

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF TABORA
AT TABORA**

LAND CASE NO. 1 OF 2021

**KAUNDIME SHABANI CHALAMILA, the Administrator of the
Deceased's Estate of the late SALIMA AIZURU**

MAJALIWA.....PLAINTIFF

VERSUS

**THE PRINCIPAL SECRETARY (Ministry of
Infrastructure Building and Communication).....1ST DEFENDANT
THE REGIONAL MANAGER TANROAD.....2ND DEFENDANT
TABORA MUNICIPAL COUNCIL.....3RD DEFENDANT
THE ATTORNEY GENERAL.....4TH DEFENDANT
KISALI AHMED (The Administrative and Legal
representative of the deceased Cheko Kombo
Masai).....5TH DEFENDANT
MSABAHA MADELEKA.....6TH DEFENDANT
HARUNA SHABANI.....7TH DEFENDANT
TATIZO WILSON.....8TH DEFENDANT
SAID MAHINDA.....9TH DEFENDANT
MASURAMADHANI.....10TH DEFENDANT
CHARLES MWITA.....11TH DEFENDANT
MUSTAPHA RASHID.....12TH DEFENDANT**

JUDGMENT

Date: 2nd June, 2023 & 6th June, 2023

BAHATI SALEMA, J.:

The plaintiff **Kaundime Shaban Chalamila** filed a case against the 1st, 2nd,
3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th defendants jointly for allegedly
invading her land of about 150 acres of an estimated value of TZS

350,000,000/=; and for the court declaratory order that she is the lawful owner of the suit land located at Malolo Ward within Tabora Municipality. The plaintiff claims that she is the lawful owner of the disputed land. She prays for Judgment and Decree against the defendants for the following reliefs;

- i. The declaration order that the plaintiff is the lawful owner of the suit land in dispute,*
- ii. The sale of any portions of the suit land in dispute by the respondents be declared unlawful/illegal,*
- iii. The declaratory order that any sale /disposition of the suit land in a dispute valued at any price without the consent of the plaintiff is void,*
- iv. The order that the respondents give vacant possession of the suit land in dispute,*
- v. Costs of this suit be provided for and;*
- vi. Any other relief that this honourable court deems fit and just to grant.*

The dispute above put the parties at issue; therefore, during the final pre-trial conference, the following issues were framed for determination of the matter by the Court.

- i. Whether the plaintiff is the lawful owner of 150 acres in a disputed area,*
- ii. Whether the defendants trespassed on the plaintiff's land,*
- iii. Whether the sale and disposition of land was lawful,*
- iv. Whether the parties are entitled to relief.*

The background to this matter as per the pleadings, is briefly narrated as follows, the plaintiff **Kaundime Shaban** claims against the defendants that she is a true owner of the suit land having inherited the same from her late mother who was born in 1942. In 2012, the 4th defendant trespassed on the said land and erected structures thereon. The 5th, defendant- Kisali Ahmed (Administrator of the Estate of Cheko Kombo Masai who was the caretaker) entered into a contract to sell the plaintiff's land illegally to the 6th, 7th, 9th, 10th, 11th, and 12th defendants and began to develop the same by cutting down various crops and trees in the suit land. The second defendant, The Regional Manager (TANROAD) constructed a road through the plaintiff's land without any agreement with the plaintiff or compensation to the plaintiff. That the 3rd defendant, Tabora Municipal Council is responsible for the administration of Malolo Dispensary by trespassing on the land and erecting a dispensary on the plaintiff's land. The defendants jointly and severally by their evil acts have caused untold hardship to the plaintiff by destroying food crops, and the land itself and cutting various trees over the suit land. That the cause of action arose in Tabora. That notwithstanding invading the suit land in dispute the defendants have caused the plaintiff untold hardship, such as suffering from mental and physical fitness for not utilizing the suit land; disposing and trespassing thereon by 5th -12th

defendants; buying pieces of land from unlawful owners' (caretaker) that caused him loss of income.

At all the material time, the plaintiff was represented by Mr. Lucas Ndanga, learned counsel, while the 1st, 2nd, 3rd and 4th defendants were represented by Ms. Mariam Matovolwa, Mr. Peter Sengerema, Mr. Gureni Mapande, Mr. Samwel Mahuma State Attorneys and Ms. Theodora Chuwa, Municipal Solicitor; and Mr. Charles Ayo, learned counsel who represented the 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th defendants.

In establishing her suit, the plaintiff's side summoned two witnesses.

PW1, Kaundime Chalamila Shaban (78) years testified that she is the administrator of the Estate of Salima Aizuru Majaliwa who was her grandmother from her mother's side. She tendered to court Form No. 4 to be admitted but it was rejected for being a copy and was not certified. She further testified that she was born in 1945 and found her parents had been there for more than 75 years. PW1 added further that the area is 150 acres and the value is TZS 350,000,000/=. She stated that the conflict started when Said Majaliwa, her uncle, left the land to Kombo Masai, as a caretaker. Kombo Masai, the father of Cheko Kombo passed away. After he passed on, Cheko Kombo relocated to their place as they were neighbours. She then approached him and asked about his transfer but Mr. Cheko replied to her

that he understood well that the place belonged to Kaundime's family and he asked to live there. PW1 then went to her place Gongoni and left him there. She testified that after a year, when she went there, she found Mr. Cheko had started to sell their land to two persons.

PW1 informed her brother who asked Cheko Masai on selling their land. PW1 testified that Cheko informed him that he was just selling the land to get money for his treatment. She further asked Cheko to call those two people (Said Mahinde and Haruna) he sold the land to but he did not call them. She then filed a case at the Ward Tribunal. She further testified that in August, 2008, the District Commissioner (DC) had a meeting in the locality and she explained to him whereby DC Msimazi ordered the Village Executive Officer him handle the matter, but the latter could not settle the dispute. She was then advised to file a case.

She also testified that nine (9) people bought land in dispute from Cheko and she then sued Cheko. She stated that TANROAD also trespassed on her land while the Municipal Council built a dispensary, however, she had not been compensated. She further testifies that to the North-Kombo Masai, East-Musa Mbaruku, South-Said Mahinda, and West-Seleman Nzige, and at the disputed area there are more than twelve graves. She was at Gongoni

there when Cheko sold the disputed land. She prayed to the court the trespassers vacate her land.

During cross-examination, she stated that she was granted Form No. 4 and the owner was Salima Aizuru Majaliwa who died in 1958 where according to Islamic rules, she had to divide it amongst the successors who were two. Unfortunately, they passed away in 2004 and 2006 respectively. Still, she had never divided with anyone since 2013. She is the only successor of Salima Aizuru Majaliwa, her grandmother. In the matter at hand, she stated that there are 11 defendants. 7 are private persons and 4 institutions that have trespassed on her land. She stated that the area has 150 acres while Cheko had grabbed 11 acres. She stated that previously the road passed outside and it was a rough road before it was tarmac built. She testified that while the Municipality were building dispensary (Kombo) informed them and her brother Bilali Waikela allowed them to build. She testified to the court that she did not file an objection since she started to file a case against Cheko Masai Kombo.

She further stated that the grave area is not too big. Some of her relatives especially Zaina Bilali, Aziza binti Issa and her mother were buried there. Her mother was the only heir of Aizuru. She advanced that mangoes trees were cut and there is only a Mosque which her granddaughter Amina

bought land from Cheko Kombo. Her mother never petitioned for the administration of the estate but Kaundime Shaban is now the administratrix. She could not petition for the administration of the estate of her mother since her uncle Said Majaliwa was there until he passed away in 2013. Cheko's father also passed away, and that is when Cheko started to sell the disputed area. Cheko Kombo grabbed 11 acres. She adduced further that although she had 150 acres she had no evaluation report of TZS 350,000,000/=.

In re-examination, she stated that she had nothing to distribute.

Next was **PW2, Asia Borafi (54 years)**, who testified to the court that the place belonged to her mother, the heir to the estate of her grandmother. She testified that her mother, Kaundime Chalamila was born in 1945 in that area. She testified that Cheko Kombo relocated to their place, and also invited a bicycle mechanic ("*Fundi baiskeli*"). She stated that Cheko started to sell their land and her mother enquired him to find those to whom he sold the land but he did not call them. Thereafter, they filed a case against the Village Executive Officer, one Omary who did not make the follow-up. Then they went to the District Commissioner, Erick Komanya who asked them to resolve the matter with them. Thereafter, they filed a case at the District Land and Housing Tribunal. She reiterated what her mother said that they

had filed a case against Cheko Kombo, TANROAD, and Municipality for building a dispensary. She adduced that they have not been compensated.

During cross-examination, she stated that her mother was an administratrix of the estate of the Aizuru. They were 3 children but 2 of them had passed away. Her grandfather died in 1963 and he was living with Aziza Issa, his wife who died in 1982. The administrator of the estate was her mother, she was granted Form No. 4 at Tabora Mjini. She stated that Said Majaliwa requested Kombo Masai to take care of the land when he moved to Kigoma where he died and was buried at Kigoma. She stated that this is case No 1/2021. Apart from oral evidence and 12 graves, she had no other evidence. She urged this Court to allow their suit and declare Kaundime Chalamila to be the owner of the land invaded by the defendants. That was the end of the prosecution case.

On the other side, the 5th -12th defendants Mr. Charles Ayo, learned counsel paraded 9 witnesses. DW1, Swalehe Kadusi; DW2, Haruna Shaban; DW3, Mashaka Haruna Kombo; DW4, Kisali Ahmed Sudi; DW5, Said Muhinda Mikidadi; DW6, Msabaha Madeleka; DW7, Tatizo Wilson; DW8 Masoud Mrisho Ramadhani, DW9, Charles Luwanga Inovu and 1st -4th Ms. Mariam Matovolwa, learned State attorney paraded DW10, Engineer Yohana Daudi Mahungu.

DW1, Swalehe Kadusi (70 years) who lived at Malolo Chang'ombe Street adduced evidence that he had been living at the Malolo since 1987. He knew Kombo Saburi, who was living at Malolo- Chang'ombe now "Kwa Masai Street". He testified that Mzee Kombo had lived in the disputed area for a long time. He stated that the Eastern is bordered by Mr. Komba to the Southern Juma Masanta, Northern – Railway, Western- Road. Among his neighbours were Mhozya Terehara and Mzee Said Muhinda. The road was rough from Tabora to Ujiji – Kigoma. He had never known Kaundime Shaban nor Salima Aizuru Majaliwa. He stated that Mzee Kombo Saburi died in 2004. After his death, the land was inherited by his three children Cheko, Risasi, and Mama Bora who are now deceased.

He testified to the court that the Dispensary was constructed in 2002 and finalized in 2004. The area had three owners who were, the 1st Juma Masanta, 2nd Eucalyptus Farm, Mawiti Primary School, and the last Village Eucalyptus Farm owned by villagers where the Dispensary is situate. He testified that the village government recompensed Juma Masanta by allocating him to another area. He participated in building the dispensary as the Hamlet chairman of CCM in 2002. He adduced further that Juma Masanta and Mzee Kombo were neighbours and there was no other family as he had

been at the land from 1987. He stated that there are more than seven 7 families in the land of Mzee Kombo.

During cross-examination, he stated that he was granted the land by the village government but he had no document. The land in dispute has graves of Kombo Saburi's family.

In re-examination, he submitted that his area is not among the disputed area.

DW2, Haruna Shabani (56 years) testified to the court that he had been at Malolo, Chang'ombe, since 1992 and the area in dispute belonged to Mzee Kombo Masai. He was invited by Mr. Kombo his uncle to stay with him and there was no neighbourhood. He stated that the area was bordered to the West: a rough road; East: Village Farm and Mfumaki where they planted Eucalyptus, North: Salehe Kadusi, South: Railway, and West: Road.

He testified that he had never known Kaundime Chalamila nor Salima Aizuru Majaliwa. He did not find Said Majaliwa when he moved to the place. He had one acre granted by Mzee Kombo where he had planted 20 mango trees, 3 coconut trees, lemon trees and an orange tree. He stated that up to now there are more than 30 residents. Yet, they are eight defendants in

court. He testified that the Malolo Dispensary was built in 2000 and the area belonged to Halfan Masanta and he was allocated another place.

DW3, Mashaka Haruna Kombo, (26 years) motorcyclist testified that he was born in 1997 in Malolo – Tabora where he found his father Haruna Shabani living at Malolo, near the dispensary. **DW4, Kisali Ahmed Sudi**, (51 years), testified to the court that she is the administratrix of the estate of Mr. Cheko Kombo where she was appointed at the Primary Court – Mjini and was given Form No. 4 which was tendered in court and admitted as exhibit "D1". She stated that the dispensary area belonged to Juma Masanta who was relocated to another place by the village. She added that there are only graves that belong to her family and have signs. She stated that Mzee Kombo invited Saidi Muhinda and Haruna Mashaka to the land. She also testified the boundaries to the Western is Tabora – Kigoma Road, Eastern: Railway, Northern: Saidi Muhinda, Muhozya Juma, and Southern: Mzee Salehe Kalusi. She testified that all places and areas have been occupied. Mr. Risasi had his place and sold some of his areas. She also tendered a document that recognizes the family of Mr. Kombo Masai and admitted as exhibit "D2". She testified that the area which is mentioned is the one in dispute and the committee visited the place after the death of Kombo. He

testified that they have never seen Kaundime Chalamila while constructing the dispensary and the dispensary area has been surveyed.

During cross-examination, he submitted that in 2018 she heard a claim to the dispensary on 150 acres. Before Mzee Kombo died he distributed the land to his children. The exhibit "D2" admitted in court introduced the true owner of the disputed land. They are also recognized by the Village government.

In re-examination, she stated that until 2002 there was no dispute and she was the administratrix of Cheko Kombo.

DW5, Said Muhinda Mikidadi, (94 years) Malolo, testified to the court that he had been living at Malolo Mashariki, since 1993 and had 1 1/4 acres and the land in dispute belonged to Mr. Kombo. He was granted by Mr. Kombo while they were clearing the place. He also found Haruna Shaban. He mentioned the boundaries and there are almost 20 households ("*Kayas*"). The dispensary was built in 2000 and the land in dispute belonged to Juma Masanta. The place is surveyed and built the dispensary. The dispensary was built by the municipal council with the assistance of Railway Gengeni.

DW6, Msabaha Madeleka, (62 years), testified that he bought the land from Risasi Kombo in 2012 for TZS 200,000/= and the contract was admitted as exhibit "D3". **DW7, Tatizo Wilson**, 38 years, testified that he bought the

land from Cheko Kombo in 2014 for TZS. 300,000/=. He also tendered the agreement which was admitted as exhibit "D4". **DW8. Masoud Mrisho Ramadhani**, (50 years), testified to the court that in 2008 he bought a 1/4 acre piece of land from Salima Mrisho Luziga and his contract for sale was admitted in this court as exhibit "D5".

DW9, Charles Luwanga Inori, (55 years) allegedly bought from Said Muhinda 1/2 acre for TZS. 250,000/=. The agreement was admitted as exhibit "D6". He stated that the claimant was Kaundime Chalamila since 2016 and the last Defence was **DW10, Engineer Yohana Daudi Mahungu (38 years)**, who testified that the road which is situate at Malolo – Tabora – Urambo was constructed from 2010 – 2017. He testified that there was a rough road before it was upgraded to tarmac. He further stated that they did not compensate the public since they constructed it at the corridor. He explained that the ones who were compensated were from the Mwafrika area – Miemba roundabout up to the railway. Since the rough road was existing no compensation was paid at Malolo – Mawiti and he had never heard any dispute from Kaundime or others. He stated the procedure in compensation is transparency when undertaking it.

During cross-examination, he stated that there are coordinates signs which are used to establish road points in the respective road. The defence side closed the case on that note.

Before embarking on the framed issues and analysis of the evidence adduced, I should point out that the plaintiff through his counsel Mr. Lucas Ndanga, prayed for the Court to visit the locus in quo before the closure of the defendants' case. However, the prayer was not granted. After hearing the case the Court was satisfied that it can determine the matter based on the adduced evidence without having to visit the *locus quo*. In the case of **Prof. T.L. Maliyamkono vs. Wilhelm Sirivester Erio**, Civil Appeal No. 93 of 2021, CAT at Dar es Salaam, the Court of Appeal reiterated the principle about the court's visiting the locus in quo which was set in their case of **Nizar M. H. Ladak vs Gulamali Fazal Jan Mohamed** (1980) TLR. 29 where it was set that a visit of the locus in quo is not mandatory, and it is done only in exceptional circumstances. Having gone through the evidence which was adduced in the matter at hand, there are no exceptional circumstances that necessitate this Court to visit the locus in quo.

At the closure of the Defendants' case, I ordered the parties to file their respective final written submissions. Thanks for their final submissions in that respect I appreciate the efforts made by both Counsels for their

esteemed cooperation in filing their respective submissions which have been of assistance in determining the matter at hand.

Having précised and considered the evidence brought before this court, I will now proceed to evaluate the evidence adduced by the witnesses to determine and decide on the said issues.

I will first address the law on the burden of proof in civil cases. One of the canon principles of civil justice is for the person who alleges to prove his allegation. Sections 110 (1) and (2) and 112 of **the Evidence Act**, Cap.6 [R.E 2022] place the burden of proof on the party asserting that partly desires a Court to believe him and pronounce judgment in his favour. Section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] provides that:-

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

The above legal requirements have been emphasized in numerous decisions. In the case of **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004 (unreported)**, the Court of Appeal held that:

"It is an elementary principle that he who alleges is the one responsible to prove his allegations."

This was cemented by the Court of Appeal of Tanzania in **Lawrence Magesa T/A Jopen Pharmacy v. Fatuma Omary & Rimina Auction Mart & Company Limited**, Civil Appeal No.333 of 2019 regarding the burden of proof that:

"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act. It is equally elementary that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his and the said burden is not diluted on account of the weakness of the opposite party's case."

Being a civil suit, the standard of proof is on the balance of probabilities. The court's decision is based on evidence that is more credible and probable than that of the adverse party. In the matter under scrutiny, since it is the Plaintiff who is alleging that the disputed land is hers then the onus to prove so shifts to her to prove under the circumstances. Under those parameters then, the question before the court is whether the Plaintiff has successfully discharged his duty to prove the facts she alleges in her favour.

From the foregoing, let me now confront the issues framed for the determination of the present dispute between the parties. In addressing the first issue *of **whether the plaintiff is the lawful owner of 150 acres in a disputed area.***

Considering the evidence of the two witnesses who appeared in court, I shall start with the evidence of PW1, Kaundime Chalamila who adduced in this court that she was the biological daughter of late Aziza Issa who was the daughter of the late Salima Aizuru Majaliwa and the lawful owner of the land of 150 acres which is located at Malolo Ward within Tabora Municipality. That the late Aziza Issa inherited the land in dispute from her mother, the late Salima Aizuru Majaliwa. That the late Salima Aizuru Majaliwa lived there for more than 75 years. PW1 stated that the size of the land in dispute was 150 acres and bordered by some neighbours, to the Northern side it is bordered by Mr. Kombo Masai; to the Eastern side; Musa Mbaruku; to the Southern Said Mahinda and on the Western side; Seleman Nzige. She stated that the proof of ownership of the disputed land by her grandmother is a copy of Form No. IV Letter of Administration of the Estate of Salima Aizuru Majaliwa which was not admitted in court and the graves of her relatives and the Mosque which has been constructed.

Like PW2, who did not produce any purported proof to indicate the ownership of the land in dispute by her mother than relying on what her mother adduced. PW2, also testified that she was not present when her mother was granted the said land.

On the other hand, the evidence of DW4, the administrator of the Estate of Cheko Kombo Masai tendered Form No.4 which was admitted as exhibit "D1". Further, she testified that Malolo Dispensary land belonged to Juma Halfan Masanta. She added that there are only graves that belong to her family and have marks whereas **DW1**, testified that the dispensary area belonged to Juma Masanta, 2nd Eucalyptus Farm, Mawiti Primary School, and the last Eucalyptus Village Farm. **DW2** testified that the area belonged to Mzee Kombo Masai and in 1992 by Mr. Kombo there was no neighbourhood. **DW5** testified to the court that he had been living at Malolo Mashariki, since 1993 and the land in dispute belonged to Kombo. The dispensary was built in 2000 and the place belonged to Juma Masanta.

From the above evidence, the court noted that there is no form no. 4 showing the plaintiff was appointed as an administratrix of the said land and PW1 had no document to prove that the land in dispute worth TZS 350,000,000/=. Therefore, it is my considered view that the court cannot be moved by mere words without evidence as stated in the case of **Mwalifunga V Mwankinga** [1971] HCD 109. The witness of the plaintiff was her daughter who cannot testify on how the deceased acquired the suit land.

Guided by Section 112 of **the Evidence Act**, Cap.6 provides that:-

"The burden of proof as to any particular fact lies on that person who wishes the cost to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person."

Applying the above provision of law and case law, the court concludes its findings by stating that the plaintiff has failed to prove her allegations of 150 acres to the value of TZS 350,000,000/=. This is clear that the plaintiff did not prove the value of the disputed area and therefore offended the provision of Order V11 Rule 1(i) of **the Civil Procedure Code**. The plaintiff has also failed to prove that the Malolo Dispensary area and where Kigoma Road crosses in Malolo area is owned by the deceased. Therefore, the first issue is answered in negative since there was no proof of the plaintiff owning 150 acres.

The second issue is **whether the defendants have trespassed on the land in dispute.**

It is on record that, **PW1** and **PW2** adduced evidence that the defendants have invaded and occupied the land in dispute. In her evidence, PW1 adduced that the late Cheko Kombo Masai sold the piece of land in dispute to the defendants Mahinda and Haruna while he was a caretaker. PW1 testified to the court that the defendants trespassed on the land that Mr.Cheko had taken 11 acres from their area and also the TANROAD has

built a tarmac road and the Municipal Dispensary. Though, during cross-examination, PW1 Kaundime admitted to the court that while the Municipality were building a dispensary (Kombo) informed them and her brother Bilali Waikela permitted them to build a dispensary.

Opposing the defendants, **DW1**, who was a CCM Chairman of Malolo testified that the Dispensary area belonged to Juma Masanta who was given an alternative area as compensation, the eucalyptus farm belonged to Mawiti Primary School, and another eucalyptus farm belonged to the village and **DW2**, testified also the area belonged to Mzee Kombo Masai since he was invited in 1992 to stay with him after clearing the area. **DW4**, testified that the Malolo Dispensary land belonged to Juma Halfan Masanta. She added that there are only graves that have signs that belong to her family. **DW5**, testified to the court that he had been living at Malolo Mashariki, since 1993 and had 1 1/4 acres and the land in dispute belonged to Kombo. The dispensary was built in 2000 and the land belonged to Juma Masanta. Also, **DW10**, from TANROAD testified that the rough road existed from colonialism before and no compensation was effected since TANROAD developed the same road. They only constructed the road in 2010-2017 through their coordinates which were there before.

To determine the issue as to who is the lawful owner of the suit land between the parties, I have opted to be guided by the principle laid down in **Hemed Said v Mohamed Mbilu** [1984], T.L.R 113 thus:-

"According to law, both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

Equally in the case of **Nasibu Daud Versus Joha Lukwaila**, Land Case Appeal No. 22 of 2016 (Unreported) the Plaintiff's side demonstrated heavier evidence than that of the defendants regarding the ownership of the suit land.

Having traversed through the evidence as well as the pleading, this court has failed to see the extent of encroachment by the 1st -4th defendants in respect of the dispensary and the road. The plaintiff in her plaint has failed to describe the suit land with material particulars sufficient to identify it since they are necessary for enabling the court to provide an executable order. Only 11 acres were identified which have been trespassed but in respect of TANROAD and Dispensary has failed to show how many acres belong to her encroached by the defendants. The plaintiff also testified that she had no exhibit concerning the land she claims.

The totality of what has been in the record is that the weight of evidence tilted in the defendants' favour. Nothing convinced this court that the plaintiff discharged this burden in respect of the alleged ownership of land, thus, I have no reason to agree to the Plaintiff's request to grant the suit. From the available evidence, it is clear that the defendants did not establish the ownership of the disputed land nor did the defendants trespass on the said area. The second issue is also answered negatively.

Coming to the third issue is **whether the sale and disposition of land was lawful.**

Having examined the evidence from both parties, in this instant matter, since the plaintiff had nothing to tender in respect of the *locus standi*. Thus, it was the duty of the applicant to attach the relevant documents to prove her claim and assist the Court to interpret the disputed provisions. By this evidence, this Court is satisfied that the sale and disposition of the land by the defendants were lawful. As the plaintiff has not proved to the Court that she was appointed the administrator of the estate of the late Salima Aizuru Majaliwa after the latter's demise. The Plaintiff brought one witness who is 54 years while the deceased died years ago and thus never saw the deceased. However the defendant in proving her administration of the estate tendered a certified copy of form four which was admitted as Exhibit "DW1".

The 5th and 12th defendants also demonstrated how each one acquired the land by tendering exhibits that were admitted in this court. Hence, this issue is answered in the affirmative.

The fourth issue is **the relief of the parties.**

As noted by the court that the evidence and the pleading do not show if the deceased was the owner of the land and the suit land was not identified properly. According to the evidence adduced in the boundaries, the plaintiff mentioned only 4 neighbours while she claimed 150 acres. As correctly stated by the defence in the case of **National Insurance Corporation V Sekulu Construction Company** [1986] TLR 157 (CA) that the parties to a case are not allowed to depart from their pleadings by adducing evidence which is extraneous to the pleadings. Thus, the allegations of the plaintiff have no weight. There was no valuation report from the relevant Authority nor oral evidence to establish the size of the land and its value. According to the pleading the disputed area is 150 acres, however, during cross-examination, PW1 stated that the area which Cheko had taken is 11 acres, and the dispensary and the road have not been identified by the plaintiff for the court to understand how much the acres the plaintiff is claiming for. Even though during the final submissions, the plaintiff submitted the breakdown of 150 acres of land in dispute which this court did not consider.

As earlier stated, in the case of **Ali Abdullah Rajab V Saada Abdallah Rajab & others** [1994] TLR 132 the court held that;

"Where the decision of a case is wholly based on the credibility of a witness it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcripts of record."

In this matter at hand, Plaintiff required a number of reliefs in the Plaint. The evidence adduced seeks a declaration that Plaintiff is a rightful owner of the piece of land estimated at 150 acres situated at Malolo Ward within the Tabora district. According to the findings of this court, the plaintiff has failed to prove all the reliefs she claimed. In the premises thereof, Plaintiff's case deserves dismissal in its entirety. However, I award no costs to either side.

Order accordingly.



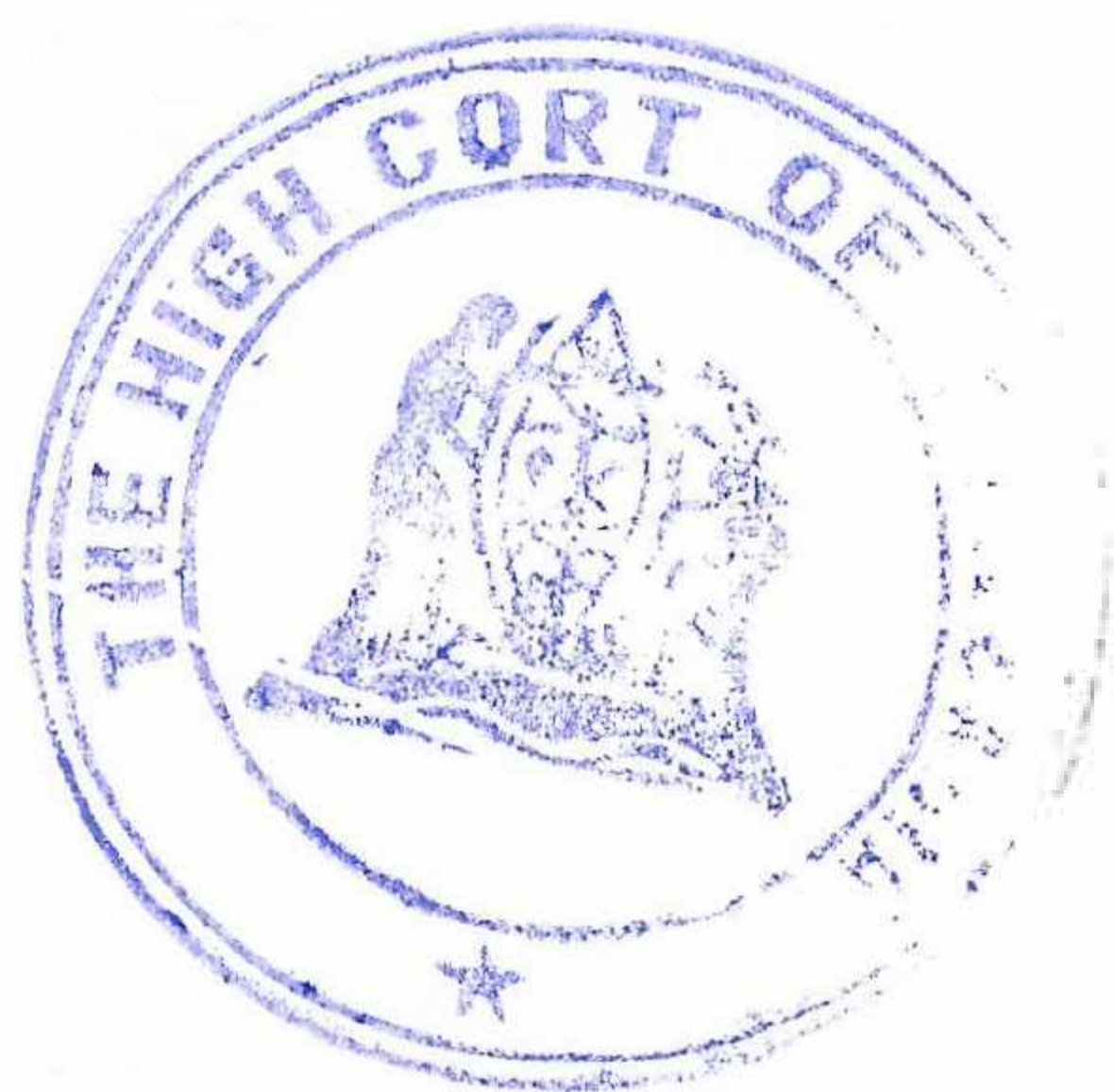
A. BAHATI SALEMA
JUDGE
6/5/2023

Court: Judgment delivered in presence of both parties.



A. BAHATI SALEMA
JUDGE
6/5/2023

Right of appeal is explained to the parties.



A. Bahati

**A. BAHATI SALEMA
JUDGE
6/5/2023**