IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWAMBEGELE, J.A., LEVIRA, J.A, And KENTE, J.A.)

CIVIL APPEAL NO. 176 OF 2020

IDRISSA RAMADHANI MBONDERA (Administrator of the Estate of the Late **RAMADHANI ALLY MBONDERA**.....**APPELLANT**

VERSUS

ALLAN MBARUKU.....**1ST RESPONDENT**

AKILI ABDALLAH MKOPI (Administrator of the Estate of the Late **ABDALLAH R. ABDALLAH @ MALIPULA**.....**2ND RESPONDENT**

(Appeal from a Judgment of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Mashauri, J.)

dated the 24th day of May, 2019

in

Land Appeal No. 63 of 2017

.....

JUDGMENT OF THE COURT

15th March & 27th April, 2023

KENTE, J.A.:

As we shall hereinafter demonstrate, in this dispute which has dragged on for close to twenty years now, each of the parties has had his respective share of highs and lows, and in view of the above, the history of

this dispute can be seen by both parties as alternating with periods of triumph and defeat.

The present appeal is against a decision of the High Court (Land Division) sitting as an appellate court in a dispute relating to competing interests to a piece of land known and described as Plot No. 271 Block H, Mbezi High Density Dar es Salaam (hereinafter alternatively referred to as the disputed property, the disputed land or the suit property).

The background leading to this appeal is briefly to the following effect: The appellant Idrissa Ramadhani Mbondera is an administrator of the estate of his deceased father, the late Ramadhani Ally Mbondera. Likewise, the second respondent Akili Abdallah Mkopi is an administrator of the estate of his deceased father, the late Abdallah R. Abdallah @ Malipula. Before his death, the late Ramadhani Ally Mbondera commenced an action against the first respondent in the Kinondoni District Land and Housing Tribunal (the DLHT) claiming ownership of the disputed land.

On being served with a plaint and, believing that there was a nexus between, on one hand, the late Ramadhani Ally Mbondera's claim against him and his liability if any, and, on another hand, between him and the second respondent's father, in his written statement of defence, the first

respondent successfully issued a third-party notice to bring into the suit the said Abdallah R. Abdallah @ Malipula who is now deceased. In the said notice, the first respondent claimed that, he bought the suit property from the late Abdallah R. Abdallah @ Malipula. He went on claiming that, the said vendor had made every endeavour to make him credulous with anything that he said by issuing him with a copy of a letter of offer of a right of occupancy (exhibit R1) showing that he was the lawful owner and occupier of the disputed property.

On his part, after he was brought into the suit and, in reply to the appellant's claim, the third party joined hands with the 1st respondent and firmly maintained that indeed, he was the one who was issued with a letter of offer of the suit property. In an endeavour to persuade the DLHT, he contended that, subsequently thereafter, he cleared the site and went on constructing a building which he later on transferred to the first respondent. He thus prayed for the dismissal of the appellant's claim for allegedly being time barred and ill-founded.

After hearing the parties, the DLHT sustained the appellant's claim which, according to the Tribunal, was not time barred. It declared him the lawful owner of the disputed property and subsequently ordered the

respondents to give him the suit property with vacant possession. For then, the appellant had won the case.

However, unreceptive to the decision by the DLHT, the respondents successfully appealed to the High Court where they carried the day but, neither by argument nor evidence as we shall later on demonstrate. The first respondent was at the end of the day, declared the owner of the suit property having allegedly bought it from the late Abdallah R. Abdallah @ Malipula in 2001.

In allowing the appeal and deciding in the respondents' favour, the learned Judge of the first appellate court began by expressing his reservations on the authenticity of the late Ramadhani Ally Mbondera's letter of offer (Exhibit P2) and title deed (Exhibit P5). The premise on which the first appellate Judge worked was that, the late Abdallah R. Abdallah @ Malipula was allocated the suit property by the Kinondoni District Council in 1983 and thereafter he developed it and later on sold it to the first respondent on 27th October, 2001. Reckoning from 1983 to 2003 when the late Ramadhani Mbondera instituted a civil suit against the first respondent in the Kinondoni District Court (Civil Case No. 330 of 2003) seeking a declaratory order that he was the lawful owner and occupier of

the suit property, the learned High Court Judge took the view that, the respondents had enjoyed a quiet 20 years period of undisturbed occupation of the suit property. He therefore criticized the late Ramadhani Ally Mbondera and his successors including the present appellant for continued 20 years inaction on the alleged respondents' condemnable acts of trespass. The learned Judge then concluded, but not on the basis of the evidence that, the claim by the late Ramadhani Ally Mbondera and the documents supporting him were altogether **malafide**.

Regarding the claim by the respondents that the suit by the appellant was time barred, having found that the cause of action arose in 1983 when the late Abdallah R. Abdallah @ Malipula was allegedly allocated the suit property by the then Kinondoni District Council, and taking into account the fact that the first respondent was sent to court for the first time in 2003, the learned Judge of the first appellate court proceeded to hold that, indeed the appellant's claim before the DLHT was barred by limitation. He therefore allowed the appeal, quashed and set aside the judgment and decree of the DLHT. Aggrieved by that decision, and vowing not to fold up, the appellant has preferred this appeal.

Through Mr. Burhan Mussa, learned Advocate, the appellant has raised the following grounds of complaint; thus:

1. That the High Court erred both in law and in fact to declare the first respondent a bonafide purchaser of the suit property for value;
2. That the High Court erred both in law and in fact to entertain the issue of adverse possession which was not raised during trial;
3. That the High Court erred both in law and in fact to hold that the appellant's suit before the DLHT was time barred;
4. That the High Court erred both in fact and in law to hold that the letter of offer and title deed in respect of the suit land issued to the appellant's deceased father was obtained by fraud without evidence;
5. That the High Court erred both in fact and in law for failure to consider the evidence adduced by the appellant before the DLHT and instead evaluating only the evidence given by the respondents;

6. That the High Court erred both in law and in fact to declare that the second respondent's father was adverse possessor of the suit property without evidence; and
7. That the High Court wrongly framed the issue for determination as to who was a bonafide purchaser of the suit property between the appellant and respondents.

In the determination of this appeal, before delving into the substantive grounds raised by the appellant, we have found it apt and imperative to start with the third ground of appeal under which the question that fell for determination revolves around the competence or otherwise of the appellant's suit before the DLHT in view of the holding by the learned Judge of the High Court that it was time barred.

In support of the third ground of appeal, Mr. Mussa took a firm stance that, the suit before the DLHT was lodged within time. Referring to the factual background giving rise to this dispute which starts with Civil Case No. 330 of 2003 instituted by the appellant's deceased father in the District Court of Kinondoni, Mr. Mussa submitted that, the period of limitation started running from 2003 when the appellant's deceased father discovered that the first respondent had trespassed upon his land thereby

forcing him to institute legal proceedings against him. The learned counsel faulted the learned Judge of the first appellate court for reckoning the limitation period from 1983 when the second respondent's deceased father was allegedly issued with a letter of offer. Instead, it was the submission by Mr. Mussa that, the limitation period began to run in 2003 when the appellant's father discovered that he had been dispossessed of the disputed land. On that point, the learned counsel sought to persuade us relying on our decision in the case of **Maingu E.M. Magenda v. Arbogast Maugo Magenda,** Civil Appeal No. 218 of 2017 (unreported). He also referred us to the case of **Barelia Karangirangi v. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (unreported) to underscore the principle that, the right of action to recover land starts running on the date of dispossession. Mr. Mussa concluded his submissions on ground three by praying that, for purposes of this case, the limitation period should be taken to have started running from 2003 when the appellant's father became aware of the dispossession.

Submitting in reply, Mr. Thomas Massawe, learned counsel for the respondents had very little to say. In his written submissions which he had filed earlier on in terms of rule 106 (7) of the Rules and adopted at the

hearing of this appeal, the learned counsel almost left Mr. Mussa's detail-oriented submissions as he found them. He merely argued that, the question as to whether the appellant's suit before the DLHT was time barred was a matter of simple arithmetic. Only fleetingly, the learned counsel reasoned that, since the second respondent's father was allocated the disputed land by the then Kinondoni District Council on 28th July, 1983 and thereafter he went on to sell it to the first respondent on 27th October, 2001, a total of eighteen years had elapsed. According to Mr. Massawe, that period was far beyond the limitation period prescribed by the law. Towards this end, the learned counsel beseeched us to determine the third ground of appeal in the negative and subsequently hold, as did the first appellate court that, indeed, the suit before the DLHT was time barred.

In a brief rejoinder, Mr. Mussa remained steadfast to his position that, twelve years limitation period began to run in 2003 when the appellant's father discovered the dispossession.

We have dispassionately given thought and weighed the contending arguments from both sides. The most important question we need to ask ourselves before we get caught up in all the nitty-gritty details of this dispute is as to when in law, does the right of action to recover land arise.

As good luck would have it, the answer to the above posed question is not far to come by. Section 9 (2) of Law of Limitation Act Chapter 89 of the Revised Laws (the LLA) which we feel instructive to reproduce here, provides in no ambiguous terms that:

> *"Where the person who institutes a suit to recover land, or some person through whom he claims he has been in possession of land has, while entitled to the land, been dispossessed or has continued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance".*

Coming now to the present case, the crucial question with which we are confronted is, when did the limitation period to recover the suit land start running against the appellant in this matter?

Whereas Mr. Mussa put up a spirited argument contending that the time started running in 2003 when the appellant's deceased father who claimed to have been allocated the said piece of land in 1981 discovered dispossession by the respondents, Mr. Massawe made his point in the most emphatic and brief style, contending that, the twelve years limitation period started running from 1983 when the second respondent's father was allegedly allocated the suit property by the Kinondoni District Council. In

the premise, going by Mr. Massawe's reckoning, the suit before the DLHT was time barred because twenty years had already elapsed when the first respondent was taken to court.

We have anxiously considered the submissions made by both counsel on the third ground of appeal of which the resolution will unquestionably pave the way for the determination of other grounds. Straight away, to Mr. Mussa's submission, we totally subscribe much as we do not agree with Mr. Massawe. Upon a careful reading of the above-quoted section 9 (2) of the LLA, what emerges from there is a principle that, in any claim for recovery of land, the 12 years limitation period prescribed under item 22 of Part I of the said Act, starts running against the claimant when he gets knowledge of the dispossession of ownership. Otherwise, there is simply no other meaning apt enough that can be placed on this provision of the law. In so holding, we are enjoined to point out here that, the above position is not in any way, a state of the art in our jurisprudence. We have taken a similar stance in a long line of authority including the case of **Barelia Karangirangi and Maingu Magenda** (supra) to which we were ably referred by Mr. Mussa.

Having carefully considered the fact that the appellant's father became aware of the respondent's alleged dispossession of the suit land in 2003 where upon he proceeded to institute a civil case against the first respondent in the same year and, considering Mr. Mussa's elaborate oral and written submissions, we will right away reject Mr. Massawe's argument which is obviously incorrect as it is based on a misapprehension of the law. As a matter of fact, after becoming aware of the dispossession, the appellant's father knew well in advance that there was no time to dawdle. He made a diligent follow up and promptly launched a civil action against the first respondent before the respondents had been on the suit land for the period of twelve years as prescribed by the law. In these circumstances, we totally subscribe to the appellant's position and hold in consequence that the suit before the DLHT was lodged within time. Accordingly, we find merit in the third ground of appeal which we hereby determine in the affirmative.

Next we address the second and sixth grounds of appeal. The leading question that runs through these grounds is whether the principle of adverse possession was raised before the DLHT and, if that was the case,

whether the second respondent's father was adverse possessor of the suit property as held by the first appellate Judge.

On the above-posed question, our starting point will inevitably involve a reflection on the doctrine of adverse possession. In a nutshell, and this should be trite knowledge to the legal fraternity, adverse possession occurs when someone occupies land belonging to someone else, without permission. If the adverse occupier does this continuously for a number of years (12 years under our jurisdiction) then, in certain circumstances, the land may become his.

While following two English decisions-viz- **Moses v. Lovegrove [1952]** 2 QB 533: and **Hughes v. Griffin [1969]** 1 ALL ER 460 which were quoted with approval by the High Court of Kenya in the case of **Mbira v. Gachuhi [2002]** 1 EA 137 (HCK) from which we found inspiration, we held in the decision we penned recently in the case of **The Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and Others**, Civil Appeal No. 193 of 2016 (unreported) that, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following:

(a) That there had been absence of possession by the true owner through abandonment;

(b) That the adverse possessor had been in actual possession of the piece of land;

(c) That the adverse possessor had no color of right to be there other than his entry and occupation;

(d) That the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;

(e) That there was a sufficient **animus** to dispossess and an **animo possidendi;**

(f) That the statutory period (in this case twelve years) had elapsed;

(g) That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and

(h) That the nature of the property was such that, in the light of the foregoing, adverse possession would result.

Regarding the respondents' argument who sought to establish in the above-cited case that, their right to adverse occupation was derived from

the original owner in the form of permission, or agreement or grant, we went on holding that, possession could never be adverse if it could be traced to a lawful title which was based on a direct grant.

Coming to the instant case, we have scanned the trial court's record from head to toe. With unfeigned respect to the first appellate Judge, we could not find anywhere where the doctrine of adverse possession was either specifically or impliedly pleaded. And even if it were pleaded or inferred from the evidence as the learned Judge of the first appellate court perhaps did, the law as stated in the above-cited case would certainly stand in the way. For one thing, the statutory period required for the doctrine to come into play had not elapsed, and it must be emphasized here that, in Tanzania, like in any other common law jurisdiction, the defence of adverse possession may have to be augmented by a plea of limitation as the respondents in the instant case vainly sought to do. Yet, for another thing, the second respondent's father whom the first appellate Judge declared to have been the adverse possessor had claimed to have been allocated the suit property by the Kinondoni District Council in 1983. In these circumstances, we should say, but not without respect, that the finding and holding by the learned Judge, that the second respondent's

father was adverse possessor of the suit property, flies in the face of all the evidence and the law.

On that account, we are disposed to share Mr. Mussa's view that indeed, the doctrine of adverse possession was wrongly invoked by the first appellate Judge as it did not feature anywhere in the parties' pleadings or evidence. Above all, one does not need to be a genius to deduce, as the law affirms, that a claim over a piece of land based on adverse possession cannot work in tandem with a claim based on an alleged grant. As a plea in civil proceedings, each of the two is self-sustaining and the two are mutually exclusive. We thus sustain the second and sixth grounds of appeal which we hereby allow.

Next is ground number four which we proceed to consider conjointly with ground number five as the two grounds are closely related if not interwoven. To recapitulate, whereas in the fourth ground of appeal the first appellate Judge is faulted for holding that the letter of offer and title deed issued to the appellant's deceased father were obtained by fraud, in the fifth ground, the learned Judge is criticized for not taking into account the evidence adduced by the appellant on that aspect.

Submitting in support of the fourth ground of appeal, Mr. Mussa contended that, the finding made by the first appellate Judge that the letter of offer and the title deed issued to the appellant's father were obtained by fraud, was not based on the parties' evidence. The learned counsel submitted further that, the evidence on record regarding acquisition of the suit property by the appellant's father was very clear, straight forward and unassailable.

Taking us through the evidence led by the appellant before the DLHT, Mr. Mussa submitted that, the first appellate court was wrong to impute fraud on the appellant while there was no evidence which would lend support to such a serious finding. He accordingly urged us to uphold the fourth ground of appeal.

Regarding the fifth ground of appeal, the learned counsel submitted briefly that, the first appellate Judge strayed into error when, without re-evaluating the evidence, he went on to differ with the DLHT which had declared the appellant's deceased father the lawful owner of the suit property. In support of the proposition that, an appellate court can only differ with a trial court when its opinion is not supported by the evidence and the right inferences of fact, the learned counsel referred us to our

earlier decision in the case of **Yasin Ramadhani Chang'a v. Republic** [1999] TLR 489.

Submitting in reply and after either strategically or inadvertently skipping the fourth ground of appeal, Mr. Massawe contended in respect of the fifth ground of appeal, that, the complaint that the first appellate Judge did not re-evaluate the appellant's evidence was not supported by the record, rather it was based on the appellant's opinion. He urged us to look at the judgment of the first appellate court as a whole instead of concentrating on a few isolated patches as was allegedly done by the appellant. Mr. Massawe's final contention was that, mere quotation of some few sentences or phrases from the judgment was likely to mislead the Court into believing that the appellant's case was consigned to oblivion.

We have very carefully studied the judgment of the first appellate court. We have also anxiously considered the submissions on the two grounds of appeal. In our judgment, we find merit in the appellant's complaint in both grounds. For, there can be no controversy that, in order to achieve quality and acceptable justice, there is need for each judicial officer to take into account among other things, the elements inherent in the decision-making process which include a proper and balanced

evaluation of the evidence. In an adversarial context like ours, a trial court, or an appellate court in a fit case and deserving situation, is faced with a duty of contrasting presentations and interpretations of the facts as shown by the evidence before applying the law to the said evidence. It is only then that a judge or magistrate can properly reach a conclusion and settle on one view of the case.

Coming to the instant case, upon going through the lower courts' record, we entirely agree with Mr. Mussa's submission that indeed the learned Judge of the first appellate court did not only leave out the appellant's evidence, he also assigned no reason to his condemnatory and extrapolated finding that there was an element of fraud and/or something underhanded in obtaining a letter of offer and title deed by the appellant's father. Moreover, it is worthwhile to observe here that, this being a civil case, in which fraud was not even pleaded, and, as such, fraud is a very serious allegation which carries a stigma that does not attach to ordinary civil claims, we are respectfully of the view that, the remark by the learned Judge of the first appellate court that the appellant's letter of offer and title deed were obtained through fraud, was both unwarranted and uncalled for. If anything and, assuming but without accepting, that both the

appellant's and second respondent's father were allocated the suit property at different times by the relevant authority, then this would be a case of double allocation of land. However, as it happened, it would appear to us that throughout his judgment, the learned Judge of the first appellate court laboured under the wrong impression as to take the view that, whatever the appellant said, should be taken with a grain of salt, but for no reason at all.

As correctly submitted by the appellant's counsel, and, most importantly, it was incumbent upon the learned Judge of the first appellate court to re-evaluate the evidence adduced by the parties before arriving at a different factual finding as opposed to the finding by the DLHT. Thus it should now be manifest why earlier on, in this judgment, we pronounced ourselves that we were in agreement with Mr. Mussa as regards the fourth and fifth grounds of appeal, which we hereby allow.

Lastly are the complaints in the first and seventh grounds of appeal, a key plank of which is the learned Judge's formulation of the issue as to who between the appellant and respondents was the bonafide purchaser of the suit property and his subsequent finding that the first respondent was the bonafide purchaser for value without notice.

It was submitted on behalf of the appellant in the first place that, the framing of the impugned issue was wrong as it did not reflect what was contained in the parties' pleadings and what transpired in the DLHT. Moreover, it was Mr. Mussa's submission in the second place that, there was no point in time when the appellant claimed that his father had purchased the disputed property.

Submitting in reply, Mr. Massawe opposed the appellant's complaint saying that, in framing the impugned issue, the learned Judge of the first appellate court was addressing the specific complaint raised by the respondents (then the appellants) who had faulted the trial DLHT for not finding that the first respondent (the first appellant then) was a bonafide purchaser.

As per the norm, in deciding on whether or not the learned Judge of the first appellate court was correct to frame the issue as to who was the bonafide purchaser of the suit property between the appellant and respondents, we have to be guided by both the law and the evidence.

In any common law jurisdiction like ours and, particularly in the law of real property, a bonafide purchaser is someone who purchases property in good faith, believing that he or she has clear rights of ownership after

the purchase and having no reason to think that there is any other party's claim to the title of that property.

Bearing in mind the above definition and, going by the evidence on the record, we are unhesitatingly of the settled view that, the complaint by the appellant in the seventh ground of appeal, is not without merit. Instead of making a broad statement, the learned Judge ought to have confined himself to the plea of bonafide purchaser as raised by the first respondent who had sought to rely on it. It should be needless to say that, by extending that doctrine so wide as to cover the appellant, the learned Judge had unconventionally relieved himself of the duty to examine the appellant's case on its own merit and perspective.

It behoves us to state at this juncture that, it is a cardinal rule that parties to any civil proceeding are bound by their pleadings and for that matter, it is not open to the court to base its decision on an unpleaded matter.

In the instance case, had the learned Judge of the first appellate court approached the parties' case in their respective distinctiveness and in equal and well balanced proportions, he would certainly have found, as we do that, the appellant's uncontroverted evidence shows on a balance of

probabilities that, his deceased father was allocated the suit property by the erstwhile Kinondoni District Council in 1981 and that, upon payment of the fees and levies attendant to the newly acquired plot, he was subsequently issued with a title deed vesting in him the right of occupancy over the said property in 1989. Going forward, the learned Judge would have found that, after obtaining a building permit (Exhibit P7) which was issued to him on 1st July, 1992, the late Ramadhani Ally Mbondera went ahead to erect a single storey building which had reached the lintel level at the time of dispossession but which was subsequently completed and finally occupied by the second respondent.

On a further note, the learned Judge of the first appellate court would have realized that, until the occurrence of this dispute, the said right of occupancy had not been revoked by the relevant authority and that, until then, the certificate of title issued in the name of Ramadhani Ally Mbondera still subsisted.

With such evidence in abundance, all in favour of the appellant, the learned Judge would not have been easily won over to the respondents' case which was solely based on a letter of offer (Exhibit R1) purportedly informing the late Abdallah R. Abdallah @ Malipula that his application for a

long term right of occupancy over the suit property had been approved by the allocation committee and nothing more.

In this connection, it can hardly be disputed as Prof. G. M. Fimbo writes, that, as the law stood then, the grant of a right of occupancy was manifested by the certificate of occupancy and the right of occupancy would vest in the relevant person on the execution thereof. (See a Text of a Public Lecture entitled "*Double Allocation of Urban Plot: A Legal Labyrinth, Citizens Puzzlement and Nightmare*" delivered on 3rd day of September, 1998 at the Central Library Dar es Salaam under the Auspices of the Law Association of Tanzania).

Based on the foregoing analysis, we hold that grounds one and seven are indeed not without merit and we accordingly sustain them.

Before we conclude our judgment, regardless of the risk of being repetitive, we need to have an in-depth look at the equitable doctrine of bonafide purchaser for value without notice which was raised by the first respondent and subsequently sustained by the first appellate court.

According to the 9th Edition of the Blacks Law Dictionary, a bonafide purchaser is defined as "*one who buys something for value without notice*

of another's claim to the property and without actual or constructive notice of any defects in or infirmities claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims". Coming back home, in the context of real and personal property in which the term bonafide purchaser for value without notice is commonly used, taking cognizance of the doctrine, section 67 (a) and (b) of the Land Act read together with section 66 (1) (a) of the same Act provides that:

> *"67. The following are the covenants implied, subject to section 66, in every instrument to which section 66 refer: -*
>
> *"(a) a disposition of a right of occupancy or a lease is to be taken to include and convey with the interest being conveyed all rights, easement, and appurtenances belonging to the land, or the interest being conveyed or usually held or enjoyed with the land or interest being conveyed, but this covenant does not give a person a* ***better title to any interest in land referred to in this covenant than the title which the disposition of which it is a part gives that person****;*

(b) a person obtaining a right of occupancy or a lease by means of a disposition not prejudicially affected by notice of any instrument, fact or thing unless-

(i) it is within that person's knowledge, or ***would have come to that person's knowledge if any inquiries and inspections had been made which ought reasonably to have been made by that person****; or*

(ii)it has in the disposition as to which a question of notice arises, come to the knowledge of the person's advocate or agent as such if such inquiries had been made as ought reasonably to have been made by that advocate or agent as such".

[Emphasis added].

In essence, the above-quoted law is intended to protect a purchaser of property if he was an innocent buyer without notice of any incumbrance, if it is shown that the purchaser was not aware of the fraudulent dealings of the seller and that he had followed due process in obtaining the title.

It cannot be emphasized here and, as we shall see in the emerging jurisprudence on the doctrine, that, the due process demanded by the law

to be followed by the buyer entails amongst others, conducting due diligence such as official search on the property with a view to verifying the particulars of the property, executing a sale agreement with the vendor, obtaining consent to transfer ownership, and payment of stamp duty, rates and other expenses to the Government prior to and after the sale transaction.

Presenting the concept of the doctrine in a simplified form, the Court of Appeal of Uganda had the following to say in the case of **Kalende v. Haridar & Company Limited [2008]** 2 EA 173 from which we can borrow a leaf:

> *"...a bonafide purchaser for value without notice in real property is a person who honestly intends to purchase the property offered for sale and, does not intend to acquire it wrongly".*

It also makes a point to refer to another inspirational decision by the High Court of Kenya in the case of **Hannington Njuki v. Willian Nyanzi**, Civil Suit Number 434 of 1996 in which it was held that, for a purchaser to successfully rely on the bonafide purchaser doctrine, he must prove the following, thus:

(i) He holds a certificate of title;

(ii) He purchased the property in good faith;

(iii) He had no knowledge of the fraud;

(iv) The vendor had an apparent valid title;

(v) He purchased without notice of any fraud; and

(vi) He was not a party to any fraud.

According to Quincy Kiptoo and Tabitha Ayiera in their informative Article entitled "*The Doctrine of Bonafide Purchaser without Notice*" (Finance Law, March 4, 2022), available at tta.co.ke, in the realm of conveyancing, the purchaser must undertake due diligence. The purchaser's Advocate, if any, must establish good root of title which involves site visits and search of the title so as to confirm the real owner of the land as well as check incumbrances.

Bearing in mind the above exposition of the law, we have closely examined the original record according to which the first respondent claimed to have conducted a search at the Kinondoni Municipal Council and the Ministry of Lands and allegedly established that the disputed property was registered in the name of the vendor whom he referred to as Abdallah Rashid Malipula. However, except for the appellant's due diligence report (Exhibit P8) dated 3rd February, 2004 which shows that the late Ramadhani

Ally Mbondera was the registered owner of the dispute property, there is absolutely nothing on the record showing or suggesting that the said property was registered in the name of Abdalah R. Malipula in 2001 when the first respondent purportedly bought it. What is more, whether the 1st respondent conducted the alleged official search at the Ministry of Lands as he told the DLHT in his all-embracing statement or at the office of the Registrar of Titles, that needed to be, but was not clarified.

All the above considered, with respect, it would appear to us that the learned Judge of the first appellate court took the first respondent's assertions at their face value and went on erroneously concluding that he was a bonafide purchaser for value without notice of the appellant's title over the same property. We need to emphasize as we have already stated that, in all land transactions such as the one in the instant case, it is always incumbent upon the purchaser to undertake due diligence by assessing the risks associated with the property he is planning to purchase.

In this connection and given the first respondent's grave omissions, it behooves us to observe as did the Nigerian Court of Appeal in the case of **Mrs. Clementine Igwebe v. Saidash International Limited and Another [2016] LPER-41188** from which we found inspiration, that:

> *"Indeed the whole basis of the equitable principle of bonafide purchaser for value without notice is to protect a purchaser from fraud of his vendor...but the rule goes further, in the sense that, if a purchaser fails to investigate title properly, he is assumed to have constructive notice of anything that he would have discovered had he investigated the whole title diligently".*

Back home, in the furtherance of the above position, we held similarly in the case of **Hamis Bushir Pazi and Four Others v. Saul Henry Amon and Four others,** Civil Appeal no. 166 of 2019 (unreported) that, in the circumstances of that case, the second respondent's unreasonable omission to make inquiry and find out from the relevant authorities what interests, if any, the fourth respondent's relatives had in the suit property before she went on to buy it, put her on a constructive notice of the appellants' ownership interests in that property and for that reason, she could not be heard to say that she was a bonafide purchaser for value without notice.

Coming to the instant case, much as it may be a bitter pill for the first respondent to swallow but for which there seems to be no consolation, he may have to live with the fact that he did not exercise all necessary due

diligence before he went on to buy the suit property. Otherwise he would not have failed to establish that the vendor had no certificate of title as the suit property appears to have been purportedly held by him under a mere letter of offer of a right of occupancy. In that regard, the first respondent could have avoided something he would later on come to regret greatly.

Moreover, it is worth noting from the evidence that, the purported sale agreement was not approved by the Commissioner for Lands and, the process of transferring land title as required in terms of section 41 of the Land Registration Act, Chapter 334 of the Revised Laws which is a prerequisite condition for registration of any interest in land and other land transactions was not followed. In the peculiar circumstances of this case which we find rather disquieting, saying, as one might get the feeling, that, perhaps the first respondent was completely not aware of all these and other requirements in real property transactions, would be to put it mildly. But all things considered, what is non-fictional, is the fact that, the omissions by the first respondent carry dire consequences which he may have to be advised to ultimately endure.

When all is said and done, we find ourselves in agreement with Mr. Mussa that indeed this appeal is not without merit and we accordingly

allow it. The decision of the High Court is set aside and in lieu thereof, the decision of the DLHT is restored. Needless to say, the appellant will have his costs, here and in the lower courts.

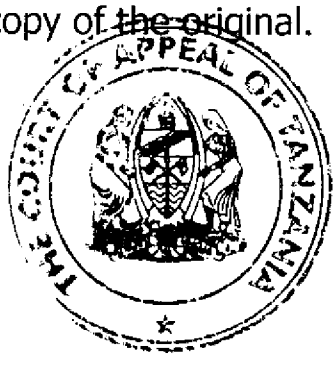
DATED at **DAR ES SALAAM** this 20th day of April, 2023.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Judgment delivered this 27th day of April, 2023 in the presence of Mr. Burhan Mussa, learned advocate for the appellant also holding brief for Mr. Thobias Massawe, learned advocate for the respondent is hereby certified as a true copy of the original.



F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL