IN THE COURT OF APPEAL OF TANZANIA

AT SHINYANGA

(CORAM: KOROSSO, J.A., GALEBA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 63 OF 2022

KELLU KAMO LUCAS .....APPELLANT

VERSUS

DR. LUIS B. SHIJA .....RESPONDENT

[Appeal from the Decision of the High Court of Tanzania at Shinyanga]

(Mdemu, J.)

Dated the 24th day of September, 2021

in

Land Case No. 9 of 2017

.....

JUDGMENT OF THE COURT

5th & 12th December, 2023

GALEBA, J.A.:

On 5th September, 2017, the appellant Kellu Kamo Lucas, instituted Land Case No. 9 of 2017 against Dr. Luis B. Shija, the respondent in the High Court of Tanzania at Shinyanga (the trial court). The dispute between them was in respect of ownership of two adjoining surveyed parcels of land known as Plot No. 247 Block "Q" (plot 247) and Plot No. 249 Block "Q" (plot 249) both situated along Isaka Road in Kahama Urban Area (the disputed plots). The basis for the appellant's claim in the law suit was that, on 16th September, 1997, he bought Plot 247 and sometime

in 1998 he bought plot 249. According to the plaint, each plot cost the appellant TZS. 12,000,000.00. It was the position of the appellant that he developed the land and in 2001, he invited the respondent to carry on medical services on the premises. In the meantime, on 25th May, 2007, both plots were registered in the public land Register at Mwanza in the name of the appellant, and were assigned Title Nos. 17860 and 17862, respectively. However, to the appellant's surprise, sometime in the year 2013, the respondent, without any legal justification, imposed a ban on his access to the disputed plots.

Based on the above facts, the appellant prayed for judgment and decree for; **one**, a declaration that he was the lawful owner of the disputed plots; **two**, that the respondent be evicted from the said plots; **three**, a permanent injunction be issued against the respondent to bar him from entering on the disputed plots; **four** payment of special damages for unlawful occupation of the disputed plots; **five**, payment of general damages; **six**, payment of costs of the suit and; **seven**, any other reliefs that the trial court would deem just to grant. In brief, that was the basis upon which the appellant sued the respondent in the High Court and the reliefs he was seeking.

As for the respondent, he lodged a written statement of defence disputing the above claims. His position being that, in December 1993 he

invited the appellant to work together in a private venture called Wazazi Dispensary which was housed in a rented property around the market square in Kahama. In 1994 the respondent obtained a study leave and had to go for further studies up to 1998. That, while away he instructed the appellant to buy land using the funds of the project, and when he came back in 1998, the appellant showed him plot 247 as one of the plots he had purchased. According to the written statement of defence, he is the one who bought plot 249 from one Charles Masuka. Nonetheless, he noted later that the appellant was not trustworthy as he was registering the properties of the project in the wrong name of Kellu Kamo Lucas. Because of the misunderstanding that followed, he decided to dissociate himself from the joint business with the appellant and decided to give the latter certain properties of the project.

Based on the above facts, the respondent prayed for; **first**, that the suit be dismissed; **two**, that he be declared the lawful owner of the disputed plots; **three**, he be paid general damages; **four**, costs, and; **five**, any other reliefs that the trial court would deem proper to award.

As the court facilitated mediation did not succeed, on 19th November, 2020, two issues were framed by the court at page 105 of the record of appeal. The **first** was; who was the lawful owner of the suit land between the plaintiff and the defendant; and the **second**, was to what

reliefs were parties entitled. In seeking to answer the first issue in any one's favor, parties had to adduce evidence.

In that pursuit, the appellant appeared on his own as PW1, but the respondent called three more witnesses in addition to himself. The other witnesses were Wilbard Pius Samamba (DW2), Theresia Pascal (DW3) and Charles Masuka (DW4).

The trial court considered the above facts and the evidence that was adduced by parties and made a finding of fact that the lawful owner of the disputed plots were both parties to the suit, in form of a partnership. The trial Judge advanced the following reasons for holding so, at page 214 of the record of appeal:

> *"Here are the reasons for holding so.* ***One,*** *both the Plaintiff and the Defendant failed each to account on separate efforts which generated income that led towards acquisition of the suit properties.* ***Two,*** *the evidence of DW1 in the quoted portion above is to the effect that funds generated from the project is what contributed to the purchase of the suit property.* ***Three,*** *there is evidence of DW2 Wilbard Pius Samamba, a friend to the two partners who testified that, profits from the partnership business is what led to acquisition of the health center. This was also the evidence of*

DW3 one Theresia Paschal, a receptionist who used to alternate in the two business ventures and on the arrangement such that the Defendant was at the health center while the Plaintiff was at the dispensary. This arrangement in work relations, in my view, indicate ownership in partnership perspective. ***Four****, there was no reason whatsoever for the Plaintiff to register the suit property in names other than the common names of either of the partners. Again, the Defendant was not involved in such a move, which in my view, is evident that the Plaintiff came to equity without clean hands".*

The trial court concluded at page 219 of the record of appeal that:

"Having said all, there is ample evidence on record that Plots No. 247 and 249 both in Block "Q" are jointly owned by both the Plaintiff and the Defendant in the course of their partnership. Partnership laws will thus guide the two in event they want to part ways with the partnership. The suit thus fails to that extent and is accordingly dismissed".

The above finding of the trial court aggrieved the appellant, hence the present appeal, where he initially raised three grounds of appeal, but when the appeal was called on for hearing, the third ground was dropped thereby retaining two grounds of appeal, which are as follows:

"1. That the Honourable trial Judge erred both in law and fact when he failed to declare the appellant as the lawful owner of the suit premises; Plot 247 and 249 both in Block "Q" Kahama Urban Area, while there was no evidence given whatsoever to prove that the appellant, in whose name the suit premises are registered, acquired them fraudulently.

2. That the Honourable trial Judge erred both in law and fact when he decided that the suit premises are jointly owned by the appellant and the respondent in the course of the partnership even though neither the appellant nor the respondent claimed to own the suit under a partnership".

At the hearing of this appeal, the appellant was represented by Mr. Paul Kipeja, and the respondent had the services of Mr. Frank Samwel, both learned advocates. Mr. Kipeja had filed written submissions in support of the appeal but his counterpart, had not. So, we allocated to each counsel an appropriate time under the Tanzania Court of Appeal Rules 2009 (the Rules), to elaborate on his written submissions, on the part of Mr. Kipeja and Mr. Samwel to reply.

After abandoning the third ground of appeal as indicated earlier on, Mr. Kipeja took the floor and started off with the first ground of appeal above. His major thrust was that in the absence of proof of fraud in acquisition of the plots by the appellant, the trial court was supposed to hold that the lawful owner of the said plots was the appellant and not a partnership between him and the respondent. In supporting his contention, the learned counsel, referred us to sections 2, 33 (1), 40, 73 and 78 of the Land Registration Act (the LRA). He also referred us to numerous authorities of this Court particularly; **Leopold Mutembei v. The Principal Assistant Registrar of Titles and Two Others,** Civil Appeal No. 57 of 2017; **Nacky Esther Nyange v. Mihayo Marijani Wilmore and Another**, Civil Appeal No. 207 of 2019, (all unreported), **Amina Maulid Ambali and Others v. Ramadhani Juma**, [2020] T.L.R. 97 and; **Salum Matheyo v. Mohamed Mateyo** (1987) T.L.R. 111, among others.

As for the second ground of appeal, Mr. Kipeja was equally brief. He submitted that the trial court erred in holding that the plots in dispute were partnership property. He contended that neither the appellant nor the respondent pleaded or testified that the plots were partnership assets. He concluded by stating that a court of law cannot grant a relief not prayed by either of the parties. In that respect, he relied on the High

Court's decision in the case of **Anania Kamala v. Tryphone Kaijunga**, Land Appeal No. 61 of 2021 (unreported), and implored us to borrow inspiration from it, since we are not bound by any decision of the High Court.

In reply to the arguments in support of the appeal, Mr. Samwel was in full support of the decision of the High Court. His only reason for supporting the decision was that the respondent proved that the plots were jointly acquired and therefore they were jointly owned by both the appellant and the respondent. On the evidence tendered to demonstrate joint ownership of the property, learned counsel referred us to the minutes of a reconciliation meeting which was convened by Mr. Wilbard Pius Samamba (DW3). That document, which is dated 16th August, 2016 and which was received as exhibit D1, is contained at page 153 of the record of appeal. In addition, he submitted that the appellant and the respondent had made a decision to divide partnership assets amongst them and that the outcome of the division was that the disputed plots were to be taken by the respondent and other assets were given to the appellant. With that point, the learned counsel implored us to uphold the position maintained by the High Court and dismiss the appeal with costs.

In rejoinder Mr. Kipeja was emphatic arguing that there was no evidence which was led to show that any of the plots were bought using

the partnership money or that they were partnership property. He submitted that whatever might have been stated in exhibit D1 cannot supersede the certificates of title issued in respect of the plots. He finally submitted that Kellu Kamo Lucas was the appellant's name and not a partnership name, such that there is no logical way that the disputed plots could be taken to be partnership assets. He submitted that, in the circumstances, the appeal has merit and it ought to be allowed with costs to the appellant's benefit.

To start with, we wish to observe that, the resolution of this appeal calls upon us to invoke the provisions of rule 36 (1) (a) of the Rules. Under that provision, when dealing with an appeal from the High Court or Tribunal exercising original jurisdiction, this Court has mandate to re-appraise the evidence tendered at the trial and draw an inference of inferences of its own, - see **Jamal A. Tamim v. Felix Francis Mkosamali and Another**, Civil Appeal 110 of 2012 (unreported). The other principle of law which we think will be a useful tool is provided for under section 3 (1) (b) of the Evidence Act, where it is provided that a fact is said to be proved, in civil matters when its existence is established on a preponderance of probability, also called the balance of probabilities. A fact is deemed to have been proved to that standard when looking at the evidence adduced, the court either believes the fact to exist or it

considers its existence so probable that a prudent man ought to act upon a supposition that the fact exists. Proof of a fact on the balance of probabilities also means that a court sustains such evidence of a party which is more credible than the other on a particular fact or a fact in issue; see **Paulina Samson Ndawavya v. Theresia Thomas Madaha,** Civil Appeal No. 45 of 2017; and **Ernest Sebastian Mbele v. Sebastian Sebastian Mbele & Others,** Civil Appeal 66 of 2019 (both unreported).

To be precise, the issue for our determination in this appeal, is whether the appellant proved ownership of the disputed plots to the exclusion of the respondent. As indicated above, the appellant's evidence was tendered by only himself as PW1. His evidence is from page 106 to 116 of the record of appeal, and according to him, he bought the plots from third parties and he processed registration of the plots in his name. To substantiate his ownership of the plots, the appellant tendered four exhibits, which were; two offers of a right of occupancy (P1), two certificates of occupancy (P2), several exchequer receipts for various payments for the two plots (P3) and two official searches (P4). All these documents are contained in the record of appeal between pages 139 and 152. In explaining the manner he acquired the plots, at page 106 of the record of appeal, the appellant testified that he bought plot 247 from Maguba Musa for TZS. 12,000,000.00 and the plot at that time was plot

no. 17, only that later it was renumbered by the land authorities as plot 247 Block "Q". At page 109 he testified that he bought plot 249 from Charles Masuka (DW4). This evidence of the appellant on acquiring plot 249 was supported by DW4 himself at page 134 of the record of appeal when he said that he sold the plot to the appellant in 1998. As indicated earlier on, the plots were later registered in the single name of the appellant. That was the material evidence as to ownership of the plots from the appellant's side.

As for the respondent, the evidence relevant to ownership of the plots came from the respondent himself, Dr. Luis Shija (DW1) and DW4. We will start with a keen dissection of the evidence of DW1 as to what he said justified his ownership of the disputed plots. What he mentions on the plots is at page 119 where he testified that plot 247 was bought in 1997 when he was pursuing his further studies. He also said plot 249 was purchased in 2004. At page 122 to 123 of the record of appeal, DW1 stated:-

> *"To my knowledge, plots 247 and 249 are my properties. According to the minutes, plots, buildings, vehicles were given to the plaintiff except Plot No. 247 Block "Q" and 249 "Q". The rest went to the plaintiff. There were Plot No. 236 and 237 with exhausted improvements. Toyota*

Land Cruiser, Ambulance, Toyota Surf, a dispensary (Igalilimi) and all appliances on plot 18 Block "C" and the center account. I pray that all documents be true. The suit be dismissed for want of merits. I also pray the court to declare me the owner of plot No. 247 and 249 Block "Q".

It was during cross examination, that DW1 shed useful light on whether he had any legal connection with the plots in the nature of ownership or not. Due to the relevance of this piece of evidence, we will quote it at some length. At page 124 of the record of appeal, he stated:-

"I do not remember when plot 17 block K was bought. I cannot remember from whom, between Charles Masuka and Magugu Mussa, the said plot got bought. ***I don't remember because the plaintiff is the one who paid the money. Plot 247 Block "Q" was purchased from Magugu Mussa. I was not present as I was on study leave****. I entered into an agreement with Magugu for the sale of that plot.* ***I do not remember the date. But it was in 1997. The plaintiff did that under my instructions. I do not have evidence that the plaintiff was instructed by me to purchase the plot from Magugu****. I cannot remember the account number of Wazazi dispensary of which the money got used in*

purchasing of the said plot. ***I do not have any document indicating the purchase of the plot using Wazazi accounts****. It is true in 2004 plot 249 Block "Q" was purchased. I am sure about this. In my written statement of defense paragraph 17 it is written that it was purchased in 1998. Therefore, the correct version is that the purchase was from Charles Masuka in 2004. I do not know when the agreement was prepared. The plaintiff knows that. I was not present when plot 249 Block "Q" was purchased. I paid the first installment. The rest was paid by the plaintiff. I do not have it here".*

[Emphasis added]

Then the respondent concluded at page 125 of the record when he said:-

"I have not shown any document to indicate that I am the owner of plots No. 247 and 249. The two plots are in the names of Kellu Kamo Lucas".

[Emphasis added]

Wilbard Pius Samamba, DW2 just tried to reconcile the parties and his evidence does not shed any light on which plot belongs to whom. We do not think the evidence of this witness was at all helpful in seeking to

resolve the issue of who owns the two plots. The same was for the evidence of Theresia Pascal DW2.

The evidence of Charles Masuka DW4 was relevant on the issue. Although called by the respondent, the witness was firm that a person to whom he sold Plot 249 was the appellant.

From this point on, we will focus our full attention on defining ourselves as to whether or not, the appellant managed to prove the case on the balance of probabilities. And of course, we will consider the strength, of the respondent's case and state with certainty whether such evidence did tilt the balance and outweigh that of PW1. We do not intend to take long in doing so.

The evidence we have just summarized, may be compressed further in several points which will enable us to resolve the issue of who is the lawful owner of the plots in an easier way. From the evidence, this is what we have gathered; **one**, both plots are registered in the public land register in the name of the appellant. **Two,** the plots were not acquired illegally or fraudulently. **Three**, the respondent did not give any money to the appellant for purposes of acquiring the plots in question. **Four**, the plots were bought in the respondent's absence. **Five,** there was no evidence, that any partnership money was spent in buying any of the

plots; and **finally,** the respondent stated that he did not have any evidence that he was the owner of the disputed plots.

In this case, although the High Court noted that the appellant proved that he was the registered owner of the plots based on the documents presented (exhibits P1, P2, P3 and P4), nonetheless the court took the view that such proof was not enough, in the circumstances of the case. In that context, at page 211 of the record of appeal, the trial court observed:

> *"**Notwithstanding, circumstances of this land dispute require evidence more than banking on the said documents.** I am saying so because, **one,** going by the evidence of PW1, he simply testified to have purchased the two plots from two different persons; that is one Charles Masuka for Plot No. 249 and plot No. 247 Block Q was purchased from Mabubu Mussa. The sale agreements were not tendered in evidence. **Two,** persons named by the Appellant to be vendors, that is Charles Masuka for Plot No. 249 and Mabubu Mussa for plot No. 247 Block Q were not called in evidence. **Three**, the Plaintiff have not demonstrated on the source of income leading to acquisition of the said plots. The circumstances of this case where there was sort of partnership, required whoever alleged to have a separate*

property, as these disputed [plots], to account for on how he acquired [them]. It may not suffice, as in the instant land dispute the Plaintiff merely saying to have purchased the two plots from own sources. What it takes, in my view, the Plaintiff used the advantage of being in charge of administrative and financial matters to purchase the property using own names".

[Emphasis added]

In other words, according to the trial court, in addition to the tendered two certificates of occupancy and other legal documents evidencing ownership, the appellant needed more evidence to substantiate ownership of the plots. With respect, we do not agree, and we will demonstrate why we think the trial court erred in holding so.

One, with all the above documents evidencing ownership of the plots, particularly the certificates of occupancy or the title deeds, it was not necessary for the appellant to tender the sale agreements in order to be believed that he was the owner of the plots. That is so because, the owner of registered land as defined under section 2(1) of the LRA means:

"owner' means, in relation to any estate or interest, the person for the time being in whose name the estate or interest is registered".

In addition, section 40 of the same Act, provides the significance of the certificate of title in evidence. It provides:

> *"a certificate of title shall be admissible as evidence of the several matters therein contained".*

That is to say, because Kellu Kamo Lucas, is shown as the owner of the estate in the certificates of title, according to section 40 of the LRA above, that is sufficient evidence as to the owner of the interest in the estate in question. In law, doubt as to the authenticity of the registered estate, arises only where the same is proved to have been fraudulently acquired in terms of section 33 (1) of the LRA, which provides as follows:

> *33.-(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 Act, the Forests Act or the Water Resource Management Act (other than easements created or saved under the provisions of the last-mentioned Act); and

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

The side notes to the above section read *"estate of registered owner paramount".* The above provision means that a person whose name is written as the registered owner of the land referred to in the certificate of occupancy, owns that land to the exclusion of all persons except where a third party can prove that the land was acquired fraudulently or that any of the points listed from (a) to (g) is relevant to the land.

Otherwise, the law on ownership of registered land, may be summarized thus; where a subject's piece of land has been surveyed and duly registered in the public land register, and such owner of the land has

been granted a certificate of occupancy by the official land authorities, ownership of the land and all interests in it, for all intents and purposes, vest in that registered owner, and his estate and interest in the land is paramount. Thus, unless such subject's interest in the land is subsequently legally revoked by an appropriate state authority, in accordance with the law, or a court of competent jurisdiction in land matters consequent to pursuit of a due process of law, determines otherwise, the owner's interest in the registered land must, by all means in this country, be protected by both the law, and the courts.

The point we are making is that, the appellant having tendered the certificates of occupancy for the plots, he did not need to tender the agreements upon which he purchased them. In **Amina Maulid Ambali (supra)** this Court stated that:

> *"...when two persons have competing interests in a landed property, the person with a certificate of title is always to be taken the lawful owner unless it is proved that the certificate was not lawfully obtained".*

In the case before us, whereas the appellant had two certificates of title in court, the respondent admitted to have no document as evidence of his ownership to the disputed plots.

Two, the other point by the trial court was that the persons who sold the plots to the appellant were not called to give evidence in court. **First**, it is not wholly true that both sellers of the plots were not called to give evidence. Charles Masuka, one of the sellers was called by the respondent and he appeared in court and testified as DW4, and in the course of doing so, he affirmed to have sold plot 249 to the appellant. Besides, we do not think that it was necessary for the appellant to call the individuals who sold the plots to him. To accept and endorse as a condition, that on all occasions, proof of ownership of registered land must be adduced by oral evidence of sellers, would be to assume that sellers of land will, in perpetuity be available to testify as to the sale. That assumption may not be legally and factually feasible because no one can guarantee availability of any man in perpetuity. In any event, in the case of **Leopold Mutembei** (supra), this Court endorsed a quotation made by Dr. R. W. Tenga and Dr. S. J. Mramba, in their work; **Conveyancing and Disposition of Land in Tanzania: Law and Procedure**, LawAfrica Dar es Salaam, 2017 at page 330, which goes:

> *"...registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in a parcel of land. The act of registration confirms transactions that confer, affect or*

terminate that ownership or interest. ***Once the registration process is completed, no search behind the register is needed to establish the chain of titles to the property, for the register itself is conclusive proof of the title".***

[Emphasis added]

So, we do not agree that to prove his ownership of the plots, the appellant needed to call the sellers as witnesses in order to complement the certificates of title he had in his name. The certificates of title did not need any complementary evidence.

Three, the other consideration by the trial court, was that the appellant did not prove the source of the money he used to purchase the plots, and that being a sole partner available in office running the business he owned with the respondent, the appellant took advantage of the latter's absence who was on study leave, to apply the partnership funds to buy the two plots which he registered in his name. In our view, however, for such a finding to be valid, there must be two verifiable assumptions underlying it. **One,** is that there must have been loss of partnership money which was occasioned by the appellant, before or around the time that the plots were acquired. **Two**, that such facts of loss of partnership

money, must have been pleaded in the written statement of defense of the respondent, and were specifically proved at the trial.

In this case, however, we have thoroughly studied the written statement of defense contained between pages 63 to 65 of the record of appeal, but we have not been able to trace a complaint of the respondent that a particular amount of money from the funds of the partnership got lost at the instance of the appellant and that the money might have been spent in acquiring the plots. Even the prayers in the written statement of defense do not suggest that there was any partnership money that the respondent was claiming following any losses caused to the partnership by the appellant.

Thus far was for the pleadings; now the evidence. We have reviewed the evidence of all the four witnesses who were called by the respondent. There is none, not even the respondent himself, who testified that the appellant caused any quantified loss. If there was no evidence of loss of partnership funds, how would a finding that the appellant used the partnership funds to buy plots, be valid? In our view, the finding that the appellant applied the funds of the partnership to finance purchase of the plots, was neither based on any credible complaint of the respondent in the pleadings, nor on any evidence. In this case, to expect the appellant to account for how he obtained funds used to purchase the plots, would

be to require too much from him, in the absence of any quantifiable loss of any partnership money.

In view of the above, there was no basis for the finding that the plots were the property of the partnership. That is so further because, neither the appellant, nor the respondent pleaded that the plots belonged to them jointly or in partnership. In simple terms, looking at the prayers referred to earlier on in this judgment, no party to the case prayed that an order be made that the lawful owner of the plots was any partnership.

In the circumstances, it is fair to observe also that no issue was framed which would call for the finding that was made by the trial court. The single substantive issue that was framed and upon which the case was to be decided was; who between the appellant and the respondent, was the lawful owner of the plots. It is trite law that, cases must be decided on the issues framed and not otherwise. The law too, is that if a trial Judge determines that a certain issue needs to be determined, he must record it and bring it to the attention of the parties for them to express their views on it. In **Said Mohamed Said v. Muhusin Amir and Another**, Civil Appeal 110 of 2020 (unreported), this Court stated:

> *"Issues guide parties in their litigation. The more so, a trial Judge is obligated to decide the case on the basis of the issues on record. As to what*

should a Judge do in the event a new issue crops up in the due course of composing a judgment, settled law is to the effect that the new question or issue should be placed on record and the parties must be given opportunity to address the court on it".

See also**, Scan Tan Tours Ltd v. The Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012 (unreported), and; **Ex B. 8356 S/SGT Sylvester S. Nyanda v. The Inspector General of Police and Another**, [2014] T.L.R. 234. In the latter case this Court held that:

"(ii) It is an elementary and fundamental principle of determination of disputes between the parties that courts of law must limit themselves to the issues raised by the parties in the pleadings as to act otherwise might well result in denying any of the parties the right to fair hearing".

That, we think is good law and relevant to the case at hand. It is relevant because, the issue which was framed was not determined, instead an issue on the land being owned by the partnership, which issue was not addressed by the parties carried the day.

In the circumstances, we are satisfied that the appellant proved the case and discharged the evidential burden placed on him in terms of

section 110 (1) of the Evidence Act. He sufficiently proved that he was the lawful owner of the disputed plots to the exclusion of any third party. Further, as amply demonstrated above, there was no basis to declare the appellant and the respondent in partnership as the lawful owners of the plots. In the circumstances the first and the second grounds of appeal are allowed.

Accordingly, the decision of the High Court is hereby reversed, and the appellant is declared the lawful owner of the disputed plots. We finally allow the appeal with costs.

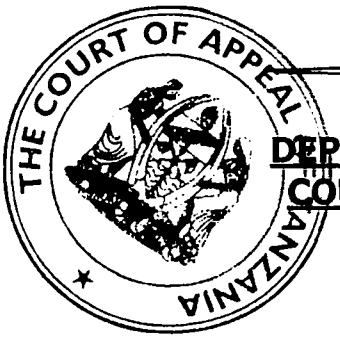
DATED at **SHINYANGA**, this 12th day of December, 2023.

W. B. KOROSSO
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The Judgment delivered this 12th day of December, 2023 in the presence of the appellant in person and Mr. Frank Samwel, learned counsel for the respondent, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL