

**IN THE HIGH COURT OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA  
LAND CASE No. 14 OF 2012**

**MUHONI KITEGE ----- PLAINTIFF**

**VERSUS**

**DORICA KITAMARA ----- 1<sup>ST</sup> DEFENDANT**

**THE PRINCIPAL SECRETARY**

**MINISTRY OF ENERGY AND MINERALS ----- 2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL ----- 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

*29<sup>th</sup> June & 12<sup>th</sup> August, 2020*

**TIGANGA, J**

In this case, the plaintiff Muhoni Kitege, a natural person, adult and a resident of Sirori Simba village in Butiama District, Mara Region sues the defendant, namely Dorica Kitamara, also an individual natural person, adult and a resident of Sirori simba village in the same District and Region, as the 1<sup>st</sup> defendant, the Principal Secretary Ministry of Energy and Minerals, The Chief Executive Officer of the Ministry responsible for management of Minerals and related resources, the 2<sup>nd</sup> defendant, while the 3<sup>rd</sup> defendant,

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the Attorney General is a chief legal advisor and legal representative of the Government (2<sup>nd</sup> defendant) inclusive, for the following reliefs.

- i. Payment of Tshs. 3,000,000,000/= (3 billion shillings) compensation of exhausted improvements and land value.
- ii. In the alternative the plaintiff be granted Gold prospecting license to dig gold deposits from his gold deposits clan land.
- iii. That, 1<sup>st</sup> defendant gold license over plaintiff's land be revoked and or nullified.
- iv. Any other reliefs the Honourable Court will deem fit to grant.
- v. Costs be granted.

According to the plaint, the plaintiff avers that the land in dispute is estimated to be five acres, which was initially acquired by the grandparents of the plaintiff in the year 1960's under the customary deemed right of occupancy. After the death of his grandparents the land was inherited by his parents, who retained the same land in 1974 during village settlement scheme in Tanzania, and that land was being used all the time for cultivation, cattle raring and water service as the land has a water well.

The complaint was that in the year 2011, on 24<sup>th</sup> August, the 1<sup>st</sup> defendant invaded the said five acres of land and started to mine gold deposits therefrom without the consent of the plaintiff.

The plaint further avers that following that invasion, the plaintiff protested and went to see the Mara Regional Resident Energy and Mineral Officer, who informed the plaintiff that, the 1<sup>st</sup> defendant was issued with a prospective license of mining on his land.



To his understanding, he averred that, if they really issued a license then the 1<sup>st</sup> defendant was supposed to pay him compensation for the unexhausted improvements, disturbance allowance, transport and accommodation allowance as well as loss of land profit and interest on the current land value in accordance with the provision of Land and Village Land Act.

On 30/08/2011, the 1<sup>st</sup> defendant arrived at the plaintiff suit land with a group of armed policemen, threatened and arrested some of his workmen. He avers that the 1<sup>st</sup> defendant actually committed trespass to the plaintiff's clan land that is why he sued her.

It was further his averment that, he put forward his demand but he was not listened, that is why he prepared and served 90 days statutory notice to sue but the same was ignored and or neglected hence this suit.

The plaint was served to the defendants, who filed their respective written statement of defence as follows. While the 1<sup>st</sup> defendant filed her independent defence, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed a joint written statement of defence.

In her written statement of defence, the 1<sup>st</sup> defendant avers that the plaintiff clan members did not acquire any land in 1960 as alleged. It is her averment that the plaintiff's mother shifted to Sirori Simba as a traditional healer in 1985 and she was the first family member of the plaintiff to settle in Sirori simba.



The 1<sup>st</sup> defendant avers that the plaintiff has never owned any land in Sirori simba, as a clan land under customary deemed right of occupancy. She avered that, on 18/11/1991 she was licensed by the Commissioner for Minerals in respect of the area or land which the plaintiff purports to be his, the fact which she strongly contests. She was given a claim title number 42107 in the name of the 1<sup>st</sup> defendant. Since then she has been occupying the said site and continuing with the mining activities up to 17/08/2011 when the plaintiff unlawfully trespassed into the said land and started extracting gold unlawfully.

The plaint also avers that, having been issued with that claim title, the 1<sup>st</sup> defendant transferred the same title to Sirori simba Mines Company Limited, in which the 1<sup>st</sup> defendant started to hold shares as a shareholder. Following that transfer, the Commissioner for Mineral issued those who joined to create Sirorisimba Mines Company with the Primary Mining License No. 0002728.

That the plaintiff trespassed the land and started mining, which facts led to the 1<sup>st</sup> defendant to report the matter to the regional mining authority and the police. Following that report, the police arrested the plaintiff and while the criminal case was under investigation, the plaintiff came to the High Court and filed this case with the view of pre emptying the police to continue with investigation and ultimately charge him with criminal offence.

The 1<sup>st</sup> defendant disputed all allegations in the plaint regarding the ownership of land by the plaintiff either in person or by clan. In the



alternative of his defence the 1<sup>st</sup> defendant raised the Counter Claim. In that counter claim, she insisted that she is a lawful owner and entitled to possession of Mining area with Primary Mining License number 0002728 situated at Sirorisimba village, Kiagata, Musoma Region.

Also that, mining site was unlawfully and without any colour of right trespassed to by the plaintiff in this counter claim and started Mining gold therefrom.

Also that the defendant in the Counter claim has remained there to the said land unlawfully and continued with extraction of Gold at the plaintiff's (in the counter claim) detriment.

She asks the court by way of Counter claim to give judgment against the defendant in the counter claim as follows;

- a) A declaration that the disputed land belongs exclusively to the plaintiff,
- b) An injunction to restrain the defendant in the counter claim, against himself or his agents or servant or agents or otherwise howsoever from entering or using the disputed land,
- c) The defendant to pay general damage to the plaintiff in the counter claim to the measure of which is the amount of profits that have been earned by the defendant during the time of extracting gold on the disputed land,
- d) She also prayed for costs of the suit and any further and other reliefs as the court deems fit in the circumstance.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendants' written statement of defence averred that the ownership of land does not include minerals and petroleum as mineral and petroleum has no automatic right as claimed by the plaintiff.

They averred that the ownership of the suit premises needs to be established and proved, as it is not enough for the plaintiff to allege that he owns the land through his parents and his grand parents.

They further averred that there is a proof that the 1<sup>st</sup> defendant obtained a Primary Mining license from the office of the 2<sup>nd</sup> defendant by following all the procedure and that has been proved by the 1<sup>st</sup> defendants letter to the commissioner for mineral Primary Mining license of 31/03/2000 to 30/03/2005 bearing the name of Dorica Kitamara accompanied with the payment voucher for renewal of 2006. It is also averred that be form No, MRF 13 an application form for renewal of a Primary Mining license the 1<sup>st</sup> defendant applied for renewal, which was renewed up to 07/06/2010, and this is also evidence by the re - survey form dated on 13/09/2006.

Also that there is no proof that the value of the disputed land, premises is Tshs. three billions, as the plaintiff himself or his clan has never owned that land in Sirori simba village. They averred that the amount claimed is too unsubstantiated and exaggerated.

They added that the procedure for a person to be given a mining license is not a mere claim in the court, but the person has to follow the procedures in securing the Mining license, not the declaration of the court.



They prayed therefore that the plaintiff suit be dismissed in its entirety for want of merits against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. They also asked for costs of the suit and any other relief that this Honourable court deems fit and just to grant.

The plaintiff filed a reply to the 1<sup>st</sup> defendant's written statement of defence in which he joined issue with the 1<sup>st</sup> defendant in each and every allegation contained in her written statement of defence save what consists of admission.

The reply contained the notice of preliminary objection, which by the ruling of my brother Hon. Siyani dated 17<sup>th</sup> day of October, 2018, the objection was dismissed for want of merits.

In that reply, he insisted that the land in question belongs to him after he had inherited the land from his grand parents who settled in Sirori simba in 1960's. He insisted that, the commissioner for minerals could not have registered the plaintiff clan land to the 1<sup>st</sup> defendant in 1991 without taking note that the land belonged to the plaintiff. He averred that the claim title was nothing but nullity in the circumstances of the case.

He further averred that the plaintiff being a lawful owner of the clan Land has a right to dig fold deposits from his own land. Also that, the mining license issued in 1991 was forged as it reads that it was issued on 18/11/1991 under Mining Act of 1998. He also questioned the legality and authenticity of the concocted village council minutes because; it was concocted on 15/09/2012 after this suit had been filed. According to him, the said meeting was conducted on Saturday which was not a working day,



it was by 9 village members instead of 25 members, that the village executive officer who conducted such meeting was on annual leave on 15/09/2012 how could he do official work when he was on annual leave, and that meeting did not summon the plaintiff to give him opportunity of being heard, it therefore violated the principle of natural justice by condemning him unheard.

That there are no minutes showing that the 1<sup>st</sup> defendant was allocated the land in 1991, but the minutes are those conducted in 2012. In that reply he also filed the written statement of defence to the counter claim, in which he disputed the said counter claim. It was also averred that the plaintiff in the counter claim has no right in the land owned by the defendant in the counter claim that is Muhoni Kitege.

He denied having trespassed to the said land as he is the indigenous owner of the suit land having inherited it from his clan. He said since he is the owner, he cannot commit trespass on his land. He insisted that it is the plaintiff in the counter claim Dorika Kitamara who trespassed his land.

While replying to the written statement of defence filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant, the plaintiff stated that, the land ownership is inseparable with minerals, petroleum products as one, and if the government wants to take ownership of the said land, it must compensate. Land interest, land value, unexhausted improvements, grants of alternative land as envisaged in Government Notice (Land Assessment of value of Land for compensation/regulations No. 2001, GN 78/2001 as amended from time to time.



He also averred that, the license allegedly granted to Dorica Kitamara in 2000 and 2005 was not of Sirorisimba but Naigoti, Serengeti Mugumu as Primary Mining licence No. 0000890 of the same area, not at Kyanyundo, Mtukula hamlet in Sirorisimba village and Ward in Butima District.

He in facts disputed all the annexures annexed to the written statement of defence filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. After completion of the pleadings three issues were framed, these are;

- i. Who is the rightful owner of the land in dispute?
- ii. Whether the mining license was legally granted to the 1<sup>st</sup> defendant.
- iii. To what reliefs are the parties entitled.

These issues were also adopted in respect of the counter claim raised by the 1<sup>st</sup> defendant against the plaintiff in the main suit. Throughout the trial, the plaintiff was not represented, he appeared in person, while the 1<sup>st</sup> defendant was represented by Mr. Mainde - Advocate, whilst the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were represented by Mr. Lameck Merumba - learned State Attorney from the office of Solicitor General. The plaintiff in his effort to prove his case called two witnesses and tendered two exhibits. The witnesses called are Muhoni Kitege as PW1 and Makoni Kitege as Pw2, while the exhibit are the letter written by the Region Mining Officer to the plaintiff Muhoni Kitege which was marked as Exhibit P1 while the second one is a 90 days statutory notice to sue the government which was marked as exhibit P2.



The plaintiff evidence is that, in the year 1990, his father Mzee Kitege before the family meeting declared that a land estimated to be five acres, at Sirori simba was allocated to the plaintiff. From then, the plaintiff continued to use the land as his, he was using it for farming, grazing and for water service, as it had a water well. He described the said land to be in Sirori simba village in Sirori simba Ward, in Butiama District, Mara Region. He described the border in North, South, East and West.

He said in his evidence that the land before he was given by his father, the land belonged to his parents, who also inherited that land from his grandparents who acquired that land in 1960's. He said that land has been owned by their clan for more than 60 years.

According to him, when it reached on 24/08/2011, he saw the 1<sup>st</sup> Defendant Dorica Kitamala with a lot of people who were with the mine extraction instruments, encroaching the land. When he made follow up, he was told that the 1<sup>st</sup> defendant had a mining license to extract mine from his land.

He said, he went to the Regional Mineral authority where he was given a letter with Ref. No. DA 164/164/04/43 dated 17/08/2011, which he tendered as exhibit P1 that letter was prohibiting him from mining on the area.

On 30/08/2011, the 1<sup>st</sup> defendant came with the police officers who arrested one Samwel Matiba his workman, and left with him to Musoma police station accusing him to have trespassed the said land in dispute. Following that arrest the police stopped him from mining, but when it



reached on 19/10/2011; the 1<sup>st</sup> defendant brought a lot of people to continue with mining on the said disputed land.

PW1 said he went to report the matter to the village government authority where the Village Executive Officer called the 1<sup>st</sup> defendant who told him that she was there by the order of the police and no body would stop her.

According to PW1, the Village Executive Officer wrote a letter to the OCD, who mounted investigation and realized that the plaintiff was not a trespasser, and following that findings of the police, he was advised to take the matter to court as land dispute. He said when the 1<sup>st</sup> defendant so trespassed, she uprooted the sisal fence which was customarily put by his grandparents. He complains also that the water well was also destructed. It is his evidence that after such destruction, he decided to prepare 90 days statutory notice to sue the government, which notice was admitted and marked as exhibit P2 which was served to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants before this case was filed before this court on 07/06/2012. He in the end prayed to be awarded as follows;

- i. That he be paid Tshs. 3,000,000,000/= (Three Billions as compensation of unexhausted improvement)
- ii. Disturbance allowance.
- iii. Transport allowance.
- iv. Accommodation allowance.
- v. Loss of land profit and interest.





He also prayed that the compensation should be to the current land value with the gold underneath as required by the law. Secondly that he be given the mining license, and that the 1<sup>st</sup> defendant mining license be revoked. Thirdly, he also asked the court to award any other relief as the court may deem just and equitable to grant and the costs of the suit.

On cross examination by counsel for the defence, he said he had no proof that the meeting which bequeathed him that land was held. He said, it is the government which can determine who should mine by giving him the mining license, as it is the government which owns minerals.

He also said that, though he knows the procedure of holding the license, but he has never asked the mining license and denied. He said the license was forged, he acknowledges that the 1<sup>st</sup> defendant has a license but the same is not genuine and legal. He said he has no family or clan meeting minutes in which he was given the land in dispute by his father.

PW2 supported the evidence of PW1, on the aspect that the plaintiff was given the suit land by his father. On cross examination he said he resides in Buchanchari village but he was born in Sirori simba in 1990 by the step mother of the PW1 and that the clan meeting in which the plaintiff was given such land there was no secretary or chairman of the meeting, therefore there was no any record of the meeting. That marked the plaintiff case.

The closure of the plaintiff case was followed by the defence case. Testifying for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, Aron Robinson Rutalagala pioneered as DW1. He is a mining engineer working with the commission



for mining headquarters, in the department of information technology and license whose daily duty is to issue the mineral exploration licenses.

He testified that for a person to be given license, he/she must prove that he has a mining site by mentioning that site geographically before he has been given a license. He generally told the court of the procedures to be followed in securing the license. Those procedures include proving from the local authority of the area where the minerals are to be extracted before issuing license to ascertain the ownership of the land in question on which the mining is sought to be done.

He said in their data base Mr. Muhoni Kitege has no license and has never even asked to be given a license. He said the record they have in their office is that in 1991, Dorica Kitamara the 1<sup>st</sup> defendant, asked for the license and was granted. Their record shows that in the year 2000 the 1<sup>st</sup> defendant joined other five claim title owners and established a company called Sirorisimba Mine.

When he was cross examined by the plaintiff he said he did not know whether the land is his or not as it is not his duty to know the owner of the said land. Whether there was a dispute or not, it was a matter to be tackled by the village authority. He said after the 1<sup>st</sup> defendant's license had expired, a new license in respect of that area was given to Mr. William Samson since 2017 when the license of Sirori simba Mining Company had expired. In re examination he said when they were issuing the licence they were not informed that there was a land dispute.



The other witness testified as DW2 was Solomony Agry Mwambene, a mining officer working with Mara Region Mineral Office Mining license department. He said before they process the license they must receive an application for the license and the consent of the owner of the land. He proved that the 1<sup>st</sup> defendant started to own a license since 1991.

That witnesses categorically informed the court in his evidence all the time when the 1<sup>st</sup> defendant owned the license and when the same expired and subsequent renewal of the same up to 2017 when it expired, and got granted to one William Samson after the last license of 2000 to 2017 expired.

On cross examination by the plaintiff, he said if there is a land dispute on the license plot, then the ministry of lands becomes responsible. He also said the plaintiff has never asked mining license from their office.

DW3 was Dorica Kitamara in her evidence she said in the year 1991, she asked for the mining license and started the mining on the land which she was given by the Sirori simba village authority before in 2011 when the plaintiff encroached on the land. According to her, before she was given the license, the area was occupied by one Okong'o who after finishing his activities submitted the area back to the village authority which is the owner of the plot. Therefore when she approached the village she was allocated the land as a local investor because the land was not occupied by anybody. She said after the plaintiff had invaded the land in which her mining site was, she complained to the Regional Mining officer who sent his officer to ascertain as to whether the mining site was actually



encroached. After realizing that the land was invaded the mining officer informed the police who went to the site to arrest the plaintiff but he ran away.

She said she had all the necessary documents proving that she was lawfully at the site. However most of the documents were lost, she tendered the loss report as exhibit D1. She also tendered the claim title given to her in 19991 as exhibit D2 and a letter written to Regional Mineral Officer as Exhibit D3, and a letter from the Regional Mineral Officer to the OCD Police was also tendered as exhibit D4.

She said after the letter was sent to the police, the plaintiff was arrested and charged, and it was after he was admitted to bail when he came to the High Court and filed this case.

On cross examination by the counsel for 2<sup>nd</sup> and 3<sup>rd</sup> defendant, she said that since 1991 the plaintiff or any member of his family have never complained that their land was invaded. It was in 2011 when the plaintiff trespassed and started to claim that the land is his. She said the mother of the plaintiff Nyanchage Kitege was the first family member of the plaintiff to come to Sirorisimba in 1985 when she came as a traditional healer from Serengeti District and bought a house at Sirorisimba centre.

When she was cross examined by the plaintiff, she said after the plaintiff had filed this case and had sued the Attorney General and the Principal Secretary, the government wanted to know who was the lawful owner of the plot, that is why the village authority deliberated on the issue



in the year 2012 and resolved that it was her who was recognized by the village authority as the one allocated the land by the village authority.

DW4 was Muniko Muniko a resident of Sirorisimba born in that village in 1942. He said he knew both the plaintiff and his family and the defendant as well. He said the mother of the plaintiff shifted to Sirorisimba as traditional healer in 1985, she bought a house from one Nchama and started to live in the village. He testified further that, other members of that family including the plaintiff joined her in later years before the father of the plaintiff joined them in 2013. He said all are residing on the plot purchased by his mother from Nchama and that the plaintiff has no residence/house in Sirorisimba.

He said Dorika Kitamara the 1<sup>st</sup> Defendant came as an investor in 1991 in mining activities, she was allocated land to extract gold in our village. According to him, before Monica Kitamara had asked and allocated that land, that land was of one Chandi an indian who when he left he returned the land to the village authority before the village had allocated the land to the 1<sup>st</sup> defendant. On cross examination by the plaintiff, he said the plaintiff went to their village in 2005 and that before 1985 there was no family or clan member of the plaintiff who was living in Sirori simba.

DW5 and DW6, were Nicolas Marwa and Chacha Mangamba respectively, DW5 said he is a resident of Sirorisimba and was born there and that he was a village chairman of Sirori simba since 1974 to 1986. The plaintiff or his parents were not among the residents of Sirorisimba during that time but in 1985, the mother of the plaintiff shifted to Sirori simba as



a traditional healer and bought a house at Sirorisimba center. He said no any family or clan member of the plaintiff who has ever been in occupation or ownership of the land in question before the same land was invaded by the plaintiff in 2011. He said the land was allocated to the 1<sup>st</sup> defendant, after one Okong'o had returned the land to the village authority following the expiration of his mining license. He said before 1985, the family of the plaintiff was not in Sirorisimba.

DW6 was a village executive officer since on 02/01/1993, by virtue of that position he was a justice of peace and a custodian of the village documents including the village residents register. He said the plaintiff registered himself on 22/04/1993, while his mother registered herself in 1988, but she migrated in the village in 1985, while the 1<sup>st</sup> defendant went there as an investor in 1991.

DW7 was also a Village Executive Officer who worked within that capacity in Sirori simba village from 2010 - 2012, while there, he received a complaint that the plaintiff had trespassed the land in which the 1<sup>st</sup> defendant was mining Gold, he went to the scene and asked the 1<sup>st</sup> defendant to show her license, while the plaintiff said he inherited the land from his grandfather. He tendered the village council special meeting resolution which sat to discuss the dispute, as exhibit D5, his evidence was similar to those of other defence witnesses in as far as the land ownership is concerned.

The evidence in the counter claim in which the plaintiff in that counter claim called only one witness Dorica Kitamara herself, while



defence also called one witness Muhoni Kitege himself. Their evidence is in every respect similar to those in the main case, they are actually adopted for the purpose of brevity and avoiding unnecessary repetition.

That marked the hearing of the case, parties opted not to make final closing submissions, they just asked this court to compose and deliver its judgment basing on the evidence adduced. In this judgment this court will be guided by the issues framed. Starting with the issue of who is the lawful owner of the land.

This issue, was deliberated upon by both parties while the plaintiff claim to be the owner of the land after he has inherited it from his parents, who also inherited it from the plaintiffs' grand parents, who owned the land since 1960's, the defence disputes that allegation on the ground that the family of the plaintiff has never been in Sirorisimba before 1985. That has been proved by the evidence of DW4, DW5, DW6 and DW7 who prove that the family of the plaintiff were not there before 1985 that means his grandfather cannot have acquired land in 1960 without being the villager of Sirori simba.

Among those who gave such proof is DW5 who was a village chairman from 1974 to 1986, he proved that it was in the year 1985 when the mother of the plaintiff came to Sirorisimba as the first family member of the plaintiff. Over and above his evidence, DW6 also said he was a Village Executive Officer since 02/02/1993 and that the plaintiff's mother and the plaintiff registered their residentsip in 1988 and 1993



respectively, that being the case, it can safely be concluded that the before that year they were not the residents of the Sirori simba village.

The plaintiff's evidence on the issue of ownership of land bases on the fact that he inherited the land from his parents who also inherited the same from their parents; he therefore had the duty to prove that he owns the land.

Section 110 of the Evidence Act (Cap 6 RE 2019) provides that whoever desires the court to give judgment as to any legal right or liability dependent on the existence of the facts which he assert must prove that those facts exist.

Section 111 provides that the burden of proof in a suit proceedings (like this) lies on the person who would fail if no evidence at all were given on either side. The standard of proof in Civil cases is provided under section 3 (2) (b) of the same Evidence Act, which is by the preponderance of probability.

These provisions have been interpreted by The Court of Appeal of Tanzania in the case of **Godfrey Sayi Vs. Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2012 unreported held *inter alia* that;

*"It is trite law that the evidential burden lies upon the party who desires for the Court to give judgment. It is similarly common knowledge that in civil proceedings, the party with*

*legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities.*

In addressing a similar scenario on who bears the evidential burden in civil cases, the Court of Appeal in yet another case of **Anthony M. Masanga Vs Penina (Mama Mgesi) and Another**, Civil Appeal No. 118 of 2014 (Unreported), cited with approval the case of **In Re B** [2008] UKHL 35, where Lord Hoffman in defining the term balance of probabilities states that:

*"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned to and the fact is treated as having happened."*

It is thus upon the plaintiff to establish its case on the balance of probabilities (See Section 3 of the Evidence Act, Cap. 6) that he owns the land in question by producing concrete proof that he actually owns the land by either inheriting or purchasing as against others including the defendant.



Now weighing the evidence of the plaintiff and that of the defence, it goes without saying that the plaintiff has failed to establish the ownership of land. Further to that the 1<sup>st</sup> defendant has been categorical that his title is that of tenancy that she was allocated by Sirori simba village as an investor to extract minerals, that being the case she cannot be said to be the legal owner, but the contractual owner, the ownership arrangement remaining with the village, and hers is to the extent of her agreement with village government authority. The first issue is therefore resolved to that effect.

Regarding the second issue as to whether the 1<sup>st</sup> defendant was properly and procedurally issued with the mining license

This issue is resolvable by using the evidence of DW1 and DW2. These are officers from the respective department dealing with the grant regulation of mining licenses. DW1 is an officer from the headquarter of the office of Commissioner for Minerals, who in his evidence categorically narrated the procedures used to issue the license, he also said that in their database, the 1<sup>st</sup> defendant was legally issued with the license, tracing from 1991 when she was so issued for the first time, up to 2017 when the license expired. DW2 is working in the Regional Mineral office –Mara in the license issuing department; he also proved before this court that the 1<sup>st</sup> defendant was properly issued with the license.

As these two officers coming from offices which have exclusive domain of powers and functions of issuing and regulating the mineral

extraction or exploration license in the country, have proved to that effect, then there is no base for not believing them. That being the position then the second issue is resolved in the affirmative that the 1<sup>st</sup> defendant was procedurally issued the license.

On the last issue of what reliefs are parties entitled to. It has already been resolved that the land in question belongs to the 1<sup>st</sup> defendant to the extent of her agreement between her and the village authority. That being the position, then it is justified to hold and order that;

- (i) The suit has failed while the counter claim has succeeded,
- (ii) The plaintiff should be restrained, himself, his agent, workmen's, servants or otherwise whoever acting under his instruction from interring or using the disputed land.
- (iii) If he is still in, then he be evicted from that land with immediate effect.
- (iv) Regarding the claim of general damages or compensation by the plaintiff, him being a trespasser, he is not entitled to any compensation or damages as he claimed.
- (v) While on the other hand, the 1<sup>st</sup> defendant has proved to have the better title in the land, but having not told the court how much she was earning per month, this court remains to be guided by the circumstances rather than the reality. I thus award Tshs. 10,000,000/= (ten millions) to be paid by the plaintiff to the 1<sup>st</sup> defendant as a general damage for loss or suffering caused by the plaintiff.



- (vi) The plaintiff in the main case is also condemned to pay costs of the suit to all defendants.

It is so ordered.

**DATED at MWANZA, this 12<sup>th</sup> day of August 2020**

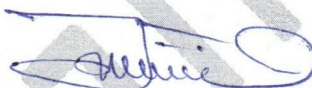


**J. C. Tiganga**

**Judge**

**12/08/2020**

Judgment delivered in open chambers in the presence of the parties.  
Right of appeal explained and guaranteed.



**J. C. Tiganga**

**Judge**

**12/08/2020**