IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA.

(CORAM: LILA, J.A., MWAMPASHI, J.A And MURUKE, J.A.)

CIVIL APPEAL NO. 338 OF 2021

ASHA JUMA MANSOOR..... 1ST APPELLANT

SEBASTIAN OLOMY..... 2ND APPELLANT

ATHUMANI HOTTY..... 3RD APPELLANT

JACKSON MAKUNDI.....4TH APPELLANT

JULIUS KOMBE.....5TH APPELLANT

JUMA MAULID.....6TH APPELLANT

HARUNA JUMA.....7TH APPELLANT

LEONIA MTUI @ MAMA BABU.....8TH APPELLANT

GRISFARU MTENGA.....9TH APPELLANT

PHILIPO R. KIWELU.....10TH APPELLANT

VERSUS

JOHN ASHERI MBOGONI..... RESPONDENT

[Appeal from the Decision of the High Court of Tanzania (Dodoma District Registry) at Dodoma]

(Kalombola, J.)

dated the 03rd day of May, 2018

in

Land Case No. 16 of 2015

JUDGMENT OF THE COURT

07thDecember 2023 & 6th February, 2024.

MWAMPASHI, J.A.:

The appellants herein, have lodged the instant appeal challenging the judgment and decree of the High Court of Tanzania (Dodoma

District Registry) at Dodoma, rendered in Land Case No. 16 of 2015 by Kalombola, J. on 03.05.2018. In that case, where the dispute between the parties was over a landed property located at Plot No. 41 Block 10 Mwangaza Avenue, Mji Mpya, within the Municipality of Dodoma (the suit property), the High Court, among others, declared the respondent herein, John Asheri Mbogoni, the rightful owner of the suit property and ordered the appellants to vacate the suit property.

The material facts giving rise to the instant appeal, which, for better appreciation not only of the gist of the dispute between the parties but also of the merits of the appeal, have to be given in detail, are as follows: Initially, the suit property belonged to the respondent's father Mr. Asheri John Mbogoni (the Landlord). Sometimes back in 1940s, the suit property was rented to one Mr. Nizar Hussein Karmali (the Tenant) by the Landlord. It is also a common ground that during the relevant tenancy, the Tenant was occupying the suit property with his brother, Mr. Mansoor Hussein Karmali who is the husband of the 1st appellant. According to a written note which was tendered by the 1st appellant and admitted in evidence as Exhibit D1, on 04.09.1970, the Landlord borrowed Tshs. 3300/= from the Tenant which was to be repaid within three (3) days failure of which the ownership of the suit property would pass to the Tenant. However, the three days having been lapsed,

neither the loan had been repaid nor the ownership of the suit property had passed to the Tenant.

On 09.01.1973, after the Landlord had passed away, a meeting to resolve the dispute regarding the loan and the suit property was convened by the Dodoma District Development Director. The attendees were the Tenant, the respondent as the Landlord's son and heir and one Mr. A. M. Kanyamala as an administrator of the estate of the Landlord. In that meeting it was agreed and resolved that, apart from the fact that the Tenant would continue occupying and living in the suit property as a tenant, the loan, that is, Tshs. 3300/= plus Tshs. 413/= which the Tenant had been awarded as costs in a suit he had instituted against the Landlord, making the total of Tshs. 3713/=, would be utilized to pay arrears of rent for 27 months at the agreed rate of Tshs. 100 per month. The balance, that is, Tshs. 1016/=, was agreed to be utilized as rent for the forthcoming period of 10 months. This agreement on the manner the loan had been settled, was reduced into writing and the said agreement was tendered by the respondent and admitted in evidence as Exhibit P4.

On 22.07.1975, the respondent through his letter which was tendered by him and admitted in evidence as Exhibit P5, served the Tenant with a 15 days' notice for the Tenant to vacate the suit property.

However, the Tenant, through his letter dated 12.08.1975, which was also tendered and admitted in evidence as Exhibit P5, resisted and refused to vacate unless he is provided with an alternative accommodation. It is also noteworthy that, in 1985, after the Primary Court of Dodoma Urban had confirmed by Exhibit P1 that the respondent was a heir and an administrator of the estate of his father, the Landlord, an offer of Right of Occupancy over the suit property was granted to the respondent in his name. This was followed by a Certificate of Title No. 162003/12, which was issued and granted to the respondent in 1990 (Exhibit P2).

On 12.12.1994, after the demise of the Tenant, the respondent served a six months' notice to vacate the suit property (Exhibit P1) to the 1st appellant's husband Mr. Mansoor Karmali who, as we have alluded to above, had been living and occupying the suit property with his brother, the Tenant. The 1st appellant's husband did not vacate and he later passed away. On 12.11.2014, after the demise of the 1st appellant's husband, the respondent, through his letter tendered by him and admitted in evidence as Exhibit P7, served the 1st appellant, with a 14 days' notice to vacate the suit property on grounds that rent was not being paid and that, without his consent, the 1st appellant had sublet the suit property to the 9 other appellants. The 1st appellant through her

advocate Mr. J.I. Rutabingwa responded to the respondent's notice. By a letter dated 16.12.2014, the 1st appellant intimated that since her efforts to gather and locate the evidence proving that the respondent's father (the Landlord) had sold the suit property to the Tenant and her husband and that the suit property is a family property, had proved futile, she was ready to vacate the suit property and would handover the vacant possession of the same to the respondent provided there would be no claim of arrears of rent by the respondent. By his letter dated 07.01.2015, the respondent agreed to forbear from claiming the arrears of rent and demanded for the suit property to be handed over to him within 14 days.

Notwithstanding the 1st appellant's initial willingness and readiness to vacate and give the vacant possession of the suit property to the respondent as above stated, the 1st appellant did not walk the talk. She changed her mind and refused to vacate the suit property on account that having located exhibit D1 which prove that the Landlord had sold the suit property to the Tenant, she thus has interest in the suit property. This is what prompted the respondent to institute Civil Case No. 16 of 2015 before the High Court against the 1st appellant jointly with the other 9 appellants who were merely joined to the suit as proper parties. In that suit, which, as we have intimated above, was essentially

between the respondent and the 1st appellant, the respondent sought the following orders:

1. *An order that, the plaintiff is the legal owner of the suit premises at Plot No. 41 Block 10 Mwangaza Avenue, Mji Mpya within Dodoma Municipality.*
2. *An order for vacant possession from the defendants of the suit premises at Plot No. 41 Block 10 Mwangaza Avenue, Mji Mpya within Dodoma Municipality.*
3. *An order for permanent injunction against the defendants, their agents, workmen, transferees, assignees or any person acting under their authority from selling, leasing, renting, trespassing or interfering in any way to the suit premises.*
4. *Payment of general damages.*
5. *Costs of the suit.*
6. *Any other relief that the Honourable court may deem fit to grant.*

In their joint written statement of defence, the appellants disputed the respondent's claim that he is the lawful owner of the suit property. It was also stated that based on exhibit D1, the 1st appellant had interests in the suit property through her late husband Mr. Mansoor Hussein Karmali, the brother of the Tenant, who had acquired the suit

property after the Landlord had failed to repay the loan of Tshs. 3300/= in 1970. It was insisted in the joint written statement of defence that, the suit property belongs to the family of the husband of the 1st appellant and that the family had peacefully occupied and lived in the suit property since 1970s. The appellant did thus pray for the respondent's suit to be dismissed with costs.

After a full trial, the High Court found that, though there was no lease agreement between the respondent and the 1st appellant, there was enough evidence including an offer of Right of Occupancy and the Certificate of Title, proving that the respondent is the lawful owner of the suit property. It was also found that the appellants had totally failed to present any evidence to prove that the suit property belongs to the family of the 1st appellant's late husband. The High Court observed and concluded that, mere words from the 1st appellant on her claim over the suit property could not defeat the respondent's Certificate of Title. The respondent was thus declared the lawful owner of the suit property and the appellants were ordered to vacate and pay the costs of the suit.

Aggrieved by the above stated decision of the High Court, the appellants have preferred the instant appeal on the following five grounds of complaint:

1. *That the honourable trial Judge erred in law in entertaining the suit without jurisdiction as the suit was barred by limitation and the plaint did not disclose the value of the subject matter to confer the court with pecuniary jurisdiction.*
2. *That the honourable trial Judge erred both in law and fact in holding that the respondent is the lawful owner of the disputed property.*
3. *That the honourable trial Judge erred in law in failing to analyse the evidence on record in particular Exhibit D1 which shows that the respondent's father had ceased to be the owner after he had failed to pay the loan granted to him against the security which was the suit land.*
4. *That the honourable trial Judge erred both in law and fact in failing to analyse the contradictory evidence of PW1 in particular the two offer letters dated 03rd April, 1976 and 01st October, 1895 on the same piece of land.*
5. *That the honourable trial Judge erred both in law and fact in holding that DWI failed to prove that her late husband owned the land following her failure to consider the evidential value of Exhibit D1.*

At the hearing of the appeal before us, the appellants were represented by Mr. Edward Chuwa and Ms. Anna Lugendo, learned advocates, whereas the respondent had the services of Mr. Elias M. Machibya and Ms. Margreth Mbasha, also learned advocates. Both learned advocates for the parties, had lodged their respective written submissions either for or against the appeal which they fully adopted.

Submitting in support of the first ground of complaint, Mr. Chuwa argued that the respondent's suit was time barred because it being over a landed property it ought to have been filed within 12 years. He contended that the respondent did not state in the plaint the date the cause of action arose contrary to Order VII rule 1 (e) of the Civil Procedure Code [Cap. 33, R.E. 2019] (the CPC). He pointed out that paragraph 6 of the plaint does not give sufficient particulars as to when the cause of action arose. On this point, Mr. Chuwa referred us to the decision of the Court in **Robby Traders Limited v. CRDB BANK PLC and Another,** Civil Appeal No. 70 of 2012 (unreported). It was further submitted by him that if the suit was for breach of tenancy, which was not, it was not pleaded as to when the said breach was committed. He also contended that if it was for trespass then the cause of action arose in 1970s or in 1994 when the 1st appellant's husband did not respond to the notice to vacate the suit property.

Still on the first ground of complaint, Mr. Chuwa submitted that the High Court lacked jurisdiction to entertain the suit because the value of the subject matter was not stated in the plaint contrary to Order VII rule 1 (i) of the CPC. He pointed out that the statement in paragraph 8 of the plaint that the value of the subject matter is over Tshs. 500,000,000/= was sufficient for purposes of rule 1 (f) and not rule 1 (i) both of Order VII of the CPC.

The response by Mr. Machibya to the 1st ground of appeal, was to the effect that the ground is baseless because the date the cause of action arose was clearly pleaded in paragraph 6 of the plaint. He argued that the cause of action arose in 2015 when the 1st appellant who according to exhibit P7 was ready and willing to handover the suit property to the respondent, all of a sudden made a u-turn refusing to handover the suit property and started claiming to have interests in it. Mr. Machibya further submitted that since neither the Tenant nor the 1st appellant's husband had ever claimed ownership of the suit property then it cannot be said that the cause of action arose at that particular time when they were in occupation of the suit property. He also contended that Order VII rule 1 (e) of the CPC was not contravened and that the value of the subject matter was stated in paragraph 8 of

the plaint which was noted by the appellants in their joint written statement of defence.

In his brief rejoinder regarding the 1st ground of complaint, Mr. Chuwa reiterated his submission in chief that the suit was time barred as the family of the 1st appellant had been in possession and use of the suit property since 1970s. He also argued that the plaint did not state when the cause of action arose and what was the value of the subject matter.

Having heard the counsel for the parties on the first ground of appeal and after examining the record of appeal particularly the pleadings, we find that this ground is baseless and devoid in merit. We agree with Mr. Machibya that the suit was not time barred and the High Court had jurisdiction to entertain the suit. First of all, we find that facts pleaded in paragraph 6 of the plaint sufficiently disclosed the cause of action and when it arose as it is required by Order VII rule 1 (e) of the CPC. In paragraph 6 of the plaint, it is stated thus:

> ***6.*** *That, in December 2014 the 1st Defendant was ready to vacate in (sic) the said property in dispute via letter written by her advocate on 16/12/2014. However, in January 2015 she changed her mind and started to claim to have interest in the house in dispute.* ***Copies***

of the letter of the Advocate of the Plaintiff of 12/11/2014 and the reply of 16/12/2014 and the final letter from the Advocate of the Plaintiff dated 17/1/2015 are herewith collectively attached as Annexure MPA – 3 and leave is hereby craved to make them be regarded as part of this plaint.

As it can be clearly discerned from the above reproduced paragraph 6 of the plaint, the facts that the 1st defendant/ 1st appellant, changed her mind and refused to vacate the suit property claiming that she has interests in the suit property, are the facts that constituted the cause of action. The cause of action could not have arisen at any other time before that moment when the 1st defendant/1st appellant refused to vacate the suit property and claimed to have interests in the same. It should be borne in mind that before that particular moment, no one, including the tenant or the 1st appellant and his late husband had ever claimed to have such interests in the suit property. It is also apparent in the said paragraph 6 of the plaint that, the facts as to when the cause of action arose are sufficiently stated. It is stated that the 1st defendant/1st appellant changed her mind and refused to vacate the suit property claiming that she has interests in it, in January, 2015. That is when the cause of action arose.

As on the complaint that the High Court lacked jurisdiction because the value of the subject matter was not stated in contravention of Order VII rule 1 (i) of the CPC, we again find the complaint baseless. Under the said provision, the plaint is required to contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and court fees as far as the case admits. In the instant case, paragraph 8 of the plaint is to the following effect:

8. *That, since the cause of action arose within Dodoma Municipality, Dodoma Region and the value of the house in dispute being over 500 million, this Honourable Court has all the jurisdiction to deal with this matter.*

Looking at paragraph 8 of the plaint, as reproduced above, it cannot be complained that the value of the subject matter was not stated. It is plainly stated in the said paragraph that the value of the house in dispute is over 500 million. The argument by Mr. Chuwa that, the statement in paragraph 8 of the plaint suffices only for purposes of Order VII rule 1 (f) under which it is required for the plaint to contain facts showing that the court has jurisdiction, and not for purposes of rule 1 (i), is not tenable. Paragraph 8 of the plaint suffices and sufficiently contained facts for purposes of both rule 1 (f) and (i) of Order VII of the CPC. Particulars and facts showing both that the High

Court had jurisdiction and also that the value of the subject matter is over 500 million, are stated in paragraph 8 of the plaint. The fact that the statement of the value and the facts showing that the High Court had jurisdiction are all pleaded in the same paragraph is neither fatal nor offensive of any law.

We also note that according to the pleadings, what is pleaded in paragraph 8 of the plaint was not contested by the appellants. In paragraph 10 of the joint written statement of defence, paragraph 8 of the plaint was just noted. Ordinarily, since the appellants had noted what is stated in paragraph 8 of the plaint without more, they ought not to have raised the instant complaint that the value of the subject matter was not stated in the plaint. Parties are always bound by their pleadings.

Mr. Chuwa combined the 2nd, 3rd and 5th grounds of appeal and argued them together. He submitted that the High Court did not properly evaluate the evidence on record in particular the 1st appellant's evidence through Exhibit D1 which showed that the suit property had ceased to belong to the respondent's father (the landlord) after he had failed to repay the loan to the Tenant. He contended that failure to properly analyse and weigh the evidential value of Exhibit D1 led the High Court to reach at an erroneous decision that the 1st appellant had

failed to prove that the suit property belongs to her late husband and hence that the respondent is the lawful owner of the suit property. Mr. Chuwa insisted that based on Exhibit D1 the owner of the suit property is the 1st appellant. He insisted that since Exhibit D1 was tendered and admitted in evidence without any objection, the High Court erred in finding that the 1st appellant had failed to prove that the suit property belonged to her late husband and that what she brought before the court were mere words.

It was further argued by Mr. Chuwa that the fact that the respondent had a Certificate of Title was not absolute and was based on a presumption which was rebuttable as there was an adverse claim of title by the 1st respondent. On this he cited the case of **Nicholaus Mwaipyana v. The Registrar Trustees of Little Sisters of Jesus Tanzania**, Civil Appeal No. 276 of 2020 (unreported). He insisted that through Exhibit D1 and by the fact that it was the 1st appellant who had been in occupation of the suit property, the respondent's ownership of the suit property by the Certificate of Title, had been rebutted.

When prompted by the Court on the effectiveness and value of Exhibit D1, taking into consideration the presence of the loan settlement reached by the Tenant and the respondent as evidenced by Exhibit P4,

Mr. Chuwa reluctantly agreed that the ownership of the suit property never passed to the Tenant, the brother of the 1st appellant's husband.

In his reply submission, Mr. Machibya, strongly opposed the arguments made by Mr. Chuwa in faulting the High Court's finding which is to the effect that, based on the evidence on record, the respondent is the lawful owner of the suit property. He argued that from the very beginning the 1st appellant's defence and claim over the suit property was based on Exhibit D1 and on her being in occupation of the suit property allegedly belonging to her husband's family. Mr. Machibya pointed out that, apart from the 1st appellant with her Exhibit D1, neither the Tenant Mr. Nizar Hussein Karmali nor the 1st respondent's husband Mr. Mansoor Hussein Karmali, had ever claimed ownership of the suit property. He insisted that after the demise of the Tenant, the 1st appellant's husband continued to live and occupy the suit property as a tenant as it was for the 1st appellant herself who continued to occupy it after the death of her husband. He thus reiterated his earlier argument that, based on the evidence on record, the High Court rightly concluded that the respondent is the lawful owner of the suit property. He thus prayed for the 2nd, 3rd and 5th grounds of appeal to be dismissed for being baseless.

To our considered view, grounds 2, 3 and 5 of the appeal, as raised and argued for by Mr. Chuwa for the appellants, essentially fault the High Court for not properly evaluating the evidence on record, particularly the 1st appellant's evidence through Exhibit D1, in reaching at the conclusion that the respondent is the lawful owner of the suit property. In determining the said three grounds of complaint and in consideration of the fact that in the instant matter we are sitting as a first appellate Court, we are obliged to re-evaluate the evidence on record and subject it to critical scrutiny and if justifiable, arrive at our own independent decision. We derive such powers from rule 36 (1) (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules), under which we can re-appraise the evidence on the record and draw our own inferences and findings of facts, of course having regard to the fact that it is the trial court that had the advantage of watching and assessing the witnesses as they gave evidence. See- **Martha Wajja v. Attorney General and Another** [1982] T.L.R. 35, **Jamal A. Tamim v. Felix Francis Mkosamali and Another,** Civil Appeal No. 110 of 2012 and **Paulina Samson Ndawanya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (both unreported).

Having examined the evidence on record and without beating around the bush, we find and agree with Mr. Machibya that the 2nd, 3rd

and 5th grounds of complaint are baseless. The High Court properly concluded that the suit property belongs to the respondent and also that the 1st appellant failed to present any evidence to prove her claims that the suit property belonged to her late husband and his family. First of all, there is evidence in abundance from the respondent proving that the suit property belonged to her late father, the Landlord and that after his demise the property passed to him as exhibited by a number of documentary evidence including Exhibit P1. The fact that the suit property was rented to the Tenant by the respondent's father and further that after the death of the Tenant, the 1st appellant and her late husband continued to occupy the suit property, is also in evidence and not disputed. It is also in evidence that neither the Tenant nor the 1st appellant's late husband had ever claimed ownership of the suit property during their occupation of the suit property.

On the other hand, the 1st appellant's claim of the suit property, as also argued by Mr. Machibya, was mainly based on Exhibit D1. It was the 1st appellant's case that by Exhibit D1, the suit property passed to the Tenant and that the respondent's father (the Landlord) had ceased to be its owner following his failure to repay the loan he had obtained from the Tenant. The appellants' complaint is also that the High Court

did not give the deserving weight to Exhibit D1 hence concluding in her disfavour.

It is our observation that, apart from the fact that what was agreed by the Tenant and Landlord through Exhibit D1 was on its own, not a conclusive evidence proving that the suit property passed to the Tenant, there is undisputed evidence on record which is to the effect that the said agreement (Exhibit D1) was extinguished by the settlement reached by the Tenant himself and the Landlord's son and heir, the respondent, as plainly exhibited by Exhibit P4. The relevant loan in question was repaid when it was agreed through Exhibit P4 that, the same would be utilized to pay the then arrears of rent and that the balance was to be utilized to pay the imminent rent. For those reasons Exhibit D1, on which the 1st appellant's claim was based, had no evidential value to which the High Court could have attached weight. There was no evidence to prove that the suit property had passed to the 1st appellant's husband and his family as claimed by the 1st appellant and the High Court did not err in discounting and disregarding Exhibit D1.

The 1st appellant's claim over the suit property was also based on the fact that she and her late husband's family had been in occupation of the property for quite a long time, that is, since 1970s. In claiming so,

the 1st appellant was trying to raise an issue of ownership by adverse possession. This claim need not detain us. The evidence on record show that the 1st appellant's occupation of the suit property was permissive. Though there was no direct lease agreement between her and the respondent, as found by the High Court, the fact that she had been in such occupation by virtue of her being the wife of Mr. Mansoor who had gained occupation of the suit property from his brother, the Tenant, cannot be disputed. Undoubtedly, under the circumstances of this case, the respondent believed, in good faith, that as it was for the Tenant and the 1st appellant's husband, the 1st appellant was also in occupation of the suit property as a tenant. As we have alluded to above, the evidence show that the occupation of the suit property by the 1st appellant was consensual. It should also be borne in mind that the 1st appellant had never claimed ownership of the suit property until in 2015. It is trite law that consensual occupation is not adverse possession. Further, a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner or in pursuance of an agreement for sale or lease or otherwise. See- **Mbira v. Gachuhi** [2002]1 EA. 137, **Amina Maulid Ambali & Two Others** (supra) and **The Registered Trustees of Holy Spirt Sisters Tanzania v.**

January Kamili Shayo and 136 Others, Civil Appeal No. 193 (unreported). In the latter case, the Court observed thus:

> *"It has always been the law that permission or consensual occupation is not adverse possession. Adverse possession is occupation inconsistent with the title of the true owner, that is, inconsistent with and in denial of the right of the true owner of the premises (see referred English case of* ***Moses v. Lovegrove*** *[1952] 2 QB 533 and* ***Hughes v. Griffin*** *[1969] 1 All ER 469)"*

Finally, it is on the 4th ground of appeal where it is complained that the High Court did not consider that PW1 gave contradictory evidence in regard to his two letters of offer of Right of Occupancy dated 03.04.1976 and 01.10.1985. On this, it was submitted by Mr. Chuwa that, in his testimony, PW1 stated that an offer of Right of Occupancy (Exhibit P2) was issued to him on 03.04.1976 while the relevant Certificate of Title No. 162003/12 was not issued to him until in 1999, after 23 years had lapsed. Mr. Chuwa further pointed out that, apart from the above referred to testimony of PW1, there was another offer of Right of Occupancy dated 01.10.1985 in respect of the same suit property which was included in the notice to produce additional documents filed on 04.12.2017 but which was however not tendered in evidence hence entitling the High Court to draw an adverse inference

against the respondent. It was insisted by Mr. Chuwa that, the respondent could not establish ownership of the suit property through the Certificate of Title No. 162003/12 in the presence of two letters of offer of Right of Occupancy. He contended that had the High Court directed its mind to the two letters of offer of Right of Occupancy, it could not have failed to find that the respondent had failed to prove the root of his title and hence not the lawful owner of the suit property.

Responding to the 4th ground of complaint Mr. Machibya argued that the complaint is misconceived and baseless. He submitted that the complaint is based on a document which was not tendered in evidence thus not part of evidence. Mr. Machibya insisted that the respondent was rightly granted the letter of offer of Right of Occupancy dated 03.04.1976 followed by an approval letter dated 17.12.1985 and lastly the Certificate of Title in 1999. He further pointed out that, once a Certificate of Title is issued no further evidence is needed to establish a title to such a property. On this and in order to cement his argument, Mr. Machibya referred us to our earlier decision in the case of **Amina Maulid Ambali & Two Others** (supra).

Having examined the 4th ground of complaint and after hearing and considering the submissions made by the counsel for the parties on the said ground, we have observed that, essentially, this ground of

complaint raises two issues; **Firstly**, is the complaint that PW1 gave contradictory evidence regarding two offers of Right of Occupancy, one dated 03.04.1976 which was tendered and received in evidence as Exhibit P2 and the other dated 01.10.1985 which was neither tendered nor admitted in evidence. On this complaint it is our observation as rightly argued by Mr. Machibya, that, the complaint is misconceived and baseless because the purported contradiction is based and refers to the offer of Right of Occupancy dated 01.10.1985 which was neither tendered nor admitted in evidence and thus not part of evidence. Documents which are neither tendered nor admitted in evidence as exhibits are not part of evidence and no reliance or reference can be made to such documents by the court. See- **Shemsa Khalifa and Two Others v. Suleiman Hamed Abdalia,** Civil Appeal No. 82 of 2012 (unreported).

We have examined the evidence given by PW1 (respondent) in establishing his title to the suit property, as appearing at pages 104 to 105 of the record of appeal, and detected no contradiction in it. In establishing his case, the respondent tendered in evidence the offer of Right of Occupancy dated 03.04.1976 and the Certificate of Title No. 162003/12 issued on 23.02.1999 and registered on 30.04.1999. The said three documents which appear at pages 130 to 139 of the record of

appeal, were collectively tendered and received in evidence as Exhibit P2. As intimated above, there is neither self-contradictory evidence from PW1 nor any other piece of evidence on record which contradicted the said relevant evidence given by PW1.

Secondly, it is our observation that the 4th ground of complaint seeks to fault the finding and the conclusion by the High Court that the Certificate of Title (Exhibit P2), conclusively proved the respondent's title to the suit property. In its judgement, the High Court, when dealing with the 2nd issue, that is, on whether the respondent is the lawful owner of the suit property, held and concluded that since the respondent's offer of a Right of Occupancy and the Certificate of Title No. 162003/12, is in the respondent's name there is no alternative answer to the 2nd issue except that the respondent is the lawful owner of the suit property. The High Court further observed that since the respondent had both the offer and Certificate of Title, mere words from the 1st appellant could not in any way stand. From that complaint by the appellants, the issue before us is whether in so concluding, the High Court erred and can be faulted.

Our answer to the above posed issue is in the negative. Apart from the fact that in the instant case the 1st appellant had no ownership interest on the suit property, as we have amply demonstrated when

determining the 2nd, 3rd and 5th grounds of appeal, it is a trite position of the law that a Certificate of Title is a conclusive evidence of the ownership of a property. See- **Amina Maulid Ambali & Two Others** and **Nicholaus Mwaipyana** (supra). In the former case, the Court stated that:

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

Guided by the above stated principle, we find that, since the 1st appellant in the instant case, as we have also intimated above, had no competing interests in the suit property with the respondent, the conclusion by the High Court that, based on his Certificate of Title, it is the respondent who is the lawful owner of the suit property, cannot be faulted. The presumption that the respondent who is a holder of a certificate of title has a better title to the suit property, was thus not rebutted and in fact it could not be rebutted by the 1st appellant who has no ownership interest in the suit property. Accordingly, the 4th ground of appeal fails.

In the result and on the basis of the foregoing reasons, the appeal fails in its entirety and it is accordingly hereby dismissed with costs.

DATED at **DODOMA** this 31st day of January, 2024.

S. A. LILA
JUSTICE OF APPEA

A. M. MWAMPASHI
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

The Judgment delivered this 6th day of February, 2024 in the presence of Ms. Magreth Mbasha holding brief for Mr. Edward Peter Chuwa, learned counsel for the Appellants, and Ms. Magreth Mbasha, learned counsel for the Respondent, is hereby certified as a true copy of the original.

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL