UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 145 OF 2022

(Arising from Land Application no. 32 of 2018)

ALWINA JOHN MFANYAKAZI ..... 1st APPELLANT

PROPERTY INTERNATIONAL LTD AUCTIONEERS

AND COURT BROKER ..... 2ND APPELLANT

VERSUS

ASHOKI KILANGO ..... 1ST RESPONDENT

MARY EVARIST MPULAYAMLUNGU ..... 2ND RESPONDENT

JUDGEMENT

Date of last order: 02/06/2023

Date of Judgement: 09/06/2023

MALATA, J

The genesis of this appeal is land application no. 32 of 2018 from Kilombero District Land and Housing tribunal, where the respondent herein were the applicants. They filed land application claiming for, inter

alia, to be declared as lawful owners of the disputed land and prayer for specific damages to the tune of one hundred nineteen million nine hundred thousand seventy-seven thousand only **(TZS 119,977,000/=)** and general damages to the tune of fifty million **(TZS 50,000,000/=)** Tanzanian Shillings.

In nutshell the facts speak that, after demise of one John Mfanyakazi who left behind six children, Pius John Mfanyakazi, inclusive who applied for letters of administration at Ifakara Urban Primary Court to administer the estate of the late John Mfanyakazi, the letters were granted to him vide Mirathi no. 4 of 2008 (herein to be referred as Probate no. 4 of 2008).

Upon being granted letter of administration, Pius John Mfanyakazi, as an administrator collected properties of the deceased including land in dispute and finally convened a family meeting for purpose of distributing properties to the legal heirs.

The appellant herein did not attend the meeting despite being notified. The distribution of properties including houses and eight acres of farm proceeded in the absence of the appellant. In the distribution, each heirs got half (½) an acre farm out of eight acres, the distribution involved the grandchild of the deceased as well.

The appellant was absent and not given her share of half (½) acre farm, as such, the appellant was dissatisfied and found her way to claim for her share through the trial court which appointed the administrator and lodge her complaint, the Ifakara Urban Primary Court. This was done through Shauri la Mirathi No. 77/2016.

The Primary Court summoned the administrator and other heirs and inquired on the complaint and finally, ordered that that the appellant be given her half (1/2) acre from areas situated at Katindiuka.

The appellant found her way to the district court and later to the High Court vide PC Civil appeal no. 23 of 2015 where he lodged a complaint that the estate of their deceased father was not equally divided as she was denied her right to inherit the farm. The High Court upheld the decision of the Primary Court order dated 6/6/2013 and further stated that the appellant should have her right to inherit from her late father to the same size alike other legal heirs obtained. **The administrator was to execute the order of the High Court.**

On 2016 the appellant filed the execution case at Ifakara Urban Primary Court to execute the order of the High Court, following the failure by the administrator to give the appellant her share as directed by the court. The

executing court ordered execution of the said order to be effected through court broker.

During distribution of the estate of the late John Mfanyakazi as stated herein above all the heirs were given shares save for the appellant herein. The deceased's son one Marcus John Mfanyakazi being one the benefited heir also got his share of half (½) acre. Marcus John Mfanyakazi sold the inherited piece of land to the 1st respondent, **ASHOKI KILANGO** who later sold to 2nd respondent, **MARY EVARIST MPULAYAMLUNGU.**

On 11/07/2017 the court broker was appointed to effect execution by demolishing the respondent's buildings erected on the suit premises which land was allocated to Marcus John Mfanyakazi who sold to **ASHOKI KILANGO** and later sold to **MARY EVARIST MPULYAMLUNGU** who built business structures. The land had changed ownership from John Mfanyakazi family to third party by sell and purchase between the heir and purchaser.

The respondents herein jointly filed land application in the District Land and Housing Tribunal claiming for declaratory orders that they are the lawful owners of the land in dispute which they acquired by **PURCHASE** from Marcus John Mfanyakazi, the heir who acquired it through

inheritance from the estate of the late John Mfanyakazi and payment of specific damages and general damages.

The DLHT entered decision in favour of the applicants and awarded the prayers. Dissatisfied thereof, the appellant processed the instant appeal predicated on nine grounds, stating:

1. The Honourable chairman and the prudent wide assessors set forth erred in law and upon fact in treating the application as an APPEAL in determining the application an action which directed the land court to wrong MAAMUZI at the alleged said RUFAA NO. 32 of 2018 was not prescribed to arise from which tribunal and which number indicating was/ is an appeal but an application.
2. That the Honourable wise chairman and the wise prudent assessors erred in law in determining and adjudicating a LAND IN DISPUTE which was given a judgement by Honourable Judge in PC Civil appeal no. 23 of 2015 without grant leave of Court having jurisdiction to order District Land and Housing Tribunal for retrial de novo or to re admit and adjudicate the same an action which is typical scorning directed the land court to a wrong decision as any case that has been given judgement by higher courts the law courts shall never entertain the case unless there is an order from a court

having jurisdiction to order the re trial. Annexed hereto is the judgement of Pc Civil Appeal no. 23 of 2015 for reference marked AL to be part of the appeal.

3. That the Honourable chairman one C. P. Kamugisha erred in law and upon fact in adjudicating the appeal no. 32 of 2018 when there was complaint of the 1st appellant that the chairman lacks faith to determine and deliver a MAAMUZI the appeal as the latter dated 1/03/2022 whom the writer in the letter suggested to be given another chairman, but the chairman obliged to adjudicate and given the uamzi regardless the letter dated 07/02/2022 which was written by the NAIBU MSAJILI Marked A4 collectively as the chairman orally claimed he is the Alpha and Omega shall determine the case and thus give a maamuzi, hence this appeal instead of the application.
4. That, The Honourable District Land and Housing Tribunal erred in law in ordering the appellants to pay the respondent a sum of Tsh. 119,977,000/= being specific damages without considering the order of the Ifakara Urban Primary Court which at the execution of the order of the High Court of Tanzania in PC Civil Appeal no. 23 of 2015 as in the UTEKELEZAJI the administrator attended every summit and could not object any of the orders. annexed here to is the UTEKELEZAJI marked AL5 annexed to form part of the appeal,

further it is that, the dispute piece of land was sold to the 1st and 2nd respondents during the case by 3rd respondents mjibu maombi in the maamuzi.

5. That, in ordering the appellants in this case to pay the specific damages while the appellant has no any land sale contract agreement (s) and have no any contact with respondent above not only that, the 2nd appellant was ordered by court prescribed to execute and that, ordered the respondent to vacate the disputed land being the ½ of an acre that was allocated as part of her probate property and the respondent could not adopt the order to BANISH their belongings fortuned during PC Civil Appeal no. 23 of 2015 alleging the plots to have been sold by Marcus John Mfanyakazi as per annexture marked AM 3 annexed collectively form part of the alleged appeal.
6. That, Honourable District Land and Housing Tribunal chairman erred in law and upon fact in delivering a decree and ordering that, the respondents are lawful owners of the disputed land without scrutinizing that, the respondent were sold the disputed land during the land case which originated from the estate probate cause no. 4 of 2008 when the sales as per records was between 2015 and 2016 a period marks a case to be at appellate period at High Court of

Tanzania Dar es salaam Registry an action which is contrary to the law.

7. That the Honourable chairman of District Land and Housing Tribunal erred in law in ordering gharama za shauri zilipwe na mjibu maombi wa kwanza na wa pili which are the first and second appellants in this case without considering that, the Honourable Primary Court Magistrate on 4/10/2016 requested a policeman to assist demolish all those were built in the disputed land Annexture AL5 and the demolition of the houses was done on 11/10/2016 annexture AL5 after the notice AL6 as no objection was raised by the respondents to date.

8. That in ordering the respondents are lawful owners of the disputed land without considering that in the execution at the Ifakara Urban Primary Court proved that the 1st appellant ½ of the land was sold as quoted ***"..... lile eneo la mirathi limeuzwa, hivyo ilibidi nimtafutie eneo linguine. Nimemnunulia shamba la ½ eka kwa 500,000/= maeneo kulekule lakini amegoma kupokea"*** this proves the sale land and the knowledge that the sold land is of the 1st appellant and is reason could not object any point in execution, the appeal is in ruling was delivered on 1/11/2022.

9. That the Honourable chairman is granting the land ownership to the respondent could not consider the taarifa ya utekelezaji the 2nd appellant since back 11/10/2016 until now no objection was raised.

Based on the grounds of appeal the appellant prayed for the appeal to be allowed with costs.

The appeal was heard by way of written submission and both parties filed their respective submission within time.

Submitting in support of the appeal the appellant stated that, the 1st respondent bought a piece of land from Marcus John Mfanyakazi in 2015, and in the petition of appeal it is agreed that the 1st appellant's land was sold when the case was at the High Court. Further, during execution Marcus Mfanyakazi attended the court and could not object the execution and that, the 2nd appellant prayed that, the land in question be taken and handed to the 1st appellant and but no objection was raised to stop the exercise which implies the demolition was to be done.

From the grounds of petition of appeal as forestated above, the appellants pray the respondents to file civil case to those who sold the appellants land to them as they knew that the sold land doesn't belong to them and the sum of 119,977,000 be paid by the sellers and not otherwise.

The appellants relate the case in the hand which was of the law of limitation but in this case relates as the case of JOHN CORNEL VS. GROVET LTD Civil case no 70 of 1978 (DSM Registry CAT at page 27)

> *"ignorance mistake or hardship does not save limitation after the prescribed period has lapsed, the door of justice is closed and no plea of poverty, distress, ignorance or mistake can be of any avail..... A law of limitation, and prescription may appear to operate harshly or unjustly in particular cases. But when such a law has been adopted by the state, for reasons which justify the rule of the majority of cases, it must if unambiguous be applied with stringency and individual case which those reasons are applicable can excepted from its operations are incapable can be excepted from its operation, the general good of the community requires that even a hard case should not he allowed to disturb the law. The rule must be enforced even at a risk of hardship to a particular party. The judge cannot on equitable grounds, enlarge the time allowed by the law, post pone its operation or introduce exceptions not recognised by it":*

Buying a land, the purchaser must be with relevant knowledge, the respondents bought a land originating from the estate property they were

to find good and relevant information on the said land. The law on action knows no sympathy or equity. It is a merciless s sword cuts across and deep into all those who got caught in its web. It is otherwise unfortunate to the respondents if they bought without knowledge of land ownership.

The appellants prayed for relief sought in the petition of appeal be allowed with cost.

In reply to the appellant's submission, the respondents submitted that they are the legal owners of the disputed land as they acquired ownership through purchase the same from the legal owner who had good title through inheritance. It is submitted that the 1st respondent purchased from Marcus John Mfanyakazi whereas the 2nd rrespondent purchased it from the 1st rrespondent. Two issues are to be noted here. One, that the purchase was never objected by the appellant's and two, the High Court directed that the aadministrator of Estate of the late John Mfanyakazi be distributed to the 1st Appellant a total of half (½) an acre as her inheritance from the estate of his late father.

The respondents further argue on the two factors which they believe is genesis of the dispute at hand. First, it is trite law that it is the Administrator of Estate of the deceased who is empowered to act on behalf of the deceased with regard to the estate left behind by the

deceased. It is on the same stream that the High Court had ordered the said Administrator to administer his duties and distribute the estates in equal shares whereof the administrator dully complied with the order ashe testified before the trial tribunal.

On the other hand, it is the 1st appellant who violated the court order by influencing the primary court to order her division contrary to the law. The law is crystal clear that the Primary Court is not empowered to distribute the deceased's estate as the same is sole duty of the Administrator. In the case of **Ibrahimu Kusaga vs. Emanuel Mweta** [1986J TLR 26 (HC) at page 30, the court had these to say with respect duties of the primary court;

> ..... *a Primary Court may hear matters relating to grant of Administration of estates where it has jurisdiction file where the law applicable is customary law or Islamic)...**a primary court ought not to distribute the estate of the deceased. That is the job of administrator appointed by the court.***

The respondents, therefore, hold that the orders made by the Primary Court were null and void as the said order has affected the rights of the bonafide purchasers the 1st and 2nd respondents herein who had legally acquired the said land by **PURCHASE** from Marcus John Mfanyakazi, who

lawfully acquired the same by inherited from the estate of the late John Mfanyakazi. The respondent submitted further that, the 1st appellant confused the Primary Court which ordered for demolition of building in the land in dispute owned by the 2nd respondent who had nothing to do with family cases and the sale of land was not disputed.

The High Court directed the judgment debtor Pius John Mfanyakazi, the administrator of Estate of the late John Mfanyakazi to allocate the 1st Appellant a total of half (½) an acre as her inheritance from the estate of their late father. Finally, they prayed that the appeal be dismissed with costs.

Having carefully gone through the submission from both sides, this court has assembled that, in principle the appellant abstained from submitting in support of the nine grounds of appeal. They did not as per their submission submit in line with what they contested in the appeal save for two grounds which have been touched impliedly. The grounds touching who should pay TZS 119,997,000 that the DLHT erred in ordering the same without considering the order of the High Court and Primary court in PC. Civil appeal no. 23 of 2015 and execution order. They thus made elaborations without referring the grounds which they emanate. Legally,

the appellants failed to argue the appeal based on the ground of appeal tabled before this court which are nine (9) in numbers.

In nutshell, this court noted that, **one**, the late John Mfanyakazi passed away leaving six children, the appellant herein inclusive, ***two***, Pius John Mfanyakazi applied and granted letter of administration by the Ifakara Primary Court, ***three***, Pius John Mfanyakazi collected the estate of the late John Mfanyakazi accordingly, ***four***, Pius John Mfanyakazi convened meeting of the family of the late John Mfanyakazi with view of reporting on the total properties and distributing to the heirs, ***five***, all heirs attended the meeting save for appellant herein, ***six***, the deceased estate was accordingly distributed including land at the rate of half (½) an acre to every heir save for appellant, ***seven***, the land in dispute was inherited by Marcus John Mfanyakazi while the rest was inherited by others, ***eight***, Marcus John Mfanyakazi sold his piece of land inherited therefrom the estate of the late John Mfanyakazi to the 1st respondent herein, ***nine***, later, the 1st respondent sold part of the purchased land to 2nd respondent herein, **ten**, 2nd respondent constructed buildings thereon.

On the other hand, this court observed that, ***one***, appellant was not allocated land by the administrator as it was done to the rest of family member (heirs), ***two***, appellant filed complaint in the primary court which

was appealed against and ended in High court by ***Hon. Kibela, J*** in PC Civil Appeal No.23 of 2015 between the 1st appellant and the Administrator one Pius John Mfanyakazi whereby the court ordered the administrator to give the appellant half (½) acre as her inheritance share from the estate of the late John Mfanyakazi otherwise will be committing gender discrimination, ***three***, the order was to be executed against the judgement debtor, Pius John Mfanyakazi the party to the said case and appeal, ***four***, the High did not specifically indicate the land to be allocated to the appellant but directed the administrator just to allocate land, ***five***, the 1st appellant herein applied for execution of the said judgement before primary court through application no. Shauri la Mirathi no.77/2016 the parties being the 1st appellant herein and Administrator, one Pius John Mfanyakazi, ***six***, as the identified land by the 1st appellant was already sold and developed by constructing buildings the administrator bought another land in the same area with view of allocating the same to 1st the appellant in execution of the court's order but the appellant refused to accept and stated that she wanted the same land which was already allocated to Marcus John Mfanyakazi and sold the 1st respondent, ***seven***, the court ordered for demolition of the building 2nd respondent's building, ***eight***, the 2nd appellant executed demolition.

On the third scenario, it is gathered that, ***one***, 1st respondent acquired title over the land in dispute by purchase from Marcus John Mfanyakazi who acquired ownership by inheritance and to date had never been revoked by any competent authority, ***two***, the 1st respondent sold the land to the 2nd respondent who constructed building there on, ***three***, the appellants are not disputing existence of sale of the land in dispute, existence of buildings and its demolition, ***four***, the demolition was the resultant of the appellants' acts following application for execution, ***five***, respondents suffered damages following demolition of building thereon, ***six***, respondent filed land application no.32 of 2018 claiming for inter alia, declaration that the respondents are the lawful owners of the disputed land and prayer for specific damages to the tune of one hundred nineteen million nine hundred thousand seventy-seven thousand shillings only **(TZS 119,977,000/=)** and general damages to the tune of fifty million shillings only **(TZS 50,000,000/=)**, ***seven***, the appellants lost the case and appealed to the High court of Tanzania, Land Appeal no.145 of 2022.

In short, the afore stated facts represent what transpired from the beginning the death of the late John Mfanyakazi, distribution of estate, dispute arising and how they were handled, including the Land appeal no. 145 of 2022.

As stated earlier, the appellant did not make submission in support of the grounds of appeal but just made a summary as to who should bear the cost of paying the awarded sum by the DLHT and that since Marcus John Mfanyakazi who was allocated such land did not object then nothing can be entertained. However, the appellants left the ground unargued.

In that regard, this court considers that, the appellants decided to abandon what they grounded in the petition of appeal save to what they stated in their submissions.

This judgement, therefore will reflect what the parties submitted for and against the appeal.

This court finds that, the source of the dispute is ground on two things; ***one,*** administrator's failure to allocate land to the 1st appellant as her share in the estate of the late John Mfanyakazi, ***two,*** execution order by the Ifakara Primary Court in Shauri la Mirathi Na. 77/2016 which ordered among others demolition and clearance of the land in dispute and hand over to the 1st appellant while the land was allocated to one Marcus John Mfanyakazi as one of the heir who later sold it to 1st respondent and finally purchased by 2nd respondent who constructed the demolished buildings.

Based on court record, the Judgement which led to the execution was between the 1st Appellant and Pius John Mfanyakazi, the administrator of

the estate of John Mfanyakazi. The underlying dispute was failure to allocate land to the 1st appellant being half (½) acre of her share.

It is pertinent to remember that in the instant appeal, as a first appellate Court our duty is to analyses and re-evaluate the evidence which was before the trial court and come to our own conclusion on the evidence without overlooking the conclusions of the trial court (See, **Ally Patrick Sanga Vs Republic**, Criminal Appeal No. 340 of 2017 and **Yohana Dioniz and Another Vs Republic**, Criminal Appeal No. 114 of 2015 (both unreported).

In digest to the grounds of appeal by the parties, it appears the main issues between the parties is who is the rightful owner of the suit land. To be able to answer the above issue this court raised sub-issues as detailed hereunder;

1. Whether the administrator allocated the land in dispute to the heir one Marcus John Mfanyakazi and whether such allocation has ever been revoked
2. Whether Marcus John Mfanyakazi sold the land in dispute to the 1st respondent and whether such sale has ever been revoked.
3. Whether 1st respondent sold part of the land in dispute to 2nd respondent herein

4. Whether the 1st and 2nd respondent developed the land in dispute by constructing buildings
5. Whether the 1st appellant filed case contesting non-allocation of half (½) acre being her share in estate of the late John Mfanyakazi and whether the High court (Hon. Kibela, J in PC Civil Appeal No. 23 of 2023) ended nullifying distribution of the estate of the late John Mfanyakazi effected by the administrator through the case filed by 1st appellant
6. To whom the High court judgement (Hon. Kibela, J in PC Civil Appeal No. 23 of 2015) was to be executed.
7. Whether the High court judgement **(Hon. Kibela, J in PC Civil Appeal No. 23 of 2015)** ordered for allocation of any specific land to the 1st appellant thence order for demolition of buildings through Shauri la Mirathi Na. 77/2016 of Ifakara Primary Court
8. Who is the lawful owner of the land in dispute?

To start with, ownership of land can be acquired through different ways, these are; ***one***, allocation by the Government authority, ***two***, purchase, ***three***, inheritance, ***four***, gift, ***five***, adverse possession, ***six*** clearing of unoccupied bush.

Responding to the first issue, this court has gone through the submission and record of this court and noted that, the administrator one Pius John Mfanyakazi who was dully appointed by the Primary Court discharged his role of collecting and distributing the estate of the late John Mfanyakazi to the heirs. This is evidenced by both witnesses from the appellant and respondents. The land in dispute was allocated by the administrator to Marcus John Mfanyakazi.

This is not disputed by any of the family members of the late John Mfanyakazi the 1st appellant inclusive. Further such allocation of land in dispute has never been challenged and revoked to date. In that regard, the rights to the land in dispute was transferred from the late John Mfanyakazi to his son Marcus John Mfanyakazi being the heir, thus he acquired ownership of land through **"inheritance." This marks the end of discussion in respect to issue no.1 herein above.**

As to the second issue, on whether Marcus John Mfanyakazi sold the land in dispute to the 1st respondent and 1st respondent. The evidence on record and submissions are in support that Marcus John Mfanyakazi sold the land in dispute to the 1st respondent and the same has never been been revoked to date. Marcus John Mfanyakazi testified that,

"Mgao ulifanyika vizuri baada ya kupata mgao wangu nilichukua sehemu ya mgao wangu kama ½ ekari hivi nikamuuzia Ashoki Kilango, nilifanya hivyo ili nipate pesa ya kuwapeleka watoto wangu watatu shule."

At the DLHT the 1st respondent who testified as SM2 stated that she bought the land in dispute from Marcus Mfanyakazi on 04/01/2015 and evidenced by "*Mkataba wa mauziano*" which was admitted as exhibit S3 at DLHT, and later on he sold part of that land to the 2nd respondent. The seller of the premises Marcus testified at DLHT as SU3 and stated that after division of the property of their deceased father he was given ½ an acre which he later sold to the first respondent.

This evidence is corroborated by the evidence by the 1st respondent who testified that, I quote;

"Ninamiliki ardhi kwenye kata ya katindiuka A. Nilinunua eneo hilo toka kwa Marcus Mfanyakazi tarehe 4/1/2015 nina mkataba wa mauziano baina yangu na Marcus Mfanyakazi.

Baraza: mkataba wa mauziano kati ya SM2 na Marcus Mfanyakazi umepokelewa kama kielelezo S3.

In that regard, it is undisputed that, Marcus John Mfanyakazi sold the land to the 1st respondent herein which sale is valid to date as it had never

been extinguished. **This marks the end of discussion in respect to issue no.2 herein above**

Regarding issue no.3 herein above, on whether the 1st respondent sold part of the land in dispute to 2nd respondent. The answer is in affirmative. This is evidenced by testimonies by 1st respondent and 2nd respondent and partly by the 1st appellant. The 1st respondent testified that, I quote;

> *"Niliendeleza eneo langu kwa kufanya umaliziaji, nilikata kipande kidogo cha eneo langu nikamuuzia SM1 ili niweze kufanya umaliziaji wa nyumba yangu."*

The 2nd respondent testified that, I quote;

> *"Nilinunua eneo hilo toka kwa Ashoki Kilango alinunua eneo hilo toka kwa Marcus Mfanyakazi ambaye aligawiwa na msimamizi wa mirathi."*

It is therefore, without shadow of doubt that, the 1st respondent sold part of the land in dispute to the 2nd respondent. **This marks the end of discussion in respect to issue no.3 herein above**

In response to issue no.4 herein above, on whether the 1st and 2nd respondents developed the land in dispute by constructing buildings. The evidence on record shows that, there were buildings of which the 1st

appellant applied to Ifakara Primary Court for an order of demolition and clearance of the land in dispute. The execution was done by the 2nd appellant herein. This is confirmed by both parties to this appeal and the Ifakara Primary Court order in purported execution of the High Court judgement **(Hon. Kibela, J in PC Civil Appeal No. 23 of 2015). This marks the end of discussion in respect to issue no.4 herein above**

As to the issues no. 5, 6 and 8, the record shows that, the 1st appellant filed a case against administrator Pius John Mfanyakazi challenging non-allocation of half (½) acre being her share in estate of the late John Mfanyakazi. The case was between **ALWINA JOHN MFANYAKAZI** and **PIUS JOHN MFANYAKAZI** which ended in the High Court (Hon. Kibela, J in PC Civil Appeal No. 23 of 2015) ordered that;

> *"...the administrator to give the appellant half (½) acre as her inheritance share from the estate of the late John Mfanyakazi otherwise will be committing gender discrimination.."*

The decision of the High Court directed the administrator **PIUS JOHN MFANYAKAZI** to give the 1st appellant half (½) acre as her inheritance share from the estate of the late John Mfanyakazi otherwise will be committing gender discrimination. This decision was to be executed against a party to the case the Administrator, Pius John Mfanyakazi and

not a stranger or third party to the case including Marcus John Mfanyakazi and the respondents herein.

In execution thereof, the administrator bought land of equal size, that is to say half (½) acre with view of allocating the same to the 1st appellant. This is evidenced by the testimony by the Administrator who testified that;

> ***".....lile eneo la mirathi limeuzwa, hivyo ilibidi nimtafutie eneo linguine. Nimemnunulia shamba la ½ eka kwa 500,000/= maeneo kulekule lakini amegoma kupokea"***

Concluding these issues, the High court did not direct, the land in dispute to be attached and given to the 1st appellant. Thus, the execution against the property of Marcus John Mfanyakazi and the respondents herein was illegal and contrary to the judgement as Hon.Kibela, J did order execution to be done against the properties of the anyone but it was directed to one Pius John Mfanyakazi, the administrator.

At this point, I am satisfied that the evidence of the respondents has sufficiently established that, the land belonged to the respondents, which ownership passed from Marcus John Mfanyakazi who had a better title of the land by **"inheritance"**. This court has gathered nothing either judicial decision or family resolution revoking the allocation of the land in dispute from Marcus John Mfanyakazi.

Further, the respondents, therefore have good title to the land in dispute which they acquired through **"purchase"** from Marcus John Mfanyakazi. **This marks the end of discussion in respect to issue no. 5, 6 and 8 herein above.**

As to the issue no. 7, it is on record as submitted herein above that, High Court judgement (Hon. Kibela, J in PC Civil Appeal No. 23 of 2015) did not specifically order for attachment or allocation of any specific property land inclusive in execution of its judgment but only ordered the administrator to give the appellant half (½) acre as her inheritance share from the estate of the late John Mfanyakazi otherwise will be committing gender discrimination.

As such, the order was to be executed against the administrator who was a party to the case and not otherwise. Therefore, the order by Ifakara Primary Court was illegal as it was executed against; ***first*** a stranger persons to the proceedings, the respondents, ***second***, the Ifakara Primary Court was not the administrator to execute the High Court Judgement by Hon. Kibela J, ***third***, the administrator who was directed to do so was overpowered and his task was taken by Ifakara Primary Court, ***four***, administrator executed the High Court Judgement by Hon. Kibela J by purchasing another land with similar size and gave to the 1st

appellant who refused to accept as she wanted the land allocated to Marcus John Mfanyakazi. this is echoed by evidence by Pius John Mfanyakazi, the administrator who testified at DLHT that,

> *".....lile eneo la mirathi limeuzwa, hivyo ilibidi nimtafutie eneo linguine. Nimemnunulia shamba la ½ eka kwa 500,000/= maeneo kulekule lakini amegoma kupokea"*

This court has failed to gather the reasons as to why the appellant rejected the land allocated to her by the administrator in execution of the High Court decision by Hon. Kibela, J.

Moreover, the act of the Magistrate to direct, specific land to be handed over to the 1st appellant, is tantamount to the court stepping into the shoes of the administrator allocating land to the 1st appellant. Worse indeed, the said land was already allocated to Marcus John Mfanyakazi by Pius John Mfanyakazi in execution of administration powers given by the same Ifakara Primary Court.

This position is assembled from the case of Ibrahimu **Kusaga vs. Emanuel Mweta** [1986] T.L.R. 26 the court had this to say

> *"..... a primary court may hear matters relating to grant of administration of estates where it has jurisdiction (i.e where the*

law applicable is customary or Islamic law) ***a primary court ought not to distribute the estate of the deceased. That is the job of the administrator appointed by the court".***

Primary Court therefore exercise the powers not vested in it in the administration of estate.

The proper remedy for the 1st appellant was to apply for execution of the Judgement of the High Court against the administrator who was ordered to allocate land to the appellant.

Additionally, the court records show that, the decision of the High Court in PC Civil Appeal was not on the ownership of land, it was on the dissatisfaction of the appellant to the division of the estate of her deceased's father. Part of the High Court order is hereby provided;

"However, it remains that, the decision by the Ifakara Urban Primary Court as well as its order dated 06/06/2013 remains untouched and the same is hereby upheld...."

The Primary Court orders were that, the appellant be given her share out of the left shamba after others have received their shares. And those were the orders of the High Court.

All said and done, this court finds no evidence proving otherwise but that, the land in dispute belonged to one Marcus John Mfanyakazi who later sold it to the 1st respondent herein.

Therefore, it is clear that, the DLHT set to hear land application which purely involved land disputes arose from demolition of the respondents' buildings who are the lawful owners of the land in dispute which they acquired through **"purchase"**. The argument by the applicant that the sale was done while there was pending determination of the High Court PC Civil Appeal is unfounded, the land was not subject of the case but discrimination of distribution of the estate of late John Mfanyakazi to the 1st appellant as half (½) acre as her share on the same. **This marks the end of discussion on issue number seven.**

On the complaints of the damages which were pleaded by the applicants at the DLHT, following the demolition of the construction of the suit land, DLHT ordered the respondent to pay the applicants' damages as they prayed, that is TZS 119,977,000/= as specific damaged.

It is a trite law that specific damages must be pleaded and proved, in the case of **Bamprass Star Service Station Limited vs. Mrs Fatuma** Mwale, [2000] T.L.R 390 Rutakangwa J, had this to say.

It is trite law that special damages being "exceptional in their character" and which may consist of "off-pocket expenses and loss of earnings incurred down to the date of trial" ***must not only be claimed specifically but also "strictly proved".***

Further in the case of **British Transport Commission v. Courley** [1956] AC 185 at 206 where it was held:

"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as ***special damages, which has to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of the trial and is generally capable of substantially exact calculation****. Secondly there is general damages which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such that as to lead continuing or permanent disability, compensation for loss of earning power in the future."*

It is clear from paragraph 8(ii) of the amended plaint that, the applicants claimed for the damages caused by the respondent act of demolishing the buildings, the damages claimed were in form of specific and general

damages. On the claim of specific damages, the respondents were legally required to prove it as to how they arrived to the tune of the claimed amount. There is no evidence on record but the DLHT just granted it without any proof. This was in contravention of the afore stated principles in the case of **Bamprass Star Service Station Limited**. As it was not proven, thus erroneously awarded. As such, this claim was not proven, thus it is accordingly set aside.

On the complaint of punitive damages as prayed by the applicant, as in what circumstances can it be awarded, in the case of **Angela Mpanduji vs. Ancilla Kilinda** [1985] TLR 16 the court held that

> *"Punitive or vindictive damages are damages given not merely as pecuniary compensation for the loss actually sustained by the plaintiff, but also as a kind of punishment of the defendant with the view of discouraging similar wrongs in future."*

However, the Court of Appeal stated in the case of **Trade Union Congress of Tanzania (TUCTA) v. Engineering Systems Consultants Ltd & Others**, Civil Appeal No. 51 of 2016 (unreported) stated that where there is a wrong there must be a remedy. Since it is undisputed that, a wrong was committed by the appellants by applying to

the court which ended ordering demolishing the premises of the respondents, this court cannot let the appellants walk free.

In the case of **Swabaha Mohamedi Shosi vs. Saburina Mohamedi Shosi**, Civil Appeal no 98 of 2018,

> *An appellate court can interfere with the discretion of the lower court if, among others, it has acted on a matter that should have acted upon, or it has failed to take into consideration that which it should have been taken, and as a result it has arrived at a wrong conclusion.*

The law is settled in our jurisdiction that general damages are awarded by the trial judge or magistrate after consideration and deliberation on the evidence on record able to justify the award. The judge or magistrate has the discretion in awarding general damages although he has to assign reasons in awarding the same. The position was discussed in the case of **P.M Jonathan vs. Athumani Khalfan** [1980] TLR 175, Lugakingira, J, as he then was stated that;

> *The position as it is therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the plaintiff's loss of reputation, as well as to act as solarium for mental pain and sufferings.*

In this case, the trial magistrate awarded specific damages which were not proved at the DLHT, the court should have to consider awarding the general damages which in our jurisdiction falls under the discretion of the court to be granted and the same has to be done in consideration of circumstances of a particular case.

Understandably from the meaning of the general damages does not need proof as it is awardable at the discretion of the court after the court had determined and quantified the damages suffered by the party. Only what the claimant is supposed to do is just to plead in the plaint. This position of law is assembled from **Peter Joseph Kilibika vs Partic Aloyce Mlingi**, Civil Appeal no. 30 of 2009 CAT, Unreported when the court of appeal quoted with approval the words of Lord Dunedin as stated in the case of **Admiralty Commissioners vs. SS Susqehanna [1950] 1 ALL ER 392** on the award of general damages where it is stated that;

> *"If the damage be general then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question."*

As law does not require the appellant to prove the claimed general damages, I have taken into consideration the fact that it is not in dispute that there was demolition of the respondent's buildings in the suit land.

At the DLHT the applicant's testimony shows that there was demolition of their buildings, this fact is not disputed by the parties to this appeal, 1st respondent testified that he erected commercial building and the 2nd respondent stated that she built the residential house. This court after taking into consideration all the relevant factor of this case justice dictates that general damages of TZS 50,000,000 (fifty million) would mitigate the sufferings the respondents has gone through out of the wrongful acts of the appellants.

In that regard, this court hereby declare that the respondents are the lawful owners of the land in disputed acquired through **PURCHASE**, further, the respondents are awarded a total of TZS 50,000,000 (fifty million) as general damages. Special damages awarded by the DLHT are set aside for want of proof as reasoned herein above.

All said and done I hereby dismiss the appeal with costs.

IT IS SO ORDERED.

DATED at **MOROGORO** this 9th June, 2023

THE HIGH COURT OF TANZANIA

G. P. MALATA

JUDGE

09/06/2023