

**IN THE UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**AT ARUSHA**  
**LAND CASE NO. 29 OF 2016**  
**OLEVOLOS PROJECT INC. LIMITED ..... PLAINTIFF**  
**VERSUS**  
**JANE OLEVOLOS ..... DEFENDANT**

**JUDGMENT**

23/2/2021 & 7/5/2021

**ROBERT, J:-**

The Plaintiff, Olevolos Project Inc. Limited filed an action against the Defendant, Jane Olevolos, for recovery of a landed property measuring two acres located at Olevolos Village, Arusha District in Arusha region.

The Plaintiff alleged that on 11<sup>th</sup> July, 2007, he instructed the Defendant to purchase a piece of land for an orphanage Centre established by the Plaintiff which the Defendant did vide an agreement dated 11<sup>th</sup> July, 2007. However, the said agreement was not executed because the Vendor found out that the Defendant had made some misrepresentations regarding the orphanage and with the help of the village authorities of

Olevolos Village, the contract was allegedly terminated on 8<sup>th</sup> February, 2008.

On 14<sup>th</sup> May, 2008 the Village Executive Officer of Olevolos Village wrote to the Defendant directing that the land bought for the orphanage should be reflected in a fresh agreement which shall state the name of the Plaintiff and the Defendant. On 6<sup>th</sup> January, 2009, a proper sale agreement was executed between the Plaintiff and the Vendor at the total consideration of TZS 33,500,000/= inclusive of the part payment that had been paid up by the Defendant. The Person who paid monies for consideration and executed documents on behalf of the Plaintiff was one Dory Gannes who is a signatory to the sale agreement. On 19<sup>th</sup> January, 2009 the Village Executive Council confirmed the Plaintiff's ownership of the suit land.

The Plaintiff has made developments on the suit land which caters for the entire orphanage.

The Defendant instituted proceedings at the District Land and Housing Tribunal against Dory Gannes seeking declarartion of ownership of the suit

land to Janes Olevolos Orphans Centre. The Plaintiff was not a party to the proceedings from which exparte decree emanates.

The Plaintiff preferred to institute this suit praying for the following orders:

- i. A declaration that the Plaintiff is the legitimate lawful owner of the suitland.
- ii. An order of eviction of the Defendant from the suit premises
- iii. A permanent order of injunction restraining the Defendant from interfering with the Plaintiff's quiet possession of the suitland,
- iv. Costs of this suit
- v. Any other relief that this honourable court may deem fit to grant in the circumstances.

In her Written Statement of Defence, the Defendant denied the allegations that the Plaintiff instructed her to purchase the disputed property and stated that the said land was bought on behalf of the Orphanage centre by using their own fund and the vendor of the suit land was not in a position to lawfully resale the suit land as it was already sold and handed over to the Defendant who is in effective occupation and use

of the said land. The Defendant denied to have made any misrepresentation regarding the orphanage.

At the hearing of this application, the Plaintiff was represented by Emmanuel Kinabo, learned Counsel whereas the Defendant was represented by Mr. Loom Ojare and Ms. Neema Oscar, learned Advocates.

At the final pretrial conference the following issues were framed and agreed by the parties for determination of this case: **One**, whether the Plaintiff had instructed the Defendant to purchase the disputed land. **Two**, whether there is a valid agreement for sale of the disputed land to the Plaintiff. **Three**, who is the lawful owner of the disputed land. **Four**, whether there is any connection between Jane Olevolos Orphanage Centre and the Plaintiff. **Five**, to what reliefs are the parties entitled to.

Starting with the first issue, whether the Plaintiff had instructed the Defendant to purchase the disputed land. PW1 Nembris Soinge informed this court that she once had a business transaction with the Defendant, Jane Olevolos and her "Mzungu" known by the name of Dori. She sold a farm measuring 3 acres with her sister Kasili Saiteli to the said Dori at the price of thirty Million Tanzanian Shillings. Payment was received from Dori

after writing the sale agreement. She did not testify on whether the Defendant had instructions from the Plaintiff in buying the disputed land nor did she relate the said Dori who allegedly paid for the sale agreement with the plaintiff. However, PW2, Philemon Medutieki Laizer, stated that purchaser of the suit land was Jane Olevolos on behalf of orphanage while PW3, William Jaro who was the chairman of Olevolos Village 2004 to 2010 stated that Olevolos Project was a project which the donor, Dori Gannes gave to Olevolos village. Olevolos Project bought land for the purpose of helping orphans in the village. He stated that Dori bought land which means the project owns land. Further to this, PW4, Pendaeli Longida Mollel who worked at Olevolos village as secretary of village meetings stated that the Plaintiff, Olevolos Project Inc. Ltd was a village project. He joined Olevos village in 2006 and found the project had already started at maendeleo hamlet. The project was sponsored by Dory and Jane. Later Jane and Dori had two disputes, one was in relation to purchase of land and the second was related to changing of the name of the project from Jane Olevolos to Olevolos Project. They agreed that the project would be called Olevolos Project instead of Jane Olevolos Project. In that meeting there was the village chairman and some village members.

On the other hand, DW1 Jane Sanare Mollel admitted to know Dori Garnes as her friend. She claimed to be the one who bought the land and paid the first instalment in the purchase of land and not Dori. She wanted to pay for the second instalment but vendors refused to accept the money saying they wanted money from the white person (mzungu). She was not involved in any subsequent sale of the disputed land. She clarified that Dori's name appears in the sale agreement of 11/7/2007 but her signature is not there because she wanted her to be a witness but she couldn't appear on the date of execution of the contract. DW2, Sanare Meterya, who is DW1's husband said he is the manager of Jane Olevolos Orphanage. The orphanage bought the disputed land on 11/7/2007 and the money was paid by Jane Olevolos using the money saved from the family of Jane.

It is obvious that, the Plaintiff failed to establish if she had instructed the defendant to purchase the disputed land. PW1 who sold the disputed land did not mention the Plaintiff in relation to the alleged sale while PW2 stated that the purchaser of the dispute land was Jane Olevolos on behalf of the Orphanage. His evidence is supported by exhibit D1 (Sale agreement) dated 11/7/2007 which indicates the purchaser of the suit land as Jane Olevolosi on behalf of Jane Olevolos Orphans. There is nothing in

exhibit D1 which indicates that the Plaintiff instructed the Defendant to purchase the disputed land. While Dory Gannes's name appears in the exhibit D1 as a witness, although she didn't sign it, there is no reference to the Plaintiff's name in that contract. Although the plaintiff later purported to enter into an agreement with the co-owners of the suit land (exhibit P1), which will be addressed later in this judgment, the Defendant was not involved in that agreement and therefore there is nothing to prove that the Plaintiff had instructed the Defendant to purchase the said land.

The second issue seek to determine whether there is a valid agreement for sale of the disputed land to the Plaintiff. The only sale agreement involving the Plaintiff to the disputed land is exhibit P1 which was signed on 6<sup>th</sup> January, 2009 between the two individuals who previously sold the said land to Jane Olevolos Orphan Centre on 11/7/2007. Exhibit P1 purports to nullify the previous contract entered between the said co-owners and Jane Olevolos Orphan Centre on grounds that payment for the second installment was delayed. Further to that, exhibit P1 purported to allow the Plaintiff to use the money paid as first instalment by Jane Olevolos Orphan Centre as part of the consideration for

the new contract by allowing the Plaintiff to pay the outstanding balance for the second instalment.

It is apparent that the validity of exhibit P1 is questionable on several aspects. As a contract between the Plaintiff and the two owners of the suit land, exhibit P1 cannot nullify or change the terms of another agreement on the same land between the Defendant on behalf of the Jane Olevolos Centre and the said two owners. Further to that, having purported to nullify the previous contract, the Plaintiff and the said owners cannot rely on the money paid by the Defendant on behalf of the Centre in the first instalment of the previous contract so nullified as part of the payment for a new agreement between them. That said, this Court finds that there is no valid agreement for sale of the disputed land to the Plaintiff.

This brings me to the third issue, who is the lawful owner of the disputed land. It is good to note that there has been two different agreements on the disputed land as discussed above. However, this Court having decided that exhibit P1 was not a valid contract for reasons stated hereinabove, the only remaining contract is the one between the Defendant on behalf of Jane Olevolos Orphan Centre and the two owners. The said agreement was signed on 11/5/2007 upon payment of the first



instalment at a tune of TZS 15,000,000/= and the owners handed over the disputed land to the Defendant on behalf of Jane Olevolos Orphan Centre with an agreement that the buyer would pay the outstanding money in the second instalment on 15/1/2008. However, DW1 testified that the sellers refused to accept the funds as they wanted to be paid by Dory Gannes who was the sponsor of the Plaintiff. DW1 testified that, she is currently running her orphanage on the suit land from the moment it was handed over to her. The contract in question is silent on the right of parties where the buyer delays to pay the outstanding amount for the purchase of the suit land or where the sellers refuses to accept the outstanding amount in the contract. None of the parties in this agreement has filed a case to claim their rights in the contract. In the circumstances of this case, this Court regards the Defendant Jane Olevolos on behalf of the Jane Olevolos Orphan Centre to be the lawful owner of the disputed land. The sellers of the disputed land are entitled to the payment of the outstanding amount for the second instalment if they so wish to claim.

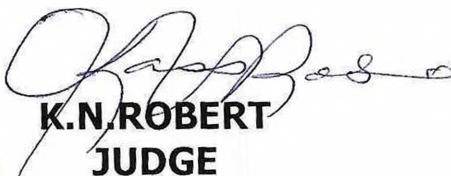
The fourth question is whether there is any connection between Jane Olevolos Orphanage Centre and the Plaintiff. This court admitted the certificate of registration of Jane Olevolos Orphans as exhibit D2. The

certificate shows that the orphanage was registered under the Societies Act, Cap. 337 R.E. 2002 on 4<sup>th</sup> February, 2008 whereas the Plaintiff stated in the pleadings that she is a limited liability company registered under the Companies Act, Cap. (212 R.E. 2002). The Plaintiff did not adduce any evidence which establishes any kind of connection between her and Jane Olevolos Orphans. In the circumstances, this court finds no connection between the Plaintiff and Jane Olevolos Orphanage Centre.

The determination of the last issue is simple as it is predicated on the response to the previous issues. Having determined that the Plaintiff had no valid agreement for sale of the disputed land, had not instructed the Defendant to purchase the disputed land and therefore not a lawful owner of the disputed land, I would in consequence hold that the Plaintiff's claim against the Defendant has no merit and I hereby dismissed it with costs.

It is ordered accordingly.



  
**K.N. ROBERT**  
**JUDGE**  
**7/5/2021**