

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

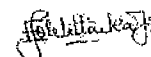
AT MTWARA

LAND CASE NO. 2 OF 2021

ISMAIL AHMAD MNAKOLE1ST PLAINTIFF
MOHAMED ABDALLAH CHAMPUNGA2ND PLAINTIFF
ALLY ATHUMANI KULOWEKA3RD PLAINTIFF
HASSAN SELEMANI MTAMBALIKA4TH PLAINTIFF
SAID ISMAIL MWAVA5TH PLAINTIFF.
ABDALLAH AJALI HEMED6TH PLAINTIFF
MARIAMU YUSUFU MTAMBALIKA7TH PLAINTIFF
OGA SAID OGA8TH PLAINTIFF.
SOFIA LITIMBA9TH PLAINTIFF
FIKIRA HAMISI NALYANGA10TH PLAINTIFF

VERSUS

NALIENDELE COLLEGE OF AGRICULTURE (MATI)...1ST DEFENDANT
THE ATTORNEY GENERAL2ND DEFENDANT



JUDGMENT

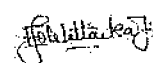
9th & 30th November 2023

LALTAIKA, J.

The plaintiffs herein, with the exception of two individuals, are senior citizens "wazee" in their 60's and 80's. The first defendant who is the reason that these wazee have walked into this court is a training institution under the Ministry of Agriculture. I consider this a unique case. It brings together many issues such as environmental stewardship, supportive neighborliness, and effective utilization of land as an important economic resource.

When the matter was called on for continuous hearing after backlogging in court for close to three years, **the wazee appeared in person, unrepresented**. The first and second respondents, on their hand, appeared through **Ms. Getrude Songoi**, learned State Attorney and Mr. **Victor Kasalamba**, legal officer of the first respondent. It can be said that the role of these lawyers (I will refer to them both as Learned State Attorneys) in assisting this court to perform its function of dispensing justice has been below expectation. Apparently, they may need to widen their worldview and take some deliberate efforts to learn soft skills.

A brief historical and contextual backdrop necessary to understand the dispute is as follows. In the early 1970's the government of Tanzania through the Ministry of Agriculture established a Research Center "UTAFITI" in an area now known as Naliendele in Mtwara Region, Southern Tanzania. In 1974 a decision was made to establish a training institution. Construction of the buildings for the training center started in 1974 and in 1975 the college



opened its doors to the first cohort of the then much needed agriculture professionals.

In 1977, a new idea for expansion was conceived; the college wanted to introduce livestock keeping in Mtwara. Tales has it that by then there were no cattle at all in Mtwara and people of the south were afraid of cows, presumably mistaking them for buffaloes. A total of 500 hectares (more than 1000 acres) was needed. Where would that land come from? The answer was not far away. The government approached the then Chairman of TANU. I assume this was before TANU merged with ASP to form CCM in the same year. A decision was made to compensate neighboring villagers who had farms in the vicinity of the college. The villagers were (purportedly) paid for each plant that was in the area taken by the government.

There is no doubt that the college (now known officially as **Ministry of Agriculture Training Institute - MATI Mtwara**) has come of age. It is one among 8 of such institutions spread across the country charged with imparting technical Agricultural knowledge to students, extension workers, farmers as well as conducting Training of Trainers (ToT) courses in related fields. In addition to the college (MATI) the area also hosts other institutions such as the Tanzania Agriculture Research Institute -TARI, Tanzania Livestock Research Institute TALIRI, Zonal Veterinary Investigations Centre, and the Tanzania Livestock Investigation Laboratory Agency (TALILA).

The area that was once a remote village in the 1970's is now a famous academic and technical center of excellence in agriculture and crop production. The name Naliendele has become synonymous to innovation in

seeds and other agricultural produce. The 1000 acres acquired as explained above is a beautiful, fertile, and vast land sandwiched by the Mtwara Airport and the Mtwara – Tandahimba-Newala Highway. Needless to say, that due to its strategic location, this land has attracted all sorts of conflicts. Many government functionaries have tried to resolve such conflicts but to no avail. The scramble akin to the "scramble and petition for Africa" by European Powers in 1880's continues.

The **crux of this dispute is only 3% of the total land described above** (herein after referred to as the "suit land."). This suit land, that this court visited in what is known in court's language as visiting the *locus in quo*, lies to the east of the MATI Mtwara buildings next to the Moma Road. This is a historical road that was used during the slave trade to transport slaves from the hinterland to the coast for shipment to slave markets such as Zanzibar.

The 10 plaintiffs herein knocked the doors of this court in 2021 claiming that the suit land belongs to them. They accused the first defendant of trespassing into their land and forcefully evicting them in 2017. The plaintiffs have tried their level best to link the alleged eviction to the first defendant's act of "selling" a part of their land to a construction company for purposes of extracting raw materials for building a road. The plaintiffs asserted that in the course of taking out the pebbles "kokoto" to build the road, graveyards of their ancestors were destroyed causing them immense psychological anguish.

The defendants' story is the complete opposite. The first defendant has maintained that the suit land is a part of the land owned by her since the 1970's. It is noteworthy that as a part of the procedure obtained in our jurisdiction the parties tried to settle the matter amicably before another (mediator) judge but to no avail. After some tiring attempts by the learned counsel for the defendants to invoke technicalities to prevent the plaintiff's from accessing this court, the gates were finally open. In the next paragraphs, I will summarize both the plaintiffs' and defendants' cases before I come to my analysis and the verdict.

The **plaintiff's case was very straightforward**. I take the liberty, for the sake of proper record keeping, to summarize each of the plaintiffs' testimonies.

PW1 **Ismail Ahmad Mnakole** looked very energetic for a 61-year-old. He is, in all practical purposes the leader of the group and appeared to be attentive to the finest details. He testified on oath that he was born in Naliendele and **had inherited 20 acres of land from his late father**. Attempts to produce a copy of letters of administration of estate as evidence failed due to objections raised by the learned State Attorneys. Nevertheless, he proceeded to state that as soon as he saw the construction company digging up his land for pebbles, he reported the matter to village authorities and the conflict was not resolved so it was taken up the ladder **to the District Commissioner** who decided in **favour of the defendants**.

On cross-examination, PW1 appeared perplexed when he was referred to copies of pleadings which, as will be clarified later carried a claim of 17



acres of land and not 20. He was equally in total confusion when the learned State Attorney invited him to clarify how he started using the land in the late 1950's while he was born in 1961.

PW2 was **Mohamed Abdallah Champunga**, a 59-year-old resident of Naliendele. His testimony was mainly on how he **allegedly inherited 12 acres of land** from his late father one Abdallah Mwalimu Champunga who passed away on 1/7/1973. He emphasized that his 12-acre land was invaded by the first defendant in 2017 and he was not sure whether the same was sold out by the college teachers. On cross examination, the witness maintained that his alleged piece of land was not a part of the 17 acres used for mining pebbles.

PW3 was **Ally Athumani Kuloweka** a 67-year-old energetic man. He testified that he was born in a village called Chikongo in Tandahimba, but his family moved to the suit land in the early 1960's. He claimed that the second defendant **had grabbed 45 acres of land he had** inherited from his grandfather. On cross-examination the witness appeared uncomfortable when he was asked to show where the 45 acres of land were provided in the plaint. On re-examination, he emphasized that he could not tell the monetary value of the land because his age was advanced.

PW4 was Hassan Selemani Mtambalika, 62 years old and resident of Tandika Area in Mtwara-Mikindani Municipality. The witness claimed that in 2017 the first defendant ousted him from **a 15 acre of land** he had inherited from his late father one Selemani Yusufu Mtambalika. His attempt to tender a copy of letters of appointment as administrator of estate failed.

However, he proceeded to narrate that his attempts to demand for his land led to his arrest, but he was later released on police bail.

PW5 was Said Ismail Mwava. At 41, he was the youngest in the group. Admittedly, PW 5's testimony was tainted by a number of inconsistencies. He stated that in 2002, he moved from his village to Mtwara town, initiating a new chapter in his life after completing primary school. He recounted engaging in selling foodstuff at Magomeni Area before the construction of the new stand. Following **the gas riot in 2015**, (a very familiar happenstance in Mtwara) he returned to his village as he could no longer sustain his life in town. PW5 mentioned being arrested in his business, spending 7 days in police remand and 21 days in prison remand. Shortly before the general election, PW5 narrated, he was released, prompting his return to the village, where he has remained since.


During cross-examination that seemed like a hard game to the witness, he clarified that he had been misquoted, asserting that **his mother was still alive**. He explained that there was a misunderstanding, and he corrected himself by noting that it was his grandfather who had passed away. He emphasized his understanding of inheritance, stating that it is typically passed on to one's child, but he has not inherited the property. PW5 argued that it is possible to be an administrator of the estate even when the owner of the property as a person was still alive.

He pointed out that he had not mentioned living in Naliendele and had not made any statements about his parents residing there. The witness appeared visibly unsettled as he explained his presence in court on behalf of

his mother. PW5 provided details about the size of his land, **stating that it is 24 acres**. He claimed to have personally taken the measurement, guided by his mother, who showed him the boundaries in 2018. He highlighted his mother's poor health, citing various illnesses she suffers from. PW5 reiterated that he had previously mentioned his mother's frequent illnesses and indicated his own age, acknowledging that he does not know his mother's exact age.

PW6 was **Abdallah Ajali Hemedi**, 51 years old, resident of Naliendele. He stated that he was in court to file a complaint against MATI, accusing them of invading his land and causing damage to crop, including cashewnuts. He specified that the land, located in Naliendele, **measures 19 acres** and was originally owned by his grandfather, MZEE HEMEDI NANYENJE. The property was inherited by his father and two aunts, with the aunts, ESHA HEMEDI, and Zainabu HEMEDI (who is disabled), still alive.

As the administrator of his grandfather's estate, PW6 explained that he was appointed based on the recommendation of his aunts. He detailed his efforts to seek legal assistance, starting from the village level to the **District Commissioner (DC)** and later to the **Regional Commissioner (RC)**. The RC's office advised them to sue the first defendant. PW6 indicated possessing a document from the Mtwara Primary Court and additional documents from the Village Chairman, all of which were presented in court. He referred to a letter from DC's office, received in response to their complaint about the invasion of their land. The document ***Letter of the District Commissioner dated 19/8/2019 addressed to Afisa Mtendaji Kata ya Naliendele Mtwara*** was admitted as an exhibit and marked as Exhibit



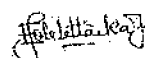
P1. On cross examination the witness maintained that the letter was given to them as *wananchi* who had taken their complaints to the DC.

PW7 was Mariamu Yusuphu Mtambalika, 53 years old, Resident of Naliendele, Peasant. She boldly stated that she was in court because her land had been invaded. She clarified that the land belonged to her late father, situated in Naliendele on the way to Moma, known as Mtambalike's place. The invasion occurred in 2017, and **the land measures 24 acres**.

Identifying herself as the administratrix of the estate of her late father's land, PW7 mentioned that her mother is still alive. She recounted going to the Primary Court and being given letters of appointment. She then requested the court to admit these letters of appointment as a part of the evidence in the case.

On cross-examination, the witness expressed that she was in court because her land had been invaded. She clarified that the land belonged to her late father, situated in Naliendele on the way to Moma, known as Mtambalike's place. The invasion occurred in 2017, and the land measures 24 acres. Identifying herself as the administratrix of the estate of her late father's land, PW7 mentioned that her mother is still alive. She recounted going to the Primary Court and being given letters of appointment. She then requested the court to admit these letters of appointment as a part of the evidence in the case but to no avail due to procedural technicalities.

PW9 was Sophia Bakiri Litimba, approximately 80 years old and resident of Miembeni Area. The old lady thoughtfully conveyed her purpose for being in court, expressing a desire to address the issue of her land being



taken by MATI. She mentioned the impact on her ability to cultivate, stating that she no longer has a place for cultivation cassava. PW9 explained that she gave birth to her first four children in that specific **place before being relocated by Nyerere**. She asserted ownership of the land throughout those years and claimed that she could prove giving birth to her children there. She emphasized that even a young child could identify it **as Mtambalika's** place.

According to PW9, the land was taken about six years ago while her children, Hawa and Mariamu, were using it. She expressed the hardship she faced due to the lack of a place to cultivate, which led her to file a complaint. Additionally, PW9 clarified that the land in question is not inherited property.

During cross-examination, the witness admitted that her daughters include Mariam Yusufu Mtambalika (7th plaintiff). She mentioned that the farm where Mariam, her daughter, and she lived is the same one she is claiming. Acknowledging that they are both complaining about the same area, she affirmed that Mariam is indeed her own daughter, and they are claiming the same land.

PW9 explained that, in the Islamic religion, brothers of the deceased husband have the authority to distribute property. She noted that her children had been cultivating the land, and they received their portions. She expressed the belief that the court would grant her rights and clarified that she had come that day to identify herself.

PW10 was Fikira Hamisi Nalyanga, Senior Citizen Approx. 80 years old as per her own estimates, Resident of Naliendele, Peasant. She testified

PW10 explained the predicament she faced, highlighting that MATI had invaded her land, leaving her with no place to farm. She emphasized the issue of having nowhere to cultivate and grow cassava, which she used for food. During cross-examination, PW10 mentioned that Mwl Nyerere relocated them from their land to an Ujamaa Village. She explained that initially, they could still go back to their former place for farming. However, they were later informed that MATI had taken over the land, preventing them from continuing cultivation. Consequently, they ceased going to that location and had no alternative land for farming. PW10 stated that MATI took a significant portion of their land, leading to the discontinuation of their cultivation activities.

DW1 was Aputa Matei Mtukwe, 81 years old, Resident of Naliendele and Retired Civil Servant. DW1 stated that he had lived in Naliendele for more than 30 years. He mentioned that he was born in Nanganga, Masasi, and had worked as a farm manager for the first respondent. DW1 shared that he was employed as an assistant field officer in April 1962 and worked in Songea Mbinga until 1974. He pursued further

studies in **Budapest, Hungary**, studying farm management and graduating in December 1975.

After completing an Advanced Diploma, DW1 returned home and was transferred to Mtwara by the Ministry of Agriculture Division of Research and Training on 6/1/1976. He came to Mtwara as an Agricultural Senior Tutor and **worked with MATI from 1976 to 1983**. After a transfer and subsequent return in 1987, DW1 continued working until he retired as Senior Agricultural Tutor1.

Regarding MATI, DW1 explained that the then Principal, **Anton Hiza**, aimed to start livestock keeping increasing meat supply in the region. They sought more land and were initially given 100 acres by ARI (now TARI), but this was deemed insufficient. The management, in agreement, conducted discussions with the village authority (Naliendele Village). During these talks, they met with the TANU Chairman, and an agreement was reached to obtain the needed land by compensating those with crops on the land.

In the negotiations, DW1 mentioned that they proposed a compensation rate of **TZS 15 shillings** for one plant, later amended to 20 shillings for one cashewnut tree or one mango tree. With approval from the Permanent Secretary of the Ministry, representatives from both the college and the villagers were selected to ensure proper counting of crops. DW1 was responsible for taking stock of the plants as per the "*majani*" (the counting leaves) method. They successfully acquired the needed 500 hectares of land, and DW1 claimed to have proof, **citing the minutes of the meeting** that he could identify if seen, as he was present during the discussions. After a

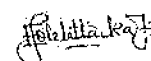


brief discussion a copy of the Extraordinary Staff Meeting dated 15/6/1976 was **admitted as evidence and marked as Exhibit D1.**

DW1 explained that during the meeting, there was an agreement to send an application to the **Ministry of Agriculture for compensation**, and the key question was determining who exactly needed to be compensated. To address this, they consulted the village authorities, and the Village leadership consented to a joint meeting. It was decided that the compensation exercise would align with the **Government Directive on Compensation for Crops**, specifying that one cashewnut tree should be compensated with TZS 20. DW1 presumed that the villagers were consulted in this regard.

He continued, mentioning their decision to increase participation on their part. They enlisted a farmer to collaborate with Mr. Kipanga and Mr. Salum Champunga, the latter being a villager closely connected to the village, despite being a casual worker "kibarua" for the first defendant by then. Some funds were sent from the Ministry, and the identified farmers, whose crops had been counted, were called to collect their compensation, which was cashed in at ARI's office.

After the land was taken, MATI began working on it in 1977. However, it wasn't until 1978 that they intensified agriculture, reaching a harvest of up to 300 acres. In 1978, they acquired 56 cows from Dodoma, taken from a meeting. The following year, **more cows** were **brought from Nangaramo Market** in Masasi, specifically milk cows.



On the acquired land, DW1 asserted that they developed paddocks where cows could be left without a herder, necessitating a large area of land. Unfortunately, recalled the brilliant retiree, funds were not coming in as needed, and the land faced invasion. Individuals started planting cashewnuts in the college area, and some even began constructing houses around six years ago. DW1 recalled warning the then Principal about the potential danger of leaving the land in that state.

During cross-examination, DW1 clarified that he never worked with the Research Institute; instead, he was a farm manager, with his colleague being Mpoto. He explained that he couldn't mention the people who were compensated, as their names were in the documents. DW1 added that due to the passage of time, it was possible that the documents might not be found, considering it as a normal occurrence.

He emphasized that he did not assert that the exhibit he tendered proved who was paid. According to DW1, **it was presented to highlight the need for land**, emphasizing that they required a large area. The mention of cashewnuts and mangoes was simply an example, clarified the witness.

DW2 was **Salim Mwalimu Champunga**, approximately 80 years old, resident of Naliendele. DW2 mentioned that he was born in Newala, in a village called Mkonjoano in Liteho Division, Mahoka Street (now part of Tandahimba). He informed that he received education through Madrassa and grew up with 12 siblings from the same parents. DW2 shared that he had been in Mtwara for many years, formerly called Mikindani before the name

Mtwara was established in 1952. His parents had moved from their original place to Mtwara, and they later came to Naliendele for agriculture.

DW2 recounted that when **Mwalimu Nyerere visited their village**, he spoke to them and provided **a cheque of Tanzanian Shillings (TZS) 5 for development purposes**, leading to the establishment of the college. Initially a casual laborer, DW2 was also responsible for indicating the boundary of the land given to MATI. However, DW2 quickly pointed out, there was a requirement to compensate the owners of the crops. When the government agreed to build the college, the village accepted it, and they agreed to sell their land, seeking compensation for the crops. They knew the land belonged to the government, so their demands were solely for the crops.

DW2 explained that they were sent to count the leaves of the crops, which were then counted, and they were paid. Although he personally received payment, he couldn't recall the exact amount. He clarified that he was even paid money for some colleagues who had passed away, and he distributed that money to their families. He expressed certainty about the area that belonged to MATI and affirmed his role in showing the boundaries. DW2 recognized some individuals among the plaintiffs including Oga and Mnankole, whose parents were given compensation, and he noted that no one complained to the government about non-payment.

After the land acquisition, DW2 narrated, villagers continued to cultivate the land, and DW2 observed that they failed to control it, leading

to the area becoming a forest. He asserted that the dispute was unfounded, and the elders had settled the matter by giving the land to the government.

DW2 distanced himself from the younger generation's opposition to that decision. Regarding **Mohamed bin Abdallah Mwalimu Champunga** (2nd plaintiff), DW2 mentioned that he is the son of his elder brother's son and clarified that his **late brother had no land in that area.**

DW2, during cross-examination, mentioned that he was a mere kibarua but also a local. He held the role of a balozi wa Nyumba kumi for Mihambwe, having been nominated due to his direct knowledge of the locals. He clarified that he didn't know the measures and was solely pointing out to MATI the land that belonged to the people he knew.

DW2 described himself as just a farmer, citing his ability to identify who started living in a specific area, even if that person was not on the border line. When asked about the idea of bringing leaves, DW2 stated that he could not answer that question. He emphasized that the concept of bringing leaves was not from their side, and those seeking answers should direct their inquiries to the government, as he was not the one who made the payments. DW2 suggested that the person with the question should contact the government for the relevant information.

DW3 was Elias Lugane Maijo, 49 years old, Agricultural Tutor and Resident of Naliendele. He took oath and stated that he holds a master's degree in agricultural economics from Sokoine University of Agriculture (SUA). He mentioned being employed on 7/2/2005 as Agricultural Tutor¹ at MATI Mtwara, one of the 14 training institutions under the Ministry of


crops were planted, MATI reported them to authorities. The matter went to the Ward Tribunal, where some prayed to harvest their crops, and others refused to honor agreements. In 2017, villagers organized and invaded the area, prompting police and District Court involvement.

The then District Commissioner, **Adv. Mmanda**, established a committee to advise on the land conflict. DW3 mentioned attending a public meeting in 2018 where the DC presented a report. He claimed to have a copy of the document with the DC's signature, including MATI in the cc.

DW3 explained that **DOTT Construction Company was constructing a road from Mtwara to Mnivata** (50 kilometers). The company surveyed various areas to find materials for construction, and they approached MATI. DOTT wrote a letter requesting materials, and MATI advised them to go to the Permanent Secretary (PS) of the Ministry of Agriculture since the area belonged to the government. However, the company was required to pay compensation for the materials collected.

The correspondence with the PS was conducted through the Municipal Director. DW3 asserted that the complaints were untrue, emphasizing that MATI did not sell the land to DOTT, and no money was received by MATI. Instead, the compensation was paid to the PS of the Ministry of Agriculture, as MATI lacked the mandate to handle such transactions.

During cross-examination, DW3 mentioned that a survey was conducted on the amount of material needed, clarifying that it was also carried out on the land designated for the college to conduct training and provide social services. He explained that the road, built by DOTT



Construction Company, was intended for the wananchi, not for an individual, particularly the residents of Naliendele who were recruited. DW3 emphasized that the road is now passable, and community involvement was part of the process. He claimed to have evidence in the form of a document on the survey, stating that surveys are mostly technical and that the land remained unchanged.

Regarding the road's impact on the people in general, DW3 asserted that the community was consulted on obtaining construction materials, referring to a letter from the DC. He acknowledged a discrepancy in the dates between the documents and mentioned that the consultation process was in progress.

DW4 was Luka Kilian Chiwalo, a 53-year-old Agriculture Tutor and Resident of Naliendele. DW4 stated that he holds a BSc in Agricultural Extension and Education from Sokoine University of Agriculture (SUA). He mentioned being employed in 2003 as an agriculture tutor, initially in the Ministry of Agriculture and later transferred to MATI Mtwara in October 2003. His roles included teaching students in certificate and diploma courses and farmers attending short courses. He was also an assistant farm manager, later promoted to farm manager.

DW4 noted that from 2012 onwards, some members of the Naliendele community started invading the farm, which belonged to the government under MATI Mtwara. When he became the farm manager, he was familiar with the entire farm, including its boundaries and neighboring individuals.

Addressing the disputed part of the land near the road that was invaded, DW4 stated that nobody claimed the land was bought, emphasizing that knowing the boundary is not proof of buying or owning the land. He mentioned having documents allowing the collection of gravel for construction. When asked about why people were allowed to live on the land for a long time, DW4 responded that they don't use force against the people.

DW5 was Edna Chacha Matiku, 37 years old, Land Valuer and Resident of Shangani, Mtwara-Mikindani Municipality. DW5 stated that she holds a degree in Land Management and Valuation from Ardhi University and works with the Ministry of Land, Housing, and Human Settlement. Her duties include conducting research on the value of land for various transactions and performing valuations for compensation, insurance, and loan purposes.

Regarding the current dispute, DW5 mentioned being aware that complaints were made to the office of the District Commissioner (DC) about MATI taking their land. At that time, she was working in the Municipal Office, and the DC formed a committee to address the complaints, with DW5 serving as a committee member. Their role was to follow the terms of reference provided by the DC, and a report was prepared and submitted to the DC, constituting her knowledge of the conflict.

One of the terms of reference required contacting the people involved, and during this process, they discovered that the disputed land belonged to MATI since the 1950s. A formal survey was conducted in 2014, following the ancient or old boundary. Letters were issued to each committee member, and the report, containing names, signatures, and the DC's terms of



reference, was submitted. DW5 expressed her ability to identify the report if she sees it. That report, however, was not admitted due to procedural irregularities and that marked the closure of the defendants' case.

Having judiciously recorded the testimonies of both parties, I must admit that this is a very unique dispute that needs to be resolved differently. It brings to my mind the timeless wisdom of **Lord Denning MR in Packer v. Packer [1953] EWCA Civ J0511-3** thus:

"If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both." (Emphasis added)

My approach will not be totally novel, but I will depart from the ordinary. As alluded to earlier, the majority of the plaintiffs are *wazee* in their 60's and 80's. In the absence of promises that they received over the years that someone would ensure the land falls back to their possession, I cannot see any other reason for their persistence. In this country, it is unusual to see *wazee* like this running to court all for nothing or for false claims. As they say in Kiswahili, ***penye wazee hapakosi jambo*** (where there are elders, there must be something). Admittedly, facing reality or rather pursuing the truth is not without disadvantages. In **PEARSE V. PEARSE (1846) 63 ER 950** Lord Justice Knight Bruce quipped: "Truth, like other good things, may be loved unwisely-may be pursued too keenly-may cost too much."

That said, I must put it very clearly that this decision **will be centered on public policy**. While legal statutes and precedents provide a foundation

for decision-making, there are instances where courts revert to using public policy as a guiding principle in their judgments. One of the primary reasons courts turn to public policy is the need to adapt to changing societal values. Legal systems are not static; they evolve alongside societal norms and beliefs. I am aware of the timeless advice given by Mr. **Justice Richardson**, Justice of the Court of Appeal of New Zealand to judges writing judgements based on public policy. According to Justice Richardson:

"If a judge is to make these value judgements it seems to me that he should have a frame of reference against which to probe and test the economic and social questions involved. The identification of community values and their reflection in judicial decisions is relatively straightforward where society is homogenous and there is a single set of values which are held by a great majority of people. That is where there is clear consensus." See I.L.M. Richardson "The role of judges as policy makers" Address given to the Wellington Branch of the New Zealand Society for Legal Philosophy on 6th June 1984

To apply public policy, and to be able to test the economic and social questions involved as advised by Justice Richardson, my analysis will start with the parties, move on to the complaint, and finally the principles that I consider paramount in taking one option against another.

Admittedly, I have considered some issues that do not appear in the pleadings. The phrase "parties are bound by their pleadings" is very popular among counsel. As much as it is an important part of our procedural law, it is not without exception. More importantly, the court is not among the "parties". In **AGRO INDUSTRIES LTD V. ATTORNEY GENERAL** [1994]

TLR 43 the Court of Appeal of Tanzania compared and contrasted two decisions of its predecessor the erstwhile the Court of Appeal for Eastern Africa namely **VIDYARTHI V. RAM RAKHA** [1957] and **ODD JOBS V. MUBIA** [1970] EA 476 and clarified this position thus:

"When a court allows parties to address it on issues, the court must conclusively determine those issues notwithstanding that the issues were not in the pleadings."

It is true that in the pleadings, it appeared that all the plaintiffs were complaining **against 17 acres of land used for mining pebbles**. However, this court realized that such was an error committed by a legal aid provider. The court therefore allowed parties to address it on the same and is duty bound, as per the above authority to conclusively determine them.

The parties in this case, as alluded to in the beginning, at least as far as the first defendant is concerned, **are neighbours**. The complaint is **on land**. There are many principles that can assist us in delving deeper into the conflict and possibly take us to a possible solution. Before coming to such public policy issues, I will take the part on parties to some deeper analysis in the next paragraphs.

I have come up with two groups among the 10 plaintiffs. Those that have no arguable case or direct interest to this case and those that have shown some arguable points. **Those in the former group are PW2 MOHAMED ABDALLAH CHAMPUNGA PW5 SAID ISMAIL MWAVA, and PW7 MARIAMU YUSUFU MTAMBALIKA**. The latter group is made up of the rest of the plaintiff now referred to as "the seven plaintiffs" or



simply the plaintiffs. I will explain briefly the reason for lack of *sufficient interest* on the side of PW2, PW5 and PW7.

As far as PW2's evidence is concerned, there isn't a direct link between his testimony with the suit land. More importantly, DW2, who is his uncle, testified that his late brother had no land in that part. This is corroborated with the minutes of the visit to the *locus in quo*. The part of the land that PW2 claims does not support the claim that it was being used for agriculture until 2017 with the freedom required to utilize one's land. The beauty described earlier is especially evident in this piece of suit land which is on the border between Mtwara Rural and Mtwara Town Council. **It is my finding therefore that PW2's claims have no merit.**

Coming to PW5 it was obvious that he was misled to become a part of this case. In his testimony he claimed to have been appointed administrator of the estate of his mother who, it turned out, was still alive by the time he was in court. The demeanor of this youngest member of the group also left a cloud of doubts about his interest in the matter. Having previously worked as an entrepreneur in Mtwara Town, he failed to show direct connection to the agricultural activities that were taking place in the suit land until, allegedly, the first defendant forcefully evicted them. **I make a finding that PW5 has no interest in the matter.**

Regarding PW7, her testimony was equally mired with contradictions. In the end, it became clear to this court that the land she is claiming is the same as that her mother Sophia Bakiri Litimba (PW9) is also claiming. Admittedly, the witness tried to explain that it is her late father's



and that the "love thy neighbour as thine self" *mpende Jirani yako kama nafsi yako* is extended beyond individuals to corporate entities.

I need to emphasize that we need to see a paradigm shift on how local communities are treated. The colonial separation should be foregone in practice. This means, the first defendant should not see the seven plaintiffs as some sort of "eye sore" or nuisance but rather partners in furtherance of many **policies for poverty reduction** and agricultural improvement. I must say that when I visited the disputed land, I was astonished to hear that the first defendant had provided some three acres to the "ward" to be used as a demonstration farm "shamba darasa." This was enough to tell me that the first defendant needs to be reminded of its core functions. It delegated a very important function of educating neighbouring communities to a very poor extension officer at ward level. As a result, that land is barren. No crops can be "demonstrated." It reminded me of the theory **of the tragedy of the commons**.

There is no doubt that the first defendant is charged with empowering farmers. In fact, taxpayers' money that has gone towards establishing the institution and the salaries that are paid to the staff of all ranks can only be justified if the lifestyles of the surrounding community reflect the *moto* of the institution. Suffices to close this part on the parties by saying that the Tanzanian public understands the mutual benefits that can be acquired through cooperation between our educational institutions and surrounding communities. With the right attitude of the staff at all levels, such cooperation can lead to lasting change.



Another reason, albeit a very indirect one, is that the parties knew what was going on. Land grabbers from different parts of the region had wanted to benefit from the conflict. Plaintiffs informed this court that top officials had intimated that the conflict was too intensive because it involved "dollar" to which the plaintiffs asked what "dollar" it was, the state or the American currency.

Probably because the first defendant is no longer **actively pursuing the cattle keeping project envisaged in the 1970's, a vast part of its original land remains underutilized.** This does not mean that future plans cannot be developed to ensure maximum utilization of the said land (or a part of it), not at all. Ideas are always in infinite supply. The only legitimate questions are who comes with such innovative ideas and how would Tanzanians in general and the surrounding communities benefit? This is not a place to answer that question as it needs a mindset change among many if not most of the top leaders of our institutions.

Coming to principles, what are the main lessons discernible from the above discussion? I think there is at least one lesson for each of the above categories: **On parties,** there is no doubt that the seven plaintiffs have established some "user rights" and remote connection to the suit land through their ancestors. The first defendant, on the other hand, has also demonstrated that the suit land is connected to the 500 hectares of land under its custody. The problem is that the plaintiffs never took sufficient initiative to formalize their purported ownership.

One may be tempted to think that the reasoning I have adopted is tantamount to “permitting a trespasser” to benefit from his or her wrongful acts. This is not the case. It goes back to my earlier assertion that the learned Counsel played only a minimum role in assisting this court address typical issues in a land dispute. For example, at some point during the proceedings, a defendant witness prayed to tender “minutes of a village meeting” purporting to grant a “certificate” of ownership to the first defendant. That defeats logic and shows lack of very elementary knowledge on land law in our country. Scarman LJ in **PORTLAND MANAGERMENTS LTD v. HARTE** [1976] 1 All ER 225 see page 231 offers the following useful lesson:

[W]hen an owner of land is making a case . . . against a person alleged to be in possession, all that the true owner has to prove is his title and an intention to regain possession. If the defendant to the action either admits his ownership or is faced with evidence, which the court accepts, that the plaintiff is in fact the owner, then the burden is on the defendant to confess and avoid; that is to say, to set up a title or right to possession consistent with the fact of ownership vested in the plaintiff.

Apparently, the defendant negligently allowed the plaintiffs to use the land (albeit with limited freedom) with hopes of regaining it someday. Another big picture is that the seven plaintiffs are dedicated farmers who are desperate to continue their tradition. The first defendant is a keeper of rules that has over the years been fighting a battle to keep the land more than its needs dictate. I think we need to borrow **from elementary economics to come out of this rat race.**

On land, we all know that in Tanzania nobody really “owns” land. Our land law is to the effect that all land in Tanzania is vested under the president

as a trustee. Several approaches have been devised to protect interest in land including the grant of certificate of occupancy and other forms of rights which are normally limited both in time and form of utilization.

Taking the above argument further, I must be very clear that although I made the finding that 7 out of 10 plaintiffs **herein have some arguable interest in the suit land, that does not mean they are owners.** More importantly, that does not mean that they can pass such interest on to their descendants. That is not what I am driving at. In addition to the underlying principle of land tenure in our country I am reminded of the philosophy of ownership articulated by a West African social activist that I think merits quoting in ex tenso:

"You own nothing, you lose nothing. If you buy land or buy a house, you have only paid rent for the remaining years you have on earth. None of them belong to you. If you buy a car, you have only paid for your transportation for the period the car will last or for the period you will last. It doesn't belong to you. If you marry a spouse, you have only got company until circumstances or death do you part. No one owns the other. If you have children, you have only fulfilled the demand of continuity of life until death comes. You do not own them. That is why the state still dictates how you bring them up. If you have money, you have only amassed value to purchase what you want for your remaining number of years on earth. The notes belong to the Central Bank. If you work and retire, your pension is only for life. After your life, it stops. Even if you eat and get filled the food in your belly is not yours, you must defecate it back to earth. The body itself that you cherish so highly does not belong to you. The earth will certainly claim its bit when the loan is due. Even the life we live is borrowed and surely will be returned. So let us not be afraid of losing anything." Agba Jalingo (Publisher of CrossRiverWatch and a rights activist from Lagos, Nigeria).



In the above analogy, even if the land belonged to the parents of the 7 plaintiffs it does not mean such ownership is perpetual. Assuming that the "compensation" by way of "counting the leaves" was done as claimed by the defendants' witnesses, is it proper to continue living in enmity? On the flip side, assuming the compensation was not paid, would that change the nature of land administration in our country? The answer is no.

We have seen commendable efforts by our government to promote agriculture. Southern Tanzania including Mtwara has benefited from improving prices for agricultural produce. It would be absurd to allow the first defendant to evict dedicated farmers in their late years only for that land to lie idle. I think this is also a way of ensuring that the last generation of the people who have *emotional connection* with the suit land are fairly treated to bring conflicts to an end.

Premised on the above I proceed to make the following orders:

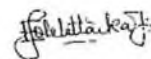
1. That **within one month from the date of this judgement**, the first defendant allows the 1st, 3rd, 4th, 6th, 8th, 9th, and 10th plaintiffs to resume their farming activities in the suit land.
2. That as per prevailing government policies current and future as well as internal plans, the 1st defendant provides 1st, 3rd, 4th, 6th, 8th, 9th, and 10th plaintiffs with the required technical skills and expertise to ensure that their farming methods do not affect the core functions of the 1st defendant.

3. That the rights provided to the 1st, 3rd, 4th, 6th, 8th, 9th, and 10th plaintiffs do not extend to nor can it be transferred to any other person.
4. That the right provided to 1st, 3rd, 4th, 6th, 8th, 9th, and 10th plaintiffs in 1 above ceases on demise of each plaintiff.
5. That 1 year after the demise of any of the 1st, 3rd, 4th, 6th, 8th, 9th, and 10th plaintiffs the part of the suit land hitherto under their utilization shall revert back to the 1st defendant.
6. That the 2nd defendant shall device appropriate document(s) such as caveats for implementation of this judgement to ensure predictability of the time that the suit land reverts back to the 1st defendant without unnecessary conflicts and/or litigation.
7. That the first defendant takes immediate steps to rehabilitate the land that was used for mining of pebbles and refrains from engaging in environmentally degrading activities.

It is so ordered.



E.I. LALTAIKA
JUDGE
30/11/2023



Court

Judgement delivered under my hand and the seal of this court this 9th day of November 2023 in the presence of Mr. Maroa Wambura, State Attorney and the plaintiffs who have appeared in person unrepresented.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**E.I. LALTAIKA
JUDGE
30/11/2023**

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**E.I. LALTAIKA
JUDGE
30/11/202**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".