

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 8 OF 2020**

**RAJUL MOTICHAND SHAH.....PLAINTIFF**

**VERSUS**

**JONAS PATRICE POTEA.....1<sup>ST</sup> DEFENDANT**

**JONAS PATRICE POTEA (As administrator of the Estate of**

**The late PATRICE POTEA) .....2<sup>ND</sup> DEFENDANT**

**NOLIC COMPANY LIMITED.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**28/09/2021 & 16/11/2021**

**GWAE, J**

On 18<sup>th</sup> day of March, 2020, the plaintiff, Rajul Motichand Shah, instituted this suit against the defendants, Jonas Patrice Potea (1<sup>st</sup> defendant) and Nolic Company Limited, Court Auctioneer now 3<sup>rd</sup> defendant. The plaintiff's claim is essentially for trespass of the landed property measuring 6.146 acres bearing Certificate of Title No. 17242, Plot No. 15965, Block "KK" located at Oloirien area in Arusha Municipality (Suit land).

According to an amendment to the amended plaint that was filed in this court on the 29<sup>th</sup> April 2021 where the 2<sup>nd</sup> defendant, Jonas Patrice Potea is also sued in the capacity of an administrator of the estate of his late father, Patrice Potea. The plaintiff claims to be the lawful owner of the land in dispute as from 22<sup>nd</sup> July 2003 when he purchased the same from M/S AGM Holdings Limited; Land Developers Company. It was further alleged that the suit land was further partitioned into twenty-one (21) plots and that, apparently, nine (9) plots were disposed of to numerous persons to wit; Vicent Mark Laswai (three plots), Mozzah Salim Mauly (two plots), Hussein Omary Hajji (two plots), Jubilee Tyres 2000 Co. Limited (one plot) and Skytel Limited (one plot).

~~The plaintiff further claims that, despite the said lawful acquisition of~~ the suit land, the 1<sup>st</sup> defendant in his personal capacity and in the capacity of an administrator of the estate of his late father kept on trespassing into the suit land claiming to have been given the same by the original owners Lionides Nicolas Doukas and Costas Criton Piperas who were previous joint owners of the suit land since 1952. The plaintiff being aggrieved by the conducts of the 1<sup>st</sup> defendant decided to file this suit against the defendants jointly and severally on the following orders;

1. That, the plaintiff be declared the lawful owner of the disputed land comprised of 12 plots, of the land property comprised under Certificates of Titles No. 43987 Plot No. 153/2/13 Block "KK", Title No. 43976 Plot No. 153/2/1 Block "KK", Title No. 43984, Plot No. 153/2/10 Block "KK", Title No. 43988, Plot No. 153/2/14 Block "KK", Title No. 43983 Plot No. 153/2/9 Block "KK", Title No. 43985 Plot No. 153/2/11 Block "KK", Title No. 43981 Plot No. 153/2/6 Block "KK", Title No. 43982 Plot No. 153/2/8 Block "KK", Title No. 43980 Plot No. 153/2/5 Block "KK", Title No. 43977 Plot No. 153/2/2 Block "KK", Title No. 43979 Plot No. 153/2/4 Block "KK" and Title No. 43978 Plot No. 153/2/3 Block "KK", Oloirien Area Arusha City.
2. A declaration that, the plaintiff's subsequent sale of nine (9) plots namely; Plot No. 153/2/18, Plot No. 153/2/19 and Plot No. 153/2/20 to Vincent Mark Laswai, Plot No. 153/2/7 and, Plot No.153/3/17 to Mozzah Salim Mauly, Plot No.153/2/21 to Hussein Omari Hajji, Plot No.153/2/16 To Jubilee Tyres, Plot No. 153/2/12 to xSky Tel Limited and Plot No. 153/2/15 to Manojkumar Khambata is declared lawfully and valid, t
3. A declaration that the defendants are trespassers to the suit land,

4. Permanent injunction to be issued to the defendants and their agents from trespassing into the plaintiff's plots,
5. Costs of the suit and any other relief that the court may deem fit and just to grant.

In refuting the plaintiff's claims, the defendants filed their written statement of defence where the 1<sup>st</sup> defendant in both, his personal capacity and as an administrator of the estate of his late father. He utterly denied to have trespassed into the suit land. He seriously contends that, the disputed land belonged to his late father as the same was given to them by Mr. Lionides Nicolas Doukas for establishing their residency. He therefore alleged that, he is the one who is being seriously disturbed and harassed by the plaintiff.—

Mediation having marked as failed, subsequently, hearing took place. The parties and their advocates appeared for the final conference and the court in consultation with the parties' advocates framed the following issues for determination;

1. Whether the plaintiff or defendants are/were the lawful owners of a parcel of land measuring 6.146 acres comprised

under certificate of title No. 17242 Plot No. 15965 Block "KK"  
Oloirien within Arusha City and its subsequent subdivided  
plots (21 plots).

2. What reliefs are parties entitled to.

Throughout the trial of the case, the plaintiff and defendants were duly represented by the learned advocates namely; Mr. Stephen Mushi assisted by Andrew Akyoo and Mr. Hamis Mayombo who was being assisted by Mr. Richard Manyota respectively.

In proving his claims, the plaintiff summoned two (2) witnesses to testify, these were; the plaintiff himself who appeared as PW1 and one Juliana Ngonyani, a Senior Assistant Registrar of Titles (PW2) and four (4) exhibits were also tendered in support of the plaintiff's claims.

Under the lead of his counsel, the plaintiff testified to be the lawful owner of the land in dispute measuring 6.146 acres which he alleged to have bought from AGM's Holdings Company Limited in the year 2003, he tendered a title deed as proof of ownership, however the same being a copy and not the original was admitted only for purposes of identification as PEI. The PW1 went on testifying that, he applied for partition of the suit land, a farm No.

153/2/1-21 by then through an application Form No. 63 (PE2). After the partition, the suit land was divided into 21 plots and site plans were issued in favour of the plaintiff. He then produced sites plans which were admitted in court as PE3.

Similarly, the PW1 told the court that, after issuance of site plans of the suit land comprising of 21 plots, he subsequently sold a number of nine (9) plots and remains with twelve (12) plots whose title deeds were tended in court and were collectively admitted as PE4.

He finally urged this court to declare him as the lawful owner of the suit land and the defendants as the trespassers of the same. Likewise, he prayed to have costs of the suit borne by the defendants.

On cross examination, the PW1 told the court that, the defendants trespassed on plot No. 153/2/13 CT No. 43987 and that the 1<sup>st</sup> plaintiff was an employee of one Hussein Gongga who terminated him from his employment in the year 2010 adding that he was requested by the said Gongga to leave him (1<sup>st</sup> defendant) to stay in one of his plots temporarily.

PW2, a Senior Assistant Registrar of Titles supported the evidence of PW1 by establishing the chronological transfers of the disputed land from

the original owners and finally to the plaintiff. According to her testimony, the Certificate of Title in respect of the disputed land was registered in the year 1952 bearing the names of Lionides Nicolas Doukas and Costas Piperas who jointly owned the land measuring about ten (10) acres. Sometimes, lionides sold his shares, 1/3 to Piperas and remained with 2/3 shares. In the year 1979 the heirs of Piperas successfully made an application to be registered as lawful owners of the shares of Piperas who was by then a deceased person.

Equally, PW2 went on stating that, the said Lionides also died and his son, one Frank Doukas applied to be registered as the owner of the shares of the late Lionides Nicolas. However, in the year 1998 the said Frank bought the shares of the heirs of Costa Piperas. He therefore he became a sole owner of a total of 10 acres. Sometimes in the year 1999 the said Frank sold a portion of 10 acres he owned acres to wit; 6.146 acres to AGM Holdings Company and a' CT was prepared whose number was CT No.17242. Nevertheless, the said CT was surrendered by the plaintiff to the Land Office after the same had been partitioned into 21 plots.

On cross examined by Mr. Mayombo as to whether the 1<sup>st</sup> defendant went to her office for official search in respect of CT 15869, he replied to the

positive stating that, she advised him (1<sup>st</sup> plaintiff) to apply for CT 17242 as the former was cancelled followed by the later adding that, there was sale agreement between the plaintiff and AGM

After close of the plaintiff's case, the defendants were able to bring two (2) witnesses for their defence notably; the 1<sup>st</sup> defendant (DW1) and one Moses kooya Mollel (DW2). Two (2) exhibits were also produced and received by the court, these are, the ruling dated 11<sup>th</sup> February 2011 District Land and Housing Tribunal of Arusha (DE1) and an Official search dated 9<sup>th</sup> March 2021 (DE2).

In his defence, the 1<sup>st</sup> defendant denied to have either been living in the suit land or to have trespassed onto the suit land by stating that, the land in which the plaintiff claims is different from the one which the 1<sup>st</sup> defendant and his family used to reside. He went on testifying that, the land that was given to his late father, Patrice Potea was a farm known as Kijenge Coffee Estate and had a Certificate of Title No. 15869 measuring about 67 acres.

On cross examination DW1 stated that Nicolous Doukas was the one who gave his late father an erected house and a farm as a golden hand



shake for his long service at Kijenge Coffee Estate. He added that no transfer of ownership had been made in respect of CT 15869 from the original owner to his late father. On further cross examination DW1 stated that he is not occupying the Ten (10) acres including 6.146 acres owned by the plaintiff. Therefore, he has no any dispute with the plaintiff as far as 6.146 acres is concerned as the same do not form part of sixty-seven (67) acres given to his late father.

DW2's evidence primarily established residence of DW1 and his family at a farm known as Kijenge Coffee Estate, DW2 testified further that as of now the defendants are not living in the said farm as they were evicted by the plaintiff. And further cross examined on whether he knew on Andrew George Mollel, he replied to the positive that, the said Mollel was his neighbor and that he heard of the sale of the suit to the plaintiff land but he was not involved in that transaction.

Having closed the defence case, it was suggested by both parties that for the interest of justice, the locus in quo be visited and more so the parties to file their final submissions.

Upon arrival at the locus in quo, it was observed that, the parties are in dispute on the same parcel of land measuring 6.146 acres as opposed to the DW1's testimony.

Submitting on the first issue, the plaintiff's counsel maintained that the plaintiff herein is the lawful owner of the disputed land on reasons that the plaintiff had on the balance of probability proved his ownership

The counsel went further to submit that the legal principle has been that, when two persons have competing interest in a landed property, the person with a certificate of Right of Occupancy thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained. He referred this court to the decision of the Court of Appeal of Tanzania in the case of **Amina Maulid Ambali and other vs. Ramadhan Juma**, Civil Appeal No. 35 of 2019 (Unreported).

On the part of the defendants, their submission aimed at countering the plaintiff's evidence. In the first place the defendant faulted the allegation that the plaintiff had bought the land in dispute from AGM on reason that a sale agreement was not tendered to prove the disposition. The defendant also faulted the whole process of transfer of the land in dispute from Frank

Doukas to AGM stating that the plaintiff has submitted a number of titles which are contradictory. He cited an example in Title No. 15969 which the transfer emanated from however the same appears to be erased by hand to Title No. 17242, another one is the alleged confusion on which is the Original Title (mother Title) between Title No. 8325 and Title No.15869. More so, the defendants also questioned the certificate of occupancy claiming the same to bear court of arm while the same was created on 18/06/1952 before the court of arm started to be used that is from 26<sup>th</sup> April 1964. With the contradictions pointed out by the defendant he is of the view that the transfers are unlawful and illegal as they emanate from unknown titles.

The defendants' counsel also submitted on the transfer that was made ~~by the plaintiff to one Bayo Fadugba and Ayodeji Fadugba whom he claims to be foreigners.~~ He thus, questioned the legality of the transfer of the said two plots to a non-citizen without sufficient evidence as to whether mandatory requirements to such transfer were complied with.

Having briefly outlined the parties evidence adduced during trial and their final written final submissions, I will now embark on tackling the framed seriatim.

Before doing so, it is necessary to point it out, right from the outset that, this court when visited the locus in quo, the following observations were made; **One**, there are signs or residues exhibiting that the defendants were living/had their shelter within the suit land at Plot No. 153/2/13 prior to the eviction by the plaintiff and, **Two**, although the testimony of DW1, Jonas Potea establishes that, the plaintiff's claim of ownership is based on a different land other than the one which his late father was allegedly given by one Lionides Doukas but in real sense the parties are claiming ownership over the same parcel of land measuring 6.146 acres. Having found as herein above, I now turn to the determination of the framed issues.

*The **first issue** is whether the plaintiff or defendants are lawful owners of a parcel of land measuring 6.146 acres comprised under certificate of Title No. 17242 Plot No. 15965 Block "KK" Olorien area and its subsequent sub divided plots (21 plots).*

It is a fundamental principle of law under the Law of Evidence Act Cap 6 R.E 2019 that whoever desires a court to give judgment in his/her favour he/she must prove that, those facts exist. Section 110 (1) (2) of the Law of Evidence Act is hereby reproduced:

"S.110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

It is thus the requirement of the law that, a party to a judicial proceeding of a civil nature who bears a legal burden and the evidential burden is the one who alleges existence of certain facts and the standard in each case is on a balance of probabilities as it has been consistently emphasized in numerous courts' decisions such as in **Barelia Karangirangi vs. Asteri**, Civil Appeal No. 237 of 2017 (unreported-CAT) and **The Manager, NBC, Tarime v Enock M. Chacha** (1993) TLR 228 and a foreign jurisprudence in the case of **Miller vs. Monister of Pensions** (1937) ALL ER 372 at page 374 where it was stated;

"If evidence evenly balanced, that the tribunal is unable to come to a determination conclusion one way or the other, then the man must be given the benefit of the doubt. This means that the case must be decided in favour of the man unless the case against him reaches degree of cogency as is required to discharge the burden in a civil case. That degree is settled. It must carry a reasonable degree of probability but not so high as

required in a criminal case, if the tribunal can say that it is more probable than not, the burden of proof is discharged. If the probabilities are equal, it is not.....”.

In the case at hand, the burden of proof at the required standard of balance of probabilities is left to the plaintiff being the one who alleges to be the owner of the suit land and that the defendants are trespassers to his land. This court is therefore duty bound to ascertain, whether the burden of proof envisaged by the law has been sufficiently discharged by the plaintiff.

In my analysis and consideration of the evidence adduced by the parties during trial, both oral and documentary, I am unhesitatingly justified in answering the first issue in affirmative for reasons to be demonstrated herein under. ~~It is a principle of law under provisions of section 26 of the~~ Land Registration Act Cap 334 Revised Edition, 2019 where registration of certificate of title is said to constitute a conclusive evidence and the person named therein as a proprietor of the land is absolute and indefeasible owner unless the fraud or mis-presentation is strictly proved or accusations that, the certificate of title was illegally or unprocedurally obtained. I am also guided by judicial decision in the case of **Salum Mateyo v. Maohamed**

**Mathayo** (1987) TLR 111 where Justice Mroso (as he then was) had the following to say;

"It seems to me clear that in law, the appellant in whose name the suit premises were registered was the owner. I am fortified in this view by section 2 of the Land Registration Ordinance, chapter. 334 which defines "owner" in relation to any estate or interest as the person for the time being in whose name the estate or interest is registered."

In our instant dispute, the plaintiff is found seriously claiming to be the owner of the land in dispute, and in justifying his ownership he testified to have legally obtained the same through disposition by way of purchase from AGM Holdings Limited. In his testimony the suit land, a farm measuring 6.146 acres was bought in 2003 and a transfer of a right of occupancy was effected through (PE1). It is also documentarily substantiated by the plaintiff that in the year 2004 he applied for partition of the farm and it was subsequently divided into twenty-one (21) plots (PE2). According to the transfer deed with Title No. 17242 Block "KK" dated 21<sup>st</sup> July 2003 the transferor was AGM Holdings Ltd while transferee was Mr. Rajul Motichand Shah, consideration for the transfer was Tshs. 25,000,000/= . Among the 21

plots, 9 plots were sold to different people and thus as of now the plaintiff is remaining with 12 plots together with their title deeds.

The title deeds were tendered and admitted in court and marked as PE4, these are; Title No. 43987 Plot No. 153/2/13 Block "KK", Title No. 43976 Plot No. 153/2/1 Block "KK", Title No. 43984 Plot No. 153/2/10 Block "KK", Title No. 43988 Plot No. 153/2/14 Block "KK", Title No. 43983 Plot No. 153/2/9 Block "KK", Title No. 43985 Plot No. 153/2/11 Block "KK", Title No. 43981 Plot No. 153/2/6 Block "KK", Title No. 43982 Plot No. 153/2/8 Block "KK", Title No. 43980 Plot No. 153/2/5 Block "KK", Title No. 43977 Plot No. 153/2/2 Block "KK", Title No. 43979 Plot No. 153/2/4 Block "KK" and Title No. 43978 Plot No. 153/2/3 Block "KK". All the certificates are registered under the ~~name of Rajul Motichand Shah the plaintiff herein.~~

The evidence of PW1 was sufficiently supported by that of the PW2 an officer from the Land Registry office whose testimony was to the effect of inheritance by the original owners' heirs and successive transfers of parts of the farm, Kijenge Coffee Estate from the heir/beneficiary known by name of Frank Lionides Duokas to AGM who also transferred his ownership of the suit land to the plaintiff.



She equally told the court reasons of the change of title number of the suit land from Certificate of Title 8325 which was cancelled to CT No. 14272 and that land in dispute measuring 6.146 acres were then partitioned into 21 plots this was followed by the surrender of the CT. No. 17242 to the Land Office as there were other CTs created in respect of the 21 plots. PW2 concluded testifying that in all transactions aforementioned there is nowhere the defendants have been mentioned as owners of the suit land.

The defendants' evidence on the other hand was so contradictory as to whether the land subject to this suit is the same as the one which he claimed to have been owned by his father (67 acres). On one hand DW1 one Jonas Patrice Potea strangely testified that, the suit land is not the one his family is residing and it is even not among the 67 acres which he claims to belong to his late father. He thus argued that the plaintiff has nothing to claim against the defendants. On the other hand, court's visit of the locus in quo revealed that the parties herein are claiming ownership over the same land contrary to what DW1 testified.

Moreover, DW2 who was duly summoned by the defendants testified for the defendants acknowledged that, there has been a conflict between the plaintiff and the defendants over the same land in dispute and sometimes

the defendant's house was demolished by the plaintiff vide the order issued by the District Land and Housing Tribunal. Therefore, as earlier explained the truth remains that, the parties herein are claiming interests over the same land.

The defendants merely tendered the ruling delivered by the District Land and Housing Tribunal of Arusha (DE1) which, in my considered view, does not entitle the defendants to the contentious ownership of the suit land. Equally, the official search (DE2) does not favour the defendants since the 1<sup>st</sup> defendant was only informed that, CT No. 15869 which he applied for search over was not available in the Office of the Registrar of Titles-Arusha, although in my view as rightly complained of by DW1, the one who made a reply letter to the DW1 exhibited that, he or she was not ready to corporate with the DW1 since even that CT's number (15869) sought for search is indicated in the Original CT that was cancelled.

Otherwise, the defendants remain with mere assertions that, the disputed land was given to his late father by the former owner, Lionides Nicolas Doukas as they tendered no documentary evidence to substantiate that, the farm, Kijenge Coffee Farm measuring 67 acres, including suit land was given to the late Patrice Potea as Golden hand shake, be it deed of gift

or transfer of right of occupancy in the deceased person's name. In the case of **The Attorney General vs. Mwahezi Mohamed** (As administrator of the Estate of the Late Dolly Maria Eustace) **and three others**, Civil Appeal No. 391 of 2019 (unreported-CAT) had the following observation.

"We have scanned the entire record of appeal and it is obvious that, though the appellant claimed to have acquired possession over the suit property for a long time since 1970s through a grant given to the Government of Tanzania **had failed completely to adduce material evidence (oral and documentary) to prove those facts, there was no deed of gift or transfer** availed before the trial court to prove that effect, The appellant's witnesses, PW1, PW2, PW3, and PW4 ended up producing communication letters which at any rate cannot manage to prove ownership over a registered land (Emphasis supplied).

It has been the position of the law that, where two persons are claiming interest over a landed property, the person with a certificate of a right of occupancy in question will always be considered as the lawful owner of the land in dispute unless the certificate is proved to have been obtained unlawfully or fraudulently. The mere assertions that the original CT with No. 15869 was lost during demolition exercise by the plaintiff is not supported

by any tangible evidence for example a police loss report. The acts of the plaintiff, PW1 of transferring the ownership from AGM to him and his subsequent acts of registering 21 plots in his names, therefore, in my considered view, definitely confer ownership of the suit land to him as was rightly demonstrated in the case of **Leopold Mutembei v. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development and 2 others**, Civil Appeal No. 57 of 2017 (unreported) delivered 12<sup>th</sup> October 2018, the Court Appeal of Tanzania at Mwanza when approving and emphasizing the essence of the book, titled *Conveyancing and Disposition of Land in Tanzania, Law and Procedure* written Dr. R.W. Tenga and Dr. S.J. Mramba at page 330:16 held

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" The registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of or a legal interest in a parcel of land. The act of registration confirms transactions that confer, affect or terminate ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property".

I have keenly examined the defendants' testimony with effect that, the late Patrice was orally given the suit land as gift or golden hand shake,

a surveyed parcel of land by the said late Lionides Doukas. I have failed to appreciate this piece of evidence adduced by the defendants considering the fact that, the suit land is a surveyed one since 18<sup>th</sup> June 1952 and taking into account that an oral agreement or gift on a right of occupancy with a certificate of title is inoperative and is of no effect (See judicial precedents in **Patterson and another v Kanji** (1956) 23 EACA 106; **Patel v Lawrenson** (1957) EA 9; **Kassam vs Kassam and Mushunga v. Theonestina Rwekanika** [1974] LRT 30).

It follows therefore, the defence has failed to prove validity of the alleged gift to the deceased, Patrice/donee for example manifestation of wish to give by the late Lionides /alleged donor, acceptance by the donee and his ~~taking possession since no deed of gift and above all no transfer deed from~~ the previous owner, Lionides Doukas to the late Patrice Potea that, were tendered and received by the court during trial to substantiate the defendants' assertions. If truly as contended by the defence, the said gift, in my view, was not therefore concluded to enable it to be valid in the eye of law.

Nevertheless, in our case it is clearly established that, one Frank Lionides came to be a sole owner of 10 acres initially owned jointly by Lionides and

Piperas and he disposed of 6.146 acres out of 10 acres to AGM as plainly established by certificates of titles tendered and admitted as PE4 collectively that effectively from 13<sup>th</sup> July 1999 the said AGM Holdings Limited became registered lawful owner of the suit land

I have further cast-off evidence by the defence that, the 1<sup>st</sup> defendant and his family had been living in the suit land especially on a Plot No. 153/2/13 in the year 1994 as testified by the defence and plainly observed by the court during visitation of the locus in quo simply because mere living or using surveyed land does not entitle a person or trespasser to ownership of the same parcel of land. If I were to believe that the 1<sup>st</sup> defendants and his family had been in use and occupation of 67 acres including the suit land since 1994, yet the doctrine of adverse possession could not apply in favour of the defendants in the suit land which is registered one. This position of the law was equally stressed by the Court of Appeal in **The Attorney General vs. Mwahezi Mohamed** (As administrator of the Estate of the Late Dolly Maria Eustace) **and three others**, (supra) where it was held inter alia that;

".... the doctrine of adverse possession, unlike in an unregistered land, the adverse possession, over the

registered land is not automatic. We have as well observed that the appellant claimed adverse possession only by asserting that he had been in occupation of the suit land over forty (40) years....the appellant cannot claim ownership over the suit property by adverse possession without following the legal procedure entailed under section 37 of the Law of Limitation Act.....section 44-51 of the Land Act for revoking or acquiring an abandoned land”.

In our present dispute, even if the defendants, would establish their long use and possession yet the law would require them to adhere to the mandatory procedures as provided under the provisions of Land Act, Cap 113 Revised Edition, 2019.

DW1 in his testimony alleged that the documents tendered by the plaintiff were all forged, as appropriately held by the Court of Appeal of Tanzania in of **Amina Maulid Ambali** (supra) this allegation, in my increasing view, ought to have been proved through cogent evidence at the trial and it ought to have been involved the filing of a counter claim or the alleged forgery or fraudulent obtaining of the CTs would have been pleaded in the defendants’ WSD and strictly proved.

Nonetheless, the oral evidence adduced by the PW2 is credible and it is sufficiently supported by documentary evidence particularly PE3& PE4, which exhibit how the transfers of ownership of a parcel of land measuring 10.645 acres from original owners with original title number 8325 (mother title) duly registered on the 19<sup>th</sup> June 1952 followed by the previous owners' heirs, then to AGM who purchased only 6.146 acres out of 10.645 acres and finally to the plaintiff who bought from the said AGM. It is common ground that an Assistant Registrar of Title or Assistant of Titles is a custodian or retainer of titles. Hence, his or her evidence is worth of belief unless the contrary is established.

I have also considered the contention by the defence that, there was ~~cancellation of original CT No. 15869 which is evidently erased as raised~~ during trial of the case and in lieu thereof Title No. 17242 was inserted by the Assistant Registrar of Titles whose signatures are appearing not only in the said cancellation but also in the twelve CTs (PE3) since 13<sup>th</sup> July 1999 to 2010. I do not fault such cancellation provided that it bears the signature of the responsible officer, Assistant Registrar of Title and the PW2 has amply given reasons for the complained cancellation.



Furthermore, I am of the finding that, the defence has failed to persuade the court to hold that, the said Bayo Fadugba and Ayodeji Fadugba, alleged foreigners who are seen to have purchased two plots (Title No. 17969 Plot No. 153/2/7 and Title No. 28978 Plot No. 153/2/17) from the plaintiff, the plots which are now sought to be declared the belongings of one Mozzah Salim Mauly). I am saying so simply because there is no proof if both persons were foreigners except one person, Bayo who was from West Africa as established by the plaintiff when cross examined by the defence counsel as to his Nationality and that, both CTs depict that both were residents of Arusha. I am alive of the legal position that non-citizens are not eligible for being granted a parcel of land unless it is for investment purposes as provided under section 20 of the Land Cap 113 Revised Edition, 2019, but there ought to be a clear proof of nationalities of the said two persons. In our case it is unsafe to hold that the said persons were both foreigners as the evidence adduced is so scanty.

It therefore follows that, the plaintiff has sufficiently proved his ownership over the suit land through both oral evidence and documentary evidence namely; Transfer deed (PE1), cite plans (PE3) together with Certificates of Titles (PE4) containing all the necessary information including

original owners of the then called Kijenge Coffee Estate Unlike the defendants.

As it stands, this court is fully satisfied that, the plaintiff is the owner of a parcel of land measuring 6.146 acres under Certificate of Title No. 17242 Plot No. 15965 Block "KK" located at Oloirien area, in Arusha City and its subsequent sub divided plots (21) including nine plots sold to other persons named above. And that his ownership of the suit land is derived from his purchase from AGM Holdings Limited in 2003.

Having determined the first issue in favour of the plaintiff and against the defendants, the next question is on the reliefs that the parties are entitled to. As the plaintiff herein is found to have successfully proved his case as indicated above as result therefore, the court grants the following reliefs in favour of the plaintiff and against the defendants severally and jointly;

1. That, the plaintiff is the lawful owner of the land property comprised under Certificates of Titles No. 43987 Plot No. 153/2/13 Block "KK", Title No. 43976 Plot No. 153/2/1 Block "KK", Title No. 43984, Plot No. 153/2/10 Block "KK", Title No. 43988, Plot No. 153/2/14 Block "KK", Title No. 43983 Plot No. 153/2/9 Block "KK", Title No. 43985 Plot No. 153/2/11 Block "KK", Title No. 43981 Plot No. 153/2/6 Block

"KK", Title No. 43982 Plot No. 153/2/8 Block "KK", Title No. 43980 Plot No. 153/2/5 Block "KK", Title No. 43977 Plot No. 153/2/2 Block "KK", Title No. 43979 Plot No. 153/2/4 Block "KK" and Title No. 43978 Plot No. 153/2/3 Block "KK", Oloirien Area Arusha City.

2. That, the plaintiff's subsequent sale of nine (9) plots namely; gPlot No. 153/2/18, Plot No. 153/2/19 and Plot No. 153/2/20 to Vincent Mark Laswai, Plot No. 153/2/7 and, Plot No.153/3/17 to Mozzah Salim Maulu, Plot No.153/2/21 to Hussein Omari Hajji, Plot No.153/2/16 To Jubilee Tyres, Plot No. 153/2/12 to Sky Tel Limited and Plot No. 153/2/15 to Manojkumar Khambata is declared lawfully and valid.
3. That, the defendants are declared as trespassers to twenty-one (21) Plots mentioned in items (1&2) above.
4. A permanent injunction is issued against the defendants, their agents, successors from trespassing into the plaintiff's plots mentioned above.
5. Given the nature of the dispute and the parties herein and in considering the fact that the defendants are under the aid from the Legal and Human Right Center I shall refrain from making an order for costs.

It is so ordered.



**M. R. GWAE**  
**JUDGE**

**16/11/2021**

**Court:** Right of appeal to the Court of Appeal of Tanzania fully explained



**M. R. GWAE**  
**JUDGE**

**16/11/2021**