IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 130 OF 2021

(Arising from Land Application No. 15 of 2018, in the District Land and Housing Tribunal for Kilosa, at Kilosa)

GIDAMNYENYE BAJUTA ..... APPELLANT

VERSUS

GASPAR MWAKANYAMALE .....1ST RESPONDENT

MOHAMED MOHAMED .....2ND RESPONDENT

JUDGMENT

19th Dec, 2022

CHABA.J.

This appeal arises from the decision of the District Land and Housing Tribunal for Kilosa, at Kilosa (the DLHT/Trial Tribunal), in Application No. 15 of 2018 in which, the appellant / applicant sued the respondents claiming for the following reliefs: **One;** That, the DLHT be pleased to order the respondents herein to vacate from the suit land in dispute, **Two;** General damages to the tune of TZS. 10,000,000/=, **Three**; Special damages in the tune of TZS. 5,000,000/=, **Four;** Costs of the Application be provided for, and **Five;** Any other relief(s) which the Honourable trial Tribunal may deem fit and just to grant. That was on the 21st day of May, 2018.

After a full trial, the trial tribunal dismissed the application with costs. In particular, the appellant / applicant was condemned to pay the costs to the 1st respondent.

1/7/25

For better understanding of what transpired, the material facts of the matter obtained from the record of appeal is of paramount importance. The case which led to the decision, subject to this appeal was instituted by Gidamnyenye Bajuta claiming that the respondents breached the lease agreement. According to the record(s), on 14th May, 2016, the appellant entered into a contract by signing a lease agreement with the 2nd respondent herein for the period of twelve (12) years and paid a total of TZS. 5,000,000/= (Five Million Only) as costs for leasing the land in dispute. He further asserted that, he signed the said lease agreement with the second respondent in his capacity of a manager of Mwakanyamale farm and that the suit land measured 180 acres located at Mvumi Village within Mvumi Ward at Kilosa District in Morogoro Region for a period of twelve (12) years tenancy term.

It is on record that, in May, 2018 the 1st respondent invaded the land in dispute and forcefully cultivated the suit land without the tenant's permission. Though the two parties tried to resolve their disputes amicably, their efforts ended in vain. The appellant/applicant therefore, decided to file an Application No. 15 of 2018 before the trial tribunal claiming that, since he entered into a valid lease agreement with the 2nd respondent, the trial tribunal had to revive and or renew his lease agreement so that he could continue using the land in dispute in a peaceful manner and free from disturbance.

Responding to the appellant / applicant's application, the 1st respondent filed a counter affidavit and stated that the appellant had never been a manager to his late father, Mwakanyamale (the deceased) and that his late father had never formed a company and registered it during his lifetime. He averred that, the appellant entered a contract with the 2nd respondent and signed a void lease agreement. He added that, the 2nd respondent herein had no power or any authority in respect of the deceased's farm. According to him, the owner of the land in dispute is the late Mwakanyamale. He added that, the lease agreement was not recognized in the eyes of the law. He further averred that, there was no need for him to obtain a permit from the appellant herein to cultivate the farm taking into account that he is not the owner of the farm or disputed suit land.

On his part, the 2nd respondent countered that, being a manager, he had all the powers to do anything into the disputed land. He insisted that, the 1st respondent did invade the farm / shamba in dispute and therefore was liable to pay the costs of the land matter which the appellant instituted before the trial tribunal.

During the hearing of the Application, three issues were framed. **One**; whether there was a valid leasing agreement over the disputed suit land between the appellant herein and the 2nd respondent herein. **Two;** Whether

the 1st respondent was a trespasser to the suit land in dispute, and **Three;** To what reliefs are the parties entitled.

To prove his allegation, the appellant called two witnesses including himself. PW.1 (Poyo Mhendi Hando) testified that he knows both the appellant and 2nd respondent. He said, he witnessed the two parties signing a lease agreement in respect of the suit land which is situated at Mvumi area. He said, the appellant paid a total of TZS. 5,000,000/= so that could possess the same for a period of 12 years. In cross-examination, PW.1 told the trial tribunal that, four witnesses were present to witness the event of signing the lease agreement including the Village Chairperson whose name was not mentioned and himself. He admitted the fact that, Mwakanyamale is not a company, but a real person and that the 2nd respondent never showed him any contract of employment between him and Mwakanyamale to the effect that he was a manager to his farm. He further admitted that the 2nd respondent is not the legal owner of the suit in dispute, but he was the so called Wakala / Agent.

The testimony of PW.2 (Gidamnyenye Kidasatu Kidabwahetu), the appellant herein, was to the effect that, sometimes in the past he hired a parcel of land from the owner (Mwakanyamale) for one year. When the contract expired, he met the farm manager (2nd respondent) and agreed to enter into a lease agreement without involving the owner of the farm / shamba, one Mzee Mwakanyamale. He testified further that, they agreed to

sign a lease agreement for the period of 12 years tenancy term for consideration of TZS. 5,000,000/=. He tendered in evidence the said lease agreement which was admitted as Exhibit PE.1. In the year 2018 the 1st respondent invaded his parcel of land hence he decided to sue him claiming to be paid a total of TZS. 10,000,000/= for breaching a contract and TZS. 5,000,000/= being the value of lease agreement.

In cross-examination, PW.2 said for the first time he hired one (1) acre in 2004 verbally and did not sign anywhere. Later, he entered into a lease agreement with Mwakanyamale's manager (2nd respondent) though he didn't describe and proved to him that he was the manager.

On the other side, the respondents brought four witnesses including DW.1 and DW.4 (1st and 2nd respondents). DW.1 (Gasper William Mwakanyamale) testified that being a peasant he has been cultivating the farm/shamba owned by his late father (William Adam Mwakanyamale). He said, his father passed away in the year 2017. He admitted having known Mohamed Mohamed (2nd respondent) who was a friend of his father. He denied invading the farm, because it is the property of his father. Therefore, he went on using and cultivating his father's farm. He denied having known the said lease agreement. He said, the 2nd respondent and the appellant entered into a lease agreement while his father was sick. For the first time, he saw the said lease agreement when he reported the 2nd respondent before the primary court.

His evidence shows further that, when his father passed away, they tried to resolve their dispute over the disputed suit land but in vain. The 2nd respondent informed the family that their late father transferred the possession of the suit land in dispute to some people called Wamang'ati and any time they could come and redeem their property.

During cross-examination, DW.1 said, he is not the owner of the farm, nor an administrator of the deceased's estates but he only used to cultivate the shamba. He testified that, the farm belongs to his late father and the person who was appointed to administer the deceased's estates is his brother, one Andrew William Mwakanyamale.

DW.2 (Tumaini William Mwakanyamale) told the trial tribunal that, one day he went to cultivate the farm, but he was restrained by the appellant who claimed that the suit land was still into his possession under lease agreement. As regard to the alleged lease agreement, he said had no idea, but he admitted the fact that the 2nd respondent was a close friend to his late father but not a manager as he claimed.

DW.3 (Mpeka Meki Salumu) testified that, in the year 2005 he went to Mzee Mwakanyamale's residence looking for a job. When he met the deceased, he told him to see the manager (2nd respondent/DW.4). Upon seeing the manager, he expressed that he was looking for a job. At the end of the day, he was employed as the watchman to the farm. During his employment, he spent about five (5) years up to 2010 working in the farm

together with DW.4 who worked in the capacity of the supervisor to the disputed suit land.

DW.4 (Mohamed Mohamed) herein 2nd respondent, testified that he was employed by the late Mwakanyamale in 1997 at Mvumi Village and continued to work in the farm. He testified further that, in 2007 Mr Mwakanyamale travelled abroad for medical treatment. When he came back in the country, he informed DW.4 that he was intending to resign from the company. Therefore, he requested him to be active and continue doing the business of a company. In 2012, the deceased met the appellant who was looking for a farm to lease. The deceased told DW.4 and the appellant to meet him so that a contract of lease agreement could be prepared. Thus, in 2015 DW.4 entered into lease agreement with the appellant as hinted above. He admitted the fact that, the appellant paid him TZS. 5,000,000/= where he used TZS. 4,500,000/= and took the remaining TZS. 500,000/= as his wages for supervising the exercise of clearing the bush. He told the court that, Mr Mwakanyamale passed away in 2017, and two years later, in 2019, the 1st respondent informed him through Hamza Mbalari that he had to stop or cease involving himself with the properties of his late father. He obeyed and showed them all the properties including the suit land. But he is surprised to see that he was sued.

During cross-examination, DW.4 testified that, he was given special power of attorney (Exhibit DEZ) and appointed by the late Mwakanyamale

to act for or on behalf of his names all the acts related to lease, supervision of the farm at Mvumi Village, Mvumi Ward within Kilosa District. This is per special power of attorney dated 3/2/2014 signed by the Commissioner for Oath, one Bishuye E. Minani, Esq. Magistrate. His evidence shows that, the instrument gave him power to enter into a lease agreement with the appellant whereby he leased about 180 acres, the deceased's property and not his property. He said, the name of their company was INVISIBLE CAMP. He said, the deceased also had a plan to form another company by the name of CAMPO but was not sure if the same was formed and registered.

Having considered the evidence at trial and the exhibits tendered in evidence, the trial tribunal dismissed the applicant's application with costs on the ground that the appellant was not the occupier of the suit land. As stated herein, the appellant / applicant was condemned to pay the costs to the 1st respondent.

Dissatisfied, the appellant preferred this appeal raising the following grounds of appeal: -

1. That, the trial chairperson erred both in law and fact for holding that there was no valid lease agreement between the appellant and second respondent.
2. That, the Chairperson erred both in law and fact when he decided a matter in favour of the first respondent who has no locus stand on the subject matter.

3. That, the trial Chairperson erred in law and fact for raising issues suo motto without addressing the parties thus condemned unheard.
4. That, the trial Chairperson erred in law and fact by denying the second respondent right to cross-examine the witnesses procured before a trial tribunal.
5. That, the trial Chairperson erred in law and fact by departing on the assessor's opinion without adducing sufficient and reasonable reasons.
6. That, the trial Chairperson erred and fact deciding the matter for failure to consider strong evidence adduced by the appellant's side compared to the respondent's side.

When the matter was called on for hearing, the appellant enjoyed the legal services of Mr. Richard Mwalingo, Learned Advocate while the 2nd respondent appeared in person, and unrepresented. The 1st respondent and his Learned Advocate Mr. Saul Sikalumba did not enter appearance without notice and for the reasons better known by themselves. Therefore, the matter proceeded for hearing in absence of the 1st respondent.

Arguing on the first ground, Mr. Mwalingo submitted that, section 2 of The Companies Act [Cap. 212 R. E, 2019], provides that the word **"manager"** includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not. Therefore, the argument that the 2nd respondent was not a manager does not hold water because there is no need to show contract of service. He submitted further that, the assertion put forward by the 2nd respondent that,

registration of their company was incomplete and the property in dispute was owned by a person namely, William Adam Mwakanyamale and not a company, had no merit because everyone may call a certain person as a manager.

Regarding the power of attorney in which the deceased (William Adam Mwakanyamale) appointed the DW.4/ 2nd respondent to act on his behalf, the counsel argued that the trial tribunal erred in law when it stated that the same showed that the fees was paid but was lacking the Seal of the Registrar, because under section 11 of the Registration of Document Act [Cap. 117 R. E, 2019], the law provides that, any document of which the registration is not compulsory, whether executed before or after the commencement of this Act, may be registered at the option of the holder. Provided that the registrar may refuse to register any such document for reasons to be stated by him in writing. Such refusal shall be subject to appeal in manner hereinafter mentioned. He submitted that, since registration of a document is optional, the trial Chairperson erred to hold that the same was lately registered and that he failed to assign plausible reasons to reject the document. He added that, the law governing registration of document and the Law of Limitation Act, [Cap. 89 R. E, 2019] does not provides for the time limit to register a document.

The counsel viewed the power of attorney as a valid document in terms of section 94 of the Evidence Act [Cap. 6 R. E, 2022]. This section provides that: -

> *"A court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or commissioner for oaths, any court, judge, magistrate, registrar, foreign service officer or diplomatic representative of a Commonwealth country, was so executed and authenticated".*

Relying on the above provision of law, the counsel submitted that, the document was executed before the commissioner for oath. He insisted that, the lease agreement between the 2nd respondent and the appellant was a valid contract. The fact that the same had no Seal of the Registrar of documents, was not a fault of the 2nd respondent or the appellant. The Hon. Chairperson had an option to ask the appellant and DW.4 to have the document to be marked with a stamp seal. In this regard, the counsel argued that, the contract or lease agreement was valid, and it met all the ingredients of a valid contract under section 10 of the Law of Contract [Cap. 345 R. E, 2019], and the 2nd respondent had all capacity to sign such a contract.

Arguing in respect of the second ground, Mr. Mwalingo accentuated that, the 1st respondent had no-any interest because he was neither an Administrator of the deceased's estates nor a beneficiary to the properties.

He said, looking at the judgment of the trial tribunal, 1st respondent was declared as a trespasser whereas at the end of the day was declared as winner, that was wrong.

On the third ground, the counsel highlighted that the DLHT erred by raising the issue of registration of a company and determination of the issue of employer and employee without affording the parties with right be heard. That means, Article 13 (6) (a) of the Constitution of the URT, 1977 as amended from time to time, was violated.

Concerning the fourth ground, Mr. Mwalingo complained that the 2nd respondent was not afforded with the rights to cross-examine pursuant to the provisions of the law under sections 46 (2) and 147 (1) of the Evidence Act (supra) as indicated from pages 12 – 24, hence his right was infringed.

In respect of the fifth ground, the counsel submitted that the chairperson, departed from the assessors' opinion without assigning genuine reason as a result he contravenes section 24 of the Land Disputes Courts Acts, [Cap. 216 R. E, 2019], as indicated on page 8 of the judgment.

Concerning the six and last ground of appeal, he contended that the Chairperson did not consider the evidence of the appellant, which was strong compared to the evidence of respondents, citing sections 110 and 111 of the Evidence Act (supra) to reinforce his argument. The echoed that, the power of attorney tendered in evidence was a valid document and the lease agreement was also valid as testified by PW.1, PW.2 and DW.4 who

narrated how the lease agreement was formed. He stated further that, the power of attorney was not faulted and no evidence was adduced to challenge the lease agreement hence the appellant managed to establish his case.

Based on the above submission, Mr. Mwalongo prayed the Court to allow the appeal with costs, quash the proceedings of the trial tribunal and set aside the judgment and decree and any orders stemmed therefrom.

On his part, the 2nd respondent firstly, conceded to what Mr. Mwalongo submitted. He briefly highlighted that, he was employed by William Adam Mwakanyamale since 1998 and that the Power of Attorney was obtained by his employer, and he was given the same at the Village Office at Mvumi Kilosa. He denied the allegation that he was / is a trespasser to the suit land but only executed the wishes of the owner of the land in dispute. He averred that, the 1st respondent was the trespasser because he was not a supervisor to the deceased's farm. He said, until he appeared to testify in Court, the deceased's properties had not been distributed to the beneficiaries. He finally prayed the Court to recognize the contract entered between the appellant and him, DW.4 as valid contract via power of attorney.

In rejoinder, the counsel for the appellant reiterated his submission in chief and prayed that, the lease agreement (PE1) be recognized as a valid contract.

I have objectively considered the evidence on records and the submissions for and against the appeal. This being the first appeal, the Court is duty bound to re-hear and re-evaluate the evidence adduced before the trial tribunal and consider the appellant's grounds of appeal, as it was underscored by the Court of Appeal in the case of **Makubi Dogani Vs. Ngodongo Maganga (Civil Appeal 78 of 2019) [2020] TZCA 1741 (21 August 2020);** extracted from (tanzlii.go.tz.). In exercising that duty, I will also consider the submissions by the counsel for the appellant and 2nd respondent (DW.4).

The vital question calling for consideration, determination and decision thereon is whether this appeal has merit. To answer the question, I propose to commence with grounds 2, 3, 4, 5 and then, I will deal with the 1st ground and finally ground 6.

In the second ground, the counsel for the appellant contended that, the Chairperson erred both in law and fact when he decided a matter in favour of the first respondent who had no locus stand on the subject matter. In his submission, Mr. Mwalingo had the view that the 1st respondent had no locus stand on the subject matter because at the material time had no-any interest for a reason that he was neither an Administrator of the deceased's estates nor a beneficiary. He blamed the Hon. Chairperson for declaring him as a trespasser and at the winner at the same time, which is wrong.

It is a settled principle of law that for a person to institute a suit, he or she must have locus stand as it was expounded in the case of **Lujuna Shubi Ballonzi, Senior Vs. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203** (HC), where this Court observed that: -

> *"Locus standi is governed by Common law according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with".*

Basing on the above principle, no doubt that the one who was supposed to establish *locus standi* against the 1st respondent was / is the appellant. I say so because, it is the appellant who brought the action before the trial tribunal. Further, on reviewing the trial tribunal's records and the judgment thereof, there is nowhere the 1st respondent was declared as the trespasser and the winner as well. On page 11 of the typed judgment, the Hon. Chairperson ruled that, all the reliefs sought by the applicant (appellant herein) had no merit and accordingly were dismissed. The only remedy that was available to all parties is order that all costs to be borne by the appellant. In this regard, this ground must fail.

On the third ground, Mr. Mwalingo complained that the trial Chairperson erred in law and fact for raising issues *suo moto* without addressing the parties, thus the appellant was condemned unheard. Substantiating his argument, the counsel highlighted that the DLHT erred by raising the issue of registration of a company and determination of the

issue of employer and employee without affording the parties with right be heard, hence violated Article 13 (6) (a) of the Constitution of the URT, 1977 (as amended from time to time).

On reviewing the records, I have found that the issue of registration of a company and determination of the issue of employer and employee was not raised *suo moto* by the Hon. Chairperson, but it arose in the cause of determining the matter and during composition of the impugned judgment. In his testimony before the trial tribunal, DW.4 (Mohamed Mohamed) herein 2nd respondent, narrated that he was employed by the late William Adam Mwakanyamale in 1997 at Mvumi Village and continued to work in the farm. He echoed his testimony while submitting in Court orally and said he was employed in 1998. His testimony was supported by PW.1 that, sometimes in the past he entered a contract of employment with the late Mwakanyamale and employed in the capacity of a manager in the disputed farm. Similar testimony was adduced by DW.3 who told the trial tribunal that, during his employment he worked in the farm as a watchman together with the appellant/DW.4 who by then was working in the capacity of the supervisor to the disputed suit land.

With the above piece of evidence, it is evident and not true that the Hon. Chairperson did raise the issue complained herein above *suo moto*. Again, this ground has no merit.

Coming to the fourth ground, it was the appellant's complaint that the trial Chairperson erred in law and fact by denying the 2nd respondent his right to cross-examine the witnesses procured before a trial tribunal. I have perused the record and found that, 2nd respondent featured as DW.4. At the hearing and during examination in chief he narrated his story and thereafter cross-examined by the Mr. Mwalingo and Mr. Saul Sikalumba. The Hon. Assessors namely Mr. Poromoka and Mrs. Lila also exercised their duty or rights accordingly. Afterwards, the 2nd respondent prayed to close his case.

In view of the above, I see the appellant's complaint is devoid of merit.

On the fifth ground, the appellant complained that the trial chairperson erred in law and fact by departing on the assessor's opinion without adducing sufficient and reasonable reasons. To support his contention, Mr. Mwalingo contended that the chairperson departed from the assessors' opinion without assigning genuine reason as a result he contravenes section 24 of the Land Disputes Courts Acts, [Cap. 216 R. E, 2019], as indicated on page 8 of the judgment. I must say that this ground is like an empty shell. I understand that the under sections 23 (1) and (2) and 24 of the Land Disputes Courts Act (supra) provides that, the DLHT established under section 22 shall be composed of at least a Chairman and not less than two assessors who shall be required to give out their opinion before the Chairman reaches the judgment. The law articulates further that in reaching decisions, the Chairman shall take into account the opinion of the assessors

but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion.

I have scrutinized the record of the trial tribunal and judgment composed by the Hon. Chairperson and the same have revealed that the Hon. Assessors gave their opinion and the Hon. Chairperson departed from their opinion and assigned the reasons for so departing. On page 11 of the typed judgment, the Hon. Chairperson had the following to say, I quote:

> *"..... Hivyo basi kwa hayo niliyoyaeleza hapo juu, ninatofautiana na maoni ya wajumbe wote wawili pale waliposema kuwa kuna mkataba halali wa kupanga shamba bishaniwa kati ya mleta maombi na mjibu maombi namba 2, ninasema hakuna mkataba halali kati ya mleta maombi na mjibu maombi namba 2 kama ilivyofafanuliwa hapo juu kwenye swali/hoja bishaniwa namba moja. Na hivyo basi, maombi haya yamefutwa kwa gharama kulipwa mjibu maombi namba 1 kama inavyoonyesha hapo juu.*

From the above excerpt of the trial tribunal's judgment, I am satisfied that the relevant provisions of the law were adhered to by trial Chairperson by assigning sufficient and reasonable grounds / reasons as to why he decided to depart from the assessors' opinion. On this ground, there is no reason to fault the decision of the Hon. Chairperson as the law is clear that upon taking opinion of the assessors, he shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion, and the Chairperson acted in accordance with the requirement of the law.

I now move to the first ground of appeal, where the appellant is complaining that the trial Chairperson erred both in law and fact for holding that there was no valid lease agreement between the appellant and second respondent. On this ground, Mr. Mwalingo submitted at lengthy. I will refer to his submission whenever need arises.

This ground has reminded me to an old age maxim which says: "He who comes into equity must come with clean hands". This maxim bars relief(s) for anyone guilty of improper conduct in the matter at hand. It operates to prevents any affirmative recovery for the person with unclean hands, no matter how unfairly the person's adversary has treated him or her. Its purpose is to protect the integrity of the Court.

It is common knowledge that a contract is an agreement giving rise to obligations that are enforceable or recognized by law. For a broader understanding of the circumstances of the present case, perhaps it might be prudent to consider the broader nature of contracts. According to Black's Law Dictionary, 8th Edition: -

> *"The term "contract" has been used indifferently to refer to three different things: -*
>
> *(i) the series of operative acts by the parties resulting in new legal relations,*
>
> *(ii) (ii) the physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts and also an operative fact as itself,*

(iii) the legal relations resulting from the operative acts, consisting of a right or rights in person and their corresponding duties, accompanied by certain powers, privileges, and communities. The sum of these legal relations is often called "obligation". William R. Anson, Principles of the Law of Contract".

It follows therefore that, the contract is enforceable in law if it complies with the requirements of a valid contract. In our jurisdiction, section 10 of the Law of Contract [Cap. 345 R. E, 2019], provides for the essential elements of a valid contract. It reads: -

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

Reverting to the matter at, the appellant and the 2nd respondent entered into a lease agreement with the appellant who hired the farm for the period of 12 years tenancy term after he had paid TZS. 5,000,000/= to the 2nd respondent (Exhibit PE1). According to 2nd respondent, he entered into a leased agreement with the appellant under the umbrella of being the manager of the farm situated at Mvumi Village within Kilosa District. His evidence is clear that, at the material time had nothing to own like the subject in question, and in similar vein, had also nothing to pass to anyone including the appellant. His evidence shows that, the deceased, William

Adam Mwakanyamale who passed away in the year 2017 was a lawful owner. Exhibit PE1 reads: -

> *"kama kichwa cha Habari kinavyosomeka hapo juu, mimi Bwana Mohamed Mohamed nikiwa kama* ***meneja wa Mwakanyamale*** *nampangisha shamba Bwana Kidamnyenye kwa muda wa miaka kumi na miwili tu kwa gharama ya shilingi milioni tano tu (Tshs. 5,000,000/=). Pesa hizo mimi kama* ***meneja*** *nitazitumia kwa usafishaji wa shamba hilo ambalo lipo katika hali ya poli ili kulimusuru katika ugawaji wa shamba pori". [Emphasise is mine].*

According to Exhibit PE1 on the upper side of the lease agreement it is typed 14/05/2016 – 14/05/228 and at the bottom of the lease agreement it is written by handwriting that, "Makubaliano haya yamefanyika mbele yangu Raguda L. F. He appended his signature on 18/8/2017. The lease agreement was witnessed by four persons namely, Mohamed Mohamed (Mpangishaji/Lessor), Kidamnyenye (Mpangaji/Lessee/tenant), Poyo Mwendi (Shahidi/Witness), Kilako Kinasaki (Shahidi/Witness) Kinyawishi Kinasaki (Shahidi/Wtness) but only two persons signed the lease agreement who are the 2nd respondent and Kilako Kinasaki.

Looking closely to the above piece of evidence, one my note that Exhibit PE1 is tainted with an element of shams and so hard to rely upon. Moreover, the purported lease agreement do not meet the thresholds provided under section 10 of the Law of Contract (supra) because Exhibit PE1 was entered by the two persons while the owner was still alive, and his

family or children were also present and none of them were involved. That is why, in my considered opinion, when the 2nd respondent was asked by the 1st respondent in 2019 through Hamza Mbalari to stop using and / or involving with the deceased's properties, he did not resist. He was honesty before the trial tribunal when he narrated that he immediately obeyed and showed them all the properties including the suit land, though he wondered to see that he was sued.

Again, the special power of attorney was prepared and signed by the Commissioner for Oaths on 03/02/2014 whereas the owner of the farm was still alive as the records and testimonies of witnesses including 2nd respondent shows that he met his death in the year 2017. In my view, the 2nd respondent decided to indicate that the same was prepared and signed by the Commissioner for Oaths in 2014 to justify his lease agreement but without forgetting that at the material time the owner of the farm in dispute was still alive.

Further, my finding reveals that, 2nd respondent entered into a lease agreement in the capacity of a manager of the farm but reading through the records, there is no evidence suggesting and proving that the company (INVISIBLE CAMP) was existing. It is trite law that, for a document to be acted upon by the Court, such a document must first be tendered, cleared and then admitted as an exhibit. As the law stands, special power of attorney becomes effective from the date it is registered by the Ministry of

Lands, Housing and Human Settlements Development through Registrar of Titles powered by Registration of Documents Act [Cap. 117 R. E, 2002]. No doubt that, the appellant's special power of attorney issued on 3rd February, 2014 was tendered in evidence and admitted as Exhibit DEZ. Afterwards it was registered on 09th August, 2019 after the demise of the late William Mwakanyamale who died in 2017, (donor).

As it was correctly analysed by the trial Hon. Chairperson, the document was admitted in evidence, but it was found that it lacked the official seal of the Registrar of Titles and was registered after the demise of the donor. Thus, in that circumstance, if the lease agreement was entered on 14/05/2016 when the power of attorney was not yet effective. It, therefore, follows Mr. MOHAMED MOHAMED was not in hold of a legal instrument allowing him to lease on behalf of WILLIAM MWAKANYAMALE. In that circumstance after the death of the donor, the power of attorney was aborted, to register it after the death of the donor would not make the corpse walk, hence the same does not have any legal value in the eye of the law.

Guided by the Common law principle of *nemo dat quod non habet* as it was expounded in **Farah Mohamed Vs. Fatuma Abdallah (1992) TLR 208,** under this legal principle that, a person who does not have adequate ownership of property or goods does not have the ability to transfer the ownership of that property or goods to another person. In this present case

Mr. Mohamed Mohamed by the time he entered into the lease agreement, had no adequate ownership over the land in dispute, hence lease agreement was entered as null and void it cannot be enforceable by the law. I agree with the finding of DLHT that there was no valid agreement between the parties. This ground has no merit.

Coming to the sixth and last ground, the counsel for the appellant faulted the the trial Chairperson that he erred in law and fact deciding the matter for failure to consider strong evidence adduced by the appellant's side compared to the respondent's side. It is settled that in civil cases including land cases, whoever desires any Court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist, and the burden of proof lies on that person who would fail if no evidence at all were given on either side (See: Sections 110 (1) and 111 of the Tanzania Evidence Act [CAP. 6 R. E, 2022] and the case **Attorney General & 2 Others Vs. Elig Edward Massawe & Others,** Civil Appeal No. 86 of 2002 (unreported)).

The evidence collected and recorded by the trial tribunal shows that the appellant failed to prove his case. Therefore, this court is of the considered view that the trial tribunal properly directed its mind to the evidence in records evaluated it, and reached a sound decision. It is apparent on the record that, the trial tribunal did evaluate and examine the evidence on record.

For the above reasons, the decision of the trial tribunal is upheld and this appeal lacks merit, and I hereby dismiss it with costs. **It is so ordered.**

DATED at **MOROGORO** this 19th day of December, 2022.

M. J. CHABA

JUDGE

19/12/2022