

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

LAND CASE NO. 14 OF 2020

ELIZABETH MBOYO.....1ST PLAINTIFF

SARA SABAYA.....2ND PLAINTIFF

LYIDIA MBOYO.....3RD PLAINTIFF

VERSUS

GRACE MBOYO.....1ST DEFENDANT

EMMANUEL MBOYO.....2ND DEFENDANT

GODLISTENI KAUSEN MOSHI.....3RD DEFENDANT

JUDGEMENT

23/05/2022 & 04/07/2022

KAMUZORA, J.

The Plaintiffs in this matter sued the Defendants for the house and plot of land measuring 23 meters width and 27 meters length located at Kambi ya Fisi, Ngaramtoni ward within Arusha City in Arusha Region. The estimated value of the suit property is Tshs. 700 million.

The brief facts of the matter albeit is that, the 1st Plaintiff Elizabeth Mboyo, the 1st Defendant Grace Mboyo and 2nd Defendant Emmanuel Mboyo are the children of the late Lydia Sabaya while the 2nd Plaintiff

Sara Sabaya and 3rd Plaintiff Lydia Mboyo are the grandchildren of the late Lydia Sabaya. The 1st Defendant petitioned and was successful appointed the administrator of the estate of the deceased Lydia Sabaya for a property measuring 23 meters width and 27 meters length. She acted with the 2nd Defendant Emmanuel Mboyo to sale a landed property measuring 23 meters width and 57 meters length to the 3rd Defendant Godlisten Kauseni Moshi. It was claimed that the 1st Defendant sold the plot she was administering but joined force with the 2nd Defendant to include a plot measuring 23 meters width and 30 meters length owned by the 2nd Defendant.

The Plaintiffs claimed that, being beneficiaries to the deceased estate for the plot measuring 23 meters width and 27 meters length, they were not involved in the sale and did not approve the sale of the alleged property which was already distributed to them. To prove their case a total number of five witnesses were aligned in court including the Plaintiffs themselves and for the defence case, a total number of three witnesses who are defendants testified in court. During the final pre-trial conference, three issues were raised and agreed by the parties to guide this court in its determination.

- 1. Whether the Plaintiffs are lawful owners of the suit land measuring 27 X 23 meters containing a house with five rooms.*
- 2. Whether the sale of the disputed land by the 1st and 2nd Defendants to the third Defendant was lawful.*
- 3. To what reliefs are parties entitled.*

As a matter of legal representation, the Plaintiffs were dully represented by Mr. Richard Manyota, learned counsel while the Defendants enjoyed the service of Mr. Silayo Edwin, learned counsel.

PW1. Elizabeth Mboyo Mollel testified that, she is among the beneficiary of the estate of her late mother Lydia Sabaya. That, the disputed property is a land with business frames measuring 23X27 meters situated at Kambi ya fisi that was divided by her late mother to five female children who are Elizabeth Mboyo, Grace Mboyo, Martha Mboyo, Sara Sabaya and Lydia Mbeki. That, she received her share with the size of 10X27 meters. That, after the death of their mother, they continued collecting rents as they had tenants in that house. That, her young brothers; Emmanuel Mboyo, Benjamini Mboyo and Mbeki Mboyo interfered into their Plot and stopped the tenants from paying rents to the female children. That, they successful sued male children at the Ward Tribunal and then instituted a probate matter at the primary court which appointed Grace (1st Defendant) as administratrix of the estate of their

late mother. That, Grace distributed the properties to heirs by handing the plot which were in the hands of each of them and they continued collecting the rent. That, Grace also filed the inventory and the probate matter was closed but after some time, PW1 was informed that their plot at Kambi ya Fisi was sold by Grace.

PW1 claimed that, as they had no family meeting authorising the sale of the property, she informed the clan leader, the Mtaa chairman and the executive officer but they were all not aware of the sale. Upon being summoned by the Mtaa chairman, Grace admitted to the sale of the property at the price of Tshs. 300 million and by that time she had already receive cash Tshs 200 million. That, PW1 refused to receive Tshs. 50 million offered to her by Grace as her share and opted to file a case in court. PW1 prays for an order declaring her the rightful owner of the disputed plot and award of compensation for disturbance and costs of the suit. She alleged that, after the sale the house was closed and her tenant left without paying rent and no one is ready to rent the house because they were informed that there is dispute over the house. She also prays for this court to order the 3rd Defendant and his family members not to inter into that property.

On being cross examined PW1 testified that, she is currently in occupation of the disputed property and have a tenant. That, she owns two rooms in that house, two mad rooms and traditional hut (nyumba ya msonge) while, Sara Sabaya own one room, Lydia own one room, Martha two rooms and Grace own one room for business, two rooms in a mad house and a toilet. That, the business frames are five and if added with other mad rooms they make a total of 8 rooms. She insisted that the disputed property was divided to them by her mother when she was still alive and after the probate matter Grace officiated by handing to them the plots there were owning.

PW2, Sara Sabaya Mollel is the grandchild of the late Lydia Sabaya. She testified that, she is among the beneficiaries of the deceased in the disputed property located at Kambi ya Fisi, measuring is 23X27 meters. That, she owns 5x27 meters of that plot that was given her by her grandmother when she was still alive. PW2 testified further that, there was a time they agreed to sale the property but they were unable to secure a buyer for the price they wanted thus, they decided not to sell the plot. She supported the evidence of PW1 on the dispute that arose between them and male children of the late Lydia Sabaya which in the end was decided in favour of female children. That, they appointed Grace

Mboyo to administer the estate of the deceased and she was approved by the court in Case No. 179 of 2014. That, after being appointed Grace gathered all the deceased properties and distributed the same to them. In proof of the distribution of the deceased estate PW2 tendered Form No. V and VI dated 24/04/2020 which were admitted collectively as exhibit PE1.

PW2 further testified that, after the distribution of the estate, they continued collecting the rent and on April 2020 she was phoned by Grace who wanted to meet her at Frolida round about. That, she was asked to go with the handbag but did not go but at the evening hours Grace went to PW2 to inform her that she was calling PW2 to collect her money as she had sold the plot. That, PW2 refused to receive Tshs. 10 million offered to her on account that she was not involved in the sale. That, she later discovered that the property was sold to Godlisten at the Price of Tshs. 300 million and Tshs. 200 million was already paid and the remaining unpaid balance was Tshs. 100 million. That, complained at the ward office and they were shown a contract of sale that was tendered admitted as exhibit PE2. PW2 explained that, the contract indicated that, the same was executed on 27/02/2020 between Grace Mboyo and Emanuel Mboyo as vendors and the buyer was Godlisten Kauseni Mushi.

That, in the plaint the disputed land is 23X27 meters but in the contract the plot sold is measuring 23x57 meters. That, Emmanuel was sued because he joined Grace in the sale of the whole plot in dispute. PW2 added that, at the disputed property he owns a business frame and she has a tenant by the name of Godlove paying Tshs. 200,000 per month. She prays for an order of this court to handover to her the plot which she own with the size of 5x27 meters which is part of the plot with the size of 23X27 meters. She also prays for this court to order Godlisten not to enter into her property, prayer for damage and costs of the case.

Upon being cross examined, PW2 added that, the disputed property was owned by her grandmother and before her death, her grandmother was collecting the rent herself. That, they became owners after the demise of her grandmother as she gave the house to them before she died. That, Grace handed to them the property after she was appointed administrator to the estate. That, Grace told PW2 to continue occupying her part of the property which she knew before that it belonged to her. PW2 testified further that, the form which Grace filed in court indicates the money Tshs. 300million that was distributed to the beneficiaries who are children of the deceased at the rate of; Grace Mboyo 25%, Martha Mboyo 25%, Elizabeth Mboyo 25% and Emmanuel Mboyo 25% but, Sara

Sabaya and Lydia Mboyo were not included. She however contended that, the distribution is those forms concerned the money and not the rooms. She thus insisted that, they did not agree on the sale of the property at the price of Tshs. 300 million.

PW3, Lydia Beki Mboyo is also a granddaughter to the deceased Lydia Sabaya. She testified that, her share on the disputed property is measuring 5 meters width and 27 meters length (5x27) which is party of the disputed property measuring 23 meters width and 27 meters length. That, she inherited the same from her grandmother and she has a tenant by name of Eligunda Peter. That, when she had travelled to Mwanza when she was phoned by Elizabeth and informed that the property was sold by Grace. That, they complained for not being involved in the sale thus, PW3 prays for this court to declare her the owner to the disputed property and issue a restraint order against Godlisten and award damages and costs of the suit.

Upon being cross examined, PW3 added that, she owns the plot with business frame measuring 5 meters width and 27 meters lengths. That, she was given the plot by the late Lydia when she was still alive and she was receiving rent before and after her grandmother's death.

That, the sale contract indicate that her father signed the contract but he was her representative.

PW4, Isaya Doita Harri is the Councillor of Ngarenaro Ward who handled the complaint between the parties. He testified that, he handled the dispute between the male children and female children of the deceased and advised them to institute a probate matter. He was later informed that Grace who was appointed to stand for the female children acted against her sisters and sold the plot without involving them. That, Grace informed PW4 that she distributed the frames to her all sisters but later she sold the same without informing them. That, he informed the WEO and tried to reconcile them but in vain thus, he advised them to go to court.

PW5, Calvin Sanare Mollel is a grandchild of the deceased Lydia Sabaya hence a relative to the Plaintiff and the 1st and 2nd Defendants. He testified that, on 27/04/2020 at 09:00hrs his aunt Grace went to Mercy Joseph Mboyo (PW5's mother) and asked her to carry a big hand bag and meet her at Frorida area as there was a business to be conducted there. That, PW5 escorted his mother as she is suffering from stroke thus could not go alone. That, when they arrived there, they found Grace Mboyo, Emmanuel Mboyo and the son of his elder uncle. That, after sometimes,

Godlisten Kausen Moshi went there with big bag full of money and was accompanied by a girl who introduced herself as Sabina Silayo, the State Attorney. That, they were informed of the sale and they read the contract to them which indicated that Grace and Emmanuel were selling their plot to Godlisten Kausen Moshi situated at Kambi ya Fisi area at Ngarenaro Ward. That, the contract also indicated that the cash paid was Tshs. 200 million and 100 million remained unpaid. That, PW5 tried to ask questions but there were no good answers and he was forced out on claim that he was causing chaos. That, they later asked her mother to sign and she signed by thumb print.

PW5 further testified that, Emmanuel Mboyo was sued because he participated in the sale of the plot in dispute which comprises of 23 meters width and 27 meters lengths. That, the contract shows that the plot sold comprises of 23 meters width and 57 meters lengths. That, the contract included the 30 meters lengths area belonging to Emmanuel Mboyo.

PW5 knows that the house was divided to Elizabeth Mboyo who was given a frame and part of the land to the Boma, Sara Sabaya was given the frame and part of the land to the Boma, Martha Mboyo was given a frame and part of the land in the Boma, Lydia Mboyo was given frame and part of the land in the Boma and Grace Mboyo was given a frame and

part of the land to the Boma. He insisted that, he was not involved in the sale or called as witness but saw what happened as he escorted his mother. That, his mother received Tshs. 5,000,000/= five million as a witness and the children of his eldest uncle; Angela Robert, Jackline Robert and Elinipa Robert were given 2 million each and Benjamin Mboyo was given 10 million. That, as Elizabeth refused to receive Tshs. 50 million offered to her, Grace promised to give Tshs 25 million or build a house for PW5 upon convincing Elizabeth to accept the money but he refused. PW5 claimed that, he has been receiving threat from Grace on allegation that he is the one assisting Elizabeth and he reported the threat to the police station. On being cross examined he added that, the Plaintiff are owners of the disputed land and they never agreed to sell the same.

On the defence side the first Defendant Grace Mboyo testified as DW1. She admitted to the sale of the disputed property measuring 23 meters width and 27 meters length but was sued jointly with brother for selling property measuring of 23 meters width and 57 meters length. She claimed that, she was appointed administratrix of her mother's estate after her brothers tried to take possession of the property belonging to female children. That, after she was appointed, they planned to sale the property at the price of Tshs. 700 million but could not secure the buyer

with that amount. That, they involved their brother Emmanuel Mboyo so that they can join his plot to their plot and sell them as one to get more money. That, Emmanuel was able to secured the buyer at the price of Tshs. 300 million and he involved DW1 who also informed her sisters Elizabeth Mboyo and Martha Mboyo. That, they all agreed to sell the property at Kambi ya Fisi and share the amount equally. That, on 23/04/2020 they agreed to the sale and deponed the affidavit showing that they received from the buyer Tshs 100 million as advance pay. The said affidavit was admitted in court as exhibit DE1. That, on 24/04/2020 they went to the primary court to file the inventory and close the probate matter. That, after closing the probate matter on 27th they signed the sale contract. DW1 identified Exhibit PE1 as Form No. V which she filed in the Primary court on 24/04/2020 in Probate No. 179 of 214. That, what is indicated in the form is the house/frame located at Kambi ya Fisi Ngarenaro Ward with the value of Tshs. 300 million. That, the same is also accompanied by Form No. VI showing the distribution among four children who are; Grace Mboyo 25%, Elizabeth Mboyo 25%, Maritha Mboyo 25% and Emmanuel Mboyo 25%. She also identified Exhibit PE2 which is the sale contract that was signed on 27/04/2020 for the property with the length of 57 meters length and 23 meters width.

DW1 added that, after they signed the contract, they received another instalment of Tshs. 100 million thus making the total of Tshs 200 million and the balance of Tshs. 100 million was to be paid within few days. That, she distributed and the money and gave each of them their shares but Elizabeth refused to receive the money claiming that Kelvin Senare who is the son to their brother asked her not to accept it as it was little money. That, they tried to reconcile in Church and to the clan elders but Elizabeth refused to accept her share, the amount of Tshs. 75 million.

DW1 further testified that, Sara and Lydia are grandchildren to their mother thus, not entitled to the estate but during the discussion of four children, they agreed to help them and share some amount with them. DW1 prays for this court to dismiss the claim with costs.

On being cross examined, DW1 added that, as administrator she was duty bound to distribute the estate of the deceased. That, the property measuring 57x23 includes two plots; the first plot is 27x23 size and the second plot is 30x23 size. That, she was the administrator of the estate to the plot with the size of 27x23. That, the deceased was survived by 8 children but the distribution of the estate was to Elizabeth, Martha, Emmanuel and Grace. That, she did not distribute to others as their plots were not included in the plot sold except that of Emmanuel Mboyo. That,

DW1 received the amount of Tshs. 100 million as the administrator of the estate of the deceased with powers to collect the money on behalf of other beneficiaries. That, Exhibit DE1 was executed before she closed the probate matter thus, she received the money as administrator of the estate of the deceased. That, as per Form No. VI each of them was entitled to 75million but Elizabeth share is still in the hands of DW1 as she refused to collect the same. That, the probate mater was closed on 24/04/2020 and the contract was signed on 27/04/2020 and it indicates that the first instalment paid was Tshs 200 million as two instalments were combined.

DW2, Godlisten Kausen Moshi testified that, the disputed property which is located at Ngarenaro Kambi ya Fisi with the size of 23x57 meters was sold to him at the price of Tshs. 300 million. That, on 23rd he paid 100 million as first instalment and assurance that the vendors were committed to sell the plot to him. That, after they processed to close the probate matter, they met on 27/04/2020 to execute a contract and he paid another 100 million. That, after two more weeks he paid the remained 100 million. That, all transaction were done in his office at Tengeru. Thereafter, he started to process for the certificate of tittle and he was issued with the tittle which currently is deposited at Bank as

security for loan. The photocopy of the said Certificate of title with number 1243 was admitted as exhibit DE2. DW2 prays for this court to consider the circumstances of this case and find that he followed the law in buying that plot.

On being cross examined DW2 added that, the disputed property contains shops which are part of the plot. That, he was shown all documents regarding the probate matter and there were beneficiaries to the probate matter that was closed on 24/04/2020. That, the contract which is Exhibit PE2 listed names of beneficiaries. That, he was issued with the certificate of title on 26/02/2021. That, the plaint was filed in court on 20/06/2020 before the certificate of title was issued to him but, he was not aware of the existence of a case in court before the certificate of title was issued although his written statement of defence was filed in court on 05/08/2020. DW2 claimed to have used the certificate of title as security for the loan though he presented no document here in court to show that the title was used as security for loan.

DW3, Emmanuel Mboyo Mollel testified that, the disputed property is measuring 23 meters width to 27 meters lengths. That, the plot with 23x30 meters has no dispute and he is the owner to that plot. That, their mother Lydia Mboyo Mollel @ Sabaya was the original owner of the plot

before her death and as the lastborn in their family he was instructed by his mother supervise the Boma. That, there was conflict as Benjamin and Mbeki tried to stop the female children from collecting rent in the disputed property. That, after Grace was appointed administratrix, they met on 2017 and agreed to sell the property and Grace was selling as administrator of the estate together with Elizabeth and Martha as beneficiaries. That, they were unable to secure the buyer until 2020 when they found one after they agreed to include DW3's plot to make it big to secure the buyer. That, they agreed to sell the whole plot at the price of 300 million and on 23/04/2020 the buyer agreed to pay 1st instalment of Tshs. 100 million to show commitment in buying the plot. That, the first instalment was paid awaiting the closure of the probate matter as they agreed to conclude the business after the probate matter was closed. That, the buyer wanted the probate matter to be closed so as to be sure that no dispute could arise thereafter. DW3 identified Exhibit DE1 as the document they signed. That, they later executed the sale contract and the amount of Tshs. 100 was paid and the total amount that was indicated as paid until that time was Tshs 200 million. That, later the remained amount of Tshs. 100 million was paid.

DW3 testified further that, all beneficiaries agreed to the sale after a meeting between them. That, the administrator distributed the property at the rate of 25% for each of the beneficiary and they all received their shares except for Elizabeth who refused to accept her share as she was advised by Kelvin Sanare not to accept the money. DW3 thus prays for this court to dismiss this suit and award costs.

On being cross examined, DW3 added that, as per Waarusha customs, the last born is responsible to supervise the Boma. That, the female children are Elizabeth, Martha and Grace who had right to collect rent from the business frames at the disputed property. That, there are four frames and other had double rooms and DW1 own one frame at that area. That, during the sale, DW3 included his plot thus he was listed as one of the beneficiaries during distribution. That, the deceased left 8 children but other children have no right over the disputed property as they have their own plots. That, all beneficiaries received equal share of Tshs. 75 million but Elizabeth refused her share.

I have clearly gone through the pleadings and the evidence from both parties. From the records, what was sold to the 3rd Defendant is a landed property with the size of 57 meters length and 23 meters width. However, the disputed property in this matter is the property with the size

of 27 meters length and 23 meters width. There is no doubt that the disputed property was originally owned by the late Lydia Sabaya thus whoever has claims over the said property has to show how he/she acquire right over the same. While the Plaintiffs claim that the said property was given to them by the deceased before her death, the 1st and 2nd Defendant claims that the disputed property was distributed only to female children by the deceased and the 2nd and 3rd Plaintiffs' being grandchildren of the deceased are not entitled to the said property.

There is no dispute that the 2nd and 3rd Plaintiffs are grandchildren of the deceased but their claim is that, they were given the said property by the deceased even before her death and after her death they were collecting rent from business frames in the disputed property. Thaty was proved by the plaintiffs themselves and their witnesses. The evidence is clear and not contested by the defendants that, the 2nd and 3rd Plaintiffs are even collecting rent up to date meaning that even before the probate matter was filed in court, they were identified as beneficiaries. They were also identified as beneficiaries during the hearing and determination Probate No. 179 of 2014 and even during execution of the contract for sale of the disputed property. They were only excluded by the 1st

Defendant while filing inventory and final account before the primary court. Part of the contract which is exhibit PE1 reads: -

"NA AMBAPO WAUZAJI wanamhakikishia MNUNUZI kwamba wanufaika wengine wa mali hiyo ambao ni wajukuu wa marehemu ambao ni Lydia Mbeki and Sara Sabaya watapewa mgao wao kihalali na kisheria."

With the above wordings, the 1st and 2nd Defendants knew that the 2nd and 3rd Plaintiffs had right over the disputed property thus it cannot be said that they were not part of the estate by virtue of being the grandchildren of the deceased. The evidence reveals that, the deceased gave the disputed property to female children including two grandchildren, the 2nd and 3rd Plaintiffs. They were all collecting rent from the disputed property even before the filing of the probate matter and no one complained against them. The complaint was only on the conduct of the male children who wanted to take possession of the disputed property. With the evidence in record, it becomes obvious that even before the probate matter was filed in court, the female children including two grandchildren were each in possession of the part of the disputed property. The probate matter was filed only to officiate the ownership after the male children tried to interfere with the ownership by female

children and grandchildren. The contention that the grandchildren were not part of the disputed property is unjustified.

Having decided so, the question is whether the 1st and 2nd Defendants had legal right to sale the disputed property. It was alleged that the 2nd Defendant was involved merely because he joined his property to the property in dispute. There is no dispute that the 2nd Defendant own part of the landed property sold to the 3rd Defendant measuring 23x30 meters. However, the contract that was signed between the parties does not reflect the fact that the 2nd Defendant involvement was only to the extent of the property he was owning personally. The contract shows that the 1st and 2nd Defendants, Grace Mboyo and Emmanuel Mboyo were all vendors to the property measuring 57X23 meters. The introductory part of the contract reads: -

"AMBAPO WAUZAJI ni wamiliki halali wa nyumba yenye vyumba vitano vya biashara, viwili vilivyoko tupu na nyumba nne za udongo iliyoko maeneno ya kambi ya fisi, kata ya Ngarenaro, ndani ya Jiji la Arusha kwenye kiwanja chenye ukubwa wa mita hamsini na saba (57) kwa urefu na upana wa mita ishirini na tatu (23) na mipaka yake inaoonyesha hapa chini: -....."

With the above wordings, the 2nd Defendant became part of the sale to the whole undisputed and disputed landed property. As he had no right

over the disputed property, he could not have acquired any right to sale the same. It was contended that, the disputed property was sold by the 1st Defendant under the umbrella of administrator of the deceased estate. Thus, the question is whether the sale of the disputed property by the 1st Defendant was lawful. The 1st Defendant claims that, as the administrator of the deceased estate, she had right to sell the property in order to distribute the proceeds to the rightful owner of the deceased.

I agree that the administrator can opt to sell the property in the estate where it is necessary to do so in the administration of the deceased estate. It is not the requirement of the law that the administrator has to seek for consent from the beneficiaries before selling the property in the estate. But it had been a matter of practice that the beneficiaries be involved to avoid unnecessary conflicts. I find such a practice appropriate because where all beneficiaries agree on the same matter, it helps in avoiding future and unnecessary conflict like the present one.

The 1st Defendant claimed that all beneficiaries agreed to sale the property but such fact was disputed by the Plaintiffs. I find that the Plaintiffs are correct to state that there was no such agreement because no evidence of such agreement was presented in court. While there a claim for the meeting, no minutes was presented to that effect. The 1st

Defendant conduct also reveals that there existed no agreement on the sale. I say so because, if there was such agreement, the 1st Defendant could not have excluded the 2nd and 3rd Plaintiffs from the list of beneficiaries when filing the inventory and final account while knowing that from the beginning were identified as beneficiaries.

Apart from unverified consent of the beneficiaries, at the time of sale, the 1st Defendant was no longer the administrator of the estate of the deceased hence, she had no legal capacity to dispose the disputed property. It is in record that the contract was signed as between the parties on 27/04/2020 while the probate matter was closed on 24/04/2020. With such evidence, it becomes obvious that the sale contract was signed after the probate matter was closed.

It was alleged by the defence witnesses that the amount of Tshs. 300 million that was indicated in the inventory form and final account was based on the price obtained from the secured buyer who also paid 100 million as 1st instalment on 23/04/2020. The Defendants' claim is that, the agreement was entered on 23/04/2020 when they executed the affidavit (exhibit DE1) on intention to sell but they agreed to sign the contract after the probate matter was closed.

In my view, the claim that there was prior agreement under the affidavit (exhibit DE1) is wanting. The said affidavit was not even referred in the real contract of sale. If the affidavit was executed before the contract, we expected the contract to contain the statement explaining the existence of the affidavit and the payment of the first instalment on the date mentioned in the affidavit. But the contract reveals that the amount of Tshs. 200 million was paid on the date the contract was executed that is, on 27/04/2020. I therefore find the evidence on the affidavit to be weak to prove that there existed any agreement before 27/04/2020.

I understand that the law gives powers to the administrator to dispose the property in the deceased estate but, such power does not continue after the close of the probate matter. It is the law that, after the close of the probate matter, the administrator is discharged from administration duties thus cannot in anyway sale any property after closure of probate matter. By closing the probate matter on 24th, the 1st Defendant was discharged from administration duties and could not have right to enter a contract that was signed on 27/04/2020 on administration capacity.

Again, the contract under the introductory party shows that the 1st and 2nd Defendant were selling their own property and no one was selling the property under administration capacity. At page 1 paragraph 4 of the contract, there is a clear statement showing that they 1st and 2nd Defendant were rightful owners of the property which they obtained through inheritance. The said paragraph read: -

"AMBAPO WAUZAJI wanamhakikishia MNUNUZI kwamba nyumba hiyo inayouzwa kwa mujibu wa mkataba huu ni nyumba yao halali walioipata kama moja ya mirathi ya marehemu mama yao na waligawiwa kisheria na kihalali na kupaleka mrejesho wa mgao huo mahakamani na hivyo haina madai/mgogoro wowote na hivyo haihusiani na mwanafamilia mwingine yeyote."

With the above statement, the 1st and 2nd Defendant claimed to be the sole owner of the property in exclusion of other beneficiaries except under the next paragraph where they acknowledged two grandchildren, the 2nd and 3rd Plaintiffs as beneficiaries. There is nowhere in that contract where it is indicated that the 1st Defendant was selling the property under administration capacity rather under capacity as the owner to the same. Thus, if the property was already distributed on 24/04/2020 and the probate matter closed, the 1st Defendant was only entitled to dispose only her share to that property and not the whole property including shares to other beneficiaries.

In the final analysis and with the above evidence it is my conclusion that the Plaintiffs are **among** the lawful owners of the suit land measuring 27X23 meters containing a house with five rooms. I am therefore of the settled mind that, the sale of the disputed property by the 1st and 2nd Defendants to the third Defendant was unlawful.

The Plaintiff claimed for damage, but they were unable to prove specific or general damage suffered. The evidence shows that they are still in possession of the disputed property collecting rent therefrom. Thus, I do not find damage suffered by them.

In conclusion, judgement is entered in favour of the Plaintiffs. The sale of the disputed land by the 1st and 2nd Defendants to the 3rd Defendant is hereby nullified. The 3rd Defendant is ordered to give vacant possession of the disputed property. In considering that the 3rd Defendant was only the buyer, the costs of this matter shall be borne by the 1st and 2nd Defendant only.

DATED at **ARUSHA** this 04th July 2022.


D.C. KAMUZORA'
JUDGE

The image shows a circular official seal of the High Court of Tanzania. The seal contains the text 'THE HIGH COURT OF TANZANIA' around the perimeter and a central emblem. A handwritten signature is written over the seal, and the name 'D.C. KAMUZORA' and the title 'JUDGE' are printed below it.

