

OPEN LETTER TO HER EXCELLENCY PRESIDENT SAMIA SULUHU HASSAN REGARDING LOLIONDO AND NGORONGORO SAGA

Kindly receive my open letter that I send you out of goodwill and in fulfilment of my responsibility as a citizen and scholar in accordance with Article 26 of the Constitution. First and foremost, I wish you a long life with robust health, full of joy so that you continue leading us wisely and protect our Constitution without fear or favour.

Regarding the Loliondo and Ngorongoro saga, I have repeatedly heard the relevant honourable ministers stating in Parliament that all land is public property, and no one owns land. In my humble opinion, this interpretation of the law is not correct.

It is true that the Land Act states that all land in Tanzania shall continue to be 'public land' and remain vested in the President as trustee for and on behalf of all citizens of Tanzania, as stipulated in section 4 (1) of the Land Act [Cap 113 R.E 2019].

This section requires some clarification. Why does the law use the words 'shall continue'? It is because since 1923, the colonial land law stated that all land in the country, is public land at the disposition of the Governor. That system did not change even after independence except that the word 'Governor' was substituted with the word 'President'. This system was adopted in the Land Act of 1999, which is the mother law governing the land tenure system in Tanzania.

I would like to underscore one issue. This section does not state, nor does it imply, that land is public property. It simply classifies land as 'public land'. It is not a declaration of land ownership. There is fundamental difference between land classification and land ownership. The section does not at all use the word 'property'. Therefore, land is not public property, nor is it the President's property nor Government's property either. If that is the case, then the question arises: whose property is land in Tanzania?

Section 4 (3) states that every person who lawfully occupied land before the enactment of the Land Act of 1999 under the granted right of occupancy or customary tenure, will continue to occupy such land. The section further stipulates that land occupancy under a granted right of occupancy or customary tenure is regarded as 'property'. Under this section, for the first time, the law uses the word 'property'. The section further stipulates that in addition to occupancy being property, the use of land for livestock grazing, in accordance with customary laws and tradition is also considered property. The law clearly and directly recognises that the use of land for depasturing, as in the case of pastoralists, is regarded as property.

Now, then, land is whose property? Land is the property of those with title deeds or communities or families or individuals occupying land in accordance with customary laws and traditions, including pastoralists who use their land for animal grazing. Those are land owners, it is not the public, nor the President not even the government that owns land. Therefore, it is incorrect to say that the land in Tanzania doesn't have owners.

The interpretation of the law provided above is reinforced by the Court of Appeal of Tanzania in the case of the **Attorney General versus Lohay Akonaay and Joseph Lohay** which was decided in 1994 and formally published in the Tanzania Law Reports of 1995 [T.L.R. 80]. Quoting an important section of that decision:

“Land rights under traditional and customary arrangement, although in reality are the rights to occupy and use land, nevertheless constitute property protected by Article 24 of the Constitution of the United Republic of Tanzania and taking away of customary rights without fair compensation is prohibited by the Constitution.” (Page 81)

If indeed this is the law of the land, why do honourable ministers who continue to assert in Parliament that land is public property go unchallenged or uncorrected? Why do these ministers who incorrectly claim that land in Tanzania is public property are not pinned down (as are other Members of Parliament), to substantiate their claim by quoting the relevant section of law?

To the best of my understanding, the person with responsibility to give interpretation of the law in Parliament and or advise Members of Parliament (irrespective of their political party affiliation) and the Parliament is the Attorney General, not the Speaker or any member of parliament even if he or she is a lawyer. Because the interpretation of the law in the case of **Akonaay** was given by the highest court which has the last word on the interpretation of law and which in no uncertain terms held the right to own land under customary law and traditions is property protected by Article 24 of the Constitution, therefore, the land that pastoral communities occupy and use in Loliondo and Ngorongoro for livestock grazing, cannot be acquired by the government, without adhering to legal procedures laid down by the Land Acquisition Act, Cap 118.

It is the President who is vested with the authority to acquire land and must observe all the procedures of acquiring land as stipulated in the Land Acquisition Act. Contrary to this, voluntary or forced evictions of the inhabitants from these areas, is illegal and against the law and fundamental human rights as spelled out in the Constitution of the United Republic of Tanzania.

To conclude my letter, Your Excellency, allow me to sum up my arguments as follows:

First, all land in Tanzania is public land. This legal device is meant to classify land, not to give the government ownership of land.

Second, land is vested in the President as a trustee. Her role as a trustee is to ensure that land benefits citizens and not otherwise. Legally, and in accordance with legal principles that we observe, a trustee has a heavy responsibility. The relationship between the trustee and the beneficiary is a special one, which the law and legal tradition, looks at through a special prism.

Three, direct and immediate ownership of land remains with title holders and with the people or families or communities who occupy and use land by virtue of customary law and traditions.

Four, customary land ownership is property, protected by the Constitution.

Five, customary owned land cannot be acquired by the President without complying with all the procedures spelled out in the Land Acquisition Act.

Lastly, in terms of the legal position summarised above, the inhabitants of Ngorongoro and Loliondo, especially pastoral communities, cannot be evicted from their land without adhering to legal procedures and for a specific reason which ought to be publicly known and discussed.

Your Excellency the President, we the people as well as the government, should ask ourselves: is eviction of the people from their land, which is their life, livelihood and heritage, simply to protect wildlife, so that game hunting companies may operate there without obstruction and harassment by the people, in the larger public interest? I must admit, I don't have an answer except that this question gives me sleepless nights.

I wish you the very best Your Excellency the President.

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