IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
LAND CASE NO. 166 OF 2012

MECHTILDA KATEME KABAGIRE
as Legal Personal Representative of the Estate of
the late **ALFRED LUDOVICK KABAGIRE** .....**PLAINTIFF**

VERSUS

RASHID RAMADHANI.....1ST DEFENDANT
ABDUL RAMADHANI MHOKA.....2ND DEFENDANT
BASIL HERI.....3RD DEFENDANT

JUDGEMENT

MASABO J.L.:-

The suit is over ownership of land identified as Farm No. 2389 with Certificate of Title No. 55544 situated at Makao Mapya area (Formelly known as Mfenesini) at Msongola village within Kibaha District in Coastal Region. The farm with a total area of 13.049 Hector is part of a 40 acres farm allegedly acquired by one Alfred Ludovick Kabagire (now deceased) on allocation by Msongola Vilage Council. The plaintiff being personal representative of the estate of the late Alfred Ludovick Kabagire is suing the defendants jointly and severely for recovery of the land to which the 1st and 2nd Defendants allegedly trespassed and sold to the 3rd Defendant. She also prays for payment of general damages at a tune of Tshs 100,000,000/= and punitive damage at a tune of Tshs 80,000,000/= and costs of the suit.

It was pleaded in the plaint that the late Alfred Ludovick Kabagire acquired the farm whose total area is 40 and upon acquiring it he developed it by planting crops. He subsequently had the farm surveyed and was granted with certificate of title. That, on 2012 the Defendants unlawfully trespassed into the farm whereby they removed the bacons planted to show the demarcations of the farm, destroyed the plaintiff's crops, portioned the farm and sold part of it to the 3rd Defendant. It was further pleaded that upon seeing the destruction, the plaintiff sued the 1st and 2nd defendant was criminal trespass and destruction of his crops but the defendants have persistently refused to enter vacant possession. The defendants sternly disputed all the claims levelled against them. In addition, the 3rd Defendant, stated that he is a bonafide purchaser having purchased the disputed farm from the 1st and 2nd Defendant.

During the hearing of the suit, both parties were represented. The Plaintiff were ably represented by Ms. Jacqueline Rweyongeza and Mr. Robert Ruitaihwa from RK Rweyongeza & Co, the 1st and 2nd Defendant were represented by Mr. Nyaronyo Mwita Kicheere from Nyaronyo & Co. Advocates whereas the 3rd Defendant was represented by Ms. Jessie Mgutto. From Jessie Mngutto Co. Advocates. Three witnesses testified for the Plaintiff's case, four witnesses testified in support of the 1st and 2nd defendants case and 3 witnesses testified for the 3rd Defendant.

For the Plaintiff, PW1 Mechtilda Kateme Kabagire, told the court that her husband was the legal owner of the suit land. She gave a long narration of

how they acquired the disputed land from Msongola village. In a nutshell, her narration is that the disputed land was among the farms which were formerly owned by residents of Mfenesini who migrated to Ngeta Station Village during villagerisation. That, prior and after being allocated the suit land the late Kabagire complied with all legal procedures for acquiring land in that, he approached the leaders of Msongola Village one mzee Mrisho (Village Chairman) and one Mzee Lubawa (Secretary) who conveyed their request to the village council which agreed to allocate him a farm covering an area of 40 acres at a consideration of Tshs 976,000/=, an amount which he dully paid and issued with a receipt (**Exhibit P2**). Later, upon acquiring the land, they paid compensation to villagers who claimed to be owners of the suit land and having paid the compensation, they arranged to have the farm surveyed where upon they were issued with a letter of offer of right of occupancy (**Exhibit P3)** and two Certificate of Titles with CT No. 55544 (covering and area of 13.049 hectors) and CT No. 55540 (covering an area of 3.58 hectors) both registered in the name of Alfred Lodovick Lubazibwa Kabagire (**Exhibit P4**) . On cross examination she stated that the original owners of the disputed farm moved to Ngeta Village in during the Villagerisation operation leaving behind bush land with a few fruits trees to which compensation was paid through the village leadership. She further stated that, the approval to have the land surveyed and issued by a committee of Makao Mapya which also involved the residents of Ngeta Station Village.

PW2 Winfrida Modest Mugyabuso, gave a brief account of how the Plaintiff acquired the suit land. Her testimony was to the effect that she is acquainted to the plaintiff and that she too acquired a farm at Msongola village around the same time. She reckoned that the original owners of the farms were dully compensated for unexhausted improvements whereupon they made arrangement to have the farms surveyed and were grated title deeds.

On his part, PW 3, Salum Lubawa a ward counselor for Kawawa ward (under which Msongola Vilalge is situated) and former resident of Ngeta Station Village, testified that in 2002 he was the Village Executive Officer for Ngeta Station village. He recalled that, in 1998 a group of people from different places oragnised under a coalition named "Muungano wa Kijani Wakulima' moved to Ngeta, Kimara, Mfenesi and Mtumbi hamlets where they grabbed the farms left behind by residents who migrated Ngeta Station Village. With the assistance of the Land Office for Kibaha District, they distributed the farms amongst themselves. The exercise did not involve the original farm owners and as a result it sparked discontent and serious complaints leading to interventions by the District Commissioner for Kibaha and the Regional Commissioner for Costal Region. To resolve the simmering conflict between villagers of Ngeta villagers and members of 'Muungano wa Kijani wa Wakulima' the Regional Commissioner and the District Commissioner ordered that the original owners be compensated for unexhausted improvements in their farms and those unwilling to surrender the farms for reallocation be allowed to recover their farms. Subsequently, , a committee tasked to identify the land owners and improvements worth

compensation was formed to which he served as secretary. He accounted further that as he was still serving in that capacity on 27/7/2002 Alfred Kabagire and other four persons desirous of owning farms approached him and were allocated the land which was originally owned by Ramadhani Mhoka, the farther to the 1st and 2nd Defendant. That, upon allocation of the said land to Alfred Kabagire and four others, he personally, located members of the Mhoka family, to wit, Said Mhoka, Shaban Mhoka and Mibegu Athumani and the same received compensation in respect of improvement existent on the land. He reckoned that no evaluation was done but compensation was paid based on the number of cashew nut tress found in the farm. On cross examination he maintained that, the disputed land belonged to Mhoka's family and that members of the Mhoka family were fully compensated.

For the Defendants, DW1 Hendrick Simba, accounted that he is well acquainted to the 1st and 2nd Defendants family as they were neighbours at Mfenesini area and even after they migrated from Mfenesini they maintained a good relationship. He told the court that 1st and 2nd defendants are sons of Ramadhani Mhoka who was the original owner of the suit land. He accounted that when the Mohoka family migrated to Ngeta Station village they left behind a farm with mango trees, cashew trees and jack fruits trees. According to his account, Ramadhan Mhoka and his family never disposed of their land nor was their land re allocated during the invasion of Mfenesini by 'Muungano wa Wakulima wa Kijani' and subsequent establishment of Makao mapya. He stated that, Ramadhan Mhoka and himself were upon

these farm owners who refused to surrender their farms for re allocation. He accounted further that he was appointed to act as chairman for those who had their land grabbed and recalls the names of all those who opted for compensation including one Kibwana Tamla whose farm bordered Ramadhan Mhoka's farm.

The testimony of DW2, Abdul Ramadhan Mhoka and DW3, Rashid Ramadhani can be summarized as follows: That at the time Alfred Kabagire allegedly acquired the suit land they were in full possession of the same having inherited it from their father, Ramadhan Mhoka, the original owner of the suit land who died in 1997. That, when their family migrated to Ngeta Station village in the course of Villagerisation their farm at Mfenesini had cashew trees, mango trees, and oil palm tree and plum trees. That, sometimes back, Salim Lubawa, PW3 who was then a secretary of the Muungano wa Kijani wa Wakulima, a group that trespassed into their land introduced Alfred Kabagire and other 4 people who were interested in buying land and upon negotiation, 2 persons whom they identified with single name as Rwegalila and Rweyemamu paid a consideration of Tshs 7,000,000/= in respect of improvements found in the farm and they have since then acquired ownership of the said land while the other part (the suit land) remained under the ownership of Mhoka family. In 2006 the family resolved to sell the remaining farm and they sold the same to the 3rd Defendant in a transaction which was conducted before court.

DW4, Seleman Ramadhan Kibave, a former resident of Mfensini informed the court that he is well acquitted with the Defendants and the suit land as

his family and the Mhoka family were neighbors at Mfenesini. He accounted further that since their farms shares a border and members of Mhoka family has a tendency of calling him to ascertain the demarcations whenever they are selling part of their land. He recalls that, he was called when the Muhoka family sold part of their land to two people and also when they sold another piece to the 3rd Defendant but has never been called to witness a sale of any part of land to Mr. Kabagire. All he recalls is that the said Kabagire bought his farm from one Alfani Kibwana Tamla, who is his paternal uncle.

Basil Heri, DW5 and 3rd Defendant herein testified that he bought the suit land from the 1st and 2nd defendant at a consideration of Tshs 18,000, 000/= thus he is a bonafide holder of title of the suit land. A copy of the sale agreement notarized by the Magistrate in charge for Mlandizi Primary Court was admitted in court as Exhibit D1. DW6, Danford Mkolwe and DW 7, Rev Canon Jonathan Panjo Shenyagwa, did not have much to account. Their only relevant testimony is that they facilitated the contact between the 1st and 2nd Defendants, then as vendors of the suit land, and the 3rd Defendant. They also witnessed the sale agreement concluded by the parties through Exhibit DW1.

At the commencement of hearing the court framed two issues for determination namely: (i) Who is the lawful owner of the disputed farm No. 2389 at Msongola Village Kibaha District? and (ii) to what reliefs are the parties entitled to?

All the parties made their final submissions in writing. On the first issue, the plaintiff submitted that the plaintiff being the holder of certificate of title has the best title over the disputed land which can not be extinguished by mere claims by the defendant. Further it was argued that the 1st and 2nd Defendant having failed to produce letters of administration of the Estate of the late Ramadhan Mhoka, they have no title/claim over the disputed land hence they could not pass a title to the 3rd Defendant. For the 1st and 2nd Defendant it was submitted that although the plaintiff is in possession of the title deed she has no good tile of the suit land as the same was acquired in total disregard of the law that requires that sale of land be sanctioned by known authorities. For the 3rd Defendant, just like for the 1st and 2nd Defendants, it was submitted that the Plaintiff has no title over the suit land as the process through which her late husband acquired the land does not show that he compensated the original owners of the suit land hence the 3rd Defendant being the bonafide purchaser have a good title.

I have carefully considered the evidence tender in court. Regarding the first issue as to who is the lawful owner of the disputed farm, the Plaintiff's case is that the Plaintiff being a legal representative of the late Alfred Kabagire is the rightful owner of land. The relevant evidence in support of this assertion is the oral testimony of PW1, PW2 and PW3 whose testimonies converge on two points, first that the disputed land was part of land originally owned by residents of Mfenesini who relocated to Ngeta Station Village in the eve of villagerisation; and two, that the disputed land was allocated to the late Kabagire by Msongola village council after he had complied with the relevant

procedure, namely payment of allocation fee to the village council and having being allocated the disputed land, he paid compensation to the original owners of the disputed land. Corroborating this testimony is: Exhibit P1 containing a receipt of the fee paid to obtain the land, a letter by the late Alfred Kabagire dated 7/8/2003 addressed to the Land Officer in which he requested to have the disputed land surveyed, and the minutes of Makazi Mapya; Exhibit P2 containing an offer of right of occupancy; Exhibit P4 containing a certificate of title with No. 55540, LO No. 183701 in respect of Farm No. 2391 at Msongola Kibaha District; and Certificate of Title No. 55544 L0 No. 183699 in respect of farm No. 2389 at Msongola Kibaha district all in the name of Alfred Ludovick Kabagire. On the part of the 1st and 2nd Defendant, they do not claim to have a granted right of occupancy. Theirs is a deemed right of occupancy, allegedly acquired under customary law through inheritance from their father one Ramadhan Mhoka who was the original owner of the disputed land. The 3rd defendant's claim of ownership rests on Exhibit D1, through which he allegedly acquired the disputed land from the 1st and 2nd Defendants by way of disposition by sale.

Before I dwell further into the evidence, let me pose here and states the following with regard to land acquisition and land management generally. First, the disputed land being in rural area fell under the purview of the Village Land Act, Act No. 5 of 1999. Second, our law recognizes several ways through which one can acquire an interest in land and these include, by way of grant of a right of occupancy, purchase, occupying land under and in accordance with customary (deemed right of occupancy); through

inheritance, and in respect of the village land, by allocation by the Village Council. It is therefore, not surprising that, the parties herein claim to have acquired the disputed land through different ways with the plaintiff claiming to have acquired it through allocation by village council, the 1st and 2st Defendant's claiming to have acquired it through inheritance from the farther who held the land customarily under deemed right of occupancy and the 3rd Defendant claiming to have acquired it by way of sale.

It is a trite law that the burden of proof lies on the person alleging existence of certain facts. Section 110 of the Tanzania Evidence Act, 1967 [Cap 6 R.E. 2002], provide clearly that a person who desires any court to give judgment as to any legal right or liability regarding the existence of certain facts must prove the existence of the said fact (See, **Godfrey Sayi v Anna Siame (**as Legal Representative of the Late Mary Mndolwa) Civil Appeal No. 114 of 2014, Court of Appeal of Tanzania (unreported). Thus, in the instant case, the burden rests on the Plaintiff to provide proof that the land was justly allocated to the said Alfred Ludovick Kabagire. This being a civil case, the standard of proof required is on the balance of probabilities which simply means that the court will accept evidence which is more credible and probable (see Al-**Karim Shamshudin Habib v Equity Bank Tanzania Limited & Viovena Company Limited** Commercial Case No. 60 of 2016).

Exhibit P4 vividly proves, indisputably, that the suit land is now registered in the name of Alfred Ludovick Kabagire, who according to this exhibit is, presumably, the legal owners of the said land. The consensus IN PW1, PW2,

PW3, DW1, DW2, DW3, and DW4's testimony that the disputed land was ordinarily owned customarily however, compels me to inquire into the mode through which the plaintiff acquired the disputed land. Section 12 (1) of the Village Land Act categorizes village land into 3 categories namely, (i) land occupied and used or available for occupation and use on a community public (communal village land); (ii) land occupied or used by an individual or family or group of persons under customary law (iii) land available for communal or individual occupation and use through allocation by village council. Of these three categories, the village council can only allocate the land falling under the first and third category.

Considering that the plaintiff's claim is that the disputed land was allocated to the late Alfred Kabagire by Msongola village council, the question to be determined first is, to which of the three categories above did the disputed land belong prior to being allocated to the late Alfred Kabagire. Testimony by PW3, DW1, DW2, DW3 and DW4 who all hail from Mfenesini (Makao Mapya) converge on the fact, prior to being allocated to Alfred Kabagire the land in dispute was not *tabula rasa*. In their testimony, they consistently testified that the disputed land was originally owned by Ramadhan Mhoka who relocated from Mfenesini area to Ngeta Station Village during villagerisation 1974 or thereabout. DW1 and DW4, being former residents of Mfenesini and owners of land neighboring the disputed land ably demonstrated that they are well acquainted with background of the suit. They gave a credible account of the ownership of the disputed land prior and after Villagelisation. Their testimony that the disputed land belonged to

Ramadhan Mhoka the father to DW2 and DW3 was uncontroverted. In fact, it was well corroborated by the independent testimony of PW3 who told the court that the land allocated to Alfred Kabagire and four other people who came to Msongola village alongside Alfred Kabagire originally belonged to Mhoka family, although he later said that the disputed land belonged to Khalfan Kibwana, on cross examination he confirmed that the land in question was the property of Ramadhan Mhoka and that the children of Ramadhan Mhoka were dully compensated. When considered in totality the evidence rendered in court clearly establish that the land was owned customarily by Ramadhan Mhoka.

Since it is now certain that the disputed land was primarily owned by Ramadhan Mhoka, the next question is how did it shift hands from the said Ramadhan Mhoka to Alfred Kabagire? Under the law, a land customarily owned under deemed right of occupancy is not free to interference or disposition without due regard been paid to the interest of the owner. As alluded to earlier, the village council cannot allocate the land privately owned under customary law save where the land has been abandoned for a minimum of 5 years and upon compliance with the procedural requirement laid down under section 45(1) of the Village Land Act, 1999 which include, among others, publication of a notice of abandonment and affixing the same in a prominent place. In the instant case, no evidence was rendered to show that the said Ramadhan Mhoka abandoned the disputed land or that the procedural requirement prescribed under section 45 was complied with before allocating the same to Alfred Kabagire. The allegation for

abandonment leveled by the plaintiff was not only devoid of concrete evidence but was also contradictory. The testimony of PW3, DW1, and DW4 all demonstrated quite clearly that even after relocating to Ngeta Station Village in 1974, Ramadhani Mhoka, maintained his farm at Mfenesini and at the time the land was allegedly allocated to Alfred Kabagire in 2002, there were certain crops to which Alfred Kabagire allegedly paid compensation. Had the land been abandoned as alleged the issue of compensation would not arise.

As the disputed land was not abandoned, its ownership could only pass from its original owner, Ramadhan Mhoka to Alfred Kabagire upon payment of full and fair compensation in respect of the crops existent therein. The testimony of PW1 is that the requirement to pay compensation was fully complied with in that, having being granted the said land, they paid compensation to the owner. No documentation was rendered to show the evaluation report, the amount paid and the names of the payee. It is crystal clear from the testimonies that, the payment made through Exhibit P2 was not in respect of compensation. While tendering Exhibit P2, PW1 told the court that the payment rendered in the said Exhibit was an allocation fee paid to the village council and upon the said payment, they were allocated the farms only to be notified later that there were people who claimed to be owners of the said farm and who demanded compensation which, the late Kabagire is later alleged to have paid. The testimony rendered in corroboration by PW3 also entertains doubts as it does not provide specificity with regard to the amount paid and the recipient thereto. All what PW3 could recall is that members of

Mhoka family participated in the evaluation exercise locally conducted by the buyer and the counted tress were fully compensated. The court has entertained serious doubts on the credibility of this testimony because it was consistently testified that the allocation of land to the new commers was marred by irregularities and was highly contested by the original owners of the farms who were allegedly not consulted. The committee to which PW3 was serving was established to correct the said irregularities and its responsibilities included among others identifying owners who were willing to surrender their farms for reallocation and those who were unwilling and to ensure that those who were willing were fully compensated. It is incomprehensible that the committee discharged this function oblivious of the importance of keeping records of the farms affected and their owners; owners who surrendered their land for reallocation and those who did not; evaluation report and compensation paid. It is my settled view that the in absence of a receipt or any other documentation in proof that the evaluation exercise was conducted and compensation thereto was paid to the Ramadhan Mhoka or his representative, this court cannot boast to have any basis upon which to conclude that the title of the disputed land legally passed to Alfred Kabagire.

Guided by the decision of this court in **Suzana Kakubukubu and 2 Others v Walwa Joseph Kasubi and Director of Mwanza** LRT[1988] 119 in which it was held that payment of compensation to a holder of deemed right of occupancy or to his representatives extinguishes that right. Thus in the instant case, Ramadhan Mhoka's ownership of the disputed land was not

distinguished as no compensation was paid neither to him nor to his representatives. The certificate of Title obtained by the Alfred Kabagire could only give him a good title over the suit land if it was obtained in compliance with the law. It should be noted that, among the new development brough by the Land Act, No.4 of 1999 and the Village Land Act No. 5 of 1999 is the elevation of the status of deemed right of occupancy. Section, 2 of the Village Land Act, defines the right of occupancy as:

> "title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law"

Owners of customary land tenure are, by virtue of this law deemed to have a good title over the land so occupied/owned. I also need not to emphasize that the right to a full and fair compensation is one of the key pillars of our land laws. Section 3.-(l) of the Village Act which incorporates the aspects of the National Land Policy into the Act, obliges all persons entrusted with the application or interpretation of the Act to have due regard to the fact that an interest in land, whether vested through right of occupancy or through recognized long-standing customary occupation has value and to ensure that a person whose interest in land is affected by any interference or transaction receives a full, fair and prompt compensation.

Before I turn to the 1st, 2nd and 3rd Defendants claim, let me pose for moment and state the irregularities I have noted in the transaction leading to the allocation of the suit property to the late Alfred Kabagire. A further scrutiny of the evidence rendered in court have revealed that, even if I were to hold that the disputed land was a village land and therefore subject to allocation by the village council, the transaction leading to the acquisition of the suit land by Alfred Kabagire would still fail the test as it was marred by irregularities. The mandate to allocate land under the Village Land Act exclusively vests in the Village Council. The disputed land lies at Mfenesini, an area within Msongolla village. Thus, according to the law only Msongolla Village Council could allocate the suit land to Alfred Kabagire or to any other person. Section 8 of the Village Land Act provides the following with regard to management of village land and allocation of the same.

> 8.-(I) The village council shall, subject to the provisions of this Act, be responsible for the management of all village land.
> (2) The Village council shall exercise functions in accordance with the principles applicable property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land
> (3).....
> (4) A Village council may establish a committee to advise and make recommendations to it on the exercise of any of the functions of the management of village land but, not withstanding the provisions of section 108 of the Local Government (District

Authorities) Act, 1982, such committee shall have no power to take any decisions concerning the management of village land.
(5) A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly

In the instant case it would appear that nether the village assembly nor the village council were involved in the allocation. The testimony of PW1 and PW3, as corroborated by Exhibit PW2, shows clearly that the transaction leading to allocation and grant of title to the late Alfred Kabagire was done by a body named "Muungano wa Kijani wa Wakulima na Wafugaji. The receipt issued to Alfred Kabagire upon payment of the allocation fee to Musongola village council bears the name, address and stamp of "Muungano wa Kijani wa Wakulima na Wafugaji." The letter wrote by the late Kabagire on 7/8/2003 to the District Land Officer, suggest to have been channeled through the Village Council for Msongola- Makazi Mapya but bears the stamp of "*Muungano wa Kijani wa Wakulima na Wafugaji.*" The minutes appended to this letter which are titled "*Muhtasari wa Kikao cha Wanakamati wa Kawawa Makazi Mapya Kilichofanyika tarehe 08-08-03 kujadili maombi ya Ndugu Alfred L.K. Kabagile ambaye anahitaji kuridhi shamba lake*" also bear the stamp of *"Muungano wa Kijani wa Wakulima na Wafugaji."* This is an obvious irregularity. "Muungano wa Kijani wa Wakulima na Wafugaji' being a loose organization of people who moved to Msongola village and for purposes of acquiring farms and engaging in farming, had no legal mandate to allocate the land let alone to approve/recommend the survey and grant of right of occupancy to the late Alfred Kabagire.

Reverting to the Defendants case, the said Ramadhan Mhoka is now deceased being survived by several children, the 1st and 2nd Defendants inclusive. The question that arises is whether these two have any interest/title over the disputed land. The Plaintiff's case is that, considering that no proof was rendered in court to show that they were duly appointed as administrators of the estate of the late Ramadhan Mhoka, they have no right whatsoever to the disputed land. The decision of Masanche J (as he then was) in **John Petro v Peter Chipaka** PC Civil Appeal No. 80 HC at Mwanza (unreported) was cited in plaintiff's final submission in support. In my view this case is distinguishable. In **John Petro v Peter Chipaka**, the court dealt with claims arising from employment while the instant case deals with acquisition of land, which as stated above, recognizes inheritance as one of the ways for acquisition of land under customary law. Although no letters of administration was rendered, the testimony of PW3, DW1 and DW4, established clearly that following the death of Ramadhan Mhoka, the ownership of the disputed customarily passed to the 1st and 2nd Respondents and their siblings, and since this was not contested by any member of the Muhoka family to whom the ownership of the land could have customarily devolved by inheritance, there is nothing to dispute their claim over the land, and this is possibly the reason why PW1 and PW3 insisted that, the 1st Defendant and the 2nd Defendants and the entire Mhoka family were compensated.

In my view, the application of the rule in **John Petro v Peter Chipaka** to the instant case would indiscriminately render a considerable number of

owners of customary tenure squatters and landless notably because not all inheritance matters are determined in court. It is a well-known fact that only a few inheritance matters are referred to court. The majority are resolved customarily at family or clan level. The strict application of the above principle would consequently mean that all those who acquired ownership through customary distribution of inheritance have no claim of right and this was, in my considered view, not the intention of the law.

Even if I were to agree with this school, this would still not change the fact that the plaintiff have no legal title over the land. The absence of a proof that the administration of the estate of the late Ramadhan Mhoka was determined in court, cannot under any circumstances regularize the acquisition of the disputed land in total disregard of the law. As alluded to earlier, the burden of proof rests on the Plaintiff. It can only shift to the Defendant once the Plaintiff have discharged its burden. Since in this case the plaintiff had failed to establish that she holds a good title over the suit land, the burden cannot shift to the 1st and the 2nd Defendant.

As regards the 3rd Defendant, upon finding that the Plaintiff have failed short of proving her case against the 1st and 2nd Defendant, there is nothing left on the case between the plaintiff and the 3rd Defends who is allegedly a bonafide purchaser of title from the 1st and 2nd Defendants. His title is evidenced by an agreement executed before Mlandizi Magistrate Court (Exhibit D1). I will not address myself to the contents of Exhibit D1 as they were neither contested by the 1st and 2nd Defendant nor the 3rd Defendant,

who are the parties there to. For that purpose, this court is convinced that notwithstanding the shortcomings in its form, exhibit D1 is a valid contract between the parties, as it constitutes the elements of a valid contract, ie, it contains an offer, acceptance and consideration there to; all the parties are of the age of majority with full capacity to contact; and the object of which it was concluded is a lawful object.

Based on all what has been stated here in above, the court has found that the plaintiff has failed to prove the claims she filed in this court against the defendants. Under the premise, the Plaintiff's suit is dismissed with cost.

1DATED at DAR ES SALAAM this 28th day of December 2019.

J.L. MASABO

JUDGE

Judgment delivered this 28th day of February 2020 in the presence of Mr. Robert Rutaihwa counsel for the Plaintiff, Mr. Godorn Nashon, Counsel for the 1st and 2nd Defendant and Mr. Trofmo Tarimo, for the thirs Defendant

J.L. MASABO

JUDGE