilities that he owns land measuring 556.27 located at Kilombero village, Ngii hamlet within Simanjiro District. It is in evidence that the Defendants also own land in the same hamlet and village. While the Plaintiff claim that the land occupied by the Defendants is part of his land, the Defendants denied such allegation and they accounted on how each of them acquired the land. The first Defendant claimed to be allocated 200 acres of land by the village, while the 2nd, 3rd, 4th and 5th Defendants claimed to have purchased land from the villagers who were allocated land by the village council. For the 1st Defendant, he tendered Exhibits DEI which is application letter dated 06/10/1999 and DE2 which is response letter from the village verifying that the 1st Defendant applied and was allocated 200 acres of land by the village. DW1 also tendered exhibit DE3 showing that he applied and was allowed to survey his land for the purpose of obtaining customary right of occupancy. The 2nd and 3rd Defendants tendered exhibits DE11 to DE15 which are contracts evidencing that they purchased 50 acres of land from different people namely; Charles Francis-10 acres, Fatuma Yusuph-10 acres, Titolai Mapashi- 10 acres, Lazzaro Karao-10 'acres and Aziza Abdallah Shinini-10 acres. Similarly, the 5th Defendant Page 28 of 45 tendered a contract evidencing that he purchased 10 acres of land from Makonde Lendare. All contracts were also annexed with letters from the office of the village executive officer showing that the sellers were allocated land by the village. For the 4th Defendant, he tendered no exhibit but he claimed that he got the land from his father who purchased the same from Jamhuri Muna who was allocated the land by the village council. It is unfortunate that the 4th Defendant neither tendered the sale agreement nor his father testified to confirm that he purchased the land he gave it to the 4th Defendant. As well argued in the Plaintiff's counsel in his closing submission, the 4th Defendant's claim is wanting. By failure to tender purchase document or present his father as a witness, the 4th Defendant failed to support his claim that his father purchased the land and gave it to him. It is clear that the current leaders of Kilombero village acknowledged all Defendants as legal owners of the land they are occupying. Subject to the evidence adduced by DW7 and DW8, the 1st Defendant was allocated land by the village while the rest of the Defendants purchased land from the villagers who were legally allocated land by the village. Exhibits DE4, DE5, DE6 and DE7 shows that the 1st Defendant is acknowledged by village leaders as responsible villager at Kilombero village. The village Page 29 of 45 leaders; DW7 and DW8 categorically denied the Plaintiff as among the recognised villagers at Kilombero village. From the evidence in record, we have leaders from the same village with different position. While PW2 who was the village leader in 1988 acknowledged the Plaintiff as the person who was allocated land at Kilombero village, DW7 and DW8 who are current leaders denied the existence of any record for allocation of land to the Plaintiff. They even disputed the legality of exhibit PE5 on account that the village never allocated or approved land allocation to the Plaintiff. Although disputed, this court finds that exhibit PE5 was legally issued by the same village in 1988. Such fact was verified by PW2 who was the village chairman by that time and the fact that PW2 was a village

leader was also acknowledged by defence witness DW7 who is a current village leader. As well explained by PW4, the customary right of occupancy (Exhibit PE5) was issued after the procedures were followed which include approval by the village general assembly. The contention by the defence side that exhibit PE5 was not properly issued cannot stand. There is no sound argument to disregard exhibit PE5 as a genuine document issued by a proper authority. I reiterate that exhibit PE5 was legally issued verifying that the Plaintiff owns land measuring 556.27 acres located at Page 30 of 45 Ngii hamlet Kilombero village, Shambarai Ward within Simanjiro District in Manyara region I therefore agree with the closing submission by the Plaintiff's counsel that since the Plaintiff has customary right of occupancy, he has a conclusive proof that he owns the land specified in that customary right of occupancy. I subscribe to the decision in the cases cited in the Plaintiff's final submission; Nacky Ester Nyange Vs. Mihayo Marijani Wilmore & Mrs. Mariam Wilmore, Civil Appeal No. 207 of 2019, Court of Appeal of Tanzania (unreported) and Leopold Mutembei Vs. Principal Assistant Registrar of Tittles and Two others, Civil Appeal No. 57 of 2017 (both unreported). In another case of Amina Maulid Ambali & 2 Others vs Ramadhani Juma, Civil Appeal No. 35 of 2019, the Court of Appeal of Tanzania observed as follows: " ... when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained. " The Plaintiff in this matter has customary right of occupancy as opposed to the Defendants. The Plaintiff was allocated land prior to the Defendants as so evidenced or people allegedly sold the land to them as per the allocation documents tendered and admitted by both parties. Page 31 of 45 While the Plaintiff was allocated land in 1988, the first Defendant was allocated land in 1999 while the rest of the Defendants purchased land from the villagers who were allocated land in 2019. Since the Plaintiff had valid title, the same village could not have valid title to pass to other villagers. As well argued by the Plaintiff's counsel the maxim 'nemo dat quod non habet'dppty in the circumstance of this case meaning that, 'no one gives what they do not have'. That was also the Court of Appeal stance in Ombeni Kimaro Vs Joseph Mishili, Civil Appeal No. 33 of 2017 (unreported) cited in the final submission by the Plaintiff's counsel. From the evidence, there is an admission that the Plaintiff was not recognised by the village leaders who allocated land to villagers later. When he tried to clear the land, the dispute arose as he found people already occupying his land. The evidence shows that on 22/12/2014, the Plaintiff complained to the village executive officer of Kilombero about the trespass into his land as per exhibit PE6. On 13/03/2015 the VEO issued a letter (exhibit PE7) to the Plaintiff stopping him from cultivating the suit land on account that there was uncertainty over the location and size of the Plaintiff's land. On 08/01/2022 as per exhibit PE8, the VEO responded to the Plaintiff's letter and allowed him to continue working in his land. There is Plaintiff's evidence that there was a committee appointed by the District Commissioner to investigate on the complaints over land allocation Page 32 of 45 at Kilombero village. That, some of the village leaders were found to have abused their powers by selling peoples' land thus, they were charged with criminal offences. As per exhibit PE9, six leaders who were also acknowledged by the defence witnesses were charged for abuse of position and for

obtaining money by false pretence as they disposed land without approval of the village assembly. Jamhuri Hamis Muna who allegedly sold the land to the 4th Defendant's father was among the accused persons and was convicted and sentenced to go to jail. Apart from that, the 1st Defendant claimed that his land was not part of the land claimed by the Plaintiff. He even engaged the service of a private surveyor to survey his land and invited the village leaders to verify it as evidenced by exhibits DE8, DE9 and DE10. In their evidence, DW2, DW7 and DW8 confirmed that the 1st Defendant's land was different from the land claimed by the Plaintiff. DW2 is the land surveyor who prepared exhibit DE10 and his evidence reveals that he surveyed the 1st Defendants land and came up with different coordinates meaning that the 1st Defendant's land was not part of the land claimed by the Plaintiff. It was also submitted by the defence counsel that, since the 1st Defendant was in occupation of his land since 1999 undisturbed, he is qualified to be shielded under the doctrine of adverse possession for the Page 33 of 45 Plaintiff abandoned the land for over 26 years from 1988 to 2014. I do not agree with the invitation by the defence counsel to shield the 1st Defendant under adverse possession. The principle of adverse possession does not apply where there is proof of purchase or allocation as it is the circumstance in this case. It only applies where a person occupies the land without permission, and the owner of the same does not exercise his right to recover it within the time prescribed by law which is 12 years. Such person (the adverse possessor) acquires ownership by adverse possession. That was the holding of the Court of Appeal in Bhoke Kitang'ita Vs. Makuru Mahemba, Civil Appeal No.. 222 of 2017 (unreported). The Court of Appeal insisted that adverse possessor have to be in uninterrupted occupation of the property. In the case of Registered Trustees of Holy Spirit Sisters Tanzania Vs. January Kamili Shayo and 136 Others, Civil Appeal No. 193 of 2016 (unreported), it was held that: - "[On] the whole, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following: -

- (a) That there had been absence of possession by the true owner through abandonment;
- (b) that the adverse possessor had been in actual possession of the piece of land; Page 34 of 45
- (c) that the adverse possessor had no colour of right to be there other than his entry and occupation;
- (d) that the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;
- (e) that there was a sufficient animus to dispossess and an animus possidendi;
- (f) that the statutory period, in this case twelve 12 years, had elapsed;
- (g) that there had been no interruption to the adverse possession throughout the aforesaid statutory period; and

- (h) that the nature of the property was such that in the light of the foregoing/adverse possession would result." In the circumstance of this case, contrary to what was suggested by the defence counsel, it cannot be said that either of the Defendants met the above requirements. According to their evidence, all the Defendants came into occupation of the land either by being allocated or by purchase thus, their occupation modes do not fall in the principle of adverse possession as propounded in the above cases as well as the case of Jackson Reuben Maro Vs Hubert Sebastian, Civil Appeal No. 84 of 2004 (unreported) referred by the defence counsel in his final submission. Page 35 of 45 It is in evidence that while the Defendants claimed that they are legally occupying the suit land, the Plaintiff is claiming that the land occupied by all Defendants belongs to him and it is part of the land identified in exhibit PE5. On parties' request, this court visited the locus in quo and invited an expert to verify the allegation. During visitation of the locus in quo, each of the Defendants identified their land and this court observed that apart from the land identified by the Defendants as their land, there was part of the land cultivated but the Defendants denied being owners of that part of the land or being responsible for cultivating the farms. Presenting on his observation and expert opinion, Mr. Masawika Fabian Kachenje, the Regional Land Surveyor of Manyara Region explained that, in surveying the suit land, he started by verifying the coordinates indicated in the customary right of occupancy in the name of Sulpis Matemu (the Plaintiff) issued in 2013 (exhibit PE5). That, he used survey system called Arc 1960 UTM which was also used in surveying the land for the customary right of occupancy in the name of the Plaintiff and for surveying the land by Gullam Hassanali Fadhal (the 1st Defendant) as per exhibit DE10. That, the same system is used in surveying land all over the country and it was used in surveying Kilombero village. That, the procedure requires inserting points in the Global Position System (GPS Page 36 of 45 system) which detects the position and gives out coordinates in terms of numbers. He was certain that since the system used was the same, it could not reveal different readings. The expert also explained that, when surveying the disputed land, he was assisted by other surveyors and they were inserting the existing coordinates in the GPS at each point, starting at 01L986, 01L989, 01L985, 01L987, 01L984 and closed again at 01L986. That, they also verified the coordinates at the farm claimed by Gullam and Eugene referring the coordinates in Matemu's customary right of occupancy. That, after they processed the data, they interpreted the coordinates and discovered that the land claimed by Eugene intruded into the suit land for about 1250 square meters and the land owned by Gullam intruded into the suit land for about 1174 square meters. That, while surveying the land, they also discovered that the land claimed by the 2nd and 3rd Defendants was within the suit land while the 4th Defendant's land was partly within the suit land but his camp and the land on the upper part of the camp was not within the disputed land. That, the 5th Defendant's land intruded into the suit land at the point with Coordinate 253365 East to 9587958 North and at point 253350 East to 9587984 North while land for Gulam intruded into the disputed land at coordinate 253600 East to 9588419 North and point 253380 East to 9588452 North. He also Page 37 of 45 noted that, while surveying the land, they found other farms which the Defendants claimed that they belonged to other people but they did not know the names for they were not there.

On being cross examined by the Plaintiff's counsel, the expert explained that each position has its coordinates and in exhibit DE10, the points may have been wrongly recorded on the position where coordinates did not merge. That, when he captured new coordinates, he discovered that there was departure at points 01L990 and 01L984 because point 01L984 was reading 9590032.2 North and 254362.126 East for the map by Matemtu (Exhibit PE5) and 9590032.172 North and 254762.00 East for the map by Gullam (Exhibit DE10). That, another departure was at point 01L990 where the reading was 9589456.956 North and 25404077.475 East for Exhibit PE5 and 9589456.5 North and 254877.4 East for exhibit DE10. He explained that if the position/point is wrongly typed there is a likelihood of getting a different coordinate thus, there was a possibility that the position was wrongly typed and that is why they came up with different reading. He added that, the survey involved both parties who were identifying their land and they denied being responsible in cultivating part of the land. On being cross-examined by the defence counsel, he explained that the system used to survey the land for the Plaintiff is the same system Page 38 of 45 used to survey land for the 1st Defendant. That, the difference may be because of the mistakes in recording the points as they discovered that the difference came up because point 990 from Matemtu's map was wrongly recorded when preparing the map for Gullam. He added that, since the system used was the same, there cannot be overlapping for the new survey system must abide by the old survey system. That, at point 01L986 to point 01L989 they found the farm of Lucy and her husband who also explained that there are other people at the area. That, from point 01L989 to point 01L985, the land was not occupied by any of the Defendants as there were farms whose owners were not there. That, at point 01L987 they found a watchman and he said that the farm at that point belonged to one Solomoni who is not among the parties to this case. That, from 01L987 to 01L984 there were other farms and the owners to those other farms are not among the parties to this case. That, from point 01L984 to 01L986 there were other farms including Omary's farm but other farms were denied by the Defendants thus, did not know the people who were cultivating them. He concluded that, when verifying the coordinates in the Plaintiff's customary right of occupancy, the coordinates recorded gave him the same map/drawing as seen in exhibit PE5. It was argued by the counsel for the Defendants in his final submission that since the survey revealed that the 1st Defendant's land Page 39 of 45 was separate from the land claimed by the Plaintiff, the suit was bad in law for misjoinder of parties. He also added that since the survey revealed the existence of people other than the Defendants in the suit land, the suit is bad in law for non-joinder of necessary parties. He referred to the cases of Abdullatif Mohamed Hamis Vs. Mohboob Yusuph Osman and another, Civil Revision No. 6 of 2017 (unreported), Tanzania Railways Corporation (TRC) Vs. GBP T LTD, Civil Appeal No 218 of 2020 (unreported) and Leonard Peter Vs Joseph Mabao and 2 others, Land Case No. 4 of 2020 (unreported). While I agree with the principles laid down in the above cases, I do not agree with the invitation to find the suit bad in law for misjoinder or non-joinder of parties. The argument over misjoinder of parties is based on the assumption that the 1st Defendant owns separate land from that claimed by the Plaintiff. However, the evidence by the experts reveals that the 1st Defendant trespassed into the Plaintiff's land by 1100 square metres thus, it cannot be said that he was wrongly included as

the defendant in this case. The argument on non-joinder of parties is based on the assumption that there were other people with farms in the disputed area who were not made party to this case. During visitation of the locus in quo, it was observed and the expert also explained that apart from the farms claimed Page 40 of 45 by the Defendants, there were other farms claimed to belong to people who are not parties to this case and some names were mentioned. The issue is whether, failure to join those people can vitiate the proceedings in this case. The law is clear on misjoinder and non-joinder of parties. Order I Rule 9 of the Civil Procedure Code [Cap 33 R.E 2019] read: - "A suit shall not be defeated by reason o f the misjoinder or non- joinder o f parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests o f the parties actually before i t " The plain meaning of the above provision is that a suit cannot be dismissed merely because there was misjoinder or non-joinder of parties. However, the above provision was intensely interpreted by the Court of Appeal in Abdullatif Mohamed Hamis Versus Mehboob Yusuf Osman and Fatna Mohamed, Civil Revision No. 6 of 2017, [2018] TZCA, 25 where it was stressed that non- joinder of a party will have effect where that party is a necessary party on whose absence, no executable decree could be issued. This refers to a party whose presence before the court is necessary for it to effectively and completely adjudicate upon the questions involved in the suit and in whose absence, no effective decree or order can be passed. Page 41 of 45 In the matter at hand, the Plaintiff's claim is for the Defendants' trespass into his land. In his pleadings and evidence, the Plaintiff claimed to be aware of the Defendants as the only people occupying the suit land. He explained that he made a follow up to the village seeking for them to identify to him if there were other people occupying the suit land but to no avail. He then chose to sue those who came open to claim ownership over the suit land. Each of the Defendants is claimed to occupy the suit land separately, thus, it cannot be said that the court cannot issue executable decree in the absence of any other person allegedly occupying the suit land separately. In my view, this court can evaluate evidence to see if the Plaintiff was able to establish his claim of trespass against the Defendants in this case. From the expert evidence, it is clear that all the Defendants trespassed into the Plaintiff's land to the extent so explained by the expert. Although the Plaintiff is the holder of customary right of occupancy which shows ownership of 556.27 acres, he was able to establish the case against the Defendants to the extent of the land so occupied by the Defendants and which intruded to the Plaintiff's land as per exhibit PE5 and not as claimed in his plaint. As well explained by the expert, the 1st Defendant intruded into the Plaintiff's land by 1100 square metres while the 5th Defendant intruded by 1200 square metres. The whole 50 acres of Page 42 of 45 land for the 2nd and 3rd Defendants is within the suit land while part of the 4th Defendant's land is within the Plaintiff's land. Although he was unable to name the exact size of the land intruded by the 4th Defendant, he mentioned that for the land occupied by the 4th Defendant only the camp and the land above the camp did not fall into the Plaintiff's land as per the map in the customary right of occupancy. Thus, only part of the land which is occupied by the 4th Defendant and which is covered in* the Plaintiff's map is proved by the Plaintiff against the 4th Defendant. If the Plaintiff so wishes, he can pursue an action against those other people allegedly occupying

part of the suit land. On the reliefs to parties, this court finds that the Plaintiff was unable to prove the specific damage she suffered. In his plaint, the plaintiff raised a claim for specific damage at the tune of TZS. 445,016,000/=. In his testimony, he came up with his own estimates of what was the expected revenue from cultivating the farm. He claimed that, if he had the opportunity to work in his land, he could have harvested 200 sacks of peas valued at TZS. 180 million for the period of 9 years which he did not work. There is no explanation as to why he claimed the amount of TZS. 445,016,000/= but came up with different figure when testifying in court. He also failed to demonstrate if there was any development or investment done at the suit land and the extent of that development or investment Page 43 of 45 which could yield such amount. This court therefore finds that there was no proof for specific damages for it was not strictly proved as required by the law. On the claim for general damage, this court finds that although the Plaintiff claimed that he suffered torture as he was arrested by the police from Babati who wanted his customary right of occupancy document for Kilombero farm and was detained for two days in police cell, he was unable to prove that he was detained and the Defendants were responsible for his sufferings. Apart from his oral account, no further evidence was submitted to support such allegation. However, the Plaintiff was able to prove that he is the owner of the farm specified in exhibit PE5 but he was unable to work on his farm due to Defendant's interference. Since he was able to establish that the Defendants trespassed into the suit land and denied him free access of the same, he is entitled to the general damage which is assessed by this court at Tanzanian Shillings five

- (5) million. In the upshot, this court finds that the Plaintiff was able to prove his case against the Defendants to the extent above explained. The Defendants have trespassed into the Plaintiff's land as per exhibit PE5. All the Defendants are ordered to vacate from the suit land which forms part of exhibit PE5 and they are permanently restrained from entering into the Page 44 of 45 Plaintiff's land. I further order that any building or structure constructed in the Plaintiff's land should be demolished with immediate effect. The plaintiff is also entitled against the Defendants jointly for general damages to the tune of Tanzanian Shillings five million (TZS. 5,000,000/=). Costs of this case shall be shared and paid by all the Defendants. DATED at MANYARA this 07th Day of August, 2024 Page 45 of 45

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