

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

LAND CASE NO. 2 OF 2018

**FATUMA MOHAMED AHMED (*Suing as the Administratrix of
the estate of the late Mohamhed Ahmed Hussein*).....PLAINTIFF**

VERSUS

YUSUF KISARWA BWAHUYO KAKWAYA.....DEFENDANT

JUDGMENT

Date of last Order: 5-4-2022

Date of judgment: 9-5-2022

B.K.PHILLIP,J

It is alleged in the plaint that the defendant sold his House located at Plot No. 236, Block "EE" , Ngarenaro , Arusha City, (Hereinafter to be referred to as " the suit property") to the late Mohamed Ahmed Hussein (Henceforth " the deceased") at a purchase price of Tshs 45,000,000/= which was all paid as agreed. Upon payment of the purchase price the defendant gave the deceased a copy of the letter of offer for the suit property on agreement that the original copy of the Right of Occupancy would be handed over to him within one month from the date of the agreement. The plaintiff moved into the suit property and up to date she is staying there. However, the defendant did not give the deceased the Right of Occupancy for the suit property as agreed. Later on, in 2014 the deceased was informed by Bank officials from National Bank of

Commerce (Henceforth " the Bank") that the suit property was mortgaged to the Bank as security for a loan that was granted to Seven In One Company, the defendant's Company. So ,the Right of Occupancy was held by the Bank since the defendant defaulted to repay the outstanding loan amount to a tune of Tshs 21,000,000/=. And that the suit property was in danger of being auctioned by the Bank. By that time the deceased was sick and his health condition had deteriorated. The deceased's daughter (the plaintiff herein) reported the matter at Arusha Central Police Station and the defendant was arrested. During the interrogations at Police Station, the defendant admitted that the suit property was mortgaged to the Bank and he defaulted in repayment of the loan. He committed himself in writing that he would negotiate with the Bank and pay the said outstanding amount so as to be obtain the Original Copy of the Right of Occupancy for the suit property. Also, he gave the plaintiff a Certificate of Title No. 12244 which is for another property belonging to him as an assurance that upon obtaining the Right of Occupancy for suit property from the Bank, he will hand over the same to the plaintiff and the plaintiff shall give back to him his certificate of Title No.12244. The defendant was released, but did not repay the outstanding loan amount as he promised as at the Police Station. The bank decided to proceed with the auction of the suit property. In order to rescue the suit property from being auctioned and move the Bank to release the Right of Occupancy for the suit property, the plaintiff , in cooperation with her son agreed with defendant to pay the outstanding loan amount. The amount paid for the payment of the aforesaid Bank

loan was agreed that it will be termed as a loan granted to the defendant. The same was agreed to be repaid in two installments.

Moreover, it was agreed that upon payment of the outstanding loan amount the defendant was supposed to request for release of the Right of Occupancy for the suit property and hand over the same to the plaintiff. In return the plaintiff would give him his Certificate of Title No. 12244.

Furthermore, the plaintiff alleged that , she paid the outstanding loan amount which was to a tune of Tshs 21,000,000/=. But the defendant refused to pay back to her the said sum of Tshs 21,000,000/= and to hand over the Right of Occupancy in respect of the suit property to her as agreed. In this case the plaintiff prays for the following reliefs;

- i) A declaratory order that the plaintiff is the rightful owner of the suit property.
- ii) An order compelling the defendant to surrender the Original copy of the Right of Occupancy in respect of the suit property to the plaintiff.
- iii) An order compelling the Registrar of titles to proceed with the transfer and /or procurement of the Certificate of Title to the plaintiff herein.
- iv) An order for payment of the outstanding debt to the tune of Tanzania Shillings Twenty One Million (Tshs 21,000,000/=).
- v) Payment of interests on the outstanding debt at the commercial rate of 22% from the date of default (11th August 2018) to the date of Judgment.

- vi) Payment of interests on the decretal amount at the Court rate of 7% from the date of judgment to the date of payment in full.
- vii) General damages for breach of contract.
- viii) Costs of the suit.
- ix) Any other relief this Honourable Court may deem just to grant.

In his written statement of defence the defendant disputed the plaintiff's allegations that he entered into a sale agreement in respect of the his property located at Plot No.236, Block "EE" Ngarenaro, Arusha for a consideration of Tshs 45,000,000/=. He alleged that he entered into an oral contract with the plaintiff for a long term lease of ten (10) years from 3rd April 2012 to 2nd April 2022, for the suit property, at rent of Tshs 450,000/= per month, with an option for the plaintiff to purchase the suit property at a later stage. The sale agreement attached to the plaint is a forged document.

Furthermore, the defendant contended as follows; That he was arrested by the police maliciously and corruptly as a way of intimidating him. He was forced to give to the plaintiff his Certificate of Title in respect of his property which was not related to the issue that was reported at the police. He implored this Court to order the plaintiff to give him his Certificate of Title No. 12244. Also , he said that he is ready to give back to the plaintiff the sum of Tshs 45,000,000 which he alleged that was paid by the deceased as advance payment for the purchase price for the suit property and prayed for the dismissal of the plaintiff's case with costs

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

- i) Whether there was a valid contract of sale of a property located at Plot No.236 Block "EE" Nagrenaro, Arusha between the defendant and the plaintiff.

If the 1st issue is answered in the affirmative,

- ii) Whether there was a breach of the said contract by either party.
- iii) Whether there was a valid loan agreement dated 11th August 2016 between the plaintiff and the defendant.

If the above issue is answered in the affirmative ,

- iv) Whether there was a breach of the said loan agreement.
- v) Whether there was an oral lease agreement in respect of the suit property (Plot No.236 Block "EE" Ngarenaro Arusha) between the plaintiff and the defendant.
- vi) Whether the defendant handed over to the plaintiff documents in Respect of the ownership of his property that was not sold to the plaintiff.

- Vii) To what reliefs are the parties entitled to.

At the hearing of this case the learned advocate Aggrey C. Kamazima appeared for the plaintiff. At the beginning of the hearing the defendant was unrepresented following the withdrawal of the learned Advocate Shilinde Ngalula from representing him. However, during the second session for the hearing , the learned Advocate Jacob V.Malick appeared for the defendant and represented him to the end of the case.The plaintiff

paraded four (4) witnesses to prove her case whereas the defendant was a sole witness for the defence case.

Before going into the determination of the issues enumerated herein above, let me point out that upon reading the pleadings between the lines, I decided to drop issue No.vi pursuant to the powers conferred to this Court under the provisions of Order XIV Rule 5 (1) the Civil Procedure Code Cap 33, R.E.2019 (Henceforth "the CPC") because the pleadings reveal that the plaintiff does not dispute that she was handed over by the defendant a Certificate of Title No.12244 for a landed property belonging to the defendant different from the suit property.

Now, let me proceed with the determination of the issues. Starting with the first issue, that is, **Whether there was a valid contract of sale of a property located at Plot No.236 Block "EE" Ngarenaro, Arusha between the defendant and the plaintiff**, the plaintiff testified as PW1. Her testimony was to the effect that she is the daughter and the administratrix of the estate of the late Mohamed Ahmed Hussein (deceased) who passed away on 15th January 2020. She was appointed by the Court as the administratrix of the deceased estate. She tendered in Court her father's death Certificate and her letter of appointment as the administratrix of the deceased estate which were admitted as Exhibit P1 and P2 respectively. She went on testifying as follows; that on 3rd April 2012, the deceased bought the suit property from the defendant for a sum of Tshs 45,000,000/= which was paid as agreed. They signed a sale agreement to that effect. The defendant handed over the suit property to deceased. Currently, she is staying in the suit property. She pays the land

rent and property tax for the suit property. As per the terms of the sale agreement, the defendant promised to hand over to the deceased the original Copy of the Right of Occupancy for the suit property later on, but he did not do so despite close follow ups for the same. The defendant gave the deceased a photocopy of the letter of offer for the suit property (exhibit P6). PW1 tendered in Court a sale agreement and the documents evidencing the payment of the purchase price which were admitted as Exhibits P3 and P4 respectively, and receipts for payment of the land rent and property tax (Exhibit P11 collectively). In addition, PW1 testified that the defendant is the owner of a Company known as Seven In One Pharmacy.

Upon being cross examined by the defendant's advocate PW1 told this Court that the deceased did not see Kakwaya's wife signing Exhibit P3 (sale agreement), but Kakwaya's wife was a witness in the contract for the defendant. The defendant took the contract to his wife for signing it as she was sick. The deceased did not fill any Land Forms for the transfer of ownership of the suit property into his name.

PW1's testimony was supported by the evidence of PW2, one Mohamed Nagi, who testified as follows; That he knew the deceased. He knows the defendant. He met the defendant when he was requested by the deceased to be a witness in the sale agreement in respect of the suit property which is located at Matejoo area in Arusha City. He signed the sale agreement as a witness for the deceased at the defendant's office. The purchase price for the suit property was Tshs 45,000,000/= .He saw the defendant, the deceased and Rashid Bagdela signing the sale

agreement. PW2 identified the defendant in Court and also by the leave of the Court he identified the sale agreement (Exhibit P3).

Upon being cross examined by the defendant's advocate PW2 told this Court the following; That he did not see defendant's wife signing the sale agreement. He was not involved in the bargaining of the purchase price. He became aware of the purchase price when he was at the defendant's office.

Also, the testimony of PW1 was supported by the testimony of PW3, one Habibu Fadhili whose testimony was as follows; That he is a broker, based in Arusha. He knows the defendant because was his father's friend. In addition to that he (PW3) was involved in a transaction in which the defendant sold his house located at Matejoo area Arusha city to the deceased. He connected the deceased to the defendant upon being informed by his friends that the defendant was looking for buyer of his property aforesaid. He took initiative to make a follow up to the defendant just to confirm if he was really selling his property aforesaid. Upon the defendant's confirmation, he informed PW1 who conveyed the message to her father (deceased) . Upon showing the deceased the pictures of the suit property, he showed interests in buying the suit property. So, he informed the defendant about the deal. The defendant agreed to pay him (PW3) 5% of the purchase price as his Commission. Thereafter he took the deceased to defendant's office which was at his pharmacy known as Seven in One Pharmacy. The defendant and deceased reached a consensus to execute the deal. The defendant agreed to sell the suit

property to the deceased for a sum of Tshs 45,000,000/= . The defendant paid him a sum of Tshs 3,500,000/= as his Commission.

Upon being cross examined by the defendant's advocate , PW 1 told this Court the following; That he had no business licence and was not a registered broker. He did not participate in the negotiation for the sale of the suit property. The deceased told him that the agreed purchase price was Tshs 45,000,000/=. He believed what the deceased told him because the defendant paid him his commission which was a prove that he was also paid the purchase price. He was not a witness to the sale agreement but he knows that the sale agreement was made before a lawyer.

On the other hand the defendant testified as DW1. In his testimony, he said the following; That the sale agreement (Exhibit P3) is a forged document. He did not sign it and does not bear the name of author. He had agreed with the deceased to sell the suit property to him at purchase price of Tshs 150,000,000/=. What they agreed was not reduced into writing. They had an oral agreement. The deceased paid advance payment to a tune of Tshs 45,000,000/= and promised to pay the remaining amount within a short time but he failed to do so. Thus, he opted to let PW1 to stay in the suit property as a tenant.

Upon being cross examined by the plaintiff's advocate, the defendant told this Court that what is stated in paragraph five of the written statement of defence to the amended plaint is false. He did not sign the written statement of defence to the amended plaint. He did not report the alleged issue on the forgery of Exhibit P3 to the police.

From the evidence adduced by both sides, I have noted that there is no dispute on the payment of Tshs 45,000,000/=. The defendant admitted that he was paid by the deceased the said amount of money. However, he contended that the same was just an advance payment whereas the plaintiff relies on exhibit P3 to show that the said Tshs 45,000,000/= was the agreed purchase price for the suit property. So, there are two competing assertions, one is supported by a sale agreement (Exhibit P3) and the other is not supported by any document.

As correctly submitted by Mr. Kamazima in his closing submission, in determining on the validity of a contract one has to look at the elements of a valid contract which are as follows; offer, acceptance, lawful consideration, intention to create a legal relation and capacity to enter into contract. In the instant case the evidence of both PW1 and DW1 (defendant) prove that there was an offer for sale of the suit property by the defendant. The offer was accepted by plaintiff and the parties had capacity to enter into the contract and as well as intention to enter into legal relationship. The sale agreement in question was witnessed by other people, including PW2 who testified that he saw the defendant and the deceased signing the same. Let me say outright that I am not convinced with the defendant's contention that plaintiff paid him Tshs 45,000,000/= without having any written document evidencing the payment of that amount. I find the testimony of PW1 which is supported by PW2 and PW3 being credible. The said Tshs 45,000,000 / = was paid to the defendant upon signing the sale agreement and the same is valid as it has all the required legal elements for a valid contract.

I decline to agree with the arguments raised by Mr. Malick in his final submission that the sale agreement is not valid because the parties did not fill in the Land Forms for the transfer of ownership of the suit property as required under the land laws because it was not possible for the parties to fill in the Land Forms in the absence of the original copy of the Right of Occupancy. It is clearly stated in Exhibit P3 that the defendant promised the deceased to give him the original copy of the Right of Occupancy within one month from the date of the sale agreement. To say the least, the parties had not reached the stage for filling in the Land Forms. I am of a settled opinion that the fact that the parties had not yet filled the Land Forms cannot vitiate the validity of the sale agreement. It has to be noted that the sale agreement is part of the documents required to be attached to the Land Forms, to wit; Land Form No.28, 29, 30 and 31. Signing of the sale agreement is an initial step towards the filling and signing of the Land Forms.

Also, the defendant's contention that the sale agreement was forged cannot hold water because it has not been proved so. In addition, that contention is weakened by the testimony of PW1 which is to the effect that upon the defendant's failure to give the original copy of the Right of occupancy she reported the matter to the police. The defendant was arrested and finally he agreed to commit himself in writing that he would give to plaintiff the original copy of the Right of Occupancy for the suit property when he obtains it from the Bank. He agreed to give the plaintiff his Certificate of Title No.12244 as an assurance of his promise. PW1 tendered in Court exhibit P7 (A document made and signed

by the defendant at the Central Police Station, in which the defendant committed himself to give to the plaintiff the Right of Occupancy for the suit property) and Exhibit P 9 collectively (A document evidencing that the plaintiff deposited at the Registrar of Titles a Certificate of Title No.12244 for safe keeping) . Looking at contents of Exhibits P7 and P9, and the testimony of PW1, it leaves no doubt that the defendant did sign the sale agreement in question (Exhibit P3)

Moreover, the payments of the purchase price were acknowledged by the defendant in writing as evidenced by Exhibit P4 collectively. Under the circumstances , the defendant's contention that there was an oral sale agreement for the suit property and that the deceased paid him a sum of Tshs 45,000,000/= as advance payment only is completely incomprehensible and unfounded.

To cap it all, the defendant's testimony is contradictory to what is stated in his written statement of defence in which he alleged that the he entered into the long term lease agreement with the plaintiff, while in his testimony he testified that he sold the suit property to plaintiff for Tshs 45,000,000/=.It has to be noted that parties are bound by their pleadings and evidence which is at variance with the pleaded facts must be ignored. In the case of **Yara Tanzania Limited Vs Charles Aloyce Msemwa T/A Msemwa Junior Agrovat, Kasimu Shodo Mazagaza and Burton Mwaituka Mwalembe, Commerical Case No. 5 of 2013, (unreported)** the Court said the following;

" It is a cardinal principle of law of civil law procedure founded upon prudence that parties are bound by their pleadings"

And in the case of **Baclays Bank (T) Vs Jacob Muro, Civli Appeal No. 357 of 2019 (CA)** (unreported), the Court said the following;

"We feel compelled at this point to restate the time honoured principle of the law that parties are bound by their own pleadings and that any evidence produced by any party which does not support the pleaded facts or is at variance with the pleaded facts must be ignored."

[Also see the case of **Mbowe Vs Eliufoo (1967) E.A 240 and Exim Bank (Tanzania Ltd Vs Dascar Limited and another, Civil Appeal No. 92 of 2009 (CA)** (unreported)]

For avoidance of doubt I have taken into consideration the defendant's contention he made when he was cross examined by Mr. kamazima that he did not sign the amended written statement of defence to the amended plaint and denied its contents. In my considered opinion the aforesaid contention is just an afterthought since it was made when the defendant was responding to questions posed to him during cross examination, as such he run short of satisfactory answers to the question posed unto him and decided to disassociate himself with the contents of written statement of defence. Therefore ,I do not agree with Mr. kamazima's stance that since the defendant denied to have signed the amended written statement of defence then the same should be struck out for lack of the defendant's signature and this court should not consider the defendant's testimony.Had the defendant's contention aforesaid been

true, the defendant himself or his advocate would have raised that concern before the hearing of the case.

From the foregoing, it is the finding of this Court that the 1st issue is answered in the affirmative.

With regard to the 2nd issue, that is **Whether there was a breach of the said contract by either party**, I have already said in the 1st issue that PW 1 testified that the defendant did not hand over the Right of Occupancy as agreed and after learning that the suit property was mortgaged for a loan, she reported the issue to the police and the defendant was arrested, and was released after committing himself in writing that he would pay the Bank loan so as to get the original copy of the Right of Occupancy for the suit property and upon obtaining it would give it to the plaintiff..Not only that , PW1's testimony was supported by the testimony of PW4 who testified that the Right of Occupancy for the suit property was held by the Bank under the mortgage agreement. Therefore it is crystal clear that defendant did not hand over to the plaintiff the original copy of the Right Occupancy as agreed in the sale agreement (Exhibit P3).

On the hand the defendant (DW1) admitted that PW1 reported to the police her complaints on the defendant's failure to give her the Right of Occupancy. He contended that he was embarrassed and harassed by the police. He wrote and signed Exhibit P7 under duress. In fact the defendant did not dispute that Right of Occupancy for the suit property has not been handed over to the plaintiff despite the fact that the Right

of Occupancy was released by the Bank as testified by PW4 , the Branch manager, NBC Bank Arusha.

With due respect to Mr. Malick, his contentions raised in his final submission that the plaintiff wrongly reported the dispute between her and defendant to Police as the same is a land dispute, and that the defendant was illegally arrested and harassed at the police station cannot , alter the fact that all what happened was due to the defendant's failure to adhere to the terms of the sale agreement. The defendant did not give the plaintiff the original copy of the Right of Occupancy for the suit property as agreed. Thus, the defendant breached the sale agreement.

The above aside, there was no evidence adduced to prove that the defendant was forced to sign Exhibit P7. I am in one with Mr. Kamazima that the evidence adduced by both sides proves that the defendant breached the sale agreement. In addition, the evidence also reveals that at the time of signing the said sale agreement the defendant did not disclose to the deceased that the suit property was mortgaged for a loan.

With regard to the third issue , that is, **Whether there was a valid loan agreement dated 11th August 2016 between the plaintiff and the defendant,** PW1 tendered in Court a loan agreement between the plaintiff and the defendant which was admitted as exhibit P8, in which it is stated as follows; That the plaintiff borrowed the defendant a sum of Tshs 21,000,000/=, payable in two equal installments of Tshs 10,500,000/=. The loan was for period of one year. The said amount of

Tshs 21,000,000/= was specifically for payment of the outstanding loan amount owed by defendant to NBC Bank Arusha Branch, so that the right of occupancy for the suit property could be released by the Bank as the same was mortgaged to the bank by the defendant for a loan which was granted to the defendant. And upon release of the Right of Occupancy the defendant was supposed to hand over the same to the plaintiff within seven days. (See Item 6 of Exhibit P6) PW1 testified further that the loan in question was granted to the defendant's Company known as "Seven In One Pharmacy". She deposited the said amount of Tshs 21,000,000/= at the bank. Her testimony was supported by the testimony of PW4, who tendered in Court the pay in slips for payment of the said Tshs 21,000,000/= (Exhibit P12) which shows that the said sum Tshs 21,000,000/= was deposited at the Bank by the plaintiff for payment of the outstanding loan amount in respect of a loan granted to Seven In One Pharmacy.

On the hand the defendant (DW1) admitted that he signed the said loan agreement (Exhibit P8) and that he has not paid to the plaintiff the said loan amount (Tshs 21,000,000/=). He contended that exhibit P8 is irrelevant in this case since it indicates that in case of non- payment of the loan amount the plaintiff was supposed to sale the defendant's motor vehicle which was offered as security for the loan. The defendant insisted that he had not stopped the plaintiff from selling the motor vehicle so as to recover the loan amount.

Looking at the evidence adduced by both sides, there is no any dispute on the existence of the loan agreement. I have perused the same and am

of the settled opinion that there was a valid loan agreement between the parties herein as admitted by the defendant and the evidence adduced proves that the plaintiff paid the loan amount to the Bank as agreed in the loan agreement.

Now coming to the fourth issue, to wit; **Whether there was a breach of the said loan agreement**, the testimonies of both PW1 and DW1 show that the loan amount was not paid as agreed and the defendant did not hand over to the plaintiff the right of Occupancy of the suit property upon being given the same by the bank following the payment of the outstanding loan amount as agreed in exhibit P8. I wish to point out here that the defendant's stance that the plaintiff was supposed to sell the motor vehicle offered as security for the said loan is misconceived because upon being cross examined by the plaintiff's advocate, the defendant admitted that he did not give the said motor vehicle to the plaintiff and that practically it is not possible to sell a motor vehicle which in the possession of another person. In fact exhibit P8 indicates that the plaintiff was supposed to be given the Registration card for the motor vehicle in question not the motor vehicle. In addition, in response to questions posed to her by the defendant's advocate during cross examination PW1 told this Court that the defendant did not give her the registration card for the motor vehicle in question. In short, the plaintiff was not in position to sell the motor vehicle as a contended by the defendant. Also, there is no dispute that the Bank gave back to the defendant the Right of Occupancy for the suit property, but the defendant has not handed

over the same to the plaintiff as greed. Therefore, it is obvious that the defendant breached the loan agreement.

In the upshot, this issue is answered in the affirmative, that is the defendant breached the loan agreement.

With regard to the 5th issue, that is, **Whether there was an oral lease agreement in respect of the suit property (Plot No.236 Block "EE" Ngarenaro Arusha) between the plaintiff and the defendant**, this issue should not detain me because the reasons for my findings for the 1st issue shows clearly that there was no any oral lease agreement between the parties herein. I do not need to be repetitive, thus, it suffices to say that since the first issue has been answered in the affirmative, that is there was a valid written sale agreement (exhibit P 3) for the suit property (Plot No.236 Block "EE" Ngarenaro Arusha), then it automatically follows that there was no oral lease agreement in respect of suit property. Therefore, this issue is answered in the negative, that is, there was no oral lease agreement in respect of the suit property (Plot No.236 Block "EE" Ngarenaro Arusha) between the plaintiff and the defendant.

With regard to the last issue that is, **the reliefs the parties are entitled to**, let me make it clear that I have considered all the arguments raised by Mr. Kamazima and Mr. Malick in their final submission regarding the reliefs the parties are entitled to. I am in agreement with the explanations made by Mr. Malick in his final submission regarding the legal procedure for disposition of a landed property held under the Right Occupancy as provided under the Land Act, Chapter 113 . R.E 2019 (

Henceforth, " the Land Act") ,that is a party intending to dispose of a landed property has to fill in Land Forms No.29 and 30 among others things. It is true that in the instant case the parties did not fill in the said Land Form, However, I also ,agree with Mr. Kamazima that it was not possible to complete the process for the transfer of the suit property by filing in and filing the required Land Forms at the relevant office because the defendant did not give the plaintiff the Right of Occupancy for the suit property. And the defendant admitted in evidence that up to date he has not handed over the said Right of Occupancy to the plaintiff. His reasons for his refusal to hand over the Right of Occupancy to the plaintiff have been well explained earlier in this judgment .I do not need to reproduce the same here, but suffice to say that I am of the view that those reasons have no merits. I have already made a finding that there was a valid sale agreement (Exhibit P3) between the plaintiff and the defendant which was breached by the defendant. This means that the defendant is at fault for not handing over the Right of Occupancy to the plaintiff and complete the last legal process for disposition of suit property, and transfer of the ownership of the same to the plaintiff.

It has to be noted that the disposition of land/landed property has steps, the first one is the signing of the sale agreement which is among the attachment to the Land Forms. For instance; Land Form No.29 and 30 requires the applicant to state the disposition, particulars of the purchaser and to attach documents evidencing the disposition of the land/property in question such as sale agreement of the land /property in question. I have expressed my stance earlier in this judgment that I do not agree

with Mr. Malick's contention that a mere fact that the aforesaid Land Forms were not filled in by the parties renders the sale agreement between the parties invalid. In my opinion upholding such a contention will open a door for unfaithful persons to swindle genuine buyers of landed properties

In addition to the above, it has to be noted that the defendant did not raise any counterclaim. Therefore, the prayers he made in his defence were just afterthoughts and cannot be entertained. However, without prejudice to what I have said herein above, I wish to point out according to exhibit P 7 and P 8 the defendant's Certificate of Title No. 12244 can be returned back to him upon handing over to PW1 the Right of Occupancy for the suit property. The defendant's contention that he is ready to pay back to the plaintiff a sum of Tshs 45,000,000/= which he alleged that he was paid as advance payment for purchase prices is not supported by any evidence, thus untenable. On top of that item (a) of the sale agreement (Exhibit P3) which provides that in case of any dispute which cannot be resolved the defendant is supposed to pay back the purchase price to the plaintiff, cannot be applied in favour of the defendant as prayed by him, because the dispute envisaged in item (a) excludes the defendant's deliberate decision to breach the terms of the agreement.

From the foregoing, this Court do hereby enter judgment for the plaintiff and order as follows;

- i) The plaintiff is the rightful owner of the suit property located on Plot No. 236, Block "EE" , Ngarenaro , Arusha City.
- ii) The Registrar of Titles shall transfer the Right of Occupancy in respect of the property located at Plot No. 236, Block "EE" , Ngarenaro , Arusha City to Fatuma Mohamed Ahmed, the Administratrix of the estate of the late Mohamed Ahmed Hussein.
- iii) The defendant shall pay to the plaintiff a sum Tanzania Shillings Twenty One Million (Tshs 21,000,000/=) , being the outstanding debt.
- iv) The defendant shall pay to the plaintiff interests on the decretal sum in item (iii) herein above at the commercial rate of 22% from the date of default (11th August 2018) to the date of Judgment.
- v) The defendant shall pay to the plaintiff interests on the decretal sum at item (iii) at the Court rate of 7% from the date of judgment to the date of payment in full.
- vi) Costs of the suit to be borne by the defendant.

Dated this 9th day of May 2022




B.K.PHILLIP
JUDGE.