LAND RIGHTS RESEARCH & RESOURCES INSTITUTE (HAKIARDHI)

FACT FINDING MISSION REPORT ON KIMERE FARMERS LAND CONFLICT - MAPINGA

7TH - 13TH OCTOBER 2011



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Abstract

The Land Rights Research and Resources Institute (LARRRI/HAKIARDHI) is Tanzanian national level a non governmental, not for profit organization that was founded in 1994 and registered as a Company Limited by Guarantee under the Companies Ordinance Chapter 212 of the laws of Tanzania.

The Institute was established in recognition of the need to generate and sustain public debates, and participation in the rural areas on issues of land tenure.

Since its establishment, LARRRI has managed to spearhead the rights to land of rural and peri-urban based small producers through activist researches, lobbying and advocacy for policy changes, critical analysis of policies and laws and active participation in policy processes. LARRRI strives to build up a knowledgeable corpus of grassroots based communities who are able to stir up changes through self mobilization and organizations and broad based public awareness programmes.

The Institute conducts land rights training through district and grassroots level workshops, monthly seminars, national public fora, training of trainers, media programmes and wide dissemination of her publications. The Institute also offers legal aid, carries fact finding research and rapid response to land disputes.

FACT FINDING MISSION REPORT ON KIMERE FARMERS LAND CONFLICT IN MAPINGA, BAGAMOYO DISTRICT

1.0 INTRODUCTION

1.1 Background of the Fact Finding Mission

Land disputes in Tanzania can be traced back during the colonial era between the colonial governments and citizens in their various local communities. The best case study is the land use conflict which involved Meru residents and British colonial government early 1949 to 1952 when the British Colonial government wanted to evict about 3,000 Meru residents from their fertile Engarenanyuki homeland so that the land could be given to a few British, German, Greek and some African Boers. Immediate after independence, the government embarked in a nation building project that put the state and its machineries at the centre of social, economic and political development, thus generated numerous land use conflicts between various land users. Even the legislative framework (policies, laws and directives) and actions of the government including the creation of parastatals like National Agricultural & Food Corporation (NAFCO) and National Ranching Company (NARCO) and establishment of national parks in various parts of the country amplified the magnitude of land use conflicts between those government institutions and the communities. What makes the matter worse is the fact that land use conflicts have existed even after the enactment of the new land legislation such as Land Act No. 4 and Village Land Act No. 5 both of 1999, the Land Disputes Courts Act 2 of 2002 as well as the Land Use Plan Act 7 of 2007. This is evidenced by the influx of people who come to seek legal redress of the land conflicts at HAKIARDHI offices which amounts 5 – 7 per week.

This fact finding is based on one of the claims of a group of peri-urban dwellers in Kimere, Mapinga village in Bagamoyo District, whose land

they claim have been invaded by one of the well connected elite with a view to assist them register their rights only to realise later on that he was playing a tricky game to own their land.

1.2 Brief description of Bagamoyo Distict.

Bagamoyo is one of the 6 districts of the Pwani Region of Tanzania. It is bordered to the North by the Tanga Region, in the West by Morogoro Region, East by Indian Ocean and South by Kibaha District.



A map of 6 Districts in Coast Region
The Bagamoyo District is administratively divided into 16 wards:

- Chalinze
- Dunda
- Kibindu
- Kiromo
- Kiwangwa
- Lugoba
- Magomeni
- Mbwewe
- Miono
- Mkange
- Msata
- Talawanda
- Ubenazomozi
- Vigwaza
- Yombo
- Zinga

The 16 wards have 82 villages Mapinga being one of them.

1.3 Lawful procedures to acquire village land in Tanzania

Any Tanzanian citizen has the right to acquire and use the land within the political boundaries of the country.

The occupier shall be lawfully allocated land for use in Tanzanian context if only adhered to the following procedures:-

- A villager is given a prescribed form
- The form is then signed by the Chairman and Secretary of the village council
- The villager then signs or marks with personal mark in each page
- The offer then is granted in writing setting terms and conditions.
- The grantee is given 90 days to reply in writing, accepting or refusing the offer
- The offer is valid upon the payment of a some of money being an advance of land rent.

1.4 Obstacles faced by the team during the study

25th August 2011, the Land Rights Research & Resources Institute (HAKIARDHI) received visitors (four people) representing Kimere Farmers Association from Kimere, Mapinga Village, Bagamoyo District with claims that there was the so called Advocate who has started selling their land instead of representing/protecting their rights.

On Friday 7th October 2011 the researchers went for fact finding to Bagamoyo District specifically to Mapinga village where Kimere Farmers Association is found.

The team visited the District Commissioner's office at first and then District Executive Director's office where the two respective authorities did not show any cooperation to the researcher's team instead they were showing negative attitude towards the said land dispute arising within Mapinga village.

Having seen difficulties from the district authorities to allow the team to conduct the fact finding as scheduled by the Institute, and the team having realized that no any harm was going to occur to them and the villagers, on the next day (8th October 2011) the team decided to go to the disputed land for actual fact finding.

Some Members of the Kimere Farmers Association in a meeting with Fact Finding Team – 8/10/11



On 10th October 2011 the researchers went to the Bagamoyo District authority as required for permission to conduct fact finding to the respective areas. The same challenge happened when the team arrived at the office of the Village Executive Officer (Dola Msombe) who said, "mimi sintajitambulisha wala kusema chochote kuhusu ardhi ya kijiji cha Mapinga kama hamna barua kutoka kwa Mkurugenzi." meaning 'I am not going to introduce myself and I have no comments unless you have an

introductory letter from the District Executive Director' despite the fact that the team had already been allowed by the District authorities.

1.5 Objectives of the study

This activity intends to find out the answers for the following question:-

- 1.5.1 Whether the piece of land currently occupied by Kimere Farmers has a title deed or certificate of right of occupancy and whose person or company entitled to it.
- 1.5.2 Whether District Lands Department for this matter Bagamoyo District Council is aware of the said land and the ongoing land conflict.
- 1.5.3 Whether village government for this matter Mapinga village is aware of Kimere Farmers Association and knows the conflict between the farmers and the purported advocate.
- 1.5.4 Whether the said advocate (Edward Boniface) is indeed an advocate, and is the associate of Update Law Chambers.
- 1.5.5 To what extend did advocate sell part of Kimere Farmers land and who involved in that deal?
- 1.5.6 Whether it is true that police officers have been involved in harassing Kimere Farmers Association leaders, if it is true to what extent, and if there are filed documents in Police station and court?.
- 1.5.7 To establish the nature of engagement between the advocate the committee of villagers.
- 1.5.8 To establish the status of land ownership and possible conflicts that is likely to emerge as a result of the type of ownership and land use in that area and similar areas.

1.6 The rationale of the fact finding mission

- The Institute will be able to get detailed information on causes of various land disputes and how to resolve.
- Kimere Farmers Association will be able to know their status on the said land

2.0 STUDY FINDINGS

2.1 Legal possession of the land in dispute

The piece of land currently occupied by Kimere Farmers Association has no title deed or certificate of rights of occupancy. However, the Chairman of the village (Said Mohammed Manjula) saw the minutes of the village council showing that the villagers agreed to welcome Petronela Malambo (now deceased) as a new villager.



The Fact Finding Team surveying the disputed land

Mr. Manjura (the chair person) went on saying that part of land in question is possessed by another person called Ahmed Mohamed although he admitted not to have seen any official documents supporting right of occupancy from Mr. Mohamed.

2.2 Awareness of the Districts Land Department on Disputed Land

The District Land Department for this matter Bagamoyo District Council is not aware of the said land and the ongoing land conflict. Moreover the Land administrative officer (Mr. Khalid Tambulegeni) directed the team to consult the village government because Kimere land is under its administrative control. On top of that he (Mr. Khalid) advised the team to have an interview with the authorized District Land Officer named Josephine M Gugu Once consulted on the next day (10/10/2011) she refused to disclose any information on Mapinga village by saying "...sintajibu swali lolote kuhusiana na kijiji cha Mapinga..." meaning: "I will not answer any question concerning Mapinga village..." and therefore the team left.

2.3 Conflict of the association

The village government for this matter, Mapinga village is aware of Kimere Farmers Association and knows the conflict between the farmers and the purported advocate. This is due to the fact that the association applied for its registration and paid a registration fee amounting T.Shs. 250,000/= through the village government. The application amongst other things included the names of members of association and a map of the occupied piece of land.

2.4 Eligibility of the advocate

Our study revealed that Mr. Edward Boniface who introduced himself to the Kimere Farmers Association as an advocate he is not an advocate at all, besides he is not an associate of the Update Law Chambers as he proclaimed, when the team consulted some of the law firms, one of them being Major Attorney Advocate for the purpose of being acquainted with physical address of the said office, where the team was informed that Update Law Chambers is no longer existing after passing away of his founder Mungoya-Advocate and disclosed further that Mr.

Boniface is not an advocate but re-known pretending attorney and conmen.

2.5 The extent of land sold by the so called advocate

The study revealed further that Kimere Farmers Association has no legal ownership of the piece of land, out of 72 plots the Advocate managed to sell four plots namely 6A, 6E, 9C and 11A. In the selling process some members of the association were also involved. For example Mr. George Alex who is the head of the security committee of the association.

2.6 Involvement of the police officers in harassing Kimere Farmers Association

In relation to the involvement of the police officers in the land dispute, the team found out that Police officers have never been involved in any way to the alleged dispute; rather it was a company of the said bush lawyer who introduced them as police officers to scare the members of KFA.

2.7 Nature of engagement between the advocate and the committee of Kimere Farmers Association

The motive of the association to hire the so called advocate was to ensure that their land was protected from any further land disputes that were likely to happen between the former occupiers and the association.

The other issue that motivated the Association to hire the so called advocate was to rescue one of the association members who is said to have been imprisoned without being given an opportunity to be heard.

2.8 The status of land ownership and possible rise of conflicts between parties.

Kimere Farmers Association are said to be trespassers to the said land however, they are not entitled to own such land. The association have no legal title deed or any certificate of right of occupancy because the area is not declared an urban area. The ownership of the Association that exists is illegal since the land was occupied before by the former possessers. Kimere Farmers Association could have the right of

ownership if the disputed land was acquired legally through normal procedures which are:-

- Making an application to the village council.
- Payment of land fee
- Allocation of the plot to the applicants by the village land committee.

The Mapinga village council alleges to have declared the land currently owned by the association not to have acquired through their village committee council.

The land dispute that is likely to happen is due to the fact that the association is not ready to vacate from the land. Any kind of dispute can emerge in any area when the occupier does not adhere to the legal procedure of land use and ownership.

3.0 POINTS ON LAND RIGHTS MATTERS

- 3.1 The actual story reflects the misconducts made by the association to acquire the disputed land. There were no any legal procedural ethics followed towards the acquisition of the land. The trespassers on the said disputed land found the land unoccupied and unclean. They did not make any effort to apply to the respective authority until when the former occupiers noticed their land to have been acquired illegally by the association.
- 3.2 Following the said dispute, the District Land Council and the Mapinga Village denied the legal existence of the association on the said disputed land. However, the District Land Authority and Mapinga village government made a proposal for the association to leave immediately until when legal procedures are followed for allocation of the said land to the legal occupiers.

3.3 The team identified that, there has been no lawful meeting and gathering such as village assembly which was held for dealing with this particular land problem. However, the association itself holds meetings on every Saturday on how to protect and develop the land in question.

In relation to other land matters/conflicts on the village land, the Chairman of the village confirmed that there have been lawful gatherings for discussing them. For example there is an ongoing conflict between Mr. Lyatuu¹ and 800 villagers which made the village assembly hold a discussion on it. However, the conflict has been intruded by the District Commissioner who has sued the Village Chairman² for welcoming the 800 villagers³ on the said land.

3.4 In its findings the team realized/found out real stories that were not disclosed by KFA in connection to ownership, legality, status of the association, duration of their entrance in the said land, their recognition by the leadership, village government and neighbours.

KFA has no legal possession on the said land, according to the information they disclosed to the Institute, as a matter of fact KFA has no any legal documents which show validity of their ownership, Chairman (Mr. Pazi Jaah), and neighbours surrounding the land in question were consulted to find out the real owner of the disputed land. It was unanimously revealed that, the KFA are mere trespassers, and rather the two/legal owners are Mama Petronila Mallambo and some few respondents mentioned native Arab called Ahmed Mohammed to possess few acres on the said land.

On the time of entrance of the association in the area, the team found contradictions from the information given by the association itself and

¹ The said owner of 239 acres

² Mr. Said Mohammed Manjura

³ The ones who are said to have unlawfully occupied the 239 acres

other respondents, for example in the information which they disclosed at the Institute (HAKIARDHI) that they entered into the land in 1997/8, after finding it with no owner. Further more on 8th October 2011, in the meeting between the team and the association, KFA stated that they entered the premise in 2007, but according to the information revealed to the team by hamlet(kitongoji) chairman and village chairman they said trespassers entered the land in 2010, and the application for registration was filed on March 2011.

3.5 In the field, the team has found that land occupied by the Association and the villagers is almost adequate for their needs and there exists no land conflict between the Association and villagers. However the villagers claim to be aware that the association currently occupies the land unlawfully as they (villagers) know the former occupiers

4.0 CHALLENGES

- Most of the village authorities are not conversant with land dispute resolution mechanisms.
- Relevant authorities have inadequate written information on ownership of the said piece of land a situation which stimulates conflicts between parties in dispute.
- Owning land and abandoning it for a long time without developing results into more conflicts between parties in dispute on the said land.
- Misconduct of the village authority. An act of receiving registration fee from the Kimere Farmers Association by the village Chairman, recognising them as village members, while knowing that KFA are mere trespassers at the same time they knew the legal possessor of the said land. This fuels the conflict between the parties."

- Both villagers and village leaders, are less conversant with land laws
- Lack of knowledge on legal procedures of village land laws
- Serious bureaucratic problem in the process of acquiring land has made people opt grabbing it. Some of the government officials have been part of the problem.

5.0 RECOMMENDATIONS

- Village authorities should undergo frequent training to enable them to be conversant with land dispute resolution mechanisms.
- The authorities are to have effective system of documenting all the information on the land matters notably land transfer to avoid unnecessary disputes.
- People who own land are not to leave it undeveloped for a long time.
- The authorities should only accept land registration fee from legal occupiers.
- Facilitating dissemination of materials on land laws and rights through print and electronic media. This will help villagers and village authorities to be acquainted with land laws thereby resolving land disputes earlier before serious repercussions.
- The government officials should adhere to the principals of good governance.
- Kimere farmers Association, seems to be unaware of the legal procedures of acquiring land, instead they decided to grab the said piece of land confidently presuming that that it is also proper procedure of acquiring land, the team would like to appeal unto the Land Rights Research and Resources Institute (HAKIARDHI) to educate the members of the Association on the proper legal

- procedures that they must be observed to acquire land lawfully and to avoid further disputes.
- Kimere Farmers Association (KFA) should seek to settle the matter amicably with the lawful owners of the land in question; this can be done through friendly discussion between the disputants and offering a reasonable amount of money to heirs of Mama Petronilla Malambo (deceased) and Mwarabu as compensation. This will facilitate into resolution of dispute without enmity.
- Since KFA have invested their energy and resources to clear the land, it should peacefully talk to heirs of Mama Petronilla Malambo and Mwarabu and claim reasonable and affordable compensation basing on the work done on the land, however it is recommendation of the team that, Tshs 770,000,000/- which was claimed by the association from Mama Malambo and Mwarabu as compensation was unreasonably high and does not conform with the energy and resources invested on the said piece of land.
- The Conflict between the two parties can amicably be resolved though humble discussion between the parties since the owners of the piece of land showed from the beginning intention of conducting talk with KFA so as to settle the dispute, for example Mama Petronilla was ready to give Six Million as compensation to KFA, but the case is different to KFA who claimed unreasonable and unaffordable compensation of 770M, something which oiled the dispute in question.
- The Institute should advise the village authorities to take actions on the land conflicts timely so as o avoid serious reparcations.
- It is high time for the institute to provide the village authorities with skills and techniques of resolving land disputes timely.
- It is team's appeal to the Institute that, wherever it receives any claim on land, to make some queries to the claimant(s) on the title

over the claimed land, for the institute to satisfy itself on the legality of the claim, it is advisable to enquire for relevant documentation to support the claim, this will help the Institute to spend its time and resources for the well grounded and valid claims.

6.0 CONCLUSION

This fact finding report on the land dispute in Kimere has critically highlighted the sources, extent and the parties involved in the said dispute. Moreover the report has categorically analysed the passive role played by the village authorities in resolving land disputes. The team also has analysed the knowledge-ability of Kimere and Mapinga villagers on land rights, which is a reflection of majority of Tanzanians on land issues.

Furthermore, it is to be noted that the extent of land conflicts in Bagamoyo district does not match with the efforts invested by the government in resolving them. Therefore it is hightime for the Government to be more serious in dealing with such land disputes before things get worse.

Attached:

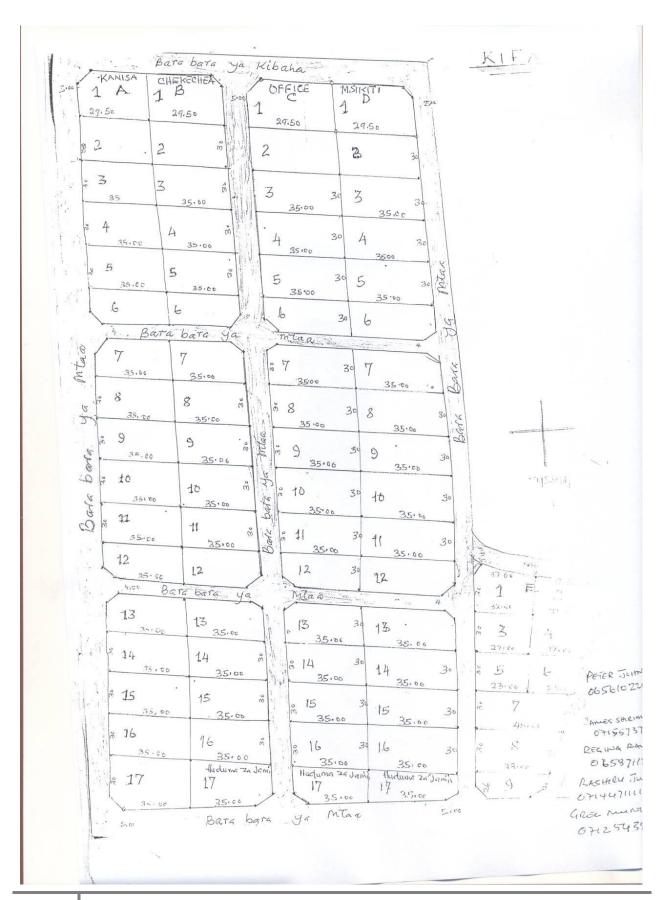
Page 18: List of Kimere Farmers Association (KFA) members who attended a meeting with the Fact Finding Team

Page 19: Kímere Farmers Association Site Plan

Page 20: A letter from Kimere Farmers seeking compensation from Mrs. Mallambo

Page 26: Response from Mrs. Mallambo to KFA.

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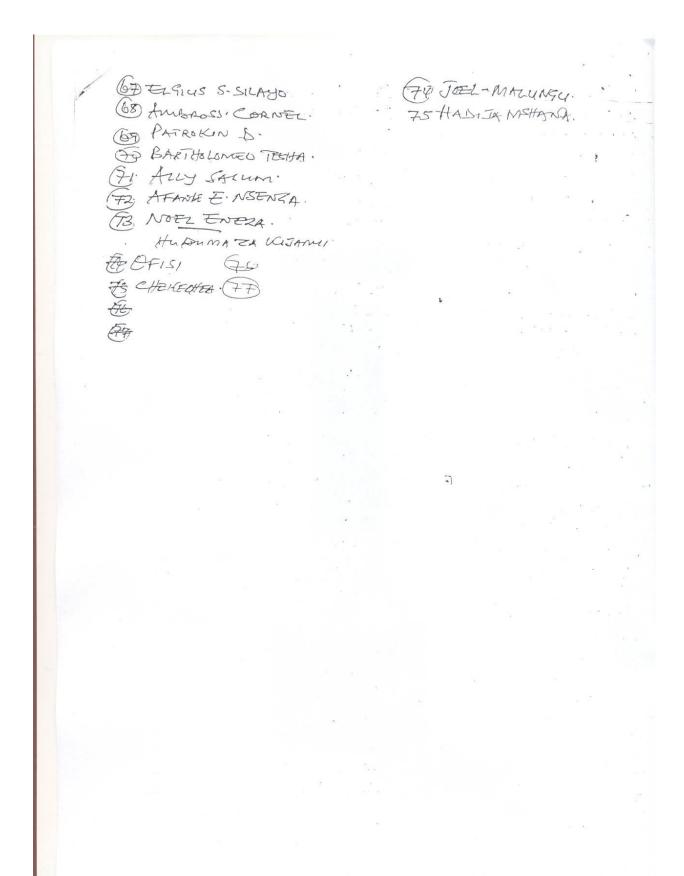
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MAJINA YA WANACHAMA. 1. K. SABUNI 2. AF. A. OBIA 3. AF. NYAMPIGA 4. FA. A. MCHANI 5. BI. H. BILAL 6. AF. A. LAIZER 7. MR. G. ALEX 8. MIS NEEMA WAMBURA 9. MIS G. MUNIS 10. MR MAHAD SULEMAN 11.MR V. MAGANGA 12.MR. B. SEVERINE 13. MR. J. MAGANGA 14.MR. C. ABDALA 15.MR. S. PETER 16.MR.M.SHAYO 17. MR. M. ALLY 18. MIS. S. SALUMU 19.MR. FADHILI HAMADI 20. MIS SALMA S 21.MR. HAMAD FADHILI 22. MRS. SAFINA SAID 23. MR. NOBERT JAMES 24. MIS. D. KISHIMBO 25. MIS. TUSSAJIGWE J 26. MR. SHIRIMA J 27. MR. KASSIM MKADIMBA 28. MRS. KHADIJA MSHAN 29.MR. SARAFIN A. 30. NR. S. KETOMARI 31. MR. K. HEMED 32. MRS. R. KUCHANILO 33. MR. R. MBAGGA 34. MR. A. PETER. 35. MR. IBRAHIM SALEHE 36. MR. ABDULA A. 37. MRS. KHADIJA KHANI 38. MR. BASHIRU J. 39. MR. AMRI ISMAIL 40. MR. EDES CORNEL 41. MR. H. MRISHO 42. AF. MALIWATA 43. MR. B. TESHA 44. MR. F. SWAI 45. MAMA MWATAGE

46. MR. BONIFACE JOSEPH 47. MR. PETER J. 48. MIS SCOLASTICA J. 49. MR. J. MAGAMBA 50. MR. OTHMAN IDD 51.MR. NASSORO ABDALA 52. MR. TAHIR MOHAMED 53. AF. E. SENGA 54.MR. AMBROS A. 55.MR. OMARY A. 56. MRS. G. AMBOKILE 57. MR. FRANK E. 58. AF. O. NYAMWALE 59. MR. H. MWAIMU 60. MR. SHIJA N. 61.MR. H. NASSORO 62. MR. H. DIDAS 63. AF. YOHANA M. 64. MR. KOMBO M.K. 65.MR. GABRIEL ALEX 66. MR. SHABANIS. 67. MR. SKAGUVA 68. MR. BAKARIS. 69. MR. V. FILIPO 70. MR. E. JOSEPH. 71.MR. A. CORNEL 72.MR. PATROKIN D. 73. MR. BATHILIMEW. 74. MR. ALLY SALUM 75. AF. E. NSENGA 76.MR. NOEL E.

WIEDDASI [WWLN II- KI II SERIKALI YA KIJIJI MAPINGA

Box __

OMG AWOOTO

KWA WIABA TA

PETROULLA MALAMBO
KATA JA KIMERE
BAGANISTO

YAH: MAJIBU HA BARWA TA VERMANUCHI WALIOKO KWENTE SHAMBA LANGU KATA TA WIMETEE TA TAR: 16/03/2011

SALAAM,

KUTOKANA NA KIKAO KILICHOFANYIKA TAD. 12/3/3011

SISI, KWA PIRBA TA MANA MALAMBO TULTIWBALI
KUWALIPA KIFUTA JASHO, WANANCH WALIONGIA KWERTE
ENEO LETU, MAJIBU TALITOKUJA NI TOTAUTI MA MATEGEMI
TETU MANNA INAONEKATIA KAMA TUNAMUMINA UPIALI
SHAMBA LETU LINA HATI MILIKI NA HIWAHLIRIWA HADA
KILA MUNKA, NA TOTE TUNISHIWANTAMIMINISHMA. HIMO BASI,
KWA UPANDE VILETU (MOMINIA MIMILAMOTO) TWITAWALIPA
NA TUKO TAMARI KWA GOOGOO OOO (MOTE MINITAMA KAMA
KIFUTA JASHO KWA UPANDE WA WWARABU ATATOA JIB
KATO NDITO MAJIBU TETU, KAMA HATAKUBARIKU BASI
TUNAONA TWENDE KWENTE HATUA NYINGINE ITAKATO—
KUBACIKA WA KWA UPANDE WETU.

MAMA MALAMBO NA MENSAKE MAMA MALAMBO NA MENSAKE Peter Jahre Laration SHRIN -A J. CHERINA BUNGU B. Bulgens . M. Sway Dar 85. Salan · Hampo: HAMADI UNIDIM DARSCAMY KeSTA Chimet & Toulika +1 conewit Setute Shija Melutu manyese JULIAN JONES JA LATO REGINA W. RAUYA ILAKA BARTHOLONGO TESHA DAR ES SACAAM ERDN E SISSO Popla DAR ES SAILAM GEORGERES bxReSXLAM