

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MOROGORO)**

**AT MOROGORO**

**CIVIL CASE NO. 5 OF 2022**

**NAHEDI UKILE CHENGULA .....PLAINTIFF**

**VERSUS**

**HALMASHAURI YA KIJIKI CHA MSHIKAMANO.....1<sup>ST</sup> DEFENDANT**

**DISTRICT EXECUTIVE DIRECTOR OF KILOMBERO....2<sup>ND</sup> DEFENDANT**

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

**TANZANIA ELECTRICITY SUPPLY COMPANY**

**(TANESCO).....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

*Hearing date on: 14/9/2022*

*Judgement date on: 02/11/2022*

**NGWEMBE, J:**

This suit traces its cause of action in year 2021 at Mshikamano village, Mang'ula B, within Ifakara District in Morogoro region, whereby the plaintiff is claiming among others payment of compensation of TZS. 20,000,000/=, as specific damages and TZS. 10,000,000/= as general damages forming an aggregate of TZS. 30,000,000/=. Such claims arose from the alleged invasion and cutting down of nine (9) timber trees (Misederea) of eleven (11) years old, and sugar cane in his farm. The culprit who actualized that destruction was the 4<sup>th</sup> defendant through

authorization of the office of 1<sup>st</sup> defendant. Also, he claimed for interest at court's rate from the date of judgement to the final payment, costs of the suit. All the defendant denied the allegations with a prayer that the reliefs sought by the plaintiff be dismissed forthwith with cost for they are baseless.

Both parties were represented by learned counsels. The plaintiff was represented by learned advocates Upendo Mtebe and Hassan Nchimbi while the defence side had the legal services of learned Senior State Attorney Mr. Ndalaha.

In proving his case, the plaintiff lined up four (4) witnesses, while the defendant had three (3) witnesses. The witnesses for the plaintiff were proving and the witness for the defendants were disproving two issues namely:

1. Whether the removing of the plaintiff's trees was justified; and
2. What reliefs are the parties entitled to.

Now I wish just briefly, narrate the evidence of each witness as follows. The first prosecution witness Mr. Nahed Ukile Chengula (PW1), testified in court that he is staying at Mangúla Mwaya in Kilombero District within Morogoro region since 1980, and that his major activity is cultivation of sugar cane and planting trees. In the village of Mshikamo, he has a farm which he bought in year 1990.

Testified further that on 4<sup>th</sup> October 2021, the village council of Mshikamano and TANESCO did cut nine (9) planted trees (Misederea) of eleven (11) years old and his sugar cane field of six (6) metres wide and one hundred and twenty (120) metres in length and after such

destruction they planted four (4) electricity poles. He further testified that; those trees may take up to twenty (20) years before they are ready for harvest. The destroyed cane field area yielded two Million (2,000,000/=) annually. Moreover, he testified that he saw TANESCO workmen digging holes for the poles, he reported the matter to police, but they did not respond as expected. Thus, decided to go to Human Rights Centre for legal assistance. Later he wrote a letter to the Director of Ifakara Township. The ninety (90) days' notice to the Government was issued and same was successfully tendered in court and rightly admitted as exhibit P1. Finally, PW1 prayed for compensation due to that destruction of his crops and costs.

In cross – examination, he testified that, he did not attend meetings of Mshikamano Village unless he is informed and that the distance from his village to Mshikamano Village is three (3) Kilometres. On price of those trees and sugarcane, he testified that the expected value for each tree is four Million and for sugar cane is 2,000,000/= but he only claims 30,000,000/=.

The second witness Raphael Nael Chengula (PW2) had brief evidences that on 4<sup>th</sup> October, 2021 he witnessed TANESCO workmen and villagers cutting down trees and sugar cane in his father's farm and digging holes for electricity poles. He further testified that he informed his father of the same who came to the farm and asked them why they were destroying his crops and they told him, to ask the village council. They also took initiative to report the matter to Mangúla Police station, but were told to ask TANESCO officials.



On cross examination he testified that by now there is electricity wires crossing his father's farm to the rice milling machine.

The third prosecution witness was William Shimba, who testified that on 4<sup>th</sup> October, 2021 while in his legal aid office at Mangúla, PW1 accompanied by PW2 came to his office seeking for legal assistance on the destruction of PW1's trees and sugarcane. To verify such allegations, visited that farm where he witnessed the destruction. He further testified that on 6<sup>th</sup> October, 2021 he wrote a letter to TANESCO office at Kidatu in respect of the matter, but no answer from TANESCO, though the Manager orally responded that TANESCO has no land, it belonged to the village.

Proceeded to testify that, on 20<sup>th</sup> November, 2021 PW1 approached him for further assistance to make follow up. In turn he wrote another letter to the Director of Ifakara Township for valuation of those trees and sugar cane. The letter was tendered and admitted in court marked exhibit P2. However, the Director never responded to his letter. Thereafter he advised PW1 to seek court redress.

On cross examination PW3 testified that, the resolution of the village may be by majority and on the valuation, he testified that it was not conducted, but the estimated value of those properties was TZS 30,000,000/=

The last witness for the prosecution was Mr. Nuldin Issaya Jasho who stated that, he knows PW1 and that he owns a farm at Mshikamano village. That PW1 told him of the destruction of his properties, thus he went to the scene and witnessed TANESCO workers cutting down trees and putting electricity polls. That he asked them, but they responded

that they were authorized by Mshikamano village council. PW4 testified further that he went to Mshikamano village councillor Mr. Kiwanga, who replied that it is a development of the village. On 8<sup>th</sup> October 2021 again he met with Mr. Kiwanga and advised him to settle the matter with PW1, but was warned to stop following that matter anymore.

After closure of the plaintiff's case, the defendants were called upon to defend on those allegations.

The first defence witness (DW1) was Mr. Ibrahim Habib Yagala who testified that, he is a member of Mshikamano Village Council. That when the village call meeting and passes a resolution that resolution must be executed. He stressed that in year 2019 they decided to have electricity in the village. On 4<sup>th</sup> May, 2019 the village held a meeting where they resolved to install electricity. He tendered the minutes of that meeting which was admitted, marked exhibit D1.

He further testified that, after the meeting, they wrote a letter to TANESCO which letter was replied on 10<sup>th</sup> May, 2019. Such letter was tendered and admitted as exhibit D2. Moreover, he submitted that the process of distributing the electricity commenced and they used every reasonable effort not to destroy any temporary crops. However, he admitted that, more than 500 trees were cut down to allow electricity polls to pass through. Thus, installation of electricity was effected in many houses including secondary schools and other institutions. Even now TANESCO continues with installations to other houses, he emphasized.

DW1 added that several businesses are continuing due to availability of electricity. Strongly testified that the village council has



never been sued following distribution of that electricity in that village. That was the first case, he admitted that, the village did cut down nine (9) trees of the plaintiff to allow distribution of the electricity wire and that the plaintiff's claims are unfounded.

On cross examination DW1 testified that he did not know if the plaintiff had a farm in their village, also they did not inform the plaintiff that electric poles will be installed through his farm and that PW1 did not attend the village meeting of 4<sup>th</sup> May 2019.

DW2 a TANESCO worker at Kilombero testified that, their duties are to distribute electricity to whoever is in need of the service and that the process of requesting for electricity is to write a letter to them, asking for the distribution of electricity. TANESCO has to assure that, there is a passage for their poles and that they cooperate with villagers who have land and crops.

Moreover, he testified that, they received a request from Mshikamano village and as of now they have already installed 110 poles, out of which only 7 poles are yet to have electricity wire. He tendered the application letter from Mshikamano village, which was admitted and marked exhibit D3. He concluded that, the plaintiff's case is unmerited because TANESCO executed the requirements of the villagers, therefore TANESCO is wrongly joined.

On cross examination, he testified that TANESCO do not pay compensation because they have no land and he did no know the amount claimed by the plaintiff.



The last defense witness was Mr. Mohamed Said Ngwila who testified that he is living at Mshikamano village since 1974. The village meeting is conveyed through assembly call "kupiga la mgambo" and the whole village meet, discuss and agree. One of the meetings was in respect to installation of electricity, which he personally attended and the village wrote a letter to TANESCO to provide the same in their village. DW3 testified that, the villagers agreed to waive their right to compensation in the whole process and to whoever will be affected. Even those villagers participated in cutting down several trees and crops to allow passage of electricity by volunteering. Even himself was also affected by cutting down his four (4) trees.

On cross examination, he testified that the plaintiff is not known to him and he is not among the villagers of Mshikamano and he is not registered in the village registration book.

Having summarized evidences of both parties, what remains is to analyse those evidences and link up with the agreed issues. The first issue being whether the removing of the plaintiff's tress was justified.

From the evidence of both sides, it is undisputed that, the plaintiff owns a farm land at Mshikamano village, and that nine trees and some sugarcane field measuring six (6) metres wide and one hundred and twenty (120) metres length were removed by the defendants. Despite the fact that, DW3 strongly denied to know the plaintiff's farm land at Mshikamano and that PW1 is not a villager because he is not registered as such, it is undisputed fact that his trees and some sugarcanes were removed in the course of electrification of that Village.



DW1 being a member of Mshikamano village council, admitted that the village did cut nine trees of the plaintiff to allow distribution of electricity following the resolution held on 4<sup>th</sup> May, 2019. The Village meeting resolved to install electricity in the whole village as such there was no doubt some trees and other crops were cut down. According to the testimony of DW2, the village agreed to have no compensation to any villager who will be affected by that project, the testimony of DW2 is backed up with exhibit D1 (Mshikamano Village meeting minutes of 4<sup>th</sup> May, 2019) which in page 3 last paragraph resolved:-

*"Na hakuna malipo ya fidia ya uharibifu wowote utakao fanywa na serikari kwa haya ni maazimio yetu."*

From the above quotation, the village meeting resolved that no one will be compensated for any destruction as a result of that project of electrification in their village. Consequently, the office of Mshikamano village wrote a letter to TANESCO dated 6<sup>th</sup> May, 2019 requesting for electrification insisting that no one shall be compensated for neither land nor crops. The second paragraph stated that: -

*"Pia tulikubaliana kwamba katika kazi ya kusambaza umeme, hakutakuwa na fidia ya maeneo na mazao yatakayo athirika na atakayepingana na maazimio haya atahesabika kama mpinga maendeleo ya Kijiji chetu"*


The question to ask is whether such resolution arrived by the Village meeting binds even those who did not participate in that meeting? Whether such resolution justified them to cut down nine (9) trees and sugarcane of the plaintiff?



Prior to answering the above questions, from the outset, the real question is conflict between public interest against individual interest or private interest. The whole villagers of Mshikamano wanted electricity in their houses and public institutions. The resolution meted at their village meeting were right that they were in need of electricity even in the costs of individual properties. The law is settled in this point, that when there is a conflict between the individual interest as against public interest, always the public interest takes precedence.

According to various decided cases of this court and Court of Appeal, the term "public interest" must include a purpose, that is to say an aim or object in which the ***general interest of the community is concerned or involved, as opposed to the particular interest of individuals or institutions.*** This was so defined by the Court of Appeal in **THE ATTORNEY GENERAL VERSUS SISI ENTERPRISES LTD** [2006] TLR.9, at Pg 14.

The Court of Appeal in the above case deeply considered the meaning of "Public interest" by making reference to many precedents and books including **In Stroud's Judicial Dictionary (5<sup>th</sup> Edition, Vol. 4)**, which defined "public interest" to mean: "*.....a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.*" In **Black's Law Dictionary**, (7<sup>th</sup> Edition by Bryan A. Garner), "public interest" means: - "*The general welfare of the public that warrants recognition and protection. Something in which the public as a whole has a stake...*"



In the above definition of "public interest" I am settled in my mind that the villagers in so deciding had common stake or common

interest. Despite the side effect of an individual to wherever those electricity wires and electric poles passed, yet all volunteered and sacrificed their time and properties to electrify their village. Thus, public interest of that community/village.

Considering the evidences adduced by both sides, the issue of land acquisition did not arise. Neither TANESCO nor the village acquired land of whoever in the process of electrification of their village. Therefore, the plaintiff's land was not acquired by either TANESCO or the Village Council. However, both TANESCO and the Village council of Mshikamano interfered with plaintiff's land for installing electric poles for the purpose of distributing electricity to the villagers. Such act has limited the ability of the plaintiff to utilize his land in full, for example he cannot plant trees in areas where electric wires have crossed in his farm.

Such fact was testified by DW3 and I am in agreement with him that supply of electricity is good for the development of the village, but in the process, the plaintiff was affected as explained above for four (4) electric poles were installed in his farm and he was not invited to the village meeting which passed such resolution.

According to the testimonies of the defendants' witnesses, the plaintiff seemed to be a stranger to Mshikamano village. However, the plaintiff's witnesses were very particular that evidenced that the plaintiff owned a farm land at Mshikamano since 1990. The fact that the plaintiff is living in another village does not prohibit him to own farm land in Mshikamano village.



Clearly evidenced that the plaintiff for all those years did not register at Mshikamano village where his farm is located. Thus, he was not invited and never attended any village meeting including that of 4<sup>th</sup> May, 2019 as evidenced in exhibit D1.

That being the case, the resolution passed by the village meeting held on 4<sup>th</sup> May, 2019, unfortunate the plaintiff was not aware of. According to the defendants, the cutting down of those 9 trees and some sugar cane was justified. Though the plaintiff had different evidence all together. He claimed for his trees that were cut down unlawfully and the defendants disturbed his sugar cane illegally. In other words, he never consented to pass electricity along his farm land and the resolution passed by the Village meeting had nothing to do with him and his properties.

I would therefore, conclude the first issue that the cutting down of the plaintiff's nine (9) trees was, at one hand justified to allow electrification of Mshikamano Village, but the village council of Mshikamano acted unreasonably by not informing the owner on the program for him to consent felling down his trees and some sugar cane.

The second issue is on reliefs. While the Plaintiff in his plaint prayed for special damages to the tune of Twenty Million (TZS 20,000,000/=) only for destruction of his plantations in his land, and Ten Million (TZS 10,000,000/=) as general damages plus interest at court's rate from the date of judgement to the final payment and costs of the suit. Yet the defendants stood firm to oppose every allegation.

Undoubtedly, specific damages must be pleaded and strictly proved as was decided in the case of **Stanbic Tanzania Ltd vs.**



**Abercrombie & Kent (T) Ltd, Civil Appeal No. 21 of 2001 at page 7 & 8** where the court held that *"specific damages must be proved specifically and strictly"*. Also, in the case of **Zuberi Augustine Vs. Anicent Mugabe (1992) T.L.R 137** court held *"it is trite law and we need not cite any authority, that special damages must be specifically pleaded and proved"*

In proving his specific claims of TZS 20,000,000/= the plaintiff testified that, I quote; -

*"The expected value for each tree is four Million (4,000,000/=) hence makes sum of TZS 36,000,000/= for nine trees and for sugar cane is 2,000,000/= but he only claims 30,000,000/="*

In the case of **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu Civil Appeal No.87 of 2020** this Court, expressed what does special damages entail as I quote hereunder: -

*"Special damages are such loss as will not be presumed by law. They are special expenses incurred or monies actually lost. For example, the expenses which a plaintiff or a party has actually incurred up to the date of the hearing are all styled as special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc... Unlike general damages, a claim for special damages should be specifically pleaded, particularized and proved. I call them three P's."*

Regarding the specific compensation, the plaintiff in this case did not produce Valuation Report to support the alleged claim of

compensation. In the absence of such report which would guide the court in determining the real value of those trees and sugar cane, it cannot be said that the plaintiff has established specific damages.

As far as our jurisdiction is concerned specific claims are not determined by expected value mentioned by the plaintiff, but as specified by evidences as specifically pleaded and proved. Unfortunate in the whole evidences of the plaintiff failed to discharge the duty, hence this court cannot award compensation of TZS. 20,000,000/=

Regarding general damages, as rightly observed in the case of **Fastjet Airlines LTD Vs. John Mnaku Mhozya, Civil Appeal No. 96 of 2016** (Unreported) the court held: -

*"General damages must be direct, natural or probable consequences of the action complained. It must aim to put the suffered person in the same position as if he has not been sustained any injury. It must deserve and /or match with the substantial damages"*

The plaintiff proved that his 9 trees and sugarcane field parcel measuring six (6) metres wide and one hundred and twenty (120) metres length were either cut down or disturbed or destroyed by the defendants in the activities of electrification of their village. Based on the available evidences, no doubt the plaintiff sustained some losses of his properties, but he contributed to that loss for his inaction. As I noted herein above, he owned such land in Mshikamano village, but neglected to register in that village so that he can be known therein. Thus, failed to know the programs of that village.



As such and without labouring much on this issue, I find justice will be done and seen to be done, if the plaintiff is awarded token of general damages for whatever disturbances he sustained in his farm. A compensation of general damages of TZS. 2,000,000/= is satisfactory in the circumstances of this suit. Such damages is payable to the plaintiff by the Village Council of Mshikamano. Each party to bear his own costs.

**It is so ordered.**

DATED at Morogoro in Chambers this 02<sup>nd</sup> day of November, 2022.



A handwritten signature in blue ink, appearing to be "P.J. NGWEMBE".

**P.J. NGWEMBE**

**JUDGE**

**02/11/2022**

**Court:** Judgment delivered at Morogoro in Chambers on this 2<sup>nd</sup> day of November, 2022, **Before Hon. J.B. Manyama, AG/DR** in the absence for the Plaintiff and in the presence of Mr. Ndalaha, Senior State Attorney for the Defendants.

**Right to appeal to the Court of Appeal explained.**

**SGD. HON. J.B. MANYAMA**  
**AG/DEPUTY REGISTRAR**

**02/11/2022**

I Certify that this is a true and correct copy of the original
A handwritten signature in blue ink, appearing to be "J.B. MANYAMA".
Deputy Registrar
Date 2/11/2022 at Morogoro