

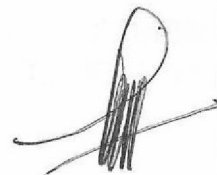
IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

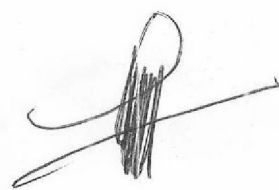
AT KIGOMA

MISC. LAND APPLICATION NO. 37 OF 2023

WINIFRIDA B. MANDOGO .....	1 <sup>ST</sup> APPLICANT
PIJO S. KALILO .....	2 <sup>ND</sup> APPLICANT
JUMANNE S. NZWIBA.....	3 <sup>RD</sup> APPLICANT
HADIJA J. MALANDE.....	4 <sup>TH</sup> APPLICANT
MANENO L. MTENDA.....	5 <sup>TH</sup> APPLICANT
KASIMU S. MASUMAA.....	6 <sup>TH</sup> APPLICANT
KASHINDI S. NZWIBA .....	7 <sup>TH</sup> APPLICANT
RIZIKI K. ABEIDI .....	8 <sup>TH</sup> APPLICANT
RAJABU K. SAID .....	9 <sup>TH</sup> APPLICANT
KASA K. SAID .....	10 <sup>TH</sup> APPLICANT
MANDE D. AMANI .....	11 <sup>TH</sup> APPLICANT
VICK M. TUNG'OMBE.....	12 <sup>TH</sup> APPLICANT
ASHURA H. BAKARI .....	13 <sup>TH</sup> APPLICANT
BARUAN IDD .....	14 <sup>TH</sup> APPLICANT
SAUDA M. MUSSA .....	15 <sup>TH</sup> APPLICANT
GASTO M. BERNALD .....	16 <sup>TH</sup> APPLICANT
ZENA S. MOHAMEDI.....	17 <sup>TH</sup> APPLICANT
TAUSI J. KATABE .....	18 <sup>TH</sup> APPLICANT
HUSNA K. ALLY .....	19 <sup>TH</sup> APPLICANT
SUZANA Y. ALLY .....	20 <sup>TH</sup> APPLICANT
JUMA M. MRISHO .....	21 <sup>ST</sup> APPLICANT
SADA A. AMANI .....	22 <sup>ND</sup> APPLICANT
AMINA S. OMARI .....	23 <sup>RD</sup> APPLICANT
ASHA H. MLUMBA .....	24 <sup>TH</sup> APPLICANT
MLASI H. NDUME .....	25 <sup>TH</sup> APPLICANT
RASHIDI H. CHONGELA .....	26 <sup>TH</sup> APPLICANT
MFAUME M. HAMISI .....	27 <sup>TH</sup> APPLICANT
KALIMU J. KALIMU .....	28 <sup>TH</sup> APPLICANT
ATHUMANI A. AMANI .....	29 <sup>TH</sup> APPLICANT
MAUA Y. MUSSA .....	30 <sup>TH</sup> APPLICANT
KASA K. ATHUMANI .....	31 <sup>ST</sup> APPLICANT
ELIZABETH S. MFAUME .....	32 <sup>ND</sup> APPLICANT
ZABIBU Z. SELEMANI .....	33 <sup>RD</sup> APPLICANT
KIVURUGA M. SONGORO.....	34 <sup>TH</sup> APPLICANT
MBAYA Y. JUMA .....	35 <sup>TH</sup> APPLICANT



SUMAIA S. KHAMISI .....	36 <sup>TH</sup> APPLICANT
ZAWADI H. ILALI.....	37 <sup>TH</sup> APPLICANT
VUMILIA A. ALIMASI.....	38 <sup>TH</sup> APPLICANT
SANGU A. AMNI .....	39 <sup>TH</sup> APPLICANT
MAULIDI I. MATISONI.....	40 <sup>TH</sup> APPLICANT
SELEMANI R. SONGORO.....	41 <sup>ST</sup> APPLICANT
ASHURA B. JOHN.....	42 <sup>ND</sup> APPLICANT
REHEMA M. MARAGE.....	43 <sup>RD</sup> APPLICANT
MWAJUMA M. MAHAMOUD.....	44 <sup>TH</sup> APPLICANT
EDI M. KAMWAGA.....	45 <sup>TH</sup> APPLICANT
VUMILIA S. MASUMAA.....	46 <sup>TH</sup> APPLICANT
HESHIMA J. KABOGO.....	47 <sup>TH</sup> APPLICANT
MWANVITA S. SAID.....	48 <sup>TH</sup> APPLICANT
ANJERINA J. RULAGUMYE.....	49 <sup>TH</sup> APPLICANT
SAID N. MASUMA.....	50 <sup>TH</sup> APPLICANT
BUBERI S. KATANGA.....	51 <sup>ST</sup> APPLICANT
MAIMUNA S. ZWIBA.....	52 <sup>ND</sup> APPLICANT
MWAMVUA Z. KATANGA.....	53 <sup>RD</sup> APPLICANT
JAFARI S. NZWIBA .....	54 <sup>TH</sup> APPLICANT
HEMEDI N. SAIDI.....	55 <sup>TH</sup> APPLICANT
ASHURA H. LUBANGA.....	56 <sup>TH</sup> APPLICANT
ASIA K. HAMISI.....	57 <sup>TH</sup> APPLICANT
MAUA Y. MUSSA.....	58 <sup>TH</sup> APPLICANT
HAMISI M. HAMISI.....	59 <sup>TH</sup> APPLICANT
RAHMA M. HAMISI.....	60 <sup>TH</sup> APPLICANT
ZABIBU J. KITEGA.....	61 <sup>ST</sup> APPLICANT
FATUMA H. JUMA .....	62 <sup>ND</sup> APPLICANT
ASHURA M. HAMISI .....	63 <sup>RD</sup> APPLICANT
ALLY R. HASANI .....	64 <sup>TH</sup> APPLICANT
MFAUME R. MAUME.....	65 <sup>TH</sup> APPLICANT
MWAJUMA M. MUSSA .....	66 <sup>TH</sup> APPLICANT
BANZA I. ATHUMANI.....	67 <sup>TH</sup> APPLICANT
MADINA I. SWALEHE.....	68 <sup>TH</sup> APPLICANT
HADIJAI. RAMADHANI .....	69 <sup>H</sup> APPLICANT
HADIJA E. ATHUMANI .....	70 <sup>TH</sup> APPLICANT
SHABANI N. KALENGE .....	71 <sup>ST</sup> APPLICANT
FAIDA K. ULIMWENGU.....	72 <sup>ND</sup> APPLICANT
ADAM A. MASUMAA.....	73 <sup>RD</sup> APPLICANT
SADA K. SAID.....	74 <sup>TH</sup> APPLICANT
MAULID K. MAKOBA.....	75 <sup>TH</sup> APPLICANT
MARIAM M. NOBERBET.....	76 <sup>TH</sup> APPLICANT



BIATRICE A. MBOGO.....	77 <sup>TH</sup> APPLICANT
MARIAMU I. LIKA .....	78 <sup>TH</sup> APPLICANT
BAWILI K. SONGORO .....	79 <sup>TH</sup> APPLICANT
CHAUSIKU H. HUSSEIN.....	80 <sup>TH</sup> APPLICANT
NYOTA A. MICHAEL.....	81 <sup>ST</sup> APPLICANT
HAMISI K. HAMISI .....	82 <sup>ND</sup> APPLICANT
HAMISI T. HAMISI.....	83 <sup>RD</sup> APPLICANT
SHALO K. HAMISI.....	84 <sup>TH</sup> APPLICANT
ABEIDI R. ABEID.....	85 <sup>TH</sup> APPLICANT
NASORO K. SABUNI.....	86 <sup>TH</sup> APPLICANT
YAHYA N. SAID.....	87 <sup>TH</sup> APPLICANT
IDD K. SABUNI .....	88 <sup>TH</sup> APPLICANT

**VERSUS**

**THE TRUSTEES OF THE TANZANIA NATIONAL PARKS**

**(MAHALE MOUNTAINS NATIONAL PARK) .....1<sup>ST</sup> RESPONDENT**

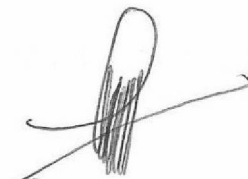
**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**RULING**

*1/8/2023 & 22/8/2023*

**Mlacha,J**

The applicants, Winifrida B. Mandogo, Pijo S. Kalilo, Jumanne S. Nzwiba, Hadija J. Malande, Maneno L. Mtenda, Kasimu S. Masumaa, Kashindi S. Nzwiba, Riziki K. Abeidi, Rajabu K. Said, Kasa K. Said, Mande D. Amani, Vick M. Tung'ombe, Ashura H. Bakari, Baruan Idd, Sauda M. Mussa, Gasto M. Bernald, Zena S. Mohamedi, Tausi J. Katabe, Husna K. Ally, Suzana Y. Ally, Juma M. Mrisho, Sada A. Amani, Amina S. Omari, Asha H. Mlumba, Mlasi H. Ndume, Rashidi H. Chongela, Mfaume M. Hamisi, Kalimu J. Kalimu, Athumani

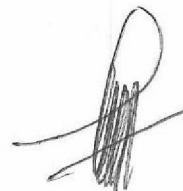


A. Amani, Maua Y. Mussa, Kasa K. Athumani, Elizabeth S. Mfaume, Zabibu Z. Selemani, Kivuruga M. Songoro, Mbaya Y. Juma, Surnaia S. Khamisi, Zawadi H. Ilali, Vumilia A. Alimasi, Sangu A. Amni, Maulidi I. Matisoni, Selemani R. Songoro, Ashura B. John, Rehema M. Marage, Mwajuma M. Mahamoud, Edi M. Kamwaga, Vumilia S. Masumaa, Heshima J. Kabogo, Mwanvita S. Said, Anjerina J. Rulagumye, Iss K. Sabuni, Said N. Masuma, Buberi S. Katanga, Maimuna S. Zwiba, Mwamvua Z. Katanga, Jafari S. Nzwiba, Hemedi N. saidi, Ashura H. Lubanga, Asia K. Hamisi, Maua Y. Mussa, Hamisi M. Hamisi, Rahma M. Hamisi, Zabibu J. Kitega, Fatuma H. Juma, Ashura M. Hamisi, Ally R. Hasani, Mfaume R. Maume, Mwajuma M. Mussa, Banza I. Athumani, Madina I. Swalehe, Hadija I. Ramadhani, Hadija E. Athumani, Shabani N. Kalenge. Faida K. Ulimwengu, Adam A. Masumaa, Sada K. Said, Maulid K. Makoba, Mariam M. Noberbet, Biatrice A. Mbogo, Mariamu I. Lika, Bawili K. Songoro, Chausiku H. Hussein, Nyota A. Michael, Hamisi K. Hamisi, Hamisi T. Hamisi, Shalo K. Hamisi, Abeidi R. Abeid, Nasoro K. sabuni, Yahya N. Said filed an application under a certificate of urgency against The Trustees of the Tanzania National Parks (Mahale Mountains National Park) and The Hon. Attorney General (hereinafter referred to as the first and second defendants respectively) praying for an injunction and



orders of status quo of the parties pending hearing and determination of an anticipated suit to be filed after the expiry of the 90 days statutory notice to sue the government. They also prayed for any relief as the court can deem fit and the costs. The application is accompanied by a joint affidavit of the applicants which has several annexures which included a copy of the 90 days' statutory notice. They had the services of Mr. Gaston Shundo Garubindi from the LAWS ON ATTORNEY, Dar se Salaam. The respondents were duly served and filed a counter affidavit in opposition sworn by a principal officer of the first respondent, Mr. Lameck Matungwa. They were represented by Arnold Simeo, Nickson Tengesi, Bernard Simeo Mganga and Selestine Ngairo state attorneys.

While adopting the contents of this affidavit, Mr. Gaston submitted that the applicants have a boundary dispute with the first respondent at Mahasa and Kabukuyungu hamlets in Kalilani village, Uvinza district. The village started following procedures under the Local Government Act and was registered in 1995. He referred the court to the certificate of registration which is annexed at the affidavit. He showed the court a letter from Kigoma District Commissioner telling them that their village had been registered.



Counsel submitted that Mahale National Park started in 1985 vide GN No. 262 of 1985 which specified its boundaries. It had a good relation with the village as reflected in annexure K-4 which shows approved village projects which involved renovation of classrooms and respect of boundaries. They later developed an interest in the village and said that it was inside the national park hence the tensions. The regional commissioner formed a committee to investigate the matter as reflected in its report, annexure K-5 which recognized Kalelani fishermen camp. It said that Kalelani hamlet was outside Mahale National Park, he said.

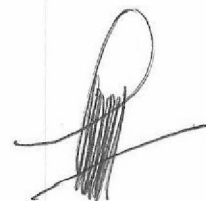
Counsel went on to submit that on 3/3/1998 the government through the Minister for Tourism and Natural Resources recognized what had been done by the Regional Commissioner and said that Kalelani village is outside the national park. But, while knowing that the area is outside the reserved land, they conducted various meetings on issues of boundaries as reflected in annexure K-6 para 3. The committee of the district council said that there was a boundary dispute. The Land Commissioner asked them to submit a full report. They rose again in 2018 and wrote a letter showing that they had a boundary dispute with Kalelani village without making reference to the earlier position. Counsel referred the court to annexure K-11 and said that



Uvinza district council recognized that the village was adjacent the National Park. And recently, the Regional Commissioner and his committee visited the area and later the applicants were informed that they were to vacate because they were in the National Park. The District Commissioner came with the same purpose. They came with the idea of valuating the land because it is inside the National Park.

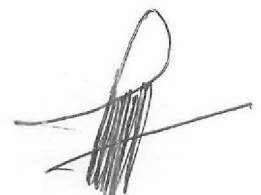
Counsel submitted that that the whole village is outside the National Park. He went on to say that they are now forcing the applicants to sign valuation form No. 69. The applicants are unable to sign because they believe that they are outside the National Park. That is the reason why they are seeking for an injunction order, he said.

Counsel referred the court to two cases for guidance; **Atilio v. Mbowe** [1968] HC D 264 and **Yahaya Hamisi Mboneye v. TANROADS and 2 others**, Miscellaneous Land Application No. 8 of 2022 (Manyanda J.). He said that there is a serious question to be determined. He believed that the applicants will be entitled to the reliefs claimed. He went on to say that they will suffer irreparable loss as opposed to the respondents.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a horizontal line and some scribbled lines underneath.

Submitting in reply, Mr. Benard Mganga state attorney, like his colleague, adopted the contents of the counter affidavit to be part of his submissions. Counsel submitted that following the issue of Government Notice No. 262 of 1985 maps of the National Park were drawn and boundaries ascertained. There has been no problem since then but now people who were fishing at Mahasa and Kabuyungu areas which are within the National Park have started to create residences and are causing problems. They have started settlements in the areas and when the first respondent intervened, a dispute erupted. Government leaders had to come in to try to settle the dispute.

Counsel submitted that the applicants recognize the existence of boundaries between them and the village. He referred the court to annexure SG-1 and SG-2 which are copies of the Government Notice and the map of the National Park. He said that the map was revised in 2006 and was approved by the commissioner for Lands. The approved map shows that Mahasa and Kabukuyungu hamlets are within the National Park. They are not villages but hamlets, he said. Making reference to SG-2, counsel submitted that there is no hamlet called Kalelani. He said that Kalelani village is under Nkokwa area which is adjacent Mahale National Park. He stressed that Mahasa and Kabukuyungu hamlets are within the National Park.

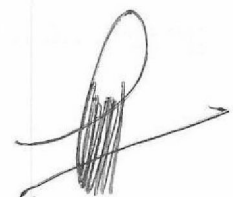




Counsel submitted that, the registration of the village was not correct and if so, then it was registered within the National Park something which is wrong. He challenged the village registration certificate saying it was not brought to court by proper authorities.

Counsel submitted that the application is baseless because the applicants have not shown anything which was done by the respondents which deny or take their properties. The first respondent have not done anything which can be established in court against the rights of the applicants. He went on to say that the applicants have failed to establish a cause of action against the respondents. They have failed to bring any document showing that the first respondent is evicting them from the land. He said that annexure K-5, two documents, are simply educating them that they are living there against the law. He wondered the reason as to why counsel for the applicants did not make reference to annexure SG-2.

Counsel submitted that there is a cabinet resolution to compensate them, to get something for starting a new life somewhere. This is what is contained in SG-3 and SG-4, he said. He added that what is being done is not a result of an act of the respondents but the entire government.



Mr. Anold Simeo state attorney took over from Mr. Benard Mganga and referred the court to the case of **Mareva Campania and Viera SA v. International Bulky Carriers S.A** (1980) ALL ER 213 which allows the granting of an application of this nature. He pointed out three conditions; One, that, the applicant must establish a prima facie case, a serious case. He said that the applicants did not state the size of hamlets, the boundaries and the way they got their land. They have failed to establish a serious case against the respondents, he said. Two, that, the applicants must show that court interference is necessary to protect them from the injury which is to happen. Counsel submitted that the first respondent is just making valuation of the land for purposes of compensating them. They have not served any notice to vacate to the applicants. He said that valuation is done voluntarily and others have accepted except the applicants. Counsel argued that the applicants have failed to establish the reason why an injunction should be granted. Three, the balance of convenience between the parties. Counsel submitted that the land belongs to the government but it has decided to value the land, pay the people and shift them to another land. The government wants the land to remain as reserved land for national interests. If an injunction will be issued, it will prevent the government to bring



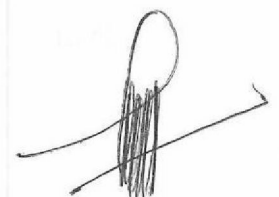
development in the area, he said. He added that if the issue is valuation, the solution was not to seek for an injunction but to appeal against the valuation. He concluded that the government has no intention to victimize anybody. Paying compensation is just done out on humanitarian grounds.

Counsel referred the court to **Yahaya Hamisi Mboneye v. TANROADS and 3 others**, Miscellaneous Land Application No.8 of 2022 and **Nyinge Zakayo and 159 others v. Kigoma Ujiji Municipal Council**, Civil Application No. 9 of 2022 (both of High Court Kigoma) and argued the court to dismiss the application.

I have taken note of principles contained in the cited cases. I will try to point out more cases and show the differences between a normal application for injunction and a Mareva injunction. The leading case in application injunctions in this country is the case of **Attilio v. Mbowe** (1969) HCD 284. This court had this to say in page 486 and 487:-

*"It is generally agreed that here are three conditions which must be satisfied before such an injunction can be issued:-*


*(i) That, there must be **serious question** to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed.*



*(ii) That, the **court's interference is necessary** to protect the plaintiff from the kind of **injury** which may be irreparable before his legal right is established.*

*(iii) That, on the balance there will be **greater hardship and mischief suffered by the plaintiff** from the withholding of the injunction than will be suffered by the defendant from the granting of it.*

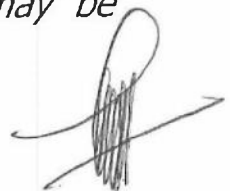
The principles were followed in **E.A. Industries vs. Trufoods**, [1972] E.A. 420, **Giella v. Cassman Brown & Co Ltd** [1973] 1 EA 358 (CAK), **T.A. Kaare vs General Manager Mara Cooperative Union**, (1984) LTD (1987) TLR 17, (HC-Musoma Mapigano J, deceased), In **Edward Epimark Lasway, T/A Lasway Truck and 2 Others vs National Bank Commerce and 2 others**, (HC- Dar es salaam, Magoiga J), Misc. Commercial Application No. 08 of 2020 said the following at page 21, and in **Msimbazi Creek Housing Estate Ltd v. Keds Tanzania Company Ltd and Another**, Misc. Land Application No. 55 of 2020 (HC-Dar es salaam, Magoiga J.). In Msimbazi Creek Housing Estate Ltd (supra) my brother Magoiga J. stressed the point at page 6 where he said:-



"... the Principles governing an order for temporary injunction are generally founded under three main grounds. **Firstly**, the applicant should show a prima facie case with a probability of success against the respondent. **Secondly**, the applicant should prove that if the application is not granted the injury that would be suffered would be irreparable by way of damages. The **third** principle one is the balance of convenience; that the Applicant would stand to suffer greater hardship if the order is refused than what the Respondent would suffer if granted."

Normal injunctions are sought and granted if the conditions set out above are met. They are granted where there is a pending suit. That is not for Mareva injunctions which are sought and granted where there is no pending suit. This position was well explained by this court in In **Daud Mkwaya Mwita vs Butiama District Commissioner and another**, Miscellaneous Land Application No 69 of 2020 (HC-Musoma Galeba J. as he then was) page 3 where it was said thus:-

"... a Mareva injunction cannot be applied or be granted pending a suit. **It is an application pending obtaining a legal standing to institute a suit.** A Mareva injunction may be



*applied where an applicant cannot institute a law suit because of **an existing legal impediment** for instance where law requires that a statutory notice be issued before a potential plaintiff can institute a suit". (Emphasis added)*

See also **Overseas Infrastructure Alliance (India) Pvt Ltd And Pratibha Industries Ltd Consortium v. Dar es Salaam Water and Sewerage Authority (DAWASA)**, Misc. Civil Application No. 237 of 2020. (S.M. KULITA, J.).

The case which tried to trace the history of Mareva injunctions and why they are applicable in this country in more clear terms is the case **Auto Mech Limited v. TIB Development Bank Limited and 3 others**, Miscellaneous Land Application No. 73 of 2020 (High Court Land Division- Maige J. as he then was) pages 5 to 11. Making reference to the case of **Mareva Compania Navira S.A** (supra) (Lord Denning MR), the case of **Aetna Financial Services v. Feigelman & 3 others** (1985) 1 SCR 2 (a decision of the Supreme court of Canada) and the provisions of the Judicature and Application of laws Act, cap 358 R.E. 2019, the court had this to say at page 11:-



*"... since the decision in Mareva case was based on a broader interpretation of section 25 of the Judicature Act of 1873 in the old case of Beddow v. Beddow (1878) 9 Ch.D at 93 (Jessel MR) **the Mareva case is still part of the received law.**"*(Emphasis added)

Making reference to earlier positions on Mareva injunctions, this court narrowed the rule to two conditions in **Leopard Net Logistics Company Ltd v. Tanzania Commercial Bank Ltd**, Miscellaneous Application No.585 of 2021 page 6 where it was said that; **one**, the applicant must demonstrate a strong prima facies case or a good and arguable case and **two**, having regard to all circumstances of the case, it appears that granting the injunction is just and justifiable. I subscribe to this view.

We talk of a serious case calling the attention of the court. We talk of a prima facie case or a good and arguable case. We measure and see if the granting of the injunction is just and justifiable on the facts before the court.

In this case, the applicants are speaking of being lawful members of Kalelani village which was registered in 1995 and which is adjacent the national park. They talk of a boundary dispute with the first respondent which have been



a subject of negotiations between them and the first respondent, the office of the Regional Commissioner, the office of the District Commissioner, Uvinza district council and the Ministry of Natural Resources and Tourism. They talk of forcible valuation of their properties with the view of being shifted to another area and resistance to move. They claim that the two hamlets are outside the national park. They resist the valuation exercise.

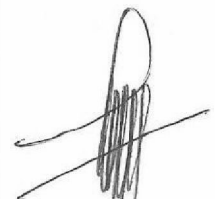
On the other hand, the respondents are talking of the national park which was established and gazetted in 1985. They are saying that the two hamlets are inside the national park and have been a problem over the years. They have maps showing that the two hamlets are within the boundaries of the national park. They have filed documents showing that several studies and meetings have been conducted and finally, the government resolved that much as the two hamlets are within the boundaries of the national park, they should be compensated, to get something ahead of them. That is the essence of the valuation exercise going on. They say that it is legal and have been accepted by many people except the applicants.

Having considered the positions of the parties carefully, and being guided by principles of fair trial, I found it necessary to visit the area to get a better insight of the dispute. I engaged the parties who agreed. We moved together





to the suit land. I was with the counsel of both parties, 5 applicants and 5 officials of the first respondent. I also engaged the village chairman, village executive secretary and the chairmen of the two hamlets. We passed through the four hamlets of the village namely Kalolwa, Katumba store, Kabukuyungu and Mahasa. We moved to a certain point inside the national park across its offices which is agreed by both parties to be a reference point in the Government Notice. The applicant were given a chance to show the boundary and pointed upwards in the mountain. They needed us to go up pointing at a certain area saying that moving leftward from that area could take us to point leaving the two hamlets outside. The respondents advised that we should put the reference points in the GPS and command it to give us the direction. We agreed so. Counsel for the plaintiffs was reading the reference points to the officer holding the GPS. It directed us to move 2.5 kilometer east to get the point. That was taking us along the lake line as opposed to what had been pointed out by the applicants. We followed him up to the end of the two hamlets and then up wards. We arrived at a certain area high in the mountains. They said that the boundary run from the point to the lake leaving the two hamlets inside the national park. There was an exchange of words which I did not allow because I was not trying the case



but merely establish if there was a serious case for decision. My role was limited to seeing whether there was a prima facie case or not. I was satisfied that on the boundary side there was no serious case or a case with a probability of success.

I looked at the village leaders and examined them on the element of valuation. The village executive secretary (VEO) said that education was given to the people who accepted the valuation exercise. It went smoothly but somewhere in between, a group of people from Kabukuyungu hamlet invaded his house. They needed to destroy the valuation forms. He had to report to the police who came to rescue him. The Mahasa hamlet chairman said that there was no problem on his part. The Kabukuyungu hamlet chairman and the village chairman had the opposite story. They said that the exercise did not involve them. They did not see it as legal because they are living outside the national park.

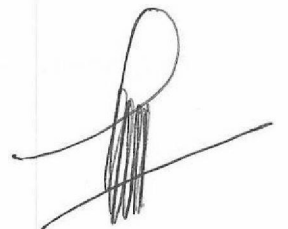
What was said by village leaders is contained in Annexure SG-4 which is a report of the Assistant Land Commissioner Kigoma dated 26/2/2023 addressed to the Regional Commissioner. It is a recent report. It reads in part as under:-

*"Kwa mujibu wa Takwimu kutoka uwandani (physical count and direct observation) kwa kushirikiana na uongozi wa Kijiji, mtendaji na Mwenyekiti na Mwenyekiti wa Kitongoji cha Mahasa, timu ilibaini uwepo wa jumla ya kaya 287 katika vitongoji vya Mahasa na Kabukuyungu (Kaya 116 Mahasa na Kaya 171 Kabukuyungu. Kaya 123 zenye jumla ya wakazi 194 zilifanyiwa uthamini, idadi hii ni sawa na 43% ya kaya zote 287....."*

*Takwimu zinaonyesha kaya zilizofanyiwa uthamini katika kitongoji cha Mahasa ni 95 zenye wakazi 138 hii ni sawa na 81.9% ya kaya zote (116) za kitongoji. Asilimia ndogo 28 zenye wakazi 56 sawa na 16.4% ya kaya 171.....**idadi ndogo kwa kitongoji cha Bukuyungu ilitokana na Mwenyekiti wa Kitongoji kuwepa zoezi na ushirikiano mdogo uliokuwa ukitoka kwa mwenyekiti wa Kijiji.....***

***Zoezi lilikuwa la hiari ililoambatana na uhamasishaji na elimu ..... Amani ilitawala muda wote wa zoezi.***

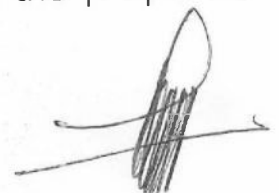
*Baada ya mkutano wa DC na fomu kutolewa tarehe 30/5/2023, usiku wake kilijitokeza **kikundi cha watu kilishinikiza na***



*kuzuia wananchi wasichukue fomu ili kugomea zoezi, ambapo kilivamia nyumba ya mtendaji na Kijiji (VEO) ndugu Maulidi Dunia Mtoni na Mwenyekiti wa Kitongoji cha Mahasa ndugu Juma Kifungo Bakari kwa ajili ya kuwapiga na kuwanyanganya fomu..... walifanikiwa kutoroka na kuokolewa na askari.....”(Emphasis added)*

This literally means that valuation was voluntary and smooth up to 30/5/2023. There is a total of 287 homesteads in the two hamlets. Mahasa has 116 and Kabukuyungu 171. In the exercise they valued 95 homesteads in Mahasa which has 138 people equal to 81.9%. They also valued 28 homesteads in Kabukuyungu which is 56 people equal to 16.4%. They then met resistance from a group of people who invaded the house of the VEO and chairman of Mahasa with the view of destroying the forms. That they were saved by the police. This is exactly what was said to me in the visit.

So, what is at stake is not a boundary dispute as such but a resistance to the ongoing valuation exercise which is conducted by the government. It is a resistance to move out of the area which is perpetrated by the village chairman and the Kabukuyungu hamlet chairman and not the people as such.

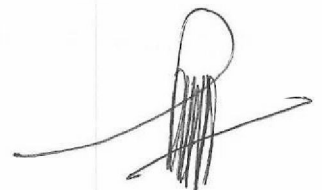


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**Zoezi lilikuwa la hiari ililoambatana na uhamasishaji na elimu ..... Amani ilitawala muda wote wa zoezi.**

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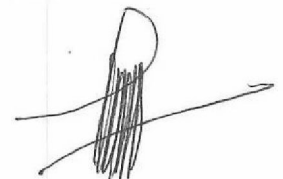
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So, what is at stake is not a boundary dispute as such but a resistance to the ongoing valuation exercise which is conducted by the government. It is a resistance to move out of the area which is perpetrated by the village chairman and the Kabukuyungu hamlet chairman and not the people as such.

It is apparent from the above that education was given to people and majority of them agreed and accepted the valuation exercise. Few did not and form the current applicants. The applicants were 92 in total but 3 pulled out before the case was heard and one died in between. I am left have 88 people out 332 people equal to 25.5% of the total population of the two hamlets. They represents 88 homesteads out of 287 homesteads equal to 30.67%. They are the minority so to say.

Can we now say that the applicants have managed to establish that there is a serious or prima facie case? I would say no. I have three points. **One**, what is going on is a lawful valuation exercise conducted by the government which have already been accepted by the majority of the people in the area. The applicants are only 25.5% of the people. **Two**, the applicants have failed to convince the court that the two hamlets are outside the national park. The locations given by the GPS in the visit of the locus in quo suggest that the two hamlets are within the national park giving the applicants a weak position during the trial in the case which will be filed. I see no probable chance of success on their side. **Three**, the applicants have filed the case without the village council which has the mandate on issues of boundaries and the valuation exercise. It is the village council which speak of its



boundaries and which resist the valuation exercise done on its land and not individuals.

Now can we say that the granting of an injunction is just and justified in the circumstances of this case? I would rush to say no because the applicants have no serious case. They have failed to establish a prima facie case. Once there is no prima facie case, a Mareva injunction cannot be granted. If a Mareva injunction will be granted in the circumstances of this case it will end up frustrating legal government activities in the area. That said, the application is found to be devoid of merits and dismissed. Costs to follow the events.



**L.M. Mlacha**

**Judge**

**22/8/2023**

**Court:** Ruling delivered. Right of appeal explained.



**L.M. Mlacha**

**Judge**

**22/8/2023**