

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

LAND CASE NO. 27 OF 2020

**THE REGISTERED TRUSTEES OF TANZANIA YOUNG MEN'S
CHRISTIAN ASSOCIATION** (Formally known as
the **Registered Trustees Tanzania National Y.M.C.A**) **PLAINTIFF**

VERSUS

**LINETH OSWALD TEMU @
MRS. OSWALD STANSLAUS TEMU** **1ST DEFENDANT**
FELIX LEON TEMU (As administrator of the Estate of the
Late **STANSLAUS GEORGE TEMU**) **2ND DEFENDANT**

JUDGMENT

16th June & 28th August, 2023

TIGANGA, J.

The plaintiff a religious based Organization is claiming against the defendants for illegal trespass on one of her landed properties in Plot No. 110A/1 and 110A/2 located at Block E, Arusha City with Certificate of Title No. 055025/20 (the suit property) registered in the name of the plaintiff.

The evidence will show that, the late Stanslaus George Temu the deceased whose interest has been taken care of the 2nd defendant and happened to be the father of the husband of the 1st defendant, was allegedly given the suit land by the Europeans since 1960's where he

stayed, raised and groomed his family until 05/04/1999 when he passed away. Upon his demise, his youngest son, the late Oswald Stanslaus Temu, petitioned for and was granted letters of administration of his estate at Arusha Urban Primary Court vide Probate Cause No. 106 of 2008 whereby the suit property was listed as one of his properties. Unfortunately, he also passed away before distributing the same hence, on 12/05/2021, the 2nd defendant was appointed and is still the current administrator of the late Stanslaus George Temu's estate.

On the other hand, following the death of Oswald Stanslaus Temu her husband, on 19/05/1999, the 1st defendant also petitioned and was granted letters of administration in respect of the estate of the late Oswald Stanslaus Temu via Probate Cause No. 151 of 1999 filed at Arusha Urban Court. In the said probate, she also listed the suit property as part of her late husband's estate alleging that, the same was bequeathed to the late Stanslaus Temu by his father Stanslaus George Temu before he passed away.

The plaintiff has a completely different version of story, according to her, the late Stanslaus George Temu was only a trespasser to the suit land. That, by the time he trespassed into the suit land, the same had already been registered under the plaintiff's name and several times the

1st and 2nd defendants' family have been formally notified to vacate the premises with no avail hence the current suit. In their amended plaint filed in Court on 11th March, 2022, the plaintiff prays for judgment and decree against the defendants jointly and severally as follows;

1. Declaration that the plaintiff is the lawful owner of the disputed plot.
2. An order evicting the defendants from the disputed plot.
3. Permanent injunction order preventing the defendants and her/his agents/workmen from interfering with the plaintiff's peaceful occupation and use of the disputed plots.
4. General damages for damages and disturbances as may be assessed by this honourable Court.
5. Costs of the suit.
6. Any other relief (s) as the Honourable Court may deem fit and just to grant.

Upon being served with copies of amended plaint, the defendants filed their written statement of defence (WSD). In her WSD, the 1st defendant denies the plaintiff's claims and said the disputed land is part of the estate of the late Oswald Stanslaus Temu, her late husband whereas the 2nd defendant apart from denying the plaintiff's claims did

also raise a counter claim alleging that the whole of the disputed plot is property of the late Stanslaus George Temu, his late uncle since his probate was never closed hence the property was never distributed to the late Oswald as claimed by the 1st defendant. Among other things, he prayed that this Court declare the suit land is still the property of the late Stanslaus George Temu.

Mediation having marked failed hearing took place and before the commencement of trial, the court in consultation with the parties' advocates framed the following issues for determination;

- i. Whether the Plaintiff's suit is time barred;
- ii. Whether the 2nd defendant counter claim is time barred;
- iii. Whether the disputed land is surveyed and is known as combined Plots Nos 110A/1 and 110A/2 Block "E" Arusha City with CT No. 055125/20.
- iv. Who is the lawful owner of the combined Plots Nos 110A/1 and 110A/2 with CT No. 055025/20.
- v. Whether the alleged title deed in terms of Plots Nos 110A/1 and 110A/2 was lawfully obtained.
- vi. Whether the Plaintiff can claim the land registered in the name of the former society.
- vii. Whether the late Stanslaus George Temu was the lawful owner of the suit land by virtue of adverse possession.
- viii. Whether the defendants have trespassed into the disputed land

ix. To what relief are the parties entitled.

In proving the claims, three witnesses testified for the plaintiff namely; Stewart Hans Lyatuu, Julius Aloyce Msengezi and Godwin Eliamani Soye. Also, 20 exhibits were tendered to support the claims. The defence paraded six witnesses; Johanes Peter Hopley, Koshuma Omary Semboja, Felix Leon Temu, Dolorosa Stanslaus Temu @ Dolorosa Lucas Kiwale, Emmaculate Stanslaus Temu @ Emmaculate Julius Mkodo and Lineth Oswald Temu. They also tendered 12 exhibits.

Led by Mr. John Materu, learned Advocate for the plaintiff, PW1 Stewart Hans Lyatuu testified that, he is a National General Secretary of Young Men Christian Association (YMCA) since 1988. That, the plaintiff was formerly a Registered Trustee in 1966 in a name which was changed in 1991 to Tanzania Young Men Christian Association also known as the Registered Trustees of Tanzania Young Mens Christian Association. The certificate of registration of Tanzania National Young Men's Christian Association Moshi dated 1966 and Certificate of Registration No. S.O 4661 with the title Tanzania Young Men's Christian Association dated 10/10/1990, Government Gazzette dated 17/05/1996 and Certificate of incorporation No. 406 dated 19th October, 2017, incorporating the Registered Trustees of Tanzania Young Men's Christian Association were admitted and marked as exhibit P1, P2, P3 and P4 respectfully.

PW1 went on testifying that, the Registered Trustees of Tanzania Young Men's Christian Association is the owner of the suit property located along Sokoine/Uhuru Road and it acquired such property after applying to the Commissioner for Lands. Thereafter, the plaintiff started developing the property which at the time the land was empty without buildings. However, after they built few shops, in 2003 the suit property was invaded by people including DW4 Immaculate Stansalus Temu hence, they notified the City Director who ordered the trespasser to vacate and they did. Further that, in 2009 when the plaintiff was planning to build the house, the 1st defendant objected on the ground that, the suit land belonged to her late husband Oswald Stanslaus Temu.

The plaintiff filed a Land Application No. 101 of 2009 at the District Land and Housing Tribunal of Arusha (DLHT) as a result, the plaintiff was declared the lawful owner and the 1st defendant was ordered to vacate the suit premises. The 1st defendant was not satisfied, she appealed to this Court in which the DLHT's decision was nullified for want of jurisdiction. Following that decision the plaintiff decided to file their case in this Court and when the same was going on, the 2nd defendant emerged claiming that, the suit land belonged to his late paternal uncle the late Stanslaus George Temu.

PW1 also tendered the application letter showing the plaintiff requesting the Commissioner for Lands to build a YMCA Centre, its reply, and a letter from Administrator General of Trustees to the Registered Trustees of Tanzania National YMCA acknowledging and giving consent to allow the plaintiff to own land. These were all admitted as exhibits P5, P6 and P7. The title deed showing ownership of the suit land Plot No. 110A/1 and 110A/2, Area E along Uhuru Road in Arusha Township with its survey plan issued on 30/07/1968 was admitted and marked as exhibit P8 and it shows the term of occupancy as 99 years.

He also tendered other documents, namely the application for official search of the Title Deed addressed to the Registrar of Titles Moshi, a letter to the City Council notifying them on the trespass, a letter written to one Immaculate Temu inquiring her to stop developing any structures to the suit land and her reply. These were admitted as exhibits P9, P10, P11 and P12. There were also a letter written by watoto wa marehemu Stanslaus Temu to Katibu Mkuu (Secretary General) Tanzania YMCA dated 05/09/2003 requesting time to vacate and the replies thereto which were admitted as exhibits P13, P14, P15 and P16. A copy of this Court's judgment in Civil Appeal No. 101/2009 nullifying the DLHT's decision was admitted as exhibit P17 whereas plaintiff's resolution appointing Mr. Materu and PW1 to prosecute this case was admitted as Exhibit 18 and

Land Rent Assessment was admitted as exhibit P19. He prayed that, this Court declare the suit land as the property of the Plaintiff, give an order evicting the defendants, permanent injunction against them be effected and an order for General damages and cost due to chaos caused.

As to the counter claim by the 2nd defendant, PW1 averred that, there is no proof that the late Stanslaus George Temu was given the suit land by YMCA in 1960's. He prayed to tender WSD of the 2nd defendant, the same was admitted as exhibit P20 and prayed that, the counter claim be dismissed.

When cross examined, PW1 stated that, he is the preparer and custodian of YMCA documents and that, he is not the one who drew the survey plan, they found the suit land already surveyed, the plaintiff just applied for the plots. He also told the Court that, the plaintiff's names appearing in the Title Deed are different from the current names because they had changed the registered names.

PW2 Julius Aloyce Msegezi, Senior Registration Officer working with the Office of Administrator General since 2020 told the court that, his duty is to verify various applications of the Registration of the Board of Trustees, Returns of Trustees, application of change of names of the Associations and the like. Upon being shown exhibit P4 and P7, he

confirmed the same to be signed and issued by their office. He explained that, exhibit P4 is a Certificate of Registration of the Tanzania Young Men's Christian Association which shows that the Association is legally existing with Registration No. 15406 issued after change of the registered name. Also exhibit P7 is a consent to acquire land which the office of the Administrator General issued to the Board of Trustees, because before the Board acquire land, a consent must be issued by the Administrator General. He corroborated the fact that, a consent was issued on 22/04/1968 to the Board of Trustees of the Tanzania National YMCA to acquire land on Plot No. 110A1/110A2 combined Commercial Area Uhuru Road Arusha. Further that, initially the plaintiff was registered on 27/01/1966 as Tanzania National YMCA, before changing to the current name in 2017.

The last plaintiff's witness was Godwin Eliaman Soye, a Land and City Surveyor working with the Ministry of Land stationed in Arusha City. He told the Court that, a Deed Plan is small survey map attached to the Title Deed which contains information of the Plot surveyed and the land mark which are nearby. He stated that, exhibit P8, the Certificate of Right of Occupancy is a Title Deed of Block E, Plot No. 110A1/110A2, Land Office No. 24005 in 68850 sqm width and length. He mentioned the eight beacon erected as CC1, EE, 311, K345, L161, B77A ED74, ED73 and ED

75. It also shows the road registered plan number 13936 as Babati Road Goliondoi River, Metropole Cinema and Labour Office and the same is signed by the Chief Surveyor using white ink. This marked the end of plaintiff's case.

The defence case started with DW1 Johanes Peter Hopley who testified that, he knows the 1st defendant as the a wife of the late Oswald Temu also the 2nd defendant is her brother in law. That, they were childhood neighbors since 1967 living in the suit property until when he vacated in 1983. Further to that, he visited the 1st defendant's late husband in 1997 for the last time and he was still living in the suit land.

DW2, Koshuma Omary Semboja testified that, he knows the late Stanslaus Temu and his children as his office was near their home built in the suit land. He told the court that, he used to see them since 1975, when he shifted from Dar es salaam to Arusha up to 1987 when he left. That, the late Stanslaus was living near Police Officers' Mess which was at the eastern side. Other boarding boundaries were Uhuru Road by North, South by some Indians and West by Naura River. He added that, the late Stanslaus Temu was farming maize and he was living in the suit land with his family, his wife and children whom he knew as Anastazia, Injili, Oswald and Imaculate. However, during his encounter with the late

Stanslaus, he never told him how he acquired the suit land but he knows for sure the land was his.

DW3, Felix Leon Temu testified that, he was born in Moshi, Kilimanjaro before shifting to Arusha in the year 1984 where he was received and raised by his paternal uncle, the late Stanslaus Temu. That, he found him living at the suit land with his wife and six children to wit; Felister, Margreth, Dolorosa, Oswald, Rose and Anastazia. Further to that, there were two houses in the suit land, one with two rooms and the other had one room and a foundation of the house which was burnt to ashes. The area was 103 x 98 meters, it was some few meters away to be two acres.

According to DW3, his late uncle told him that, he was given the suit land by Europeans (Wazungu) to whom he was working as an interpreter as he had a knowledge of more than ten languages which he learnt during the war. Those Europeans were building Uhuru and Dodoma roads in 1960's. He also told the Court that, his late uncle lived in the suit land up to 1993 when his wife died then he went to Kilema in Moshi District, his original home village. At the suit land, he left Oswald and his two sisters Rose and Anastazia, as other sisters Dororosa, Immaculate and Felister were already married. Further to that, DW3 told the court

that, the late Stanslaus died in the year 1999, while in Moshi at Kilema and at the time of his death, the land was under the care and use of Oswald and his sisters. Currently the person living there is the wife of the late Oswald called Lineth who was married in the year 1997.

It was DW3's further testimony that, he was the one who built the brick house in 1994 as he is a mason, but he was financed by the children of the late Stanslaus. During such time, they were not stopped from building the same by anybody and he started to hear about the plaintiff's commotion in 2022 after their Advocate Mr. Materu had called him to collect the case documents. That, he was served by the plaintiff because he is the administrator of the estate of the deceased Stanslaus George Temu appointed after the former administrator, Oswald Stanslaus Temu had died.

Letters of appointment and copy of ruling appointing the late Oswald Stanslaus Temu as administrator of the estate of the late Stanslaus Temu by Arusha Urban Primary Court vide Probate Cause No. 106 of 2008 were admitted as exhibit D1 and D2 while a copy of Judgment and letter appointing DW3 as administrator of the estate of the late Stanslaus Temu were collectively admitted as exhibit D3. He finished his testimony by telling the Court that the properties mentioned in the late Stanslaus

Temu's estate are a house in Moshi and two houses in the suit land in Arusha.

During cross examination, DW3 challenged exhibit P8, the title deed, on the ground that at the second page of the title deed attached to the copy of plaint which he was served, the claimant is YMCA while in the title deed there is no YMCA hence there are different names. Following such service, he inquired from the offices of Registration of Insolvency & Trusteeship Agency (RITA) and asked whether the plot was allocated to YMCA. The said letter was admitted as exhibit D4. RITA replied to him back and told him to pay for search, such reply dated 18/08/2022 was admitted as exhibit D5. After such letter, he paid for and was issued two receipts which were admitted into evidence as exhibit D6. Thereafter, RITA wrote him again on 24/08/2022 telling him that, there was no ownership of the suit land listed to the plaintiff's name. The said letter was admitted as exhibit D7.

He contended that, the allegation accusing them to be trespassers of the land is not founded because Stanslaus has been living on the land and has never been disturbed since 1960's. He prayed that, this Court recognize and declare that, the suit land is a property of the late Stanslaus Temu and that, the same is not surveyed, thus the title deed is a nullity.

DW4 Dolorosa Stanslaus Temu @ Dolorosia Lucas Kiwale testified that, she is the daughter of the late Stanslaus George Temu and had been living in the suit land since 1971 with her family. That, their late father was a mechanic and an interpreter of various languages and that, he got the suit land in the year 1960 from European where he was working as a Mechanics and Interpreter. Further that, almost all of her siblings were born and raised in the suit land and their father lived up to 1993 when his wife died and shifted to Moshi Rural in Kilimanjaro at his home village. When he left, the late Oswald with his sister Rose and Anastazia remained and later on only Oswald and his family remained at the suit land. She corroborated the fact that, following their father's death in 1999, Oswald was appointed to be the administrator of his estate after the clan meeting proposed him in their meeting sat on 06/04/1999. Copy of the said meeting was admitted as exhibit D8 and that, following his death the 2nd defendant took over.

DW5 Emmaculate Stanslaus Temu @ Emmaculate Julius Mkodo corroborated the fact that, he was born and raised in the suit land until when she got married. That, the suit land belongs to their late father after he was given the same by Europeans back in 1960's who were living in the suit land by then. She also acknowledge the fact that after the death of their father, Oswald was appointed to administer his estate and after

his death the 2nd defendant took over. She denied to have written or receiving any letter from anybody regarding the suit land and that, for the first time she heard about YMCA owning the place after the death of Oswald in 2020.

The last defence witness was DW6 Lineth Oswald Temu, wife of the late Oswald Stanslaus Temu. She told the Court that, the land in dispute belonged to her late father in law since 1955 because in the year 2009 before the DLHT in Land Case No. 101/2009, the clan chairperson testified that in 1954, he slept at the house of Stanslaus, on his way to Dodoma Mpwapwa. That, when she got married, she was received by her late father-in-law who gave them a place to build a permanent residence in 1996 when he decided to shift to Moshi. Further that, she lived with her husband until his death and is still living in the suit land to date and that, she has developed the area by planting Michongoma and built a restaurant which she is using for food vending business.

According to her, the suit land was never surveyed and following the death of her husband the family clan meeting proposed her to be administrator of her late husband's estate. The minutes of the Temu clan dated 23/05/2009 was admitted as exhibit D9. She was therefore appointed by Arusha Urban Primary Court to be the administratrix of her

estate vide Probate Cause No. 151 of 2009. The decision in Mirathi No. 151 of 2009 which appointed her was admitted as exhibit D10 while the letters appointing her was admitted as Exh D11. She also told the court that, after the conclusion of the case against the plaintiff before the DLHT, she appealed before this Court which quashed the decision of the DLHT. She thereafter closed the Probate matter on 02/06/2021 in which she distributed the suit land to herself and her three children. An order of closing the probate matter dated 02/06/2021 was admitted as exhibit D12.

She challenged the appointment of the 2nd defendant on the ground that, he has never been appointed by a clan meeting. She also challenged exhibit P8 on the ground that, the survey plan is not of the impugned title because it has no date, signature and receipt for which the plan was paid for and that in exhibit P17, the Respondent is the Registered Trustees of YMCA, a name which does not feature in exhibit P8. That marked the end of defence case.

After closure of each party's evidence, learned counsels made their final submissions which I will not reproduce in verbatim, but I will consider in my analysis. I now proceed to the issues raised in the manner they were formed seriatim.

The first issue is whether the plaintiff's suit is time barred. In their closing arguments, the plaintiff's counsel pointed out that, the plaintiff's suit is not time barred because to them the cause of action arose in 1999 and they had been in courts till this suit which was filed in 2020 hence, within time pursuant to item 22 of the Schedule to the **Law of Limitation Act**, [Cap 89 R.E. 2019]. On the other hand, the 2nd defendant's counsel submitted that, the late Stanslaus had lived in the suit land undisturbed from 1960 to 1999 when the dispute ensued thus, 39 years had lapsed hence time barred.

According to the plaintiff's evidence, they became aware that, a person had trespassed to the suit land in 2003. According to exhibit P10 to P15, it is clear that, in 2003 there was exchange of communication between the plaintiff and DW5 pertaining making permanent developments in the suit land and DW5 on behalf of the Temu's family asked to be given time so that they can vacate. Some did and some did not including 1st respondent's husband whom upon his demise, his wife was sued for trespass vide Land Application No. 101 of 2009 filed at the DLHT, Exhibit P17 shows that, the application was decided in favour of the plaintiff but upon appeal, the same was declared a nullity for want of jurisdiction hence the current suit. Section 5 of the Law of Limitation Act reads;

5. Subject to the provisions of this Act the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises.

From the brief narration above it is clear that, the actual cause of action started in 2003, then there was a silent moment until when the matter resumed again in 2009 to date. Be as it may, DW5 denies being in any correspondence with the plaintiffs and in her testimony as well as he counsel's final submission, the cause of action accrued when the 1st defendant was sued for trespass in 2009. However, since then parties have been in court corridors, hence this matter cannot be termed as time barred.

The 2nd defendant's counsel tried to imply on the adverse possession because the Temu's have been staying in the suit land undisturbed from 1960. This will also answer the 7th issue. The Court of Appeal of Tanzania in the case of **Registered Trustees of the Holy Spirit Sisters Tanzania vs. January Kamili Shayo and 136 Others**, Civil Appeal No. 193 of 2016, enunciated the prerequisites for one to raise a claim of ownership of land under the doctrine of adverse possession. It was held thus,

1. That it was not operative for a land held under the Right of Occupancy to be granted without any written document from

the guarantor and, most importantly, without authorisation of the superior landlord, the President; and

- 2. That the judge erred to decide that possession and occupation of land for a considerable period, in itself, automatically gives rise to a claim of adverse possession.*

Also, in the case of **Abdallah Mtandi vs. Ramadhani Ikungu & Seif Muhoni**, Land Appeal No. 7 of 2009, HCT, Dodoma (Unreported), Mwangesi, J. (as he then was) held:

"While it is true that in a situation where a person has been in use and/or in possession of a plot of land for a period of above twelve years without being disturbed, such person acquires ownership of the plot of land by the principle of adverse possession.... This principle, however, applies in a situation where the initial entrance or of the land at issue was illegal. Under such circumstances, whoever might have had right over such piece of land, is assumed to have sat on his right for all that period and he is thus barred from claiming any further right over the same."

Applying the above principles in the matter at hand, defendants and their witnesses claim that, the late Stanslaus was given the suit of land in 1960 by Europeans who were constructing Arusha-Dodoma Road. Since then the Temu family had been staying undisturbed up to date. I however find this evidence wanting on the ground that, in our laws, did the alleged Europeans possess land and had a clean title to pass to the late Stanslaus back in the year 1960? The answer is definitely NO; because generally,

under section 20 of the **Land Act** [Cap 113 R.E. 2019], a foreigner cannot own land in Tanzania unless it is for investment purpose only under the Tanzania Investment Act. As per the evidence, there is no proof that the said Europeans owned the suit land and passed the same to the late Stanslaus. In that regard, the claim of adverse possession also fails. The suit is therefore not time barred. The first issue is answered in negative.

The 2nd issue is whether the counter claim is time barred. This will not detain me much because the law is clear that, in matters involving recovery of land of a deceased person, time starts to count from the day he died. In **Yusufu Same and Another vs. Hadija Yusuph** 1996 TLR 347 it was held that;

"...where a person institutes a suit to recover land of a deceased person whether under will or intestacy and the deceased person was on the date of his death in possession of the land and was the last person entitled to the land to be in possession of the land, the right action shall be deemed to have accrued on the date of death"

In the present suit, the late Stanslaus died in 1999 the same year the battle at DLHT started. The 2nd defendant was appointed to be the administrator of the late Stanslaus Temu in 12/05/2021 after the death of the former administrator, the late Oswald Temu. Also, in the DLHT, the 2nd defendant was not joined as a party to the case between the plaintiff

and the 1st defendant, he was made aware of the same when he was served with documents to appear and defend the present suit. It is in the same vein that, he realised that the 1st defendant has distributed the suit land all to herself as part of her husband's estate in exclusion of other legal heirs considering the fact that, the late Stanslaus' estate was never distributed. In the circumstances, his counter claim against the 1st defendant is not time barred. This issue is also answered in negative.

On the 3rd and 5th issues raised, the Court is called to determine whether the disputed land is surveyed and is known as combined Plots Nos 110A/1 and 110A/2 Block "E" Arusha City with CT No. 055125/20. Also, whether the same was legally obtained. Both defendants deny the fact that, the suit land is surveyed on only one ground that, the survey plan is not dated hence, presence of elements of fraud. However, the plaintiff claims that, the same is surveyed. Through testimony of PW3, a Land and City Surveyor, he told the court that, the land is surveyed and that the presence of signature and lack of the date is a minor error and that alone is not sufficient to discredit and invalidate authenticity of the Survey Plan. He also recognized the Survey Plan and the Certificate of Right of Occupancy (exhibit P8) to be genuine documents.

It is a fundamental principal of law under Section 3(2) (b) and 110 (1) (2) of the **Law of Evidence Act** [Cap 6 R.E 2022] that, whoever desires a court to give judgment in his/her favour, he/she must prove that those facts exist. The sections read;

"3(2) A fact is said to be proved when-

(b) in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability."

Section 110 of Evidence Act

"110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

In the case at hand, the burden of proof at the required standard of balance of probabilities is left to the plaintiff being the one who alleges the suit property surveyed. It is my considered opinion that, the plaintiff's evidence on this fact carries more weight than that of defendants. A mere lack of date does not make the survey plan futile and invalid. These issues are answered in negative.

The 4th and 8th issues are on who is the lawful owner of the combined Plots Nos 110A/1 and 110A/2 with CT No. 055025/20 and whether the 2nd defendant was a trespasser. According to the plaintiff's

evidence specifically the evidence of PW1, the plaintiff applied to the Commissioner for Land as well as notified the Office of Administrator General regarding her interest in acquisition of the suit land way back in 1967. They also sought for permit to develop the area as seen in exhibits P5, P6 and P7 respectively. They were granted the same and title was issued as seen in exhibit P8.

On the other hand the defendants only told the court that, they were told by the late Stanslaus that, he was given the suit land by Europeans way back in 1960's. However, without further proof, their evidence remains a hearsay as none of them were present when the said transaction was done. Section 62 (1)(a) of **the Evidence Act** [Cap 6 R.E. 2019], requires in a mandatory terms the oral evidence to be direct in all cases and if it refers to a fact which could be seen, the relevant evidence must be of a witness who saw it. In the case of **Vumi Liapenda Mushi vs. Republic**, Criminal Appeal No. 327 of 2016 CAT at Arusha (unreported) it was stated that hearsay evidence has no evidential value.

Apart from that, as briefly shown above, the late Stanslaus Temu did not have a good title to pass to the defendants as he could not pass ownership of a title which he did not legally own. This has been observed in a number of Court of Appeal Cases such as the case of **Paschal**

Maganga vs. Kitinga Mbarika, Civil Appeal No. 240 of 2017, CAT at Mwanza (unreported) and **Spendors (T) Limited vs. Victor Raymon D’Souza (under Irrevocable Special Power of Attorney by Mary Mushi & Jerry John as Administrator of Christina S. Mungamba-Deceased) & Another**, Civil Appeal No. 7 of 2020, CAT at Arusha (unreported). In the latter decision, the Court of Appeal approved the conditions laid down by the High Court in the case of **Farah Mohamed vs. Fatuma Abdallah** [1992] TLR 205 where it was held;

- (i) A right of occupancy or an offer of a right of occupancy cannot be inherited by the mere possession of documents of title;*
- (ii) he who doesn't have legal title to land cannot pass good title over the same to another;*
- (iii) documents purporting to transfer ownership of a right of occupancy must be registered otherwise those documents are invalid and ineffectual;*
- (iv) transfer of a right of occupancy without consent of the President is ineffective and unenforceable.*

I fully subscribe to the above authority that without a clean title of the suit land by the late Stanslaus Temu, he could have not passed it to the 1st defendant's husband or rather subject the same to distribution among his legal heirs as claimed by the 2nd defendant.

Apart from that, it has been the position of the law that where two persons are claiming interest over a landed property, the person with a certificate of title will always be considered as the lawful owner of the land in dispute unless the certificate is proved to have been obtained unlawfully. The Court of Appeal of Tanzania in the case of **Amina Maulid Ambali & 2 Others vs. Ramadhani Juma**, Civil appeal No. 35 of 2019, CAT at Mwanza (unreported) cited its earlier case of **Leopold Mutembe vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing & Urban Development and the Attorney General**, Civil Appeal No. 57 of 2017. In the latter case the Court cited with approval the following excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. S.J. Mramba, Law Africa, Dar es Salaam, 2017 at page 330;

"...the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."

Unlike the defendants, the plaintiff having proved his ownership through the Certificate of Right of Occupancy it is the firm view that this

Court that, the plaintiff has successfully proved on the balance of probabilities that the land in dispute belongs to her making the 2nd defendant the trespasser.

On the 6th issue as to whether the Plaintiff can claim the land registered in the name of the former society. The law is clear under section 6 (3) of the **Trustees Incorporation Act**, Cap 318 that, a body corporate can change its name upon notification to the Administrator General who can authorises such change. More so, PW1 told the Court on how they changed the name several times, as evidenced in exhibit P1, P2, P3 and P4. This fact was confirmed by PW2 an officer from RITA who testified to acknowledge the said change as the same is also evident in their office records. Exhibit P1 shows that the plaintiff went by the name of Tanzania National Young Men's Christian Association-Moshi as of 27/01/1966, this is the time it acquired the suit land.

Later, on 10/10/1990 the plaintiff changed to Tanzania Young Men's Christian Association. Again in 19/10/2017, the plaintiff changed to The Registered Trustees of Tanzania National Young Men's Christian Association. In the circumstances, since the record is clear on the change of names, the plaintiff legally acquired land under different name.

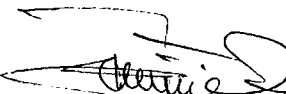
Having determined the eight issue above, the last issue is on the reliefs entitled to the parties. As the plaintiff herein has successfully proved his case, this court orders the following reliefs in favour of the plaintiff but against the defendants;

1. The plaintiff is the lawful owner of the landed property in Plots Nos 110A/1 and 110A/2 Block "E" Arusha City with Certificate of Occupancy with Title No. 055025/20.
2. That the 1st and 2nd defendants are declared as trespassers to the above-mentioned plots, and should give vacant possession to the plaintiff or else forceful eviction will issue against them.
3. A permanent injunction is issued to the defendants, their agents, and successors from trespassing into the plaintiff's plots mentioned hereinabove.
4. The defendants to pay costs.

It is so ordered.

DATED and delivered at **ARUSHA** this 28th day of August, 2023.




J.C. TIGANGA
JUDGE