

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

LAND CASE NO. 23 OF 2022

WAMBURA MASWE KAKERA 1ST PLAINTIFF
DORIS FABIAN 2ND PLAINTIFF
PENDO BONIPHAS ORIA 3RD PLAINTIFF
ROBART KIBERENGE 4TH PLAINTIFF
KICHERE KICHERE 5TH PLAINTIFF
BONIFACE MHINDI 6TH PLAINTIFF

VERSUS

THE VILLAGE COUNCIL OF MORI 1ST DEFENDANT
DISTRICT EXECUTIVE DIRECTOR
OF RORYA DISTRICT 2ND DEFENDANT
ATTONEY GENERAL 3RD DEFENDANT
NESI LAIZA 4TH DEFENDANT
MWL ISAYA ASENSO 5TH DEFENDANT
ANTONY SANGA 6TH DEFENDANT
DAUDI JEJE 7TH DEFENDANT
ANNA DAUDI MARWA 8TH DEFENDANT
MAGRETH ADONGO 9TH DEFENDANT
JOSHUA NYAMHANGA WANDWE 10TH DEFENDANT

ERICK ANG'WEN ORONGE	11TH DEFENDANT
ODEMBA DAUDI SONGA	12TH DEFENDANT
THETHE SANGA MASWE	13TH DEFENDANT
WEREMA SANGA	14TH DEFENDANT
AGALLA AYUKE SONGA	15TH DEFENDANT
ODHIAMBO MAGOTI	16TH DEFENDANT
KIJIJI LWANG'A	17TH DEFENDANT
OPONDO OPIYO	18TH DEFENDANT

RULING

29th February & 05th March, 2024

M. L. KOMBA, J:

Plaintiffs as listed above has sued defendants claiming that the 1st defendant has trespassed into the land owned by plaintiffs, cut trees, uprooted sisal plants and distributed land to 4th up to 18th defendants. Establishing their case in plaint each plaintiff owns a piece of land with different size acquired by different means. As per WSD, the 1st defendant claimed that the land is owned by the village council and it was the latter who decided to develop the said land by establishing social services. Following that controversy, the matter went to full trial.

When both parties have finalized their submission Mr. Emmanuel Gervas counsel for plaintiffs requested this court to hear his prayer. He prayed for this court to visit locus in quo before composition of the judgment. The prayer was objected by the defendants and I gave time for both parties to research. On following day Mr. Gervas maintained his prayer claiming that there is no accuracy in evidence among the two sides specifically on existence of land mark symbols in the disputed area like houses, graves, domestic trees and agriculture farms but defendants claim the area is bear land. He insisted the need for this court to see the disputed land and have a knowledge and a general picture of the area. He relied on the decision in **Nizar M.H Ladak vs Gulamali Fazal Janmohamed** [1980] T.L.R 29, **Kimonidimitri Mantheakis vs Ally Azim Dewji & Others** (Civil Appeal 4 of 2018) [2021] TZCA 663 (3 November 2021) and **Avit Thadeus Massawe vs Isidory Assenga**, Civil Appeal No. 6 of 2017 which elaborates circumstances where court may visit locus in quo. He prays this court to go and verify what was testified and not to take further evidences.

On the other side, Mr. Kitia Turoke, State Attorney was of the submission that counsel Gervas was supposed to register his prayed before he closes his case, otherwise it is like he prays to re-open his case. Distinguishing the

case of **Kimnidimitri Mantheakis vs Ally Azim Dewji & Others** (supra) he submitted that parties applied before they close their case. In the same case he insisted that courts were warned to use visits of locus in quo to fill gaps in evidence. Further it was his submission that courts may visit locus in quo in special circumstances which was not seen in the case at hand and supplied this court with decision in **Herieth Kasidi vs Agustino Bushiri (Civil Appeal No. 480 of 2020) [2023] TZCA 17767 (23 October 2023)**.

I heard parties in their submission. The issue in controversy is timing of the prayer as both are aware of what has to be done while visiting the locus in quo as listed in **Kimnidimitri Mantheakis vs Ally Azim Dewji & Others** (supra). There is no doubt that Mr. Gervas registered his prayer after the closing of his case and even closing of defence case. When I order parties to conduct research I too researched over the matter and found this;

*'We wish to observe here that the duty of a trial court is to ensure that justice is done to both parties in the end. **Even if the need to visit the locus in quo was brought to the attention of the learned judge after the parties had been allowed to make their final addresses the judge was not barred (for the ends of justice), from acceding to the request to visit***

the locus in quo at that stage. She admitted herself, and indeed correctly so, considering that this is a land matter that visiting the locus in quo could have some impacts.'

See **M/s Georges Center Limited vs The Honourable Attorney General & Another (Civil Appeal 29 of 2016) [2016] TZCA 629 (28 July 2016).**

Basing from above words of Justices in a foregoing paragraph, I find, for the end of justice, there is a need for this court to visit *locus in quo* to verify what was testified by witnesses of both sides about physical structures of the disputed land. The date for visiting the locus in quo shall be communicated within two weeks from the date of this ruling and the visit will be conducted after four weeks from now as currently this court has another engagement.

It is so ordered.

DATED at TARIME this 05th day of March, 2024.



NK
M. L. KOMBA
Judge

Ruling delivered while this court operates from Tarime District Court premises in presence Mr. Gervas Emmanuel Advocate for plaintiffs and Mr. Kitia Turoke State Attorney represented defendants. Both were connected from their offices through teleconference.

Nk

M. L. KOMBA

Judge

05 March, 2024

