

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND CASE NO. 11 OF 2021**

**SAULO M. MAKUNGU ..... 1<sup>ST</sup> PLAINTIFF**  
**KUBOJA MALIMA ..... 2<sup>ND</sup> PLAINTIFF**  
**MBOI MALIMA ..... 3<sup>RD</sup> PLAINTIFF**  
**MKUNGU MALIMA ..... 4<sup>TH</sup> PLAINTIFF**  
**SISTA MALIMA ..... 5<sup>TH</sup> PLAINTIFF**  
**THEREZA MALIMA ..... 6<sup>TH</sup> PLAINTIFF**  
**TIBE MALIMA ..... 7<sup>TH</sup> PLAINTIFF**  
**SCOLA MALIMA ..... 8<sup>TH</sup> PLAINTIFF**  
**GRACE MALIMA ..... 9<sup>TH</sup> PLAINTIFF**  
**NYAMBINA MALIMA ..... 10<sup>TH</sup> PLAINTIFF**  
**MASAGA SAULO ..... 11<sup>TH</sup> PLAINTIFF**  
**MAJUBU SAULO ..... 12<sup>TH</sup> PLAINTIFF**  
**BITA MBOI ..... 13<sup>TH</sup> PLAINTIFF**  
**MULILA TELEZA ..... 14<sup>TH</sup> PLAINTIFF**  
**MUTUME MBOI ..... 15<sup>TH</sup> PLAINTIFF**  
**NYAKAJI TELEZA ..... 16<sup>TH</sup> PLAINTIFF**  
**GWATO SISTA ..... 17<sup>TH</sup> PLAINTIFF**  
**KALILO SISTA ..... 18<sup>TH</sup> PLAINTIFF**  
**NYABUGUMBA MBOI ..... 19<sup>TH</sup> PLAINTIFF**

***VERSUS***

**BUSIRIME VILLAGE COUNCIL..... 1<sup>ST</sup> DEFENDANT**  
**BUTIAMA DISTRICT EXECUTIVE DIRECTOR.....2<sup>ND</sup> DEFENDANT**  
**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**THE REGISTERED TRUSTEES OF THE AFRICAN INLAND  
CHURCH OF MARA AND UKERWE DIOCESE.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*07<sup>th</sup> & 29<sup>th</sup> September, 2023*

**M. L. KOMBA, J.**

One pastor from one of the registered churches in Tanzania visited Butiama District within Mara Region. Specifically, he visited Kasule harmlet found in Busirime village and was interested with one location for making bow hole so that he can make business of selling water to the nearby community. It was an investment on his side. He faced the owners of the targeted land Mr. Saulo Makungu, PW1 and they had a deal that they make a joint venture agreement on utilizing the land and, according to Mr. Saulo parties agreed that they will share the profit 30% to owner of the land and 70% to prospect investor.

When deal was concluded, owners of the land and prospect investor needed their joint venture agreement to be witnessed by the village Government. After smelling the good thing, according to Mr. Saulo, the Village Government refused to witness the said agreement claiming that all land is village land.

Thereafter, Busirime Village Council secretly allocated the land to investor who drill the bow hole overnight and started the project of selling water to the entire community leaving the said owners of the land with nothing. That action forced the plaintiffs to knock the door of this court with a leave of this court under Misc. Civil Application No. 29 of 2021 the 1<sup>st</sup> plaintiff, Saulo M. Makungu represent his fellow 18 family members whom they jointly own the disputed land praying for judgment and decree that plaintiffs are the legal owner of the disputed land, the 1<sup>st</sup> and 4<sup>th</sup> defendants to be ordered to vacate from the disputed land, general damages and costs.

During hearing Saulo who appeared as PW1 informed this court that the disputed land belonged to his grandmother **Nyabugumba Saulo** who had two parts of land, one part measure 70 by 70 paces for residential purposes and one acre for agriculture. Nyabugumba died in 1996 leaving family in the said land. He informed this court that in the year 2004 family members planted two hundred (200) trees in the whole one acre but in 2018 when the 4<sup>th</sup> defendant trespassed into the said land, they cut 36 trees and drill bow hole.

PW2 (Mulilo Tereza) informed the court that he knows the disputed land since 2011 but in 2018 the 4<sup>th</sup> defendant invaded and cut trees and put a bow hole in which they are selling water to community.

Apart from the proof of service of summons three times, investor who is the 4<sup>th</sup> defendant decided not to file WSD and the matter was ordered to proceed ex-parte against him serve that he was informed of the hearing date and he acknowledged to receive the hearing notice.

The remaining 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were represented by a team of State Attorneys lead by Ms. Neema Mwaipyana, others are Mr. Anesius Kamugisha, Mr. Abdalah Makulo and Mr. Joseph Lyakulya. They parade Neema Chacha Machama, a Village Executive Officer as DW1. She has one year experience in that position and informed this court that the disputed area belongs to the village and there is water project in that area which was managed by investor since 2018. It was her evidence that the decision to start a project was blessed by the village meeting which was conducted in 2018 and she tendered and this court admitted Exh D1 which is minutes of the village meeting conducted on 05/07/2018 showing that all participated members agree that bow hole should be drilled.

During cross examination she informed this court that the area given to the village is only 10 paces although they give them without a letter to confirm on the measurement and there is no contract between them.

Wiliam Kitunu Nyakiliga appeared as DW2 who was a Village Executive Officer between the year 2015 to 2019. He remembered he received an investor who wish to conduct water project in their village. From that request, so far as there was a wet land within the village, as he said, he called a village meeting and village members made decision where he recognized the Exh D1 when shown to him. Giving specification of the disputed land he said there is a road which differentiate the land owned by the plaintiffs and the disputed land where the project is conducted.

During cross examination by the plaintiff, he informed this court that the 1<sup>st</sup> plaintiff's family has invade the area and confirmed that he never gave them a letter informing the 1<sup>st</sup> plaintiff's family of their invasion to the village land and he never give the investor a letter granting them the village land for investment. He too, confirms that he doesn't have evidence to prove the disputed land is within 60 meters from the source of water. He further confirms the area given to investor was not defined (in terms of size and demarcation) anywhere so they don't know the size of the area

occupied by the investor whom he calls them 'church' but this witness never seen church registration number / certificate neither have an introduction letter from them to confirm it is a church which run the project.

When this court finalized hearing of testimonies by witnesses, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants pray for leave to file final written submission. The prayer was granted and the 1<sup>st</sup> plaintiff informed this court he will not file due to costs accompanied to the process. His concern was well noted.

Before hearing of the case parties agreed on only two issues to be proved during hearing of this case;

- 1. Who is the lawful owner of the disputed land*
- 2. What relief do parties entitled*

The general principle of the law as per section 3 and 110 of the Evidence Act, Cap 6 R. E 2022 is that, he who allege must prove. This being the civil suit, the standard is to the balance of probabilities. See **Magambo J. Masato & Others vs. Esther Amon Bulaya and 3 other**, Civil Appeal No.199 of 2016 CAT at DSM.

Starting with the first issue, plaintiff claim that the area was owned by his late grandmother Nyabugumba Saulo who was given by village council in 1978 and it was occupied since then. The later Nyabugumba was given two pieces of land for residential and agriculture. Since then, both areas were occupied and developed by the plaintiff family who via Misc. Civil Application No. 29 of 2021 this court (Hon. Mahimbali, J.) Mr. Saulo, the 1<sup>st</sup> plaintiff was allowed to represent other 18 applicants. It was adduced that the later Nyabugumba occupied the land and upon her death the family of the plaintiff enter into the possession and continue to use the land including planting 200 trees.

Defendants via her witness did not dispute the fact that the later Nyabugumba was given the land by village council serve in their final submission they adduced that plaintiffs did not have any documentary evidence to prove as to when they acquired the disputed. Plaintiffs claimed to be in possession of the said land since 1978 when it was allocated to his grandmother. The late Nyabugumba and the plaintiffs are in occupation of the land since then up to 2018 when the dispute arose. It is more than 40 years the plaintiffs are using the said land without disturbance. The principle over ownership of land is clearly incorporated in our laws stating



that the limitation of time in a suit to recover land is twelve (12) years as provided for under **Item 22, Part I of the First Schedule to the Law of Limitation Act [Cap.89 R.E. 2019]**. Being in possession of the land for almost 40 years entitle the plaintiffs to be owners.

Moreover, DW2 confirmed that the village never issue any letter complaining of the said land to be used by the plaintiffs illegally. Defendants under Section 123 of the Cap 6 are estopped from claiming the ownership of the disputed land.

Both parties are in agreement that the disputed land has a bow hole and there is community service offered by payment. The so-called investor is selling water to the community from the drilled bow hole. DW2 confirm that they allocate the land to 4<sup>th</sup> defendant orally without any document even the approving meeting did not mention the size, and therefore, it is not well known the size of land allocated to 4<sup>th</sup> defendant referred as investor. DW1 informed this court they issued only ten (10) paces of land to investor. It is hard to rely on this testimony as they haven't proven the same in a letter neither minute of the village meeting.

From pleadings, the disputed land has a bow hole operated by the 4<sup>th</sup> defendant under instruction of the 1<sup>st</sup> defendant. Up to the year 2018 the



disputed land was not confirmed to be source of water until when the survey was conducted. If that was the case, then, it cannot be said that the area belonged to the 1<sup>st</sup> defendant as it was within 60 meters from the river valley. In alternative, if the area is within 60 meters of the river valley, then, the 1<sup>st</sup> defendant was supposed to notify the plaintiffs of the protection of the said area and request them to vacate. That was not done as confirmed by DW2. That follows, there could be no need of conducting survey as testified by DW2 as the area was a wet land.

Furthermore, as long the defendants claim the area to be within protected area of 60 meters from the source of water, then, the operation of the **Environment Management Act of 2004** found plaintiffs in occupation of the said land. This legislation did not operate retrospective. In honor the provision of the above cited law, as said, plaintiff was supposed to be notified and other negotiation to follow but was not the case.

In a different note, before declaring who is a lawful owner of the disputed land, 1<sup>st</sup> plaintiff and his 18 relatives claim that the area was given to their late grandmother Nyabugumba Saulo. After the death, the rest of family member enter into possession and continue to enjoy the use of the same. During cross examination, Mr. Saulo, the 1<sup>st</sup> plaintiff informed this court

that he has never instituted Probate cause to be appointed as the administrator of the estate of the late Nyabugumba Saulo. Neither did he inform this court that there has been appointed administrator of the estate of the late Nyabugumba Saulo. As submitted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in final submission, I find the suit is prematurely instituted as was in **Mwajuma Yusuph Mbondike (Administratrix of the Estate of the Late Juma Yusuph Mbondike) vs. Lukia Shamte Mbwela (Administratrix of the Estate of Moshi Juma Mbindwike)**, Land Appeal no. 300 of 2021.

In the case at hand, Mr. Saulo and other 18 family members are claiming to be owners of the disputed land. So far as the said land was owned by the later grandmother, there is possibility other lawful heirs to be not aware of this case and therefore granting the prayer at this point will prejudice other heirs. I therefore decline to answer the 1<sup>st</sup> issue as the case was filed premature.

Noteworthy, facts revealed in the course of hearing of this suit made my mind to think beyond the issues raised. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants confirmed that they have granted a piece of land to the so-called investor without issuing a letter conferring the 4<sup>th</sup> defendant, the investor, the right

to use the area, the offer so given has no specified size and demarcation of the land to be used by the 4<sup>th</sup> defendant neither have they prove the establishment of the 4<sup>th</sup> defendant status. Worse enough, the use of the land by the 4<sup>th</sup> defendant is indefinity term. I'm wondering if that area is protected by the law how all of this was possible.

Much done and said, I find the suit by the plaintiffs is premature and is hereby struck out.

For reasons best known to this court, I order this without costs.  
It is so ordered.

**DATED** in **MUSOMA** on this 29<sup>th</sup> September, 2023.



*NK*  
**M. L. KOMBA**

**JUDGE**

Judgment delivered while this court operates from Tarime District Court premises in the presence of Mr. Kitia Toroke and Mr. Stewart Kamugisha representing 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and in the absence of the plaintiffs.

*NK*  
**M. L. KOMBA**

**JUDGE**

29<sup>th</sup> September, 2023