IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: JUMA, C.J., MKUYE, J.A. And WAMBALI,J.A.)

CIVIL APPEAL NO 74 OF 2019

PHILIPO JOSEPH LUKONDE.....APPELLANT

VERSUS

FARAJI ALLY SAIDI.....RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania at Dodoma)

(Hon. H. H. Kalombola, J.)

Dated the 4th day of December, 2018

in

Land Case No. 14 of 2016

JUDGMENT OF THE COURT

16th & 21st September, 2020

JUMA, C.J.:

This appeal involves a dispute over a parcel of land situated in Plot No. 60 Block 14 Chinangali West in Dodoma Municipality (now Dodoma City) and registered in the name of the appellant, Philipo Joseph Lukonde. On 26th October 2016 the respondent, Faraji Ally Saidi, filed a suit, Land Case No. 14 of 2016, in the High Court at Dodoma against the appellant. The respondent claimed that on 2/11/2015 he entered into a Sale

Agreement to purchase the appellant's parcel of land. The respondent claimed specific performance of the agreement of sale of the appellant's land.

The respondent's case in the High Court was built on his own evidence (PW1), and on the evidence of Abdallah Abubakar Saggafu (PW2). The respondent recalled the date, 2/11/2015 when he and the appellant, signed a sale agreement (exhibit P1) in his OILCOM Petrol Station office at Magomeni-Kagera Dar es Salaam. They agreed on the purchase price at Tshs. 165,000,000/=. According to the respondent, after signing the agreement, the appellant handed over to him his original Offer of land title. As consideration for their Agreement, the respondent paid the appellant a sum of Tshs. 134,200,000/= being part of the purchase price. He promised to pay the remaining instalment of Tshs. 30,800,000/= upon the appellant handing over to him his Title Deed.

The respondent informed the High Court how later on, when he reminded the appellant to hand over Title Deed, the appellant reneged from his part of sale agreement requiring him to hand over the Title Deed. The respondent denied the appellant's pleadings that the sale agreement

(exhibit P1) was only a temporary arrangement, pending a final agreement which would show a purchase price of Tshs. 650,000,000/=.

The respondent's case was supported by PW2. He recalled that it was the appellant who had initially approached him with an offer to sell the disputed plot at price of Tshs. 145,000,000/=. Because he was not interested, he alerted the respondent in Dar es Salaam to the prospect of buying that plot of land in Dodoma. PW2 later learnt about the appellant's reluctance to hand over the Title Deed to the respondent.

On his part the appellant confirmed that he first approached PW2 to invite him to purchase his plot of land. He also confirmed that PW2 linked him up to the respondent. He however contradicted the respondent's version with respect to purchase price. He insisted that while negotiating the price with the respondent, he offered to sell his land at a price of Tshs. 1 Billion. He finally climbed down to the price of Tshs. 650,000,000/=. He did not have original copies of his land title documents; these had earlier been destroyed by fire. He insisted that the sale agreement which he signed at price of Tshs. 165,000,000/= was a temporary agreement. And parties would have signed a permanent

agreement when the respondent paid up the full purchase price of Tshs. 650,000,000/-.

In his suit, the respondent prayed for the following orders: Firstly, he asked the trial court to issue an order of enforcement of contract, by directing the appellant to receive the remaining contractual sum of Tshs. 30,800,000/=. Secondly, he asked the trial High Court to order the appellant to sign all necessary documents to conclude formal transfer of land from the vendor to the purchaser. In the alternative to ordering the signing of transfer documents, the respondent asked the High Court to declare him to be the legal owner of the disputed plot of land. The respondent also prayed for a permanent injunction to restrain the appellant from interfering with the disputed land. Finally, the respondent prayed for general damages.

The learned trial judge (Kalombola, J.) made a finding that there was a contract between the respondent and the appellant because the appellant sold the disputed plot, and the respondent had accepted the offer and paid Shs. 134,200,000/- out of the agreed contractual sum of Shs. 165,000,000/=. She also accepted the respondent's assertion that the

remaining sum was to be paid after the handing over the Certificate of Title to the respondent. The learned trial judge found clear evidence that the appellant had failed to fulfil his obligation under the sale agreement.

The trial court entered its judgment in favour of the respondent and issued several orders. Firstly, the trial court issued an order to enforce the contract by directing the appellant to receive the contractual sum of shs. 30,800,000/= which was due under the sale agreement. Secondly, the appellant was ordered to sign all documents necessary for the transfer of disputed plot to the respondent. Thirdly, the trial court issued a permanent injunction to restrain the appellant from interfering with the disputed land. Fourthly, the respondent was awarded general damages (which were not specified).

The appellant was aggrieved by the decision of the trial court. He lodged this appeal on two grounds. In the first ground the appellant faults the trial court's finding that there was enforceable sale agreement. The second ground similarly faults the trial court's finding that there was a breach of the sale agreement.

When the appeal came up for hearing, two learned counsel, Mr. Deus Nyabiri and Ms. Sophia Gabriel, appeared for the appellant. Mr. Godfrey Wasonga, learned counsel, appeared for the respondent. The appellant had earlier filed written submissions on 29/04/2019 and the respondent had followed up with written submissions in reply which was filed on 28/05/2019.

In the written submissions, Mr. Nyabiri argued that the appellant had what he described as "an arrangement" of selling his land at price of Shs. 650,000,000/= which the respondent had agreed to pay. He disputed the sale price of Shs. 165,000,000/= which appears in the sale agreement (exhibit P1) which the appellant signed. It was submitted that the respondent had induced the appellant into writing the document purporting to sell the disputed land at a lower price in order to make him to believe that the remaining Shs. 515,800,000/= would be paid later. It was submitted that the appellant was surprised when later he saw documents, which were designed to transfer his land to the respondent which showed a purchase price of Shs. 23,000,000/= instead of Shs. 650,000,000/= he had expected.

He submitted that when the appellant refused to hand the title deed to the respondent, he was reported to the Ministry of Land and to the police at Magomeni. Mr. Nyabiri highlighted the lack of witnesses to the sale agreement, which in his submission makes sale agreement uncertain and doubtful. He pointed out Abdallah Abubakar Sagaffu (PW2), who was supposed to witness the signing of the sale agreement, did not sign it because he was then away in Dodoma.

Mr. Nyabiri urged us to interfere with final order of the trial court where Kalombola, J ordered the appellant to "sign all documents to enable transfer of the disputed land." He submitted that the appellant should not be made to sign documents in circumstances where some contractual documents show consideration of Shs. 23,000,000/= while the sale agreement (exhibit P1) shows consideration of Shs. 165,000,000/=. This confusion over purchase price, he submitted, creates uncertainty whether there was any breach of contract. This explains, he went on, why the appellant refused to sign documents which were presented before him to conclude effect the transfer of ownership of disputed land. In the prevailing confusion, the learned counsel for the appellant submitted that

the element of consent within the meaning of section 13 of the Law of Contract Act Cap 345, was missing in the sale agreement.

Mr. Nyabiri then went on to distinguish two decisions of this Court which Mr. Wasonga had relied on in the written submissions. These decisions are, **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** [1993] T.L.R. 280 and **GEORGE SHAMBWE V. NATIONAL PRINTING COMPANY LIMITED** [1995] T.L.R. 262.

He argued that these decisions are distinguishable because in the appeal before us there are uncertainties over the signing and witnessing of sale agreement (exhibit P1). He pointed out that, while a copy of sale agreement on page 55 of the record of appeal (exhibit P1) bears photographs of parties to that contract, same document appearing on page 54 has only one photograph, of the appellant.

To support the appellant's claim that the purchase price was Shs. 650,000,000/= but not Shs. 165,000,000/=, Mr. Nyabiri referred to the appellant's evidence that he had initially proposed a selling price of One Billion shillings, but later he and respondent agreed a purchase price of Shs. 650,000,000/=. Nyabiri insisted that the price of Shs. 165,000,000/=

quoted in the sale agreement (exhibit P1) was a temporary sale agreement which would be replaced by a final agreement when the total amount of Shs. 650,000,000/= is paid.

Regarding the first ground of appeal concerning whether there was a contract of sale, the learned counsel submitted that existing doubt over the purchase price creates uncertainty over what agreement was actually reached between the appellant and the respondent. He submitted that as far as the appellant is concerned, the sale agreement (exhibit P1) was temporary and correct purchase price is Shs. 650,000,000/=.

To cement his argument that the sale agreement disclosing a purchase price of Shs. 165,000,000/= was temporary arrangement, Mr. Nyabiri referred to exhibit D1 which the appellant tendered in his evidence in chief. Exhibit D1 was a collection of documents which contained contract for disposition; transfer of right of occupancy; notice of disposition; and, spousal consent to dispose land. Because these documents disclose the consideration of Shs. 23,000,000/=, it was submitted, the Court should regard the sale agreement showing a consideration of Shs. 165,000,000/= anything but a temporary agreement.

Mr. Nyabiri also referred us to provisions in Land Act Cap 113, Land Registration Act Cap 334 and Land Registration Regulations which, he submitted, do not qualify the purported sale agreement (exhibit P1) to be anything near a disposition of the right of occupancy. He elaborated that the sale agreement (exhibit P1) cannot transfer land because it is not written in the format required by the law, and is not attested as law requires. He submitted that because exhibit P1 does not qualify under the laws and Regulations he cited; it cannot facilitate disposition of land under section 61 (1) of Cap. 113.

When his moment came to submit, Mr. Wasonga placed on the respondent's filed written submissions, which he highlighted orally. It was submitted that there are no uncertainties over the sale agreement (exhibit P1) to justify the refusal of the appellant to sign the transfer documents hence breaching the fundamental terms of the sale agreement. Mr. Wasonga was not in any doubt that the appellant and respondent had on 2/11/2015 entered into a valid agreement for purchase of disputed land at the price of Shs. 165,000,000/=. He submitted that the suggestion that this agreement was temporary is not part of the agreement and this Court

should not allow the appellant to amend the written agreement orally as an afterthought.

Unlike Mr. Nyabiri, Mr. Wasonga insisted that the decisions of the Court in **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** and **GEORGE SHAMBWE V. NATIONAL PRINTING COMPANY LIMITED** (supra) are very relevant to this appeal before us. He submitted that in **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** (supra) when a party to a sale agreement refused to sign transfer documents, the Court pertinently held: *"That defendant to be condemned to sign all necessary documents to enable the plaintiff to transfer ownership from the vendor to the purchaser."* He urged us to do the same against the appellant because the respondent is seeking the enforcement of agreement of sale (exhibit P1).

Mr. Wasonga described the second decision of the Court in **GEORGE SHAMBWE V. NATIONAL PRINTING COMPANY LIMITED** (supra) to be very relevant as pertinent to this appeal before us because, after parties had concluded the land sale agreement, the vendor (the appellant) had benefitted after receiving part of the purchase price as

consideration. The vendor refused to sign the agreement and tried to disown the agreement altogether. The learned counsel described the following holding as pertinent to this appeal before us:

> *"(i) On the basis of the evidence there was a concluded agreement for sale of the house between the appellant and the respondent;*
>
> *(ii) It is not correct to say that because the approval of the Commissioner for Lands had not been obtained therefore there was no agreement of sale between the appellant and the respondent;*
>
> *(iii) Though the agreement for sale of the house was inoperative as it was not approved by the Commissioner for Lands, it did not also mean that there was no binding agreement as borne out of evidence;"*

The learned counsel for the respondent also made oral submissions in which he highlighted several paragraphs of the appellant's written statement of defence where he admitted that there was a sale agreement (contract) between him and the respondent. The relevant paragraphs of the written statement of defence are:

"2. ...the Defendant admits that there was an arrangement of selling his piece of land namely Plot No. 60 Block 14 located at Chinangali within Dodoma...."

17. That as regards to the contents of paragraphs 9 of the Plaint, the defendant admits to have received the said sum of Tshs. 134,200,000/=..."

Mr. Wasonga submitted that having entered into a sale agreement showing the purchase price of Tshs. 165,000,000/=, it was untenable for the appellant to renege from that agreement and contract under the cover that it was a temporary. He submitted that it was inappropriate for the appellant to claim Tshs. 650,000,000/= which was not part of the sale agreement he had signed.

Mr. Wasonga also rejected the suggestion that the appellant was coerced into signing the sale agreement (exhibit P1). He referred us to the evidence on page 107 of the record where, under cross examination, the appellant did not remember the dates he was taken to police in Dodoma and at Magomeni in Dar es Salaam. The learned counsel also urged us not to allow the appellant to claim that the sale agreement was forged because there are so many instances in pleadings and in his evidence

where the appellant admits that he signed the sale agreement and he even received advance payment as consideration. He disagreed with the suggestion that the appellant did not consent to the sale agreement.

We have considered the record of appeal and the submissions of counsel on the two grounds of appeal, that is, whether there was contract of sale of land, and if so, whether it was breached.

This being a first appeal, this Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusions. The conclusions may affirm the trial court's finding of facts, or this Court may even arrive at a totally different conclusion on the same facts. But, as this Court stated in **TANZANIA SEWING MACHINE CO. LTD V. NJAKE ENTERPRISES LTD**, CIVIL APPEAL NO. 15 OF 2016 (unreported), we shall exercise our power to re-evaluate evidence very cautiously because the trial court was at a better position to see, hear and appreciate the evidence.

From evidence on record and submissions of the two learned counsel, it is not in dispute that on 02/11/2015 the appellant and the respondent signed an agreement (exhibit P1) for sale of land situated in

Plot No. 60 Block 14 Chinangali West in Dodoma Municipality. The point of departure between the disputing parties is evidently over the agreed selling price of the suit land. While the respondent maintains the price to be Tshs. 165,000,000/= as shown in the sale agreement (exhibit P1), the appellant on the opposite end, claims the price of 650,000,000/= which he showed in his written statement of defence before trial court and also reiterated during his evidence in chief.

The learned counsel for the appellant has cast doubt on the finality of the sale agreement on several fronts. Firstly, he highlighted the absence of an independent witnesses to the sale agreement, specifically the absence of Abdallah Abubakar Sagaffu (PW2). It was submitted that absence of PW2 as a witness affected the validity of sale agreement. Secondly, he referred to transfer documents (exhibit D1), which set the sale price of his land at Shs. 23,000,000/=. This amount, he argued, is different from the selling price of Tshs. 165,000,000/= appearing in the sale agreement the appellant signed. He argued that this disparity clouded the element of consent of parties, and created doubt and uncertainty whether there was any sale agreement at all. Thirdly, Mr. Nyabiri also

raised the spectre that the appellant was coerced into signing the sale agreement (exhibit P1). Finally, Mr. Nyabiri relied on the provisions in Land Act Cap 113, Land Registration Act Cap 334 and Land Registration Regulations to cast doubt on validity of sale agreement (exhibit P1) arguing the sale agreement does not meet the statutory threshold of disposition of the right of occupancy from the appellant to the respondent.

After hearing the two learned counsel for the parties we carried out our own re-evaluation of evidence. We think it is rather belated for counsel for the appellant to try and walk the appellant away from sale agreement which he freely signed at the respondent's offices in Dar es Salaam after travelling all the way from Dodoma for that very purpose. Mr. Wasonga has referred us to the appellant's written statement of defence where in second and seventeenth paragraphs, the appellant admitted that he signed the sale agreement (exhibit P1) and received consideration of Tshs. 134,200,000/= out of the contractual sum of 165,000,000/=. Again, the appellant's claims over the temporary nature of the sale agreement he signed, and his demand for purchase price of Tshs. 650,000,000/= are not

borne out by the sale agreement which provided him with best opportunity to stake these fundamental demands.

Where parties have freely entered into binding agreements, neither courts nor parties to the agreement, should not interpolate anything or interfere with the terms and conditions therein, even where binding agreements were made by lay people. This was brought out very lucidly in **MICHIRA V. GESIMA POWER MILLS LTD** [2004] eKLR where the Court of Appeal of Kenya discussed the construction of agreement for the sale of land which the trial court had found as matters of fact that the contract was "home-made" and contained several contradictory clauses framed in unusual terms. The Court of Appeal of Kenya advised against tampering with concluded agreements and to give effect to the intention of the parties as can be discoverable from their agreement:

> *"...That fact does not give room to this Court to tamper with the agreement. As Apoloo, J.A. said in* ***SHAH V. SHAH*** *[1988] KLR 289 at page 292 paragraph 35, in respect of an agreement drawn by laymen:*
>
> ***'One must bear in mind that this agreement was drawn up by laymen. They did not use any***

legal language and the court can only interpret the sense of their agreement and not interpolate it with any technical legal concept ...'...

If the words of the agreement are clearly expressed and the intention of the parties can be discovered from the whole agreement then the court must give effect to the intention of the parties." [Emphasis added].

It is significant that in his evidence during cross-examination, the appellant appears to have freely consented to sign the sale agreement. He recalled how the respondent invited him to travel to Dar es Salaam with land title documents. When he arrived in Dar es Salaam, he explained to the respondent why he did not take with him his land title documents. He and the respondent then signed the sale agreement at the selling price of Tshs. 165,000,000/=. He pointed out that at the time of signing his photograph and that of the respondent were not there. Tellingly, when he returned to Dodoma after the signing, he informed the respondent that he had then with him his title documents and expressed his intention to complete their agreement. The appellant even tendered a collection of his title documents, exhibit D1, which were necessary for completion of their

sale agreement. Using the words of the Court of Appeal of Kenya in **MICHIRA V. GESIMA POWER MILLS LTD** (supra), the intention of the appellant and the respondent was written in the sale agreement (exhibit P1). Their intention is discoverable from the appellant's own evidence. It is an afterthought for the appellant to claim that the sale agreement was a temporary arrangement. It was similarly an afterthought for him to claim that he was coerced into signing that sale agreement. He was a free agent when he travelled from Dodoma to Dar es Salaam to sign the sale agreement.

From our re-evaluation of evidence, we think, the learned trial judge correctly discovered the intention of the appellant and the respondent when they signed the sale agreement (exhibit P1) on 02/11/2015. The trial judge stated:

> *"This court finds there was a contract between the plaintiff and the defendant because defendant was selling Plot No. 60 Block 14....and the plaintiff accepted the offer hence he paid Shs. 134,200,000/- out of the agreed sum of Shs. 165,000,000/= because it was agreed between them*

that the remaining sum was to be paid after a Certificate of Title was handed to the plaintiff."

In our re-evaluation of evidence, we cannot fault the learned trial judge when she concluded that the evidence from both sides proved that the appellant failed to fulfil his obligation under the terms of the sale agreement (exhibit P1). Whilst under cross-examination the appellant clearly said that he refused to sign the land transfer documents (exhibit D1) because the selling price of his Plot of land was written Shs. 23,000,000/=. We agree with the learned trial judge that the appellant's own evidence was indeed an admission that he deliberately breached the contract of sale of his land.

We take any such deliberate breach of contracts very seriously. Once parties have duly entered into a contract, they must honour their obligations under that contract. Neither this Court, nor any other court in Tanzania for that matter, should allow deliberate breach of the sanctity of contract. On this, we subscribe to what was said in an article titled **"The Nature and Importance of Contract Law,** Oxford University Press, http://lib.oup.com.au/he/samples/clarke_cl3e_sample.pdf:

> *"A contract is a promise (or a set of promises) that is legally binding; by 'legally binding' we mean that the law will compel the person making the promise ('the promisor') to perform that promise, or to pay damages to compensate the person to whom it was made ('the promisee') for non-performance. Promises are a common feature of our lives; individuals make promises to family members and their friends, promises are made within the workplace, suppliers and their customers make promises about the supply and acquisition of goods and services, and political parties make election promises."*

With due respect, we do not agree with Mr. Nyabiri that our decisions in **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** and **GEORGE SHAMBWE V. NATIONAL PRINTING COMPANY LIMITED** (supra) are not applicable to this appeal. In **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** (supra) we reiterated the duty the law imposes on parties to contracts, to perform their contractual obligations.

The respondent Hashim Ayoub Jaku had filed a suit at the District Court at Vuga in Zanzibar to claim against the appellant Mohamed Idrissa

Mohammed for specific performance of an agreement for sale of land. The district court dismissed the suit, holding that the performance of the agreement of sale had been frustrated by the intervention of the appellant's children and clan who blocked the deal on the ground that the land which contains ancestral graves, could not be sold to an outsider.

The respondent's appeal succeeded at the Regional Court at Zanzibar, which held that intervention had not been proved because no such clan members came forward to give evidence to support the appellant's claim. The appellant unsuccessfully appealed to the High Court of Zanzibar. Thereafter, the appellant appealed to this Court. In dismissing the appeal, this Court emphasized that:

> *"...agreements must be adhered to and fulfilled."*
>
> *"The appellant had no good reason not to fulfil his agreement of sale with the respondent and execute the Deed of Sale in his favour."*

Our decision in **GEORGE SHAMBWE V. NATIONAL PRINTING COMPANY LIMITED** (supra) is equally relevant to this appeal, at very least in the context of the submission of Mr. Nyabiri, who contended that in terms of the provisions in Land Act Cap 113, Land Registration Act Cap

334 and Land Registration Regulations; the sale agreement (exhibit P1), does not qualify to facilitate disposition of right of occupancy. This decision demarcates two distinct stages through which a parcel of registered land passes from a vendor to a purchaser. The first stage is contractual, where parties enter into private agreement over parcel of land earmarked for sale. The second stage is the more formal involving actual transfer and change of ownership. It is in the second stage when consent of the Commissioner for Lands is applied for before new titles change ownerships.

The appellant, George Shambwe, filed a suit against the respondent, National Printing Company Limited, seeking a declaratory judgment that the sale agreement between the appellant and the respondent for the purchase of the house was inoperative and for an order for vacant possession of the suit premises by the respondent. The issue was raised, that there was no binding agreement simply because the approval of the Commissioner for Lands was not obtained after the initial agreement between the appellant and the respondent. This Court recognized the

sanctity of the contract of sale while parties were waiting for the consent of the Commissioner for Lands, when it said:

> *"...we wish to make it clear that Mr. Semgalawe, learned Counsel, is not with respect correct in his assertion that because the approval of the Commissioner for Lands was not forthcoming there was therefore no agreement of sale between the appellant and the respondent. This is so because, in the instant case* ***though the agreement for sale of the house was inoperative as it was not approved by the Commissioner for Lands, it did not also mean that there was no binding agreement as borne out by the evidence. In our understanding an agreement for a disposition of a right of occupancy is inoperative in the sense that property does not pass unless and until the approval of the Commissioner for Lands is obtained.****" [Emphasis is added].*

In the instant appeal before us, parties have concluded the first stage, that is contractual stage or agreement stage. We found that there is a valid sale agreement of disputed property between the appellant and the respondent. Exhibit D1 are documents that are relevant in the second

stage, when parties will seek the consent of the Commissioner for Lands to approve formal disposition of the right of occupancy. These documents in exhibit D1 are, the contract for disposition, transfer of right of occupancy, notice of disposition and spousal consent to dispose land. Here we say as we did in **MOHAMED IDRISSA MOHAMMED V. HASHIM AYOUB JAKU** (supra): the appellant must adhere to his obligations under the agreement, because he has not shown good reason not to fulfil his agreement of sale.

Having looked closely at the sale agreement in light of surrounding circumstances, we agree with Mr. Wasonga that there are no uncertainties over the sale agreement (exhibit P1) to justify the appellant's claim either that it was a temporary arrangement, or it envisaged a larger consideration of Tshs. 650,000,000/=. After he received part of the payment as consideration, the contract became operative and binding against the appellant. He is obliged to perform his binding obligations under this sale agreement (exhibit P1).

In the circumstances, we think that the learned trial Judge cannot be faulted in her judgment. We see no merit in the two grounds of appeal

which we dismiss. Accordingly, this appeal is hereby dismissed with costs to the respondent.

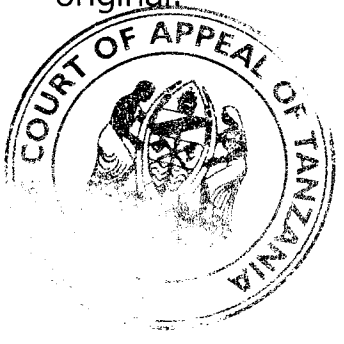
DATED at **DODOMA** this 19th day of September, 2020.

I. H. JUMA
CHIEF JUSTICE

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

The Judgement delivered this 21st day of September, 2020 in the presence of Ms. Sophia Gabriel for the Appellant and Mr. Godfrey Wasonga for the Respondent is hereby certified as a true copy of the original.



S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL