

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
LAND CASE NO. 38 OF 2014**

**PROF. MELKIZEDECK LESHABARI.....1<sup>ST</sup> PLAINTIFF**

**MRS SEBALDA LESHABARI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**COMMISSIONER FOR LANDS.....1<sup>ST</sup> DEFENDANT**

**PERMANENT SECRETARY MINISTRY OF LANDS**

**AND HUMAN SETTLEMENT DEVELOPMENTS .....2<sup>ND</sup> DEFENDANT**

**TREASURY REGISTRAR .....3<sup>RD</sup> DEFENDANT**

**ESTOMIH TITUS MURUVE .....4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL .....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**MASABO, J.L.:-**

The Plaintiffs are suing the Defendants jointly and severally praying for judgment and decree for the following orders:

- a) Declaration that the suit property on Flat No. KF8 Ex ATHCO, CT No. 186171/74 Kalenga Street, Upanga Dar es Salaam ( the Suit Property) was properly transferred to the Plaintiff by the 4<sup>th</sup> Defendant;

- b) Declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant acts and omission toward refusal to transfer and register the suit property to the 4<sup>th</sup> Defendant and finally to the Plaintiffs are discriminatory and illegal.
- c) An order for specific performance of the transfer of the right of occupancy agreement between the Plaintiff and the 4<sup>th</sup> Defendant in favour of the Plaintiffs.
- d) General damages against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the sum Tshs 500,000,000/= only or any other sum as the Court may assess in favour of the Plaintiffs.
- e) Costs.
- f) Any other reliefs this Court may deem appropriate to grant.

Briefly, the dispute centers on the disposition of the suit property identified as Flat No. KF8 Ex ATHCO, CT No. 186171/74 situated at Kalenga Street, Upanga area in Dar es Salaam ordinarily owned by Air Tanzania Corporation (ATC). In June 2002 ATC sold the property to the 4<sup>th</sup> Defendant who was at the material time its employee. A few months later and before the formal disposition requirement was completed the 4<sup>th</sup> Defendant sold the disputed house to the Plaintiff in settlement of a loan of Tshs 31,000,000/= previously advanced to him the Plaintiffs to enable him to pay the consideration price for the suit property from ATC. Since the approval of transfer of the property from ATC to the 4<sup>th</sup> Defendant had not been obtained, the 4<sup>th</sup> Defendant who was at the material time relocating to the United Kingdom (UK) entrusted the Plaintiffs with the

responsibility in respect of all arrangements for transfer of the property from ATC and to the 4<sup>th</sup> Defendant and subsequently, from the 4<sup>th</sup> Defendant to the Plaintiffs. Acting on these arrangements, the Plaintiffs submitted the document to ATC to initiate the approval process but the approval was withheld for various reasons. After numerous correspondences between the Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, it was confirmed that the transfer documents submitted to 1<sup>st</sup> Defendant had been lost and the Plaintiffs were instructed to submit another set of documents to facilitate the approval of the transfer between ATC and the 4<sup>th</sup> Defendant. Meanwhile the 4<sup>th</sup> Defendant turned hostile. He refused to sign new disposition documents in replacement of the lost ones and he subsequently alleged that the disposition agreement between him and the Plaintiff was a nullity because at the time it was concluded he, the 4<sup>th</sup> Defendant, had no good title to transfer. They are now suing to effect the pending transfer.

Upon the plaint being filed and served on the Defendants, they all filed their written statement of defence but later the powers and mandate of the 3<sup>rd</sup> Defendant, i.e Consolidated Holding Corporation which was then a caretaker for ATC's interest expired by operation of law and it was replaced by the Treasury Registrar a development which necessitated the amendment of the plaint to implead the Treasury Registrar in replacement of Consolidated Holding Corporation. After the amended plaint was filed the Defendants were ordered to file their defence to the amended plaint but the 4<sup>th</sup> Defendant defaulted. Consequently, on 21<sup>st</sup>

July 2017 this court granted leave to the Plaintiffs to prove their case exparte the 4<sup>th</sup> Defendant.

In proving their the Plaintiffs marshaled 3 witnesses, PW1 Prof. Melkizedeck Thomas Leshabari, 68 years, a Professor of medicine at Muhimbili University of Health and Allied Studies (the 1<sup>st</sup> Plaintiff herein); Dr. Sebalda Leshabari, a Lecturer at Muhimbili University of Health and Allied Acienes (the wife to PW1and 2<sup>nd</sup> Defendant herein); and PW3 Mr. Tom Bahame Nyanduga, an advocate of the High Court.

PW1 and PW2 accounted that sometimes in June 2002 they jointly let money at a tune of Tanzania Shillings thirty one million (Tshs 31,000,000/=) to one Mr. Estomih Muruve , the 4 Defendant herein, who was at the material time their neighbour and family friend. The loan was to enable the 4<sup>th</sup> Defendant who was at the material time working for ATC to buy a flat identified as flat No. KF8 in a house situated in Plot No. 598 A at Karenga street, Upanga area in Dar es Salaam (the suit property) which was ordinarily owned by ATC. The loan was repayable in 6 months. As security the 4<sup>th</sup> Defendant deposited on PW1 and PW2 the letter of offer and all receipt paid to ATC in respect of the suit property. It was further agreed at the completion of the disposition process the 4<sup>th</sup> Defendant would deposit the title deed as security. However, prior to the expiry of the six months and prior to the completion of the disposition process the 4<sup>th</sup> Defendant relocated to UK whereupon he offered to pass his interest in the disputed property to PW1 and PW2 in lieu of the loan beca use at the material time he had not repaid the loan and was not in

the position to repay. In acceptance of this offer the Plaintiffs and the 4<sup>th</sup> Defendant executed a disposition agreement (Exhibit P3) whereupon the 4<sup>th</sup> Defendant entrusted the PW1 with all the processes for transfer of the disputed property. Subsequently, the 4<sup>th</sup> Defendant who was then in occupancy of the suit property entered vacant possession and handed over the said property to PW1 and PW2 who have since been in occupancy of the said property. After the disputed property was handed over to them, they initiated the transfer process in anticipation that a two-tier transfer will be affected ie. transfer from ATC to the 4<sup>th</sup> Defendant and from the 4<sup>th</sup> Defendant to PW1 and PW2 but the same has been with no fruition as the 1<sup>st</sup> Defendant has withheld the consent for transfer.

It is the Plaintiff's case that after they had handed over all the necessary documents to the 1<sup>st</sup> Defendant they were informed that the transfer could not be effected due to an error on the plot number. Later, they were informed that transfer could not take place as the house in which the disputed property is located had dues being transfer fee which ATC did not pay when it bought the said house from Industrial Services Management (the original owner of the property) in 1997. They pleaded that the condition was not fairly imposed on them as the disputed property is situated in house comprised of 8 flats and 6 of these flats had already been transferred to third parties. After a long time of pleading with the 1<sup>st</sup> Defendant they were notified that the documents they submitted were lost and they should submit new ones. They were also required to provide proof that the 4<sup>th</sup> Defendant is indeed Tanzanian and

that all dues to ATC has been paid (exhibit p7). Meanwhile, the 4<sup>th</sup> Defendant turned hostile. He refused to sign new documents claiming that he wrongly sold the house to the Plaintiff's and he started demanding rent instantly.

On his part, PW3 accoutered that he notarized the loan agreement (Exhibit P1) as well as the sale agreement between the Plaintiffs and the 4<sup>th</sup> Defendant (Exhibit P3) and that acting on the Plaintiff's instruction he was constantly involved in the transfer process and that on 7/3/2005 he submitted all the transfer documents to ATC to wit: offer of the sale of the sale by ATC together with receipts paid by the 4<sup>th</sup> Defendant in consideration of the suit property (Exhibit P2); Sale agreement between ATC and the 4<sup>th</sup> Defendant (Exhibit P4), Disposition agreement between the 4<sup>th</sup> Defendant and PW1 and PW2 (Exhibit p4); Application for Register of Right of Occupancy; Land from No. 38; Passport photos for the Plaintiffs and the 4<sup>th</sup> Defendant. He further accoutered that ATC lodged lodged these documents at the 1<sup>st</sup> Defendants office but the 1<sup>st</sup> Defedant has deliberately withheld his approval citing reason that are attributable nether to the Plaintiff's nor the 4<sup>th</sup> Defendant who was until 2011 entirely supportive of the transfer.

The defence side brought only one witness, Ms. Hellen Philip, a land officer in the ministry for Land. From her testimony she did not participate in the initial stages of the matter as she was employed in the Department in 2010. She therefore inherited the file from another officer. She recalled

that her office was served with a statutory notice to sue the government from the Plaintiff and that upon receipt of the letter on 13/6/2014 they informed the Plaintiff that the disputed property was registered in ATC's name and they instructed him to submit transfer documents from ATC to the 4<sup>th</sup> Defendant and to pay an approval fees of Tshs 80,000/=, to submit receipt for payment of the land rent and proof of citizenship so as to facilitate the transfer from ATC to the 4<sup>th</sup> Defendant. However, the letter was not responded to and the documents were not submitted hence the property has remained in the name of ATC.

In determination of this dispute, the court is guided by the following issues:

- (i) Whether there was any sale and transfer of the suit property from ATC to the 4<sup>th</sup> Defendant.
- (ii) If the answer to the first issue is in the affirmative, whether the 4<sup>th</sup> Defendant has transferred the Suit property by way of sale to the Plaintiffs.
- (iii) Whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants refusal of consent to the transfer of the suit property to the Plaintiff was proper.
- (iv) Whether the Plaintiff have suffered any damage as a result of any of Defendant's acts/omission and if so to what extent.
- (v) What reliefs if any the Parties ever entitled to?

The first issue has two limbs, the first limb being whether there was a sale agreement and the second limb being whether or not there was a transfer of the said property to the 4<sup>th</sup> Defendant. On the first limb, PW1 and PW2 uncontroverted testimony is to the effect that that sometimes in June 2002, the 4<sup>th</sup> Defendant who was at the material working for ATC was offered to buy the disputed property at a consideration price of Tshs 31,000,000/= payable in two instalments (the first instalment of 25% of the purchase price payable within 5 days of the offer and the second installment of 75% payable within 21 days) as per Exhibit P2. Pursuant to these terms on 1/7/2002 the 4<sup>th</sup> Defendant paid the initial installment of Tshs 7,750,000/= and on 18<sup>th</sup> July 2002 he paid the last installment of 23,250, 000/= on 15<sup>th</sup> August 2002 ATC and the 4<sup>th</sup> Defendant signed a sale agreement (Exhibit P3). In the totality of this evidence, the first limb is answered in the affirmative.

Regarding the second limb, it is on record that subsequent to signing the sale agreement on 15<sup>th</sup> August 2002, ATC and the 4<sup>th</sup> Defendant signed a deed of transfer of the disputed property from ATC to the 4<sup>th</sup> Defendant (exhibit p4), which literary marked the commencement of formal transfer processes from ATC to the 4<sup>th</sup> Defendant which according to section 36,37 and 39 of the Land Act, [Cap 113 RE 2002] entails a length process, involving among others application and grant of approval by the Commissioner for Land, payment of transfer fee and registration of the of transfer. The procedure for application and grant of approval is provided for under section 39 (1) of the Land Act and involves submission of a



formal application signed by both parties and accompanied by other necessary information such as the sale agreement. In the instant case it is uncontroverted that prior to his departure to the UK, the 4th Defendant handed over the necessary documents to PW1 and PW2 whom he entrusted to conduct the transfer registration from ATC to his name. PW3, acting on instruction of PW1 and PW2 initiated the procedure by forwarding the prerequisite documents to the ATC Holding Corporation and the same were lodged with the 1<sup>st</sup> Defendant for purpose of obtaining an approval but the approval was has of today not been obtained as it has been withheld by the 1<sup>st</sup> Defendant for various reasons as could be seen in a string of correspondences between PW3 and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. According to Exhibit P7 the disputed property is still in the name of the Air Tanzania Holding Cooperation and that for the approval to be effected the 4<sup>th</sup> Defendant is required to provide the documents in respect of transfer from ATC to 4<sup>th</sup> Defendant; approval fee, Land Rent receipt and copy of the 4<sup>th</sup> Defendants passport or birth certificate in proof of the his nationality, the documents which the 4<sup>th</sup> Defendant has refused to avail the Plaintiff to facilitate the transfer.

Section 37(5) of the Land Act provides that failure to obtain the approval renders the transfer ineffective. According to this section where a disposition has been carried out without first obtaining the approval of the Commissioner shall be inoperative. The Court of Appeal in the Case of Appeal in **Abualy Alibhai Aziz vs Bhatia Brothers Ltd** [2000] TLR

288 defined the word inoperative in context of disposition of land in the following terms:

“.....a contract for the disposition of land, which otherwise is proper but for the lack of required consent, is inoperative, that is, unenforceable...”

The Court of Appeal held further that, the word ‘inoperative’ does not entail invalidity and that it logically means at least that the contract in question is valid. This definition suits perfectly in the purview of the instant case in that, as stated while dealing with the first limb, there is in place a valid contract for disposition of the suit property between ATC and the 4<sup>th</sup> Defendant. Going by this definition, it is crystal clear that the disposition of the suit property and impliedly the transfer between the ATC and the 4<sup>th</sup> Defendant is incomplete, hence legally unenforceable.

The third issue which this court is called upon to determine is whether the 4<sup>th</sup> Defendant has transferred the suit property by way of sale to the Plaintiffs. The testimony of PW1, PW2 and PW3 as well as Exhibit P1 demonstrate vividly that upon being offered to buy the suit property the 4<sup>th</sup> Defendant approached the Plaintiff who advanced him a loan of 31,000,000 which he paid as consideration price for the disputed property. The agreement was reduced into a written contract (Exhibit P1) prepared by PW3 and executed by the Plaintiff on one side as lenders and the 4<sup>th</sup> Defendant on the other side as the borrower. It is also uncontroverted that on 17<sup>th</sup> December 2002 the 4<sup>th</sup> Defendant and the

Plaintiff entered into yet another contractual relationship contained in Exhibit P5 contract of disposition in which the 4<sup>th</sup> Defendant purportedly transferred the disputed plot to the Plaintiffs in consideration of Tsh 31,000,000 which as per the testimony of PW1, PW2 and PW3 was previously advanced to him as a loan.

Considering that the sale and transfer of the disputed property from the 4<sup>th</sup> Defendant to the Plaintiff was contingent to the sale and subsequent transfer of the disputed property from ATC to the 4<sup>th</sup> Defendant, the issue before me hinges on whether the 4<sup>th</sup> Defendant had at the material time a 4<sup>th</sup> Defendant had a transferable right over the suit property.

It is the trite law in land matters where the land in dispute is a registered land the prima facie evidence to prove ownership is the title deed. The series of event discernable from the Pleadings and the testimony thereto as demonstrated during determination of the 2<sup>nd</sup> issue is that, at the time the disposition contract between the 4<sup>th</sup> Defendant and the Plaintiffs was executed, disposition of the disputed property from ATC and the 4<sup>th</sup> Defendant was incomplete hence unenforceable hence, legally the 4<sup>th</sup> Defendant did not have a transferable right. As the title of the suit property was at the material time registered in the name of ATC it is incomprehensible how the 4<sup>th</sup> Defendant could transfer the suit property to a third party while legally he had no title capable of being transferred/passed to the Plaintiffs or to any other third party.

Section 39 (8) of the Land Act provides the following with respect to vesting of transferable right:

“A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly”

Thus, by virtue of this section even if the certificate of approval of disposition has been granted it does not automatically vest in the transferee any right of transfer of his interest to a third party. That right can only vest in the transferee after all the premia, taxes and dues in respect of the disposition have been paid. For the transferee who has not obtained the approval as in the instant case it need not be overstated that he/she is devoid of any right of transfer. In view of the position above, I am of the settled view that the purported transfer by way of sale was executed in total disregard of the law. Under the circumstances, the answer to this issue is obviously in the negative.

Before I pen down on this issue, I wish to state that I have noted the 4<sup>th</sup> Defendant's claims in Exhibit P3 with regard to the legality of the contract between him and the Plaintiff. Although the content of the letter depicts

the correct position of law with regard to the purported transfer of the property to the Plaintiffs, I have found his threat to the Plaintiff to be unscrupulous and malicious. Nowhere in the said letter did the 4<sup>th</sup> Defendant dispute the existence of a contract between him and the Plaintiff which implies that he executed the disposition contract while full aware, as the content of Exhibit 13 attests, that he did not have a title to transfer and this gives the Plaintiffs enforceable rights against him for misrepresentation or any other cause.

On the third issue the Plaintiff case can be easily summarized that, since the withholding of approval by the 1<sup>st</sup> Defendant was discriminatory and unlawful. Discriminatory in the context that, the disputed property is situated in house with 8 flats 6 of which have been transferred to other persons but none of these other persons was required to pay the transfer fee for the disposition of the their respective flats from Industrial Management Services (IMS) to ATC let alone the disposition fee for the entire house – a reason which was advanced by the 1<sup>st</sup> Defendant in withholding the transfer to 4<sup>th</sup> Defendant (under Exhibit P6). With respect to the claim that the withholding was unlawful and unfounded, the Plaintiffs' case rests on the fact that the documents for transfer of the suit property from ATC to the 4<sup>th</sup> Defendant and from the 4<sup>th</sup> Defendant to the Plaintiffs were submitted to the 1<sup>st</sup> Defendant who dully acknowledged receipt through Exhibit P6, Exhibit P11 and Exhibit P16 but deliberately withheld the approval advancing such reasons as, incomplete disposition between IMS and ATC (Exhibit 6); Number of the Certificate of Title

mistakenly quoted as 186171/45 instead of 186171/47 (Exhibit P12A) loss of original documents and demand of new documents (Exhibit7) and that none of these reasons was attributable to the 4<sup>th</sup> Defendant nor the Plaintiff.

Having held the 2<sup>nd</sup> issue on the negative, I will not labour much on issue. Considering that I have already hold that the disposition between the Plaintiffs and the 4<sup>th</sup> Defendant was invalid it goes without say that the Plaintiffs did not have a right capable of being registered by the 1<sup>st</sup> Defendant hence, they do not have a cause of action against all the Defendant save for the 4<sup>th</sup> Defendant who purported to sale to them a property to which he had no transferable rights. The complaints raised by the Plaintiffs with respect to this issue can only be actionable between the 4<sup>th</sup> Defendant and the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants. Had the Plaintiffs being suing in the capacity of Attorneys for the 4<sup>th</sup> Defendant their complaints in this issue would make a good case unlike in the instant case where they are suing in their personal capacity to enforce the right emanating from the abortive disposition agreement between them and the 4<sup>th</sup> Defendant.

When the Plaintiffs' claims in respect of this issue are considered in respect of the 4<sup>th</sup> Defendant they certainly make a good case in that the reasons leading to withholding of the approval are strictly speaking not attributable to the 4<sup>th</sup> Defendant nor the ATC. The ATC and the Plaintiff's acting for the 4<sup>th</sup> Defendants dutifully submitted the transfer documents

to the 1st Defendant and this is highly acknowledged in the evidence tendered in court. Save for the requirement to produce new documents which is also largely attributable to the 1<sup>st</sup> Defendant, the rest of the reasons are entirely attributable to the 1st Defendant. As for the payment of transfer between the IMS and ACT largely stalled the approval process, it is uncontroverted that the suit property is one out of the eight flats subject of the Certificate of Title and according to the testimony of DW1, the 1<sup>st</sup> Defendant approved the transfer of Flat KF2, and KF6 and the two flats have now been registered in the names on new owners who had purchased the flats from ATC on 04/07/2006 on arrangements more or less similar to the arrangement between ATC and the 4th Defendant and none of these two buyers was required to pay the fee for from IMS to ATC. I find it rather incomprehensible that the 1st Defendant while knowing that the property was sold to 8 buyers, he chose to impose the requirement on the 4th Defendant.

In Exhibit 11, the 1<sup>st</sup> Defendant tries to justify the imposition of the fee on the 4th Defendant whereby he admitted that the said fee was mistakenly not demanded from other buyers and that the payment by the 4th Defendant will correct the mistake. This was to say the least, discriminatory and unfounded because, by imposing the entire fee on the 4th Defendant it was tantamount to condemning him to pay for the mistakes committed by the official's in the 1st Defendants office. Besides, during her testimony DW1 testified that the transfer of the Title Deed CT

No. 18617/47 from IMS to ATC was completed on 10/6/2004 which implies that Exhibit P6 and Exhibit P11 were all written, recklessly.

On the 4<sup>th</sup> issues as to whether the Plaintiff have suffered any damage as a result of any of Defendant, acts or omission and if so to what extent, The Plaintiff have ably established that through PW3 whom they have engaged as an attorney have been diligently pursuing their right since 2003 which is now almost 16 years. The bulk of correspondences adduced as evidence in court attests to this fact. Although they have adduced no tangible evidence quantifying the costs they have incurred in pursuit of the matter, it is certain to me that throughout this time they have incurred considerable costs in terms of time, mental anguish and other unquantifiable damages. They have also ably established they paid Tshs 31,000,000 to the 4<sup>th</sup> Defendant being purchase price for the suit property. They have further averred through the testimony of PW1 and PW2 that they had intended to use the suit property as security for mortgage but they could not do so. PW2 has further testified that the suit property is located in the prime area of Upanga hence could be put on lease at a minimum rent rate of Tsh 400,000.00 per months which would give the Plaintiffs an income of about Tsh 81,000,000.00 but this was not possible as they could not execute a lease agreement because the suit property was not registered in their name. However, they lead no evidence in proof of the same.



As to the reliefs, the Plaintiff's prayers are in respect of declaratory orders that the suit property was transferred to the Plaintiff by the 4th Defendant; the Defendant acts and omission toward refusal to transfer and register the suit property to the 4th Defendant and finally to the Plaintiffs are discriminatory and illegal; an order for specific performance of the transfer of the right of occupancy agreement between the Plaintiff and the 4th Defendant in favour of the Plaintiffs; general damages against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants at a tune of Tshs 500,000,000/=; and any other sum as the Court may asses. This Court finds that since the Plaintiff has totally failed to show any cause of action against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Defendants. All the reliefs sought against these four Defendants fail entirely and I hereby proceed to dismiss the suit against these Defendants.

The Plaintiff's relief if any is against the 4<sup>th</sup> Defendant. For this Defendant I wish to reiterate that this Court has noted that contrary to the content of the preamble to Exhibit P5 where he purports to be the registered owner of the of the suit property, he was not the owner let alone the registered owner of the suit property as it was still within the name of ATC. However, since the legality or otherwise of the agreement between the 4<sup>th</sup> Defendant was not at issue in the instant suit, I am unable to order any relief to the Plaintiffs. They may, if they find it proper, institute a fresh suit to enforce their contractual rights against this Defendant.

Accordingly, I dismiss the suit. Considering that each of the parties shares a certain degree of responsibility to the factors leading to this suit I will I refrain from making orders as to cost so that each of the parties cater for its respective costs.

Order, accordingly.

DATED at DAR ES SALAAM this 9<sup>th</sup> day of October 2019.



**J.L. MASABO**

**JUDGE**

Judgment delivered this 9<sup>th</sup> day of October 2019 in the Presence of Mr. Deogratius Lyimo and Mr. Mhina Michael, counsels for the Plaintiff and Mr. Stanley Mahenge, learned State Attorney for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Defendants.



**J.L. MASABO**

**JUDGE**