



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



(Coram: Charles O. Nyawello, DPJ; Charles A. Nyachae, Richard Muhumuza, Richard Wabwire Wejuli & Léonard Gacuko, JJ)

APPLICATION NO. 2 OF 2022
(Arising from Reference No. 10 of 2017)

1. OLOLOSOKWAN VILLAGE COUNCIL 1ST APPLICANT
2. OLOIRIEN VILLAGE COUNCIL 2ND APPLICANT
3. KIRTALO VILLAGE COUNCIL 3RD APPLICANT
4. ARASH VILLAGE COUNCIL 4TH APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE
UNITED THE REPUBLIC OF TANZANIA RESPONDENT**

30th NOVEMBER 2023

REASONED RULING OF THE COURT

A. INTRODUCTION

1. This Application arises from the Ruling of the Court in **Application No. 15 of 2017** arising from **Reference No. 10 of 2017**. The Application is premised on Article 39 of the Treaty for the Establishment of East African Community (“the Treaty”) and Rules 1(2), (3), (4) and (5); 84(1), (2), (3) and (5) and Rule 4 of the East African Court of Justice Rules of the Court, 2019 (“the Rules”).
2. On 15th November, 2023 the Court rendered its decision in this Application and reserved its reasoned ruling to be read on 30th November 2023.
3. The Ruling is an omnibus decision which encapsulates the Court’s determination of the preliminary questions raised by the Respondent and argued by the parties on 11th November 2022 and its decision on the merits of the Application.
4. The Applicants, **Ololosokwan Village Council, Oloirien Village Council, Kirtalo Village Council and Arash Village Council** (“the Applicants”) are legal entities established by law in the United Republic of Tanzania. They are bodies corporate that are located within the Ngorongoro District, Arusha Region.
5. The Respondent is the Attorney General of the United Republic of Tanzania, who was sued in his representative capacity as the Chief Legal Advisor of Government (“the Respondent”).

B. REPRESENTATION

6. The Applicants were represented by Mr Donald Deya, Learned Advocate and Chief Executive Officer of the Pan African Lawyers Union (PALU); and Ms Praise-God Joseph, Learned Advocate.
7. The Respondent was represented by Mr Mark Mulwambo, Mr Edson Mweyunge and Mr Hangi Chang'a, Learned Principal State Attorneys and Ms Vivian Method, Senior State Attorney.

C. BACKGROUND

8. On 21st September 2017, the Applicant filed **Reference No. 10 of 2017** challenging the Respondent's action which resulted in their eviction from the disputed piece of land comprised of 1500 square kilometres.
9. On 22nd September 2017, the Applicants lodged **Application No. 15 of 2017** by which they sought a temporary injunction restraining the Respondent from taking any adverse action, pending the determination of **Reference No. 10 of 2017**.
10. On 25th September 2017, this Court granted the Application in the following terms:
 - (a) **An interim order doth issue restraining the Respondent, and any persons or offices acting on his behalf, from evicting the Applicants' residents from the disputed land, being the land comprised in the 1,500 sq. km of land in the Wildlife Conservation Area bordering Serengeti National Park; destroying their homestead or confiscating their livestock on that land, until the determination of Reference No. 10 of 2017; and**
 - (b) **An interim order doth issue against the Respondent, restraining the office of the Inspector General of Police from**

harassing or intimidating the Applicants in relation to Reference No. 10 of 2017 pending the determination thereof.

D. GROUNDS FOR THE APPLICATION

11. The grounds of the Application are stated in the Notice of Motion and three Affidavits; namely:

- (a) the Affidavit of John M. Pyando, deponed at Arusha on 21st January 2022;**
- (b) the Affidavit of Yonas Masiaya Laiser deponed at Arusha on 9th August 2022; and**
- (c) the Affidavit of Praisegod Millen Joseph, deponed at Arusha on 12th October 2022.**

12. Briefly, the grounds are that:

- (a) From 9th January 2022, officials of the Respondent State conducted a series of meetings, made assertions and declarations and took actions within the disputed area;**
- (b) Officials from Tanzania Wildlife Association ordered some of the villages to stop grazing their livestock in parts of the disputed land; and**
- (c) The Respondent State is intending, planning, and organising the partitioning of the disputed land.**

13. The Applicants seek the following (reproduced verbatim):

- i. A declaration that the following potential Contemnors are in contempt of Orders of this Honourable Court:**
 - (a) The District Executive Director (DED) of Ngorongoro District, Hon. Dr. Juma Mhina;**

(b)The Regional Commissioner of Arusha Region, Hon. John Mongella; and

(c)The Minister of Natural Resources and Tourism, Hon. Dr Damas Ndumbaro.

- ii. **That, the Court issue, once more, a temporary injunction against the Potential Contemnors and their agents and officers over the partition of the 1,500 Square Kilometres of the Complainants' disputed land.**
- iii. **That, as the Complainants villages, as well as the Contemnors, are competently represented by Counsel, any attempts for out-of-court negotiations be undertaken by Counsel on record, as provided for by the principles, rules and ethics of the legal profession.**
- iv. **That, the Costs of this Application be met by the Potential Contemnors, in their individual capacity and/or by the Contemnors.**
- v. **That, this Honourable Court be pleased to issue any other Orders or reliefs that it deems fit.**

E. RESPONDENT'S REPLY TO THE APPLICATION

14. The Respondent's reply to the Application is contained in four Affidavits deponed by:

(a)Hangi M. Chang'a, on 3rd November 2022 at Dar es Salaam; and

(b)Emmanuel Daniel Pius, on 3rd November 2022 at Dar es Salaam

15. The averments deponed are summarised as follows:

- (a) **The Government of Tanzania has always complied with Court's Orders regarding the instant Application;**
- (b) **The District Executive Director did not convene any meeting on 9th September 2021 to deliberate on Reference No. 10 of 2017;**
- (c) **Arusha Regional Commissioner did not convene any meeting with all the villages within the division to deliberate on the disputed land;**
- (d) **The disputed land forms part of Serengeti National Park;**
- (e) **Officials from Tanzania Wildlife Management Authority did not approach any of the Complainants' village to stop them from grazing their livestock in the disputed area;**
- (f) **The Government of Tanzania neither intends nor plans to partition any land belonging to the complainant villages; and**
- (g) **None of the officials from the Government of Tanzania approached any one from the complaining villagers.**

F. PRELIMINARY OBJECTIONS

16. When the Application came up for hearing on 11th November 2022 Counsel for the Respondent's sought guidance from the Court on how to proceed. They opined that since Reference No. 10 of 2017 from which **Application No 15 of 2017** that gives rise to the instant **Application No. 2 of 2022** had been determined on 30th September, 2022, the Orders under **Application No. 15 of 2017** had ceased to

apply and that the instant **Application No 2 of 2022** had no basis and therefore, cannot be heard.

17. They further opined that since the Applicant had filed an appeal challenging the decision in the Reference, the matter is before the Appellate Division and cannot therefore be concurrently entertained by the First Instance Division, which, in their opinion, would be unusual. That the instant Application should there be “**removed from this Court**” (*sic*).

18. The Respondents were advised to raise their concerns as a formal preliminary objection.

19. Hearing of the main Application on its merits was stood over, and by consent of the parties, the Court was addressed by oral submissions on the inquiry raised by the Respondents.

a. Respondent’s Submissions

20. For the Respondent, Mr Mweyunge, Principal State Attorney, submitted that the orders that were given in **EACJ Application No. 15 of 2017** had a limitation, having been granted pending determination of **Reference No. 10 of 2017**.

21. That since subsistence of the orders under **Application No. 15 of 2017** was entirely pegged on the existence of **Reference No. 10 of 2017**, following the determination of **Reference No. 10 of 2017** on 30th September 2022, the orders emanating from that Application can no longer be upheld. He prayed that this Application be dismissed as it cannot be entertained anymore for want of the underlying Reference.

22. The Ruling on the preliminary objection was reserved. On 15th November 2023, at the first sitting of the Court after the 11th November 2022 sitting, the Court rendered its determination of the entire

Application but reserved its Reasoned Ruling to be read on 30th November 2023.

23. Mr Mweyunge further submitted that on November 4th 2022, the Applicant lodged an appeal against **Reference No. 10 of 2017**, which is now termed **Appeal No. 12 of 2022** in the Appellate Division. That this raises concerns of jurisdiction, because concurrent adjudication between the lower Court and the Appellate Court is not permitted. That given that this matter originally fell within this Court's purview and is now in the Appellate Court, any subsequent matters stemming from the Reference now in the Appellate Court cannot be entertained here.
24. Counsel also raised concern about supplementary affidavits submitted by the Applicant which, he said, might be used should the Application proceed to be heard on the merits.
25. He submitted that the supplementary Affidavit filed on October 21, 2022 was submitted without the Court's permission or the consent of the parties, as required by Rule 52(6) of the Rules, which explicitly stipulates that an Applicant may lodge one or more supplementary affidavits with the Court's leave or the other party's agreement. That the affidavit does not adhere to these conditions.
26. He submitted that whereas the Notice of Motion corresponds to **Application No.15 of 2017**, the supporting affidavit relates to **Reference No. 10 of 2017**. That while **Application No.15 in 2020** was about alleged contempt by the Respondent, **Reference No. 10 of 2017** initially did not address such accusations. That this mismatch has caused confusion regarding how the Applications are related and the grounds for citing the Respondent for contempt.

27. That when Ruling in the Reference, **Application No. 15 of 2017** was struck out by the Court and that the instant Application has therefore been brought, ostensibly arising from an Application that does not exist and therefore ought to be dismissed.
28. That additionally, there is another affidavit labelled **Application No. 2 of 2022**, submitted on August 10, 2022, within **Reference No. 10 of 2017**, which, as contended by the Respondent, is not currently under this Court's jurisdiction. That this Affidavit, too, was filed without the Court's permission and lacks a clear foundation as it seems detached from its originating case. That this affidavit also be dismissed due to the absence of the Court's leave or the parties' consent.
29. That owing to these inconsistencies, the Application is improperly presented before Court and should be dismissed with an order for costs to the Respondent.

b. Applicant's Reply

30. In reply, Mr Deya, Counsel for the Applicants, emphasized the distinction between **Reference No.10 of 2017**, **Application No.15 of 2017**, and **Application No. 2 of 2022**, highlighting their interconnectedness. He clarified that **Application No.15 of 2017** resulted in the interim orders of September 25, 2018. That these orders have not been revoked by this Court, even after its judgment on the merits of **Reference No. 10 of 2017 on September 30, 2022.**
31. That regarding **Appeal No. 12 of 2022**, it pertains to the substantive decision in **Reference No. 10 of 2017**. That however, the current Application does not concern the merits of that decision. Instead, it focuses on the conduct of the parties between January and September 2022, as outlined in **Application No. 2 of 2022**. Mr Deya stressed that this aspect remains active and is not rendered obsolete by the

judgment. He highlighted that the judgment does not nullify the orders from the Ruling in **Application No.15 of 2017** made in 2018.

32. Regarding the Affidavit referred to by the Respondent, which was filed after the 30th September 2022, subsequent to this Court's decision on the **Reference No. 10 of 2017**, he stated that notably, all Respondent affidavits were submitted on November 3, 2022 and that therefore should the aim be to exclude post-September affidavits, this Application might proceed unopposed on the Respondent's part.
33. He contended that Rule 53 of the Rules specifies that affidavits can be submitted no less than 14 days before the scheduled hearing and that the Applicants' affidavits, including the supplementary one, were filed well within this timeframe before any response from the Respondents, who filed their Affidavits on 3rd November 2022.
34. Nonetheless, he prayed that in the interest of justice, Court ought to consider deeming all affidavits, including those of the Respondents', as filed on time.
35. In reply to the Respondent's argument regarding **Application No. 15 of 2017** being struck out by this Court, Mr Deya submitted that there indeed was an order from this Court that remained valid and brought the matter to its current status. That therefore the argument that there's no existing application or basis to support **Application No. 2 of 2022** lacks coherence. The confusion between **Reference No. 10 of 2017** and **Application No.15 of 2017**, which forms the basis of the alleged preliminary objection, renders it inherently flawed. That if the decision of this Court in **Reference No. 10 of 2017** did not render **Application No. 2 of 2022** *otios*, it is because the Court had the opportunity to nullify it and chose not to, for valid reasons.

36. He prayed for dismissal of the preliminary objections and that the Applicant be allowed to proceed with **Application No. 2 of 2022**.

37. In rejoinder, Mr Mulwambo submitted that, the interim orders issued in **Application No. 15 of 2017** were specific, they aimed at restraining the Respondents in that particular area until the main case was decided. That once the main case concluded, these orders ceased to hold ground as they were contingent upon the main case's determination.

38. Regarding **Application No. 2 of 2022**, the Applicant sought a temporary injunction against potential contemnors and their agents. That it is vital to note that addressing this matter before the Court delivered its judgment was crucial. That the Applicants had the opportunity to bring attention to this pending issue before the judgment was pronounced, especially considering that the matter is now in the Appellate Division.

39. Counsel contended that since the order from **Application No. 15 of 2017** was contingent upon the main Reference's determination, which was concluded, there is no existing issue of contempt before the Court for determination.

G. COURTS DETERMINATION OF THE PRELIMINARY OBJECTIONS

ISSUE NO. 1: Whether conclusion of Reference No. 10 of 2017 stemmed the then pending contempt of Court proceedings in Application No. 2 of 2022:

40. On 21st September 2017, the Applicants filed **Application No. 15 of 2017** seeking a halt to eviction of the residents and destruction of their property pending determination of the Reference.

41. On 25th September 2017 Applicants were granted the impugned interim orders pending determination of the Reference.
42. On 30th September 2022, the Court delivered its judgement in determination of Reference No. 10 of 2017.
43. The Respondents contended that since subsistence of the orders under **Application No.15 of 2017** was entirely pegged on the existence of Reference No.10 of 2017, the orders emanating from that Application could no longer be enforced, following the determination of Reference No. 10 of 2017 on 30th September 2022.
44. He prayed that this Application be dismissed as it could not be entertained anymore in the absence of the underlying Reference.
45. The Applicants would appear to be of a different view. From their Pleadings and submissions, the Applicants' position is that in the absence of an appeal or review, the orders remain in force and demand compliance. They contend that the judgment does not nullify the orders from the ruling in **Application No. 15 of 2017** made in 2018.
46. Our understanding of the Respondents argument is that any inquiry into the respondents conduct regarding compliance or non-compliance with the interim orders issued in **Application No. 15 of 2017** was now moot, following determination of the Reference.
47. Contempt of court charges arise from disobedience or disregard for court orders or proceedings, which are separate issues from the main case itself. Even if the main case is resolved, if someone violated the Court orders or showed disrespect for the Court during the proceedings or pendency of the main case, they could still potentially face contempt charges and be held accountable for their actions.

48. Typically, contempt of court proceedings is independent of the resolution of the main matter. The fact that the main case is determined does not automatically stop or absolve someone from facing contempt charges for actions that occurred before the main case was resolved.
49. The determination of the main case does not invalidate or halt contempt proceedings for actions that occurred prior to its resolution.
50. Court orders can only lapse or become void through either; expiration if the orders are time bound and the time elapses, upon fulfilment of conditions, revocation by court, reversal by a higher court, completion of legal proceedings in the case of interim or temporary orders unless explicitly stated otherwise, mutual agreement or by legislative changes.
51. It is the plain and unqualified obligation of every person against or in respect of whom an order is made to obey it unless and until it is discharged- **Hon. Sitenda Sebalu vs Secretary General of the East African Community** (*supra*)
52. In the instant Application, Mr Deya submitted that the orders granted in **Application No. 15 of 2017** have not been revoked by this Court, even after its judgment on the merits of **Reference No. 10 of 2017** on September 30, 2022. Notably, this is a mischaracterization of facts by Counsel. The orders granted in **Application No. 15 of 2017** had a lifespan. Whereas no reference was made to these Orders when rendering the Court's decision in the Reference, this Court expressly indicated that the first Order would subsist only until determination of the Reference and the second one, pending determination of the Reference. The orders are therefore no longer in force. This is the common understanding shared by the Respondents as well, that, the interim orders issued in **Application No. 15 of 2017** were specific, aimed at restraining the Respondents in that particular area until the

main case was decided. Once the main case was concluded on September 30, 2022, these orders ceased to hold ground as they were issued to subsist, contingent upon determination of the main case.

53. Be that as it may, a person who is in violation of interim court orders may not be absolved from liability for contempt of court, even if the main case has been determined. Contempt of court charges can still be pressed for actions that contravene court orders issued during the proceedings, regardless of the final determination of the main case. The violation of court orders is a separate issue from the resolution of the main case and can still carry legal consequences, subject, of course, to proof of the alleged violations or disobediences.

54. In the circumstances therefore, the notion that since **Reference No. 10 of 2017** had been determined on 30th September 2022, the Orders under **Application No. 15 of 2017** had ceased to apply and that the instant **Application No. 2 of 2022** therefore had no basis is both an erroneous characterisation of the matter and a misconception of the law. It is so, for the reason that, whereas indeed the interim orders cease having effect upon determination of the main reference, as was intended by the Court when allowing **Application No. 15 of 2017**, liability for violations, if any and when proved, of the court orders which may have taken place during the pendency of **Reference No. 10 of 2017** is not extinguished.

55. In conclusion, whereas upon determination of **Reference No. 10 of 2017** on 30th September 2022, the Orders under **Application No. 15 of 2017** ceased to apply, determination of the Reference did not stem the then pending Contempt of Court proceedings in the instant **Application No. 2 of 2022**.

ISSUE NO.2: Whether the jurisdictional conflict arising from the appeal against Reference No.10 of 2017 in the Appellate Division Appeal No.12 of 2022, concerning a matter initially under this court's purview, precludes the consideration of any subsequent issues related to the original matter now pending in the Appellate Division:

56. Counsel for the Respondent submitted that concurrent adjudication between this Court and the Appellate Court is not permitted. That due to the prohibition of concurrent adjudication, matters previously stemming from the Reference cannot be entertained in this Court.
57. That regarding **Appeal No. 12 of 2022**, Mr Deya stated that the current Application does not concern the merits of that decision in **Reference No.10 of 2017**. That instead, it focuses on the conduct of the parties between January and September 2022, as outlined in **Application No. 2 of 2022**. Mr Deya stressed that this aspect remains active and is not rendered obsolete by the judgment. He highlighted that the judgment does not nullify the orders from the ruling in **Application No. 15 of 2017** made in 2018.
58. In common law jurisdictions, the general rule is that once an appeal has been filed against a decision in the main matter, the trial court's jurisdiction is suspended or stayed, and it cannot continue with any further proceedings related to that matter until the appeal is resolved.
59. Typically, while the decision in the main Reference is being appealed, this Court would not hear an Application connected to the subject of the decision being appealed against, until the appeal is resolved. The rationale behind this rule is to avoid potential conflicts or inconsistencies between the trial court and the appellate court, as well

as to prevent the risk that any orders or decisions made by the trial court during the appeal process could become moot if the appeal is successful.

60. However, in the instant case, Mr Deya stated that the current Application does not concern the merits of Judgment in **Reference No. 10 of 2017** which is the subject of **Appeal No. 12 of 2022.**

61. Pursuant to Rule 4 of the Rules therefore, which mandates the Court to give directions as may be necessary for the ends of justice, this in our opinion is a basis for exception to makes it possible to hear the Contempt of Court Application, even during the pendency of the Appeal and we so order.

62. The 3rd issue that the Respondent raised was in respect of a supplementary Affidavit submitted by the Applicants. He contended that it was submitted without the requisite permission from the Court or consent from the Respondent, thus contravening Rule 52(6) of the Rules, which specifies the requirement for an Applicant to submit supplementary affidavits with the Court's leave or the agreement of the other party. That this affidavit fails to comply with these stipulations and should be struck out.

63. Mr Deya submitted that Rule 53 necessitates affidavits to be submitted at least 14 days before the scheduled hearing, and that the Applicant's affidavits, including a supplementary one, were lodged within this timeframe before any response from the Respondents, who filed their Affidavits on 3rd November 2022.

64. The Respondent's Counsel contended that their Affidavits were filed in time but that on the other hand, the Applicants Supplementary

Affidavit was filed without complying with the Rules and should be struck out.

65. On the other hand, he submitted that contrary to what Mr Deya would appear to have wanted court to believe, that the Respondents Affidavits were equally belatedly filed, the Respondent's Affidavits were actually filed almost a month before the hearing, which was within time.

66. We have the benefit of looking at the Rules cited by the Parties and have also diligently reviewed the submissions presented by both parties.

67. Rule 52(6) which the Respondent invoked states that:

“An applicant may, with the leave of court or with the consent of the other party, lodge one or more supplementary Affidavits.”

68. Rule 54(1) states that:

“Any person served with a notice of motion or amended notice of motion under Rule 52, may lodge one or more affidavits in reply in not less than 7 days before the day of hearing and shall as soon as practicable serve a copy or copies hereof on the Applicant.”

69. The spirit of Rule 52(6) is to regulate the submission of supplementary affidavits in legal proceedings in order to ensure fairness and transparency in the presentation of additional evidence beyond the initial affidavits. By requiring either court approval or consent from all parties involved, the rule seeks to prevent surprise or unfair advantage, and promote a level playing field for all parties.

70. In the same spirit, Rule 54(1) aims to ensure that any individual served with a Notice of Motion or an amended notice of motion under Rule 52 has an opportunity to respond effectively and adequately within a reasonable timeframe. The rule sets a specific timeline, requiring the respondent to file their affidavits not less than 7 days before the scheduled hearing. This time provision is intended to ensure that both parties have sufficient time to prepare their case.
71. The Court emphasizes the critical importance of procedural adherence in legal proceedings to ensure fairness and uphold the sanctity of due process.
72. Rule 52(6) of this Court explicitly outlines the requirement for seeking permission or securing consent when lodging supplementary Affidavits.
73. It is common ground that the Applicant's supplementary affidavit was filed without complying with Rule 52(6). It lacks the essential prerequisite of court approval or consent from the opposing party. This contravenes the established procedural guidelines, undermining the integrity of the legal process in the Court.
74. While acknowledging the importance of a comprehensive presentation of evidence, the Court firmly upholds the procedural regulations set forth in Rule 52(6). It is imperative to maintain the standard procedural framework to guarantee equity and prevent any unfair advantage or surprise tactics in the litigation process in the Court.
75. Hence, while the Court remains committed to upholding procedural fairness and adherence to its rules, in adherence to the spirit and letter of Rule 52(6), we decline the admission of the Applicant's

Supplementary Affidavit that was not filed in accordance with the stipulated requirements.

76. That said, all the preliminary objections raised by the Respondent, save the point on the Supplementary Affidavit, stand dismissed and the Applicant is allowed to proceed with **Application No. 2 of 2022**.

77. Having perused the pleadings, the affidavit evidence on record with their respective attachments, and after listening to the parties in oral submissions and in view of the decision we arrived at in respect of the preliminary questions raised by the Respondents, we deemed it unnecessary to call for written submissions.

78. We shall now proceed to consider the Application on the merits.

H. ISSUES FOR DETERMINATION

79. From the foregoing, two issues arise for determination:

- 1. Whether the Respondent was is contempt of this Courts Orders in Application No. 15 of 2017; and**
- 2. Whether the Applicants are entitled to the reliefs sought.**

I. COURT'S DETERMINATION

ISSUE NO.1: Whether the Respondent was is contempt of this Courts Orders in Application No. 15 of 2017.

80. Black's Law Dictionary 10th Edition at Page 385 defines Contempt of Court as:

“Disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or interruption of its proceedings by disorderly behaviour or insolent

language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

81. Noteworthy, there is no specific provision under the Community laws and Rules that addresses issues of contempt.

82. Faced with the challenge to address issues of contempt before it, this Court, in **Hon. Sitenda Sebalu vs Secretary General of the East African Community, EACJ Reference No. 8 of 2012**, invoked its inherent power under Rule 1(2) of its Rules of Procedure, 2013 which is *in pari materia* with Rule 4 of the Rules of Court, 2019, to lay out the ingredients of Contempt of Court that form the basis of guidance for such matters in this Court, and these are;

- a) Existence of a lawful Order;**
- b) The potential contemnor’s knowledge of the Order;**
- c) The Potential Contemnor’s ability to comply and; and**
- d) The Potential Contemnor’s disobedience of the Order.**

83. For a conviction to be secured, the Applicants are required to establish the four elements of contempt.

84. The Applicants faulted the Respondent State for the actions of its agents. Counsel for the Applicants argued that the Respondent State was in contempt of Court through the actions of its agents.

85. That after the Court issued the injunctions requiring the Respondent State to desist from taking any action on the disputed land, the District Executive Director of Ngorongoro District convened a meeting with the complainant villages to deliberate on matters relating to **Reference No. 10 of 2017.**

86. The Applicants implicate the Regional Commissioner of Arusha Region, the Minister of Natural Resources and Tourism, and other officials of the Respondent State. They aver that officials from Tanzania Wildlife Association ordered some of the Applicants to stop grazing their livestock in the disputed land; and that the Respondent State was intending, planning and organising to partition 1500 square Kilometres from the disputed land for the benefit of particular investors.
87. In reply, the Respondent refutes the averments advanced for the Applicants.
88. It is averred, for the Respondent, that the Government of the United Republic of Tanzania has always complied with the Orders of the Court.
89. That neither the District Executive Direct nor any other officer of the Respondent convened a meeting involving the leaders of the complaining villages on issues relating to **Reference No. 10 of 2017** about the land in dispute.
90. That no official of Tanzania Wildlife Management Authority approached any of the complainants' villages to stop them from grazing their livestock in the disputed area; that the Government of the United Republic of Tanzania neither intends nor plans to partition any land belonging to the Complainants.
91. That the disputed land constitutes part of Serengeti National Park.
92. That none of the officials of the Government of the United Republic of Tanzania is in contempt of any order of this Court.
93. In the instant Application it is argued for the Applicants that the Respondent State was in breach of the pertinent order, though aware

of the order and its contents on account of having been represented in the session in which the restraining order was issued.

94. From the Affidavit of John M. Pyando, the action complained of is the alleged series of meetings conducted by the local authorities on matters pertaining to the orders mentioned in paragraph 5 above. This assertion is echoed by the Affidavit of Yonas Masiaya Laider, albeit with additional mention of actions, assertions and declarations on the part of the Respondent's agents.
95. The Affidavit of John M. Pyando mentions meetings convened by the local authorities at which actions and discussions that amount to disobedience of the Orders transpired. This position is echoed by the rest of the Applicants' affidavits.
96. The Respondent denies any breach by the State agents. This position is supported by the Affidavit of Hangi M. Chang'a and the three Affidavits of Emmanuel Daniel Pius.
97. The Affidavit deponed in reply by Emmanuel Daniel Pius denies the occurrence of any such Meetings. That denial is repeated in the rest of the Respondent's affidavits.
98. It is an established position of the law that the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, and almost, but not exactly beyond reasonable doubt. The jurisdiction to commit for contempt should be carefully exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode with can be brought to bear on the contemnor. This was the position adopted in **Mutitika vs Baharani Farm Ltd, [1985] KLR 227.**

99. We have carefully considered the pleadings and evidence by the parties together with the relevant laws and authorities on the matter.

100. Although the Applicants say that there was a series of meetings at which actions and things said would amount to violation of the court orders in relation to the matter of **Reference No. 10 of 2017**, we do not find, from the record of the said meetings, anything to evince the participation of the Respondent or his agents in any of the meetings.

101. Taking into consideration the law regarding establishment of the ingredients of contempt as stated in **Sitenda Sebalu** (*supra*), except for the first and second ingredients, there was no cogent evidence adduced to establish the 3rd and 4th ingredients.

102. After applying our minds to the facts in the pleadings, the affidavits on file and the law, we are drawn to a singular finding that the alleged contempt was not backed by cogent evidence to the standard required to establish the allegations and we therefore conclude that neither Respondent nor his agents were in contempt of Court.

103. The application stands dismissed.

ISSUE NO.2: Whether the Applicants are entitled to the Reliefs Sought:

104. In Paragraph 12 above, a number of reliefs were craved by the Applicants. The Respondent denied and urged the Court to hold that the Applicants are not entitled to those reliefs.

105. Premised on our findings and conclusion, the Applicants are not entitled to the reliefs sought.

106. Pursuant to Rule 127(1) of the Rules, costs follow the event and we find no good reason to rule otherwise.

J. CONCLUSION

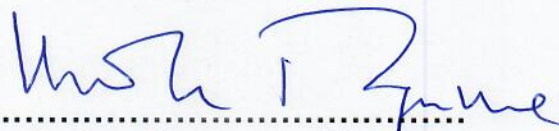
107. In the result, and for the reasons above, **Application No. 2 of 2022** stands dismissed.

108. Costs for the Application are awarded to the Respondent against the Applicants, jointly and severally.

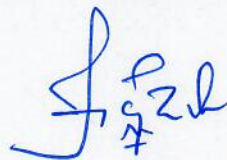
Dated, signed and read at Arusha this 30th day of November, 2023.



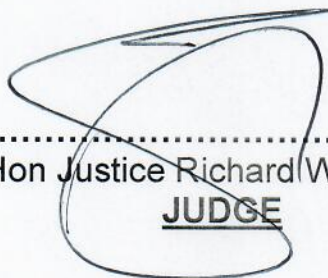
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Hon. Justice Dr Charles O. Nyawello
DEPUTY PRINCIPAL JUDGE



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Hon. Justice Charles A. Nyachae
JUDGE



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Hon. Justice Richard Muhumuza
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Hon Justice Richard W. Wejuli
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Hon. Justice Dr Léonard Gacuko
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