

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND CASE NO. 1 OF 2020**

<b>KANG'WINA MATINDE .....</b>	<b>1<sup>ST</sup> PLAINTIFF</b>
<b>KULWA MZULINGI .....</b>	<b>2<sup>ND</sup> PLAINTIFF</b>
<b>MASUNGA JOSEPH .....</b>	<b>3<sup>RD</sup> PLAINTIFF</b>
<b>JETRUDA JOSEPH .....</b>	<b>4<sup>TH</sup> PLAINTIFF</b>
<b>EMMANUEL MASANJA .....</b>	<b>5<sup>TH</sup> PLAINTIFF</b>
<b>NGASA SOKONI .....</b>	<b>6<sup>TH</sup> PLAINTIFF</b>
<b>SAMORA MAYIGE .....</b>	<b>7<sup>TH</sup> PLAINTIFF</b>
<b>JOSEPH L. IGOLOLA .....</b>	<b>8<sup>TH</sup> PLAINTIFF</b>
<b>DOTIO DILA .....</b>	<b>9<sup>TH</sup> PLAINTIFF</b>
<b>DILA MANAMBA .....</b>	<b>10<sup>TH</sup> PLAINTIFF</b>
<b>SACKA MAKEZO .....</b>	<b>11<sup>TH</sup> PLAINTIFF</b>
<b>DANIEL FEDUKA .....</b>	<b>12<sup>TH</sup> PLAINTIFF</b>
<b>KASANZU MTALUMA .....</b>	<b>13<sup>TH</sup> PLAINTIFF</b>
<b>REGINA ALLY .....</b>	<b>14<sup>TH</sup> PLAINTIFF</b>
<b>MAKEJA WENNA .....</b>	<b>15<sup>TH</sup> PLAINTIFF</b>
<b>DANIEL JAMES .....</b>	<b>16<sup>TH</sup> PLAINTIFF</b>
<b>MAYUNGA MASEMBA .....</b>	<b>17<sup>TH</sup> PLAINTIFF</b>
<b>MBOJE MAHUGA .....</b>	<b>18<sup>TH</sup> PLAINTIFF</b>
<b>SAIMON S. LUNYILIJA .....</b>	<b>19<sup>TH</sup> PLAINTIFF</b>
<b>GABEHO JIMOTIRI .....</b>	<b>20<sup>TH</sup> PLAINTIFF</b>
<b>DUYI INYASI.....</b>	<b>21<sup>TH</sup> PLAINTIFF</b>
<b>HENER SENDWA .....</b>	<b>22<sup>TH</sup> PLAINTIFF</b>
<b>DOTTO MASELE.....</b>	<b>23<sup>TH</sup> PLAINTIFF</b>
<b>MASULE LUTINGINYA.....</b>	<b>24<sup>TH</sup> PLAINTIFF</b>
<b>JOHN SILIMBI.....</b>	<b>25<sup>TH</sup> PLAINTIFF</b>
<b>BONDELA SAMBAYI.....</b>	<b>26<sup>TH</sup> PLAINTIFF</b>
<b>BONIFAS BOMA.....</b>	<b>27<sup>TH</sup> PLAINTIFF</b>
<b>BULUGU MKOMA.....</b>	<b>28<sup>TH</sup> PLAINTIFF</b>
<b>JAMES MASUKE.....</b>	<b>29<sup>TH</sup> PLAINTIFF</b>
<b>SHUKULU MAGESA.....</b>	<b>30<sup>TH</sup> PLAINTIFF</b>
<b>NHIGA LUPIMO.....</b>	<b>31<sup>TH</sup> PLAINTIFF</b>
<b>GENGESABA LWIGI.....</b>	<b>32<sup>TH</sup> PLAINTIFF</b>
<b>SAMWEL NTEHENHI.....</b>	<b>33<sup>TH</sup> PLAINTIFF</b>
<b>NYAFA JIHUMBI.....</b>	<b>34<sup>TH</sup> PLAINTIFF</b>
<b>NZARE LUSWETULA.....</b>	<b>35<sup>TH</sup> PLAINTIFF</b>
<b>MASALU JINYAMA.....</b>	<b>36<sup>TH</sup> PLAINTIFF</b>
<b>NJILE MAKALAYE.....</b>	<b>37<sup>TH</sup> PLAINTIFF</b>
<b>HUSEIN ZUOPOJA.....</b>	<b>38<sup>TH</sup> PLAINTIFF</b>

<b>KULWA MALIWA.....</b>	<b>39<sup>TH</sup> PLAINTIFF</b>
<b>MASUNGA JILUNGU.....</b>	<b>40<sup>TH</sup> PLAINTIFF</b>
<b>EZEKIEL HADIKA.....</b>	<b>41<sup>TH</sup> PLAINTIFF</b>
<b>SHIJA L. KISOMBA.....</b>	<b>42<sup>TH</sup> PLAINTIFF</b>
<b>MAJILA JAGWA.....</b>	<b>43<sup>TH</sup> PLAINTIFF</b>
<b>SOSPETE MASASI.....</b>	<b>44<sup>TH</sup> PLAINTIFF</b>
<b>LUGUNANA NKONDO.....</b>	<b>45<sup>TH</sup> PLAINTIFF</b>
<b>PASKALI JOSEPH.....</b>	<b>46<sup>TH</sup> PLAINTIFF</b>
<b>RUHIGO NHENENGO.....</b>	<b>47<sup>TH</sup> PLAINTIFF</b>
<b>LUCHOMA K. BUNDI.....</b>	<b>48<sup>TH</sup> PLAINTIFF</b>
<b>HENELI SENDWA.....</b>	<b>49<sup>TH</sup> PLAINTIFF</b>
<b>DOTTO NKWAMINO.....</b>	<b>50<sup>TH</sup> PLAINTIFF</b>
<b>MATOGOLO KANG'WINA.....</b>	<b>51<sup>TH</sup> PLAINTIFF</b>
<b>KANUNDO GEDI.....</b>	<b>52<sup>TH</sup> PLAINTIFF</b>
<b>HAMIS MABILIKA NYANDA.....</b>	<b>53<sup>TH</sup> PLAINTIFF</b>
<b>SHIJA FULANO.....</b>	<b>54<sup>TH</sup> PLAINTIFF</b>
<b>MILIONI MAJA.....</b>	<b>55<sup>TH</sup> PLAINTIFF</b>
<b>NHIGULE JILALA.....</b>	<b>56<sup>TH</sup> PLAINTIFF</b>
<b>LUCAS MALULANYA.....</b>	<b>57<sup>TH</sup> PLAINTIFF</b>
<b>MANENO MALONGO.....</b>	<b>58<sup>TH</sup> PLAINTIFF</b>
<b>ELIAS LUFUNGULO.....</b>	<b>59<sup>TH</sup> PLAINTIFF</b>
<b>PETER MATHIAS.....</b>	<b>60<sup>TH</sup> PLAINTIFF</b>
<b>MASALU BULASHI.....</b>	<b>61<sup>TH</sup> PLAINTIFF</b>
<b>DOTIO MASHILIMU.....</b>	<b>62<sup>TH</sup> PLAINTIFF</b>
<b>LEONARD H. MWANANDENJE.....</b>	<b>63<sup>TH</sup> PLAINTIFF</b>
<b>MARY MADUHU.....</b>	<b>64<sup>TH</sup> PLAINTIFF</b>
<b>JOSEPH SIMON.....</b>	<b>65<sup>TH</sup> PLAINTIFF</b>
<b>DAUDI JIPALA.....</b>	<b>66<sup>TH</sup> PLAINTIFF</b>
<b>ANASTAZIA JOSEPH.....</b>	<b>67<sup>TH</sup> PLAINTIFF</b>
<b>LUSIA BAGILI.....</b>	<b>68<sup>TH</sup> PLAINTIFF</b>
<b>BAZILIO SENDWA.....</b>	<b>69<sup>TH</sup> PLAINTIFF</b>
<b>MAYUNGA MASEMBA.....</b>	<b>70<sup>TH</sup> PLAINTIFF</b>
<b>SAIDI LUBASHA.....</b>	<b>71<sup>TH</sup> PLAINTIFF</b>
<b>SAMWER L. LUFUTA.....</b>	<b>72<sup>TH</sup> PLAINTIFF</b>
<b>YEGELA MARIKO.....</b>	<b>73<sup>TH</sup> PLAINTIFF</b>
<b>MLEKWA MAKOLE.....</b>	<b>74<sup>TH</sup> PLAINTIFF</b>
<b>MAKALANGA MANYOTA.....</b>	<b>75<sup>TH</sup> PLAINTIFF</b>
<b>MIKOMA CHALESI.....</b>	<b>76<sup>TH</sup> PLAINTIFF</b>
<b>JOSEPH SAMWEL.....</b>	<b>77<sup>TH</sup> PLAINTIFF</b>
<b>MKINA SOKONI MMKINA.....</b>	<b>78<sup>TH</sup> PLAINTIFF</b>
<b>MAPAMBANO MPANGAMCHU.....</b>	<b>79<sup>TH</sup> PLAINTIFF</b>
<b>EMBASI RUHENDE.....</b>	<b>80<sup>TH</sup> PLAINTIFF</b>
<b>KULWA SOSELA.....</b>	<b>81<sup>TH</sup> PLAINTIFF</b>
<b>NEKI RUCHAGURA.....</b>	<b>82<sup>TH</sup> PLAINTIFF</b>

RICHARD KADAMI HAMIS.....	83 <sup>TH</sup> PLAINTIFF
EMMANUEL KATWALE BULOGO.....	84 <sup>TH</sup> PLAINTIFF
JIDOGA LUTELEMBA.....	85 <sup>TH</sup> PLAINTIFF
MALONJA MAJI.....	86 <sup>TH</sup> PLAINTIFF
JOSEPH IGOLOLA.....	87 <sup>TH</sup> PLAINTIFF
MASHIMO MAJEBELE.....	88 <sup>TH</sup> PLAINTIFF
NGASA SOKONI.....	89 <sup>TH</sup> PLAINTIFF
KITABU SILA.....	90 <sup>TH</sup> PLAINTIFF
ZILIWA SINGU.....	91 <sup>TH</sup> PLAINTIFF

**VERSUS**

FALA MAZUTA .....	1 <sup>ST</sup> DEFENDANT
KAPELE ZENOBI.....	2 <sup>ND</sup> DEFENDANT
MWALIMU JAKOMO.....	3 <sup>RD</sup> DEFENDANT
LUSIANO KAPAKU.....	4 <sup>TH</sup> DEFENDANT
FULEKI FUPE.....	5 <sup>TH</sup> DEFENDANT
KAYAPA FELE.....	6 <sup>TH</sup> DEFENDANT
FUMA BOGA.....	7 <sup>TH</sup> DEFENDANT
KANIKA MALABIKA.....	8 <sup>TH</sup> DEFENDANT
NAMES MKANA.....	9 <sup>TH</sup> DEFENDANT
SEBASTIAN JAKOBO.....	10 <sup>TH</sup> DEFENDANT
MWALIMU HAPPY.....	11 <sup>TH</sup> DEFENDANT
ASKARI YUNI.....	12 <sup>TH</sup> DEFENDANT
EVODIYA NTANYENYA.....	13 <sup>TH</sup> DEFENDANT
BWANA MIFUGO.....	14 <sup>TH</sup> DEFENDANT
MWASAGA.....	15 <sup>TH</sup> DEFENDANT
MASAJA.....	16 <sup>TH</sup> DEFENDANT
MIZIMU.....	17 <sup>TH</sup> DEFENDANT
JAKOBO.....	18 <sup>TH</sup> DEFENDANT
MALİYANA.....	19 <sup>TH</sup> DEFENDANT
KIBUNGULU.....	20 <sup>TH</sup> DEFENDANT
JAGISONI.....	21 <sup>TH</sup> DEFENDANT
SADIKI.....	22 <sup>TH</sup> DEFENDANT
SAIMONI.....	23 <sup>TH</sup> DEFENDANT
JEREMIAH.....	24 <sup>TH</sup> DEFENDANT
JAPHETH.....	25 <sup>TH</sup> DEFENDANT
LINUS SIWEZI.....	26 <sup>TH</sup> DEFENDANT
DENDE.....	27 <sup>TH</sup> DEFENDANT
CHARLES.....	28 <sup>TH</sup> DEFENDANT
JENIS.....	29 <sup>TH</sup> DEFENDANT
MAYELA CHELEHANI .....	30 <sup>TH</sup> DEFENDANT
MBOJE.....	31 <sup>TH</sup> DEFENDANT

DEO KATULI.....	32 <sup>TH</sup> DEFENDANT
CHRISTOPHER .....	33 <sup>TH</sup> DEFENDANT
ABAS.....	34 <sup>TH</sup> DEFENDANT
SALUM KUBEBA.....	35 <sup>TH</sup> DEFENDANT
SIKU SESELEMBE.....	36 <sup>TH</sup> DEFENDANT
AMAN.....	37 <sup>TH</sup> DEFENDANT
JAFET.....	38 <sup>TH</sup> DEFENDANT
DOTO MHELA.....	39 <sup>TH</sup> DEFENDANT
GILES.....	40 <sup>TH</sup> DEFENDANT
STEVEN WILLIAM.....	41 <sup>TH</sup> DEFENDANT
ROZIMELI RICHARD.....	42 <sup>TH</sup> DEFENDANT
ATHUMAN IDD.....	43 <sup>TH</sup> DEFENDANT
ZENOBI KAPERRE.....	44 <sup>TH</sup> DEFENDANT
ANNA MBOGO.....	45 <sup>TH</sup> DEFENDANT
JAPHETH ALFRED.....	46 <sup>TH</sup> DEFENDANT
SAMSONI MAGWOLO.....	47 <sup>TH</sup> DEFENDANT
CHARLES TEKERE.....	48 <sup>TH</sup> DEFENDANT
DORICA NDABILA.....	49 <sup>TH</sup> DEFENDANT
LAZARO KATABI.....	50 <sup>TH</sup> DEFENDANT
MASHAKA DOTTO.....	51 <sup>TH</sup> DEFENDANT
MAIKO JULIAS.....	52 <sup>TH</sup> DEFENDANT
JOHN GEOFFREY.....	53 <sup>TH</sup> DEFENDANT
MASANGA CHARLES.....	54 <sup>TH</sup> DEFENDANT
FRANK MTAINDWA.....	55 <sup>TH</sup> DEFENDANT
LEORNARD KAGUSA.....	56 <sup>TH</sup> DEFENDANT
DAMAS DAMIANO.....	57 <sup>TH</sup> DEFENDANT
STEPHANO KALILO.....	58 <sup>TH</sup> DEFENDANT
CHARLES MWANAGWA.....	59 <sup>TH</sup> DEFENDANT
SAID JUMA.....	60 <sup>TH</sup> DEFENDANT
FRANK KALYALLYA.....	61 <sup>TH</sup> DEFENDANT
JANETH ALLY.....	62 <sup>TH</sup> DEFENDANT
SANGU JOHN.....	63 <sup>TH</sup> DEFENDANT
AIDAN GEORGE .....	64 <sup>TH</sup> DEFENDANT
JONASANI MGOMBA.....	68 <sup>TH</sup> DEFENDANT
GEOFFREY NTAINDWA .....	66 <sup>TH</sup> DEFENDANT
ANASTAZIA JOSEPHAT.....	67 <sup>TH</sup> DEFENDANT
SIKU SELELEBE.....	68 <sup>TH</sup> DEFENDANT
JOSEPH KUTULI.....	69 <sup>TH</sup> DEFENDANT
FUMU BOGO.....	70 <sup>TH</sup> DEFENDANT
KAPAYA FELE.....	71 <sup>TH</sup> DEFENDANT
FRANK FUPE.....	72 <sup>TH</sup> DEFENDANT
KULWA MAMBA.....	73 <sup>TH</sup> DEFENDANT
BEBE VIBO.....	74 <sup>TH</sup> DEFENDANT
MWALIMU JAKOBO.....	75 <sup>TH</sup> DEFENDANT

MWALIMU KANA.....	76 <sup>TH</sup> DEFENDANT
SABA KAMZI.....	77 <sup>TH</sup> DEFENDANT
MARCO ROMANI.....	78 <sup>TH</sup> DEFENDANT
SEFU KABEBE.....	79 <sup>TH</sup> DEFENDANT
LUYEYE.....	80 <sup>TH</sup> DEFENDANT
LINUS SIWEZI.....	81 <sup>TH</sup> DEFENDANT
JENIS.....	82 <sup>TH</sup> DEFENDANT
DOTO SEKETULE.....	83 <sup>TH</sup> DEFENDANT
MASANGASI.....	84 <sup>TH</sup> DEFENDANT
BILIA.....	85 <sup>TH</sup> DEFENDANT
WIMBI .....	86 <sup>TH</sup> DEFENDANT
KABILA.....	87 <sup>TH</sup> DEFENDANT
SIKOMBE.....	88 <sup>TH</sup> DEFENDANT
SABA.....	89 <sup>TH</sup> DEFENDANT
TINYA.....	90 <sup>TH</sup> DEFENDANT
MBAJE.....	91 <sup>TH</sup> DEFENDANT
NDALU SAGUDA.....	92 <sup>TH</sup> DEFENDANT
MAMA KWANGIPENYE.....	93 <sup>TH</sup> DEFENDANT
SAMWELI PANGANI.....	94 <sup>TH</sup> DEFENDANT
BABA ENDO.....	95 <sup>TH</sup> DEFENDANT
PETER SAMSON MPEPO.....	96 <sup>TH</sup> DEFENDANT
PHOSTINI MRINDA.....	97 <sup>TH</sup> DEFENDANT
KANYEMA MRINDA.....	98 <sup>TH</sup> DEFENDANT
PENCHA.....	99 <sup>TH</sup> DEFENDANT
LONKA.....	100 <sup>TH</sup> DEFENDANT
FUREKI.....	101 <sup>TH</sup> DEFENDANT
JUMA SAID.....	102 <sup>TH</sup> DEFENDANT
JANETH ELIAS.....	103 <sup>TH</sup> DEFENDANT
JONAS MIGOMBA.....	104 <sup>TH</sup> DEFENDANT
SADICK SAID.....	105 <sup>TH</sup> DEFENDANT
TAUSI JOHN.....	106 <sup>TH</sup> DEFENDANT
SILVIA JUMA.....	107 <sup>TH</sup> DEFENDANT
PILI ANDREA.....	108 <sup>TH</sup> DEFENDANT
ALPHONCEB RASHID .....	109 <sup>TH</sup> DEFENDANT
ADAMU CHARLES.....	110 <sup>TH</sup> DEFENDANT
MAIKO JULIAS.....	111 <sup>TH</sup> DEFENDANT
LAZARO KATABI.....	112 <sup>TH</sup> DEFENDANT
GODELINA MWANAWIMBE.....	113 <sup>TH</sup> DEFENDANT
KATABI DOTO.....	114 <sup>TH</sup> DEFENDANT
RASHID JOHN.....	115 <sup>TH</sup> DEFENDANT
LAZARO JOHN.....	116 <sup>TH</sup> DEFENDANT
JOHN SAGU.....	117 <sup>TH</sup> DEFENDANT
GEOPHREY JOHN.....	118 <sup>TH</sup> DEFENDANT
KAGUSA LEONARD.....	119 <sup>TH</sup> DEFENDANT

<b>DAMIANO JUMA .....</b>	<b>120<sup>TH</sup> DEFENDANT</b>
<b>KAMINA JOSEPHAT.....</b>	<b>121<sup>TH</sup> DEFENDANT</b>
<b>RASHID JUMA .....</b>	<b>122<sup>TH</sup> DEFENDANT</b>
<b>SAIMUNI IDD .....</b>	<b>123<sup>TH</sup> DEFENDANT</b>
<b>JAPHETH MWANAGWA .....</b>	<b>124<sup>TH</sup> DEFENDANT</b>
<b>THACDEO JUMA .....</b>	<b>125<sup>TH</sup> DEFENDANT</b>
<b>MALIANA EDIGA.....</b>	<b>126<sup>TH</sup> DEFENDANT</b>
<b>TATU SAHIDI.....</b>	<b>127<sup>TH</sup> DEFENDANT</b>
<b>EPHRAIM MWAMPOULU .....</b>	<b>128<sup>TH</sup> DEFENDANT</b>
<b>SHUKRANI MKALUKA .....</b>	<b>129<sup>TH</sup> DEFENDANT</b>

### **EX-PARTE JUDGMENT**

28/07 & 30/08/2022

#### **NKWABI, J.:**

In this land case, the plaintiffs are suing the defendants for a piece of land.

The reliefs the plaintiffs are seeking are:

- (i) All defendants be evicted from the land.
- (ii) Permanent injunction against all the defendants, their relatives, servants and anyone coming from their orders.
- (iii) General damages for trespass.
- (iv) Recovery of agricultural products to a value of the rice price as per 20 bags per each acre from the time of evasion up to the day of return of the land.
- (v) T. shillings 250,000/= per each day from the day of judgment up to the day of return of the land.
- (vi) Cost of the suit.

(vii) Any other relief the Honourable Court deems fit and just.

The facts leading up to this suit are that the plaintiffs on one hand are peasants who live and conduct farming business in Stalike and Igongwe villages in Stalike ward within Nsimbo District in Katavi Region. On the other hand the defendants in this matter are businessmen who conduct business in Katavi region.

It was also stated by the plaintiffs in the plaint that in the year 2017 the plaintiffs having formed an intention of conducting an irrigation farming scheme in Stalike and Igongwe villages areas, did each individually buy from various owners pieces of land in the area which was earmarked village farming area covering the land measuring 3,515.35 acres valued at Tanzania shillings 527,302,500/= and using the same area in cooperative form of farming.

But to the surprise of the plaintiffs on diverse days of November 2019 the Defendants started forcefully entering into and together continued to occupy and use the Plaintiffs' lands preventing the plaintiffs of their legal utilization of the same so as to make the latter suffer the loss of using it and profits realizable therefrom. Demands and reminders that the defendants vacate the suit land

have never been heeded to by the defendants. The endeavour to cultivate rice in the land was frustrated by the Defendants the act which entitles the plaintiffs to claim for general damages in trespass besides other claim.

Since, the defendants did not appear in mediation, the written statement of defence was struck out under Order VIII (c) Rule 29 of the Civil Procedure Code, Cap 33 R.E. 2019 by this Court at the instance of the prayer by the counsel for the plaintiffs. Thus, the hearing of this case proceeded ex-parte. The plaintiffs paraded four witnesses to build on their case.

The evidence on the plaintiffs' side was that PW1 Richard Kadami Hamis, who is the chairperson of the peasants (Chama cha Wakulima wa Umwagiliaji Muungano) testified that he cultivates rice, maize and groundnuts in the area. It is also the evidence that is in the record of this Court that the pieces of land were bought from the villagers who were owning the same. The transactions were sent to the village leadership. The copies of sale/purchase agreements were received in court as exhibits. PW1 as the chairperson of the group used to be the custodian of the land purchase agreements.



The whole area has the size of 3,515 acres. It is also the evidence that the plaintiffs started to cultivate the area since the farming season of 2017 – 2018, and 2018 – 2019, but in the year 2019 – 2020, that is in December 2019, there came a group of persons who invaded their land. At the time of invasion, the plaintiffs had already cultivated the area and had sown seeds. The leader of that group that invaded their agricultural land was the W.E.O. of the Ward, namely Shukrani Mkaluka (the 129 defendant).

When they invaded the pieces of their (plaintiffs') land, they allocated it amongst themselves (defendants). The invaders harvested the crops of the plaintiffs. To date, those who invaded plaintiffs' pieces of shamba are still holding plaintiffs pieces of shamba. For the first year, he cultivated 10 acres of land, in the following year, he cultivated about 20 acres. For every acre he was harvesting 20 sacks of rice.

Then the Court was prayed for orders of vacant possession to the plaintiffs' area, compensation for the plaintiffs' who have not cultivated their pieces of land for two years and other reliefs as per their plaint including but not limited to defendants be forcefully evicted from the plaintiffs' pieces of shamba. After the judgment, if the defendant continues to remain in

plaintiffs' farms, this Court has to order compensation as per plaintiffs' harvest per each year.

The testimony of PW1 was supported by the testimonies of PW2 Christoph Angelo Mrisho, PW3 Yegela Michael and PW4 Mkoma Charles Mwoigela who teamed up in order to prove the plaint.

Faced with the above evidence, this Court is minded to go back to the overused laws, that he who alleges must prove and in civil litigation, proof is on the balance of probabilities, see **East African Road Services Ltd v. J.S. Davis & Co. Ltd.** [1965] E.A. 676 and **Karangirangi v, Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT) at pg. 7 & 8.

*"... we think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove. ... It is similarly that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on balance of probabilities."*

The pertinent question here is, have the plaintiffs managed to prove the plaint on the balance of probabilities? I think the answer to the above question is in the affirmative.

The first reasons for an affirmative answer to the question posed is that the defendants failed to enter appearance during mediation and on the prayer by the counsel for the plaintiffs, this Court struck out the written statement of defence filed by some of the defendants. I also note that some of the defendants did not enter appearance though the summons was even published on newspaper.

The next reason for an affirmative answer is that the plaintiffs have tendered evidence (documentary exhibits) to prove that they purchased pieces of land at the suit place. The transactions were blessed by the villages' authorities for the two villages. There is no evidence to the contrary.

The certificate of registration of the plaintiffs' irrigation association namely (Chama cha Wakulima wa Umwagiliaji Muungano) corroborates their evidence that they own the pieces of land for agricultural activities.

Lastly, the oral evidence by all four witnesses on the plaintiffs' side which oral evidence has not been controverted by the defendants coupled with the other pieces of evidence such as documentary evidence suffice to tilt the balance of the case to the plaintiffs' favour.

The above suffices, and thus I hold affirmatively that the plaintiffs have proved the case on the balance of probabilities. As such, I declare that the plaintiffs are the owners of the disputed piece of land which has the size of 3,515.35 acres situated within in Stalike and Igongwe villages' areas that they purchased and the transaction blessed by the villages' authorities.

Lastly, I determine the reliefs the plaintiffs are entitled to. In this judgment herein above, I have listed the reliefs that are sought by the plaintiffs. Because the plaintiffs have proved their case, I grant them the following reliefs:

- a. The plaintiffs have to have vacant possession of the suit land. In case the defendants neglect to vacate the suit land, forceful eviction be carried out against the defendants from the suit land.

- b. Permanent injunction against all the defendants, their relatives, servants, agents and anyone coming from their orders.
- c. General damages for trespass at the tune of T.shs 100,000,000/= (a hundred million Tanzanian shillings).
- d. Recovery of agricultural products to a value of the rice price as per 20 bags per each acre from the time of evasion up to the day of return of the land.
- e. Costs of the suit awarded to the plaintiffs.
- f. The suit land is declared the property of the plaintiffs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 30<sup>th</sup> day of August 2022.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

**J. F. NKWABI**  
**JUDGE**