IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND CASE APPEAL NO. 19 OF 2023

(C/F Application No. 51 of 2020 in the District Land and Housing Tribunal for Moshi at Moshi)

GODFREY MAIMU…… APPELLANT

VERSUS

WILLY WILBARD MAUKI..……1ST RESPONDENT
EVARIST SILAYO……..……..……2ND RESPONDENT

JUDGEMENT

Date of Last Order: 19.10.2023
Date of Judgment: 07.12.2023

MONGELLA, J.

The respondents in this matter filed a suit in the District Land and Housing Tribunal for Moshi at Moshi (the trial Tribunal, hereinafter) against the appellant, vide Land Application No. 141 of 2020. They claimed that the appellant had trespassed over a piece of land measuring 1000 Sqm- with L.O. No. 135904 and Certificate of title No. 11496 (the suit land, hereinafter). The suit land is located at Plot No, 169, Block "C" at Bomang'ombe Urban Area within Hai District. The respondents thus sought for the Tribunal to: declare the 2nd respondent as owner of the suit land; issue a perpetual injunction against the appellant and his agents from entering the suit land

and interfering with the ownership by the 2nd respondent; declare the appellant as a trespasser to the suit land; evict the appellant from the suit land and order demolition of the suit property; grant general damages to the tune of T.shs. 60,000,000/- due to aguish and pain and; grant them costs of the application.

The background of the suit, in a nutshell, is that: the 1st respondent was allocated the suit land by the Municipal Council sometime in 1991 vide a letter of offer. He duly sought and was granted a certificate of Right of Occupancy in 1993 (Exhibit P4). He paid the land rent since then and eventually sold the suit land to the 2nd respondent in 1997. Sometime in 2014 the suit land was trespassed by the appellant.

On the other hand, the appellant claimed that his mother one, Elinipa Maimu Makileo, was allocated 10 acres of land in 1976 by Bomang'ombe village. That, sometime in 1984, the 10 acres of land were surveyed and made into plots. That, prior to the survey, their mother had allocated each of them 1 acre of land. Sometime in 1998, he filed a case in this court over the suit land and other plots whereby this court granted them victory and ordered that they be handed the said plots. In the premises, he said he was surprised to be accused of trespassing and told to either vacate the area or give the 1st respondent some other plot of land. He too sought measures at the District Commissioner's office, Regional Commissioner's office and at the Prime Minister's office whereby his ownership was acknowledged.

The trial Tribunal found in favour of the respondents and: declared 2nd respondent the owner of the suit land, declared the appellant a trespasser and eventually allowed the application with costs. Aggrieved, the appellant has filed this appeal on the following grounds:

1. *That, the trial tribunal erred in both law and facts for not finding that there was misjoinder of parties in the respondents Application or that the 2nd respondent had no locus stand to file that application.*

2. *That the trial chairman erred for not finding that it was necessary to visit the locus in quo in order to verify the conflicting evidence on when the building in which the appellant resides was built and on whether there is a fence which was built by the 1st respondent and whether there are 15 rollies of sound which was brought by the 1st respondent.*

3. *That. the trial chairman erred in both law and facts for failure to properly evaluate evidence of the parties thereby reaching at wrong and un just decision.*

4. *That the trial chairman erred for failure to framing issues.* (sic)

5. *That, the trial tribunal erred for deciding that the suit land is the property of the 2nd respondent one Evarist Silayo.*

The appeal was argued orally. The appellant was represented by Mr. Erasto Kamani while the respondent was represented by Mr. Willence Shayo, both learned advocates.

Addressing the 1st ground, Mr. Kamani faulted the trial Tribunal for not finding that the 1st respondent had no *locus standi* in the suit land since he had already sold the same to the 2nd respondent. He averred that the presence of the two respondents prejudiced the appellant as he had no idea what interest each of them had in the suit land.

With regard to the 2nd ground, he challenged the trial Tribunal for failure to visit the *locus in quo* while there were controversies as to the suit land. He contended that even though visiting the suit land is not mandatory, where there is a necessity, the court must visit the same to ascertain the controversies. Explaining the controversies in the parties' testimonies regarding the suit land, he argued that while the appellant stated that there was an old house built in 1982, the respondents alleged that there was a new house built in the suit land in 2014. That, respondents also stated that the suit land was fenced by thorn trees "*Michongoma*" while the appellant stated that the house was fenced by stones and blocks. Considering these controversies in describing the suit land, he had the view that the

image that comes to mind is that these were two distinct areas, hence necessitating the Tribunal to visit the suit land.

As to the 3rd ground, he faulted the trial Tribunal for failure to evaluate the evidence before it. He had the view that if the Tribunal had done so, it would have discovered that the evidence of the respondents was false because; **one**, at paragraph 6 (a) of the application they stated that the suit land was invaded by the appellant in 2014, and that the sale to the 2nd respondent was made in 2014. However, in their evidence, they testified that the sale was made in 1997 and furnished a sale agreement to that effect. **Two**, that the 1st respondent claimed to have lived in the suit land for 25 years, but in evidence it was stated that he was allocated the suit land in 1991 and sold it in 1997. **Three**, that, while the 1st respondent stated that he built the fence in 1991 after being allocated the suit land, the 2nd respondent stated that he constructed the fence when he bought the land in 1997. In the premises, Mr. Kamani contended that the trial Tribunal ought to have questioned itself as to how the wall was built twice in 1991 and in 1997. As to documentary evidence, he contended that the same reflected the 1st respondent as the owner of the suit land, but the trial chairperson declared the 2nd respondent the owner of the suit land.

Submitting on the 4th ground, he claimed that the trial chairperson failed to frame issues leading to miscarriage of justice. That, the issues framed were in favour of the respondent. Considering that

the parties were both claiming to be owners of the suit land, he had the view that the right issue was supposed to be "*who is the rightful owner of the suit land*" so that all parties would lead evidence to answer the said issue. Referring to the issues framed by the Tribunal, that is, "*whether the 1st respondent was the rightful owner and rightfully transferred his ownership*" and "*whether the appellant was the trespasser to the suit land*" he contended that the issues were meant to ruin the appellant. While acknowledging that wrong framing of issues cannot nullify a decision, he argued that when the same leads to a wrong decision it can nullify the proceedings.

Regarding the 5th ground, he averred that the trial chairperson erred in declaring the 2nd respondent the owner of the suit land. The basis of his argument being that the sale agreement never transferred any interest from the 1st respondent to the 2nd respondent. He held such view on the ground that the suit land was registered and the transfer could only take effect if approved by the paramount or superior landlord, that is, the president. He supported his arguments with the case of **Patterson and Another vs. Kanji** [1956] EACA 106; **Nittin Coffee Estates Ltd. vs. United Engineering Works Limited** [1988] TLR 203 and **Registered Trustees of Holy Spirit Sisters Tanzania vs January Kamili Shayo and 136 Others** (Civil Appeal No.193 of 2016) [2018] TZCA 32 TANZLII.

Mr. Kamani concluded by praying for the Tribunal proceedings and Judgment to be quashed and for this court to give directives as it sees fit.

The appeal was opposed by the respondent. In reply to Mr. Kamani's submission, Mr. Shayo first prayed to adopt the respondent's reply to the memorandum of appeal. Replying to the 1st ground, he averred that both respondents had *locus standi* to file the case at the trial Tribunal since they both witnessed the trespass. Further that, the 1st respondent had sold the suit land to the 2nd respondent, but the transfer was not completed. He had the view that that explains why the necessary documents were still in the 1st respondent's name. with regard to the joint filing of the suit between the respondents, he considered that having no prejudice to the appellant in accessing his rights. Referring to paragraph 7 of the application, he averred that the prayers were clearly stated to the effect that the 2nd respondent be declared the rightful owner of the suit land.

As to the 2nd ground, he averred that visiting the *locus in quo* is within the court's discretion. In support of that stance, he referred the case of **Nizar M. H vs. Gulamali Fazal Janmohamed** [1980] TLR 29. He supported the Tribunal's act of not visiting the *locus in quo* arguing that there was no dispute as to the location of the suit land. He contended that the location of the suit land was well described under paragraph 3 of the amended application and the appellant had not disputed the description. With regard to the contention pertaining the fence, he had the stance that there was no conflict on the subject.

Submitting on the 3rd ground, he contended that the trial Tribunal properly evaluated the evidence before it. That, there were no contradictions on the evidence of the respondents as the pleadings do not show that the suit land was purchased in 2014. That, the "later on" mentioned in the application did not mean that the land was bought after 2014 and that is why there was evidence adduced showing that the suit land was sold in 1997 while the seller was allocated land in 1991.

Concerning the argument that the 1st respondent stayed in the suit land for 25 years while he was allocated the same in 1991, Mr. Shayo contended that the 1st respondent lived in the suit land and applied to be allocated the same formally, though the letter requesting the land to be surveyed was never tendered. He argued further that the respondents never lied before the trial Tribunal when they testified that the allocation was done in 1991 and transfer to the 2nd respondent was made in 1997. As to whether both built a fence, he had the view that the same is possible as one could have demolished and the other rebuilt the same.

Replying to the 4th ground, Mr. Shayo insisted that the issues were framed and the appellant was not prejudiced by the framed issues. He contended that the first issue did not prejudice the appellant since it was for the respondents to prove their claims. As to the 2nd issue, he averred that the parties were to furnish evidence to prove or disprove whether the appellant was a trespasser. In that respect he had the firm view that the issues reflected the case of both

parties. He added that the appellant never prayed to be declared the owner of the suit land, but for the application to be dismissed.

On the 5th ground, Mr. Shayo contended that the trial Tribunal was correct in declaring the 2nd respondent the owner of the suit land because it was clear that the 1st respondent had sold the suit land to the 2nd respondent. Referring to paragraph 6 (a) (iv) of the Application before the Tribunal, he argued further that the respondents agreed to cooperate to end the dispute and complete the transfer. That, also under paragraph 7 (a) of the Application, the respondents prayed for the Tribunal to announce the 2nd respondent as the rightful owner of the suit land.

With regard to the cases referred to by Mr. Kamani, Mr. Shayo found the circumstances in those cases distinguishable from the ones in the case at hand. explaining further, he argued that in the case at hand, the respondents prayed for the 2nd respondent to be declared the rightful owner of the suit land. Concerning the transfer being incomplete, he maintained that the right of the 2nd respondent remained intact as processes to complete the transfer were still in progress rendering it rightful for the 2nd respondent being declared the rightful owner.

Mr. Shayo finalized his submissions by praying for this court to uphold the decision of the trial Tribunal as no miscarriage of justice was occasioned. He supported his prayer with **section 45 of the Land**

Disputes Courts Act [Cap 216 RE 2019] and asked for the appeal to be dismissed with costs.

Rejoining, Mr. Kamani started with the 5th ground whereby he reiterated his submission in chief. He averred that the trial Tribunal erred in relying on an inoperative agreement by declaring the 2nd respondent the rightful owner.

As to the 4th ground, he averred that the Tribunal's act of not wanting to address the appellant's ownership, prejudiced the appellant. That, by not considering his ownership in framing the issues, the trial chairperson clearly never wanted to address the same. On the 3rd ground, he reiterated his argument that the evidence of the respondents was false.

Rejoining on the 2nd ground, he averred that the court in **Nizar** (supra) insisted that the visit to the *locus in quo* should be done where there is necessity and also provided for the procedures to be observed. He insisted that due to the conflicting evidence there was need to visit the *locus in quo*. That, the suit land known to the appellant on which he agreed to its description in his Written Statement of Defence was different from the one the parties talked of during their testimonies, hence the visit was necessary.

Finally, on the 1st ground, he maintained that the 1st respondent had no interest in the suit land as he had sold the same and thus had no *locus standi*. He added that considering that the sale was also not

operative, the 2nd respondent also lacked *locus standi*. He reiterated his prayer asking the court to quash the proceedings of the trial Tribunal and order a retrial. He further challenged the application of **section 45 of the Land Disputes Courts Act** averring that the same was inapplicable in the circumstances in the case at hand due to the shortcomings in the proceedings and the resultant decision which led to miscarriage of justice.

I have considered the grounds of appeal and the rival submissions of both parties as well as gone through the trial Tribunal record. The appellant has challenged the decision of the trial Tribunal on five grounds. Noting that the 3rd ground addresses an issue of evaluation of evidence, I prefer to firstly briefly summarize the evidence on record and thereafter address each of the grounds of appeal.

To prove their claims before the trial Tribunal, the 1st and 2nd respondents stood for their case giving their evidence as SM1 and SM2, respectively. They did not call any other witnesses. The 1st respondent testified that he sold the suit land to the 2nd respondent in 1997 for T.shs. 900,000/= vide a written contract which was admitted as Exhibit P1. That, he was issued a letter of offer which was admitted as Exhibit P2 and afterwards he paid land rent over the suit land. He presented some of the land rent receipts which were admitted as exhibit P3. He said that he also obtained a certificate of Right of Occupancy which was admitted as exhibit P4. Speaking about developments on the suit land, he claimed to

have developed the suit land by unloading 15 trucks of sand and 10 trucks of stones in 1991. He further claimed that the building materials stayed on the suit land until when he sold the same to the 2nd respondent. That, in 2014, the appellant trespassed the suit land and he reported the matter to the land office following a request from the 2nd respondent who had purchased the suit land from him, but the titles were still registered in his name.

The appellant was called to the land office and it was resolved vide a letter that he should no longer trespass the suit land. The letter was admitted as exhibit P5. The appellant however did not vacate the suit land. He instead continued developing the suit land and therein constructed a three roomed house in 2016.

SM2 testified that he purchased the suit land from the 1st respondent in 1997 for T.shs. 900,000/= as witnesses by Exhibit P1. That, thereafter he fenced the land and put a gate. While in process of developing the land, in 2014, he found the suit land was trespassed whereby a three roomed house had been constructed in the land. He asked the 1st respondent to inquire on the same. They both went to the land officer at Bomang'ombe to inquire. Later, accompanied by the land officer, they went to the suit land and inquired as to who constructed the building. They found out it was the appellant. Then the appellant was called to the land office for amicable settlement. That, when he came into the office, he had no any documentation. It was thus decided that he was a trespasser and required to vacate the suit land or since he had constructed the

house in the suit land, he could give another land to them. That, he was also told that if he shall fail to do either of the two options, he should demolish his house. The orders were given through a letter, exhibit P5.

The appellant testified that his mother was allocated 10 acres of land on 18.10.1976 by Bomang'ombe village in writing. The writing was admitted as exhibit D1. He said that the allocation was issued following her request for an area to live and farm. That they built a house in the area and planted trees. That, in 1984, the area was surveyed and many plots were made therein, including the suit land. He added that in 1998, they filed a suit in the High Court whereby he was handed the suit land and other plots, the judgement to that effect was admitted as exhibit D2.

The appellant further testified that on 02.04.2019, the 1st respondent issued him a letter requiring him to demolish the house he had built and lived in which also had 25 trucks of black sand, 5 trucks of red sand, 15 trucks of stones and 30 trees. Upon receiving the said letter, he went to the District Commissioner who took him to the District Council solicitor. The solicitor replied to the said letter vide a letter issued on 23.04.2019. That, the said letter verified that he was in the land following the judgement of the High Court. The letter was admitted for identification purposes and marked ID1. He claimed that the said letter was never replied, but he was instead sued. He further tendered the letters from the office of the Prime Minister, Regional Commissioner and District Commissioner, respectively,

which acknowledged that they were the owners of the suit land. The letters were collectively admitted as exhibit D3.

I now turn to the grounds of appeal. On the 1st ground, the appellant faults the trial court for not finding that the 2nd respondent had no locus standi on the suit. Foremost, I wish to note that *locus standi* refers to the presence of an interest in the subject matter. The concept was well explained in the case of **Omary Yusuph vs. Albert Munuo** (Civil Appeal 12 of 2018) [2021] TZCA 605 TANZLII, whereby the Court of Appeal stated:

> "We are aware that *locus standi* is all about directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted which among the initial matter to be established in a litigation matter. That said, it is a settled principle of law that for a person to institute a suit he/she must have *locus standi*…"

As drawn from their evidence, as well as the application filed before the trial Tribunal, the respondents' relationship is that of a vendor and purchaser that seems to have been established sometime in 1997. This is well evidenced by Exhibit P1, the sale agreement executed on 14.04.1997. Due to reasons not clearly disclosed at the trial Tribunal, it seems the title was never fully transferred to the 2nd respondent causing the 2nd respondent to lack the necessary documentation to prove his ownership other than Exhibit P1. Given the situation, the 2nd respondent's right could not

be established without the 1st respondent being joined to explain the situation.

In my view, disposition of land/conveyance in a registered land, is a process involving several stages. Signing of a sale agreement and payment of the purchase price is part of the stages. In my view, the purchaser develops interest in the land once he/she has paid the purchase price. Though in law transfer of a right of occupancy is completed with an entry of the purchaser into the land register/certificate of occupancy, I am of the considered view that if that stage is not yet reached, the purchaser, in the process, does not lose his/her interest over the land vis a vis third parties. Given the situation that the certificate of occupancy was still in the name of the 1st respondent, who did not dispute having sold the land to the 2nd respondent, I find the question of *locus standi* of the 2nd respondent misplaced. The ground is therefore dismissed.

Mr. Kamani contended that the presence of the two respondents prejudiced the appellant as he had no idea what interest each of them had in the suit land. With due respect, I do not subscribe to his contention. In the application, the respondents explained their interest in the suit land and the appellant was capable of defending by filing his written statement of defence.

In addition, the record, does not show him complaining before the trial Tribunal that he was confused as to the interest of the respondents in the case. This claim, in my view, presents a new issue

of fact. Raising the issue at this stage is therefore inappropriate as the law prohibits new issues at the appellate stage. There is a plethora of decisions from the Court of Appeal and this Court on this aspect. See: **Leopold Mutembei vs. Principle Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development & Attorney General** (Civil Appeal No. 57 of 2017) [2018] TZCA 213 TANZLII; and **Hotel Traveltine Limited & 2 Others vs. National Bank of Commerce Limited** [2006] TLR 133. In the premises, the ground of appeal is hereby dismissed.

As to the 2nd ground, he faulted the trial Tribunal for failure to visit the *locus in quo*. Foremost, as agreed by both parties, visiting the *locus in quo* is not a mandatory requirement. This was well stated in **Nizar M. H Ladak vs. Gulamali Fazal Janmohamed** (supra) whereby the Court of Appeal reasoned:

> *"According to this decision, a visit of the locus in quo is not mandatory, and it is done only in exceptional circumstances.*

In **Sikuzani Saidi Magambo & Another vs. Mohamed Roble** Civil Appeal No. 197 of 2018) [2019] TZCA 322 TANZLII, the Court of Appeal further elaborated that:

> "As for the first issue, we need to start by stating that, we are mindful of the fact that there is no law which forcefully and mandatory requires the court or tribunal to conduct a visit at the *locus in quo*, as the same is done at the

> discretion of the court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during trial."

Noting that visiting the *locus in quo* is not mandatory and the same is only done in necessary circumstances, I visited the records to see whether the allegations by Mr. Kamani, as to there being controversies on the suit land were sufficient to warrant the visit of the *locus in quo*.

The first argument was that the appellant stated that there was an old house built in 1982, while the respondents stated that there was a new house built in 2014. In the amended application the respondents disclosed that the appellant started construction in the suit land after trespassing the same in 2014. This is found in paragraph 6 (a) (iii) which is quoted hereunder:

> "That, without any colour of right the respondent trespassed into the suit land on (sic) March, 2014 and started to build a house thereon claiming to be the rightful owner of the disputed land"

The 1st respondent also testified during his cross examination by the appellant that the construction on the suit land commenced in 2016 while the trespass was made in 2014. The 2nd respondent testified that he found the house built in 2014 thus showing the house was somewhat new.

On the other hand, contrary to arguments by Mr. Kamani, there is nowhere on record, either in the appellant's written statement of defence or his evidence where he disclosed that there was an old house in the suit land. Rather he stated that his late mother one, Elinipa, had built a house in 10 acres of land handed to her by Bomang'ombe village in 1976. As to the suit land, he only disclosed being served with a letter from the 1st respondent in 2019 requiring him to demolish the house he had built. He stated:

> "Mnamo Tarehe 2/04/2019 bwana Willy Mauki (mleta Maombi 1) alileta barua ya mimi kwenda kubomoa nyumba niloyokuwa nikiishi…"

Mr. Kamani further argued that while the appellant averred that the house was fenced with thorn trees while the respondents stated that the house was fenced with stones and blocks fence. Going through the record, I have found that the 1st respondent in cross examination clearly stated that he did not fence the area although in the application it is stated the 1st applicant built a fence. The 2nd respondent stated that the suit land had thorn trees and Bougainville, which he planted. The appellant, on the other hand, never gave any detail as to there being a thorn fence or a wall. In the premises, in my considered view, there was thus no dispute as to the fence on the suit land necessitating ascertainment by visiting the *locus in quo*.

There was in fact no conflict pertaining boundaries. From the pleadings to the testimonies adduced before the trial Tribunal, the parties only made reference to the suit land alone, each attempting to prove its claims. In further observation of the record, the appellant's claim was backed by Exhibit D1, a letter from Bomang'ombe village which granted one Elinipa Makileo 10 acres of land whose boundaries had not been disclosed; Exhibit D2 which was the judgment of this court in Criminal Appeal No. 110 of 1998 pertaining a criminal trespass charge against one Elinipa Makileo over Plot No. 64 Block C located at Bomang'ombe in which her conviction by Hai District Court was quashed and the order to vacate the suit land set aside on the reason that she had a *bonafide* claim of right. Exhibit D3 included; a 1998 letter to the District Commissioner from the office of the Prime Minister requiring the Commissioner to resolve the problem pertaining the 10 acres of land; a 1999 letter to the District Commissioner from the Regional Commissioner requiring the matter to be resolved and; a 2001 letter referring one Elinipa to the Land Development officer of Hai District Council pertaining the alleged demand over the 10 acres of land.

From the face of such evidence by the appellant, clearly there was no need to visit the *locus in quo* because his evidence could hardly prove his claim that the suit land is part of the 10 acres of land which belonged to the late Elinipa and whether having being registered, he was the rightful owner of the same as he claimed. I thus dismiss this ground.

Concerning the 3rd ground, Mr. Kamani argued that the trial chairperson failed to properly evaluate the evidence on record., Being the first appellate court, I shall examine the evidence and address his concerns in view of the Tribunal record.

His first concern was that there was variance on the year the suit land was sold. He claimed that at paragraph 6 (a) (iv) of the Application, the respondents claimed that the suit land was invaded in 2014 and sold in 2014 while in testimony they stated that the suit land was sold in 1997. I have however noted in the record that in the application, at paragraph 6 (a) (iv), the respondents did not specifically state the year the suit land was sold. However, the paragraph contained a statement that somehow indicate that there had been a dispute over the suit land. The paragraph states:

> "That later the 2nd applicant purchased the suit land from the 1st applicant with an agreement that the first applicant will show cooperation and make sure that the dispute on the suit land is well settled and after that will finalize transfer process of suit land"

Even in the respondents' testimonies, there is no evidence on the suit land being sold or purchased between the appellants in 2014. The evidence of both the 1st and 2nd respondents was to the effect that the suit land was sold in 1997.

Mr. Kamani's other concern was that the 1st respondent averred that he lived in the suit land for 25 years since 1991, but later stated that he sold the suit land in 1997. I in fact find Mr. Kamani's argument misleading to the court. This is because neither of the parties disclosed that they lived in the suit land. In the Application it is averred that the 1st respondent made exhaustive improvements and was enjoying the same without disturbance. This is found at paragraph 6 (ii) of the amended Application which states:

> "That, the 1st Applicant made an exhaustive improvement on the said plot by placing very heavy building materials that is 15 trucks of sand and 10 trucks of stones and so he built a fence therein and he was enjoying without any disturbances for over twenty-five years (25) since 1991 and No one has ever raised a demand on disrupting his ownership all those years"

As seen above, the cited paragraph cannot on the face of it be interpreted to mean that the 1st respondent lived in the suit land for 25 years. This is despite the fact that the statement showing that he enjoyed the suit land since 1991 while also stated to have sold the same to the 2nd respondent in 1997.

On the 4th ground, Mr. Kamani claimed that the issues drafted were in favour of the respondents. The record shows three issues that were framed. The same can be translated as follows:

1. Whether the 1st respondent was the rightful owner of the suit land and he transferred the same.
2. Whether the appellant is a trespasser.
3. To what reliefs are the parties entitled to.

On the face of it, it may appear that the trial chairperson gave huge focus on the respondents' claim and this is greatly because of the wording of the issues. However, it is obvious that the answer to the 1st and 2nd issues would end up determining the rightful owner of the suit land. This is because, if the answer on whether the 1st respondent is a rightful owner is in the negative, that would mean he failed to prove his ownership thereby not disturbing the appellant's possession over the land. On the other hand, if the answer to the second issue is in the negative it would mean that the appellant was the rightful owner. I therefore do not find in any way that the issues framed favoured the respondents' case. This ground is also without merit.

As to the 5th ground, the appellant finds the Tribunal erred in declaring the 2nd respondent the rightful owner of the suit land. Undoubtedly, it is well settled that disposition of a right of occupancy can only be operative if it is in writing and is approved by the paramount landlord, who in our case, is the President. In **Registered Trustees of Holy Spirit Sisters Tanzania vs. January Kamili Shayo and 136 Others** (supra) the Court observed:

> "There is, in this regard, a long line of authority to the effect that an oral and unapproved

> agreement for the disposition of land held under a Right of Occupancy such as the one relied upon by the respondents, is in operative and of no effect."

As to what amounts to "a contract made contrary to the requirements being inoperative," the Court of Appeal in **Abualy Alibhai Azizi vs. Bhatia Brothers Ltd.** [2000] T.LR. 288 explained that an agreement that does not comply with necessary prerequisite to inform the paramount landlord is valid but unenforceable. The Court stated:

> "Logically, it means at least that the contract in question is valid. According to Mr. Chandoo, such contract has all the attributes of a valid contract. That submission is consistent with the doctrine or principle of sanctity of contract… It is our considered opinion that a contract falling within the scope of regulation 3 has all the attributes of a valid contract, except those, of which performance before the requisite consent is sought and obtained, is prejudicial to the interests of the paramount landlord. Such are, for example, terms of which performance has the effect of replacing the holder of a right of occupancy with another person without the consent of the paramount landlord. Such terms, though valid, are unenforceable on the grounds of public policy, which protects the interests of the paramount landlord. In our considered opinion, this unenforceability of a valid contract is what is meant by the expression "shall be inoperative"…"

However, this reasoning has no room in this matter. The 1st and 2nd respondents are not at issue as to who between them is the rightful owner of the suit land. Even if it is questioned as to why the process of transferring the suit land had not been completed since 1997; here we have the actual landowner and the purchaser admitting that the transfer was never completed, but the suit was nevertheless sold. There is thus no conflict warranting the application of such stern rules of transfer where there is no dispute pertaining the initiation of a transfer. This ground therefore lacks merit.

Having disarmed all the grounds of appeal, I hold the view that the evidence on record clearly proved that the 1st respondent was the owner of the suit land and he sold the same to the 2nd respondent. The appellant clearly failed to prove his ownership which was based on his mother having been granted the same in 1976 and that he distributed the same to each child, there is no proof of such transfer being made to him specifically and when the same was made. No proof again as to the suit land being part of the 10 acres of land and being specifically allocated to him/his mother as alleged. Upon observing Exhibit P5, it seems the office of the District Commissioner well expounded on the matter to the effect that the appellant's family had been allocated plots 8 and 9 but still sought to claim other plots.

This together with his evidence before the Tribunal which seemed to refer wither wholly to the 10 acres of land given to his mother or Plot 64 Block "C", clearly indicates that he failed to establish his

connection to the suit land. It is trite law as stated in **Hemedi Said vs. Mohamed Mbilu** [1984] T.L.R 113 that he who has the heaviest evidence should win. In this case, the respondents' evidence was heavier and they justly won before the trial Tribunal. In the premises, I uphold the decision of the trial Tribunal. The appeal is dismissed, with costs.

Dated and delivered on this 07th day of December, 2023.

X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA