

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**MISCELLLENEOUS CIVIL APPLICATION No. 4 of 2022**

**In the Matter of an Application for Leave to apply for orders of Declaration that the order of the Government Notice No. 597 of 7/10/2022 and the relied land use program implementing by-laws for Olpopong village of 2019 are ultra-vires. Certiorari to quash the order together with any by-law and administrative program relied upon. And Mandamus to the Respondents to follow the law in coordinating, capacitating and making of the land use program and by laws of Olpopong village in Kiteto District.**

**And**

**In The Matter for Application for Judicial Review to Challenge G.N. No. 597  
Of 7<sup>th</sup> Day of October 2022**

**And**

**In The Matter Grazing Land and Animal Feed Resources Act, No. 13 Of  
2010**

**And**

**In The Matter of Village Land Act Cap 114 R.E. 2019**

**And**

**In The Matter of Land Use Planning Act No. 6 Of 2007**

**And**

**In The Matter of Land Use Program Implementing By-Laws for Olpopong  
Village Of 2019**

**And**

**In The Matter of Kimbo Grazing, And Land Use Program Of 2019-2026 For  
Olpopong Village, Njoro Ward, Orbobote Division, Kiteto District, Manyara  
Region**

**BETWEEN**

**ISAYA YAKOBO AND 801 OTHERS.....APPLICANTS**

**VERSUS**

<b>OLPOPONG VILLAGE COUNCIL.....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>KITETO DISTRICT COUNCIL.....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>NATIONAL LAND USE PLANNING COMMISSION .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>THE HONOURABLE ATTORNEY GENERAL.....</b>	<b>4<sup>TH</sup> RESPONDENT</b>

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**RULING**

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**29/12/2022**

**BARTHY, J.**

The applicants preferred the instant application under **Section 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R.E 2019], Rule 5 of the Law Reform (Fatal Accidents and Miscellaneous Provisions (Judicial Review Procedure and Fees) Rules, 2014**. The gist of the application is as hereunder;

*The applicants may be heard on an application for leave to file judicial review in favour of the following writs;*

*a) Declaration that,*



- i. *The Kimbo grazing program, AND the Land Use program of 2019-2026 for Olopopong'i village, Njoro ward, Orborote Division, Kiteto District, Manyara Region were imposed contrary to law.*
  - ii. *That, the Olpopong land use program implementing by-laws of 2019 as attached to the said Olpopong land use program of 2019-2016 is ULTRA-VIRES and invalid.*
  - iii. *That, the order of the government notice no. 597 of 07/10/2022 declaring applicant's land to be grazing land, relying on the KIMBO grazing program, and or relying on the Land Use program of 2019 of 2019-2026 for the said Olpopong village, was made and gazetted PER INCURIUM.*
- b) *Certiorari to quash,*
- i. *The illegal and illegitimate KIMBO GRAZING PROGRAM and the Olpopong village Land Use program of 2019-2016*
  - ii. *To quash the Olpopong land use program implementing by-laws of 2019 attached to the program for want of validity.*
  - iii. *To quash the government notice no. 597 of 07/10/2022 declaring Applicant's agricultural land to be grazing area under KIMBO program.*
- c) *Mandamus to order*
- i. *The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, to follow the test and dictate of the law in coordinating, capacitating and making of the land use Program for the said Alpopong'i village and to always consider the legal advice given by the 4<sup>th</sup> Respondent whenever they engage administrative programs affecting legal or constitutional rights of the people.*

In order to appreciate well this application, the brief background albeit brief is such that, the applicants are part of the villagers dealing with agriculture farming and pastoralism in Olpopong village of Njoro ward, Orborote Division, Kiteto District, Manyara Region.

As they were preparing their farms, on 07/10/2022 they learned through the Government Notice No. 597 of 2022 that part of their land has been gazetted and declared to be the grazing area under KIMBO program.

Following the notice, and the decision that led to the same, the applicants are before this court seeking for leave to file for application for leave judicial review to challenge the same.

During hearing, the applicants enjoyed the services of Mr. Moses John Basila, learned counsel. The fourth respondent the Hon. Attorney General was served with the summons to appear and the proof of the service was tendered before the court.

Being mindful of the provision of section 18(2) of Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 R.E 2019] the court heard the application ex-parte.

During the hearing the application for leave to file judicial review, Mr. Basila prayed to this court to adopt the statement of facts, affidavit of the applicants' counsel and annexures to be part of his submission.

It was submitted by Mr. Basila that, the 802 applicants are the villagers in Olpopong village at Njoro ward, of Orbotote division of Kiteto district within manyara region. The applicants are farmers who depend on farming and each of them has the piece of land in the said village where they were doing farming.



He further submitted that, on 7<sup>th</sup> of October 2022 through the Government Notice No. 597 of 2022, it declared 24,790 acres of those farmers to be the grazing pastoral area.

He contended that, the notice is made under s. 16(2) of **Grazing Land and Animal Feed Resources Act No. 13 of 2020**. The said law had amended section 51 in the year 2020 vide Written Laws Miscellaneous Amendment No. 2 of 2020, which empowered the Village Council to to change land use of certain areas.

It was further submitted by Mr. Basila that, the applicants were not involved in the action plans of the village, as the meeting minutes used in the said programme were of the Lerge village as seen annexures accompanying the application.

He added that, no village assembly was not involved, or the village council. He contended that, the notice was passed when the applicants had already prepared their farms but now they cannot cultivate.

In addition to that, Mr. Basila contended, the G.N. was gazetted on 7/10/2022, therefore, the application for leave has been made within time for it to be considered.

To conclude, Mr. Basila argued that government was misled to have passed the said law. The applicants therefore are seeking for leave for judicial review as the means of acquiring their land was not conventional as the villagers were not involved.

Having in mind the submission made by the counsel for the applicants with respect to the application, this court finds the only issue for determination is;



Whether the application for judicial review has the merit.

The application for judicial review is not an automatic right. One should first seek for leave to file for judicial review. In so doing, the applicant has to meet the conditions set in the case of **Emma Bayo vs The Minister of Labour and Youth Development and Others**, Civil Appeal No. 77 of 2012 where the Court of Appeal of Tanzania at Arusha, where the court among other things held that;

- i. whether the applicant has made out any arguable case;*
- ii. whether the application is within the six months limitation period allowed to seek a judicial review of the decision of a tribunal subordinate to the High court;*
- iii. that the applicant has to show that he/she has sufficient interest to be allowed to bring the main application.*

In determining the first condition set, the court need to ascertain at to whether the applicants have made any arguable case. On this principle, the applicants have the duty to establish that the decision, action or omission made was succumbed with the **illegality, irrationality or Procedural impropriety**.

Gathering from the documents in support of this application and the submission made by the applicants' counsel, it desired this court to find Government Notice No. 597 of 2022 gazetted on 7<sup>th</sup> of October 2022 to declare 24,790 acres of the applicants to be the grazing pastoral area under KIMBO program is faced with procedural impropriety and illegality.

It was submitted that, Olpopong villagers including the applicants were not involved in the process of acquiring the said land as there was no



general meeting or counsel meeting convened to discuss on the change of use of the land which was used for cultivation by the farmers.

In this application there are claim that the Government Notice was passed without following the guidelines which required participatory land use programme and not imposition of land use. The applicants claim the Government Notice No. 597 of 2022 was invalid and ultra vires.

On this condition the court is satisfied that the applicants have arguable case that need to be considered for application for judicial review to be granted.

The second condition requires the court to ascertain if the application for judicial review has been made within six months' time frame. On this ground Mr. Basila stated that, the Government Notice No. 597 of 2022 was gazetted on 07/10/2022 to make part of Olpopong village land to be the grazing area under KIMBO program.

From the time the Government Notice was gazetted to the time the application for leave to file judicial review has been lodged, the six months period has not lapsed.

As provided under rule 6 of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 (the Rules) the application is therefore within time.

In the last condition, the applicants have to show that they have sufficient interest to be allowed to bring the main application. On this ground, Mr. Basila had argued that the applicants were all villagers of Olpopong village, Njoro ward, Orbobote division of Kiteto district within Manyara region. The applicants are claiming to have personal interest on

the land which was declared to be grazing land under KIMBO program vide Government Notice No. 597 of 2022.

The rationale behind this condition is to ensure that court process is not abused. The court therefore has to be satisfied that the applicant has the interest over the matter and should the leave be granted, the applicants will be the one to pursue the application for judicial review.

This court had stated in the case **Pavisa Enterprises v. The Minister for Labour, Youth, Development and sports & Another, Misc. Civil Cause No. 65 of 2003, High Court of Dar es Salaam (unreported)**, that the applicant is required to show sufficient interest in that decision to which the application relates and to what extent he has been affected with such a decision to be impugned.

In light of the above contention, the applicants' counsel had claimed the applicants were the farmers/ agriculturalist who have already prepared their farms for this season cultivation now curtailed to cultivate their lands.

Again Mr. Basila had argued that the applicants including other villagers were not involved in that decision which was passed to designate their land to become grazing area. As the government was misled in passing the said Government Notice No. 597 of 2022 and the minutes used for reference involved another village.

Among the annexures attached with the affidavit in support of the application is Subsidiary Legislation to the Gazette of the United Republic of Tanzania No.39. Vol.103 dated 7<sup>th</sup> October, 2022 titling;

*"TANGAZO LA SERIKALI NA. 597 imetangazwa tarehe 07/10/2022 MAENEO YA MALISHO NA RASILIMALI ZA VYAKULA VYA WANYAMA (SURA YA 180)*





\_\_\_\_\_ AMRI \_\_\_\_\_ (Imetengenezwa chini ya kifungu cha 16(2))  
\_\_\_\_\_ NOTISI YA MAENEO YA MALISHO NA RASILIMALI ZA VYAKULA  
VYA WANYAMA (MAENEO YA MALISHO YALIYOTENGWA, KUPIMWA NA  
KUTANGAZWA) 2022."

On the Schedule to the said Government Notice No. 597 of 2022 there is the list of the designated areas for pastoralism. On page 7 it has declared the areas within Kiteto district of Manyara region to be designated for pastoralism.

Designated areas include; Allole for villages of Imei, Loorela, Lembapuli, Lesoit, and for Napalai, KIMBO for villages of Orpopongi, Mbigiri and Kimana. It is clear that, part of the applicants' village land is designated to pastoral area.

I am of the view that the applicants have sufficient interest in the subject matter of complaint. As the applicants have demonstrated that they have a prima facie arguable case. It is clear from the affidavits and supporting documents that the applicants' interest arises from Government Notice No. 597 of 2022 and the supporting village documents that led to notice.

It suffices to say that, having considered this application and made a due regard to the pre-conditions set; the court therefore is satisfied that the application has the merit and leave to file application for judicial review is therefore granted.

The applicants to file the application for judicial review within 14 days from the date of this decision as provided for under rule 8 (1) (b) of the Rules. No order as to costs.

It is so ordered.



**DATED** at **Babati** this 29<sup>th</sup> December, 2022.



**G.N. BARTHY**  
**JUDGE**  
**29/12/2022**

Delivered on 29<sup>th</sup> of December 2022 in the presence of one applicant, Mr. Moses John Basila the counsel for all applicants and in the absence of the respondents.