

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**LAND CASE NO. 2 OF 2017**

**DOMINICUS ZIMANIMOTO MAKUKULA**

**Administrator of the Estate of the Late**

**DOMMY DOMINICUS MAKUKULA ..... PLAINTIFF**

**VERSUS**

**DOMINICA DOMINICUS MAKUKULA ..... 1<sup>ST</sup> DEFENDANT**

**SONGEA MUNICIPAL COUNCIL ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER FOR LANDS,**

**MINISTRY OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

*Date of last order: 28/04/2020*

*Date of judgment: 21/05/2020*

**JUDGMENT**

**I. ARUFANI, J.**

The plaintiff filed the suit in this court against the defendants claiming the defendants, jointly and severally fraudulently procured registration of Certificate of Title No. 13084-MBYL in the name of the first defendant in respect of

the property situated on plot No. 17 Block "E" Songea Township. Among the reliefs the plaintiff prayed from this court includes an order for declaration that, the Certificate of Title No. 13084-MBYL issued by the second defendant in favour of the first defendant was issued fraudulently, thus null and void. He also prayed the court to declare the plaintiff who is an administrator of the estate of the late Dommy Domminikus Makukula is the rightful owner of the land in dispute. In addition to that he prayed for vacant possession of the land in dispute, specific damages at the tune of Tshs. 5,000,000/= per month from 1998 to the date of vacant possession, general damages at the tune of Tshs. 100,000,000/=, various interests plus the costs of the case.

The history of the matter as averred by the plaintiff in his amended plaint is to the effect that, Dommy Dominicus Makukula was the father and the brother of the first defendant, Dominica Domminicus Makukula. The name of the plaintiff's grandfather who was the father of his father and the first defendant was Dominikus Zimanimoto Makukula. While the grandfather of the plaintiff (the late Dominikus Zimanimoto Makukula) died in 1982, the father of

the plaintiff namely Dommy Dominicus Makukula died on 26<sup>th</sup> June, 2013.

The plaintiff states that, his grandfather was the original owner of the land located on Plot No. 17 Block "E" Songea Township and said before the death of his grandfather he donated the mentioned land to his father. He asserts that, after the land beingdonated to his father, the Certificate of Title No. 28979 for ownership of 99 years in respect of the mentioned land with effect from on 1<sup>st</sup> July, 1982 was issued in favor of his late father.

He avers that, despite the existence of the above mentioned Certificate of Title issued in favor of his late father, the defendants jointly and severally and fraudulently issued a letter of offer and Certificate of Title No. 13084-MBYL in respect of the same plot of land to the first defendant. The plaintiff claims that, the said fraudulent action put the first defendant in unlawful possession and occupation of the land in dispute from 1998. The plaintiff claims further that, the plaintiff has suffered a loss of Tshs. 5,000,000/= per month which is arising from the rent which

the estate of his late father has been denied from 1998 to the date of vacant possession.

The above stated claims of the plaintiff were vehemently disputed by all defendants and put him into strict proof. The defendants stated in their separate written statements of defence that, the Certificate of Title No. 13084-MBYL was lawfully issued in favour of the first defendant by the relevant authorities and there is no fraudulent act committed by the defendants. The first defendant stated in her written statement of defence that, the mentioned Certificate of Title was issued to her after being appointed administratrix of estate of her late father, Dominikus Zimanimoto Makukula.

The first defendant states further in her written statement of defence that, she has been paying annual land rent and property tax of the land in dispute from when her father died up to 2016 when she was stopped by the second defendant from paying the said rent. All the defendants prayed the court to dismiss the plaintiff's suit in its entirety with cost for want of merit. The issues framed by the court for determination in this matter are as follows:-

1. Whether the original owner of the demised premises, the late Dominikus Z. Makukula gave, donated and handed over the demised premises to the late Dommy Dominikus Makukula.
2. Whether the Certificate of Title No. 28979 for 99 years was lawfully issued in favor of the late Dommy Dominikus Makukula from 1<sup>st</sup> July, 1982.
3. Whether the Certificate of Title No. 13084-MBYL in respect of Plot No. 17 Block "E" Songea Township was fraudulently processed and issued in favour of the first defendant by the defendants.
4. Whether the first defendant has been unlawful possessing, occupying and collecting rent in the demised premises from 1998 and denied the estate of the late Dommy Dominikus Makukula a revenue of Tshs. 5,000,000/= per month from 1998 to date.
5. Whether the plaintiff has suffered any damage as a result of the defendants action and
6. To what reliefs the parties are entitled.

At the hearing of the case the plaintiff was represented by Mr. Hillary Ndumbaro, learned advocate. On the other side, while the first defendant was represented by Mr. Edson

Mbogoro and assisted by Mr. Vissent Kassale, learned advocates the second defendant was represented by Mr. Alto Liwolelu, Solicitor and the third defendant was represented by Mr. Telesphory Komba, Land Officer. Despite the fact that the fourth defendant filed in this court a written statement of defence which was prepared jointly with the written statement of defence of the third defendant but during hearing of the matter nobody appeared in this court on behalf of the fourth defendant. That prompted the court to allow the matter to proceed ex parte against the fourth defendant.

In proving the claims of the plaintiff the court received the evidence of four witnesses from the plaintiff's side and in disproving the claims four witnesses testified on the side of the defendants. The plaintiff, Dominicus Zimanimoto Makukula testified before the court as PW1 and told the court that, he was given the mentioned name by his grandfather and he has also been using the names of Dominicus Dommy and Dominicus Makukula in some of his documents. He told the court that, his father, Dommy Dominicus Makukula who was also using the name of Dominicus Makukula died at Temeke Hospital in Dar es

Salaam Region on 26<sup>th</sup> June, 2013. He went on telling the court that, on 12<sup>th</sup> February, 2014 he was appointed by Temeke Primary Court vide Probate and Administration Cause No. 2 of 2014 to administer the estate of his late father. The certified copies of the letters of administration of estate of the late father of PW1 issued to PW1 together with the affidavit in respect of the names of PW1 were admitted in the matter as exhibit P1 and P2 collectively.

PW1 told the court that, after the death of his father and being appointed to administer the estate of his late father they convened a family meeting to identify the properties of his late father. In the said family meeting they found one of the properties of his late father was the house built on Plot No. 17 Block "E" located at Songea Township. When he followed the said property in the office of the second defendant he found there was a new Certificate of Title which had been issued in respect of the mentioned plot of land. He said to have been told by the Land Officer from the office of the second defendant to take to him the documents showing his father was the owner of the land in dispute.

PW1 told the court that, after returning to his mother, Bertha Nyoni who testified in this matter as PW3 she told him that, she witnessed his grandfather giving the land in dispute to his late father. He said his mother told him the stated bequeathing was made in writing by his grandfather. PW1 told the court that, the letter for donating the land in dispute to his late father was written by his grandfather to the second defendant on 3<sup>rd</sup> May, 1982 and prayed the second defendant to transfer the ownership of the land in dispute to the name of his late father. The mentioned copy of the letter was admitted in the case as exhibit P3.

PW1 told the court that, after seeing exhibit P3 and as they had Certificate of Title No. 28979 which was issued in favor of his late father and admitted in the matter as exhibit P4 he started making a follow up to know what happened in respect of the ownership of his late father to the land in dispute. He said to have gone to the land in dispute where he found there was construction of a storey building which was continuing on the land in dispute and he was told the first defendant was the one who was doing the said construction on the land in dispute.

PW1 said to have gone to the office of the second defendant where he was told the first defendant was the one who was paying land rent and property tax in relation to the land in dispute. He said to have been told to write a letter to the Director of the second defendant so that he can be given information about all what had happened in relation to the land in dispute. He said on 16<sup>th</sup> September, 2014 he received a letter from the second defendant which was admitted in the case as exhibit P5 which informed him the ownership of the land in dispute had been transferred to the first defendant via Certificate of Title No. 13084-MBYL.

PW1 said to have been told by the second defendant's Officials that, the first defendant was granted ownership of the land in dispute after being appointed by the District Court of Songea via Probate & Administration Cause No. 63 of 2003 to administer the estate of his grandfather who was the original owner of the land in dispute. He said to have been advised by the second defendant's Officials to go to the District Court of Songea to ask for documents relating to the appointment of the first defendant to administer the estate of her late grandfather.

PW1 told the court that, upon making an inquiry from the District of Songea about the appointment of the first defendant to administer the estate of the late Dominikus Z. Makukula he was informed through the letter admitted in the case as exhibit P6 that, the mentioned cause was not in relation to the estate of the late Dominikus Z. Makukula but in relation to the estate of the late Moshi Ferdinand Mapunda and the administratrix appointed in that matter was Stella Ferdinand Mapunda. He went on stating that, after getting the said reply from the court and made further inquiry from the second defendant he was informed by the second defendant that, they had given him a wrong information as the Probate & Administration Cause upon which the first defendant was appointed to administer the estate of her late father was No. 67 of 2003 and not 63 of 2003.

PW1 testified further that, after getting the said information he wrote another letter to the court requesting for the information relating to the appointment of the first defendant to administer the estate of her late father. He said to have also gone to the land in dispute and found the people were doing business on the suit premises. He said

one of the tenants he found at the suit premises was the employees of the Star Times. PW1 said that, when he asked them as to who was their landlord they told him they were paying house rent to the first defendant.

PW1 said to have been arrested by the policemen on 24<sup>th</sup> December, 2017 and told he was causing disturbance in the property of the first defendant. Later on he went to the office of the second defendant with his relatives and after a long discussion the second defendant's officials said they had discovered they had caused dispute by issuing a letter of offer to the first defendant by relying on the documents which were not genuine. The second defendant wrote a letter in relation to the said discovery to PW1 and the said letter was admitted in the case as exhibit P7.

PW1 told the court that, although Certificate of Title No. 28979 was issued in different name with the one indicated in exhibit P3 but was issued to his father as the signature appearing on that Certificate of Title is the signature of his late father which he used in other different documents. He told the court the said signature is appearing in the driving licence of his late father which he used from 1961 to 2012.

He said that, to show the certificate was issued to his late father, his late father signed the Certificate on 22<sup>nd</sup> April, 1983 while his grandfather died on 24<sup>th</sup> May, 1982 and buried on 26<sup>th</sup> May, 1982.

He testified further that, on 5<sup>th</sup> August, 2019 he prayed to peruse the file of Plot No. 17 Block "E" Songea Township and discovered there was a death certificate issued on 8<sup>th</sup> September, 2014 which shows his grandfather died on 26<sup>th</sup> November, 1995 while his grandfather died on 24<sup>th</sup> May, 1982. He said that shows the documents used to issue a letter of offer to the first defendant were forged documents as they are in contradiction with the documents which are in the file of the Plot No. 17 Block "E". He stated further that, the ruling of the court made in Probate & Administration Cause No. 67 of 2003 which he found in the file of the mentioned plot land shows it was directing the first defendant to be allocated the land situated on Plot No. 17 Block "C" and not Plot 17 Block "E" which is a subject matter in the suit before the court.

PW1 said that, it appears from 1998 when his father departed from Songea and went to Iringa the first

defendant started conducting different businesses on the suit premises which included renting the premises to different people and collected rent from those people and she proceeded to do so until when his father died. He said before his father went to Iringa he had rented the premises to some tenants and his paternal aunt namely Veronica Dominicus Makukula was the one who was taking care of the house. He said his grandmother was living in the suit premises up to when his father moved from Songea and said his aunt Veronica Dominicus Makukula died in 2016.

PW1 told the court that, in 1998 there were investors who wanted to develop the land in dispute by constructing a building which would have been used for banking business and those investors told his late father that they would have paid him Tshs. 5,000,000/= per month as a rent. He said that, when he came to Songea in 2013 after the death of his father he was told his father failed to develop the land in dispute and found the first defendant had done a lot of developments on the land.

He said after discovering the forgery done by the defendants he wrote a demand letter to the defendants

claiming compensation of the loss and damages caused to the estate of his late father. The two demand letters written by Maleta and Ndumbaro Advocates to the third and fourth defendants were admitted in the case as exhibit P8 collectively. PW1 prayed the court to grant to him the reliefs prayed in his amended plaint.

When PW1 was cross examined by the counsel for the first defendant he told the court that, he don't see any confusion in using the name of Dominicus Zimanimoto Makukula which was also being used by his grandfather. He said to have discovered the land in dispute was the property of his late father after the death of his father. He said to his understanding exhibit P3 is the one used to transfer ownership of the land in dispute from his grandfather to his father. He said if there was any procedure which was not followed in transferring the ownership of the land to his father that is supposed to be answered by the defendants.

He said further that, although he has stated his late father was using the names of Dommy Dominicus Makukula and Dominicus Makukula but he don't know why the

certificate of title was issued in the name of Dominicus Makukula. He said that, although his father was paying land rent from 1983 but he had not brought to the court evidence to show his father was paying land rent from that year. Upon being cross examined further he said he don't know if his late father was paying land rent or not. He said his first time to go to the land in dispute was 2017 after getting the letter from the second defendant. He said he didn't go to talk to the first defendant about the land in dispute because when his father died the first defendant quarreled with the members of their family.

He stated further that, during family meeting he heard people saying the persons who were in occupation of the land in dispute were the first defendant and his aunt Veronica Dominicus Makukula. He said he don't know how many times his father came to Songea from 1998 when he shifted to Iringa. He said some of his siblings died after his father shifted to Iringa and were buried at Songea and his father attended some of the burial events and not all the burial events. He said it is true that after his father shifted to Iringa he was involved into an accident and he came to

Songea for treatment and he stayed here for a long time but he don't know if he visited the land in dispute.

When he was cross examined by the counsel for the second defendant he said to have done search in the file of the land in dispute in 2013 and discovered the certificate of title issued to his late father was still in existence. He said he has not discovered if his late father had ever complained about the development done on the land in dispute by the first defendant. He went on saying that, for the time being there is one storey building on the land in dispute. He said the side houses which are on the land in dispute were built by his late father around 1975 to 1978. He said before the one storey building being constructed on the land in dispute there was another building constructed by his grandfather but was demolished and the storey building was constructed on the land in dispute. He said the storey building was not constructed by his father and he doesn't know who constructed the same.

When PW1 was cross examined by the counsel for the third defendant he stated that, there is no difference between his name and that of his grandfather and said the

difference is on their signatures. He said he know his grandfather was issued with a short term offer in 1968. He said he know there is a letter written by the second defendant on 1<sup>st</sup> July, 1982 directing the Treasury Officer to recognize exhibit P3 and issue a certificate of title in the name of his late father. He however, said he don't know why his late father accepted the certificate of title issued in the name of Dominicus Makukula instead of the name of Dommy Dominicus Z. Makukula written in the said letter.

When he was re-examined by his advocate he said the transfer of ownership of the land from his grandfather to his late father was done by the second defendant and the second defendant was the one who was supposed to follow the transfer of ownership of the land in dispute. He said to have been told by his mother that, exhibit P3 was taken to the second defendant by his late grandfather and his late father and it was received in the office of the second defendant and stamped with their rubber stamp.

He said after the second defendant admitted in exhibit P7 that they did mistake in allocating the land to the first defendant the second defendant did not take any other

action. He said what he knows is that, ownership of a land is proved by certificate of title and not receipt of paying land rent. He said the ruling made in Probate & Administration Cause No. 67 of 2003 shows the minutes of the family meeting which appointed the first defendant to administer the estate of his grandfather and it also shows one of the property left by his grandfather was the land on plot No. 17 Block "C" and not Block "E" Songea Municipal council. He said that, despite the fact that the letter directed the first defendant to be allocated the land on plot No. 17 Block "C" but she was allocated the land on Plot No. 17 Block "E".

He stated further that, the ruling of the District Court shows that, the petition for letters of Administration of the estate of his late grandfather was made orally by advocate Edson Mbogoro and not by the first defendant. He said when his grandfather died his late father and his aunt Veronica were still alive but his father was not at Songea. Finally he reiterated his prayer of the reliefs sought in the Amended plaint.

Arthur John Makukula testified in this matter as PW2 and told the court that, the father of PW1 was his uncle as he

was young brother of his father. He said the father of PW1 was using the names of Dommy Dominicus Makukula or Dominicus Makukula. He said his uncle used the name of Dominicus Makukula in his driving license and he used the name of Dommy Dominicus Makukula in his voting card. The driving license and voting card of the late father of PW1 mentioned by PW2 were admitted in the case as exhibits P9 and P10 respectively. He said the difference in the name of the late father of PW1 and that of his grandfather is that, while his late grandfather, who died on 25<sup>th</sup> April, 1982 was using the name of Dominicus Zimanimoto Makukula the late father of PW1 was not using the name of Zimanimoto in his names.

PW2 told the court that, he heard the late father of PW1 saying he was given the land on Plot No. 17 Block "E" Songea Township by his grandfather who was the original owner of the land in dispute. He said the late father of PW1 told them in some occasions that, his grandfather wrote a letter to bequeath to him the land in dispute and said if he will see the letter he will be able to identify the same. After being shown the letter which is exhibit P3 in the case he

managed to identify it after seeing the signature and handwriting of his grandfather.

He said his late uncle was issued with a certificate of title which was issued to him on July, 1983. He identified the said certificate of title by using the name of his uncle, date of issuance and his signature which he said was similar to the one appearing in his driving license and voting card. He told the court that, for the time being there are two houses on the land in dispute which were built by the first defendant who is also his aunt.

When he was cross examined by the counsel for the first defendant he told the court that, PW1 was given the name of Dominicus Zimanimoto Makukula by his grandfather. He said it is possible that exhibit P3 was taken to the second defendant after the death of his grandfather as the letter showed to them by the late father of PW1 was a copy. He said the storey building which is at the land in dispute was built by the first defendant after the death of his uncle which occurred in 2013. When he was cross examined by the counsel for the second defendant he said he was

not living with his uncle but his uncle told them about exhibit P3 when they met him at his residence at Mfaranyaki.

When he was cross examined by the counsel for the third defendant he said the children of his grandfather were Anna, Veronica, John, Dominica and Dommy. He said with exception of the first defendant the rest of the mentioned children of his grandfather are no longer alive. He said when his grandfather died in 1982 the children who were alive were Veronica, Dominica and Dommy. He said he don't know if there was family meeting which was convened after the death of his grandfather. He said to have heard people saying the first defendant said she was building the house on the plot to preserve the name of her late father. He also said he is not in good relationship with the first defendant and she has stopped him to go to her home.

Mother of PW1 who testified in the matter as PW3 told the court that, she was married by the Dommy Dominicus Makukula on 19<sup>th</sup> June, 1965 and their marriage certificate was admitted in the case as exhibit P11. She said her late husband died seven years ago. She said the land in dispute was given to her late husband in 1982 by his father who was

her father in law. She said she was told by her late husband about the event of being given the land in dispute by his father. She testified further that, although she don't know the number of the plot in dispute but she know the house is at Majengo area close to the market.

She said that, when she was married she lived with her husband in the house of her father in law which was on the land in dispute and later on they shifted to Mfaranyika before the death of her father in law. She said after her late husband shown her the letter of being given the land in dispute by his father they didn't do anything with that letter but her late husband kept it. She said she don't know who demolished the house of his grandfather and build a storey building on the plot in dispute. She told the court what she know is that, the land in dispute is the property of her husband, the late Dommy Dominicus Makukula.

When she was cross examined by the counsel for the first defendant she said that, she came to discover the person who was building the house on the land in dispute is her sister in law after occurrence of the dispute. She said to have seeing the house while it had already being built. She

said that, despite the fact that most of the time she was living at Songea but sometimes she used to go to Dar es Salaam to stay with her late husband who was living at Dar es Salaam. She told the court that, after her late husband being given the land in dispute by his father he went to Dar es Salaam where he was issued with certificate of title for long lease. She said there is a time her husband was involved into an accident and came to Songea for treatment. She said after her husband recovered he went to proceed with his work. He also said her husband used to come to Songea when some of their children died.

When she was cross examined by the counsel for the second defendant she said the names of her late husband were Dommy Dominicus Makukula or Dominicus Makukula. She said her late husband went to the land office with his father when he was still alive. When cross examined by the counsel for the third defendant she said that, there is a day her father in law went to their house and told her he wanted to see her husband. When her husband came she told him his father wanted to see him. She said after her husband went to see his father he returned with a letter and showed the same to her but told her he was not ready to build on

the plot. Later on her husband went to Dar es Salaam where he was given long lease in respect of the plot given to him by his late father.

Another witness called by the plaintiff is Abdallah Salum Limbuya who testified as PW4 and told the court that, he is a retired Land Officer and before retiring his station of work was Songea Municipal Council. He said on 30<sup>th</sup> June, 1982 he received a letter which exhibit P3 in the matter from the owner of Plot. No. 17 Block "E" located within Songea Township who was Dominicus Z. Makukula which states he was donating the mentioned plot of land to his son namely Dommy Dominicus Makukula to develop it. The letter was shown to him and managed to identify it.

He said on 1<sup>st</sup> July, 1982 he wrote a letter the District Treasury Officer to notify him the owner of the mentioned plot of land had donated the land to his son and required him to change the name of the owner of the land to the new owner namely Dommy Dominicus Z. Makukula of P.o Box 10 Songea. The letter written by PW4 to the District Treasury Officer was admitted in the case as exhibit P12. He

said the original owner of the land in dispute owned that land under short term lease.

He said after the fees for transferring ownership of the land to the new owner being paid he wrote a letter to the Director of Land Development Service which was admitted in the case as exhibit P13 so that he can initiate the process of preparing a certificate of Title in the name of Dommy Dominicus Z. Makukula of P.o Box 10 Songea. He said the payment for transferring ownership of the land was paid by Dommy Dominicus Z. Makukula. He said the Certificate of Title was prepared at Dar es Salaam by the Registrar of Title and they received its copy which was written it was issued to Dominicus Makukula after being introduced to the Registrar of Title by A. P. Mbena who was a Land Officer.

PW4 told the court that, the Certificate of Title was written the name of Dominicus Makukula because the space for writing name in the certificate was not enough to accommodate the full name of the new owner he wrote in the letter. He was shown the copy of the Certificate of Title admitted in the case as exhibit P4 and managed to identify it and said is the one issued to the late Dommy Dominicus Z.

Makukula. He said to have continued with his work up to when he retired without receiving any complaint in relation to the ownership of the land in dispute. He told the court that, there is no possibility of issuing two certificate of title in respect of one plot of land.

When he was cross examined by the counsel for the first defendant he said that, after receiving the letter from the original owner of the land he directed the same to himself as his assistants would have not managed to handle it. He said the late Dominicus Z. Makukula died before the letter, exhibit P3 being taken to their office. He said despite the fact that the letter was brought to his office after the death of the author but he believed it was written by Dominicus Z. Makukula after seeing the signature of the author of the letter was similar to other signatures in other documents which were in their file.

He said that, despite the fact that the late Dommy Dominicus Z. Makukula did not apply for a letter of offer but he issued the same to him as letter of offer is issued to all prospective owner of the long term lease of the land. When he was cross examined by the counsel for the second

defendant he said that, when a person died the relatives are required to appoint a legal representative to administer the estate of the deceased. He said he didn't ask who was appointed to administer the estate of the late Dominicus Z. Makukula. He said he prepared the letter of offer and the Certificate of Title was prepared at Dar es Salaam.

When he was cross examined by the counsel for the third defendant he said he prepared the letter of offer with effect from 1<sup>st</sup> July, 1982 and said payments are made after issuing a letter of offer. When he was re-examined by the counsel for the plaintiff he said that, exhibit P3 was written before the death of the author. He said the Registrar of Title used to issue a certificate of occupancy after being satisfied all the required documents are correctly prepared. He stated further that, the Registrar of title is the one issues number of Certificate of Title.

The first defendant, Dominica Dominicus Zimanimoto Makukula testified as DW1 and told the court that, Dominicus Zimanimoto Makukula was her father and he died on 24<sup>th</sup> May, 1982 and buried on 25<sup>th</sup> May, 1982. She said when her father died she was in Holland with her

husband who was Ambassador of Tanzania in that country. She said to have come back to Tanzania on 3<sup>rd</sup> March, 1990. She said that, when her father died she left two houses which one was at the land in dispute and another one was at Mfaranyaki. She said the house at Mfaranyaki was the house of her aunt and it was left to her father after the death of her aunt.

DW1 told the court the court that, after the death of her father her mother and her sister namely Veronica continued to live in the house left at town by her late father and nobody was appointed to administer the estate of her late father. She said after coming back home she went to live in the house located at Mfaranyaki as the house at town where her mother and sister were living was not in a good condition. She said her brother, the late Dominicus Dominicus Makukula was living in the house at Mfaranyaki and said Dommy Dominicus Makukula is the son of her brother, Dominicus Dominicus Makukula. She also conceded that the plaintiff in this matter is the son of the mentioned brother.

She went on arguing that, she built her house at Majengo and after building the same in 1991 she shifted her mother and sister Veronica to that house of Majengo as the house were living was not in good condition. DW1 said that, by that time her brother Dominicus Dominicus Zimanimoto Makukula was living at Songea and he was working in a Company known as Haidery as a driver. She said the person who was paying rent of the plot left by her late father was her sister Veronica and she paid that rent from May, 1982 when her father died up to 1996 when she told her to stop paying the rent and said she would have paid the same as her sister was using the money she was giving her for offering to pay the rent of the land left by her late father.

DW1 said that, later on her mother told her she was not comforted to continue to stay in her house because of Ngoni customs and traditions and requested her to assist her to renovate the house left by her late father so that she can return in that house. DW1 said that, before commencing renovation of the house left by her late father, her mother died on 26<sup>th</sup> November, 1995. She stated that, when they were talking about renovation of the house left by their late father her brother Dominicus Dominicus Makukula was at

Songea and he said he will not do anything in relation to that house and said he will only take care of the house at Mfaranyaki.

DW1 said to have started collecting materials for renovating the house and when she wanted to start renovating the house in 2000 she went to the office of the second defendant to ask if she can renovate the house. She said to have been told by the officials from the second defendant's office that, according to the town plan she was only allowed to build a storey building on the plot. She said up to that time the plot was in the name of her late father and her sister Veronica was paying rent by using the name of her late father. PW1 said to have convened a meeting which was attended by herself, her sister Veronica and her brother Dominicus Dominicus Makukula and agreed that, she should take the land in dispute so that she can develop it and Dominicus Dominicus Makukula said his house is the house at Mfaranyaki.

She said after that meeting she went to the District Court of Songea where she was given the ruling which she took to the office of the second defendant. The copy of the

said ruling was admitted in the case as exhibit D1. She said that, although she was paying land rent but she do not know if the number of the land was Block "E" or "C". She said for the time being is the owner of the land in dispute and the Certificate of Title issued to her in respect of that house was admitted in the case as exhibit D2.

DW1 denied to have procured exhibit D2 fraudulently and said she followed all the required procedure. She challenged exhibit P3 by stating that, her late father would have not donated the land in dispute to her late brother without informing her mother and her sister who were living with him. She said exhibit P3 is a forged document. DW1 said to have started paying rent in relation to the plot in dispute from 1996 up to 2016 when she was stopped by the second defendant to continue to pay the rent as there was dispute over ownership of the land in dispute. DW1 tendered to the court a bundle of 29 land rent receipts and were admitted in the case as exhibit D3 collectively.

DW1 continue to tell the court that, her late brother, Dominicus Dominicus Makukula went to Dar es Salaam where he stayed up to when he died. She said that,

although her brother stayed at Dar es Salaam for about ten years but sometimes he used to come to Songea and her wife (PW3) who was living at Songea used to go to Dar es Salaam to visit her husband. DW1 said there was a time her brother was involved into an accident at Mbeya and his leg was injured. She said she sent her motor vehicle to take him to Songea where he was treated at Peramiho Hospital.

DW1 said that, the plaintiff whose name is Dommy was studying at Bagamoyo and after his parents failed to pay his school fees she assisted him to pay the school fees of the plaintiff. She said that, although there was another house on the land in dispute before building the new house on the land but it was not a house which would have fetched a rent of Tshs. 5,000,000/= per month. She said he don't know the plaintiff who is calling himself as Dominicus Zimanimoto Makukula as that is the name of her late father. She said she has built the house on the plot in dispute for eight years. She prayed the court to see where the truth lies in this matter and ordered the plaintiff to pay her the costs of the case.

During cross examination by the counsel for the plaintiff DW1 told the court that, although it was stated in exhibit D1

her late father died on 25<sup>th</sup> May, 1982 but he died on 24<sup>th</sup> May, 1982 and buried on 25<sup>th</sup> May 1982. She said to have requested the ruling to be corrected but she was told there is no problem. She said the Bock of the land in dispute is not "C" as indicated in the ruling but is "E". She stated further that, although she started construction of the house in 2001 but she started mobilization of the building materials in 2000. She said she started construction of the house before getting the ruling of the court as the ruling was delivered on 12<sup>th</sup> December, 2003 and said she was issued with certificate of occupancy in 2008 after finishing construction of the house on the plot in dispute.

She said a person can start construction of house if she has been given a letter of offer and has a building permit. She said she was given building permit before commencing to build the house. She said before being given Certificate of Occupancy she was paying land rent by using the name of her late father and after being issued with Certificate of Occupancy she was paying land rent by using her name. She said the family meeting to discuss about renovation of the house of their late father was convened in 1998 but the minutes of that meeting was not put in writing.

She said she was not given letters of administration of estate of her late father but only the ruling of the court which was admitted in the case as exhibit D1. She said that, although exhibit P3 is a forged document but she doesn't know who forged the same. She said she demolished the old house left by her late father and built the new house which is on the land in dispute. She said she had not seeing Certificate of Title issued to Dominicus Makukula until when she came to see the same before the court and when she was handed the Certificate of Occupancy she was not told there was another Certificate of Occupancy which has ever been issued in respect of the land in dispute.

She stated further that, exhibit P4 was issued to her brother Dominicus Makukula and not to her late father because the name of her late father was Dominicus Zimanimoto Makukula. She said she was called by the officer in the office of the second defendant to take the certificate of occupancy issued to her. She stated further that, the Certificate of Occupancy was not issued to her as a legal administratrix of estate of her late father as she did not take letters of administration to the second defendant.

She said to have taken only ruling of the court to the second defendant. She added that, the Certificate of Occupancy issued to her was written her name as she was the one built the house on the land in dispute. She said there was nobody who was living on the house which was on the plot in dispute as the house was about to collapse. She said there are two tenants in the house she has built who paid her a rent of Tshs. 300,000/= per month. When she was re-examined by her learned advocate she said she went to the District Court to swear she was a lawful heir of her late father. She stated further that, sometimes people used to call her late brother Dommy instead of Dominicus Makukula. Finally she said all her siblings have died and she has remained alone.

The first defendant called Selemani Daudi Mnyani who testified before the court as DW1 and told the court he is a mason and he also used to do carpentry work. He said he know DW1 as in 1991 she employed him to build her house at Majengo. He said in 1996 DW1 employed him again to repair the side rooms in Plot No. 17 Block "E" Songea Township. He also told the court that, on July, 2001 DW1 employed him to assist one Rashid Haule @ Masharubu to

build a one storey building on Plot No. 17 Block "E" Songea Township. He said they continued with that work up to 2005 when Masharubu stopped the work and left him to continue with the work up to 2008 when he finished the work.

DW2 said he know Dommy Dominicus Makukula and said for the time being his residence is at Dar es Salaam. He said he know the father of Dommy Dominicus Makukula whose name was Dominicus Dominicus Makukula and for now is a deceased. He said to have started knowing Dominicus Dominicus Makukula in 1987 as he had rented a house neighbour to his house. He said in 1988 he was working with him in a Company known as Haidery Raod Works where he was working as a mason and Dominicus Dominicus Makukula was working as a driver. He said they worked together in that company up to 1993 when the Company demised and Dominicus Dominicus Makukula went to Dar es Salaam where he was employed by another Company.

He went on telling the court that, the last time to meet with Dominicus Dominicus Makukula was in 2009 when he was renovating the house on Plot No. 17 Block "E" Songea

Township which was knocked by a motor vehicle. He said when he met Dominicus Dominicus Makukula he was with his fellow driver namely Sadick Swalehe who told Dominicus Dominicus Makukula to look at the house and said the work was good and proceeded with their journey. He said PW1 came to the plot with DW1 in 2006 and they found him painting the house. He said after taking them to see the house they kneeled down on the storey and made a prayer and PW1 congratulated DW1 for the good building and gave them Tshs. 2,000/= to congratulate them for the good job.

When DW2 was cross examined by the counsel for the plaintiff he told the court that, the sketch map given to them was for building a house on Plot No. 17 Block "E" Songea Township and the owner of the house was DW1. He said he didn't see the Certificate of Occupancy of the plot. He said PW1 came to the plot on July, 2006 with DW1 and witnessed by Asha Athuman who was his assistant. He said he know the family of the late Dominicus Makukula very well and said the Plot of land where he built a storey building was the property of the late Dominicus Makukula but he don't know when his ownership ended. He said on the plot

where they built a storey building there was a dilapidated house which they demolished.

When he was cross examined by the counsel for the second defendant he said when they were building the house on the plot they had a building permit. When he was cross examined by the counsel for the third defendant he said when where building on the land they didn't see any other member of the late Dominicus Makukula coming to participate in the work of constructing the building. When he was re-examined by the counsel for the first defendant he said in 2009 he was renovating the wall of the house which was knocked by a motor vehicle and the person called him to do that work was DW1. He said the dilapidated house they demolished on the plot of land was built by soil and not bricks and it was roofed by corrugated iron sheets. He said he know PW1 from when he was a young boy but is not very close to him.

Another witness called by the first defendant is Devotha John Makukula who testified before the court as DW3 and told the court that, her father whose name was John Makukula was the brother of DW1 and brother of the father

of PW1. She said the name of the father of PW1 was Dominicus Dominicus Makukula and is now a deceased. DW3 told the court the historical background of the father of PW1 in relation to his family and where he had worked during his life time. She said in 2008 the father of PW1 who was her uncle was involved into an accident at Igawa area in Mbeya Region when she was going to Congo.

She said the information of the said accident was communicated to DW1 by PW1 through telephone and DW1 sent her with her motor vehicle to take the father of PW1 from Uyole Mbeya and brought him to Songea for treatment. She said while at a petrol station at Mbeya, her uncle told her he was being surprised that by the PW1 as he was telling him to sue DW1 as she was not giving him his share from the house of his late father. He said to have been told by her uncle that, PW1 had told him he wanted to claim Tshs. 50,000,000/= from DW1 as the share of his father from the house. She said her uncle told her he was surprising because he had not contributed even a single bag of cement in the construction of the house on the land in dispute and said he cannot sue his sister. She said the father of PW1 was in good condition with DW1.

She stated that, after arriving at Songea they took her uncle to his home at Mfaranyaki and thereafter he was taken to Peramiho Hospital for treatment. She said Later on her uncle departed to Dar es Salaam to continue with his work. DW3 told the court that, the background of PW1 in respect of the school he attended and said when he was studying at the University of Dar es Salaam his father requested DW1 to assist him to pay the fees of education of PW1 and promised her he would have repaid her. She said when PW1 was studying at the University of Dar es Salaam she used to come to Songea to and visited DW1 as she was the one who was paying fees of his education.

DW3 said that, it is not true that PW1 and his late father did not know DW1 was constructing a house on the land in dispute as the father of PW1 told her PW1 had said he wanted to sue DW1 to claim for Tshs. 50,000,000/= as the share of his father from the house but his late father told her he would have not sued his sister. She said the house at Mfaranyaki was built by the sister of their grandfather and after her death the house was left to their grandfather as his sister had no child.

DW3 said that, her mother was married and lived in the house of Mfaranyaki and after her death the house was rented to a tenant after her sister refused to stay in the house. Later on the house was given to the father of PW1 and stayed there with his family.

When she was cross examined by the counsel for the plaintiff she said that, apart from the house of Mfaranyaki her grandfather had another house in town where she was living with her grandfather and grandmother. She said the house was on Plot No. 17 as she used to hear DW1 saying that was the number of the plot of land but she don't remember other numbers. She said DW1 used to go to pay rent of the land which was owned by her grandfather, Dominicus Zimanimoto Makukula. She said she don't know the name written on the Certificate of Title of her grandfather. She said the house left by her grandfather was rented to people dealing with scales and they stayed for about one year and a half and departed.

DW3 said that, she didn't tell anybody the story she was told by her uncle that PW1 had told him he wanted to sue DW1 to claim for share of his father from the house built on

the land in dispute as her uncle did not finish the story he was telling her. She said the storey building on the house in dispute was built by DW1 herself. She said all of them were living in the house of her grandfather up to when she was married in 1975 but now the house has been demolished to pave chance of building the new house. She stated further that, when she followed her uncle after being involved into an accident his wife, PW3 was living at Songea. She said she has never heard if there was a family meeting which was convened to appoint a person who would have administered the estate of her late father.

When she was cross examined by the counsel for the third defendant she said her grandmother died in 1995. She said were grown up by their grandfather, grandmother and their uncle from their childhood up to when were married. She said she didn't hear if there was any will written by their grandfather to bequeath any house to any of his children. She said as the house was under the control of three children and it is only DW1 who is still alive as other children have already died the owner of the house is DW1.

The last witness to testify in this matter is Elly Christopher Lyamuya who testified as DW4. He told the court that, the procedure for transferring ownership of a land from a deceased person to another person is for the administrator of estate of the deceased to take to them letters of administration of estate of the deceased issued to him or her by the court. After receiving those documents they used to prepare documents for transferring the ownership of the land as per the request of the administrator of the estate of the deceased.

He said he know Plot No. 17 Block "E" in the central area of the Municipality of Songea. He said the original owner of that land was the late Dominicus Zimanimoto Makukula and his ownership to the land which was in short term right of occupancy started in 1968. He said in 2008 DW1 took to their office the documents issued to her by the District Court of Songea vide Probate & Administration Cause No. 67 of 2003 which appointed her to administer the estate of her late father. He said the documents presented to their office by DW1 were letters of administration, ruling of the court and the affidavit of DW1 which were admitted in the case as exhibit D4 collectively. *Exhibit*

DW4 said that, Plot No 17 Block "C" mentioned in the Ruling of the District Court of Songea was a typing error as there is no such a plot within the Municipality of Songea. He said that, as DW1 was applying to be allocated the plot of his late father they found the correct number of the plot of her late father was Plot No. 17 Block "E" and Block "C". He said after receiving exhibit D4 the letter of offer and Right of Occupancy were prepared in the name of DW1. He was shown and identified the Right of Occupancy issued to DW1 which was admitted in the case as exhibit D2.

He said he has seen exhibit P4 in their office and said that, the said certificate is not the one issued to DW1 as is showing it was issued in respect of Plot No. 17 Block "E" High Density Songea Township while they have no area known as High Density within Songea Township. He said the right of occupancy issued to DW1 was in respect of Plot No. 17 Block "E" Central Area Songea Township. He said that, according to the law the stamp of the Commissioner for Land is supposed to be affixed at the schedule where the Commissioner for Land is required to sign and not back of the certificate of occupancy as done in exhibit P4.



Further to that, DW4 told the court that, procurement of exhibit 4 was not proper because the letter for application of transfer of ownership of the land was not taken to the Director of the second defendant. He added that when the letter (exhibit P3) was taken to their office the owner of the land had already died and there was no letters administration of estate of the deceased which had been issued to the applicant of the stated right of occupancy (i,e exhibit P4). Moreover, he said the application was for the certificate to be issued to Dommy Dominicus Z. Makukula but it was issued to Dominicus Makukula who is a different person.

He told the court that, section 36 of the Land Act, No. 4 of 1999 states clearly that, all disposition must comply with section 37 up to 37 of the cited law. He prayed the court to see the plaintiff violated section 174 of the Land Act, No 4 of 1999. He said that, in their office there is no procedure of reducing names of applicant of right of occupancy. He said the Certificate of Occupancy issued to DW1 followed all the required procedure. He said their office is recognizing DW1 as the lawful owner of the land in dispute and prayed the suit to be dismissed.

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When DW4 was cross examined by the counsel for the plaintiff he said the short term right of occupancy issued to the late Dominicus Zimanimoto Makukula ended in 1969 and the long term right of occupancy in respect of the land in dispute was issued to DW1 in 2008 after receiving exhibit D4. He said to have seen exhibit P4 in their file and said it was issued in 1983. He acknowledged his office prepared two certificates of occupancy which are for Plot No. 17 Block "E" Central area of Songea Municipality and Plot No. 17 Block "E" High Density.

He said the first document was issued to Dominicus Makukula and the second was issued in 2008 to DW1. He said in their office there is no area called central area but there are areas like Mfaranyaki, Msamala etc. He said low density is the area which its size is 1,200 square meters and above, medium density is the area with 800 square meters up to 1,200 and high density is the area with 799 square meters and bellow. He said he don't remember the size of the land allocated to DW1.

He said the dispute they stated in their letter they had caused was not resolved. He stated that where there are

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two certificate of occupancy in respect of the same plot of land one which was issued wrongly must be revoked. He said under section 171 of the Land Act, Act No. 4 of 1999 DW1 was the one who was entitled to be given ownership of the land in dispute. He said that, the certificates of occupancy tendered in this matter are of two different plots. He said that, Plot No. 17 Block "E" High Density is not in existent in Songea and said the certificate issued to the father of PW1 has several defects as he stated in his evidence in chief.

When he was cross examined by the counsel for the first defendant he said that, if a person was bequeathed a land by a deceased, an administrator of estate of the deceased is the one introduced the person bequeathed the land in their office. He said after discovering there is no Plot styled as Plot No. 17 Block "E" High Density in their office they were satisfied there was no longer a mistake or problem in relation to the right of occupancy issued to DW1. He said they have not received any other complaint from the rest of the heirs of the late Dominicus Zimanimoto Makukula.

When he was cross examined by the counsel for third defendant he explained the procedure used to issue a letter of offer and how and where the right of occupancy is prepared. He said the certificate of occupancy which was issued out of the required procedure has no legal effect. When re-examined by the counsel for the second defendant he said the certificate of title is prepared in their office by land officer and sent to the Commissioner for Lands to fill the part required to be filled by him.

Having heard the evidence from both sides the task of the court is to determine the issues framed for determination in the matter listed earlier in this judgment. I will start with the first issue which asks whether the land in dispute was donated to the late Dommy Dominicus Makukula by his father, the late Dominicus Zimanimoto Makukula. This issue has tasked my mind a little bit because the name of the person stated was the original owner of the land in dispute has been used interchangeably between the said person, his son to whom is alleged the land in dispute was donated and his grandson who is the plaintiff in the matter at hand.

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The court has found that, while it is stated without dispute from both sides that the name of the original owner of the land in dispute was Dominicus Zimanimoto Makukula but the plaintiff in the matter at hand who is the grandson of the said original owner of the land in dispute told the court is also known by the name of Dominicus Zimanimoto Makukula and is the name he has used to file the matter at hand in this court. Further to that, it was stated to the court by the plaintiff and his witness who testified in this matter as PW2 that, his late father whose name as used in this matter was Dommy Dominicus Makukula he was also known in some of his documents like his driving licence, voting card and marriage certificate (admitted in this as exhibits P9, P10 and P11 respectively) as Dominicus Makukula. That name of Dominicus Makukula is also used by the plaintiff as his name as deposed in his affidavit admitted in this matter as exhibit P1.

Under that circumstance the court has found that, when you want to know which person among the three mentioned persons did what or what was done to any of them at any particular point of time you must get further and better particulars to know you are dealing with which

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specific person out of the mentioned three persons. Now in order to avoid confusion which might arise in using the names of the mentioned three persons I will be referring the original owner of the land in dispute as Dominicus Z. Makukula, his son who was the father of the plaintiff as Dommy Dominicus Makukual and the plaintiff as Dominicus Zimanimoto Makukula as used in the amended plaint.

With the stated clarification in mind the court has found indulging into determination of the first issue and the subsequent issues it is proper to state at this juncture that, it is a trite law as provided under sections 110 and 111 of the Evidence Act, Cap 6 R.E 2002 that, the burden of proof in civil cases lies on the person alleging existence of certain facts. The principle of law laid in the above provisions of the law was firmly stated by the Court of Appeal of Tanzania in the case of **Godfrey Sayi V. Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2014, CAT at Mwanza (unreported) that:

*"It is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified*



in our view by the provisions of sections 110 and 111 of the Law of Evidence Act [Cap 6 R.E. 2002] which among other things states:-

110. Whoever desires any court to give judgment as of any legal right or liability depending on existence of facts which he asserts must prove that those facts exist.

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

Together with the principle stated hereinabove it is to the view of this court proper to state here that, the standard of proof in civil cases as provided under section 3 (2) (b) of the Evidence Act and restated in number of cases which one of them is the case of **Anthony M. Masanga V. Penina (Mama Mgesi) and Another**, Civil Appeal No. 118 of 2014, CAT at Mwanza (unreported) is on preponderance or balance of probability. While being guided by the above stated principle of the law the court has found its task is to determine whether the plaintiff has managed to discharge the duty laid on his shoulder of proving his allegations on the

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stated standard that the land in dispute was donated to his late father by his grandfather.

In discharging the stated legal duty the plaintiff told the court in his testimony that, the land situated on Plot No. 17 Block "E" Songea town was originally owned by his grandfather, the late Dominicus Z. Makukula from 1968. He went on telling the court that, his grandfather donated the mentioned land to his father in 1982 through the letter admitted in this case as exhibit P3. The mentioned letter shows it was written by the late grandfather of the plaintiff on 3<sup>rd</sup> May, 1982 and addressed to the second defendant intimating that, the author, Dominicus Z. Makukula who was the original owner of the land in dispute was donating the said land to his son namely Dommy Dominicus Z. Makukula.

Despite the fact that the mentioned letter was written on 3<sup>rd</sup> May, 1982 but the late Dominicus Z. Makukula who was the author of the letter died on, 25<sup>th</sup> May, 1982 which was almost three weeks from the date of writing the letter and the letter was taken to the office of the second defendant on 30<sup>th</sup> June, 1982. The question arise here which was not answered by any of the evidence adduced before



this court by both sides is why the letter was not taken to the second defendant who was the addressee of the letter immediately after being written. The court has found the letter took about three weeks from when it was written up to when the author of the letter died without being taken to the addressee.

The court has also found the letter took about two months from when it was written to be taken to the office of the second defendant who was the addressee of the letter while the letter was written at Songea and the office of the addressee is at Songea. The stated delay to present the letter to the addressee of the letter caused the court to entertain some doubts if the letter was really written by the late Dominicus Z. Makukula who was the original owner of the land in dispute.

The court has also entertained some doubts if the letter was really written by the late Dominicus Z. Makukula because as stated by DW1 in her evidence nobody like the wife of the author of the letter or sister of the late Dommy Dominicus Makukula namely Veronika Dominicus Makukula who by that time were alive and were living in the house

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built on the land in dispute were involved in that transaction as witnesses of the alleged transaction. The court has found even the wife of the late Dommy Dominicus Makukula who testified in this matter as PW3 and said she was at Songea when her husband was given exhibit P3 was not involved by her father in law in the stated transaction.

What PW3 told the court as stated hereinabove is that, before her husband being given the said exhibit P3 her father in law went to their home and asked her where was her husband and after telling him he was not at home he told her to inform her husband when he would have returned home that he wanted to see to see him. PW3 told the court that after her husband returned home she told him his father wanted to see him. PW3 said that, after her husband going to his father he returned with exhibit P3 which she said in her testimony is certificate and after showing the same to her, he kept the same in their cabinet and she didn't do anything with that document.

The court has also entertained some doubt in respect of the donation of the land in dispute to the late father of the plaintiff after seeing that, as stated by the first

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defendant in her evidence the late father of the plaintiff did not inform her as his sibling that, his father had donated the plot in dispute to her. The first defendant stated in her testimony that, after being requested by her late mother to renovate the house which was on the land in dispute so that she can stay therein she informed the late father of the plaintiff about the prayer of their mother but the late father of the plaintiff told her he was not ready to do anything in relation to that house and said he will only deal with the house at Mfaranyaki and he didn't inform DW1 the land in dispute had been donated to him by their late father.

The evidence of the first defendant appears to be supported by the evidence of DW3 who was the daughter of the brother of both the first defendant and the late father of the plaintiff, who told the court that, even though she was told by the late father of the plaintiff who was her uncle that he was not supporting the plaintiff's intention of suing the first defendant to claim for his share from the house as he had not contributed anything in the construction of the house on the plot but he didn't tell her the land in dispute had ever being donated to him as his personal property. All that make the court to be of the view that, if the late father



of the plaintiff was really donated the land in dispute by his late father he would have not keep it as a secret from her mother, sisters and the daughter of his brother who testified in this matter as DW3.

The court has also considered the evidence of the plaintiff who told the court after his late father being granted ownership of the land in dispute he left the house under the care of his sister, the late Veronica and was the one who was paying rent of the stated land on behalf of his late father but the plaintiff did not bring to the court any evidence to support his testimony that the mentioned late Veronica was assigned by her late brother who was the father of the plaintiff to take care of the house. Although the plaintiff told the court they have receipts showing her aunt, the late Veronica was paying rent of the land on behalf of his late father but he didn't bring to the court any receipt of rent paid by his aunt, the late Veronica on behalf of his late father to support his evidence.

To the contrary the court has found the first defendant told the court that, her sister Veronica was paying the rent of the plot as the property of their late father and she was

A handwritten signature consisting of the letters "J" and "K" joined together.

using the money she was giving to her for offering to pay the land rent until when she told her to stop paying the land rent. The court has been of the view that, if the late Veronica was really taking care of the land in dispute on behalf of her late brother she wouldn't have hesitated to inform her sister, the first defendant that the land in dispute was the property of their late brother and she was taking care of the same on his behalf.

The court has considered the evidence of PW2 who told the court he heard the late father of the plaintiff saying he was donated the land in dispute by his grandfather and he showed them exhibit P3 but failed to belief his testimony. The reason for the court to fail to belief his evidence is because, he didn't tell the court if he witnessed his grandfather giving the mentioned exhibit to the late father of the plaintiff or he was involved in the said transaction in any way.

In addition to that, he told the court is not in good terms with the first defendant but is in good terms with the family of the late father of the plaintiff. That makes the court to be of the view that, under that circumstance there is

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possibility of the said witness to give a biased testimony against the first defendant as they are not in good terms. All of the above stated reasons lead the court to come to the view that, the plaintiff's evidence together with that of his witnesses has not been able to satisfy the court exhibit P3 which was used to establish the land in dispute was donated to the late father of the plaintiff is free from doubt. That makes the court to come to the settled view that the first issue canot be answered in affirmative.

Coming to the second issue which is asking whether the certificate of Title No. 28979 in respect of the land in dispute was lawfully issued in favor of the late Dommy Dominicus Makukula from 1<sup>st</sup> July, 1982 the court has found that, even if it will be assumed the late father of the plaintiff was lawfully and properly donated the land in dispute through exhibit P3 but still the process of transferring the ownership of the land in dispute from the original owner to the purported new owner left a lot to be desired.

The court has arrived to the above finding after seeing that, although exhibit P3 shows the author who was the late Dominicus Z. Makukula indicated his intention was to

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transfer ownership of the land to his son, the late Dommy Dominicus Z. Makukula and the letters written by the office of the second defendant which was admitted in the case as exhibits P12 and P13 directed the name of the original owner of the land to be changed into the mentioned name of Dommy Dominicus Z. Makukula but the ownership of the land as evidenced by the Certificate of Title No. 28979 admitted in this case as exhibit P4 was transferred to the name of Dominikus Makukula.

Despite the fact that the plaintiff told the court his father used the name of Dominicus Makukula in some of his documents but the court has found there is no sufficient evidence or explanation given to the court to establish why exhibit P4 was issued in the name of Dominikus Makukula which can also stand as the name of the late father of the purported donee or the plaintiff in the matter instead of the name of Dommy Dominicus Z. Makukula given in exhibits P3, P12 and P13. The court has considered the evidence of PW4 who told the court that, the name of the donee was not written in exhibit P4 as directed in exhibit P3, P12 and P13 but it was written in a short name of Dominikus Makukula as the space in exhibit P4 was not enough to accommodate



- the whole name of the donee but failed to see any grain of truth in the said part of evidence of PW4.

The court has arrived to the above finding after seeing that, PW4 is not the one prepared the said Certificate of title so that he can say he failed to fill the full name of the donee in the Certificate of title as directed by exhibits P3, P12 and P13. The court has also found exhibit P4 shows there is a big space at the place where the name of the person to whom the certificate was issued which was enough to write the full name of the donee as indicated in the above exhibits and that space was just crossed after being seeing there was no further particulars to be filled in the said space.

The court has also found that, although PW3 and PW4 said the late father of the plaintiff followed the said certificate himself at Dar es Salaam to suggest he might have been the one directed his name to be written in the certificate of title in the name of Dominikus Makukula instead of the name provided in exhibits P3, P12 and P13 but the court has found it was not proper for the Certificate of title to be issued in a name which is different from the one directed by the original owner of the land and the second

*J. Keer*

defendant's office which initiated the process of transferring the ownership of the land to the alleged donee.

Moreover, the court has found even DW4 who is the Land Officer working in the office of the second defendant told the court that, there is no plot of land in their town area known as Plot No. 17 Block "E" Songea High Density Songea Township indicated in the certificate of Title issued to the person named as Dominikus Makukula and admitted in the case as exhibit P4. He said the plot of land they have in their office is the plot known as Plot No. 17 Block "E" Central Area Songea Township which its Certificate of Occupancy Titled No. 13084-MBYL was issued to the first defendant namely Dominica Dominicus Makukula. In the premises the court has come to the finding that, it cannot be said the Certificate of Occupancy with Title No. 28979 can establish lawfulness of ownership of the land in dispute to the late father of the plaintiff. As a result the second issue is answered in negative.

Coming to the third issue which asks whether Certificate of Title No. 13084 MBY-L in respect of Plot No. 17 Block "E" Songea Township was fraudulently issued in favour of the first defendant by the defendants the court has found

*Jcces*

proper to state here that, as the plaintiff alleges the ownership of the land was granted to the first defendant fraudulently the law requires him to prove the said allegation of fraud strictly. That is the position of the law as stated in the case of **Ratialal Gordhanbai Patel V. Lalji Makanji**, [1957] EA 314 where it was stated that:-

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

The similar holding was made by the Court of Appeal of Tanzania in the case of **Omari Yusufu V. Rahma Ahmed Abdulkadr** [1987] TLR 169 where the allegation of fraud being committed by one of the party in the case was raised in the case and the Court held that:-

*"When the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary civil cases."*

*Jasor*

The question to answer here is whether the plaintiff has managed to prove the Certificate of Title mentioned in the third issue was fraudulently issued to the first defendant to the standard stated in the above cited cases. The evidence given to the court by the plaintiff to establish the allegation that the said Certificate of Occupancy was issued to the first defendant fraudulently as stated earlier in this judgment is that, when he requested the second defendant to give him the documents used to grant ownership of the land in dispute to the first defendant he was given a letter which was admitted in this case as exhibit P5.

The said letter shows the first defendant was appointed administratrix of estate of her father, the late Dominicus Z. Makukula through Probate & Administration Cause No. 63 of 2003 of the District Court of Songea. However, after making an inquiry from the mentioned court the plaintiff was informed vide the letter admitted in this matter as exhibit P6 that, the mentioned matter was not in respect of the first defendant and his late grandfather. He was informed the matter was in respect of the estate of the late Moshi Ferdinand Mapunda whose administratrix was Stella Ferdinand Mapunda.

After considering the above evidence the court has found a mere fact that the number of the case through which DW1 was appointed to administer the estate of Dominicus Z. Makukula given to the plaintiff by the office of the second defendant was not correct cannot be taken as conclusive proof that there was fraud in issuing exhibit D2 to the first defendant. The court has arrived to the above finding after seeing that, despite the fact the second defendant gave a wrong number of the case to the plaintiff but later on it was found the correct number of the matter upon which the first defendant was appointed to administer the estate of her late father as indicated in the ruling of the mentioned court admitted in this matter as exhibit D1 was 67 of 2003. That makes the court to be of the view that, to inform the plaintiff the first defendant was appointed to administer the estate of her late father in Probate & Administration Cause No. 63 of 2003 instead of 67 of 2003 might have been a typographical error which cannot be said it has establish the allegation of fraud asserted by the plaintiff in his amended plaint.

Likewise the plaintiff's evidence that the mentioned Certificate of Occupancy was fraudulently issued to the first

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defendant because the plot of land mentioned in the ruling of the court as the property of the late Dominicus Z. Makukula was Plot No. 17 Block "C" and not Block "E" has been considered by the court but found as correctly stated by DW4 in his testimony that might have been a typing error which cannot establish the assertion of fraud raised by the plaintiff. The court has also found in establishing the Certificate of Occupancy was issued fraudulently to the first defendant the plaintiff told the court that, although it was stated in exhibit D2 that the first defendant was authorized by the members of the family of her late father to apply for letters of administration of estate of her late father but there was no family meeting which was convened to authorize her to apply for the letters of administration of estate of her late father.

The court has considered the stated evidence but find there is nowhere stated there was a family meeting which was convened to authorize the first defendant to apply for letters of administration of estate of her late father. The only family meeting which DW1 said they convened and involved their mother, her late sister Veronica and the late father of the plaintiff was a meeting to discuss how they

JAC

should renovate the house left by their late father and the minutes of that meeting was not put in writing.

To the view of this court a mere stating in the ruling of the court that the first defendant was authorized by members of the family of her late father to apply for the letters of administration of estate of her late father without any other evidence to show what was stated before the court and caused the court to state in its ruling the members of the family authorized the first defendant to apply for letters of administration of the estate of their late father cannot be taken as conclusive evidence that the first defendant stated there was a meeting of the members of the family of the deceased which was convened to authorize her to apply for letters of administration.

To the view of this court and as stated by the first defendant in her evidence there was no family meeting which was convened to appoint her to apply for the letters of administration of the estate of her late father. She stated she was granted the letters of administration of the estate of her late father after publishing the matter as required by the law and appeared there was nobody who was objecting

*for*

her petition that is why the court stated the first defendant was authorized by the members of the family of the deceased to apply for the letters of administration of the estate of her later father.

The court has also being of the view that, even if it will be said the mentioned court was informed there was a family meeting which was convened to authorize the first defendant to apply for letters of administration while there was no such a meeting but that cannot be taken as a proof that the defendants jointly and severally issued Certificate of Occupancy with Title No. 13084-MBYL to the first defendant fraudulently.

Further to that, the court has found as the mentioned ruling of the court has not being challenged being by way of appeal or revision basing on the allegation of fraud raised by the plaintiff the court has found it cannot be used to establish in the matter at hand that the Certificate of Occupancy issued to the first defendant in respect of the land in dispute was issued fraudulently. In the light of all what I have stated hereinabove the court has found the allegation of fraud made by the plaintiff in relation to the

*Jace*

certificate of occupancy issued to the first defendant is a mere suspicion which is not enough to prove the said allegation. The above finding of this court is getting support from the case of **Mususa V. Dhanani** [2001] 2 EA 471 where when Kalegeya, J (as he then was) was dealing with similar allegation of fraud he made reference to **Mogha's Law of Pleadings**, 4<sup>th</sup> Edition at 66 and the **Supreme Court Practice**, 1985 Volume 1 at page 283 where it is stated that:-

*"Mere suspicion is not enough, there must be circumstances incompatible with honest dealing"* and *"fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from facts."*

Basing on the above cited authorities and all what I have stated in relation to the evidence adduced to prove the third issue the court has found the plaintiff has not managed to discharge his duty to prove to the standard required by the law that the Certificate of Occupancy with Title No. 13084-MBYL was fraudulently issued to the first defendants. In the premises the third issue is also answered in negative.

*Jac*

Having found the first to third issues framed for determination in this matter have been answered in negative the court has found there is no need of continuing to determine the fourth and fifth issues framed for determination in this matter because they are answers are principally depending on the answers which would have been arrived in the preceding issues.

Therefore the issue left for determination in this matter is the last issue relating to the reliefs the parties are entitled in this matter. Since the court has found all the issues framed in this matter have been answered in negative the only remedy which can be granted in the matter is to dismiss the matter in its entirety for want of proof and the costs to follow the event. It is so ordered.

Dated at Songea this 21<sup>st</sup> day of May, 2020



**I. ARUFANI**

**JUDGE**

**21/05/2020**

Date: 21/05/202

Coram: Hon. I. Arufani, J

Plaintiff:

For: Mr. Hillary Ndumbaro, Advocate

1<sup>st</sup> Defendant:

For: Mr. Edson Mbogoro, Advocate and assisted by

Mr. Vicent Kassale Advocate.

2<sup>nd</sup> Defendant:

3<sup>rd</sup> Defendant:

4<sup>th</sup> Defendant:

C/C Chris.

All absent

**Court:** Judgment delivered today 21<sup>st</sup> day of May, 2020 in the presence of Mr. Hillary Ndumbaro, Advocate for the plaintiff and Mr. Edson Mbogor, Avocated who is assisted by Mr. Vicent Kassale, Advocate for the first defendant. The rest

of the defendants are absent. Right of Appeal is fully explained.



**I. ARUFANI**

**JUDGE**

**21/05/2020**