

**IN THE HIGH COURT OF TANZANIA
(BUKOB DISTRICT REGISTRY)
AT BUKOBA**

CIVIL CASE No. 02 OF 2020

**1. CHANCHECHE VENANT
2. VENANT FILIDON PLAINTIFFS**

VERSUS

**1. MINISTRY OF NATURAL RESOURCES AND TOURISM
2. ATTORNEY GENERAL DEFENDANTS**

JUDGMENT

14th March & 30th June 2023

OTARU J.:

In May 2017 conservation rangers were clearing cattle grazing within Game Reserves in Kagera Region. They were implementing 'operesheni ondoa mifugo' within Kimisi, Burigi and Biharamulo National Game Reserves. On 20th May 2017 they apprehended 85 heads of cattle grazing within the confines of Kimisi National Game Reserve. These cattle are the subject of this case. **Chancheche Venant** and **Venant Filidon** the Plaintiffs herein, claim that the 85 cattle apprehended by the conservation rangers were theirs and the same were taken from their home at night and not from the National Game Reserve. According to the Defendants, the said cattle were grazing on their own. They were confined and sold as unclaimed property at an auction on 23rd June 2017 (exhibit D1). Meanwhile, the Plaintiffs followed up on the cattle. On 29th May 2017 they were charged in Criminal Case

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No. 194 of 2017 in the District Court of Ngara at Ngara for grazing 85 heads of cattle within Kimisi Game Reserve. The charge sheet contained two counts. The first count was unlawful entry in the game reserve contrary to Section 15(1)(2) and 113(2) of the **Wildlife Act**, Act No. 5 of 2009 the second count was unlawful grazing inside the Game Reserve contrary to Section 18(2), (4); 111(1)(a) and 113(2) of the **Wildlife Conservation Act**, Act No. 5 of 2009 (exhibit P1). On 17th July 2017, the day the matter was scheduled for preliminary hearing, the Plaintiffs were discharged under Section 91(1) of the **Criminal Procedure Act** (Cap. 20 R.E. 2002) by Nolle Prosequi by the Director of Public Prosecutions. The charge was marked as withdrawn.

The 1st Plaintiff applied, under Certificate of Urgency via Misc. Criminal Application No. 09 of 2017, to restrain the Republic and the appointed auctioneer from selling the cattle pending determination of Criminal Case No. 194 of 2017. Because at the time, the criminal case was still pending, the court dismissed the application stating that the cattle were not among the confiscated cattle (exhibit P6 - Ruling dated 21st June 2017). Having no connection between the Plaintiffs and the cattle, the Ministry of Natural Resources granted permission to implement the court order of 7th June 2017 for unclaimed cattle (letter dated 15th June 2017 - exhibit P3). On 3rd July 2017 the 1st Plaintiff through Mr. Abdala Mwanjala, learned Advocate prayed for the cattle not to be disposed of until full determination of the

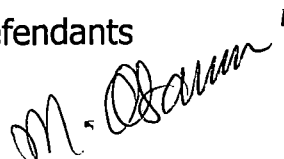
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case. This Application was not entertained by the court for being *functus officio*. The Applicants however withdrew the Application on technical grounds in September 2017. The Plaintiffs are now suing the Defendants for return of the cattle, claiming a sum of 77,350,000/= (Seventy Seven Million, Three Hundred and Fifty Thousand only) or return of 85 herd of cattle, return or refund of excepted 166 calves weighting each 100 kilograms at the market price of Tshs 260,000/= making a total of 43,160,000/= (forty three million one hundred and sixty thousand only; general damages at the court's discretion; costs and any other relief as deemed by this court.

At the hearing, the Plaintiffs were represented by Advocate Seth Niikiza, while the Defendants enjoyed the services of Mr. Gerald Njoka, learned State Attorney. Each side called 3 witnesses to testify in court. The evidence adduced was targeting to determine the following issues framed in court on 6th July 2022:-

1. *Whether the defendants unlawfully confined 85 heads of cattle, the property of the Plaintiffs.*
2. *Whether it was lawful for the defendant to disobey the directive of the DPP to the 1st defendant to return the confined cattle.*
3. *What reliefs are the parties entitled to.*

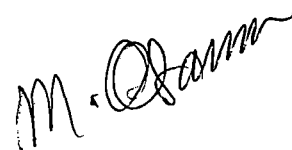
In determining the first issue, the Defendants do not dispute the existence of 85 heads of cattle as indicated in Paragraph 2 of the Written Statement of Defence. They however dispute their connection to the Plaintiffs. The Defendants



claim that the 85 heads of cattle that were apprehended on 20th May 2017 within Kimisi Game Reserve were without a herder. The record indicates that the Defendants disposed of the cattle for being unclaimed. As per Prosper Kavishe (DW2) the cattle were sold at an auction on 23rd June 2017. The record also indicates as per the Plaintiffs' claim that they followed up on the cattle and on 27th May 2017 they are on record to have identified them. It is not clear how they introduced themselves, but it seems that the same had lead to their arraignment on 29th May 2017. Meanwhile, the process of disposing of the cattle proceeded as indicated above. The two were treated as separate matters. One may understand the lack of connection between the two matters due to the following:-

When cross examined by the learned State Attorney, the second Plaintiff herein, one Fidolin Venant (PW1) stated that the cows belonged to their relative Jackson Venant. They weren't theirs. Their relative did not follow up on them thus they decided to take the initiative of claiming them. The same is also seen in the brief report prepared by Tanzania Wildlife Management Authority (TAWA) and admitted in court as exhibit D1. Page 2 of the report indicates the owner to have been Jackson Venant. Thus, the Plaintiffs not being the owners of the cattle, lack entitlement in pursuing the case.

In the case of **Lujuna Shubi Ballozi v. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 (HC) it was held that;-



'In order to maintain proceedings successfully, a plaintiff or an applicant must show that not only the court has power to determine the issue, but also he is entitled to bring the matter before the court.'

The court further stated that:-

'Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with.' [emphasis mine]

The Court of Appeal cemented on the said principle in the case of **Godbless Jonathan Lema v. Musa Hamisi & 2 others**, Civil Appeal No. 47/2012 that the issue of locus standi goes to the root of the case. Leading to determination of the first issue that the Defendants did not confine the Plaintiffs' 85 heads of cattle. The cattle in question were not the property of the Plaintiffs.

Having determined the first issue in the negative and that the Plaintiffs have had no *locus standi* to proceed with this case, these proceedings therefore are a nullity and are hereby struck out. No order as to costs is given.

It is so ordered.

DATED at BUKOBA this 30th June, 2023.




M.P. Otaru
Judge

Court: Judgment is read in Judge's chamber under the seal of the court, in the presence of the Plaintiffs in person and Mr. Nestory learned State Attorney for the Defendants.



M.P. Otaru

Judge

30/06/2023