

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LAND CASE NO.33 OF 2021**

KIYAPI HAIYO SIRIA.....PLAINTIFF

Vs

HONEST L.KIVUYO.....1ST DEFENDANT

TUBULU KIAMBWA2ND DEFENDANT

LAWRENCE JAMES3RD DEFENDANT

RICHARD OROMBOI.....4TH DEFENDANT

VICENT SAID.....5TH DEFENDANT

PAMBAU NGALEYO.....6TH DEFENDANT

IMELDA SAID.....7TH DEFENDANT

BASILIDI MROSO.....8TH DEFENDANT

JUDGMENT

Date of last Order: 9-6-2023

Date of the judgment: 13-7-2023

B.K.PHILLIP,J

The dispute in this case is over the ownership of land measuring 250 acres, (Hereinafter to be referred to as the suit land). It is the plaintiff's case that sometimes in 1989 he was allocated land measuring 1670 acres, located in Nadonjukin Village, Komolo Ward in Simanjiro District by Komolo Village Council. The allocation of the aforesaid land was approved by Kiteto District Council. Ultimately, that land was surveyed and registered as farm

No.301 and a Customary Right of Occupancy in respect of the same was issued in 2014. He developed part of the land and left another portion for livestock keeping. Sometimes in October 2019, the 3rd, 4th, 5th, 6th, 7th and 8th defendants trespassed into 150 acres (Herein after to be referred to as " the suit land") forming part of farm No.301 on the southern part and thereafter sold the same to the 1st defendant. Sometimes in October, 2020 the 2nd defendant trespasses into 100 acres (hereinafter to be referred to as " the suit land") forming part of farm No.301 on the southern part and built structures for livestock keeping. The 1st and 2nd defendants took possession of the suit land. They cleared the trees and grasses which had been protected by the plaintiff for livestock grazing. The defendants have refused to vacate from the suit land despite being demanded by the plaintiff to do so. In this case the plaintiff prays for judgment and decree as follows;

- i) A declaration that the plaintiff is the lawful owner of the suit land.
- ii) A declaration that all the defendants are trespassers to the suit land.
- iii) A permanent injunctive order to restrain the defendants, their agents, workmen or any other person from doing any activities in the suit land.
- iv) General damages to be assessed by this honourable court.
- v) Costs of the suit.
- vi) Any other relief(s) this honorable court may deem fit to grant.

On the other hand, the 1st 3rd, 4th, 5th, 6th, 7th and 8th defendants filed a joint written statement of defence in which they alleged as follows; That

the suit land is located in Okutu Village, not Komolo Village. The 3rd, 4th, 5th, 6th, 7th and 8th defendants were allocated the suit land by Okutu Village Council in 2011 upon compliance with all the required legal procedures pertaining to allocation of village land. They have been in possession of the suit land without any interruption ever since they were allocated the same. The 1st defendant is a lawful occupier of the suit land having signed a five (5) years lease agreement in respect of the suit land with the 3rd, 4th, 5th, 6th, 7th and 8th defendants. The 1st, 3rd, 4th, 5th, 6th, 7th and 8th defendants prayed for the dismissal of this suit with costs.

The 2nd defendant did not enter appearance in court despite being notified on the existence of this case by the plaintiff thus, this case was heard ex-parte against him.

The learned Advocate Deogratias Melkior Njau appeared for the plaintiff whereas the learned advocate Yoyo Asubuhi represented the 1, 3rd, 4th, 5th, 6th, 7th and 8th defendants. In proving his case the plaintiff testified as PW1 and paraded two (2) witnesses namely; Kasaine Kaika Mollel (PW2) and Benjamini Emmanuel Sarakikya (PW3). On the defence side the 5th, 8th, 6th, 4th, 3rd, and 1st defendants testified as DW1, DW2, DW3, DW4, DW5 and DW6 respectively. Mr. William Steven Wanga testified as DW7. In addition to the above mentioned witnesses, this court summoned Mr. Baltazari John Sulle, authorized land officer for Simanjiro District Council to appear in court as the court's witnesses (CW1) so as to testify on the boundaries of Okutu and Nadonjukin Village as well as the specific location of the suit land.

At the final pre-trial conference the following issues were framed for determination by the court.

- i) Who is the rightful owner of the suit land.*
- ii) To what reliefs are the parties entitled to.*

However, in the course of composing this judgment, upon analysis of the evidence adduced as well as reading the pleadings between the lines, I found myself constrained to add one issue in order to properly determine the really controversy between the parties in this case. Thus, pursuant to the provisions of Order XIV Rule 5 (1) I added the following issue; *whether or not the suit land is located in Nandojukin Village, Komolo ward*, as the first issue followed by the issues enumerated herein above. Since the witnesses from the both sides testified on the issue concerning the specific location of the suit land, I found no need of inviting the parties to give any evidence on the same. Therefore, for clarity the issues for determination in this case are;

- i) Whether or not the suit land is located in Nandojukin Village, Komolo ward.*
- ii) Who is the rightful owner of the suit land.*
- iii) To what reliefs are the parties entitled to.*

For convenience I will deal with the 1st and 2nd issues conjointly since they are intertwined. Before going to the analysis of the evidence adduced and the determination of the issues aforestated, it is noteworthy that the learned advocates were granted time to file their final submissions.

The same were filed timely as ordered by the court and are highly appreciated.

Back to the analysis of the evidence adduced, the plaintiff's testimony was to the effect that he is a pastoralist, resident of Nadonjokin Village, Komolo Ward in Simanjiro District. He is the lawful owner of the land which is known as farm No. 301 measuring 1671 acres and the suit land forms part of his aforesaid farm. He was allocated the same by Komolo Village Council in 1989 and the allocation of the aforesaid land was approved by Kiteto District Council. In 1991 he started clearing his aforesaid farm. He cleared 200 acres and left the rest of the land for grazing. In 2014 he was issued with a Customary Right of Occupancy (exhibit P1) in respect of his aforesaid farm. Part of the land is used by his family members. In 2019, the defendants trespassed into the suit land measuring 250 acres worth Tshs. 375,000,000/=. He requested the 1st defendant to vacate from the suit land but in vain. Before filing this case in court the defendants used to conduct agricultural activities in the suit land but, after filing this case they stopped though, currently there is a person cutting trees therein for making charcoal. That person was brought in the suit land by the 1st defendant.

Moreover, the plaintiff testified that the suit land has been destroyed so much by the defendants and it is no longer a good grazing area as it used to be thus, he has sustained heavy losses due to the defendants' actions. The plaintiff invited this court to grant the prayers made in the plaint.

In response to the question posed to him during cross examination by Mr.Yoyo, the plaintiff told this court the following; In 1989 when he was allocated the suit land Nadonjuki village was not yet established. The suit land was within Komolo Village. He does not know any land allocation conducted by Okutu village in 2010 in respect of the suit land.

The plaintiff's testimony, was supported by PW2 and PW3 whose testimonies were to the effect that the suit land is located in Nandojukin Village and the plaintiff is the lawful owner of the same. PW2 testified that he was the chairman of Nobicto hamlet. The suit land is located in Nobicto hamlet, Nandonjukin Village. He stays near by the suit land. In 2019 the 1st defendant trespassed into the suit land. The officers from Nadonjukin village arrested people who had trespassed into the suit land and started cutting trees for making charcoal. Currently, there is nothing going on in the suit land. The trespassers into the suit land are residents of Okutu Village. The distance from Okutu village to the suit land is about one (1) kilometer.

PW3's testimony was to the effect that, he is a surveyor working at Simanjiro District Council. He knows the suit land. It belongs to the plaintiff. It is located in Nadonjukin Village which was part of Komolo Village. Nadonjukin village was established after the division of Komolo village into two villages, to wit; Nadonjukin village and Komolo village. Nadonjukin Village is adjacent to Okutu Village. The map in respect of the villages located in Simanjiro District Council shows that the suit land is located in Nadonjukin Village. The plaintiff lodged complaints on the defendants' intrusion into the suit land and he was appointed by the

District Executive Director (Henceforth "the DED") to visit the suit land and identify its boundaries by using the Global Position System machine (" GPS").Upon visiting the suit land and taking the coordinates using the GPS machine, he realized that the suit land is located in Nadonjokin Village. PW3 tendered in court a sketch map showing the location of the suit land which was admitted as exhibit P2.

On the defence side, DW1 testified as follows; That he is the resident of Okutu Village since 1986. He had been a chairman of Okutu Village for ten (10) years from 1994 to 2004. He knows the plaintiff. He was a councilor in the nearby Ward, to wit; komolo Ward. He used to meet him in various political activities. The plaintiff has never been the resident of Okutu Village. The suit land is located in Okutu Village, Naberera Ward. Formerly, before the establishment of Okutu Village the area that is currently known as Okutu village was part of Naberera Village in Naberera Ward. In 1994, Naberera village was divided into two villages that is when Okutu village was established and occupied the land that was formerly part of Naberera village.He was the first chairman of Naberera village and was involved in the division of Naberera village and marking its boundaries. The suit land is at the center of Okutu village not at the peripheral. Okutu village is adjacent to Nadonjokin village which was formerly part of Komolo village. Okutu villages has five (5) hamlets namely; Lemelepo, Olkuriapure ,Olmoti,Okutu juu and Ndovu. The suit land is located at Okutu juu hamlet which adjacent to Nadonjokin Village. He owns twenty (20) acres in the suit land which he was granted by Okutu village council in 2011.He was issued with a document, (exhibit D1) by Okutu village

council evidencing that he is the lawful owner of the said 20 acres. He was allocated the suit land by Okutu village council and the allocation was approved by Okutu village assembly. By the time he was allocated the suit land the chairman of the Okutu Village was Mr. Richard Olomboi. He has been in possession of the suit land ever since it was granted unto him without any interference. The controversy over the ownership of the suit land started in 2021 when he was served with summons to appear in this case. Mr. Pambau Ngaleyoy (6th defendant) and Basili Mroso (DW 8th defendant) were members of Okutu village land allocation committee. Exhibit P1 was issued in 2014 whereas he was allocated the suit land in 2011.

DW1's testimony was supported by the testimony of DW2, DW3, DW4, DW5 and DW7 whose testimonies were to the effect that the suit land is located in Okutu Village. DW2, DW3, DW4 and DW6 tendered in court exhibits D2, D3, D4, and D5 (documents showing allocation of the suit land unto them) respectively to prove that the suit land is located in Okutu Village and they were allocated the same by Okutu Village Council following the approval made by Okutu village assembly.

DW7's testimony was to the effect that he is the resident of Naberera village, Naberera Ward, in Simanjiro District. He is the Ward Executive Officer (" WEO") of Naberera Ward. He started working at Naberera Ward as the WEO in 2018. The Chairman of Naberera village is Mr. Richard Kasumba and the chairman of Okutu village is Mr. Richard Olomboi (4th defendant). He knows the plaintiff and is aware of the dispute between the parties in this case. In 2019, Mr. Richard Olomboi informed him about

the complaints of the residents of Okutu village on the harassment and interference on their ownership of the suit land. He went to Okutu village to sort out that matter. He visited the suit land together with officials from Okutu Village in the absence of plaintiff and officials from Komolo village. He realized that the defendants lawful owners of the suit land since they had proper documents for ownership of the same issued by Okutu village council and the suit land is located in Okutu village. He wrote a letter to the plaintiff and directed him to stop interfering with the ownership of the suit land. During the Ward Development Committee meeting ("WDC") he made a request for a surveyor from Simanjoro District council to be sent to Okutu village for the purpose of identification of the boundaries of Okutu village. The surveyor was sent to Okutu village. He identified the boundaries as requested in his (DW7) presence and the officials from Okutu village and prepared his report which shows that the suit land is located in Okutu juu hamlet, Okutu Village. In identifying the boundaries of Okutu village, the surveyor used the map of Naberera village and the map of Okutu village. Okutu village is registered.

Moreover, DW7 told this court Okutu Village was part of Naberera Village. The available map is the one of Naberera Village. The suit land is located about 500 meters from the boundary of Komolo Ward and Okutu Village. DW7 tendered in Court three documents which were admitted in evidence as exhibit D6 collectively. He termed them as "minutes of Okutu village assembly" in which the approval the allocation of the suit land to the 2nd -8th defendants inclusive was made.

DW6's testimony was as follows; that he is a farmer dealing with large scale farming and sale of agricultural produces. He resides in Okutu village since 2018. He has another residence in Milangoine Village in Arusha. He knows the plaintiff. The 2nd, 3rd, 4th, 5th, 6th, 7th and 8th defendants leased the suit land to him for three years from 2021-2023. Before leasing the suit land he obtained confirmation from the VEO and chairman of Okutu Village that the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th defendants are the owners of the suit land. DW6 beseeched this court to declare him as an innocent person since he believed that the suit land belongs to the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th defendants.

CW1, the authorized land officer for Simanjiro District Council testified as follows; that he knows Nadonjukin and Okutu villages. Nadonjukin Village is located in Komolo Ward, Terrat division whereas Okutu village is located in Naberera Ward. Komolo Ward is adjacent to Naberera Ward. Nadonjukin Village has already been surveyed. Formerly, it was part of Komolo Village whereas Okutu Village is not yet surveyed. Formerly it was part of Naberera village. It was a hamlet within Naberera village. Currently, it has been registered as a village though it is not yet surveyed. By 1997 Okutu Village was already registered. The boundaries of Naberera and Okutu village are not yet established by Simanjiro District Council land office /department. Normally, the minutes of the meetings in which a resolution for establishment of Okutu Village was made shows the particulars for the boundaries of a village in question. Okutu village has not yet been surveyed due to the disputes among the officials of Okutu village which led to the suspension of the members of Okutu village council.

including Mr. Richard Olomboi who was the chairman of Okutu village. The Simanjiro District Council took charge of the management of the Okutu village. Okutu village is adjacent to Nadonjuki Village.

Moreover, CW1 told this court that he knows the plaintiff and the suit land. Formely, the suit land was within komolo Village but following the division of Komolo Village and establishment of Nadonjuki village, the suit land is now located in Nadonjuki village.

From the evidence adduced by the parties herein, it is not in dispute that Okutu Village is in Naberera Ward. This is per the testimonies of DW1, the WEO of Naberera Ward, DW3, DW4 and CW1, the authorized land officer of Simanjiro District Council. In addition, it is not in dispute that Okutu village is not yet surveyed this is in accordance with the testimonies of DW1, the WEO of Naberera Ward and CW1, the authorized land officer of Simanjiro District council.

Moreover, the evidence adduced from both sides reveals that Nadonjuki Village is in Komolo Ward. Formerly, before the division of Komolo village into two villages, to wit; Komolo village and Nadonjuki village, the land currently occupied by Nadonjuki village was part of Komolo village. Nadonjuki and Okutu villages are adjacent. Similarly, Komolo and Naberera Wards are adjacent. Since Okutu village is not surveyed it is obvious that there are no beacons for identification of its boundaries. However, according to DW7's testimony, the boundaries of Naberera Ward are the ones used to identify the boundaries between Nadonjuki Village and Okutu Villages because Okutu Village is within

Naberera Ward. At this juncture, it is noteworthy that the authorized land officers, like CW1 in this case, are the ones responsible for identifications of boundaries for surveyed lands within their districts/jurisdictions since they are responsible for the survey of lands in their jurisdictions/ districts among other duties. Thus, as between the two competing assertions on the location of the suit land, I am of a settled opinion that the testimony of CW1 is worthy to be believed and relied upon by this court. CW1 was a credible witness and an official from Simanjiro District Council responsible for land matters. DW7's assertion on the identification of the boundaries of Okutu Village and the location of suit land by a land surveyor from Simanjiro District Council whose name was not disclosed is wanting. First, that surveyor was not brought in court to testify to that effect. Secondly, DW7 is neither a surveyor nor a responsible official from the department dealing with land matters in Simanjiro District Council. In addition, since Nadonjukin village is surveyed, its boundaries can be identified with certainty thus, CW1's testimony that the suit land is located in Nadonjukin village makes sense. Exhibit P1 (the Customary Right of Occupancy) also, proves that the suit land is located in Nadonjukin village since it is common ground that Nadonjukin village was part of Komolo village and exhibit P1 indicates that the suit land is located in Komolo village.

For avoidance of doubts, I have taken into consideration exhibits D1-D5 inclusive as well as exhibit D6 collectively which comprises of three documents termed by DW7 as the "minutes of Okutu village assembly" relied upon by the defendants in proving that the suit land is located in Okutu Village and its allocation was approved by Okutu village assembly.

In my considered opinion exhibits D1-D5 inclusive and exhibit D6 cannot take precedence over the Customary Right of Occupancy (exhibit P1) relied upon by the plaintiff in proving his ownership of the suit land and its location. The judgment of the Court of Appeal in the case of **Maulid Ambali, Rose Kashinde and Masaki kashinde Vs Ramadhani Juma, Civil application No.173 /08 of 2020**, (unreported), cited by Mr. Njau in his final submission, in which the Court of Appeal pointed out that where two persons have competing interests in a landed property , the person with a certificate thereof will always be taken to be the lawful owner unless it is proved that the certificate was not lawfully obtained, is relevant in the case at hand. Exhibit P1 was signed by CW1. During cross examination upon being referred to exhibit P1, CW1 told this court that he signed and issued exhibit P1 to the plaintiff since there were supporting documents from Komolo village where the suit land was located before the establishment of Nadonjukin Village. CW1's response aforesaid takes care of the concern raised by Mr. Yoyo in his final submission that exhibit P1 does not indicate that the suit land is located in Nadonjukin Village. According to CW1's testimony exhibit P1 was issued prior to the division of Komolo village into two villages to wit; Komolo and Nadonjukin Village. I have also noted that exhibit P1 shows that the suit land is located in Nobikto hamlet which is in line with the testimony of PW2, the former chairman of Nobikto hamlet which was to the effect that the suit land is in located in Nobikto hamlet in Nadonjukin village.

In addition to the above, I have taken into consideration Mr. Yoyo's concern that exhibit P1 indicates that farm No.301 within which the suit

land is located was granted to three persons and the plaintiff has not sought the permission from the other two co-owners of the suit land to institute this case on their behalf. In my considered opinion Mr. Yoyo's concern aforesaid has been raised as an afterthought in his final submission since he was supposed to raise that concern /point in the defendants' written statement of defence or as a point of preliminary objection in order to give a room to the plaintiff to address it adequately. In fact, the same would have been the 1st issue to be dealt with since it challenges the plaintiff's *locus standi* and /or the competency of this suit. I am of a view that it is not appropriate to entertain that concern at this stage since it was not pleaded thus, unfounded and that is why it is not among the issues framed for determination by the court. Moreover, I am of a settled view that entertaining Mr.Yoyo's argument aforesaid at this stage will prejudice the plaintiff who had no opportunity to adduce his evidence on the same during the hearing. Mindful of the position of the law that final submissions are neither evidence nor part of the pleadings, I will not make any determination on the aforesaid argument.

Another argument raised by Mr. Yoyo is that exhibit P1 is not signed by the other two co –owners of the suit land indicated therein namely; Silongoi Kiyapi Siria and Sabaya Kiyapi Siria, and that Sabaya Kiyapi Siria is a minor.Mr. Yoyo urged this court not to accord any weight to exhibit P1. As correctly pointed out by Mr. Yoyo, it is true that exhibit P1 was signed by PW1 only and has not been signed by the other two co- owners of the suit land indicated in exhibit P1. However, it is noteworthy that exhibit P1 is duly stamped and signed by the chairman of Komolo Village,

WEO of Komolo Ward and the authorized land officer of Simanjiro District Council (CW1). In addition, it bears Simanjiro District Council's seal and all necessary information on the land in question including a small sketch map showing the size of the land in question and indicates that the same is granted to the plaintiff, Mr. Kiyapi Haiyo Siria, Silongoi Kiyapi Siria and Sabaya Kiyapi Siria , a minor who is represented by Mr.Kiyapi Haiyo Siria, the plaintiff. What I have endeavored to point out herein above on the contents of exhibit P1 shows that the same is a genuine document. The fact that it does not bear the signatures of Silongoi Kiyapi Siria and Sabaya Kiyapi Siria is a trivial omission which cannot render the same invalid or insignificant. In fact, the plaintiff was supposed to sign exhibit P1 on his own behalf and on behalf of Sabaya Siria since he is a minor and the plaintiff is his representative as per the contents of exhibit P1.The plaintiff's and Mr. Silongoi Kiyapi Siria's failure to sign in their respective spaces in exhibit P1 can be cured by signing the document and not otherwise. In the absence of any serious and proved allegation that the exhibit P1 was obtained illegally I do not see any plausible reasons to ignore it.

Be it as it may, for the sake of arguments, even if this court decides to ignore exhibit P1 on the ground that it is not signed by the two co-owners, the testimonies of CW1, PW2 and the plaintiff prove that the suit land is located in Nadonjukin village not Okutu village.

On Mr.Yoyo's concern that the plaintiff did not tender in court the minute of Komolo village council meeting and Komolo village assembly which allowed the allocation of the suit land to the plaintiff, I find it wanting too

since , as alluded earlier in this judgment, exhibit P1 bears the signature of the chairman of Komolo village and the WEO of komolo Ward which means that before the issuance of exhibit P1 there was a permission from Komolo Village Council and Komolo village assembly for allocation of the suit land to the plaintiff, otherwise the aforesaid village officials would have not signed exhibit P1. In addition, the defendants in their defence did not allege that exhibit P1 was obtained fraudulently and no evidence was made by the defendants' witnesses to that effect. Thus, Mr. Yoyo's concern aforesaid has been raised as an aforethought in his final submission which does not form part of the pleadings or evidence. Thus, my stance is that exhibit P1 is a lawful document and since it has not been proved otherwise, I do not see any plausible reasons to doubt the process through which it was issued/obtained [see the case of **Maulid Ambali, Rose Kashinde and Masaki kashinde**, (supra)].

Without prejudice to my observations herein above, I wish to point out some glaring contradictions and shortcomings on exhibit D6 tendered by the defendants to support the issuance of exhibits D1-D5 inclusive. As alluded earlier in this judgment, exhibit D6 collectively is comprised of three separate documents to wit; a letter dated 10th June 2011 written by the VEO of Okutu Village addressed to the DED , Simanjiro District Council and copied to the WEO of Naberera ward, a document titled "list of persons authorized by the Village Assembly to be allocated land measuring 5-50 acres starting from 15th June 2011" and a document titled "list of attendees at Okutu village assembly". Starting with the letter titled "minutes of Okutu village assembly" dated 10th June 2011, I have noted

that the same indicates that it was signed by the Chairman of Okutu Village on the same day, that is 10th June 2011 and duly stamped. But the contents of the same letter at page two indicates that the meeting was held on 15th June 2011 and on that date the Village Assembly resolved that land should be allocated to the applicants/villagers from the date of that meeting, that is, 15th June 2011. Also, the list of persons allowed to be allocated land indicates that they were supposed to be allocated their respective land from 15th June 2011 onwards. Now, the pertinent question here is; when was the allegedly Okutu Village Assembly held?. Is it 10th June 2011 or 15th June 2011.

The above aside, as alluded herein above, the said "minutes of Okutu Village Assembly" are in a form of a letter addressed to the DED Simanjiro District Council, Manyara and copied to the WEO of Naberera Ward. In my considered opinion what has been presented in evidence by the defendants as "the minutes of Okutu village assembly" does not deserve to be termed as "minutes". I am alive that there is no strict formality in preparation of minutes of Village assembly. However, by whatever stretch of imagination the same cannot be in a form of a letter. In addition, the separate document titled "list of attendees of Okutu Village assembly", is not dated and does not bear any stamp of Okutu Village or signature or any endorsement of any official from Okutu Village in order to connect it with the letter aforesaid purported to be "minutes" of Okutu village assembly. Similarly, the other document titled, "list of persons allowed to be allocated land" is neither dated nor indorsed by the officials of Okutu Village. In my considered opinion the discrepancies I have pointed out

herein above are fatal as they cast doubts on the whether the Okutu village assembly was really held and there was approval of resolution for the allocation of suit land as alleged by the defendants. With due respect to Mr. Yoyo, I am not inclined to agree with the contention made in his final submission that the defendants have provided more credible evidence than the plaintiff in proving their ownership of the suit land.

From the foregoing, it is the finding of this court that the suit land is located in Nadonjukin Village. It is a common knowledge that the prove in civil cases is on balance of probabilities, that is, the court has to sustain evidence which is more credible than the other on a particular fact to be proved. [See **Agatha Mshote Vs Edison Emmanuel and 10 others, Civil Appeal No.121 of 2019** (unreported)].I am in agreement with Mr. Njau's stance expressed in his final submission that the plaintiff has managed to prove his case to the standard required by law that the suit land is located in Nadonjukin village thus, it goes without saying that exhibits D1-D6 inclusive are redundant in the sense that they cannot be used to confer rights of ownership of the suit land to the 2nd- 8th defendants inclusive. Okutu village council had no powers to allocate to the 2nd -8th defendants suit land since the same is located in Nadonjukin village. Consequently, it is the finding of this court that the plaintiff is the lawful owner of the suit land. Thus, the 2nd – 8th defendants inclusive are trespassers into the plaintiff's land and had no right to enter into a lease agreement with the 1st defendant in respect of the suit land. Under the circumstances, definitely the plaintiff have suffered damages due to the defendants' intrusion in his land since he was denied his right to use it.

With regard to the reliefs the parties are entitled; The plaintiff is hereby declared the lawful owner of the suit land. The defendants should vacate from the suit land forthwith and should not interfere with the plaintiff's ownership, and use of the suit land anymore. The 2nd, 3rd, 4^t, 5th, 6th, 7th and 8th defendants shall pay the plaintiff a sum of Tshs. 3,500,000/= being general damages as well as the costs of this suit.



Dated this 13th day of July 2023

B.K.PHILLIP

JUDGE.