

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPLICATION No. 104 OF 2021

(Arising from the High Court (Musoma District Registry) in Consolidated Land Cases Appeal No. 9 & 13 of 2021 originating from the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 167 of 2016)

JOSEPH JACOB KAHUNGWA APPLICANT

Versus

- 1. RHOBI KIKARO**
- 2. SELEMAN SALUM**
- 3. WATAIGO MWITA MGAYA**
- 4. MAGAMBO MWITA MAHARAGE**
- 5. ADAM MBUSURO WAHAME**
- 6. MUHOCHI MARWA**
- 7. KASAWA KISUNTE**
- 8. RHOBI SEBASTIAN**

..... **RESPONDENTS**

RULING

31.05.2022 & 31.05.2022

Mtulya, J.:

The enactment in section 4 (1) of the **Land Acquisition Act** [Cap 118 R.E. 2019] (the Act) was cited and became the subject of contest today afternoon in this court in an application for leave to access the Court of Appeal. The citation was displayed by learned counsel, Mr. Venance Kibulika, learned counsel for Mr. Joseph Jacob Kahungwa (the applicant) to persuade this court to decide in favour of the leave to challenge the judgment of this court in the

Consolidated Land Cases Appeal No. 9 & 13 of 2021 (the appeal) decided on 12th November 2021, between the applicant and Mr. Rhobi Kikaro & seven others persons (the respondents).

The citation of the section was supported by an argument produced by Mr. Kibulika. In his submission in support of the application, he stated that the judgment of this court cited and relied on the provision of section 4(1) of the Act to justify compensation to the respondents and finally decided the appeal in favour of the respondents while the matter is regulated by the **Mining Act** [Cap. 123 R.E. 2019] (the Mining Act).

According to Mr. Kibulika the Act regulates lands acquired for public interest or public purposes and not for individual persons as the applicant. In support of this application, Mr. Kibulika cited the decision of this court in **Robert Wema Bayongo Bukuru v. Clara Barakaboji & Another**, Misc. Land Application No. 15 of 2020, contending that this application raised point of general importance and novel points of law that may invite the Court of Appeal to resolve. To his opinion, the reason of complaint on section 4 (1) of the Act and other grounds listed by the applicant in paragraph 5 (a) to (d) of the Affidavit are not frivolous, vexatious or hypothetical.

In replying the submissions of Mr. Kibulika, the respondents hired the legal services of Mr. Emmanuel Gervas, learned counsel to protest the application. In his protest, Mr. Gervas contended that

the applicant has not shown any good reasons to persuade this court to decide in favour of the application because the application is frivolous and the points raised by Mr. Kibulika are vexatious.

In bolstering his argument, Mr. Gervas contended that this court invited the provision from the mandate of the mother law, the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) under article 24 which provides for the right to own property and fair & prompt compensation, in case a property is acquired for public interest. In his opinion, the tribunal noted the point and had taken steps to decide for the respondents in favour of compensation hence this court was correct in blessing the decision. According to Mr. Gervas, in any case, there was no any prejudice against the applicant or miscarriage of justice caused to the parties.

On my part, I have consulted the record of this court in the application and found page 25 of the judgment was drafted in the following words which invited the present contest between the learned minds.

Acquiring land for public use without full, fair, just and prompt compensation in unlawful as per law in section 4 (1) of the Land Acquisition Act, Act No. 47 of 1967, Cap. 118 R.E. 2019, should it be for a personal or private use.

It is these words which were spotted by Mr. Kibulika and complained today in this court that the Act was improperly invited and appreciated. I am aware that the preamble in the Act provides that: *An Act to provide for compulsory acquisition of lands for public purposes and connection with housing schemes.* I am also quietly aware that section 4 (1) of the Act deals with definition of public purpose, and section 4 (1) (e) of the Act mentions mining and oils activities. However, I am uncertain whether the provision may be invited and applied in a situation where the land is acquired by an individual person for use to produce private profits. This question cannot be resolved by this court. It has to be determined by our superior court. I leave it to appropriate authority at appropriate moment.

Having said so, and noting granting leave in applications like the present one, is the discretion of this court and part of cherishing article 13 (6) (a) of the Constitution, I have decided to grant leave to the applicant to prefer an appeal to the Court of Appeal to dispute the decision of this court in the **Consolidated Land Cases Appeal No. 9 & 13**, in accordance to the laws regulating appeals from this court to the Court of Appeal.

Before I pen down, I understand the applicant had filed a total of four (4) issues, in paragraph 5 (a)–(c) in his affidavit to be tested by this court for the leave, but I decline to reply on all the

remaining points after noting the materials registered in the application depict serious and long drawn analysis and deliberations, which I am not certain if I have any mandate to do so. It is from the uncertainties I leave them to our superior court for determination. As the matter in this court took long drawn protests and contests between the parties, I am moved to allow the application with costs.

Ordered accordingly.



F. H. Mtulya

Judge

31.05.2022

This ruling was delivered in chambers under the seal of this court in the presence of the parties, and their learned minds in Mr. Venance Kibulika and Mr. Emmanuel Gervas.



F.H. Mtulya

Judge

31.05.2022