

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

LAND CASE NO. 26 OF 2013

MONDOROSI VILLAGE COUNCIL.....1ST PLAINTIFF

SUKENYA VILLAGE COUNCIL.....2ND PLAINTIFF

SOITSAMBU VILLAGE COUNCIL.....3RD PLAINTIFF

VERSUS

TANZANIA BREWERIES LTD.....1ST DEFENDANT

TANZANIA CONSERVATION LTD.....2ND DEFENDANT

NGORONGORO DISTRICT COUNCIL.....3RD DEFENDANT

THE COMMISSIONER FOR LANDS.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

Date of last Order: 16/09/2015

Date of Judgment: 28/10/2015

BEFORE S. C. MOSHI, J.

Mondorosi Village Council (1st plaintiff), Sukenya village council (2nd plaintiff) and Soitsambu Village Council (3rd plaintiff) sued Tanzania Breweries Limited (1st defendant), Tanzania Conservation Limited (2nd Defendant) Ngorongoro District Council (3rd Defendant). The Commissioner for Lands (4th defendant) and the Attorney General (5th Defendant) over ownership of village land known as Sukenya farm. The land is also known as "Enavisha Nature Refuge" Comprising 12,167 acres (5106 hectares), in Ngorongoro District

Council. The Land is currently owned and occupied by the 2nd defendant.

The land was Originally owned by Soitsambu Village Council, which now comprises the 1st, 2nd and 3rd Plaintiffs. In 1984/1985 the land was given to the 1st defendant who needed it for barley production. The 1st defendant cultivated the land as intended but he didn't utilize the whole farm; only 800 acres were in use. The 1st defendant later on; in 2003; transferred the land to the 2nd defendant.

The plaintiffs challenges the transfer of land from 1st defendant to the 2nd defendant to be illegal. The Plaintiffs claim that the 1st defendant didn't adequately compensate the owners of the land through the Soitsambu Village council and that 1st defendant had illegally acquired the extra 2617; it was agreed that the land should not exceed 10,000 acres but they took away 12617 acres.

The plaintiff's also claimed that 1st defendant had abandoned the land hence the community continued to use it; they acquired it by adverse possession. However, later on when the land was transferred to the 2nd defendant; the villagers were denied access to the land; they were chased away and were violently mistreated by the 2nd defendant and her agents.

On the other side the defendant's stated that the land was lawfully acquired from the Soitsambu Village Council, through the Ngorongoro District Council. The Land was never abandoned. That, the farm was later transferred to 2nd defendant due to change of Management policies of the 1st defendant.

During the hearing of the Case, Mr. Rashid Francis Kiwanga and Mr. Wallace Kapaya advocates represented the plaintiffs whereas Mr. Sankah advocate represented the 1st defendant, Mr. Sinare advocate represented the 2nd defendant and Ms. Janeth Masono State Attorney, represented the 3rd, 4th and 4th defendants.

At the commencement of hearing of the Case, the following issues were proposed:-

1. Whether the suit is res-judicata owing to the decision of the Resident Magistrates' court of Arusha in Civil Case No. 74 of 1987 between Isata Ole Ndekerei & 4 Others versus Tanzania Brewers Limited (TBL) Farms.
2. Whether the 1st Defendant had at any time abandoned the disputed land or any part thereof.
3. Whether the plaintiffs acquired the disputed land by way of adverse possession.
4. Whether the actual size of the disputed land in terms of acreage was established prior and/or during the allocation of the disputed land to the 1st defendant by the then soitsambu village.
5. Whether the 1st defendant unlawfully acquired extra 2617 acres of land beyond the boundaries of the land allocated to it by the then soitsambu village.
6. Whether the plaintiffs are successors in title of the then soitsambu village.
7. Whether acquisition, sale and Transfer of the disputed land from the 1st defendant to 2nd defendant was illegal.
8. Whether the 1st defendant has not fairly, justly and adequately compensated the plaintiffs for the alienation of the 10,000 acres of land as was required by the agreement and by the law.
9. To what reliefs the parties are entitled to.

The plaintiffs called a total of 9 witness, the 1st defendant had 2 witnesses, the 2nd defendant had one witness and 3rd defendant had one witness. All witnesses gave their testimonies on oath.

PW1. LOSERIAN MINIS, stated among other things as follows:-

He lives at Sukenya village. He is the Village chairman of Sukenya village. He has never lived outside Ngorongoro. He is a livestock keeper. He is also the village chairman of Sukenya since 2004. In 2009 he was elected chairman of street (kitongoji).

In 2010 villages were divided Sukenya was separated from Soitsambu.

Sukenya village was registered. There is a certificate of registration [Exhibit P.1].

The village economic activity is livestock keeping and small scale farming.

The dominant tribe living in the village is Maasai. They keep cattle, goats, sheep and donkeys.

The Sukenya farm is located at Sukenya Village. It's now used for Tourist's activities which started in 2008.

The land was used for farming since 1980. In 1980s it was under Tanzania Brewers TZL who started to farm the land in 1985-1990. TBL cultivated 800 acres. The farm measures 12,617 acres. The remaining part of the land was used for livestock keepers. It is the residents of that area who were keeping livestock there; they were of Sukenya, Ndorosi and Soitsambu villages.

TBL cultivated the farm for 5 years. Thereafter, the TBL abandoned the farm and the buildings. Only one watchman was left there.

No person had ever stopped them from using the farm.

The 2nd defendant and Thomson occupied the farm in 2006. They fixed tents in it.

The 2nd defendant never applied to be allocated land; Sunkenya land (farm).

Villagers, complained and opened a case before the court. The Sukenya village decided to come to court. They complained to the

government but the government didn't act on it. They decided to bring the case to court.

He prayed that the court cancel the 2nd defendant's certificate of ownership.

On cross-examination by Mr. Sankah, he inter – alia stated thus;

He is the village chairman of Sukenya; since 2004. In 2011 he was chairman of Sukenya village. The parent village was Soitsambu. He was a leader of Soitsambu. In 2004; he was a Kitongoji (street) chair of Sukenya which was in Soitsambu village. By then in 2004; he was aged 30 years. In 1984 he was in standard 6. He was born in 1971.

He didn't know when TBL requested for land from Soitsambu. It is true that 800 acres only were used for farming. The land which was cultivated was less than which was not used. He told his advocates that they stopped farming in 1990. By then, he had completed school he was not a leader of the village. He is on leadership position since 2004 to date. He identified MVCI to be Minutes of the village council. ID 1 is Sukenya village document (the village council). The village Assembly had decided that they open a case. It didn't provide that there was village Assembly's decision to take the case to Court. About 50% of the land of the village has been taken by the farm.

The Mondorosi Land taken by Sukenya farm was not measured.

The land is owned under traditional and customary tenure, even before giving it to Brewers. When Soitsambu gave land to Brewers, the people were not involved. It's leaders who were involved. He knew of this when he was young.

1st case was filed in 1987. The case was opened by the people not village chairman.

Brewers abandoned the land. The TBL building was demolished in 2006 or 2007 when TCL occupied the land. There was a TBL watchman keeping the building.

He prayed that land be restored to the people and the registered title deed be cancelled. He also requested that 12,617 acres be returned to the people; as the same was acquired illegally.

They discussed with 3rd defendants, Ngorongoro district Council, the 3rd defendant said that they gave Land to TBL to farm. If they fail, to farm it, they should return it to the people. Also they shouldn't take more land without consent of the village.

During Cross examination by Mr. Sinare he stated that:-

It's Government Notice which established the village, it's No. 22 chapter 287.

There's still soitsambu village; it was a street under the parent village. It's the law which established the soitsambu village. Soitsambu is not defunct.

The decision to give away the land was made by Soitsambu.

The land is used by livestock keepers. Currently Sukenya's residents are more than 2800 so there are cattle belonging to more than 2,800 people.

The committee reported that there were 4 "**bomas**" (homestead). It's said there were 8 km and 4km distance from the farm land. It proposed that, they be moved to another area. There was a resolution that the people should move out, TBL be given 10,000 acres and shouldn't acquire another land until they get consent from the council. He does not know if the land was measured. The land was measured in 2003. You could not tell the size of the farm before 2003. He doesn't know if TBL were shown the boundaries.

He knows the current boundaries. The boundaries are not the same; as they were given 10,000 acres. Now it's 12, 617 acres.

The land belongs to the people. He complains on their behalf. He knows that the people have right to sue. The village council is representing the people.

The 2,800 people are from Sukenya. It's not correct to say that Soitsambu have no land there. The villages are divided but they are not measured; there are no beacons.

There were no boundaries, since it were a street till this time.

When cross-examination by Ms. Chacha he said that the Council discussed with the village when the land was given to TBL. There was a committee formed by D/Council to discuss with Sukenya people. He saw the Minutes. He did not see any agreement. MCVI shows that the council gave land to TBL; 10,000 acres.

PW2. PARMITOR KASIARO, stated inter-alia that:-

He lives at Ngorongoro. He is a livestock keeper. He keeps livestock at Ngorongoro reserve, Ololobi. Between 1984 to 1990 he was living at Ngorongoro. He was a Diwani (councilor) of his ward and Chairman of the Ngorongoro District Council. He has been chairman of the Council since 1984-1990. He recall that the TBL came to the District. They discussed with various leaders; party leaders and Government leaders. The TBL, requested for land for barley farming. The Ngorongoro Council was capable to give, 10,000 acres.

They first formed a committee; which comprised Experts and councilors. They visited the area. They then brought feedback, that the land was available; it had few bomas. The council allowed to allocation of 10,000 acres but they shouldn't acquire more land. The land should be measured before acquiring the title deed. The TBL should assist cultivation by hiring tractors to the people; the few bomas should be moved from that area and TBL should compensate

them. There is a letter from Loliondo Executive director to the Executive director TBL. He signed the letter.

Thereafter, the TBL started to farm a small part of the land. They farmed it till 1990. Later they started to grow maize instead of barley. Finally they abandoned the farm.

TBL did not comply with the terms as put in the resolution. They expected that they would re-fublish a windmill for water.

The farm is part of Sukenya. Also other neighbouring villages, soitsambu and mondorosi were grazing on that land.

Apart from TBL the other part of the land was used by the villagers.

[The District Council meeting minutes which he was chairman were tendered in court as Exhibit P. 3].

The land was not measured. He didn't see any compliance of what they agreed.

When cross-examined by Mr. Sinare he stated thus:-

It's true the council allocated land per the resolutions made; he doesn't see some other terms like supply of water.

It's the District Council which had authority to allocate land which is 10,000 acres or more. They didn't write to TBL regarding non compliance with the terms. They didn't fix a time frame for the TBL to survey the land/measure the land. He was councilor till 1990. They didn't given them time frame to comply their terms. He does not know if they did after he finished his term. Before TBL coming in, the farm was used by the people. He has never lived at Sukenya. He does not know the boundaries. The TBL was to compesate those who were to move. You can't move a person without compensating him. The minutes says that those who lived in Bomas they should be moved elsewhere. It was not written that they be compensated.

PW3. CHARLES GORANGA, stated among other things as follows:-

In 1980 he was working with TBL. He was Assistant Agricultural Liason Officer. He was based at Karatu. He was later on in 1984 promoted to Northern Zonal Extension Officer; for barley farming. He was based at Karatu. His Responsibilities were to Develop barley farming at Karatu Ngorongoro, Babati and Hanang.

TBL instructed him to go to Ngorongoro and look for land to grow Barley. The company gave him a letter introducing him to Ngorongoro District Council. He was a leader of TBL team. They had 5 days meeting with councilors to consider the application. Their request was for 10,000 acres land.

Apart from, the TBL team, 7 councilors, there were there and their chairman.

TBL did not give them anything. After 5 days, their application was granted. It's the Ngorongoro district council leadership who wrote the acceptance letter.

After getting the letter, he took the letter to TBL. They appointed TBL officers to work on the farm. They included farm manager and Liason Officer; who would be a link to assist the Maasai to cultivate food crops. The name of the Liason officer was Charles Orle Ndikire

The 10,000 land is allocated at Sukenya, Soitsambu Ward.

Cultivation started in 1985; the farming was done for 4 – 5 years. They farmed about 2000 acres. They did not farm the whole 10,000 acres due to the fact that animals were destroying crops and they were operating on loss; expenditure was bigger than income. The barley was transported to Moshi which is about 400 kms away.

TBL failed to Develop the land. He was assigned to oversee the farm; to supervise watchmen and the building. Three watchmen

(guards) were there. The watchmen were to guard buildings and other TBL properties.

They were informed by superiors that they were looking for other means to develop the farm. He is not aware of any steps taken thereafter.

Since 1984 – 1990 TBL was owned by the Tanzania government; later on she entered into partnership with south Africa.

After joint venture the TBL's policy was to abandon non-productive farms. They decided so because they were not productive. When cross – examined by Ms. Angella Chacha he said thus:-

According to terms of agreement. TBL was given 10,000 acres and TBL was to assist the masai to cultivate farms for food crops. The letter did not contain a provision that the people would be compensated.

When re-examined by Mr. Rashid he said that, the cattle which entered the area belong to the people/residents of that area. He does not know if there was any prosecutions for trespass by TBL. He did not initiate a survey of the area. He does not don't know if TBL compensated the people.

PW4. JAMES LEMBIKAS, stated inter-alia as follows:-

In 1984 he was a member of Soitsambu village council, it's situated in Ngorongoro District. He was appointed member of the village council in 1982. He held the position up to 1987. Thereafter, He contested for chairmanship. He was elected chairman in 1987. He held the position up to 2009. He has been chairperson for 24 years. The village was divided in 2010. It was separated into 5 villages. 5 villages include soitsambu, Sukenya, Mondorosi, Kirtalo and Njoroi. Three villagers; remained in soitsambu ward; i.e. Soitsambu, Kirtalo and Mondorosi. Sukenya is under Oloipir Ward. Njoroi is now is Olokwan.

Mondorosi, Sukenya and Soitsambu borders the suit land; and Enguserosambu Ward. Mondorosi is on the northern boundary. Soitsambu is on the western boundary and Sukenya is in the Southern boundary. Engosoro Sambu is on the Eastern border.

In 1984 he was member of village council. 5 people came; C. C. M Chairman, the Chairman of the Ngorongoro District Council and 3 other people whom were strangers to him. The D/Council Chairman was called Ole Kasialo and the C. C. M Chairman was Gidion Ole Sombe.

They came to see village Leadership and members who were there. The village chair was Mark Timan. The Soitsambu Ward Executive Officer (Ward Secretary) was there. They said that they came with TBL personel to look for land for farming barley. They requested 100,000 acres. They said if it was not possible then they would need 10,000 acres. They told them that they had received the Application. They would convene the village General Assembly meeting. The meeting was convened. They discussed the TBL application and European, John's application. The village Assembly said the there was no land because they had given Land to TBL. The land was given to TBL by the village leaders, and District leaders. They gave 10,000 acres to TBL. The TBL did barley farming. The TBL cultivated a small parcel about 100 or 200 acres. He recalls that TBL cultivated it for 4 years.

The area which they didn't farm was used for grazing, erecting bomas, cattle were getting salt, Deep (joshu).

When TBL left, they continued to build "**bomas**" and grazing. TBL never came back to the land.

TBL left some tin material huts. No TBL workers remained there.

Thereafter came another company. They forbid grazing in the area. They said that the land was sold. 16 years elapsed from the time when TBL abandoned the land till the other company came. The

other company is a Tourist company named Thomson. The Thomson Company said that they bought 12,617 acres of land.

When Thomson acquired the land, they complained to the District Authorities. The District leadership said the land was sold. Some people were chased away and some were shot.

He wasn't shown the 12,617 acres, he was only told about it.

Whenever people go there to graze; chaos occurs one youth was shot.

The new company does conservation for Tourism.

PW5. JOSHUA MARKO, stated among other things as follows:-

He is a livestock keeper; and Chairman of the Mondorosi village. The village is located in Ngorongoro District, Soitsambu Ward. Mondorosi village and Soitsambu are in one Ward of Soitsambu. Mondorosi was registered in 2002 per Exhibit P.4 (village registration certificate).

His duties are to oversee/supervise all duties in the village and coordinate (kuratibu) all issues touching the people. In respect of land; to safe guard the land.

The Mondorosi people are livestock keepers. They keep cattle, goats, donkeys and sheep.

The Sukenya farm is in the Northern side of Ngorongoro district. The farm is inside the Mondorosi village area. About 5 acres are in the farm. Before its establishment, Mondorosi was a street of Soitsambu. TBL acquired the land in 1984. By then he was just born. He does not know the relationship between Thomson and TCL. Thomson does not involve Mondorosi village in anyway. They claim their land which they appropriated (wamepora). The land is taken by TBL and TCL.

They own the land customarily. Before Thomson took the farm, it was used for grazing,. They instituted the case as village council

[The village council meeting minutes of 2013 was tendered in court as Exhibit P.5].

The land was used for grazing; from 1990 onwards. Now, the land use has changed. The area is for animal conservation. The land use change has affected them.

- The grazing land is small. They even have to go to Kenya for grazing. The suit land is about 500m from homesteads.
- They took away the road which Endosheki students passes to Mondorosi School. The students now can't pass there as there are animals.
- Kololeti river which was used by the people has been taken by the farm. People are forced to go to Kenya.

They encroached the land in 2006 after Thomson came.

Before 2006, the land was for grazing. There were no permanent residence there. There were temporary Bomas during dry season.

In 2006; people where being chased away, beaten and taken to court. Where charged of grazing on Thomson's farm. He prayed the court to cancel Thomson's title deed as it was obtained illegally and the land be returned to the people.

When cross-examined by Mr. Sankah he stated that

He was Chair of the meeting which was held on 01/06/2013 per Exhibit P.5. This meeting was preceded by the General Assembly meeting. The Mondorosi Village has 1,352 residents. About 900 residents attended the General Assembly meeting. The minutes of the meeting is with the executive officer.

When the land was allocated to TBL he was young he was born in 1982. The information is correct. He learned from the file which were handed to him. MVCI –which is attached to the plaint; is a fake document; Kijiji cha Sukenya/Soitsambu 13/05/1984. It is fabricated

by those who attended the meeting. The heading says Serikali ya Kijiji. There was no Sukenya/Soitsambu village. Secondly, the attendees, Ole Konjela has never been village Chairman. Ole Konjela was TANAPA Director and C. C. M Chairman. Thirdly, the names in the minutes are not written in brief form. He did tell the representative that the minutes are forged. MVCL; are Minutes of 29/08/1984 – 01/09/1984. He does not don't know if it is a forged document. He doesn't know the Resolutions made by that meeting. They had no powers to divide the Land without having people's consent.

Basing on Exhibit P.5, they resolved that the case be instituted in 2013.

They took long, to bring the issue to court because they were not aware (Hatukuji tambua). The elders who were in 1984 meeting also were surprised in 2013 that TBL had the deed. They didn't know that Mondorosi was included. They became aware in 2006 that they trespassed 5 acres of Mondurus. They didn't write them to get out. They started to fight i.e. "ingiza mifugo, fukuza mifugo."

The Mondorosi village was affected. The people have sent him. The council owns 60,000 livestock. The cattle belongs to the people. If the deed is cancelled they will own it Customarily. They claim 12,617 acres. Brewers was given 10,000. They request that if the 10,000 were legally owned, then the 2,617 be returned to the people.

PW6. LOTA NYATURU, 53YRS, stated among other things that:-

He lives at Soitsambu village. The village is within Ngorongoro village. He's the village chairman. He was appointed in 2011. The village was registered on 01/09/2012. It has a registration certificate [Exhibit P.6].

Soitsambu is parent village of Mondorosi, Sukenya, Njoroi and Kirtaro.

The villagers are livestock keepers and peasants. He is also a livestock keeper and a peasant. They graze on their land, they have no boundary. They own the land customarily. They have arrangement of boundaries for calves. However they don't have boundaries for grazing area. They identify the village by homesteads. He knows the Sukenya farm. It was owned by TBL. The TBL was given the farm by the District council of Ngorongoro in 1984. TBL grew Barley. They did the farming for 4 years. They utilized 600 or 700 acres. Thereafter they abandoned the farm. The land was left as an open area it was used for grazing.

Between 2003 – 2006 nothing was done. In 2006 they saw a new company. The new company erected tents. Later on they entered TBL buildings. Now they have erected their own buildings.

Before Thomas occupying the land, it was the people who were using the land. Thereafter they raised a complaint. They complained to the District council and land division Northern Zone.

They did not get any response. The company continued to occupy the Land.

They complained to political leaders.

They then instituted a case. The plaintiff in that case were the 3 villages.

The suit land borders Sukenya, Mondorosi and Soitsambu village.

His village borders the farm on the western side.

His village was not affected by the TCL. The other villagers people were greatly affected. Mondorosi and Sukenya have to enter the farm. When they enter the suit land they are beaten.

In 1990's the cattle were grazing there. Nothing happened. Nobody chased them. On 30th – 31st May, 2013 They held a big

meeting of 3 villages. The meeting decided that the village council institute a case. They sat on 01/06/2013. The minutes were admitted as Exhibit, 7. The Council decided that it would open a case against TBL and he prays the court that their land be returned, the title deed for TCL be cancelled.

When examined by Mr. Sankah he stated among other things that;

Since 1984 up to 2013 is almost 30 years.

It's true that he sues over that land. He decided to come to court when TCL denied them access to use land. When TBL was using, they were grazing the land. When TBL left, the land was returned to them. The TBL was not allocated the land by the village.

The land was allocated by D/Council of Ngorongoro. By then Soitsambu was a big village. The then leaders were not aware. If they were aware, they didn't involve people. The big Soitsambu village did open a case in 2009 against the Ngorongoro District Council.

There are about 400 homesteads. He came on behalf of the people. He prays that the land be returned to them and the title be cancelled.

PW7. Elias Ngorisa Lyangiri, stated inter-alia that:-

A chairman for Ngorongoro District Council he was elected as such 2010.

He deals with all affairs of the council and he is a supervisor of works.

They have mechanism of management, in accordance with the Law.

- Council management team.
- Permanent council committee; under cliff determents which are Economic affairs; including Land, construction and Environment.
- Social; education.
- Health & water.

- Social development – including women & children affairs & gender.

The committee dealing with land issues is under Economic affairs.

He is chair of finance committee and Chama cha Mapinduzi Council, and full Council. He is also member of all committees.

He is aware of the dispute on Sukenya farm. He became aware in 2006 – 2007. The dispute between Thomson and villages was dealt with by the District Security Committee (ulinzi na usalama). He learned that the District Council (3rd defendant) was sued by villages in 2013.

He called a council meeting, They formed a committee to find out why the villages were suing them.

The committee found out 2 things:-

- Additional land measuring 2617 acres.
- On 01/08/2008 & 25/08/2008 the employer of the council wrote to land commissioner forwarded the minutes of change of land use from animal husbandry and farming to Tourism. The employee lied that on the minutes 23/01/2008 & 25/01/2008 the council accepted land use change. The employee is a designated land officer. The meetings did not deliberate on this issue.

According to Exhibit P.2 10,000 acres were given to TBL. The TBL was given conditions if they want to increase the land:-

- TBL can't increase land without council's consent.
- TBL should contact the council if they want to own the Land un accordance with the Law.
- TBL to give 2 tractors to the people.

He didn't see any TBL request to increases the Land.

- The money value of the Land, 12, 617 acres. The price is 3m – 4m per acre as it's exclusive land. Therefore the value of the Land is over 44 billion with (3.5m per acre).

PW8 Charles Ndikere Testified to the following effect:-

In 1984 he was employed by Brewers, 1st defendant. He was liason officer. He was based at Sukenya. As liason officer his job was to liase between Masai community and the Company.

Sukenya was a TBL Barley farm. He started working there in 1984.

He worked there for three (3) years. He recalls that within that time the defendant had cultivated 4 – 5 acres land. The farming was not successful as animals were destroying the farms. Brewers didn't fence the area. He was living at Makalasinga, Loliondo which is about 6 to km's from the farm. There was no production because animals destroyed the barley and there were misunderstandings between the company and the Masai.

PW9. Sandeti Ole Reiya said that:-

He lives at Mondorosi. He has been living there since 1979. He is a Clan leader. He was also a street Chairman settled there after independence. He is animal keeper, farmer and clan elder. He is the Ole Laigwanani. He has been Laigwanani since 1965 Laigwanani's duty is to lead the youths groups; (Rika). Being clan elder is like a chief. He's attending many community's activities. He also had been a Militiaman. There was a dispute between them and TBL and Thomson Company, also Arab's Company. TBL came in 1984.

TBL did Barley farming on 10,000 acres. The TBL used the community's land. It was a grazing area for the surrounding villages. TBL said it was government. The TBL stayed there for 3 years only. They came without knocking and they left without bidding farewell. They were given 10,000 acres, they utilized/cultivated 700 acres only.

It's the DC who told them that the TBL obtained then land; 10,000 acres. The DC called a meeting, gave them food (Mchele) and drinks one beer each.

They cultivated 700 acres left 9300 acres. They tilled it for 3 years. They were informed so by Lazaro Parkipuny, and by a member of parliament.

When TBL left, the land was used for grazing their cattle.

There were some permanent Bomas built there. The bomas were used for residence of the families; women and youths.

When TBL left the continued to use the land. Later on Thomson came. He's torturing them up to this moment. Thomson came in 2006.

He had one Boma in that farm. There were a total of 10 Bomas. They were living at Engusero Oormongi Siruai, another Boma is at Endonyo Naibor Isoitok, one at Engeju Engoilalei and another Boma is at Engejek Oladamiso and at Olduroto Loltiatelete. He built the Boma when he moved to Mondorosi. The Bomas are no longer there. They left there because of Thomson. The land was used for conservation. The bomas were set on fire people were shot by gunfire, people were beaten taken to police and to Court. Cattle were moved away. The cattle fell in gullys, some died some got lost, some died due to lack of grazing grass and water.

They were chased away from Poloreti where they used to get water, another well is at Irmong'isirnai and at Enashipa.

He remembers 2 people who were shot. He knows one youth from Nayoi family and Olunjai Timani.

It's Thomson company that committed these atrocities. He does not know if they were even taken to police and court.

He didn't do anything but the community reacted, there was chaos, they called meetings, found lawyers. The lawyers demanded them to stop.

When cross-examination by Mr. Sankah he said that:-

TBL didn't ask for land from the people. If they requested it from the council; he is not aware of that. He was living in Soitsambu. However, recently, the villages were partitioned to Soitsambu, Mondorosi, Kiratalo, Soitsambu, Sukeny, Njoloji.

The partition was made about five years ago. He is now testifying for Mondoros village. His Boma was also burnt.

They didn't report. They raised an alarm. The District Commissioner (DC) got information. He held a meeting with them. He visited the scene. He was on his way to Monduli; he said they had taken up the matter. However he hasn't seen the DC since then. He has not complained or reported of the death and loss of cattle. His cattle were not affected, most part of the land is in Mondoros, village & Sukenya. He does not know if the land was surveyed. He was only informed that the land was 10,000 acres.

When cross-examination by Mr. Sinare, he said thus:-

Thomson didn't burn his homestead (boma) he had several bomas, about 7 bomas in the farm. Among the 10 indicated boma's one is his. He knows 2 people who were shot but they didn't die. He wasn't at the scene when they were shot. He didn't see those who shot them. They chased away his 300 cattle. His cattle didn't die. His homestead is neighboring the farm. He knows that Ole timan's cattle

were chased away but they were killed by hyena. Thomson didn't kill the cattle but his actions led to what happened to the cattle.

When cross-examined by Ms. Janeth he said that, as a street chairman he called meetings they wanted the company to move away. The lawyers and DC and Police came from Loliondo. The DC did not settle the issue.

When re-examined by Mr. Kapaya he said that he said he didn't see Thomson chasing away or killing cattle, he said they are responsible because when the headers escape, the cattle get lost or die. They know it was Thomsons people who were chasing the cattle.

PW. 10 Shangwe Isata mdelereo, stated among other things as follows:-

He lives at Sukenya village, Ngorongoro District, he was born there. He is a cattle keeper/farmer. He is also a member of P/school committee.

He knows the TBL Company. The TBL came there in 1984. They came with a mobile house. The TBL tilled the land. In May 1985 they used tractors. They had 4 tractors.

He does not know the size of the farm which they occupied.

They tilled ten acres. They were grazing around that farm. They entered there after the harvest of the wheat. They got water from the gully. TBL vacated in 1988

TBL had harvest for 3 years. TBL left in 1988; they left a building and one security guard.

The security guard didn't prevent them from using the land.

They used the land for 15-16 years after TBL left.

Thomson came in 2006. He has a Boma in the farm; it is in the mid of the farm. There were about 5 bomas. He had 200 heads of cattle. Thomson said remove the cattle because it was reserved land for Animals. They resisted the move.

Thomson brought Police. Division secretary, arrested youths and took there to court. They moved them out of the farm. His boma was burnt, all Bomas were burnt.

There were 5 Bomas, they moved out to nearby land. Youths were hit by police and taken to police.

He was affected as they arrested his son and his cattle were chased away and some got lost.

When cross-examined by Mr. Sankah, he said among other things that he doesn't know how TBL acquired the farm.

When Thomson came; he complained, to the DC. The RC Abas Kandoro came. Kandoro called a meeting for all villages he attended the meeting. Kandoro called only one meeting, at the soitsambu village. There was one village only. The soitsambu village was partitioned. The village was partitioned after Thomson has occupied the land.

The meeting agenda was the dispute between them and Thomson. The RC ordered OCD, Mponjoli to stop beating them. The RC didn't say who was the owner of the shamba. The RC said that he was picking up the matter.

He has six male youths. His child who was grazing his cattle, the child was aged about 18 years by them.

He witnessed two people being shot. He saw one being hit. The other one was shot. He witnessed one of them being shot at the jaw. He was referred to Muhimbil. Thomson's manager shot the youth. He saw a police who shot him. He was brought by the Tomson's vehicle. The youth told him it's a police, called Juma who hit him. He witnessed the shooting.

That was the end of Plaintiff's case. For defendants, the case was as follows:-

DWI David Frank Batekereza testified for 1st defendant stated inter-alia that:-

He is a peasant also Agricultural expert and consultant on issues of Agriculture. He is based at Arusha; and other parts of Tanzania; the H.Q is at Arusha.

In 1982 he was employed by TBL. He was overseer of company's machinery.

He worked with TBL since 1982-2010 when he voluntarily retired.

He was later promoted to farm manager; He managed the Ludodolelo, at Makete. In 1998, he was manager of west Kilimanjaro Estate. In the same year, he was promoted to be production manager of the Barley Research and production. In 2001 he was promoted to be head of depart; barley depart manager. He supervised production and Research.

TBL had about 10 farms; southern High lands, and Northern highland zone where there was; West Kilimanjaro, Monduli Loliondo and Babati.

Loliondo farm is in Ngorongoro District. When he joined TBL, there was discussions/negotiations to acquire the Loliondo farm. The farm is measuring 12,000 acres.

The farm was for barley production. When he was in employment till when he retired the farm was under TBL.

The TBL didn't utilize all the 12,000 acres.

They couldn't utilize all of it because there were initial steps to prepare the farm, land clearing and to assess the production before expanding the production area. There was also problem of blocking destructive animals. They decided to expand human, activities area, so animals could go far from farms.

TBL was a company; it was paying all the expenses itself. In the past it was 100% Government owned, in 1993-1994 the government sold some of its shares to foreign companies. By the time he left, the farm was not under TBL. The government sold all its assets and liabilities starting in 1993; in 1994 the Board of directors of TBL decided not to involve itself in barley production by using its equipments. So, it sold all the shares to private companies.

The TBL Engaged itself with contractual farming; with private farmers.

By the time he left the TBL had left no single farm.

When cross-examined by Mr. Sinare he said that when they acquired the farm, they built staff houses, stores, and the machinery house ware. When the company was sold out, the building was under TBL till when the farm was sold out.

There were workers of various department till when the farms were sold. The production workers were there up to 1992. Other workers were watchmen. They worked up to the time when the company sold the farms.

When cross-examined by Janeth he said that TBL had title of land ownership.

When cross-examined by Mr. Rashid he said that the production lasted till 1992. He knew the size of the farm. He didn't measure that farm.

Exhibit. P. 2 is a letter to TBL Executive chairman, from Ngorongoro District, it is dated 30/08/1984 subject is request for land for barley production. Yes, measurement of acre is exact measurement/size. The letter says 10,000 acres. Its written that if they needed to increase they have to get consent & follow Land Law when processing the title.

Exhibit. P. 3 is written to General Manager of TBL from Chairman Ngorongoro District. The Title, "kibali cha kumiliki ekari 10,000:

It is true that they were looking for 10000. There was a subcommittee to show the area. The reports shows that the farm was not measured.

TBL farms Ltd was the company managing Sukenya and other farms. The Barley was to be taken to Moshi to the factory; to the plant to process the malt. The distance from Sukenya farm to Moshi is 400 Km. In 1984-1985 the road was not tarmac. The road was rough road; he agreed that there were buildings on the farm. He didn't measure the size of the area covered by the buildings. They covered about 1-2 acres some watchmen were left there. He cannot tell the numbers. It's not true that TBL abandoned the land. The farm was not fenced.

DW2. MANASEH ELISA MATANGANDA, testified for the first defendant.

He stated among other things as follows: He was once was employed by government as extension officer, in ministry of Agriculture in 1984.

He thereafter worked at Njombe District; He later joined TBL in 1989, December, up to 1994 when he was employed as Agricultural field officer of TBL. He worked at Loliondo farms and west Kilimanjaro. He was living in those farms.

When he was employed by the Loliondo farm, it was already TBL farm it was operating. They were producing Barley. He was living in the farm.

The TBL record shows it's 10,000 acres. He didn't measure the farm.

He was supervising the farming when he left the farm in 1992 they had cultivated 800 acres for barley.

He worked with the farm from 1990-1992. He worked there for 3 years.

The 800 acres were under cultivation. He left the farm after the season between October to November.

They didn't cultivate the whole of 10,000. They started with a small piece. They were continuing to expand. During the end 1992 he moved to west Kilimanjaro.

He quit in 1994 after TBL entered into partnership. The company didn't continue with farming.

There were no Boma's inside the farm or cattle in the farm. The huddles in developing the farm were wild animals. The animals had surrounded the farms. The farm was at Sukenya village at Soitsambu ward. There was also the farm manager. The administrators did remain but there were no productions.

There were houses for staff, office, godown and shed for keeping equipment's, tanks for fuel, and container for keeping spare parts.

By that time, there were farm manager, production section i.e him, drivers for tractors & combine Accounts, "funds", about 10-15 watchmen and store keepers. When production stopped watchmen were left there.

When cross examined by Mr. Rashid he stated inter-alia that:-

He cannot know if only 800 acres were utilized. He visited all parts of the farm i.e 10,000 acres. He worked on the farm through the week. There was no need of guarding the whole farm. They also attended the remaining land as they didn't allow people to occupy it.

DW3: JOHN BEARCROFT, testified for 2nd defendant and stated among other things thus:-

He is General manager for Tanzania Conservation Ltd. His work station is Arusha. He works with TCL since December, 2009 the case is regarding a disputed piece of land sukenya farm 373. They say that the land was acquired illegally because they are alleging abandonment by TBL.

The owner of the land currently is TCL, according to the title [Exhibit D.1].

At the back page of the title there's transfer of title. There's transfer of title to TCL on 07/03/2007. Currently the Land is occupied by staff and management of TCL.

When cross-examined by Mr. Sankah he said that, since December, 2009 to date he has visited the land about 30 times.

There are staff running the area; currently they are 22 of them. They look after tourists; taking them on walks, guiding the camps, general care of the farm, Natural resources, and the animals. They do not keep domestic animals on the land.

There are no Native Boma's on that land. He visited the land, for the last time in May this year.

The type of Tourism is community Tourism. Tourists stay in camp. They visit schools and projects which they support.

In addition to that members of the community are invited to the property to provide service to Tourists.

Including but not Limited to Nature Walks, Traditional dances, storytelling (Traditional stories) e.t.c.

His observation is the relationship with the community is peaceful.

The right of occupancy has never been revoked by the government of Tanzania.

He has never received any threats from the authorities or from the natives. For community service; they do; social projects, school facilities building classrooms, teachers buildings, Taking Tourists to school; they pay the school per head for the visit; the amount of money is used to help the schools in their daily needs. Furthermore, they assisted in proving medical facilities.

When cross-examined by Mr. Rashid he said that:- TBL was granted the Right of Occupancy on 24/5/2004. The description of the land says it measures 5106 acres. That's about 12,617 acres.

It's not correct that 2nd defendant is foreign owned company. It's not exclusively owned by Rick Thomson and Judy Wineland.

According to documentation the land was used by TBL for farming. TCL applied for change of use of land to Tourism. The application is in process.

TCL is not using the land illegally since they acquired it up to date.

They did not receive any notice to stop tourism nor notice to vacate.

He is aware of existence of 3 clans. The purko, Latayok and Loita. They surround the piece of land.

The TCL guards hail from all 3 clans. He does not agree that there are clans who are minority.

He is aware of resistance of NGO facilitating the resistance.

It's not correct that they divided the clans by giving benefits to some and denying others. The TCL has offered position to all the community who were ready Mondorosi were approached by management, they turned the offer down. Currently there are 22 staff for TCL who are working there.

There is no conflict between cattle keepers and TCL. There are cattle grazing there. The problems occur when number of cattle increase.

He was aware that the villagers were arrested for attempt to assault the staff.

His staff did not beat any member of the community. He communicates with staff on daily basis.

According to the documents and reports there were no Bomas on the land prior to his coming; when he came in 2009 there were no Bomas on the land.

DW4. KASEMA EMMANUEL SAMAWA, testified for the 4th respondent and stated among other things as follows, she lives at Loliondo. She was born there. She works with Ngorongoro executive director office since 01/09/2003. She is an assistant land officer, her duties are:

- To prepare drafts for title.
- To prepare all records regarding land issues
- To inspect plots
- Give advice on Land issues
- Collect government revenue; land taxes and rents.

The record shows that in 1984 the soitsambu village gave land to TBL.

In 1987, the village opened a case, Civ. No. 74/1987. In 1991 the court found that TBL were lawful owners of the farm.

In 2006 TBL sold the farm to TCL. Another dispute arose between the people and the company.

The RC visited the area. The people advised him to advise the president to return it to the people. The owner of the farm currently is TCL.

When cross-examined by Mr. Sinare she said that in 1987 the Soitsambu village gave the land to TBL. The land was demarcated in 1992; Full survey was done in 2000; approval of drawings was done in 2003.

Thereafter the process for title continued; it was issued in 2003.

The title (Exhibit D.I) was prepared by the Ngorongoro D/council.

When cross-examined by Mr. Rashid she said that:-

The 1987 suit was brought by Soitsambu village the plaintiff were Isata Ole Ndekerei and others; not the village. It's shown that the suit land was 10,000 acres.

The title comprised more than what was agreed. If they needed more land, they were to seek for permit. She doesn't know if they sought permit to exceed the 10,000 to 12,000 acres.

According to Tanzania Laws, the applicant has to pay compensation S. 3 of the village land Act.

When the land was acquired the 1923 Law was used. The law provided that the undeveloped land had no value. There was no compensation; so it's different from the current Law.

When the title was prepared title the law applicable was the 1999.

When examined by Janeth she said that during Demarcation you put bench marks. In full survey you prepare drawings which are send to the director of survey (upimaji na ramani). In order to acquire land the applicant has to go through the village.

That was the evidence from both parties. Thereafter the advocates brought their final submissions. I have considered them when preparing this decision.

Coming back to the issues:- I will start with the 1st issue. It is obvious that the parties in Civil Case No. 74 of 1987 between Isata

Ole **Nderekei & 4 others Vs. Tanzania Breweries Limited (TBL) Farms** is different from the present case. The parties in the two cases are different. In this case the plaintiffs are villages whereas in the former case, the plaintiffs were villagers. I need not labour much in this issue; as for the case to be Res-judicata the subject matter and the parties must be the same. In this respect see Section 9 of the Civil Procedure Code [Cap. 33 R.E 2002]

The provision reads:

9. Res-judicata

"No court shall try any suit or issue in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed".

On the 2nd issues; There is undisputed evidence as shown above that the 1st defendant developed only part of the land, according to the plaintiffs' witnesses, only 800 acres were tilled. The 1st defendant, through DW1, David Frank Batekereza agreed that they did not utilize the whole farm. The farm was for Barley production but they faced some problems which included invasion by wild animals who were destroying the farm and the distance from Sukenya Farm to Moshi

factory which was about 400 kms of rough road. DW2, Manase Elisa Matanganda also said that they cultivated only 800 acres. They were still expanding the farm. According to 1st defendants witnesses DW1 and DW2, production continued till 1992. Thereafter some workers left as the 1st defendant decided to stop farming; i.e. producing barley. That, the 1st defendant sold all the shares of the farms to private companies. So, the farm was sold out to 2nd defendant in 1994. I have weighed the whole evidence, it is evident that the 1st defendant was doing farming. It is also in evidence that the cultivation started and it was still expanding, it is also in evidence that the 1st defendant never left the farm till when he transferred it to 2nd defendant. It is also in evidence that the 1st defendant had not allowed any settlement in the land during all the time she was there. It is my view that although the 1st Defendant cultivated 800 acres only of the land, he did not abandon the other parts of the land. The evidence as shown, shows that she continued to take care of it. According to evidence, they use to guard around the farm. Hence this issue is answered in the negative.

Concerning 3rd issue. The plaintiffs witnesses stated that they were using the land and there were few homesteads in the farm. The witnesses said that they owned the land under customary law; that they owned it before the 2nd defendant acquired it. There is further evidence which shows that villagers moved into suit land during dry

season in pursuit of pastures and they had temporary '**Bomas**' on the land.

Considering the evidence as answered in the 2nd issue the 1st defendant never abandoned the farm. She has been occupying the farm throughout till when she transferred the land to 2nd defendant. As said, the evidence shows that the villagers used to enter the farm during dry season for grazing. The plaintiffs have never occupied the land continuously. Temporary time grazing does not entitle them to adverse possession. Adverse possession could have been successfully claimed if the plaintiff had successfully shown that he has been in actual possession of the suit land continuously to the exclusion of the true owner for a period prescribed by the Law of Limitation, in our case the period of 12 years as prescribed in the Law Limitation Act, [Cap. 89 R.E 2002].

As, shown in evidence, the plaintiffs have never been in continuous possession of the land since when the parent villager of Soitsambu and the 3rd defendant gave the land to 1st defendant who later on transferred to 2nd defendant.

On the 4th issue. As seen in the evidence, both parties agreed that the size agreed to be allocated in accordance with the Minutes of the village meeting and that of the District Council was 10,000 acres. It was also provided further that in the event that the 1st defendant wished to acquire more land, she should first seek consent. However, there is no evidence that consent for extra 2,617 acres was obtained.

Yet again, it is in evidence that the land which was acquired was not measured during the allocation to the 1st defendant. The land was measured later on when the 1st defendant was pursuing a title deed for a right of occupancy.

According to the title deed which was admitted in court as Exhibit D.1, the Land which was transferred to 2nd defendant by 1st defendant measures 12,617 acres. From this evidence it is evident that the extra 2,617 acres were unlawfully acquired. I find so, because there is no evidence to show that the 1st defendant did ever request for extra Land. The agreement was that, if he wanted extra land; he should have sought consent.

That said, the 4th issue is answered in the negative; that the land was not measured prior/during allocation to the 1st defendant by the then Soitsambu village; and the 5th issue is answered in the affirmative that the extra 2617 was unlawfully acquired.

Concerning the 6th issue. There is evidence that the plaintiffs i.e. the Mondorosi village council, Sukenya village council and Soitsambu village council were previously part of the then Soitsambu village.

Whether the plaintiffs are successors of the Soitsambu village; counsels for defendant argued that in accordance with Section 26(2) of the Local Government (District Authorities) Act Cap. 287 R.E 2002 the existence of the plaintiffs started after the year 2010; after their incorporation; that, as such one would wonder how did they jointly

and separately occupy the suit land for a period of 12 years; while it's in existence for less than 5 years.

I have considered this argument, Exhibit P.1, Exhibit P.4 and Exhibit P.6 shows that the village were registered under Section 22 of Cap. 287 R.E 2002 (supra). Section 7 of the Village Land Act, Cap. 114, R.E 2002 recognizes, under Section 7(1) (a) this category of Land to be village land. Another category which is relevant to our case is the land provided under Section 7(1) (c).

The provisions reads:-

"Land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act came into force, whether the administrative procedure based on or conducted in accordance with any statute law or general principles of either received or Customarily law applying in Tanzania and whether the demarcation has been formally approved or gazetted or not".

Considering the evidence as a whole, it is obvious that the land in question, before the registering of the plaintiff who are villages, was recognized to be the property of Soitsambu village which is parent village of plaintiffs. It's my view that by virtue of Section 7 (1) (c) of the village land Act; the plaintiffs are successors in title to the former Soitsambu village. On the same footing; it's my view that the

case which was cited by defence counsel, the case of **National Agriculture and Food Corporation versus Mulbadaw village Council and others** [1985] TLR 88 is distinguishable from the circumstances of this case.

On 7th issue. As I answered the 4th, 5th and 6th issues as I did, it is evident that the transfer of 2617 acres of Land from 1st to 2nd defendant was illegal. It is illegal because the 1st defendant had acquired the extra 2617 unlawfully; contrary to the agreed acreage.

The 8th issue. I have read through the minutes and relevant documents which were correspondents between the District Council 3rd defendant and the 1st defendant. There is no provision of compensation. The Plaintiffs counsels submitted that compensation for the Land which has been acquired or nationalized is a right to the occupier of the land. They cited Art. 24 of the constitution of United Republic of Tanzania. They also cited the Land acquisition Act, but they did not cite any specific provision of Law.

Considering the evidence related to this issue I am persuaded with DW4's evidence. DW4, Kasema Emmanuel Samawa, who is land expert and she categorically stated that by then, the Law relating to land did not provide for compensation for land which has not been developed. Also Art. 24 of the constitution (supra) is a broad provision of rights which have to be put into effect by relevant Laws. The counsel didn't cite any law which would have entitled the plaintiff to a

compensation for undeveloped land at the time when the land was acquired.

Having discussed as I did, I find that the plaintiffs are not entitled to compensation.

Basing on the aforesaid, the Judgment and decree is entered in favour of the plaintiffs to the following extent:-

- (i) The 1st, 2nd, 3rd and 4th defendants illegally confiscated 2617 acres of land from the plaintiff.
- (ii) The plaintiff are the legal and rightful owners of the 2617 acres.
- (iii) The certificate of occupancy granted to the 1st and 2nd defendants be rectified. It should comprise 10,000 acres only. The rectification should involve both parties and relevant authorities.
- (iv) The costs to be paid by the defendants.

Right of Appeal Explained.

SGD: S. C. MOSHI
JUDGE
28/10/2015

I hereby certify this to be a true copy of the original

DEPUTY REGISTRAR
ARUSHA