IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL No. 01 OF 2021

(Originating from Land Application No. 25/2017 of the District Land and Housing Tribunal for Rukwa at Sumbawanga)

FRANCIS MWASYEBA.....APPELLANT

VERSUS

THERESIA ZUMBA MZINDAKAYA
(Next Friend of Michael Chrisant Mzindakaya).....1ST RESPONDENT
JULIAS KALAYA.....2ND RESPONDENT

JUDGMENT

18/04/2023 & 29/05/2023

MWENEMPAZI, J.:

The appellant is aggrieved with the decision of the trial tribunal where he was sued over the possession of a suitland located at Kilangala area within Kipande village. The decision of the trial tribunal, declared the 1st respondent as the lawful owner of the suitland, and being in grief of the decision, the appellant filed this appeal to this court which consists of three (3) grounds of appeal which are as hereunder;

1. That, the trial Learned Chairman erred in law and fact by delivering the judgement which is against justice, good conscience and equity.

2. That, the Learned Chairman erred in law and fact by ignoring the watertight evidence of the Appellant and relied on the weak and contradictory evidence of the respondents.
3. That, the trial Learned Chairman erred in law and fact by not declaring that there was no valid contract at all between the 2nd respondent and one Michael Chrisant Mzindakaya.

As per the outlined grounds above, the appellant prays for this appeal to be allowed with costs.

On the 13th day of March, 2023 this matter was scheduled for hearing, the appellant enjoyed the legal services of Mr. Fred Peter Kalonga learned advocate while the respondents were both represented by Mr. Mathias Budodi also a learned advocate. Thereafter, all sides had a consensus that this matter should be dealt with by way of written submissions, and indeed this court blessed the option made, and all parties adhered to the scheduling set by this court for each party to file its submissions.

As scheduled, the appellant's counsel submitted first and, in his submissions, he started off by stating that a judgment should consider all evidence from both parties and should give reasons. He said, in the appealed decision, the tribunal chairperson failed to adduce reasons to

his decision with respect to the issue raised. That, the tribunal judgment never resolved all issues each one separately but instead discussed them in a conclusive manner in favour of one party (the Applicant) to the matter. He added that, also condemning the Appellant to pay general damages to the tune of Tsh. 5,000,000 was unjustifiable as he has at no point trespassed the land which was under his control, and ordering the 2nd Respondent return Tshs. 1,000,000 to the Appellant was against justice as the total money paid was Tshs. 4,000,000 and ought to have ordered that the 2nd respondent take the remained Tshs. 3,000,000 and return any sum of money to the 1st respondent if at all the alleged transactions could have been done.

Mr. Kalonga proceeded further that, it's the trite law and principle of natural law that, no man should be a judge of his own cause (Nemo Debet Esses Judex In Propria Causa/Nemo Judex In Causa Sua), that in the trial tribunal the trial chairperson sat with two Assessors whom among of them was the current first respondent Theresa Mzindakaya in which there was a breach of the cardinal principle of natural Justice to the effect that one of the Assessors had an interest which might influence the outcome of the decisions, learned counsel insisted that the said assessor sat as an assessor on 13.7.2017, 20.3.2018, 19.2.2019, 13.3.2019 and on 26.3.2019, and consequently the appellant wrote a

letter and prayed to the district tribunal for withdrawal of the said assessor but his prayer to the district tribunal was ignored mysteriously by the Tribunal, he then referred this court to page 8 of the typed proceedings which never gave a ruling on that.

Mr. Kalonga proceeded that, the current 1st respondent has interest to the subject matter since she was the wife of the deceased who was PW1 and the mother/next friend of one Michael Chrisant Mzindakaya, hence sitting as an assessor influenced the judgment which is against justice and impartiality of the Tribunal. Mr. Kalonga referred this court to the case of **Tanzania Breweries Limited Vs. Mohamed Kazingumbe. Civil Appeal No. 53/2008 (CAT)** unreported at page 7, where the court held that;

> *" ... we are equally settled in our minds that it is settled law that failure to observe these rules will in almost all cases invalidate the decision even if the same decision would have been arrived at had there been no violation of them ..."*

The learned counsel then added that, and now she has turned as a next friend in an appeal which arises from the proceedings which his side invites this court to vitiate the same.

In submitting on the 2nd ground of appeal, Mr. Kalonga submitted that after dully scrutinizing the proceedings it is apparent that the appellant and his witnesses made a strong and watertight evidence DW1 FRANCIS MWASYEBA was testifying especially at page 30 and 31 of the Tribunal typed proceedings and he (DW1) stated that he bought the land in dispute from JULIAS KALAYA who was real owner, the sales agreement was executed on 3/05/2010 this is exhibited by the sale agreement and the same was tendered as exhibit " DI". The agreement was based in consideration of Tshs. 7, 000,000/=, and it was to be paid by instalments, the first 4,000,000 was paid in 2010 and second Respondent was to take the remaining amount 3,000,000/= at any time he wishes since there was no time limit to furnish the same and with no apparent reasons evaded taking the remaining money for the reasons best known to himself.

Mr. Kalonga did not end there, he proceeded that when PW1 was testifying he tendered exhibit P1 as sale agreement with the second respondent, he added that the said P1 is highly tainted with lots of irregularity and contradictions based on fraudulent as sham contract, first of all its entered between the second respondent one JULIAS KALAYA and MICHAEL CHRISANT MZINDAKAYA minor as he had not attained the age of majority at the time of the agreement contrary to

section 11 (1) of the law of Contract Act (supra) which renders it to be void. Mr. Kalonga then cited the case of **Savera Katisha Vs. Yistinian Miao (Misc. Land Case Appeal No. 16/2025 (Unreported)** where the High Court held in affirmative to section 11 of Cap 345 at page 8 held that;

> *"..... Section 11 (2) of Cap 345 (supra) provides that an agreement by a person who is not hereby declared to be competent to contract is void. In the same vein, the sale agreement witnessed by Kilizostom Mzee, being a minor was void. I thus found this ground of appeal to have merit as well..."*

The learned counsel then proceeded that, at page 34 of the typed proceedings, DW2 one ALEX MICHAEL who is the one who witnessed the sales agreement of the respondent stated that, he was the chairman of Kilangala hamlet when he signed the exhibit marked D1 at his home not in office while were only two with the second respondent in the absence of the alleged buyer and he never met them, DW2 further avers that he only signed the same as proof of ownership of the disputed land not sales transfer since the one with authority to execute sales agreement was the village chairman who at a time was PW3. Mr.

Kalonga went on that, DW2 further asserts that, he received only a single page with no any alteration which came to be made subsequently to delete the word Kilangala and write the word Kipande, and that He has never been the chairman of Kipande village where the rubber stamp of the village is appended and He has never witnessed the purported sale between the 1st Respondent and the 2nd Respondent.

The learned counsel then clarified that it's their view that, compliance with section 8 of the Village Land Act, CAP 114 R.E 2019 and 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 affairs and business of the village***"
>
> (Emphasis added)

Mr Kalonga then insisted that, this is a mandatory provision, failure to engage the proper authority invalidates the transfer, and cited the case of **Bakari Mhando Swanga Vs Mzee Mohamed Bakari Shekihindo & Others, Civil Appeal No. 380/2019, CAT at Tanga (Unreported)** where at page 8 and 9 of the judgment among other things the Court held that, for a contract for the disposition of a village

land which did not involve the village leadership to be valid must, subsequent to the execution, obtain approval of the village council. Failure to do so renders it invalid.

The learned counsel insisted that, from the above assertion the sale agreement is void for being entered with incompetent party who was a minor of 12 years with lots of fraudulent alteration, and that it's their humble submission that, the trial chairperson misdirected herself by admitting the said D1 since was made fraudulently for the aim of looting the appellants land by the Respondent, and also being the village Land ought to be witnessed by the respective village chairman, rather it was witnessed by one ALEX MICHAEL who was not the village Chairman and denied to know the content of exhibit P1 hence renders it be void.

Again Mr. Kalonga submitted that it is also their contention that the evidence of the 1st Respondent (who was the Applicant at the Tribunal) was weak because the buyer of the land the current appellant testified that, he bought the land in dispute from JULIAS KALAYA who was real owner on 24.11.2011, on the other hand the Appellant bought the same land in 2010 the sale having been executed before the six family members the same was tendered as exhibit "D1". That, the agreement was based in consideration of Tsh. 7,000,000/= and was to be paid in

instalments, the first Tshs. 4,000,000 was paid in 2010 and second Respondent was to take the remaining amount at any time he wishes since there was no time limit to furnish the same.

It was Mr. Kalonga's submission that, DW8 who is the second respondent one JULIAS KALAYA (DW2) admitted to execute the agreement in 2010 with the appellant as the first buyer, the appellant (DW1) at page 31 averred clearly that there was no time limit on paying the remaining amount of Tshs. 3,000,000 since the second respondent had to go to Kenya for treatment, that DW6 who was a broker stated that there was no time span to pay the remaining amount, parties agreed that the seller would come to take the remaining amount at any time he wished.

He then proceeded that, in 2017 this matter was reported at district tribunal, it went to the village council which was informed on the alleged dispute over the land, and while at the village office the respondent did admit to receive Tshs. 4,000,000/= as first instalment and that further the village council allowed him to proceed with his activities through a letter which was admitted as exhibit D2 tendered by DW5 who was VEO in 2017, Mr. Kalonga then this court to page 39 and

40 of the proceedings as the 2nd respondent had no justification as to why he did not take the remaining sum of Tshs. 3,000,000.

He submitted further that, subject to sections 37 and 73 of the Law of Contract Act Cap. 433 R.E 2019 for the contract to be breached either party has to fail to comply in his contractual obligation. That, in this appeal the Appellant did furnish his contractual obligation by paying required consideration, application to the village council be village member in 2015 as stated by the village chairman who was DW4 one RAYMOND CHINDA. That, under the law, under section 10 of the law of Contract Act, Cap. 345 [R.E 2019] it does provide all agreements are contracts only if they are completed by the free consent of the parties who are capable and competent enter to contract, for a lawful consideration and with a lawful object and are not on the margin of being declared void, also as stated under section 13 of the same Act a contract is legally enforceable if both parties were willing, that's free consent.

Mr. Kalonga underlined that, in the typed proceedings PW3 one Patrick Kayomvyo at page 19 being the village chairman at Kipande village did witness the sale agreement between the Appellant and the second respondent on 30/05/2010 which was admitted as D1, that the

said D1 was dully legally executed having signed by the parties, witnesses from both side, on the seller being six family members, witnessed signed and stamped by the village council through village chairman, PW3.

The learned counsel stated that through the evidence adduced by the appellant, it is clear that the appellant never breached his obligation and neither defaulted to furnish it as he was awaiting him per their agreement. That, there is no any time the second respondent went to claim the remaining amount and the appellant refused. He added that, in his testimony DW8 stated that, he wanted to rescind the contract with the appellant in 2016, refer page 46 and 47 of the typed proceeding while subsequent sales with the respondent alleged be done in 2011.

Mr. Kalonga clarified further that its impracticable in contractual law for the alleged breach be done in 2016 six years later after first agreement entered in 2010 and sale agreement with the second buyer, the respondent therein be done in 2011, wherefore it's his side's view that the said agreement, P1 was a mere swindle against the appellant to deprive him of his rights over the land. He insisted, that being the position as the appellant was the first buyer as he never breached his contractual obligation, it rendered any subsequent transfer of the

disputed land be invalid since title only pass from the real owner who was appellant from 2010 where the principle of priority comes into play, that the principle carries the maxim ***"he who is earlier in time is stronger in law"*** which means the first in time prevails over the others. That's to mean, the one who has the advantage in time should have advantage in law.

The learned counsel tensed additionally that, the situation is a pure case of the principle of ***Nemo dat quod non habet*** or no one can give better tittle than he himself has. That, this common law rule means that the first person to acquire tittle to the property is entitled to that property not withstanding any subsequent sell of the same". Mr. Kalonga referred this court **Melchiades John Mwenda Vs. Gizelle Mbaga (Administratrix of the Estate of JOHN JAPHET MBAGA – deceased) and Two Others, Civil Appeal No. 57 of 2018** (Cat – Dsm) (unreported) at page 25 of the judgment. He again referred me to the case of **Ombeni Kimaro vs. Joseph Mishili T/A Catholic Charismatic Renewal, Civil Appeal No. 33 of 2017 (CAT – DSM) (unreported)** in which among other things the Court held that the seller having first sold the suit land to the appellant, then he had no good tittle to pass to the second respondent.

Mr. Kalonga then concluded that, it is without doubt therefore that the 1st respondent being the latter buyer after the appellant came in possession of the land, he did not acquire any interest or good tittle over the suit land and on the premise of the foregone submission he wishes to pray the appeal be allowed with costs and the appellant be declared owner of the land in dispute as the principle of ***Nemo dat quod no habet*** or no one can give better tittle than he himself has provides and ***"he who is earlier in time is stronger in law"***.

In response to the submissions made by the learned counsel for the appellant, the learned counsel for the respondents, Mr. Budodi submitted that, upon being served and carefully gone through the submission by the counsel for the appellant and having observed the same to be misleading, misconceived and devoid in merit, his side wishes to respond the same briefly but substantively.

Mr. Budodi submitted against the first ground of appeal, which concerns the appellant's argument on faulting appropriateness of the decision. The learned counsel stated that the main contentions are three: one, issues on the trial tribunal were generally determined (not separately), two; order of refund ought to be Tshs. 4,000,000 instead of

Tshs. 1,000,000, three; attendance of Theresia Mzindakaya as assessor vitiated the proceedings.

He proceeded that, it is their humble submission that failure to determine the issues separately is neither legal requirement or fatal to the proceedings. That, in the instant case the trial chairperson was legally justifiable to determine generally some issues framed because in fact say the 1st, 2nd, 4th, 6th issues were almost similarly related and were duly generally determined as seen at page 8 and 9 of the judgment as they are essentially based on the question to determine who was the rightful owner of the disputed land which was the central issue on the issues mentioned above. He added that, be it as it may, it is an established principle that not any omission on framing or determination of the issues is fatal rather the party must establish that such an omission in fact occasioned to any miscarriage of justice. Mr. Budodi then referred this court to the case of **Jonester Jones 7 Another vs Elizabeth Ngaiza** and he quoted:

> *"...I agree with Jayness Kaihura that a trial without framing issues is a nullity. However, that is not the case in all situations. As submitted by modsta Daniel, Learned Counsel,*

such a trial would be declared a nullity where it occasions failure of justice...."

The learned counsel emphasised that, the decision above owes its genesis from the good conscious as established by the Court of Appeal that procedural irregularity is only fatal once it occasions to miscarriage of justice, and thereto Mr. Budodi again cited the case of **Felician Muhandiki vs The Managing Director Backays Bank (T) Ltd, Civil Appeal**.....at page 15 and he again quoted:

"it is a settled jurisprudence that procedural irregularity cannot vitiate proceedings if no injustice has been occasioned to a party [see cooper motors corporation (t) ltd vs AICC [1991] T.L.T 165] in that regard we see no merit on point No. 2(ii) thus we overrule it..".

Mr. Budodi then proceeded that, in his submission the counsel for the appellant failed to substantiate if at all there was any omission on the determination of the issues and how the same occasioned to any miscarriage of justice or prejudiced the appellant's rights, and that, on their part they consider this contention to be superfluous.

He then came to the second limb on the issue that the trial tribunal ought to have ordered refund of Tshs.4,000,000 instead of Tshs.

1,000,000. He insisted his side joins hands with the finding of the trial tribunal that the evidence of the appellant (his witnesses) in the trial tribunal proved that only Tshs. 1,000,000 was paid to the second respondent. That, the alleged Tshs. 3,000,000 was alleged to be paid to one THABITA who was neither called as a witness nor proved to be acting as an agent of the second respondent.

Mr. Budodi also addressed concerning the issue of the assessor THERESIA MZINDAKAYA whereas her attendance was only once when the matter initially came for mention on 19.02.2019 as hearing had yet to start and she subsequently retired from the proceedings, and that other dates like 13.07.2017 there was no such a date in the proceedings and the rest especially when hearing started, the records are clear that the assessors were Mr. Masonda and Mrs. Michese. He therefore bolded that this contention is also superfluous, and thus invited this honourable court to reject this first ground of appeal for being devoid in merit.

Submitting against the second ground of appeal. Mr. Budodi stated that, from the foremost his side partly do concede with the express repeatedly argument by the appellant that exhibit D1 (sale agreement by the appellant and second respondent) is void as it was made fraudulently. That, this per se sufficed to dispose this ground that the

decision of the trial tribunal was right in holding that the sale agreement between the appellant and second respondent was void in law.

He submitted further that, the appellant admits that at the time the first respondent was purchasing the land in dispute from the second respondent, the appellant had failed to pay the balance of purchasing price hence the contract between the two had been breached. He added that, it is a settled principle that failure to pay the balance of the purchasing price vitiate the contract, to insist this Mr. Budodi cited the case of **Lulu Victor Kayombo vs Oceanic Bay Ltd & Mchinga Bay Ltd**[2] at page 13 and quoted:

> *"...therefore, the seller was required to recover her property after failure by the purchaser to pay the balance of USD 250,000 as the terms of the sale agreement remained intact..."*.

The learned counsel stated that, the contention by the counsel for the appellant that there was no time limit is mere kick of a dying horse at the point of death and serves no purpose due to the fact that, firstly; this fact was refuted by appellant's own witness DW7 who alleged to witness the transaction. Secondly, would it be true then it calls the plea of void contract under the dictates of section 29 of the Law of Contract

which terms are expressly that when the terms of a contract are not certain the contract is void.

Mr. Budodi proceeded that, the contention that the contract exhibit P1 was entered by a minor is misconceived as the one who signed the contract was not a minor rather it was Dr. Chrisant Mzindakaya this fact is not in dispute and is clear from the exhibit itself and the testimony of 1st respondent's witnesses in the trial tribunal, whose testimony was in one accord that though the land was bought by the late Dr. Chrisant Mzindakaya as a guardian but he purchased for his son Michael Mzindakaya. Mr. Budodi therefore invites this honourable court to find this second ground of appeal is as well devoid in merit.

Submitting against the third ground of appeal which the appellant contended that he was the first buyer and that the second respondent had no good title to pass to the first respondent, the respondents' side reiterate their argument supra that under the principle set in the case of **Lulu Victor Kayombo** cited above, the alleged contract was void for failure to pay the balance of the purchasing price, thus at the time the 1st respondent was concluding the sale agreement the second respondent had a good title. Again, Mr. Budodi urges this honourable court to reject this ground appeal, and conclusively stated that on the

strength of their brief but clear reasoned supportive argument, he invites this honourable court to dismiss this appeal entirely with costs for want of merit.

There was no any rejoinder made by the learned counsel of the appellant whatsoever.

I have gone through the submissions from both sides and keenly read the records of the trial tribunal before me and I am fortified that the only determinant feature in this appeal would be ***whether this appeal is meritious before this court.*** And answering the issue at hand, I will respond to the three filed grounds of appeal as this court is the first appellate court it is obligated to re-evaluate the evidence in record and reach its own decision. This position of law was emphasized by the Court of Appeal of Tanzania in the case of **Mwajuma Mbege vs Kitwana Amani [2004] TLR 410.**

Responding to the first ground of appeal, in my keen perusal I never came across any irregularity neither in the proceedings of the trial tribunal nor in the judgement. It is trite law that, in dealing with civil suits, framing of issues is the requirement of the law and that the omission to frame issues is fatal if it leads to miscarriage of justice. See for instance the case of **Tanzania Sand and Stone Quarries v.**

Omoni Ebi [1972] H.C.D 219. Comparing with the trial tribunal's records, is that the trial learned chairperson did frame seven issues which I find best to reproduce as hereunder;

1. *Who was the first one to purchase the disputed land between the 1st respondent (appellant) and the applicant (1st respondent herein).*
2. *Whether there was an agreement for purchase of the disputed land between the 1st respondent (appellant) and the 2nd respondent (2nd respondent herein).*
3. *Whether the 1st respondent (appellant) has trespassed in the dispute land.*
4. *Who is the lawful owner of the disputed land.*
5. *Whether the applicant is entitled to the payment of Tshs. 4,000,000/= being the costs for demolition.*
6. *Who legally acquired the land in dispute between the 1st respondent (appellant) and the applicant (1st respondent).*
7. *To what reliefs if any are the parties entitled to.*

It is my fortified reasoning that, from the 1st issue to the 6th raised issue the learned trial chairperson did deal with them together as they all suggest upon the same thing, meaning it is impossible to talk about

the ownership of the disputed land without considering transfer from one person to another and also in it there should be a contract between the parties involved. And therefore, I do join hands with the submission made by the counsel for the respondents that it is not fatal dealing with the raised issues together as it did not occasion miscarriage of justice to the appellant.

Again, I went through the records of the trial tribunal to prove the allegations that the 1st respondent was among the assessors sitting with the learned chairperson during the commencing of the hearing. When one peruses the hand written proceedings, it reveals that he hearing commenced on 26/03/2019 and the assessors were J. Michese and L. Sambi, and on 20/08/2019 the assessors appearing on the coram were J. Michese and T. Mzindakaya. This made me curious and perused deeper, on the same date that is 20/08/2019 during cross examination to the witness PW4, when it was the tribunal's turn to pose questions to the witness, the assessors who questioned the witness were J. Michese and L. Sambi. I noticed that, the handwriting of the names appearing at the coram and the handwrite of the proceedings were different, and therefore, I firmly concluded that the handwrite that wrote the names appearing at the coram was not the handwrite that wrote the names of the assessors during cross examination. And in that, T. Mzindakaya was

not present during the hearing as earlier alleged by the counsel for the appellant.

Again, the records of the trial tribunal have that the appellant had constructed a foundation on the disputed land, whereas his counsel at some point in his submission has conceded that the agreement entered between the appellant and 2nd respondent (D1) was void. In my perusal, indeed I found the said agreement, in which it had no signature of the 2nd respondent as the seller of the suitland but rather TABITA KALAYA who was listed as a member of the family and no any other explanations as to who was she to the contract that she appeared to have received the afore mentioned Tshs. 3,000,000/= and not 2nd respondent. And this person was not summoned by the appellant to testify at the trial tribunal which would push me to make an adverse inference for that failure. In the case of **Aziz Abdalla vs Republic [1991] TLR 71** (CAT) it was held that;

> *"Adverse inference may be made where the persons omitted are within reach and not called without sufficient reason being shown by the prosecution."*

As the appellant had admitted that he indeed built a foundation at the suit land, it was reasonable for the trial tribunal to award the

compensation to the 1st respondent. Therefore, as far as the 1st ground of appeal is concerned, I am firmly convinced that the judgement of the trial tribunal was rightly constructed, delivered and it was not against justice. I therefore proceed to dismiss this ground of appeal for its void of merit.

Coming to the 2nd ground of appeal, it needs not an effort of a 'fork lifter' in dealing with this ground. It is trite that in civil suits the one who alleges must prove as it is provided under sections 110 and 111 of the Tanzania Evidence Act [Cap. 6 RE 2022]. The Court of Appeal has insisted this position in a number of decisions, but to mention one in **Barelia Karangirangi vs Asteria Nyalwambwa, Civil Appeal No. 237 of 2017, CAT** at Mwanza (unreported).

The duty of the 1st respondent in this appeal at the trial tribunal was to prove that the appellant had trespassed to his land, and indeed it was established that the appellant had no colour of right to be at the disputed land. However, come to think of it, all the witnesses summoned by the appellant and the exhibits he tendered were against him. During a trial, a party with a duty to present a water tight evidence is the party that sues the other and not otherwise. That party carries a duty to prove to the balance of probability the fact alleged that the fact exists.

In addition to that, the standard of proof in Civil suits is based on balance of probabilities and not otherwise, whereas the literal meaning of balance of probabilities is that, **the occurrence of an event was more likely than not**. See, **Agatha Mshote vs Edson Emmanuel & 10 Others, Civil Appeal No.121 of 2019** Court of Appeal of Tanzania at Dar es Salaam. In the matter at hand as revealed by the records, the probability that the 2nd respondent had sold the same land to two different buyers is so unlikely because, at no point did the appellant sue the 2nd respondent anywhere for recovery of the consideration he paid for the land nor for total possession of the same, as he claimed to have bought the suitland first before the 1st respondent. As the matter of fact, the 1st respondent did tender an exhibit that proved there was an agreement between him and the 2nd respondent. This alone sufficed to conclude that the trial court was correct in declaring the appellant as the trespasser to the suit land, as on the balance of probabilities, through the evidence adduced by the 1st respondent, it is more likely that the suitland lawfully belongs to the 1st respondent than the appellant.

At this juncture, I join hands with the submissions made by the counsel for the respondents that, the contentions made by the learned counsel for the appellant that there was no time limit in the payment of the consideration, this is a total false and I regard the same as a bad

intention of misleading this court instead of assisting it to reach a justifiable decision. If one goes through the exhibit marked P2 which is titled;

"MKATABA WA MALIPO YA UNUNUZI WA SHAMBA LA JULIYAS KALAYA NA NDUGU MWESHEBA"

This exhibit is said to be made the same date the exhibit D1 was made (03/05/2010), whereas it reveals that the consideration of the suitland was Tshs. 7,000,000/=, and that it states that the payment will be done in instalments, in which the first instalment will be done on 04/05/2010 that the appellant will pay Tshs. 3,000,000/= and the second instalment will be made on 15/10/2010 whereas the appellant will pay the remaining Tshs. 4,000,000/=. Here, the time limit has been set contrary to what has been submitted.

To make things worse, the appellant relied upon exhibit D1 as the agreement he entered with the 2nd respondent which is dated 03/05/2010 whereas, in this exhibit it reveals that there was an advance payment of Tshs. 3,000,000/= paid by the appellant and that a person known as Tabitha Kalaya received the said sum. Now, these two documents by themselves are contradicting each other and in that, they

cannot at any point be relied upon for the interest of justice. I therefore find no merit in this ground of appeal and proceed to dismiss it to.

On the 3rd ground of appeal, again it is in the records that PW1, the late Dr. Chrisant Mzindakaya purposely bought the suitland who was a minor. Indeed, the agreement which was tendered at the trial tribunal had the names of the seller (2nd respondent) and the buyer (the son of PW1) but at the end of the agreement the signatories were the seller and the guardian of the buyer (PW1).

I will elaborate more on this as follows, **Contractual capacity** is the main requirement for a contract to be legally binding. The term "contractual capacity" refers to the mental competence to comprehend the contract agreement. A **minor** is among the three groups of people excluded from having the capacity to contract. The other two includes people with mental illness or those who have been intoxicated. Therefore, the law postulates that those lacking mental capacity cannot be obligated to the terms and conditions of a contract. A minor, in this case, is an individual who has not attained **maturity**. In Tanzania, this includes anyone under the age of 18 who is still under the obligation of parental support. The rationale for a minor not having the capacity to

contract is that they might get into a contract without a full understanding of the terms or conditions.

In relation to the case at hand, PW1 has parental obligation to the minor appearing in the contract, and it is on the same line that the minor never signed the contract but the parent did sign the contract. Nevertheless, it was not the appellant's duty to declare the contract between Michael Mzindakaya and the 2nd respondent void, because he was not part the contract, and even worse he has never sued any of the respondents either for trespass or fraudulent sale of the suit land respectively. Again, I find no merit in this ground and I consequently dismiss it.

Concluding, after deep and keen analysis of the records at hand, I am fortified that this appeal has no merits before this court, and it is hereby dismissed in its entirety. The decision of the trial tribunal is upheld. Costs to follow the event.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 29th day of May, 2023.

T. M. MWENEMPAZI

JUDGE