IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KWARIKO, J.A., GALEBA, J.A. And FIKIRINI, J.A.)

CIVIL APPEAL NO. 181 OF 2021

JAMES MAKUNDI .....APPELLANT

VERSUS

PERMANENT SECRETARY, MINISTRY OF LANDS, HOUSING AND HUMAN SETTLEMENTS DEVELOPMENT.....1ST RESPONDENT

ATTORNEY GENERAL .....2ND RESPONDENT

DUNSTAN NOVAT RUTAGERUKA .....3RD RESPONDENT

(Appeal from the Judgment and Decree of the of High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam)

(Kulita, J.)

dated the 22nd day of September, 2020
in
Land Case No. 80 of 2015

JUDGMENT OF THE COURT

28th March & 28th April, 2022

KWARIKO, J.A.:

The appellant, James Makundi was aggrieved by the decision of the High Court of Tanzania (Kulita, J.), Dar es Salaam District Registry at Dar es Salaam (the trial court), dated 22nd September, 2020 in Land Case No. 80 of 2015. In that case, the appellant sued the respondents challenging the acquisition, on account of public interest, of his landed property on Plots No. 204, 205 and 206 Block 'K' Kurasini Area in Dar es Salaam City (henceforth "the suit land").

The appellant claimed in his amended plaint that the acquisition, re-survey and the valuation of the suit land did not follow the prescribed procedure of law. He claimed further that the certificate of title issued to the third respondent in respect of the suit land is illegal since he (the appellant) is still the lawful owner of the same. He thus prayed for a declaration that the valuation over the suit land was illegal; that the suit land was not within the area acquired by the Government; the certifica te of title No. 120053 issued to the third respondent is illegal and it ought to be nullified. The appellant claimed for general damages at the tune of TZS. 500,000,000.00 and costs of the suit.

In their written statement of defence, the first and second respondents resisted the claims. They averred that the acquisition of the suit land was for public interest for extension of Dar es Salaam port business and that it followed relevant procedure and the law and therefore the third respondent was the lawful owner of the suit land after it was allocated to him by the relevant authority.

On his part, the third respondent resisted the appellant's claims and also raised a counter-claim. He sought for a declaration that he was the lawful owner of the suit land named Plot No. 2003 Block 'I' Kurasini

Area in Dar es Salaam City under the Certificate of Title No. 120053, TZS. 260,800,000.00 being loss of income, interest and costs of the suit.

In his evidence to substantiate his claim, the appellant who was the only witness on his part, testified as PW1. He stated that, he was the lawful owner of Plots No. 204, 205 and 206 Block 'K' Kurasini Area in Dar es Salaam City with Title Nos. 399671 of 1992, 36949 of 1990 and 36461 of 1990, respectively (exhibits P1 collectively). He testified further that there were five houses on those plots whereas on 4th July, 2013 they were marked with letter 'X' by the officers from the Ministry of Lands, Housing and Human Settlements Development (the Ministry of Lands), without any notice to him in advance. Following that act, he wrote a complaint letter to the said Ministry but there was no response. It was PW1's further testimony that, on 27th June, 2015 he was informed by one Eddie Makwaya that he had been sent by his boss who is the third respondent to convince him to sell his premises to him and that he had already secured another title deed in respect of the suit land.

According to PW1, on 27th November, 2015, his residential house on Plot No. 204 was invaded by a group of 45 people while himself was put under restraint and the house was demolished. The six photos of the

demolished houses were received as exhibit P2 collectively. He reported the matter to the police station where upon on 30th November, 2015 the Officer Commanding District (OCD) visited the scene on the same date and the Ward Executive Officer showed them certificate of title No. 120053 which was issued to the third respondent on 16th December, 2011. The appellant added that before the said demolition, he had made an official search on 4th November, 2015 and discovered that he was still the lawful owner of the suit land.

The third respondent's evidence comprised of two witnesses. Advocate Melchisedeck Sangalali Lutema who testified as DW1, averred that Title Deed No. 120053 with Land Office Tenure No. 456063 for Plot No. 2003 Block 'I' Kurasini Area (exhibit D1) in the name of the third respondent was in his custody as a security for the loan, the third respondent had taken from his client one Joseph Obeto.

For his part, the third respondent who testified as DW2 stated that the Commissioner for Lands allocated him Plot No. 2003 Block '1' – Kurasini Area covering around 13,000 square meters including around 2,000 square meters of the appellant's land since 2011 for bulk oil storage, being a port connected business. DW2 testified further that through official searches conducted by his advocate, it was discovered

that the suit land was acquired by the President of the United Republic of Tanzania on 8th September, 2016, 6th July, 2017 and 13th January, 2017 for Plots Nos. 204, 205 and 206 respectively (exhibit D2 collectively), thus the appellant was no longer the owner of the same. Apart from the claim for loss of income, DW3 claimed TZS. 25,000,000.00 being land rents he had paid to the Temeke Municipal Council whose receipts were admitted as exhibit D3 collectively.

For the first and second respondents was Kajesa Minga (DW3), Land Officer from the Ministry of Lands. His evidence was to the effect that in 2008, the Government of the United Republic of Tanzania made a decision to expand the Port of Dar es Salaam for port related businesses including construction of filling stations, dry ports, fuel reserve tanks and bulk oil storage facilities and that, Kurasini which was a residential area was earmarked to be acquired for that purpose. Before the acquisition, information and education were provided to local area leaders and the people who were to be affected by the exercise. The matter was published in the Government Gazette dated 16th September, 2011 (exhibit D4).

It was DW3's further testimony that the people who were to be affected by the exercise were informed that they would be compensated

of their properties after valuation. However, some people were not satisfied with the valuation hence raised objections, others refused to vacate and others, including the appellant, filed cases at the High Court which in the end it ordered for the re-evaluation of that land including that of the appellant. Thereafter, the Commissioner for Lands prepared the valuation report (exhibit D5) where the appellant was supposed to be paid TZS 277,036,800.00 as compensation, which he refused to collect.

DW3 concluded that as a result of the re-survey the third respondent was allocated Plot No. 2003 Block 'I' Kurasini Area as a substitute for his Plot No. 12 Block No. 65 Kariakoo Area which had been acquired by the Government. That, the third respondent was allocated the suit land for storage of bulk oil.

At the end of the trial, the trial court found that the appellant had failed to prove that the acquisition of the suit land was done illegally and thus it dismissed the suit with costs. However, the court allowed the counter-claim and ordered the appellant to pay the third respondent TZS. 20,000,000.00 as general damages.

Aggrieved by that decision, the appellant has approached the Court on appeal upon the following four grounds:

"1. That, the trial Judge erred in law and fact by holding that the 3rd respondent is a lawful owner of the disputed land with insufficient evidence.

2. That, the trial Judge erred in law and fact in its Judgment and Decree by holding in favour of respondents without proof of properly conducted valuation.

3. That, the trial Judge erred in law and fact in failing to analyze and evaluate properly the appellant's evidence and entered Judgment in favour of the 3rd respondent.

4. That, the trial Judge misdirected himself by declaring that there was acquisition by the Government for public purpose and declared 3rd respondent as lawful owner of the disputed properties."

On the day the appeal was called before the Court for hearing, the appellant was represented by Mr. Victor Kessy, learned advocate whereas the first and second respondents had the services of Messrs. Stanley Kalokola and Gallus Lupogo, both learned State Attorneys. Mr. Erasmus Buberwa, learned advocate appeared for the third respondent.

The counsel for the parties had filed written submissions for and against the appeal in terms of rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 which were adopted during the hearing of the appeal.

When he was invited to argue the appeal, Mr. Kessy rightly indicated that his written submissions only covered the second ground of appeal thus argued the other grounds orally. He argued the first and third grounds together, where he submitted that there is no sufficient evidence to prove that the allocation of the suit land to the third respondent was lawful. He mentioned three reasons for this assertion; **one**, whilst the third respondent was allocated the suit land in 2011, the evidence shows that the appellant was allocated the same in 1990 and 1990's and his title deeds had not been revoked. **Two**, upon official search in 2018 at the Land Registry, it was found that the suit land was acquired by the President in 2016 and 2017, which was long after allocation to the third respondent in 2011. **Three**, the publication done in the Government Gazette of 16th September, 2011 related to Plot No. 206 only, thus Plots No. 204 and 205 which were not published to have been acquired, remained the property of the appellant.

Responding to the above submission, Mr. Kalokola argued that the suit land was acquired by the President, as part of port expansion in terms of section 4 of the Land Acquisition Act [CAP 118 R.E. 2019] (the Act) and changed the land use from residential to commercial use. He added that, following the acquisition, a re-survey was conducted and the suit land containing around 2,000 square meters became part of Plot No. 2003 Block 'I' Kurasini Area containing 13,100 square meters which was ultimately allocated to the third respondent to deal with storage of bulk oil.

Concerning the appellant's name in the Register in respect of the suit land which appeared in 2015 upon official search by the appellant, Mr. Kalokola argued that the registration was in progress since the acquisition started in 2008 whereas the notice was issued in 2011. To fortify his contention, he cited the case of **National Bank of Commercial v. Suleiman Nassor Ally** [1989] T.L.R. 67.

It was Mr. Kalokola's further submission that from the evidence of DW2 and DW3 together with exhibit D2 collectively, the suit land was in the name of the President after acquisition and that the third respondent is in possession of the valid title and in the absence of the evidence of fraud in acquiring the land, his estate in the land cannot legally be

impeached. He contended that the appellant did not lead any evidence to show that the third respondent acquired the title by fraud. To give credence to his argument, Mr. Kalokola cited several foreign and local decisions, one of them is **Tanzania Railways Corporation v. GDF (T) Limited,** Civil Appeal No. 218 of 2020 (unreported).

Going forward, the learned counsel argued that since the appellant had a competing interest with the third respondent, he ought to have tendered evidence to fault the latter's ownership of the suit land. In that case, he argued, that the third respondent has good title after having been allocated the suit land by the Commissioner for Lands the same having been re-surveyed. He submitted that the appellant has nothing against the third respondent which is consistent with the observation of the Court in its earlier decision in the case of **Amina Maulid Ambali & Two Others v. Ramadhani Juma,** Civil Appeal No. 35 of 2019 (unreported).

For his part, Mr. Buberwa adopted the submission made by his learned friend, Mr. Kalokola in respect of the first and third grounds but added that, the appellant was involved in the process of acquisition of the suit land thus he has no valid reason to complain.

As regards the second ground of appeal, the appellant's counsel submitted that the valuation done by the Covernment to the suit land was illegal and the trial court did not comply with section 42 (1) of the Valuation and Values Registration Act No. 7 of 2016 (the Valuation Act) when it dealt with that issue. It was submitted further that the first respondent should have tendered a registered valuation report as required in law and not a schedule of compensation which was unacceptable. Mr. Kessy fortified his contention with the unreported decision of the High Court in the case of **Ore Corp Tanzania Ltd v. Mathias Shileka,** Civil Appeal No. 19 of 2020 to the effect that the Government valuation report prevails where it is in conflict with other valuation reports. It was thus argued that the appellant is only entitled to compensation based on the Government valuer's valuation report and not on the basis of the schedule of compensation.

In response to the above submission, Mr. Kalokola argued that the registration of the valuation report under section 42 (1) of the Valuation Act is a completely new matter as it was not canvassed at the trial court. However, he argued that the cited provision of the law relates to registration of valuers and not valuation reports which is governed under

sections 52 and 63 of the Valuation Act. He added that there is no requirement of registration of the valuation report under that law.

It was Mr. Kalokola's further argument that the appellant was duty bound to prove that there was no proper valuation of the suit land as it was stated in the case of **Barelia Karangirangi v. Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017 (unreported) which observed that he who alleges must prove as required under section 110 and 111 of the Evidence Act [CAP 6 R.E. 2019] (the Evidence Act). The learned counsel contended that after the acquisition of the suit land, the valuation was conducted and a report was prepared as required in law. He went on to submit that the appellant did not challenge the validity of the valuation report (exhibit D5) which was approved by the Chief Government Valuer as per section 7 of the Valuation Act because it followed the procedure. That, as per exhibit D5, the suit land was valued to a total of TZS. 277,036,300.00. The learned counsel distinguished the case of **Ore Corp Tanzania Ltd** (supra) cited by Mr. Kessy, as it related to the validity of the valuation report which was prepared by an agricultural officer who the High Court found to be an incompetent person for the purpose of conducting land valuation. Additionally, he argued, in that case, the court was called upon to resolve an issue

where there is a conflict between a valuation report prepared by a Government official and other valuation reports, which is not the contention in the instant case.

The learned State Attorney went on to contend that, since the appellant demanded compensation according to the valuation done by the Government officials, then he should have accepted the compensation arising out of the valuation conducted by the first respondent comprised in exhibit D5 which is valid having been approved by the Chief Government Valuer in accordance with the law. In any case, he argued, the appellant could not be entitled to compensation of TZS. 2,000,000,000.00 for it was reached by land value assessment conducted by the appellant himself thus lacking legal force for, it was not approved by the Chief Government Valuer as required by law.

The third respondent's point in relation to the second ground of appeal did not differ with the foregoing submissions by Mr. Kalokola.

In relation to the fourth ground, Mr. Kessy argued that if the acquisition of the suit land was for port extension as presented by the respondents, it was unlawful to allocate it to the third respondent who did not used it for that purpose. Basing on his submissions, Mr. Kessy urged us to allow the appellant's appeal with costs.

In response to the above contention, Mr. Kalokola argued that the suit land was acquired by the government in terms of section 4 of the Act for expansion of Dar es Salaam Port. The learned counsel added that, subsequent to the acquisition, the land use in respect of the suit land was changed from residential to commercial use and was allocated to the third respondent for bulk oil storage which is port connected business.

On being probed by the Court, Mr. Kalokola conceded that only Plot No. 206 was published in the Government Gazette but the acquired area covered the whole of the appellant's land and the schedule of compensation covered the entire suit land. He explained further that the non-publication of the other plots cannot invalidate the acquisition process because compensation was in respect of all the three plots.

Mr. Buberwa subscribed to Mr. Kalokola's submission in respect of the fourth ground of appeal. The respondents' counsel urged us to dismiss the appeal with costs for being unmerited.

In his brief rejoinder, Mr. Kessy argued that although the appellant's valuation was not approved by the Chief Government Valuer, it comprised structures on the suit land. He added that there is no evidence to show that the appellant declined to collect his compensation

and that his participation in the meeting which was convened by the Minister for Lands prior to acquisition of land did not mean that he acquiesced to the acquisition of the suit land.

Having dispassionately considered the grounds of appeal and the contending submissions by the learned counsel of the parties, we find that this appeal can conveniently be determined on the basis of the following three issues. **One,** whether the suit land was legally acquired by the President for public purpose under the Act; **two,** whether the trial court properly evaluated the appellant's evidence and whether a determination that the third respondent was the lawful owner of the suit land was justified; and **three,** whether the valuation of the suit land was conducted according to the law.

Before we proceed any further, we wish to restate that, it is trite law that a first appellate court is entitled to re-evaluate the evidence on record from both sides and if possible, to come out with its own conclusion. This principle, which we will invoke in this case has been applied by the Court in its various decisions, some of which include **Makubi Dogani v. Ndogongo Maganga**, Civil Appeal No. 78 of 2019; **Leopold Mutembei v. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development and**

Another, Civil Appeal No. 57 of 2017; and **Domina Kagaruki v. Farida F. Mbarak and Five Others,** Civil Appeal No. 60 of 2016 (all unreported).

Starting with the first issue, we would like to preface it with the law in relation to acquisition of lands by the President for public purpose. Section 3 of the Act provides thus:

> *"3. The President may, subject to the provisions of this Act, acquire any land for any estate or term where such land is required for any public purpose."*

Thus, according to this provision, the President is empowered to acquire any land where such land is required for public purpose. The term public purpose is defined under section 4 (1) of the Act as follows:

> *"4.- (1) Land shall be deemed to be required for a public purpose where it is:*
>
> > *(a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing;*

(b) for or in connection with sanitary improvement of any kind, including reclamations;

(c) for or in connection with the laying out of any new city, municipality, township or minor settlement or the extension or improvement of any existing city, municipality, township or minor settlement;

(d) for or in connection with the development of any airfield, port or harbour;

(e) for or in connection with mining for minerals or oil;

(f) for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development."

The term public purpose or public interest has also been a subject of discussion by the Court in the previous decisions. For instance, in the case of **the Attorney General v. Sisi Enterprises Ltd,** Civil Appeal No. 30 of 2004 (unreported), which was cited by Mr. Kalokola, the Court referred to various authorities and came up with the following definition:

"...it is clear to us that "public interest" or "public purpose" must include a purpose, that is to say

an aim or object in which the general interest of the community is concerned or involved, as opposed to the particular interest of individuals or institutions."

Therefore, the acquisition of land for public interest or public purpose should relate to general interest of the community as opposed to the particular interest of an individual or an institution. In the instant matter, the acquisition of the suit land was done in terms of section 4 of the Act. To validate this exercise the respondents tendered evidence through DW3 and indicated that the acquisition of the suit land along with other peoples' parcels of lands was for extension of the area for Dar es Salaam Port related activities. Subsequent to the acquisition, that land was allocated to the third respondent for use in bulk oil storage activities which is related to port businesses. It is our considered view that, the first issue is to be answered in the affirmative that the suit land was legally acquired by the government and allocated to the third respondent for public purpose, namely; port related operation, which is bulk oil storage in terms of section 4 (1) (d) of the Act.

In the second issue, the appellant's main complaint is that the trial court failed to properly evaluate the evidence by the appellant and declared the third respondent the lawful owner of the suit land. The

appellant contended, **firstly,** that the evidence shows that the third respondent was allocated the suit land in 2011 while the appellant's title deeds were issued between 1990 and 1992. According to the evidence on record, it is common ground that the appellant was the owner of suit land before its acquisition by the President. The acquisition process started in 2008 and the notice of it was issued in 2011 and followed by a resurvey to get Plot No. 2003 Block 'I' Kurasini, which was allocated to the third respondent. Therefore, with that process, the appellant ceased to be the owner of the suit land.

Secondly, the appellant has complained that when an official search was conducted at the land registry in 2018, only one plot was shown to have been acquired by the President. The evidence on record shows that the appellant's official search in November 2015 (exhibit P3 collectively) indicated that the three plots were in the name of the appellant. However, the evidence also shows that the official search conducted by the third respondent's counsel Mr. Erasmus Buberwa in October 2018 (exhibit D2 collectively), showed that the three plots were acquired by the President on 8th September, 2016; 6th July, 2017; and 13th January, 2017 for Plots No. 204, 205 and 206, respectively. We agree with Mr. Kalokola that notwithstanding the name of the appellant

on the land register in 2015, we are satisfied that the acquisition of his land was completed six weeks after publication of the acquisition in the Government Gazette on 16th September, 2011. This is so because [illegible] of any entry in the land register under section 31 (2) of the Land Registration Act [CAP 334 R.E. 2019] (the Land Registration Act) by the Registrar of Titles is subsequent to land delivery processes by the Commissioner for Lands or in this case, the acquisition by the President under the law. We are therefore of the position that the suit land was lawfully allocated to the third respondent.

In his third contention, the appellant has queried the publication done in the Government Gazette of 16th September, 2011 which related to Plot No. 206 only, which means he is still the owner of Plots no. 204 and 205. As we have shown above, the three plots were acquired by the President on different dates, which means the process of acquisition was not done on a single day, it was an ongoing process. It is thus our considered view that, so long as all three plots were acquired by the President as shown above, the omission to mention the two at that time, is not fatal to the whole process. The three plots which measured in total square meters 2,299, were part of the land which the government allocated to the third respondent and after a re-survey it was described

as Plot No. 2003 Block 'I' Kurasini Area measuring 1.31 hectors (13,100 square meters).

Basing on the foregoing, to fault the third respondent's title to the suit land, the appellant ought to have led evidence to show that the third respondent acquired it fraudulently. In this respect, the ownership of the land by the third respondent is paramount to all interests whatsoever under section 33 (1) of the Land Registration Act which provides as follows:

> *"(1) The owner of any estate shall, except in case of fraud, hold the same free from all estates and interests whatsoever, other than:*
>
> *(a) any incumbrance registered or entered in the land register;*
>
> *(b)the interest of any person in possession of the land whose interest is not registrable under the provisions of this Act;*
>
> *(c) any rights subsisting under any adverse possession or by reason of any law of prescription;*
>
> *(d) any public rights of way;*
>
> *(e) any charge on or over land created by the express provisions of any other law, without reference to registration under this*

Act, to secure any unpaid rates or other moneys;

(f)any rights conferred on any person under the provisions of the Mining Act, the Petroleum Exploration and Production Act, the Forests Act or the Water Resource Management Act (other than easements created or saved under the provisions of the last mentioned Act);

(g) any security over crops registered under the provisions of the Chattels Transfer Act."

Further, in the case of **Amina Maulid Ambali** (supra) cited by Mr. Kalokola, when the Court was faced with an akin scenario, it stated thus:

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained."

It follows therefore that in this case it is the third respondent who has a valid title following his allocation of the suit land by the Government, the same having been lawfully acquired from the appellant by the President. The second issue is thus answered in the affirmative.

In the third issue, the appellant is complaining that the valuation of the suit land was not conducted in compliance with the dictates of the law. In his submission, Mr. Kessy argued that the trial court did not apply the provisions of section 42 (1) of the Valuation Act in its decision. Before we proceed any further, we would like to state that the Valuation Act which has been referred to us on various occasions by both counsel is not applicable in the instant case. This is so because it became operative on 30th September, 2016, which was long after the impugned valuation that was conducted in October 2013.

Now, the question which follows is whether there was a valid valuation in respect of the suit land. The law under sections 110 and 111 of the Evidence Act states that, he who alleges the existence of a fact is duty bound to prove it and would fail if no evidence is given at all. See also the Court's decisions in the cases of **Geita Gold Mining Ltd & Another v. Ignas Athanas,** Civil Appeal No. 227 of 2017 and **North Mara Gold Mine Limited v. Josephat Weroma Dominic,** Civil Appeal No. 299 of 2020 (both unreported). For instance, in the latter case, the Court stated thus:

> *"Indeed, in terms of sections 110 and 111 of the Evidence Act, Cap. 6 R.E. 2019 he who alleges*

the existence of a fact has to prove it and that the burden of proof lies on a person who would fail if no evidence were given at all."

Back to the instant case, it is the respondents who have alleged that the valuation was conducted in accordance with the law and previous owners of the acquired land including the appellant were compensated for the unexhausted improvements. Therefore, the burden of proving that the valuation of the suit land was correctly conducted lied on the respondents.

We have gone through the evidence of Kajesa Minga (DW3), a Land Officer from the Ministry of Lands, who testified for the respondents. His evidence reveals that the valuation was conducted for the purpose of compensation of the land acquired by the President. This is a requirement under section 3 (1) (g) of the Land Act [CAP 113 R.E. 2019] which provides thus:

"3.- (1) The fundamental principles of the National Land Policy which is the objective of this Act to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to, are:

(a) -(f) N/A

> *(g) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act."*

Following the valuation, a report was prepared (exhibit D5), titled *Jedwali la Fidia Kitabu cha 10 Mtaa wa Mivinjeni Kata ya Kurasini Dar es Salaam dated 7th October, 2013)* (the schedule of compensation). This report was approved by the Chief Government Valuer as per regulation 6 of the Land (Assessment of the Value of Land for Compensation) Regulations, Government Notice No. 78 of 2001 (G.N. No. 78 of 2001). This regulation provides:

> *"Every assessment of the value of land and unexhausted improvement for the purpose of payment of compensation by Government or Local Government Authority shall be verified by the Chief Valuer of the Government or his representative."*

According to that report, the appellant's name features at page 394 of the record of appeal and the suit land was valued at a total of TZS. 277,036,300.00.

For his part, the appellant has demanded compensation according to the valuation done by the Government valuer's valuation report other than exhibit D5 which he claimed that it was not legally done. We have considered this complaint and we are satisfied that exhibit D5 is valid, having been prepared by the qualified Government valuer in the Ministry of Lands and approved by the Chief Government Valuer on 8th October, 2013 in accordance with the law. We thus find no reason why the appellant has declined to accept that compensation. On the other hand, the appellant's own valuation of TZS. 2,000,000,000.00 was not backed by any proof that it was conducted by a qualified valuer and approved by the Chief Valuer in terms of regulation 6 of G.N. No 78 of 2001.

Still on the issue of valuation, the case of **Ore Corp Tanzania Ltd** (supra) cited by Mr. Kessy being a High Court decision is not binding on us. For what we have shown above, we have no hesitation to hold that the valuation of the suit land was lawfully conducted and thus the appellant's complaint is rejected.

Consequently, we are well settled in our mind that there is nothing upon which to fault the trial court's decision and thus the appeal has no merit and we hereby dismiss it with costs.

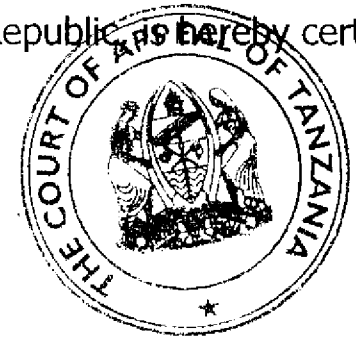
DATED at DAR ES SALAAM this 22nd day of April, 2022.

M. A. KWARIKO
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The judgment delivered this 28th day of April, 2022 in the presence of Mr. James Makundi, learned counsel for the appellant and Mr. Erasmus Buberwa, learned counsel for the 3rd respondent and Mr. Galus Lupogo, learned State Attorney for the 1st and 2nd respondents /Republic is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL