IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KOROSSO, J.A., RUMANYIKA, J.A., And MGONYA, J.A.)

CIVIL APPEAL NO. 29 OF 2021

EBONY AND COMPANY LIMITED .....APPELLANT

VERSUS

WATUMISHI HOUSING COMPANY LIMITED .....RESPONDENT

(Appeal from the Judgment and decree of the High Court of Tanzania, at Dar es Salaam)

(Mlyambina, J.)

dated the 31st day of May, 2019

in

Land Case No. 76 of 2015

.....

JUDGMENT OF THE COURT

18th September 2023 & 11th March, 2024

KOROSSO, J.A.:

The appeal emanates from the judgment of the High Court in Land Case No. 76 of 2015 (Mlyambina, J.) of 31/8/2019, whereby the suit filed by the appellant was dismissed. The appellant dissatisfied with the decision has appealed to this Court.

The background of the appeal is as follows: In the suit filed by the appellant against the respondent which is subject to the instant appeal, reliefs claimed included; one, a finding that the respondent company perpetrated fraud upon its failure to include in the sale agreement the

terms arising from the negotiations between the parties. Two, a finding that the negotiated price per square meter was Tshs. 17,000/= and not Tshs. 15,000/=. Third, a finding that the respondent was obliged to pay for the whole property without excluding 25% of the area covered by the plot. Four, payment of Tshs. 255,990,000/= as per paragraph 9(1) of the plaint. Five, payment of Tshs. 46,931,511 as stated in paragraph 9(1) of the plaint. Six, General damages as the court may determine; and seven, interest as prayed.

The suit giving rise to the instant appeal is grounded on a land dispute alleged to have been sold to the respondent by the appellant. The appellant, as the owner of Plots no. 197 and 198, Block 25 Gezaulole Area, Temeke, Dar es Salaam, in September 2014 (the suit property), in consideration of Tshs. 432,000,000/=, disposed of the suit property to the respondent as evidenced by a written agreement signed by officials representing the contending parties. According to one of the appellant's directors, Fauzia Jamal Mohamed (PW1), the appellant and the respondent had agreed that the value of each square meter per acre of the suit property be Tshs. 17,000/= down from the originally offered price of Tshs. 25,000/=. In that regard, the total price for the two plots comprising ten acres equal to 40470 square meters value was Tshs.

687,990,000/=. PW1 further testified that after the parties agreed on the price for the plots, the respondent informed the appellant that the agreement for the disposition of the suit property had to be prepared in the format provided by the Government and thus undertook to draft it. She alluded that the appellant prepared the agreement and thereafter handed it to the appellant, who proceeded to sign it. Thereafter, the original title deed for the suit property was handed to the respondent. Additionally, PW1 expounded that she has been in the real estate business for about thirty years and thus imprinted with vast experience in the area.

PW1 testified further that upon signing the drafted contract, it was sent back to the respondent for payment, who then paid 80% of the amount required, which is Tshs. 432,000,000/=, an amount which was less by 25% of the total payment expected and agreed upon. The agreement for the sale of the suit property dated 18/9/2014 was admitted as exhibit P2. Dissatisfied with the amount paid by the respondent for the suit property, PW1 instructed her lawyer to file an agreement for termination of the sale, and the relevant letter to the respondent requesting for termination of the sale of the suit property was admitted as exhibit P3. PW1 conceded that she never read the contract before

signing it and despite having an advocate for her business operation, she did not seek legal advice during negotiations of the said contract.

On the respondent's part, a written statement of defence (WSD) was filed denying the allegations found in the appellant's pleadings. Fred Matola Msemwa (DW1) argued that the appellant transferred the property to the respondent upon payment of consideration of Tshs. 432,000,000/=. DW1 further testified that the sale agreement was drafted jointly between the parties through the services of M. K Generis Advocates as exhibited by exhibit D1, a letter informing the respondent on the completion of the transfer of certificate of titles for the suit property which was copied to the appellant. The respondent denied committing fraud in the process of sale of the suit property stating that both parties were involved at each stage of the process hence the conferral of the title deeds to the respondent by the appellant so that the final payment of 20% may be effected (see exhibit D1 and D2). DW1 stated further that PW1 was the one who sold the suit property to them on behalf of the appellant company. After the purchase of the suit property, transfer to the respondent was effected, hence the title deeds No. 130677; LO No. 524229 for plot No. 198 dated 7/10/2014, and title No. 130675 LO No.

524230 for plot No. 197, admitted as exhibit D2 and in the respondent's possession.

After the conclusion of the trial, the judgment was in favour of the respondent. Aggrieved by the decision, the appellant filed the instant appeal through the memorandum of appeal premised on six grounds that fault the trial court and paraphrased, state that:

1. *Having noted that the allegations of fraud are criminal, it erred in demanding that the appellant provide reasons for failing to read the draft agreement before signing it.*
2. *For rejecting the allegations of fraud because the appellant had signed the disputed contract.*
3. *Giving an erroneous judgment by not considering the admission by DW1 that the sale of the suit property involved the process of drafting a contract from the negotiation stage and was to have included all that was negotiated from the preliminary stages.*
4. *For not considering the evidence of PW1 and PW2 that the negotiated price per square meter was Tshs. 17,000/= and not 15,000/=.*
5. *Failure to consider that the respondent's failure to pay the balance amount of 25% upfront, was contrary to the agreement which required such payment to have been done.*
6. *Failure to consider that the respondent's exclusion of material facts in the sale agreement, including its measurements, was the basis of his fraud.*

Ms. Rita Odunga Chihoma, learned advocate represented the appellant on the day the appeal came for hearing, whereas, the respondent enjoyed the services of Ms. Alice Edward Mtulo and Ms. Vivian Method, learned Senior State Attorneys and Mr. Joel Maeda, learned State Attorney.

Ms. Chihoma's intervention was brief, preferring to adopt the written submissions and cited authorities filed in support of the appeal. She implored us to find that the testimony of DW1 was a clear admission that some of the agreed terms were not included in the disputed contract and implored us to find most of the cited cases by the respondent to be distinguishable since they address different circumstances from those obtaining in the instant appeal.

On grounds one and two which are submitted conjointly, the appellant faults the trial judge for rejecting claims of fraudulent acts committed by the respondent in concluding the disputed contract because the appellant had signed the said agreement. The appellant conceded to have signed the disputed contract and argued the fact not to be an issue since the concern was some of the terms therein which they contended differ from what was discussed and agreed upon between the parties when negotiating. The appellant acknowledged the fact that due care was

not done on their part to verify all the terms of the contract, particularly the calculations of the amounts agreed, however, she contended this was due to the appellant having put her trust in the respondents who drafted the disputed contract to put only agreed terms and not otherwise. The Court was invited to consider the fact that DW1 testified that some of the agreed terms were not incorporated in the disputed contract and that the appellant did not agree on a deduction of 25% of the proposed price per square meter.

According to the learned counsel, failure to put in writing as part of the contract all agreed terms was improper and fell within the folds of fraud within the definition found in section 17 of the Law of Contract, Cap. 345 (the LCA). The fact that the learned trial Judge failed to consider that the mere act by the respondent of not incorporating the agreed terms in the disputed contract and/or inserting wrong consideration is fraud under section 17 of the LCA when trusted to do so as alluded to by PW1 was erroneous, she argued.

The learned counsel further contended that for fraud to be proved, it must be established that the committing party had knowledge and intention of having committed acts amounting to fraud. That, in the instant case, since the respondent is the one who prepared the disputed

contract and excluded some essential agreed terms, then, without doubt, fraud was proved on their part, she asserted. Furthermore, the learned counsel contended that the fact that the respondent deducted 25% of the land when calculating the price shows an intention to deprive the appellant of the full value of the suit property which led to the payment of Tshs. 233,990,000/=, less the agreed amount (when calculated at Tshs. 17,000/= per square metre as agreed).

According to the learned counsel, the appellant having proved fraud on the part of the respondent in the processing of the disputed contract, the fact that their lawyer failed to comment on the anomaly in the contract and the appellant signed it should not impact negatively on its part since as lawyers were not part of the negotiations and thus unaware of the agreed terms at the time of reviewing/assessing the draft agreement. The learned counsel argued that it was thus erroneous, for the trial court to conclude that the signing of the disputed agreement by the appellant detracted the liability of the respondent from the fraudulent acts perpetrated in the drafting and execution of the disputed contract, she argued.

Expounding on grounds three and four which were argued together, the grievance being the failure of the trial court to properly assess the

evidence of DW1, who when being cross-examined by the learned counsel for the appellant, had admitted that the parties had negotiated various terms and some were not incorporated in the disputed contract. She argued that such admission meant that the respondent who drafted the said agreement purposely intended to mislead the appellant especially since the respondent failed to explain why some of the agreed terms were not incorporated in the contract. She asserted that the trial court should have considered that the adduced evidence revealed that the negotiations involved PW1 and three people from the respondent's side and the appellant's lawyer was not part of the negotiations as stated earlier. She asserted that in such circumstances, the appellant was not assailed with proper legal advice on whether the contents of the contract were intact and included all the agreed terms, hence PW1 should not be faulted for signing the disputed contract having trusted the respondent.

The learned counsel concluded by stating that if the trial court had answered the following questions, undoubtedly, it would have arrived at a different conclusion; first, whether there was a contract between the parties; second, whether the contract entered is void or voidable given the alleged illegality, fraud, mistake, or any other reason; and third, whether the parties particularly the appellant, assented to the content of

the contract when signing it. Ms. Chihoma further argued that while there is no doubt that the parties entered into a contract and applied some terms of the contract however, due to contradictions of the terms in the contract, the trial court needed to have considered the contents of the contract as they related to what had been negotiated between them.

Amplifying on grounds five and six, the learned counsel argued that the respondent was obliged to pay the price of the suit property as agreed without excluding 25% of the area covered calculated at Tshs. 17,000/= per square meter and the trial court should have considered and relied on the evidence of PW1 and DW1 on the negotiated and agreed terms. The learned counsel stressed that the failure of the trial court to consider the same led it not to address the issue of fraud, a pertinent concern. In addition, she argued that in the wake of the anomalies highlighted, the trial court had the duty to assess whether there was free consent on the part of both parties in line with section 10 of the LCA and consequently, further question the validity of the disputed contract. Ms. Chihoma concluded by praying for the appeal to be allowed with costs.

On the respondent's side, Ms. Mtulo, the lead attorney for the respondent, commenced by adopting the written submissions filed and the list of authorities. She invited us to bear in mind the principle of the

sanctity of the contract when deliberating on the appeal since it essentially addresses the binding nature of a contract entered freely by concerned parties. According to the learned Senior State Attorney, in addition, the said principle requires the court to give effect to the intention of the parties and not to interfere and referred us to the decision of the Court in **Harold Sekiete Levira and Another v. African Banking Corporation Tanzania Ltd (Bank ABC) and Another,** Civil Appeal No. 46 of 2022 (unreported) to reinforce her stance.

Ms. Mtulo asserted that the arguments being advanced by the appellant's side on appeal are an afterthought since any communication related to the need for an amicable settlement on issues arising from the contract between the parties came about eleven months after the signing of the contract and payment of the consideration. On the issue of the disputed contract being tainted with fraud, the learned Senior State Attorney was adamant that there was no fraud. While conceding that the disputed contract was drafted by the respondent side, she argued that the appellant was accorded an opportunity to assess and evaluate its contents since it was availed to them for review before being signed, a fact admitted by PW1 in her testimony, she argued. Ms. Mtulo further argued that as far as the respondent knew, the appellant had an advocate

to provide legal advice throughout the process, not forgetting the fact that PW1 had testified that she had been in the real estate business for over thirty years. Therefore, it cannot be expected that with a legal adviser and PW1's vast experience in the area, there could be doubts that the appellant was not fully informed when signing the disputed contract. She urged us to also consider the fact that the requisite consideration was paid by installments and thereafter the appellant signed the disputed contract. The learned Senior State Attorney argued that this leaves no room to doubt that the appellant was conversant with the contents of the contract, and any complaints therefrom are an afterthought and should be disregarded.

Regarding complaints that the appellant was not conversant with the contents of the disputed contract since it differed from the agreed terms, and the appellant's lawyer had not been a party to the negotiation and thus oblivious of the terms, Ms. Mtulo argued that this argument should not be considered and she invited us to find it to be a lame excuse and only showed lack of care and negligence on the appellant and their counsel.

Concerning the negotiated and agreed terms of the contract not being the ones included in the disputed contract, the learned Senior State

Attorney argued that the appellant failed to prove this, since the disputed contract only included terms negotiated and agreed upon between the parties, and reiterated the purchase price as negotiated and agreed between them, hence both parties signed it. The signing of the disputed contract infers that each of the parties knew the contents therein and were satisfied, and are thus bound to execute it by the principle of sanctity of contract, she argued. If one party is not satisfied as expounded by the appellant, then the step to take would have been to terminate the contract or seek to add an addendum to address the concern the appellant had about the terms of the contract, she asserted. She implored us to find the appeal unmeritorious and dismiss it with costs.

Ms. Chihoma's rejoinder was essentially a reiteration of the submission in chief and to emphasize the fact that there was no negligence on the part of the appellant's counsel since he was unaware of the terms of the contract and thus could not advise the appellant otherwise. She urged us to allow the appeal with costs.

Having gone through the oral and written submissions by the contending parties, the record of appeal, and the authorities cited to augment the party's arguments and stance, in our determination of this appeal, we will address the grounds of appeal sequentially. However, we

find it important to first remind ourselves that this being the first appeal, our duty as the first appellate court, is essentially to re-evaluate the evidence on record and when necessary, come up with our conclusion as mandated by rule 36(1)(a) of the Tanzania Court of Appeal Rules, 2009 (the Rules). In addition, we find it apposite to highlight matters that we find are not controverted by the contending parties as discerned from the record of appeal before us; One, is the fact that before the disposition process, the suit land was owned by the appellant who negotiated with the respondent to dispose of it. Two, the disputed agreement (exhibit P2) was drafted on the respondent's side and sent to the appellant for scrutiny and signing. Three, the appellant did sign the disputed agreement and hand over the title deeds to the suit property to the respondent.

We have opted to address the 1st, 2nd, and 6th grounds of appeal conjointly. The main issue of contention we have drawn therefrom is whether the trial court failed to deliberate on allegations that the disputed contract is tainted with fraud despite the appellant having signed it. On this issue, the parties are not in contention that the disputed agreement was signed by both of them as conceded by PW1 and DW1. However, on the part of the appellant, it is disgruntled believing that the disputed contract does not have some of the terms negotiated and agreed upon by

the parties, and would like us to find that this fact was conceded by DWI in his testimony. On the other part, the respondent's counsel vehemently refuted the said assertion, arguing that the process of drafting and signing the disputed agreement was transparent and that the appellant was availed with the draft of the same to review, and eventually had signed it on its own volition and free will. He argued that, therefore essential elements of a valid contract were fulfilled. The respondent's counsel also reminded us to be guided by the principles governing contractual relations including the sanctity of contract which stipulates that having signed a contract of free will, parties are bound by it.

In addressing this issue for determination, we will be guided by various principles, such as the burden of proof and the sanctity of contract. It is a well-established position that in civil suits the burden of proving an alleged or pleaded fact falls on the person who alleges, as stipulated in sections 110 and 111 of the Evidence Act. Being a civil suit, the said burden is on the balance of probability as established by case law [see, **Anthony M. Masanga v. Penina (Mama Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (unreported)].

With regard to the alleged fraud, we find it pertinent to reproduce section 17 of the Law of Contract Act which defines fraud in contracts as follows:

> *"17.-(1) "Fraud" means any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-*
>
> *(a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;*
>
> *(b) the active concealment of a fact by one having knowledge or belief of the fact;*
>
> *(c) a promise made without any intention of performing it;*
>
> *(d) any other act fitted to deceive; or*
>
> *(e) any such act or omission as the law specially declares to be fraudulent."*

Undoubtedly, in the circumstances, the burden to prove that the respondent committed fraud in the disputed agreement falls on the appellant. In the instant appeal, the appellant claimed that the respondent committed fraud in processing the disputed contract, particularly the price per square metre of the land which the parties did not agree, and

deducting in payment 25% of the suit property when calculating the price and that this showed an intention to deprive the appellant of the full value of the suit land being disposed of. The question on the fold for us to determine then is, did the appellant fulfill that burden?

When determining this issue, the High Court, having warned itself of the standard of proof on allegations of fraud in civil cases, considered the content of exhibit P2 finding that both the appellant and respondent signed the contract of free will, and that there was no evidence that inducement was exerted to the appellant to sign it, and thus stated on page 323 and 324 of the record of appeal:

> *"... any document with signature in it means it implies its authenticity of what is enclosed in the stated document, in this case the contract. It gives out the notion that everything found under the contract was read by both parties and been understood hence putting the signature."*

Upon our scrutiny of the evidence on record, we agree with the above observation. Similar to the High Court, we have taken into account the fact that PW1 had informed the trial court that they signed the contract without any inducement, and had legal advice on it. PW1's assertion that their lawyer was not conversant with the negotiated terms

and thus could not advise them on whether the disputed contract reflected what was agreed upon or not has been considered. Stemming from that, we find such claims beyond comprehension, particularly, how PW1, who claimed to have vast experience in the real estate business, proceeded to sign an agreement for the disposition of such vast land without properly scrutinizing the stipulated terms of the said agreement and according to her, relied on her trust to the contending party in signing the contract. It is also mind-boggling how a competent and diligent lawyer proceeds to review a contract without knowledge of the agreed terms between the parties.

Having gone through the record of appeal, we have failed to discern anything to convince us as argued by the appellant's counsel that the High Court failed to consider the raised concerns. It is on record that the High Court rejected the appellant's assertion upon consideration of the fact that PW1 conceded to have had legal advice from a lawyer throughout the process of negotiation and drafting of the agreement and that the doctrine of *non est factum* was not advanced by the appellant. Having scrutinized the evidence of PW1 and the appellant's submission, we cannot fault the finding of the High Court on this, we have found no claims that the appellant side signed the disputed contract through no fault of their own

for lack of understanding of its purport through innate incapacity or otherwise or having been unduly influenced. Throughout the process, there is evidence that the appellant was part and parcel of the negotiation and had an opportunity to review the draft agreement before signing it.

The argument that the appellant's lawyer was not part of the negotiations and was thus unaware of the terms of the agreement and could not advise his client otherwise, we find does not give strength to the claims of fraud on the part of the respondents, since one would have expected that a diligent lawyer will gather information on what was negotiated between the parties to arm him/her when reviewing the draft disputed contract to properly advise his client.

We are also mindful of the provision of section 64 of the Land Act, No. 4 of 1999 (the Land Act) which stipulates when a disposition of land is said to be enforceable and states:

> *"S. 64(1)- A contract for the disposition of a right of occupancy or any derivative right in it or a mortgage is enforceable in a proceeding only if-*
>
> *(a) The contract is in writing or there is a written memorandum of its terms;*

(b) The contract or the written memorandum is signed by the party against whom the contract is sought to be enforced."

Flowing from above, we agree with the High Court Judge that the evidence before it showed that the disputed agreement between the appellant and the respondent complied with the requisite stages stipulated under the law. We are also satisfied that the High Court properly considered whether or not the disputed agreement was tainted with fraud and found otherwise, and thus cannot be faulted under the circumstances. The High Court even examined the elements of fraud on page 322 of the record of appeal.

We are also fortified on this by the fact that despite the allegations of fraud fronted by the appellant, there is nowhere the particulars of such have been provided nor any evidence led to prove it. The allegations only address the fact that what was negotiated between the parties on the price of the square meter of the land was not what was reflected in exhibit P2. There was no evidence tendered on what was negotiated and how it contrasted with the terms found in exhibit P2 relating to the challenged prices. It should be noted that fraud imputes a criminal offence whose proof ought to be above the requirements in civil cases that of on the balance of probabilities. See: **Omary Yusufu vs. Rahma Ahmed**

Abdulkadr [1987] TLR 169 and **Ratilal Gordhanbhai Patel vs. Layi Makanyi** [1957] EA 314. In the latter case, the redundant Court of Appeal for Eastern Africa stated:

> *"Allegation of fraud must be strictly proven; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required."*

We have failed to see any evidence of fraudulent elements in the disputed agreement as alleged and we thus find it unproven to the standard required. Therefore, grounds one, two and six fail.

Concerning grounds three, four and five, we are of the view that the main issue therefrom is whether the trial court erred in law and fact by relying on the evidence that shows that the disputed agreement was signed by both parties without considering the contents related to what has been negotiated and agreed upon. The appellant's counsel implored us to find that the disputed contract did not include the negotiated price of 17,000/= per square metre and not Tshs. 15,000/= found in exhibit P2 and that payment was to be for the whole property and not supposed to exclude 25% of the area covered. He also wanted us to consider the evidence of DW1 conceding that there were some negotiated terms not included in

the disputed agreement. On the part of the respondent, the learned Senior State Attorney was adamant that both parties have signed the contract, each party including the appellant is bound by the terms therein.

Undoubtedly, in addressing this issue, some of the concerns have already been dealt with when determining grounds 1, 2 and 6 above. We are again constrained to consider whether the assertions by the appellant fulfilled his burden of proving the assertion on the balance of probability as stated earlier. It is also well settled that parties are bound by the agreements they freely entered into, a cardinal principle of the Law of contract as expounded in **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R. 288, stating that:

> *"The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement".*

In addition, in **Unilever Tanzania Ltd v. Benedict Mkasa t/a Bema Enterprises**, Civil Appeal No. 41 of 2009 (Unreported), it was held:

> *"strictly speaking, under our laws, once parties have freely agreed on their contractual clauses, it*

would not be open for the courts to change those clauses which the parties have agreed between themselves. It is not the role of the courts to re-draft clauses in agreements but to enforce these clauses where parties are in dispute."

Importing the above stance into the instant appeal, we are in tandem with the holding of the High Court Judge on this issue, that as long as the appellant signed the contract, and did not give evidence that the signing was forced, and the alleged negotiated prices of Tshs. 17,000/= per square metre are not reflected in the disputed contract, nor is there any evidence of the alleged negotiated price to show they differ from what is found in exhibit P2, it is thus not the role of the Court to change the clauses found in the disputed agreement.

We have also delved into the evidence of DW1 that his testimony on the issue was that the respondent agreed with the appellant who was represented by PW1 in the negotiation, that the purchase price for Plots 197 and 198 was Tshs. 432 million. The payment was to be in two installments, the first was payment of 80% of the purchase price upon signing the contract and the second installment of 20% was to be paid after effecting the transfer deed. About exhibit P2, he conceded to have signed it on the side of the respondent, while one Mohamed Abduratif

Mohamed and Fauzia, directors of the appellant signed. He testified that the respondent complied to the terms of the contract. He contended that the process was transparent and involved lawyers from Social Security Institutions. When cross-examined by the learned counsel for the appellant, on what was agreed he stated on page 309:

> *"It is true we agreed the consideration be per square metre. It is not true that we agreed the price by 17,000/- per square metre be 11,000/= up to 12,000/=. What we agreed were reduced in the contract.... And is reflected at page 2 Roman VI(1) of the contract. Also page 3 para 2(c) talks the square metre term"*

In our scrutiny of the record, we have found nowhere that DW1 states that what is reflected in the disputed contract is not what was negotiated. We are of the view that the appellant misconstrued DW1 testimony and the analysis of his evidence by the trial court, who summarized his evidence and considered it when determining the suit and ended up finding no elements of fraud proved. We have also failed to find anything from his testimony to prove allegations of fraud in the disputed contract. Therefore, we find grounds 3, 4 and 5 unmeritorious.

In the final analysis, we find the appeal to lack merit. For the foregoing, having found that the complaints raised by the appellant are

unfounded and that the evidence on record on the preponderance of probability is insufficient to prove the appellant's claims, we dismiss the appeal with costs.

DATED at **DAR ES SALAAM** this 6th day of March, 2024.

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 11th day of March, 2024 in the presence of Ms. Queen Sambo, learned counsel for the appellant and of Mr. Elias Mwendwa, learned State Attorney for the respondent is hereby certified as a true copy of the original.

J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL