IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

APPELLATE JURISDICTION

LAND APPEAL NO. 07 OF 2021

(Arising from the decision in Land Application No. 44 of 2018 in the District Land and Housing Tribunal for Kigoma Before F. Chinuku, Chairperson)

1. ABDUL S/O YAHAYA KIDAGIRA
(Administrator of the Estate of the late **YAHAYA HEMEDI KIDAGIRA**) **.....APPELLANTS**
2. MUHIDINI S/O YAHAYA

VERSUS

1. MACHO S/O HUSSEINI SAIDI
2. ZIKIE S/O YAHAYA HEMEDI **..... RESPONDENTS**
3. TAUSI S/O SHABANI HEMEDI

JUDGMENT

22nd & 05th November, 2021

A. MATUMA, J.

The 1st respondent Macho Hussein Saidi is a sister-in-law to the appellants and the rest of the Respondents. She is married to the appellants' and 2nd respondent's brother one Hemedi Yahaya Kidagira. During the life time of her father is law one Yahaya Hemed Kidagira, she bought pieces

of lands from the 2nd appellant, 2nd and 3rd respondents and from other people. From the 2nd appellant, she is alleged to have bought from him a piece of land on 11/09/2015 for Tshs 1,000,000/=, from the 2nd respondent on 02/09/2015 for Tshs 1,000,000/= and from the 3rd respondent on 22/06/2011 for Tshs 200,000/=.

After the death of her father-in-law and when the 1st appellant had obtained letters of administration of the estate, some problems arose within the family as the 1st appellant claimed back the sold pieces of land from the 1st respondent whose total size are approximately at 2 acres on the ground that they forms part of the estate of his late father and those who sold had no capacity so to do.

The 2nd Appellant disputed altogether to have sold any land to the 1st respondent while the 2nd and 3rd respondent admitted to have sold to her the stated pieces of lands.

It is from this background, the 1st respondent sued the appellants and the two other respondents at the District Land and Housing Tribunal for Kigoma for declaration that she is the lawful owner of the dispute land which she acquired through a lawful purchase from her in-laws, general damages to the tune of Tshs. 5,000,000/=, costs of the suit and any other reliefs.

At the end of trial, the honourable chairperson; F. Chinuku determined the application in favour of the 1st respondent and declared her the lawful owner of the suit land through a lawful purchase, she declared the rest of the parties as trespassers thereat in case they enter in it. The honourable chairperson refrained from awarding costs of the suit on the ground that the matter was a family issue. She did not talk on the general damages which was one of the reliefs sought in the suit.

The appellants became aggrieved with such findings hence this appeal. A total of nine (9) grounds of appeal were presented as seen in the memorandum of appeal but during the hearing of this appeal the learned advocate who represented both appellants combined the grounds of appeal and argued them into two major complaints that;

i. *The 2nd and 3rd respondents had no good title to pass to the 1st respondent.*

ii. *That the 1st respondent failed to prove her case on the balance of probabilities.*

At the hearing of this appeal, the appellants and the 1st and 2nd respondents were present in person and were dully represented serve for the 2nd respondent who was not represented by an advocate.

Mr. Sadiki Aliki learned advocate represented both Appellants whereas Mr. Eliuta Kivyiro learned advocate represented the 1st respondent and Mr. Ignatius Kagashe learned advocate represented the 3rd respondent. The 2nd respondent stood alone unrepresented.

Arguing the 1st ground, Mr. Sadiki Aliki learned advocate submitted that despite the fact that the 2nd and 3rd respondents during trial admitted to have sold part of the suit land to the 1st respondent, they did not prove their respective titles to the lands they sold. He was of the further arguments that the 2nd respondent despite of admitting to have sold a piece of land, he confessed at page 26 of the trial proceedings that he did not own that land which he sold as it was merely entrusted to him by his father for farming. About the 3rd respondent, the learned advocate argued that she merely alleged to have been given the piece of land which she sold to the 1st respondent by her late father but alleging that his late father was as well given it by her grand father but she did not prove such averments. The learned advocate argued that the 3rd respondent should have proved first the title of his father to the land before having been given to her and the title of her grandfather in that land before having been given to her father as alleged. In that regard he cited the decision in the case of ***Bulashitse Samaje versus Jonas Kapera***, *Misc. Land*

Appeal No. 24 of 2020, High Court at Kigoma; I.C. Mugeta, J. to the effect that the guarantor's title over the land has to be established. He further argued that the 3rd respondent should have brought at least her mother as a witness to state whether really the land she sold belonged to her father because the said mother was better positioned to know if it is true her late husband possessed that piece of land. The said mother was however not called and therefore the title of the alleged 3rd respondent's father unestablished.

To the contrary, there were abundant evidence on record to show that the whole dispute land belonged to the late Yahaya Hemed Kidagira subject to be administered by the 1st appellant, the learned advocate contended. He relied on the evidence of DW3 Tatu Zikiye, the mother of the appellants and 2nd respondent who testified that the suit land belonged to her late husband the father of the appellants and the 2nd respondent. Mr. Sadiki Aliki argued that the evidence of DW3 supra and the 1st appellant (DW1) to the effect that the suit land belonged to the late Yahaya Hemedi Kidagira got corroborated by that of the 2nd respondent who admitted to have mistakenly sold a piece thereof to the 1st respondent.

The learned advocate further argued that the 1st respondent should blame herself to have bought the suit lands without exercising due diligence under the ***Caveat emptor rule***. In that respect he cited the case of ***Ramadhani Msangi versus Sunna G. Mandara & 2 others, Land Appeal No. 39 of 2017*** High Court at Dar es salaam; P.M.Kente, J. to the effect that the buyer must always be aware.

With the herein submissions, the learned advocate argued that the learned chairperson of the trial tribunal did not scrutinise the evidence of each witness and asked this court as the 1st appellate court to do so on the strength of the decision in the case of ***Stanslaus Rubaga Kasusura & Attorney General versus Phares Kabuye [1982] TLR 338.***

Responding on this ground, Mr. Eliuta Kivyiro learned advocate for the 1st respondent submitted that the 2nd and 3rd respondents admitted in their joint Written Statement of Defence to have sold their own pieces of land to the 1st respondent and that the sale and purchase was done during lifetime of the late Yahaya Hemedi Kidagira whereas the 1st respondent started to use the bought pieces of land without any problem. The learned advocate argued that the denial of the 2nd respondent of his title to the land he sold is nothing but a conspiracy with the appellants to contravene the sale agreement in which he declared the land to be his

lawful property. About the title of the 3rd respondent to the piece of land she sold to the 1st respondent, the learned advocate argued that it is on record that the whole land was originally owned by the grand father of the parties herein serve for the 1st respondent. The said grandfather gave part of the land to the father of the 3rd respondent who in turn gave it to the 3rd respondent and who also sold the same to the 1st respondent. That she thus sufficiently established her title on the sold land. That failure of the 3rd respondent to call her mother as a witness was not fatal.

Mr. Eliuta Kivyiro learned advocate further submitted that the appellants cannot have a good case because the evidence of DW3 and DW4 contradicted on the ownership of the land in question because while DW3 testified that the land belonged to her late husband Yahaya Hemed Kidagira, DW4 testified that the late Yahaya Hemed Kidagira had parted the land into pieces and given to each child his own piece which they used to cultivate.

About the principle that "buyer be aware", the learned advocate argued that the 1st respondent was one of the family members and therefore could not question her in-laws on their titles in the suit land. Mr. Kivyiro further submitted that it is not true altogether that the evidence of each witness was not considered by the trial tribunal but rather it was

considered in which the trial court found rightly that PW1 now the 1st respondent was corroborated in her evidence by the evicence of DW4 and DW5. He concluded on this ground by calling this court to decree the pieces of land sold to the 1st respondent by the 2nd appellant, 2nd respondent and 3rd respondents which is almost 2 acres in total as the lawful property of the 1st respondent.

Mr. Ignatius Kagashe learned advocate for the 3rd respondent on his party joined hands with advocate Kivyiro. He submitted generally that; at first, he represented both the 2nd and 3rd respondents and it is his office which prepared the joint written statement of defence for the 2nd and 3rd respondents in which the two admitted that the pieces of land they sold were their own respective properties. It is sometime later during trial when the 2nd respondent withdrew the advocate's chamber from representing him and thereby changing the story to purport that the land he sold did not belong to him. He was on the same view with advocate Kivyiro that the 2nd respondent's acts are indicators of conspiracy with the appellants.

The learned advocate further argued that the 1st respondent since her purchase of the suit land from the 3rd respondent in 2011 used it peacefully up to 2018 when the dispute arose and that the purchase from

both the 2nd and 3rd respondents was done during the lifetime of the late Yahaya Hemedi Kigagira but no problem happened.

Mr. Kagashe cited to me the case of ***Stanley Kalama Masaki versus Chihiyo Nderingo Ngomuo [1981] TLR 143*** to the effect that the 1st respondent is an innocent purchaser for value who has gone into occupation and effected substantive developments in the suit land, and thus protected in law. The learned advocate further argued similar to what Mr. Kivyiro had already submitted and I cannot thus see the necessity to reproduce them.

In determining this ground, I will consider the ground, the submissions by the parties as herein, the rejoinder submission as well as the evidence on record.

I will start with the piece of land allegedly sold to the 1st respondent by the 2nd appellant Muhidini Yahaya Hemed. It is undisputed fact by the parties that the 2nd appellant did not sign the said sale agreement exhibit P3. Even though it is on record as per the evidence of the 1st respondent at page 12 of the proceedings that the 2nd respondent's father the late Yahaya Hemed signed such sale agreement;

> *'The document with 2nd respondent was not signed by him but brought his picture. The father of the 2nd respondent*

signed the document but the 2nd respondent himself did not sign the sale document'.

With this quotation, I have no doubt that the 2nd appellant did not sign the sale agreement to authenticate that he personally sold that piece of land which form part of the suit land in this case. The issue is therefore whether the none signing of the sale agreement by the 2nd appellant who was purportedly the seller rendered such sale agreement void and the sale itself ineffective.

Going through the evidence on record and the arguments by the parties, it is clearly shown that the piece of land allegedly sold by the 2nd appellant to the 1st respondent is not alleged to belong to him. The said piece of land is alleged to belong to the late Yahaya Hemed Kidagira, his father. The 2nd appellant himself testified that he did not sell that land as he did not own it, but his late father;

'I have never owned any land.... previously I knew the said land is among the properties of my late father Yahaya Kidagira'. See page 17 of proceedings.

He even insisted that such land belonged to his late father subject to be administered by his brother, the 1st appellant;

'The suit land is the property of my father the late Yahaya Kidagira and the administrator of the estate is the 1st respondent'. Page 17 of the proceedings.

With this evidence of the 2nd appellant, it is clear that he does not claim title over the suit land and could have therefore not sold it to anybody. That was stated by other defence witnesses during trial.

He who is alleged to have signed the sale agreement exhibit P3 is the late Yahaya Hemed Kidagira and it is him who is said to be the owner of that land. I have gone through the exhibit and seen his signature as a witness of the seller.

Since exhibit P3 was not alleged as a forged document nor there was any impeachment of the signature of the late Yahaya Hemed Kidagira on the document, I find that the said Yahaya Hemed Kidagira did actually sign exhibit P3 although as a witness of the seller and not as the seller. His signing was witnessed by the 1st respondent who is the buyer and his daughter in law and thus the signature authenticated in terms of section 49 (1) and (2) of the law of Evidence Act, Cap. 6 R.E. 2019. More so, none of the appellants and or the 2nd respondent and their mother DW3 disputed such signature as being not a true signature of the late Yahaya Hemed Kidagira. They did not do so either in the trial court or even in this court during hearing of this appeal.

Exhibit P3 was put in evidence prior to their time of giving evidence. They could therefore dispute the signature in exhibit P3 purporting to be the signature of the late Yahaya Hemed Kidagira. Their failure to do so left the evidence of the 1st respondent that she saw the late Yahaya Hemed Kidagira signing the sale agreement unchallenged.

I therefore determine that exhibit P3 was a genuine document dully executed as it speaks by itself but only that the 2nd appellant did not sign it as a seller.

Having found so, I would go further to determine the legal effect of exhibit P3. Since the 2nd appellant did not sign the said document, he is hereby declared to have not participated in the sale agreement exhibit P3. That does not however negate the fact that the sale was actually there and the purchase price dully paid. This is because both parties identified Amiri Ahmadi who witnessed the sale agreement as the Mtaa chairman in the presence of the 1st respondent Macho Hussein Said and the late Yahaya Hemed Kidagira.

Since the late Yahaya Hemed Kidagira signed the document on the party of the seller (shahidi wa mnunuzi), it means he intended the said piece of land to pass title to the 1st respondent. And since the appellants and the 2nd respondent averred during trial and even during this appeal that the

piece of land in question belonged to the late Yahaya Hemed Kidagira, then the sale agreement is valid despite of lacking the signature of the seller because the purported seller did not have title over that land. It was his witness who had title thereof. The sale agreement should have reflected the late Yahaya Hemed Kidagira as the seller and not Muhidini Yahaya, the 2nd appellant. If the 2nd appellant did not receive the sale price then his father witnessed the 1st respondent paying either to himself or someone else. The 1st respondent was not cross examined as to who exactly received from her the purchase price. Most important is that the owner of the land Yahaya Hemed Kigagira witnessed the sale to have been fully executed in the presence of the Mtaa chairman and signed the sale agreement in execution that the title thereof passes to the 1st respondent. It is from this observation, I believe that is why the appellants and even the 2nd respondent did not bother/trouble the 1st respondent from enjoying that suit land during the life time of the late Yahaya Hemed Kidagira. No doubt had they dared, they would have faced their father in defence of the 1st respondent.

The Appellants are therefore estopped from denying the 1st respondent to enjoy such piece of land because its original owner himself enforced the sale deed. Under section 123 of the Evidence Act supra, the

appellants are estopped from denying the intent of the late Yahaya Hemed Kidagira to have the suit land pass to the 1st respondent. Or else they should have accounted for the purposes of the signature of the late Yahaya Hemed Kidagira in the sale agreement. I therefore rule out that the piece of land allegedly sold to the 1st respondent by the 2nd appellant was dully sold by its owner, the late Yahaya Hemed Kidagira and the title thereof passed fully to the 1st respondent.

I now turn to the piece of land which was sold to the 1st respondent by the 2nd respondent.

As reflected herein, the 2nd respondent did not dispute to have sold that land to the 1st respondent. It is only contended that he was not the owner of that land but the late Yahaya Hemed Kidagira, his father. Without much ado I do hereby agree with the findings of the trial tribunal that the title thereof passed to the 1st respondent. I have two reasons; **one,** that during his defence, the 2nd respondent stood firm in his written statement of defence as rightly argued by Mr. Kagashe learned advocate that what he sold was his lawful property. Under paragraph 3 of the Joint Written Statement of Defence, the 2nd respondent averred;

> *'...the 3rd and 4th respondents jointly admit to have sold their respective pieces of lands/shambas in 2015 and 2011*

respectively before the passing away of the late Yahaya Hemed Kidagira and that ***at the time of the respective sales, the same were lawful owners of the shambas and hence passed good title unto the Applicant'.***

The 2nd respondent to cement the herein above defence attached to the written statement of defence annexure D3 a copy of the sale agreement to authenticate that he had previously bought that piece of land from Yahaya Hemed Mteta (presumably his late father).

In law this is what the 2nd respondent was expected to stand for during trial and not to diverge without disclosing the reasons for such diversion. In the case of ***Jackson Sifael Mtares and 3 others v. DPP,*** *Civil Appeal No. 180 of 2019,* the Court of Appeal at page 16 quoting the case of ***James Funke Gwagilo vs. Attorney General [2004] TLR 161*** held that;

'...it is settled law that, parties are bound by their own pleadings, ***no party should be allowed to depart from his pleadings with effect of changing his case from what he/she originally pleaded'.***

In the circumstances, the 2nd respondent Zikiye Yahaya Hemed is not allowed to deviate from his original pleadings that he owned the piece of land which ultimately sold to the 1st respondent.

His evidence during trial that at the time he sold the suit land, he was yet owned it is an afterthought and a clear conspiracy with the appellants to disposes the 1st respondent her lawfully purchased land as rightly argued by Mr. Eliuta Kivyiro and Mr. Ignatius Kagashe learned advocates.

If we allow the cooked story by the 2nd respondent which he gave during trial, it would have no meaning other than the conclusion that he committed a criminal offence by selling the property which was not belonging to him while he was aware that the property was not his. That was an offence of obtaining money by false pretences contrary to section 302 of the penal code, cap. 16 R.E. 2019 which provides that;

> *'Any person who by false pretence and with intent to defraud, obtains from any other person anything capable of being stolen ... is guilty of an offence and is liable to imprisonment for seven years'.*

Not only that but also the 2nd respondent would be subject to prosecution for forgery of the purchase agreement annexure D3 and perjury for presenting in court false and fabricating evidence (annexure D3). The two offences are severely punishable under the Penal Code.

The 2nd respondent should therefore be carefully of his own words acts and avoid as much as possible to be instigated to deny his title over the sold land for the purposes of dispossessing the 1st respondent her lawful

property as he might find himself into criminal problems contrary to what he carelessly thinks. But again, if his written statement of defence is to be ignored all together, it means he gave evidence in the absence of his statement of defence. In law a person who has not filed a defence cannot be allowed to enter his defence during trial. His evidence would therefore be valueless and not worth to be worked upon because the same hanged without a prior defence to have been filed as required by law. It is from the pleadings of both parties the issues for determination are drawn. What the 2nd respondent purported to testify during trial was not part of his written statement of defence hence deprived the rights of other parties and the trial tribunal to draw issues for determination from it.

In that respect the evidence of the 1st respondent (PW1) would remain intact and unchallenged that the piece of land she purchased from the 2nd respondent was his own land and did not form part of the estate of the late Yahaya Hemed;

> *'The sellers were owners of that land ... The suitland is not among the estate of the late my father in law'. Page 11.*

Two, an alternative reason as to why I find the 1st respondent to be entitled the suit land which she bought from the 2nd respondent is that; even if we agree that the same did not belong to the 2nd respondent but

his late father, still the problem arose after the death of his late father. He consistently testified that he sold the suit land to the 1st respondent after the death of his father. See pages 26 and 27 of the trial proceedings when he testified;

"I sold my piece of land to the applicant ***after the death*** *of my father"*

"I sold the land when our father was dead already"

If we have to believe him on such accounts then under Islamic Law which the deceased possessed and even all parties admitted to honour Islamic guidance as stated by the 1st Appellant at page 15 of the proceedings that they resorted into Islamic leaders several times to have the dispute resolved, the estate of the deceased passes automatically from him/her to the heirs upon his/her death. The administrator would only go to distribute the estate according to the shares of each heir. In the circumstances, the 2nd respondent is one of the beneficiaries in the estate and entitled to inherit therefrom. On record the 1st appellant did not state in evidence that the share of the 2nd respondent would be less than what he sold to the 1st respondent nor that the 2nd respondent is not entitled to inherit the piece which he sold among his entitlements in the estate,

taking into consideration that he was in occupation and use of it even during the lifetime of his father.

The second respondent in fact during trial and even during the hearing of this appeal maintained that after the distribution he would give the 1st respondent the portion which he shall be given by the administrator;

> *'I told the applicant to agree with the distribution of land then I will give her my portion which will be given to me after distribution of estates'. Page 26 of the proceedings*

The 2nd respondent sold a piece of land measuring 12 x 16 feet. It is not on record as I have said that he is entitled to less than such measurement in the estate of the deceased. Because the problem arose when the 2nd respondent was already a person entitled in the estate, it should have only been considered that he misused the estate by selling part of it. The distribution could therefore be done by considering his misuse thereof without necessarily dispossessing the innocent purchaser for value.

I therefore reject the arguments of Mr. Sadiki Aliki learned advocate for the appellants and that of the 2nd respondent and determine/rule out that the 2nd respondent lawfully sold his piece of land to the 1st respondent and the title thereof lawfully passed from him to the 1st respondent. The

piece of land sold by him is hereby declared the lawful property of the 1st respondent.

The 1st appellant if at all considers that the 2nd respondent wrongfully sold that land is at liberty to consider it in his distribution of the estate by reducing the shares of the 2nd respondent. But that is their own family arrangements. Otherwise he should report him to criminal authorities for him to be dealt for perjury and forgery as herein above stated. It is upon obtaining the conviction against him, he may even apply to the court for the appropriate remedy against the 2nd respondent's written statement of Defence and annexure D3. Then the 1st respondent would be positioned to start another criminal charges for obtaining money by false pretence as herein above indicated and ultimately the property return to be part of the estate of the late Yahaya Hemedi Kidagira.

But for the purposes of this suit, it suffices to rule that the 2nd respondent sold what he personally possessed lawfully. Or else he should have withdrawn his written statement of defence or seek an order of the trial tribunal to amend the same. He did not do so and left it intact to date. That means he maintained up to date what he pleaded therein and verified as true facts worth to be considered by the court in its determination of the rights between the parties.

Now it is the piece of land sold to the 1st respondent by the 3rd respondent. The 3rd respondent up to this moment maintains that the piece she sold was her lawful property which she was given it by his father who also was given it his father (the by her late grandfather of the 3rd respondent). Mr. Sadiki Aliki contended that neither the title of the suit land father of the 3rd respondent nor her grandfather's title was established over that suit land.

On the other hand, the counsels for the 1st and 3rd respondents submitted that the title thereof was well established from the grandfather to the father hence to the 3rd respondent.

On my party, I find that the 3rd respondent had heavier evidence than that of the appellants and 2nd respondent in respect of the suit land which she sold to the 1st respondent. She explained that, such land was originally owned by her grandfather who gave it to her father. Her father then gave it to her. She then in 2011 sold it to the 1st respondent as she was in need of a school fees when she was in form two. This evidence is consistent through out on record contrary to that of the appellants, the 2nd respondent and their mother DW3 which is not consistent and contradictory to each other. Let us see some few examples;

i. *While the 1st appellant DW1 testified that his late father owned only* five acres *but only* two of them *is in dispute in the instant case, his mother DW3 testified that the whole land owned by her late husband is* eight (8) *acres* but only five of them *are in dispute in this case. This signifies that either the 1st appellant or his mother DW3 or all of them are not certain with the exact measurement of the land owned by the late Yahaya Hemed Kidagira. In that respect, it is dangerous to act on their evidence as they might include that which did not belong to the late Yahaya Hemed Kidagira.*

ii. *While the 2nd appellant contended in evidence that the 1st respondent is not in use of the dispute land as she had testified, the 1st appellant testified that she is actually in use of it and prayed before the tribunal the same to be returned to them. At the same time, he was clear that they are only using 3 acres. The 2nd appellant is further contradicted by the 2nd respondent who acknowledges the use of the dispute land by the 1st respondent. The 2nd respondent further condemned the appellants to trespass into the suit land lawfully owned by the 1st respondent as per his own written statement of defence at paragraph 5;*

'....it is the 1st and 2nd respondents (now appellants) who without justification are trespassing into the Applicant's suit land'

iii. *While the 2nd respondent testified that each child of the late Yahaya Hemed Kidagira had his own piece of land given by their late father for cultivation, the 2nd appellant denied even to have known the suit land until when he was sued;*
"I came to know the suit land when the Applicant sued me."
He contended that at all times since 2010 up to 2015 he was in Dar es Salaam.

iv. *While the 3rd respondent explained how her father became to possess the suit land before giving it to her, the appellants and their mother did not know how the alleged Yahaya Hemed Kidagira get to own it;*
1st Appellant at page 14;
'We were born to find our parents using the suit land'.
Their mother DW3; at page 22 and 24 respectively:
'When I was married to my husband, I found my husband the late Yahaya Kidagira cultivating that land .... I was married to find my husband cultivating suit land ***but I do not know how he became to own that land'.***

If the appellants and their mother did not establish how the late Yahaya Hemed Kidagira became to own the suit land, they cannot claim that the land which the 3rd respondent sold to the 1st respondent belonged to him. None of them testified in evidence if at all the late Yahaya Hemedi Kidagira took him or her around to show them the boundaries of the farms he possessed by distinguishing them with those of his neighbours including

those which were owned by the father of the 3rd respondent. Therefore, the evidence of the 3rd respondent that it was his father who owned it having been given by her grandfather is not shaken. The 3rd respondent's father possessed a good title which he passed to his daughter, the 3rd respondent.

Mr. Sadiki Aliki learned advocate argued that, the 3rd respondent ought to have brought her mother to authenticate first that it is true her late husband Shabani gave that piece of land to the 3rd respondent, and two, that the said Shabani had good title to pass to the 3rd respondent.

On this I would agree with Mr. Eliuta Kivyiro learned advocate that it is not a number of witnesses that matters but the quality and credibility of the evidence so adduced. See section 143 of the Evidence Act, Cap. 6 supra. More so it is on record that the mother of the 3rd respondent was authorized to sign the 3rd respondent's written statement of defence and she dully signed it and verified the same. That was not disputed nor challenged. In that regard, as she signed the document and verified it which is mutatis mutandis to what the 3rd respondent testified, it was needless to bring her in evidence as she would only repeat what the 3rd respondent had already testified. Furthermore, she was part and signatory to the sale agreement by the 3rd respondent, such sale

agreement was tendered in evidence exhibit P1. In it the mother and uncle (baba mdogo) of the 3rd respondent witnessed the that they acknowledged her title thereof.

The 2nd respondent is not credible at all for obvious reasons that he used to change versions as evidenced between his written statement of defence and his testimony during trial. Also, he testified at page 26 and 27 that he sold the piece of land to the 1st respondent when his father had already died while documentary evidence exhibit P2 shows that he sold the same when his father was still alive. He sold on 2/9/2015 and his father died in December, 2015. In that respect, the 2nd respondent is lying to pre-empty the argument that, why his father did not take action against him or against the first respondent if at all the sale was unlawful. With all these, I find the appellants, the 2nd respondent and their mother DW3 cooked a story to fabricate evidence against the 1st respondent but in so doing they destroyed their case by contradicting each other and expose their incredibility as herein above revealed. That left the evidence of the 3rd respondent unshaken as it was coherent, credible and reliable. I therefore conclude that, the 3rd respondent sold her own land and lawfully passed the title thereof to the 1st respondent.

In the final analysis, I decree the 1st respondent as the lawful owner of the three pieces of land measuring about two (2) acres she bought from the 2nd and 3rd respondents and that which the late Yahaya Hemed sold to her in the name of the 2nd appellant.

As Mr. Sadiki Aliki learned advocate for the appellants called me to scrutinize the evidence of each witness to remedy the situation, I find that the trial chairperson ignored the evidence of the 1st respondent in which she prayed her application to be allowed which included the prayer for general damages. I find that the 1st respondent was entitled to general damages, otherwise the grounds for denial thereof should have been stated in the circumstances that, the trial tribunal did not talk on its shares and grant the 1st respondent general damages to the tune of Tshs. 3,000,000/= against the appellants and the 2nd respondent for having subjected the 1st respondent into unnecessary litigations for his lawful purchased land, throwing her into enmity within the family she is married and for the denial of her peaceful enjoyment of the suit land.

The rest of the land bought from other people who are not of parties to this mother is not covered by this judgment as I am aware that there is another pending suit No. 48/2018 between some of the parties herein and some more others as reflected on record.

Having determined the 1st ground of complaint as herein above, the 2nd ground is already covered and the same is determined that the 1st respondent during trial successfully proved her case on the balance of probabilities.

Serve for general damages as herein above demonstrated, the judgment of the trial tribunal was rightly entered and the same is hereby upheld. In that respect this appeal has been brought without any sufficient cause and it is hereby dismissed in its entirety.

The same is dismissed with costs, both the costs at the trial tribunal and costs in this appeal.

Right of further appeal to the court of Appeal is hereby explained.

It is so ordered.

A. Matuma

Judge

05/11/2021

Copy: Judgment delivered in the presence of the appellants and their advocate Mr. Stephano John, the first respondent in person and her advocate M/S Victoria Nyembea, the 2nd respondent in person and in the presence of Advocate Joseph Mathias for the 3rd respondent. Right of appeal explained.

Sgd: A. Matuma

Judge

05/11/2021