

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA DISTRICT REGISTRY**  
**AT MBEYA**  
**LAND CASE NO. 04 OF 2021**

**CHRISTOPHER SAID SANGA** (Suing as the

Administrator of the Estates of the late Elika Said Sanga).....**PLAINTIFF**

**VERSUS**

**VERONICA EMMANUEL SANGA** (As the Administratrix

of the Estates of the Late Emmanuel Mzanzibari Sanga Mwikombe).....**1<sup>st</sup> DEFENDANT**

**ATUPAKISYE ANANIA MONI**.....**2<sup>ND</sup> DEFENDANT**

**MAPINDUZI EMMANUEL SANGA**.....**3<sup>RD</sup> DEFENDANT**

**MUVWA VILLAGE COUNCIL**.....**4<sup>TH</sup> DEFENDANT**

**MBEYA DISTRICT COUNCIL**.....**5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL** .....**6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*Date of Last Order: 24/04/2023*

*Date of Judgement: 11/07/2023*

**Ndunguru, J.**

At hand is a land dispute over three pieces of land located at Muvwa village in Mbeya Rural District within Mbeya Region. The land is surveyed and customary right of occupancy issued with certificate Title

Nos. 85MBY7109, No. 85MBY7084 and 85MBY8316 (to be referred as the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> farm respectively or collectively as the suit land.)

The plaintiff, Christopher Said Sanga an administrator of the estates of the late Erika Said Sanga is suing Veronica Emmanuel Sanga (Administratrix of the estate of the late Emmanuel Mzanzibari Sanga a.k.a Emmanuel Mzanzibar Mwikombe), Atupakisye Anania Moni, Mapinduzi Emmanuel Sanga, Muvwa Village Council, Mbeya District Council and the Attorney General (the 1<sup>st</sup> – 6<sup>th</sup> defendants respectively).

The plaintiff is alleging in the plaint that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants trespassed in the suit land then fraudulently obtained customary title. It is alleged also that the suit land was owned by the late Erika Said Sanga whom her death occurred in 2009. That following the demise of Erika Sanga, in 2010 the family handed the suit land to Emmanuel Mzanzibar for custody pending appointing of the administrator of the estates. However, without colour of right Emmanuel Mzanzibar possessed it to himself and his wife and apportioned the 3<sup>rd</sup> farm to his son (the 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively). That they consequently, in 2019 fraudulently obtained the customary certificate of title in respect of the suit land. The plaintiff further alleged that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not related to Erika Said Sanga they cannot

thus benefit from her estates. He is therefore praying to this court for the following orders:

- i) Declaratory Order that the three pieces of the suit land forms part of the estates of the late Erika Said Sanga.
- ii) Certificates Customary Rights of Occupancy issued over the three disputed pieces of land be nullified.
- iii) An order of peaceful vacant possession of the three disputed pieces of land.
- iv) Costs of the suit.
- v) Any other relief(s) and/or order(s) this honourable court may deem just and equitable to grant

On the other hand, the defendants have sturdily resisted the plaintiff's claims. Through their respective WSD the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants pressed the plaintiff into strict proof of his claim, so to the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants who however stated that the 4<sup>th</sup> defendant had never witnessed the handing over of the suit land to Emmanuel Mzanzibar and that the customary certificates were legally issued by the 5<sup>th</sup> defendant. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants then prayed for this court to declare them as lawful owner of the suit land, costs and any other relief as this court may deem fit to grant.

During hearing, Mr. Msegeya, learned advocate represented the plaintiff in one side, while on the other the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> defendants had the service of Mr. Iman Mbwiga learned advocate whereas the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants were represented by Mr. Joseph Tibaijuka, learned State Attorney.

Learned counsel for the parties agreed and this court approved the following three issues:

- 1. Whether the disputed pieces of land falls within the estate of Erika Said Sanga*
- 2. Whether the right of occupancy to the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants were legally granted by the 4<sup>th</sup> defendant*
- 3. What are the relief(s) if any parties are entitled to.*

For the plaintiff's case it was Christopher Said Sanga (PW1), Julius Fungabara Shungu PW2, Festo Fungabara Mwandezi (PW3) and Osia Jonas Mwalwanda (PW4) who testified. Three exhibits namely; the letters for administration (P1) the handing over note (P2) and the judgment and proceedings of the Primary Court, District Court and this Court (collectively as P3) were also tendered.

The defence case has been built under the testimonies of Veronica Emmanuel Sanga (DW1), Atupakisye Anania Moni (DW2), Mapinduzi

Emmanuel Sanga (DW3), Mapinduzi Kalwela Kameme (DW4), Bernard Gabriel (DW5) and Dora Japhet Helambili (DW6). Also, tendered four exhibits namely; the handing over agreement (D1), certificate of title No. 85MBY7109, No. 85MBY7084 and 85MBY8316 (D2, D3 and D4 respectively)

PW1 testified that the late Erika Said Sanga was his aunt who was born, lived and died in 2009 within Muvwa village. That the suit land (the 1<sup>st</sup> and 2<sup>nd</sup> farms) belonged to her as she inherited from her father one Said Sanga while the 3<sup>rd</sup> farm was allocated to her by the village in 1974 through operation Sogea. That Erika Said Sanga lived with one Pindi Mwikombe as her lover whom after his death he was buried at the public graves as he could not be buried in the farms of Erika Said Sanga.

PW1 also gave evidence that the late Pindi Mwikombe had no relationship with Emmanuel Mzanzibar but Emmanuel used the surname Mwikombe with intent to grab the properties of Erika Sanga trying to show that he was the son of Pindi Mwikombe. That Emmanuel Mzanzibar and the 3<sup>rd</sup> defendant started showing intention of grabbing the suit land from when they challenged the appointment of the plaintiff as the administrator of the estates of Erika Said Sanga but they lost in the Primary Court, District Court and this Court.

In his further testimony PW1 narrated that he is suing the 4<sup>th</sup> defendant for allocating the suit land to the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants while the same belonged to the late Elika Sanga. That there was a time when the same village (4<sup>th</sup> defendant) wanted to grab the suit land to build a school but they failed and the same remained the property of the Elika Sanga. In his testimony PW1 further stated that the late Emmanuel Mzanzibari was working to Elika Said Sanga caretaker of her properties. That he was therefore handled with the properties including the suit land after the death of Elika Sanga for the purpose of taking them care.

On cross-examination he replied that he was told the story of Elika Sanga to inherit the suit land. Also, that Emmanuel Mzanzibari started working to Elika Sanga from 1985 and that Elika Sanga inherited the suit land but no evidence if she filed a probate to the estates of the late Said Sanga. He also said that he knew the land to be 18, 6, and 2 ½ hectors but after being surveyed they measured 19, 4 and 2 hectors. About exhibit P2 he said that it did not contain description of the suit land. On whether he objected the issuance of certificate of title he referred to the judgment of the Primary Court that when the suit land was about to be surveyed he objected.

The evidence of PW2 was that he was born and raised in the Muvwa village and he knew well Elika Sanga as a daughter of Said Sanga. That Pindi Mwikombe came and lived in Muvwa village he was hosted by Elika Sanga. That Emmanuel Mzanzibar came to live with Pindi whom they knew as his father. That Pindi was also allocated the farm by the village and after his death he was buried in his farm and not in the Elika's farms. PW2 further stated that in surveying the village farms the dispute occurred between Emmanuel Mzanzibari and Christopher but he knew that the farms belonged to Elika and not Mwikombe. In cross examination he said that Pindi and Emmmanuel were given their own farms and as the village members they told Emmanuel to remit back the certificate of title but he denied.

PW3, who described himself as the elder person in Muvwa village said that he was born, raised and stays in the same village. That he knew the suit land belonged to Elika Sanga who got them after the death of her father one Said Sanga. That Pindi Mwikombe was hosted by Elika Sanga but not his husband. And that Emmanuel Mzanzibar came to Elika's home as a labour who used to brew local beer (Ulanzi) and take care of cattle. In cross examination he said that the three disputed farms belonged to Elika where the 3<sup>rd</sup> farm among the three was the one she was allocated by the village and the rest two were inherited.



PW3 then stated that he does not know about the probate of the estates of the late Said Sanga. Also, that Pindi Mwikombe was buried at the plot he was allocated by the village.

PW4 the Village Executive Officer (VEO) of Muvwa village in 2010 testified that on 15/10/2010 went some family members including the plaintiff (Christopher) and one Emmanuel Mzanzibar to his office with the view of handing over the properties of Elika to Emmanuel. That he wrote a handing over note in which the properties handed to Emmanuel included three farms being at Mshewe Secondary, the at Ngwelenje and the third at near Mkabibi Mwandezi he also identified exhibit P2 as the said document he prepared.

On the other part, DW1 testified that the suit land belonged to Emmanuel Mzanzibari as he was given by his father one Pindi Mwikombe in 1979. That Pindi Mwikombe was allocated the suit land by the village authority. She stated also that Emmanuel processed customary title deeds in 2019 after he satisfied the village that the farms are his and the procedures in surveying and granting the certificates were followed.

According to DW1, Elika Sanga was the wife of the Pindi Mwikombe she had no farm also her father Said Sanga had no farm. That the plaintiff was raised by Emmanuel Mzanzibar who had once



apportioned a piece of land to him for cultivation. For that evidence she tendered exhibit D2.

During cross examination she said that ELika Sanga was buried sat Kafupa hamlet at the farm of Emmanuel Mzanzibari whereas Pindi Mwikombe was buried at Changómbe hamlet. Further that after the death of Pindi, the suit land remained under the supervision of Emmanuel Mzanzibar.

Atupakisye Anania Moni (DW2) the wife of the late Emmanuel Mzanzibari said that the land belonged to her husband who was given by his father in 1979. That they own the farms located at Kafupa hamlet jointly with her husband and the certificate of title shows that effect. That she had been using the farms for cultivation, then planted mango trees and seasonal crops like maize. That in the suit farms there are two tombs and her family still living therein. DW2 also testified that the plaintiff, Christopher is the grandson of Eliká Sanga. When cross examined she stated that she do not know when her husband was given the land but her husband told her so. And that she had no information that the farms belonged to Eliká Sanga and that Pindi had no child with Eliká. DW2 then said that she was married to Emmenuel when Pindi has already died.

Emmanuel Sanga (DW3) the son of Emmanuel Mzanzibari told this court that he owns 2.3 hectares in Changómbe hamlet that he was given the land by his father Emmanuel Mzanzibari in 2002. That he continued cultivating the said land and in 2019 was granted customary title, exhibit D4. He also gave evidence that his land had no dispute that is why he was issued with the certificate of title. On cross examination he said that he had never inquired how his father acquired the land but he found him using it. Replying to the question why he objected the administration of estates of Erika Sanga he told this court that he did so for the reason that it was Emmanuel Mzanzibari who took care of Erika Sanga.

DW4 stated that he had lived in Muvwa village, he knew Erika Sanga as the wife of Pindi Mwikombe and the suit land belonged to Emmanuel as he was the one using it. In his testimony DW4 then said that the suit land was located to Pindi by the village authority. Further that he did not know the land of Erika Sanga and the Plaintiff was raised by Emmanuel Mzanzibari. When cross examine, he said that he did not witness Emmanuel being given the suit land but he has witnessed him cultivating it. That in the suit land there are tombs of the children of Emmanuel Mzanzibari.

Bernard Gabriel (DW5), a village chairman of Muvwa village from 2014 to 2019 gave evidence that he involved in formalization of the village land. That he was a member in the village land disputes resolution committee (Kamati ya Marekebisho na Mapingamizi). According to him a person was given the certificate of title upon satisfaction that he owned it and no any dispute raised. He further testified that the plaintiff never raised any objection over the disputed land. Also, that the land belonged to Pindi Mwikombe and following the death of Pindi the land was used by Emmanuel Manzibari.

He stated more that all processes in granting certificate of title were followed hence the title in relation to the suit land was legally issued. On cross-examination he said that he did not know how Pindi got the disputed land but he found him using it. Further that if the dispute over the ownership of land went direct to the Village Land Tribunal, he could not know it. That Erika Sanga owned the land with her husband. That the government was not allocating land but formalized the villagers' land for those who owned land.

DW6, a VEO of Muvwa village gave evidence that the government was sued for issuing certificate of title which the same was legally issued as the owners have followed the process. That the process involved

convening meeting in the respective hamlet, then the survey which was followed by issuing of 14 days period for any objection and /or complaint on ownership. That in all those steps the plaintiff did not show up hence the defendants were issued with certificates of title in relation with the suit land.

The foregone marked the end of the case for both sides.

Having heard the evidence of both sides, the task remains to this court to determine the issues as above framed. In resolving the issues, I will be guided by the general principle that whoever alleges must prove as per section 110 of the Evidence Act, Cap 6 R.E 2022 and many cases including the case of **Kwiga Masa v. Samwel Mtubatwa** [1989] TLR 103. Also, it is the settled law that in civil cases the standard of prove is to the balance of probability; see section 3 (2) (b) of the Evidence Act. This entails that the court will uphold the evidence and decide in favour of a party whose evidence is weightier than the other; see **Hemed Said vs Mohamedi Mbilu** [1986] TLR 113, **Ikizu Secondary School vs. Sarawe Village Council**, Civil Appeal No. 163 of 2016 (unreported) and the case of **Scania Tanzania Limited vs. Gilbert Wilson Mapanda**, Commercial Case No. 180 of 2002 (unreported) where '*balance of probabilities*' was ascribed to mean that:

*"A court is satisfied an event occurred if it considers that on evidence, the occurrence of the event is more likely than not."*

I have also seen it imperative to state on the outset that according to the evidence by the parties there is no controverse that the late Elika Said Sanga (to be referred to as Elika, or Elika Sanga) died without being blessed with any child that is also to the late Pindi Mwikombe (sometimes to be referred to as Pindi). Another undisputed fact is that the late Emmanuel Mzanzibari Mwikombe (Emmanuel Mzanzibar or Emmanuel) was not a biological child of the late Pindi Mwikombe. It is further undisputed that the late Pindi Mwikombe lived with Elika Sanga and he passed on about 24 years before Elika. I also take note that the late Emmanuel Mzanzibari lived with Pindi, Elika Sanga and later on with Elika and the plaintiff.

Starting with the first issue whether the suit land forms the estates of Elika Sanga. According to the plaintiff's evidence the late Pindi Mwikombe came in Muvwa village for business purpose and he found Elika Sanga in her land which she inherited from her father Said Sanga. That Pindi was hosted by Elika Sanga and lived to her home. There after came Emmanuel Mzanzibar to join Pindi and Elika as Emmanuel and

Pindi did same business and after the death of Pindi, Emmanuel remained with Elika as a labour looking after cattle and brewing local beer. This was the testimonies of PW1, PW2 and PW3. On their part the defendants (1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup>) gave evidence that Elika was the wife of Pindi. That Emmanuel Mzanzibar was invited by Pindi as he was his uncle and that Pindi gave the suit land to Emmanuel. Then that Emmanuel lived with Elika after the death of Pindi as his mother. And that Emmanuel was the one who allowed Elika Sanga to invite Christopher (the plaintiff).

In my view the evidence of PW2 and PW3 the elder persons aged at 75 and 77 years respectively told the whole story which this court finds it appealing and reliable. Both told this court that the late Pindi lived with Elika in her land. That on the death of Pindi, Elika rejected him to be buried in her land on the reason that he could not be buried in the in-law land. This evidence of the late Pindi not to be buried in the Elika's land was supported by DW1 who said during cross examination that Pindi was buried in Songambebe hamlet which is different with Kafupa hamlet where the suit land of 19 hectors is situated. Simple logic makes to ask myself why the owner of the land (though alleged that has already gave it) be denied to be buried in his land and why the one not the owner be allowed to be buried in the same land where the owner



was rejected. The story that Elika Sanga was the owner of the land from his father Said Sanga makes more sense than that the suit land was of Pindi and he gave to Emmanuel before his demise.

Above that, PW2 and PW3 told this court that Elika Sanga was born, raised and lived in Muvwa village until she met her death. They also stated that Elika Sanga took over the farms of the late Said Sanga her father. There was also evidence from both sides that Pindi Mwikombe came in Muvwa village followed by Emmanuel Mzanzibar as they were doing business. I get from this evidence that the life of Said Sanga and his daughter Elika Sanga in Muvwa village has a long back history compared to that of Pindi Mwikombe and Emmanuel Mzanzibar. It would therefore not be conceivable that Said Sanga lived without land in Muvwa village then died leaving none to Elika until when Pindi arrived and started living with her in his land. In the parity of thinking, guided by the decision of the Court of Appeal of Tanzania in the case of **John Siringo and 20 others v. Tanzania National Roads Agency and Another**, Civil Appeal No. 171 of 2021 CAT at Musoma (unreported) that, persons who claim ownership of land have to show by evidence, acts by them or their progenitors manifesting their domination over the disputed portions of land of such a nature that any person would

exercise over his own property and the evidence showing how and when the disputed land was acquired.

In this case the defendants, specifically DW1 testified that the late Emmanuel Mzanzibar acquired the suit land by being given by Pindi Mwikombe. That Pindi Mwikombe was allocated the same land by the village authority but without saying when he was allocated. Alongside, DW4 who said was a village chairman from 2014 to 2019 and a sub-village chairman in 1992 said that Pindi Mwikombe came at the village long ago in 1979. But he did not say anything about Pindi being allocated the suit land. Did not also say if by virtual of him being the village chairman had ever seen or found anything in his office in relation to the allocation of the suit land to Pindi by the village authority. That makes his evidence regarding ownership of suit land incredible thus, making the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants fail to trace the ownership of the suit land by Emmanuel Mzanzibar.

apply the principle that the ownership should be traced from the

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It appears in my view that counsel for the defendants were trying to make the defence case that the late Erika Sanga could not inherit the property of her father without probate. That means no inheritance of the

deceased's properties without probate or administration of estates. I think this is not how the law requires, it would even not be imaginable that if the heirs do not file probate or obtain letters of administration their property may be simply taken. In my view, it is encouraged to file probate and administration cause so as to avoid disputes among the heirs or to capacitate a person who wish to sue or be on behalf of the deceased since without probate or letters of administration one cannot do so. See this court observation in the case of **Ramadhan Mumwi Ng'imba v. Ramadhan Jumanne Sinda**, Misc. Land Appeal No. 8 of 2012 HCT at Dodoma (unreported).

Moreover, the defendants have tried to establish that the late Emmanuel Mzanzibar went to live in Muvwa village in 1979 and the same year was given the suit land by Pindi Mwikombe. That evidence presupposes that Pindi Mwikombe while he was still alive decided to give the whole of his land to Emmanuel Mzanzibar so leaving himself with nothing. This type of evidence is hard to believe since there was no any explanation as to why Pindi took that tough decision. I am also tempted not to believe that as Pindi at the time alleged to give the land to Emmanuel he was living with his wife Elika, he decided not to apportion any piece of land to his wife but gave it all to Emmanuel.

In addition to that the defendants have given evidence supposing that Emmanuel Mzanzibar has lived, used and occupied the suit land for so long. Nevertheless, the plaintiff's evidence is to the effect that Emmanuel Mzanzibar lived with Erika as the labourer and that after the death of Erika he was handed over the suit land for him to take it care; exhibit P1. That evidence however, faced challenge from the defendants on the reasons that exhibit P1 did not describe the land which was handled to Emmanuel and it does not show in the list of participants if Emmanuel participated. But PW4 testified as the one who wrote the handing over note and that Emmanuel participated and he signed the note. I have keenly observed exhibit P1, indeed, it does not describe any land. However, in my view the shortfall does not affect the whole evidence that Emmanuel Mzanzibar was handled with the properties of the late Erika Sanga. It is also my considered opinion after reading exhibit P1 that the handing over did not intend to describe each and every property but in their generality. In as much as the evidence that Emmanuel was handled with the suit land, the living, possession and use of it does not make him the owner but he remains an invitee in the land of Erika Sanga.

In further scrutinizing the parties' evidence, I have also considered exhibit D1 which is to the effect that Emmanuel Mzanzibar apportioned 2

½ acres farm to the plaintiff on 18/12/2009. Exhibit D1 indicates also that the said 2 ½ acres were not within the same/single farm but in different areas. I am hesitating to believe if they were relating to the suit land. This is because, I would not assume facts that Emmanuel Mzanzibar had no any other farm than the suit land which he could apportioned to the plaintiff considering the fact that they lived together at Erika's home and the evidence of PW2 that Emmanuel had other farms which he was allocated by the village apart from the suit land.

Having said what I have said, I am confident that the first issue has been answered in the affirmative.

Having answered the same in the way I have done, it is now the time for the second issue, which is to the effect that if the right of occupancy to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were legally granted. The plaintiff claimed that the right of occupancy was fraudulently granted. On the defendants' part through DW4 and DW5's evidence they held the view that the right of occupancy was legally granted since they followed procedures satisfying that the suit land was legally owned by the Emmanuel Mzanzibar, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and that there was no dispute in relation to them as they received no complaint nor objection.

Following my conviction in the first issue as I have resolved that the suit land forms the estates of the late Erika Sanga, I am inclined to hold that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants fraudulently obtained the certificate of title. I shall demonstrate. It should nonetheless, be noted earlier that I am not saying that the 4<sup>th</sup> and 5<sup>th</sup> defendants issued the right of occupancy fraudulently since the two were not in the process of allocating the land to the villagers but they were formalizing and issuing the certificate upon the villagers established that the land belonged them.

As to why I hold that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants obtained the certificate of title fraudulently; there is evidence by the plaintiff that he objected the grant of the right of occupancy but the 4<sup>th</sup> defendant did not heed. Also, PW2 said that he was the member of the village land council in the process, that he advised the defendants to remit the certificate but they denied. The defendants in their evidence maintained that they never encountered any objection regarding the suit land. In my scrutiny the evidence by the defendants is not the truth. This is due to the evidence of DW1 as obtained in Exhibit P3 (the proceedings of the Primary Court in hearing the application for revocation) where she told the Primary Court that at the time of verifying the land in the village office, they were told that they have applied for certificates on the land



not theirs. The very evidence which is in Kiswahili language states in part that:

*"... serikali ya Kijiji ilitangaza zoezi la umilikishaji ardhi huko Muvwa, mzee alituita tuudhulie semina kuhusu umiliki wa ardhi, tuliudhulia baadaye yakatangazwa kupanua yale maeneo yaliyopimwa **tuliitwa kwa ajili ya uhakiki, kufika ofisini tukaambiwa ninyi mmeomba kujaziwa eneo la ardhi isiyo kuwa ya kwenu, ndipo wale watu wa upimaji walituita sisi na huyu ndugu Christopher** ndipo wakatuelezea alete vielelezo kwamba lile eneo ni la kwake, tukaagizwa kesho kila mtu aende na vielelezo vyake kesho yake tulipeleka vielelezo vyake hakufika ndipo Emmanuel Mzanzibar akamilikishwa lile eneo."* (bold emphasis is added).

The above evidence of DW1 collaborates the plaintiff's evidence about the claim that he objected the grant of certificates of title but 4<sup>th</sup> defendant unheeded.

Despite the evidence that there was dispute over the suit land before issuing certificate of occupancy DW5 tried to prove before this

court that there was a disputes resolution committee (Kamati ya Marekebisho na mapingamizi) which was established for resolving disputes during the process of formalization of the village land. In my view this was not a proper mechanism in the sense that the said committee had no capacity of completely resolving disputes about ownership of land. It would have been for interest of justice if the said committee would have assisted to direct the antagonistic parties to refer the dispute to the land disputes courts established under the Village Land Act, Cap. 114, the Land Act, Cap. 113 and the Land Disputes Courts Act, Cap. 216.

For what I have said, I come to the conclusion that the Customary Right of Occupancy; exhibit D2, D3 and D4 issued to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were illegally obtained.

In the circumstance, I nullify certificate of title Nos. 85MBY7109, 85MBY7084 and 85MBY8316 and order them be revoked by the issuing authority. In the end, I declare the suit land to be the property forming the estates of the late Erika Said Sanga. And I order the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants to peacefully give vacant possession of the suit land. Since the government was involved as the parties each shall bare her own costs.

Order accordingly.



  
**D.B. NDUNGURU**

**JUDGE**

**11/07/2023**

ORIGINAL