

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO.12 OF 2019**

**ABEL JEREMIA OLE LEKEN.....PLAINTIFF**

**VERSUS**

**SAIMON JOHN.....1<sup>ST</sup> DEFENDANT**

**NICODEMUS YOHANA NYAMAJEJE.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

*Date of last order: 11/2/2022*

*Date of judgment: 25-2-2022*

**B. K. PHILLIP , J.**

The plaintiff claims against the defendants land measuring 23 Acres, located in Lesiraa Village, Kisongo Ward. (Herein after to be referred to as "the land in dispute"). It is alleged in the plaint that in the year 2010 the plaintiff purchased the land in dispute from the 1<sup>st</sup> defendant. Since then, he has been in peaceful possession of the same without any interference. However, on the 21<sup>st</sup> of January, 2019, when he wanted to sell part of the land in dispute at a price of Tshs 16,000,000/=, the 2<sup>nd</sup> defendant objected to transaction on the ground that he bought the land in dispute from the 1<sup>st</sup> defendant, hence he is

the owner of the same. Thus, the plaintiff lodged this case praying for the following reliefs;

- i) A declaration that the plaintiff is the lawful owner of the property in dispute.
- ii) Defendants be stopped to interfere with the property in dispute for whatever purposes.
- iii) General damages as may be assessed by the Court.
- iv) Costs of the Suit.
- v) Such other and further orders that this Honourable Court may deem appropriate and just to grant.

In his defence the 1<sup>st</sup> defendant alleged that he was the owner of the land in dispute. In the year 2009, the 2<sup>nd</sup> defendant attempted to purchase the land in dispute but did not manage to pay the purchase price. Thus, he never bought it . In the year 2019 he sold the land in dispute to the plaintiff. When Tanesco acquired part of the land in dispute, compensation was paid to the plaintiff and there was no dispute on the ownership of the land in dispute.

In his defence the 2<sup>nd</sup> defendant alleged as follows; That he is the lawful owner of the land in dispute. The land in dispute is part of the 62 Acres which he purchased from the 1<sup>st</sup> defendant in three phases.

The first phase comprised of 42 Acres purchased in 1999, the second phase comprised of 10 Acres purchased on 20<sup>th</sup> May 2001 and the third phase comprised of 10 Acres purchased sometimes in 2005. The 1<sup>st</sup> defendant had no good title on the land in dispute to pass the ownership of the land in dispute to the plaintiff. The purported sale of the land in dispute to the plaintiff made in 2010 is null and void *ab initio*.

At the Final Pre-Trial Conference, the following issues were framed for determination by the Court.

- i) Who is the lawful owner of the land in dispute.*
- ii) What reliefs are the parties entitled to.*

The plaintiff was the sole witness for the plaintiff's case. He testified as PW1. The 1<sup>st</sup> defendant testified as DW1 and brought one witness, namely Lesika Nguyini Kivuyo ( DW2) .The 2<sup>nd</sup> defendant testified as DW4 and brought four witnesses, namely Saidati Liana Mbaga ( DW3), Thobias Sakaya ( DW5), Richard Ndooki ( DW6) and Loishiye Lepaani Karisiani ( DW7).

Starting with the 1<sup>st</sup> issue, that is , **Who is the lawful owner of the land in dispute**, the plaintiff, ( PW1) testified that he purchased the land in dispute from the 1<sup>st</sup> defendant and planted trees on it. PW1

tendered in evidence a sale agreement in respect of the land in dispute which was admitted as Exhibit P1. He testified further that on 21<sup>st</sup> January 2019, when he wanted to sell part of the land in dispute the 2<sup>nd</sup> defendant objected to the transaction. He claimed that he is the lawful owner of the land in dispute. He bought it from the 1<sup>st</sup> defendant.

When responding to questions posed to him during cross examination, PW1 told this Court the following; That he purchased the land in dispute in 2010. No one had purchased the land in dispute before. The sale agreement (Exhibit P1) was not signed by any village leader or blessed by the Village Council because they were not involved in the transaction. He did not pay any fees to Lesiraa Village in respect of the transaction for the land in dispute and the value of the land in dispute is Tshs 368,000,000/=.

DW1's testimony was as follows; That he sold 10 Acres to the 2<sup>nd</sup> defendant. The said 10 Acres are located at Lesiraa Village in Kisongo ward. The plaintiff was introduced to him by a broker namely Lesika (DW2). He signed the sale agreement for the said 10 Acres. Thereafter, 2<sup>nd</sup> defendant wanted to purchase more land from him. He had a discussion with 2<sup>nd</sup> defendant together with Mr. Lesika, the broker.

During the discussion they agreed that the 2<sup>nd</sup> defendant was supposed to survey the land he intended to buy so as to know its size and thereafter would come to sign the sale agreement and effect payments for the same. The 2<sup>nd</sup> defendant did not come back. He tried to trace him but he could not find him. He asked the broker, Mr. Lesika the where about the 2<sup>nd</sup> defendant but he could not help him to get in touch with the 2<sup>nd</sup> defendant. He decided to go to the 2<sup>nd</sup> defendant's residence where he met his wife who told him that she did not know the 2<sup>nd</sup> defendant's whereabouts. Finally, the broker introduced him to the plaintiff who managed to purchase 23 Acres for Tshs 23,000,000/= .He admitted that he signed exhibit P1 .

Upon being cross examined by the learned Advocates, DW2 told this Court the following; That he inherited the land in dispute from his father. The 2<sup>nd</sup> defendant surveyed the 10 Acres that he sold to him and later on he sold that land to an Indian man. They had a discussion with the 1<sup>st</sup> defendant on the exchange of his land with the defendant's land located at Kibaha. What they agreed was that the 2<sup>nd</sup> defendant was supposed to survey the 1<sup>st</sup> defendant's land which he wanted to buy and thereafter they would agree how to conclude the deal. However, the deal was not concluded. Currently, the 2<sup>nd</sup> defendant does not own any land at Lesiraa Vilage.

DW2, Lesika Nguyini Kivuyo testified as follows; That he introduced the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant purchased from the 1<sup>st</sup> defendant 10 Acres locate at Lesiraa Village. He purchased the same for Tshs 3,000,000/=. The 2<sup>nd</sup> defendant wanted to buy another land from the 1<sup>st</sup> defendant but the deal was not concluded because the 2<sup>nd</sup> defendant failed to pay the purchase price. He introduced the plaintiff to the 1<sup>st</sup> defendant who sold to him (plaintiff) 23 Acres. The land that was sold to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant is different from the land that was sold to the plaintiff by the 1<sup>st</sup> defendant.

The defence case for the 2<sup>nd</sup> defendant was opened by Saidati Liana Mbaga ( DW3) who testified as follows; That she used to cohabit with the 2<sup>nd</sup> defendant. She has two children with the 2<sup>nd</sup> defendant. In 2003 2<sup>nd</sup> defendant requested her to take Mr. Gilbert Manyonyi, a surveyor to Kisongo for the purpose of surveying the 2<sup>nd</sup> defendant's land measuring 46 Acres so as to process a request for the right of occupancy. She took the surveyor to Kisongo and on arrival at land in question she called the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant came and showed them the boundaries.

Responding to questions posed to her during cross examination, DW3 told this Court that to her knowledge, the 2<sup>nd</sup> defendant had a sale agreement for the land that was being surveyed. Before going to the land/shamba, the 2<sup>nd</sup> defendant had already talked to the surveyor and the 1<sup>st</sup> defendant. The surveyor fixed poles to mark the demarcations of surveyed land. During the survey of the land Mr. Msangi, the neighbor in that area was around. No government officials were involved in the survey of that land.

The 2<sup>nd</sup> defendant's testimony was as follows; That in the year 1999 he was residing in Arusha. There was a time he wanted to buy a shamba/land. His friend one Eden Chonjo introduced him to a broker namely Lesika ( DW2). Lesika took him to the 1<sup>st</sup> defendant in Lesiraa Village, Kisongo ward .The 1<sup>st</sup> defendant showed him his land which he wanted to sell. They agreed the purchase price. He bought 71 Acres from the 1<sup>st</sup> defendant. Later on, he arranged for the survey of 45 Acres out the said 71 Acres he had bought and managed to obtain a Right of Occupancy in respect of 29 Acres only and a letter of offer for 16 Acres. In 2001 he purchased 10 Acres from the 1<sup>st</sup> defendant .In 2005, he purchased another 10 Acres from the 1<sup>st</sup> defendant. In total he bought 91 Acres from the 1<sup>st</sup> defendant. Out of the said 91 Acres sold to him by the 1<sup>st</sup> defendant, 26 Acres were purchased by exchanging

the 2<sup>nd</sup> defendant's land which was in Kibaha area measuring 6.25 Hectares with the 1<sup>st</sup> defendant's land measuring 26 Acres located in Lesiraa Village. He sold 29 Acres of the surveyed land to Mr. Seif. He remained with 62 Acres. 46 Acres were unsurveyed and 16 Acres were surveyed. The 46 Acres which DW3 testified about includes the 26 Acres which he bought by exchanging his land that was located at Kibaha. He remained with unsurveyed 20 Acres. He used to direct the 1<sup>st</sup> defendant to go to the DW3 to take money for payment of the purchase prices. The land in dispute belongs to him. He bought it earlier before the alleged sale of the same to Mr. Abel ( plaintiff) . The 1<sup>st</sup> defendant had already sold all his shamba/land, thus, he had no land to sell to the plaintiff. The land claimed by the plaintiff in this case part of it fall on the 26 Acres and another part fall within the 16 Acres which he bought from the 1<sup>st</sup> defendant .The 2<sup>nd</sup> defendant tendered in evidence Copy of the letter of offer in respect of 16 Acres allegedly bought from the 1<sup>st</sup> defendant.

Moreover, the 2<sup>nd</sup> defendant testified that the alleged sale agreement between the plaintiff and the 1<sup>st</sup> defendant is fake since the village Council was not involved in anyway because the 1<sup>st</sup> defendant knew quite well that he had already sold that land to him.



Upon being cross examined by the learned Advocates, the 2<sup>nd</sup> defendant told this Court the following; In the year 2000 he went to Lesiraa village together with 1<sup>st</sup> defendant to notify the officials of Lesiraa village about the 26 Acres he bought from the 1<sup>st</sup> defendant. In 2007 he went to Lesiraa village again because there was a dispute involving the boundaries of the land he bought from the 1<sup>st</sup> defendant. He signed three sale agreements with the 1<sup>st</sup> defendant for the land he sold him and in all agreements the village Council was involved. The 1<sup>st</sup> agreement was made in 2000, it was for the 26 Acres which he exchanged with his land located in Kibaha, the 2<sup>nd</sup> contract was made in 2001. It was for 10 Acres which he bought for Tshs 3,000,000/=. The 3<sup>rd</sup> agreement was made in 2005. It was in respect of 10 Acres which he bought for Tshs 3,000,000/=. The land in dispute covers all 16 Acres which belongs to him plus 7 Acres which covers part of the 26 Acres.

DW5, Thobias Sakaya testified as follows; That he was the executive officer of Lesiraa Village from 1999 to 2008. He knows the 1<sup>st</sup> defendant. He owned land in Lesiraa Village. When 1<sup>st</sup> defendant wanted to sell his land to the 2<sup>nd</sup> defendant the officials of Lesiraa village involved. The 1<sup>st</sup> defendant sold to the 2<sup>nd</sup> defendant 10 Acres for Tshs 3,000,000/= and 26 Acres were sold by exchanging the same

with the 2<sup>nd</sup> defendant's land which was located at Kibaha. There were some disputes over the boundaries of the 1<sup>st</sup> defendant's land which were cleared and 1<sup>st</sup> and 2<sup>nd</sup> defendant were allowed to proceed with their deal. They planted sisal to mark the demarcations of the land sold and the 2<sup>nd</sup> defendant requested him (DW5) to look after the land he bought from the 1<sup>st</sup> defendant. By the time he left from Lesiraa Village in 2008, the 1<sup>st</sup> defendant had already sold to the 2<sup>nd</sup> defendant the 26 Acres .

Furthermore, DW5 testified that he knows the plaintiff. He is a broker dealing with selling of lands. When he was working at Lesiraa village the plaintiff came to his office. He wanted to buy a land from the 1<sup>st</sup> defendant and the area which he mentioned was within the 26 Acres sold to the 2<sup>nd</sup> defendant. He told him that the land he wanted to buy belongs to the 2<sup>nd</sup> defendant since it had already been sold to him by the 1<sup>st</sup> defendant and the transaction was blessed by the Village Council .The plaintiff left. He does not know any sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> defendants for a land located in Lesiraa Village which was made in 2010. The procedure for buying land located in a village requires the village official / Council to be involved as well as the neighbors and the sale agreement has to be blessed by the

village Council. The aim behind this procedure is to avoid land disputes.

In response to questions posed to him during cross examination, DW5 told this Court the following ; That he was involved in the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 2<sup>nd</sup> defendant is the owner of the land in dispute. There is a Right of Occupancy issued to the 2<sup>nd</sup> defendant in respect of 10 Acres which were sold to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant.

DW6, Richard Ndooki, testified as follows: That he is a resident of Kisongo and member of Lesiraa Village Council and the social welfare committee of the Lesiraa Village .He has been a member of Lesiraa Village Council since 2000. He knows that the 2<sup>nd</sup> defendant bought 10 Acres from the 1<sup>st</sup> defendant for Tshs 3,000,000/= and 26 Acres were bought by exchanging with the 2<sup>nd</sup> defendant's land which is at Kibaha. Those transactions were blessed by the Lesiraa Village Council. There are minutes for the meeting held by the Village Council in which the said transactions were blessed by the village Council. He does not know any transaction in which the plaintiff bought any land located in Lesiraa Village.

During cross examination DW6 told this Court the following; That the 1<sup>st</sup> and 2<sup>nd</sup> defendants came to Lesiraa Village to report on transactions, in which 10 Acres were sold by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant by cash and 26 Acres were sold to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant by exchanging with the 2<sup>nd</sup> defendant's land which was in Kibaha. That is, the 2<sup>nd</sup> defendant took the 26 Acres located in Lesiraa Village ,Kisongo and the 1<sup>st</sup> defendant took the 2<sup>nd</sup> defendant's land in Kibaha. No document for the exchange of the land was tendered at the meeting held by the village Council but both the 1<sup>st</sup> and 2<sup>nd</sup> defendants were present at the meeting and confirmed that they exchanged their aforesaid lands. The 1<sup>st</sup> defendant did not returned to the Village Council to complain on the said deal involving exchange of lands.

DW7 , Mr Loishiye Lepaani testified as follows; That he was the chairman of the Lesiraa Village from 1998-2009. One of his responsibility was to chair all meeting held by the Village Council , sign all minutes for the meetings held by the Village Council and to handle all matters involving sales of land located in the Village. Lesika is a broker. There was a time he was warned by the Lesiraa Village Council because he was bringing different people to purchase the 1<sup>st</sup> defendant's land which had already been sold. The Village Council used to certify and

bles sales of lands located in the Village and purchasers of land located in the Village used to pay 10% of the purchase price to the village Council. He chaired the meeting held by the Village Council in 2000, in which one of the agenda was the issue pertaining to transaction involving 26 Acres which were sold to 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant by exchanging with the 2<sup>nd</sup> defendant's land located in kibaha. Those information were given by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. This Witness tendered in Court the minutes for meeting held by the Village Council in 2000 and 2007 which were admitted as exhibit D2 collectively.

During cross examination DW7, said the following; That he did not go to Kibaha to see the 2<sup>nd</sup> defendant's land that he was exchanging with the 1<sup>st</sup> defendant's land. The 1<sup>st</sup> and 2<sup>nd</sup> defendants did not attend the meeting that was held by the Village Council in 2007. The warning that was issued to Lesika was in respect of the land belonging to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant paid the village levy to a tune of Tshs 300,000/= for the 10 Acres he purchased from the 1<sup>st</sup> defendant. It was not the responsibility of the Village officials to follow up the execution of the deal between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Both the 1<sup>st</sup> and 2<sup>nd</sup> defendants attended the meeting held by the Village Council in 2000, though their names were not listed in the minutes.

Having analyzed the evidence adduced by the parties herein, I have noted that it is a common ground that as between the plaintiff and the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant was the first one to buy land from the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant admitted that he sold 10 Acres to the 2<sup>nd</sup> defendant. Also he wanted to sell his land measuring 26 Acres located at Lesiraa Village to the 2<sup>nd</sup> defendant by exchanging it with the 2<sup>nd</sup> defendant's land located at Kibaha. However, he claimed that the deal did not materialize, because the 2<sup>nd</sup> defendant failed to pay the agreed purchase price, whereas the 2<sup>nd</sup> defendant alleged that the said deal was finalized successfully. He claimed that the said 26 Acres belongs to him and the land in dispute is within those 26 Acres and covers another part of the land he bought from the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant's and DW2's testimonies are in support of the plaintiff's claim.

Before going further, I wish to point out that, with due respect to the learned Advocates Edna Mdeme and Charles Abraham, their view expressed in their final submissions that since the 1<sup>st</sup> defendant is the original owner of the land in dispute and is the one who sold it, then, he is the proper person to say who is the rightful owner of the land in dispute is misconceived because in establishing who is the rightful owner of the land in dispute, what is required to be looked into is the

evidence in its totality including documentary evidence tendered in evidence. After all, the 1<sup>st</sup> defendant in this matter is a witness with interest to serve since he is also a defendant in this case. The law is very clear that whoever desires the Court to give judgment in his favour dependent on the existence of facts which he asserts must prove that those facts exist. (See section 110 of the Evidence Act). Thus, it was the duty of the plaintiff to prove the ownership of the land in dispute on balance of probabilities as required by the law.

Back to the evidence adduced at the hearing, the plaintiff tendered in Court the sale agreement in respect of the land in dispute ( Exhibit P1). According to PW1's testimony,( the plaintiff), Exhibit P1 was not witnessed by any official of Lesiraa Village or blessed by Lesiraa Village Council. PW1 ( plaintiff ) and DW1 ( the 1<sup>st</sup> defendant ) did not give any satisfactory answer on why they decided not to involve the officials of Lesiraa Village or the Village Council while the land in dispute is located in that Village. On the other hand, DW5 told this Court that the plaintiff attempted to involve the officials of Lesiraa Village but could not succeed to do so as he was told that the land he wanted to buy had already been sold to the 2<sup>nd</sup> defendant. DW5 testified in Court that he knows the plaintiff, 1<sup>st</sup> and 2<sup>nd</sup> defendants very well

as well as the land which was sold to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant, that is, 10 and 26 Acres.

Looking at the evidence adduced, I am convinced that DW5 gave credible evidence and a sensible reason on why the 1<sup>st</sup> defendant and the plaintiff did not involve the Village officials and /or Village Council in the transaction involving the allegedly sale of the land in dispute to the plaintiff. The testimonies of DW6 and DW7 prove that the transaction of the allegedly sale of the land in dispute to the plaintiff was not blessed by either officials of Lesiraa or Village the Village Council. Not only that, despite the fact that the sale agreement ( Exhibit P1) shows that it was witnessed by four people, namely Ndavukai Saimon, Naomi A. Ole Leken, Steven Jeremiah and Joachim Naisumashi, none of them was called in Court to testify and no any reason was adduced on the failure to bring any of them to testify in Court.

Let me point out here that, as correctly testified by DW5 the position of the law and practice is that any transaction involving sale of land located in a village requires the village officials /Village Council to be involved. That is done to avoid unnecessary land disputes and misunderstandings in the community . A sale of land allocated in the



village that is not blessed by the village officials / Village Council is doubtful. In the case of **Bakari Mhando Swanga Vs Mzee Mohamed Bakari Shelukindo, Chairman of Kasiga Village Council, Mariam Rajabu and Hamis Rajabu, Civil Appeal No.389 of 2019**, ( unreported), the Court of Appeal while deliberating on an issue involving a sale of land located in village but not blessed by the village Council said the following;

*"we assume that the purported sale agreement was valid, which is not the case, then the same was supposed to be approved by the village council as correctly submitted by the second respondent, which in our view is in compliance with section 142 (1) of the Local Government (District Authorities) Act - Cap. 287 R.E. 2002 which provides;*

*'~ village council is the organ in which is vested all executive power in respect of all the affairs and business of a village. "*

*Under normal circumstances, it was expected for the appellant after he had executed the purported sale deed with Khatibu Shembilu, to present the document to the village council of Kasiga to get its blessings. However, the appellant did not comply with this requirement .*

From the foregoing, it is obvious that the sale agreement ( Exhibit P1) cannot be relied upon by this Court as a proof of the allegedly sale of the land in dispute to the plaintiff.

On the other hand, I have noted that the 2<sup>nd</sup> defendant's allegations that the land in dispute was sold to him before the purported sale of the land in dispute to the plaintiff was made is supported by the testimonies of DW3, DW5, DW6 and DW7 who was the chairman of Lesiraa Village at the time of the allegedly sale of the land in dispute to the plaintiff. Exhibits D2 Collectively (Minutes of Lesiraa Village Council dated 2000 and 2007) prove that the transactions for the sale of the 1<sup>st</sup> defendant's land to the 2<sup>nd</sup> defendant were blessed by Lesiraa Village Council. I am convinced that the 2<sup>nd</sup> defendant's defence is credible.

Without prejudice to my observations made earlier in this judgment, even if I assume that the purported sale agreement (Exhibit P1) is valid, which is not the case, as the same was not blessed by Lesiraa Village Council, from the evidence adduced by DW4, DW5, DW6 and DW7, I find myself in agreement with the views expressed by the learned Advocate Materu that the 1<sup>st</sup> defendant had no title over the disputed land, thus he had nothing to transfer to the plaintiff because the land in dispute had already been sold to the 2<sup>nd</sup> defendant before the said sale agreement, (Exhibit P1). The case of **Juma Yusufu Myella Vs Linda Manu, Land Appeal No.86 of 2021** (unreported) cited by Mr. Materu is very relevant here and has similar facts to the

case in hand. In that case my sister Lady Justice Makani, J said the following;

*"... In other words, title passed to the respondent prior to that sale transaction and sale agreement between Juma Said Jongo and the appellant was signed and came to a completion. **In that regard, the interests by Juma Said Jongo had already been transferred to the respondent herein and he thus did not have interests to pass on to the appellant**"*

*(emphasis in added)*

For avoidance of doubts, I have taken into consideration the arguments raised by Ms. Mdeme and Mr. Abraham in their final submissions in which they contended that the testimonies of the 2<sup>nd</sup> defendant and his witnesses were contradictory and that the plaintiff is the rightful owner of the land in dispute. With due respect to them, it has to be noted that the plaintiff had the task of proving his ownership over the land in dispute, notwithstanding the strength or weakness of the defence case. I have pointed out in this judgment that the testimonies of DW5, DW6, DW7 and exhibit D2 collectively prove on balance of probabilities that the land in dispute is within the land sold by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant earlier before the sale agreement between the 1<sup>st</sup> defendant and the plaintiff was made. (Exhibit P1).

From the foregoing, it is the finding of this Court that the 2<sup>nd</sup> defendant is the rightful owner of the land in dispute.

Coming to the last issue, that is, **what reliefs are the parties entitled to**, as I have already said hereinabove, the 2<sup>nd</sup> defendant is the rightful owner of the land in dispute. The 1<sup>st</sup> defendant admitted in Court that he sold the land in dispute to the plaintiff and conceded to the contents of Exhibit P1 ( sale agreement ). Now, since I have made a finding that the 2<sup>nd</sup> defendant is the rightful owner of the land in dispute and the sale agreement ( Exhibit P1) indicates that the plaintiff paid to the 1<sup>st</sup> defendant a sum of Tshs 23,000,000/= being a purchase price, and one of the conditions in Exhibit P1 is that in case the sale agreement is vitiated and/or found to be invalid, then, the seller ( the 1<sup>st</sup> defendant herein ) will pay back the purchase price to the buyer (the plaintiff herein ) plus 75% of the purchase price thus, under the circumstances I hereby order as follows;

- i) The 2<sup>nd</sup> defendant is the rightful owner of the land in dispute, located at Lesiraa Village, Kisongo.
- ii) The 1<sup>st</sup> defendant shall pay back the sum of Tshs 23,000,000/= to the plaintiff, being the purchase price of the land in dispute paid to him by the plaintiff

- iii) That the 1<sup>st</sup> defendant shall pay the plaintiff a sum of Tshs 17,250,000/= being 75% of the purchase price.
- iv) The plaintiff shall pay the 2<sup>nd</sup> defendant the costs of this case.

Dated this 25<sup>th</sup> day of February 2022



A handwritten signature in blue ink, appearing to read "B.K. Phillip", is written over the printed name.

**B.K.PHILLIP**

**JUDGE**