IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MKUYE, J.A., KOROSSO, J.A., And MAKUNGU, J.A.)

CIVIL APPEAL NO. 126 OF 2020

AMOS NJILE LILI ..... APPELLANT

VERSUS

NYANZA COOPERATIVE UNION (1984) LTD ..... 1ST RESPONDENT

GERALD KUSAYA ..... 2ND RESPONDENT

THE ATTORNEY GENERAL..... 3RD RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Mwanza)

(Mgeyekwa, J.)

dated the 30th day of July, 2019

in

Land Case No. 12 of 2018

.....

JUDGMENT OF THE COURT

15th August 2023 & 31st January, 2024

KOROSSO, J.A.:

The appeal is against the decision of the High Court of Tanzania sitting at Mwanza delivered on 30/7/2019 (Mgeyekwa, J. as she then was) in Land Case No. 12 of 2018, which was dismissed for want of merit. The contextual setting giving rise to the appeal is that on 7/1/2007, at an auction conducted by a court broker, the appellant purchased property on plot No. 104/1 Block A, Igogo Industrial Area, Mwanza Region, with a Certificate of Title No. 45296 (suit property). Noteworthy, is the fact that

the auction where the appellant purchased the suit property was in execution of the decree of Civil Case No. 45 of 2003, after the dismissal of the 1st respondent's appeal by the Court. Having purchased the suit property, the appellant was issued with a proclamation of sale (exhibit P1).

It is on record that, originally, the suit property was owned by the 1st respondent. Upon his purchase and transfer, the appellant was issued a certificate of title No. 45296, registered on 9/7/2013 in his name. It is alleged that in December 2017, the appellant (PW1) received information that the certificate of occupancy related to the suit property was canceled. According to him, he followed up with the relevant authorities and was assured that it was still valid. Sometime later, through tenants premised at the suit property who had received a letter from the Regional Commissioner Mwanza apprising them that the suit property was no longer owned by the appellant but belonged to the 1st respondent, the appellant was informed that his title to the disputed land was revoked. In January 2018, the appellant was invited and attended a meeting convened by the Prime Minister to discuss issues related to the sale of the suit property, held at Dodoma. The appellant testified that at the Dodoma meeting, his title to the suit property was questioned and he was directed

to surrender the Certificate of Title of the suit property, which at the time was still in the custody of the court that tried and dismissed Land Case No. 58 of 2015. At the meeting in Dodoma, the appellant signed a document titled *"Makubaliano ya Kurejesha Mali"* (exhibit P2 or disputed contract).

The appellant's evidence further expounded that sometime in 2015, upon receipt of a notice of revocation of his title to the suit property by the President of the United Republic of Tanzania, he instituted a suit in the High Court in Land Case No. 58 of 2015. In the suit, he claimed ownership of the suit property against various defendants including Mwanza City Council (then, the 1st defendant); the 1st respondent herein (then, the second defendant); the Commissioner for Lands and the Registrar of Titles (then the third and fourth defendants respectively) and the 3rd respondent herein (then the fifth defendant). The suit was dismissed with an order that the disputed property be surveyed and proper demarcations be made between the appellant's land and the land allegedly belonging to the 1st respondent.

The appellant did not appeal against the dismissal of the suit in Land Case No. 58 of 2015, and the judgment was admitted as exhibit P3. However, he filed another suit, Land Case No. 12 of 2018, which is the

subject of the instant appeal. The suit was lodged against the respondents herein with the appellant claiming for the following declaratory orders; one, that the purported settlement agreement dated 15/1/2018 between the appellant and the Government of the United Republic of Tanzania (disputed agreement) is *void ab initio* and therefore unenforceable. Two, that the plaintiff is the lawful and registered property owner of the suit property. Three, for payment of special damages of Tshs. 150,000,000/- per annum from January 2018. Four, for payment of Tshs. 2,000,000,000/- for general, exemplary, and punitive damages; and five, for commensurate interests and costs.

The respondents filed a joint written statement of defence (WSD) disputing the claims and prayed for the dismissal of the suit with costs. They urged the court to declare that the disputed contract was valid and lawful and that the first defendant was the lawful owner of the suit property. Suffice it to say, that upon hearing the contending parties, the trial court decided in favour of the respondents for the following reasons: Firstly, the disputed contract was valid, both parties having entered it with free consent since it was signed by both parties, and in the absence of evidence to show the appellant was forced to sign. Secondly, having failed to comply with the order of the Commissioner for Lands to respond to the

rectification notice, and having failed to challenge the order by the court in Land Case No. 58 of 2015 dismissing the challenge on the rectification of the title deed by the court, the appellant could not come to the court and claim otherwise. The trial court held that the revocation of the title to the suit property and its acquisition by the President of the United Republic of Tanzania upon its rectification was lawful. Thirdly, the owner of the disputed property was the President of the United Republic of Tanzania, the Registrar of Titles having been registered thus. Fourthly, the suit was not *res judicata* as in Land Case No. 58 of 2015 although addressed the same subject matter, the disputed land, the parties to the two suits, differed. Fifthly, no damages were awarded to any party except for the costs awarded to the respondents.

The appellant was aggrieved by the decision and, hence, preferred the instant appeal. The memorandum of appeal contains five grounds which, paraphrased fault the trial Judge on the following four complaints: **One**, for holding that the appellant and the Government of the United Republic of Tanzania had a valid contract (settlement agreement). **Two,** finding the appellant to have signed the contract out of free consent. **Three**, finding that Plot No. 104/1 Igogo Industrial Area was lawfully acquired by and under the ownership of the President of the United

Republic of Tanzania; and **four**, failing to properly evaluate the evidence on record and thus arriving at an erroneous decision.

On the day the appeal came for hearing, the appellant was represented by Mr. Jamhuri Johnson, learned counsel whereas, Mr. Solomon Lwenge, learned Senior State Attorney represented all the three respondents assisted by Ms. Sabina Yongo and Mr. Felician Daniel, learned State Attorneys.

When provided the floor, Mr. Johnson commenced by adopting the written submissions filed by the appellant so that they form part of his oral submission. He preferred to address the grounds of appeal successively and commenced with complaints one and two questioning the validity of the disputed contract. He faulted the trial judge for failing to take into account the apparent defects in exhibit P2, hence her erroneous finding on its validity.

He contended that upon scrutiny of exhibit P2, the validity of the contract is doubtful for the following reasons: one, while the contract is alleged to be between the Government of the United Republic of Tanzania (the Government) and the appellant, it is signed by the second respondent in his capacity as the Chairman, while there is no clarity on his capacity within the Government since the role of Chairman is not an official post in

the Government service unless specified thus. He argued that the position of the Chairman of the team, a signatory of the disputed contract was not clarified nor was his capacity to represent the government stated. According to the learned counsel for the appellant, considering that section 10 of the Law of Contract Act provides that parties competent to contract should be the ones to enter agreements, in exhibit P2, one of the parties, the Government side, was signed by a person who was not competent to contract on its behalf. Secondly, is the fact that exhibit P2 was not properly attested. Thirdly, the fact that the trial judge did not address the issue of whether the contract was signed out of free will, a requirement under the law.

The learned counsel stated that, in determining this matter, the trial Judge was expected to have ascertained how the appellant travelled to Dodoma and the motive behind it. He argued that the trial court should have found that there was no free will on the part of the appellant when signing the disputed contract, taking into account the circumstances surrounding his attendance there, including having no witness on his side at the signing of the contract, his counsel having been denied access to be part of the meeting.

Another concern was the lack of consideration. Mr. Johnson invited us to consider the fact that a contract without consideration is no contract. According to him, in the disputed contract under clause no. 3, the appellant is made to promise not to claim any compensation from the respondent upon signing the contract, which he argued amounted to a threat to coerce him to sign the disputed contract, removing the element of free will on his part.

The learned counsel for the appellant argued further that the absence of attestation in the contract presupposes that the appellant was denied an opportunity to seek legal advice. He argued that when all the gaps are taken into account it should lead to a conclusion that there was no free consent on the part of the appellant. The failure of the respondent to prove otherwise that there was free will on the part of the appellant should also be considered on the preponderance of probability, he asserted. Furthermore, the learned counsel contended that it was erroneous for the trial Judge to shift the burden of proof to the appellant to show there was free consent in entering the contract whilst one, the disputed contract lacked attestation of the signatures and two, given the threats to the appellant, engrained in the clauses of the disputed contract.

He referred us to an Indian case of **Wajid Khan v. Raja Kwaz Ali Khan** 1891, L.R. Ind. App. 144 to reinforce his stance.

Expounding on the third complaint, that challenged the trial court's finding that the disputed land was lawfully acquired and thus owned by the President of the United Republic of Tanzania, the learned counsel for the appellant argued that even if there was such acquisition, it was wrong to determine thus, since the alleged acquisition was an issue for determination in Land Case No. 58 of 2015 before another High Court Judge and should have been left to be determined accordingly in the said case. The learned counsel for the appellant argued that, in reaching such a finding, the trial Judge was; one, acting as an appellate court against a decision of a fellow Judge and, second, if there was such acquisition, then in essence, the trial Judge was making a finding that there was no contract entered between the appellant and the Government since the appellant had no title to transfer the disputed land to anyone let alone the Government.

On this complaint, Mr. Johnson concluded by submitting that the holding by the trial Judge was misconceived since the issue of acquisition of the disputed land was not before the trial court for determination at the time. He then proceeded to argue in the alternative that, if the issue

of acquisition of the disputed land was an issue for determination in the trial court, then it should have been upon the respondents to lead evidence to prove whether or not the alleged acquisition was lawful and in consequence, whether the appellant was compensated. It was the learned counsel for the appellant's contention that, we should bear in mind that the findings by the trial Judge on page 194 of the record of appeal that there was a notice before the acquisition by the President of the United Republic of Tanzania were not pleaded and no evidence was adduced at the trial to prove the assertion.

Amplifying the fourth grievance, Mr. Johnson faulted the trial Judge for failure to properly analyze the adduced evidence as required by law. He contended that there was no evidence adduced at the trial, for the trial Judge to conclude that the respondents proved that exhibit P2 was properly executed since, while PW1 testified on the signing of exhibit P2 none of the respondents' witnesses gave evidence on how the contract was entered between the parties, negotiations and involvement of the parties.

The learned counsel also queried why after having found that the matter was not *res judicata*, the trial Judge proceeded to determine matters that were subject to Land Case No. 58 of 2015, instead of dealing

with only those issues of relevance to the trial before her, such as matters related to the execution of exhibit P2. He concluded his submissions, praying for the appeal to be allowed, the disputed contract to be declared null and void, and a declaration that the appellant is entitled to damages pleaded and costs.

In response, Mr. Lwenge decided to follow the appellant's counsel approach, that is, sequentially. Confronting complaints one and two together, he sided with the holding of the trial Judge that the contract was valid for the following reasons: first, the disputed agreement was drawn through a special committee/team of the Government, with a full mandate to contract on behalf of the Government. Second, the disputed contract was witnessed by members of the special team and it is not a requirement of law for each party to have their witnesses present at the signing of a contract. Third, on the issue of lack of free will on the part of the appellant when signing the contract, the learned Senior State Attorney disputed the complaint arguing that the appellant failed to prove his contention of lack of free consent despite having pleaded thus as found in paragraphs 10 and 11 of the plaint as can be discerned from the appellant's evidence found on pages 92-112 of the record of appeal.

Therefore, it was improper at this juncture to claim otherwise when he failed to prove his claims at the trial.

Fourth, according to the learned Senior State Attorney, since there was a clause in the contract that promised to compensate the appellant upon the property in dispute being acquired by the President of the United Republic of Tanzania, without doubt, this was consideration within the confines of section 25(1) of the Law of Contract Act. He contended that the disputed contract aimed to facilitate a peaceful surrender of the disputed property by the appellant since the disputed property was already in the hands of the President and the appellant failed to prove otherwise as required by the law. Mr. Lwenge cited cases related to the responsibility of a party who alleges a fact to prove it such as **Martin Fredrick Rajabu v. Ilemela Municipal Council and Another**, Civil Appeal No. 197 of 2019 (unreported). Fifth, the fact that the appellant and the respondent had concluded an agreement that has not been disputed, should thus lead to a conclusion that the contract is valid. To bolster this argument, he referred us to our decision in **Simon Kichele Chacha v. Aveline M. Kilawe**, Civil Appeal No. 160 of 2018 (unreported). In conclusion, he implored us to find the two complaints unmerited.

Regarding grievances number three and four which he chose to address conjointly, on acquisition and ownership of the disputed land, the learned Senior State Attorney argued that this complaint was misconceived since at the start of the trial, ownership of the suit property was already with the President. According to him, the corollary to this is the fact that the trial court could not depart from the decision of the High Court (Maige, J. (as he then was)) in **Amos Njile Lili v. Mwanza City Council and 4 Others,** Land Case No. 58 of 2015 (unreported) on this issue, which cemented the fact that the suit property had been acquired by the President, together with its title. He cited the case of **James Makundi v. Permanent Secretary Ministry of Lands, Housing and Human Settlements Development and 2 Others,** Civil Appeal No. 181 of 2021 (unreported) to buttress his contention.

In response to the grievance related to the failure of the trial court to evaluate evidence properly, the learned Senior State Attorney did not spend much time on this, stating that the judgment clearly shows that the evidence was thoroughly analyzed and the court found that the appellant failed to prove his claims on the balance of probability. He thus urged us to find complaints three and four to lack substance, find the appeal unmeritorious, and dismiss it.

Mr. Johnson's rejoinder was brief, essentially reiterating his submission in chief, he stressed the fact that the alleged negotiations did not take place hence there was no evidence from the respondents' side adducing that fact. He further contended that a perusal of exhibit P2 clearly shows threats to the appellant establishing that it was entered without the free will of the appellant. He also disputed the argument that the trial court could not depart from the High Court decision in Land Case No. 58 of 2015 (Maige, J.) since it was proper, he questioned this stand, arguing that if that was the case, then there was no need for the signing of the disputed contract on 15/1/2018, two months after the said decision was delivered on 30/11/2017. He contended that in those circumstances the contract was rendered redundant. He thus prayed for the appeal to be allowed and the prayers to be granted.

We have carefully considered the submissions from the learned counsel of the contending parties herein, together with the record of appeal and we shall deliberate on the drawn complaints by the appellant in sequence. Moreover, before we delve into the issues, we wish to reiterate the fact that as the first appellate court, we are tasked to evaluate the rival evidence on record and where possible draw our conclusion, a position settled and restated in various decisions including

Okeno v. Republic [1957] E.A. 32, **Tanzania Sewing Machine Co. Ltd. v. Njake Enterprises Ltd**, Civil Appeal No. 15 of 2016, **Makubi Dogani v. Ndogongo Maganga**, Civil Appeal No. 78 of 2019 and **Domina Kagaruki v. Farida F. Mbarak and 5 Others,** Civil Appeal No. 60 of 2016 (all unreported).

Indeed, the evidence on record and the rival submissions from the counsel for the parties herein shows that the fact that the appellant did sign the disputed contract is not disputed nor is the fact that the appellant purchased the disputed property through an auction conducted by a court broker. The other fact not disputed is the capacity to enter into a valid contract for the contending parties in terms of section 11 of the Law of Contract Act as discerned from their pleadings which show that the appellant is a natural person and the 1st and 3rd respondents are legal persons with the capacity to sue or be sued.

In our determination of the complaints before us, we shall be guided by the following principles of law. One, is that in civil cases, the burden of proof lies on the person who alleges anything in his favour founded on section 110 of the Evidence Act. Two, is that the burden of proof envisaged above is on the balance of probabilities as stated in various decisions of this Court, including **Anthony Masanga v. Penina Mama**

Mgesi and Another, Civil Appeal No. 118 of 2014 and **Hamza Byarumshengo v. Fulgencia Manya and 4 Others,** Civil Appeal No. 33 of 2017 (both unreported). Three, under section 10 of the Law of Contract Act, parties are bound by the agreements they freely entered into. The cardinal principle of the law of contract being the sanctity of the contract as expounded in numerous cases including **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R. 288 and **Unilever Tanzania Ltd v. Benedict Mkasa t/a Bema Enterprises,** Civil Appeal No. 41 of 2009 (unreported).

In complaints number one and two, the appellant faults the trial court's finding on the validity of the disputed contract between the appellant and the Government of the United Republic of Tanzania, titled "*Makubaliano ya Kurejesha Mali zilizopo Kiwanja No. 104/1 Kitalu "A" Igogo Industrial Area Mwanza*" (exhibit P2). The challenge on the validity of the disputed contract is founded on the appellant's assertion that, one, there was no free consent on his part when signing the disputed contract. Two, the contract was not attested on his side, and third, lack of consideration. The respondents on the other hand, vehemently rejected the claims, arguing that the appellant signed the contract willingly with the understanding he had to return the suit property to the Government

and the promised compensation should be considered as the requisite consideration. Taking into account the above contending positions, the underlying issue is whether the disputed contract is valid. To determine this, we are guided by the provision of section 10 of the Law of Contract Act which provides:-

> *"10. All agreements are contracts if they are made by the **free consent of parties competent to contract, for a lawful consideration** and with a lawful object; and are not hereby expressly declared to be void:*
>
> *Provided that nothing herein contained shall affect any law in force, and not hereby expressly repealed or disapplied, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents." [emphasis added]*

Indeed, section 10 of the Contract Act outlines the fact that free consent of parties competent to contract for a lawful consideration and object are essential components in establishing a valid contract. Having already determined above that both parties were competent to contract, therefore the next issue we are constrained to address is whether there was free consent on the part of the appellant when he entered the disputed agreement. In proceeding thus, at this juncture, we first dwell

to better understand what "consent" means. Fortunately, section 13 of the Law of Contract Act defines consent to mean; *"Two or more persons are said to consent when they agree upon the same thing in the same sense."*

In the instant appeal, when addressing whether there was the requisite free consent on the part of the appellant when entering the disputed contract, the trial court deliberated on this issue, and on pages 191 and 192 of the record of appeal, observed that: -

> *"... Both parties entered into an agreement whereas on the side of Amos Njile he admitted on his own free will he will return the property and all related documents in relation to the properties in question to the Government... Both parties signed the contract. Though the contract was not stamped but as long as Amos signed the contract and he did not testify that he was forced to sign contrary to what his advocate has stated, it means he consented and agreed to the terms and conditions of the contract..."*

Having considered the passage above, while we agree with the trial Judge that the appellant did sign the contract as displayed in exhibit P2, taking into account the circumstances obtaining which led to the signing of the contract, we remain unconvinced that the act by the appellant of

signing the disputed contract in itself in the absence of any other evidence to prove otherwise, established that there was free consent on his part during the process. We remain unconvinced that signing the disputed contract meant that the appellant of his free will agreed to all the terms in the said contract and that there was *consensus ad idem* for both signatories on the content and context of the contract envisaged under sections 10 and 13 of the Law of Contract Act. We are of such view for the following reasons: **one**, given the circumstances leading to the appellant's attendance at the meeting with the Prime Minister in Dodoma which resulted in him signing exhibit P2 as discerned from the appellant's testimony on page 92 of the record of appeal, evidence which was not disputed. **Two**, there is evidence that the appellant, a layperson, was denied the opportunity to have legal counsel in the said meeting. **Three**, lack of clarity in why the disputed contract was issued by the Government when it is alleged by the learned Senior State Attorney that at the time of filing the suit subject to the instant appeal, the issue of ownership and title to the disputed land had already been determined through the Judgment of the High Court in Land Case No. 58 of 2015. The said judgment was delivered on 30/11/2017 (see page 121 of the record of appeal). If this is the case it is unclear why the Government drew the disputed contract which the appellant signed on 15/01/2018, more than

45 days thereafter. The uncertainty is escalated further when exhibit D1 dated 13/10/2014 is taken into account. It shows that at the time the disputed contract was executed, the President of the United Republic of Tanzania was the owner and the registered title holder of the right of occupancy of the disputed property upon Rectification of the Right of Occupancy related to the suit land.

Four, a preview of exhibit P2 shows it is essentially a one-sided led agreement. The appellant is the one giving or committing himself and receives nothing in return apart from an affirmation that no legal action to be taken against him on matters related to the sale transaction of the disputed land. Clause one of the disputed contract requires the appellant to relinquish the disputed property. In clause two, the appellant undertakes and confirms not to seek any compensation from the government for any expenses incurred in handing over the disputed property. Clause three advances the fact that no legal action will be taken against the appellant from the purchase of the disputed land. In clause four, the appellant undertakes to provide support when needed to finalize the relinquishing of the disputed property, and clause six, alludes that the agreement is to be governed by the laws of Tanzania. **Five**, clause four, is essentially a threat as stated by the appellant's counsel, since it

addresses the sale of the disputed land and not the relinquishing of the disputed property to the government. For the foregoing, we are thus of the firm view that had the trial Judge critically considered the circumstances surrounding the signing of the disputed contract, with due respect, she would not have reached the finding she did that there was free consent on the part of the appellant.

In addressing the issue of the validity of the contract, we also considered whether there was consideration as required by the law. The importance of consideration in contracts has been emphasized in various decisions of this Court. In **Mathias Erasto Manga v. M/S Simon Group (T) Limited**, Civil Appeal No. 43 of 2013 (unreported), we adopted the definition of consideration as found in the case of **Currie v. Misa** (1875) LR 10 Ex 153; (1875 - 76) LR 1 App- Cas 554 stating:-

> *"A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other..."*

In the present appeal, we have failed to find any promise to compensate the appellant in the clauses of the disputed contract, which the learned Senior State Attorney had vehemently informed us was

essentially consideration. Having perused the record of appeal we have found no evidence on the part of the respondent to show there was consideration. We have also taken into account the circumstances surrounding the drawing and signing of the said contract, undoubtedly, the learned Senior State Attorney's argument was misconceived since in the circumstances obtaining such a clause would not augur well with the contents therein. This is because, in the preamble to the disputed contract, there is a clear statement that the Government through a special team convened by the Prime Minister, having conducted an investigation was satisfied that there was illegality in the sale of the disputed property. Such a statement is without doubt complimented by clause four whose contents have been alluded to hereinabove, essentially stating that no legal action against the appellant would be preferred by the Government. We agree with the learned counsel for the appellant that an assertion that the Government will not take legal action against the appellant for the purchase of the disputed property cannot be taken to be the consideration envisaged by law to confirm a contract. We find this further emphasizes possible threats or patronage to convince the appellant to sign the contract. We therefore are of the view that the respondents failed to show there was consideration in the execution of the contract. Thus, the complaints have substance.

About complaint number three challenging the trial court's holding on the ownership of the disputed property, that it was lawfully acquired and was under the ownership of the President of the United Republic of Tanzania, we are of the view that this should not take much of our time. On this issue, the trial court found it was already settled in Land Case No. 58 of 2015 since it dismissed claims challenging the rectification of the disputed right of occupancy and title. A decision which the appellant failed to challenge. The trial court also found that the acquisition of the suit land by the President of the United Republic of Tanzania was lawful upon revocation of the existing grant of right of occupancy over the acquired disputed land since adequate notice was provided to the appellant regarding the intended acquisition. The trial court stated: -

> *... the procedure to acquire the suit piece of land was adhered to and it was effected to its finality..."*

On ownership of the suit property, the trial court found that it was the President of the United Republic of Tanzania who owned and had title to it and relied on exhibit D1, an application for official search.

The learned Senior State Attorney argued that the complaint by the appellant was misconceived since from the start of the trial it was clear that ownership and title of the disputed land was under the President since this issue was already determined by a High Court Judge in Land

Case No. 58 of 2015, a decision which the trial court could not depart from. Having carefully considered the arguments by the learned counsel for the appellant, we agree with him that, one, the trial court having held that the issue had already been determined by another High Court Judge in Land Case No. 58 of 2015, it should have not proceeded to deliberate on it further and give a holding on it. In analyzing the evidence related to an already determined issue, while not exercising appellate or revisional jurisdiction, the trial court erred. Therefore, the complaint has merit.

The fourth complaint on the trial court's failure to properly evaluate the evidence, we find this need not take much of our time since while addressing the other three complaints, this concern was duly addressed and determined.

In the premises, aware that the principle of the sanctity of a contract prevails and courts are advised not to temper with concluded agreements but to give effect to the intention of the parties as discerned from the contents therein (see, Kenyan case in **Mechira v. Gesima Power Mills Ltd** [2004] eKLR and **Philipo Joseph Lukonde v. Faraji Ally Saidi,** Civil Appeal No. 74 of 2019 (unreported) as alluded herein, upon re-evaluation of the evidence, we are of the view that had the trial court properly evaluated the evidence before it, it would have discovered that

the appellant's intention was not embraced in the signed contract since there was no proof of free consent on his part. In the circumstances, we have also failed to discern any grounds advanced by the appellant on record to justify the grant of damages as prayed in the High Court.

In the final analysis, we allow the appeal with costs, to the extent stated. Further, we set aside the judgment and orders of the High Court in Land Case No. 12 of 2018. For avoidance of doubts, interested parties may proceed with the execution of orders in the High Court in Land Case No. 58 of 2015 if they so wish.

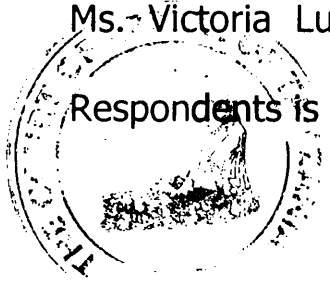
DATED at **DAR ES SALAAM** this 29th day of January, 2024.

R. K. MKUYE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 29th day of January, 2024 in the presence of Mr. Jamhuri Johnson, learned counsel for the Appellant and Ms. Victoria Lugendo, learned State Attorney for the first and third Respondents is hereby certified as a true copy of the original.



W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL