IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

LAND APPEAL NO. 46 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Dodoma in Land Application No. 221 of 2019, Hon O.Y. Mbega, Chairman)

THE REGISTERED TRUSTEES OF DIOCESE

OF CENTRAL TANGANYIKA.....APPELLANT

VERSUS

MOSES PANDAKILIMA (Suing as a Guardian

of SALMA ANDAKILIMA..... RESPONDENT

JUDGMENT

Date of last Order: 14/05/2024

Date of the Judgment: 03/06/2024

LONGOPA, J.:

The appeal relates to a dispute over land ownership of Plot No. 9 Block No. 6 Madukani Area/ Barabara ya 8 within Dodoma Municipality. The respondent vide a Land Application No. 221 of 2019 instituted a claim against the appellant for order that (a) the respondent be declared as the legal owner of the disputed land situated and located at Plot No. 9 Block "6" Barabara ya 8 within Dodoma City; (b) an order of enforcement of contract by appellant to hand over the title deed to the respondent;(c) payment of the general damages as assessed by the Tribunal; and (d) costs of the application.

The basis of these claims by the respondent is that in 2004, the appellant and respondent entered into agreement for sale of the disputed land for Tanzanian Shillings seven million two hundred thousand (TZS 7,200,000/=). That sometimes in November 2007, the appellant and respondent executed a transfer deed with a promise from the appellant to hand over all necessary documents including the title deed of the said piece of land. On that promise, the respondent obtained authorizations to develop the land from the Capital Development Authority (CDA) and that appellant failed to honour the promise despite several follow ups and numerous verbal demands from the respondent. It is alleged that this unwarranted refusal of the appellant to hand over the title deed that made the respondent to seek the District Land and Housing Tribunal's assistance for a declaration of ownership and seek an enforcement order of the contract to compel the appellant to perform the obligation, specifically, handover of the title deed.

On 03/03/2023, the District Land and Housing Tribunal for Dodoma (O.Y. Mbega, Charman) entered a judgment and decree in favour of the respondent to the effect that the respondent was declared as the lawful owner of the suit premise located at Plot No. 9 Block 6 Barabara ya Nane and that the appellant should hand over the title deed to the respondent for his necessary actions.

The appellant was dissatisfied with the whole of the decision thus preferred this appeal against the decision on the following fifteen grounds, namely:

1. That the trial Tribunal Chairman erred in law and in fact by holding that the respondent is the lawful owner of the disputed property without adducing strong evidence such as Sale Agreement. The trial tribunal ought to hold that in absence of land sale agreement then the respondent cannot be lawful owner of the disputed premises.

2. That the trial tribunal erred in law by holding that members of the appellant sold the disputed property. The trial tribunal ought to hold that in absence of the consent from RITA for disposition then there was no sale of the disputed property.

3. That the trial tribunal erred in law and in fact by holding that "Baba Askofu" participated in Agreement to sale the suit premises.

4. That the trial tribunal erred in law and in fact by holding that Exhibit A.E.- 1 is a Sale Agreement. The trial tribunal ought to hold that Exhibit A.E. 1 is a deed of transfer having no sale agreement.

5. That the trial tribunal erred in law and in fact by holding that the appellant was keeping quite and never take (sic) any action until sued. The trial tribunal ought to hold that the appellant took steps including lodging a Land Case No. 7 of 2019 filed at the High Court of Tanzania at Dodoma.

6. That the trial tribunal erred in law and in fact by holding that the respondent was in occupation of the suit premises for 15 years undisturbed.

7. That the trial tribunal erred in law and in fact by holding that the appellant failed to take action against its members who participated in the sale transaction and hence waived its interests in the suit premises.

8. That the trial honourable Chairman erred in law and in fact by failure to observe weak evidence of the respondent who never tendered any document and that DW 2 was his blood brother.

9. That the trial honourable Chairman erred in law and in fact by not taking into consideration the legality and weighty of evidence of the appellant.

10. That trial honourable Chairman erred in law by holding that there was lawful disposition.

11. That the trial honourable Chairman erred in law and fact by holding that in failure to give judgment according to the parties pleadings and evidence.

12. That the trial honourable Chairman erred in law and fact by failure to give reasons for complying with the opinion of the prudent assessor who said according to the evidence appellant is the lawful owner of the disputed land.

13. That the trail tribunal erred in law by failure to take into account the final written submission and supporting authorities in composing the judgment.

14. That the trial tribunal erred in law and in fact by failure to call court witnesses from RITA to assist the tribunal on procedure for disposition of Trust properties.

15. That the trial tribunal erred in law and in fact by failure to keep records of the proceedings as AW III George Sauli Chomola is no longer a Priest of the Appellant; and records of the two assessors.

The hearing of the appeal was done on 16/04/2024, and 14/05/2024. The appellant enjoyed the legal services of Mr. Ally Nkhangaa and Mr. Allen Mtetemela, learned advocates while the respondent enjoyed the legal services of Mr. Godfrey Wasonga, learned advocate.

On the hearing date the appellant abandoned a total of eight grounds of appeal namely 2, 8, 9, 11,12,13,14 and 15. The remaining grounds were argued in sets whereas the 1st and 4th grounds were argued jointly as for the 5th to 7th grounds while ground 3 and 10 were argued separately.

On the 1st and 4th grounds, it was submitted that the decision of the Tribunal was based on existence of sale agreement between the respondent and the appellant. It was appellant's view that evidence on record does not show the existence of sale agreement. First, sale agreement is nowhere to be found in the proceedings. What is on record is a Deed of Transfer (Hati ya Kuhamisha Umiliki) that was tendered as Exhibit AE-1. Second, that Exhibit had several legal issues on validity.

Regarding 3rd ground, it was argued there was no evidence whatsoever to justify that the Diocese of Central Tanganyika (DCT)'s Bishop participated in the sale agreement. The decision of the Tribunal was erroneous to hold on page 5 of the decision of the Tribunal that Baba Askofu (Reverend Bishop) participated in the sale of the suit premises. There is no such evidence on record. As such that the Tribunal's chairman erred in this decision to grant ownership to the respondent.

In respect of the 5th to 7th grounds, appellant submitted that: First, the Tribunal erred to hold that respondent was in occupation and use of land in dispute for fifteen years undisturbed and that appellant was silent. Some elements of adverse possession were being fronted in page 6 of the Judgment. The same is not correct position of the law as respondent in pleading never pleaded as the adverse possessor of that land or to be declared as the owner for being adverse possessor. It was wrong for the Chairman of the Tribunal to use adverse possession as a ground for holding the respondent as the rightful owners of the disputed land.

Second, it was argued even if adverse possession was the reason, there are explicit legal requirements that were not adhered to namely Section 72(1) to (5) of the Land Registration Act, Cap 334 R.E. 2022. These conditions include that there must be a requirement to apply to the Registrar of Titles for registration of his interests. There must be application to the Registrar of Titles, and it must be considered whether to register the applicant as adverse possessor or otherwise. It was appellant version of argument that the Court/ Tribunal has no powers to declare that

one is adverse possessor without that person applying to the Registrar of Titles.

On the 10th ground relating to existence of lawful disposition, it was submitted that: First, the land is registered in the name of the Registered Trustees of the Diocese of Central Tanganyika. Second, respondent's ownership is traced on so called purchase agreement which is Exhibit A.E. 1 titled Deed of transfer signed on 23/11 /2007. Third, Section 8(1) (a) of the Trustees Incorporation Act, Cap 318 R.E. 2022 requires common seal of the registered board of trustees to be there and applied in sealing the deed or agreement. Also, section 12 of the same Act explicitly provides that all deeds and contracts to be sealed upon execution by the common seal of that registered body of trustees. These two provisions are mandatory in nature and the requirement of having a common seal that can be affixed to contracts/agreements for validity of the same.

Fourth, it was reiterated that Exhibit AE 1 does not contain affixation of any common seal of the Registered Board of Trustees of the appellant except the stamp of an advocate witnessing the deed of transfer. It was argued that the deed of transfer was executed against the law.

Fifth, the issue of common seal is also a requirement under sections 92(b) and 93(b) of the Land Registration Act, Cap 334 R.E. 2022 in attesting documents of a corporation.

Sixth, in the Exhibit A.E. 1 which is the Deed of Transfer was signed by one George Chomola, applicant/ respondent PW 3 (AW III) on behalf of the Registered Trustees of the Diocese of Central Tanganyika in 2007. It is PW 3' evidence that he has been a member of Board of Trustees for DCT

from 2006 to 2006. In 2007, he was not a member of the Registered Trustees thus any signing of deed of transfer was a nullity.

Seventh, pleadings are contradicting the decision of the Tribunal. The cause of action under Paragraphs 6(iii), (iv), and (v) of the Application was to enforce the sale agreement on the disputed land by requesting the order of specific performance to hand over title over the land. It was reiterated that until the date of determination of the matter the registered owner is the appellant.

Eighth, it was argued that there could not be lawful disposition as there was completely neglected to adhere to the mandatory requirements set out in the law by sections 37-40 of the Land Act, Cap 113 R.E. 2022. It was thus a serious error on the part of the Tribunal to hold that the respondent was a lawful owner. At this juncture, the appellant prayed that this court be pleased to quash the judgment and set aside the decree of the District Land and Housing Tribunal for Dodoma and allow the appeal with costs.

On the other hand, the respondent commenced by reiterating that all the grounds are not merited, thus urged this Court to dismiss all the grounds in their totality with costs.

Regarding the 1st and 4th grounds of appeal, it was submitted there existed a valid sale agreement. First, Exhibit AE 1 was a proof that there existed agreement for sale of the disputed land between the appellant and respondent. Second, Exhibit AE 2 is a receipt Acknowledging payment from the respondent to the appellant. The totality of contents of all Exhibit AE-

1, AE 2, AE 3, AE 4 and AE 5 reveal existence of the agreement to sell the said plot of land. The appellant argued incorrectly that in absence of the sale agreement there is no disposition of that piece of land. Third, there is no dispute that sale was made in year 2004 as demonstrated by evidence of PW 1 (referred to as AW I) but the agreement was concluded in 2007 as per Exhibit AE-1.

It was reiterated by respondent that there are two stages in the disposition of land. The respondent cited the case of **Phillip Joseph Lukonde v Faraja Ally Said**, Civil Appeal No. 74 of 2019 at page 23 where the first stage is contractual while the second stage is formal preparation of documents. The third stage is change of name. The sections of the Land Act cited apply to disposition and they do not apply to sale of land which is the first stage. The only issue before this Court is the existence of contract which may be oral or written. According to respondent's argument in this case, the contract was written.

It was submitted that Section 2(1)(h) of the Law of Contract Act, Cap 345 R.E. 2019 reveals that an agreement enforceable by law is a contract. According to the respondent, this is the reason the District Land and Housing Tribunal granted the prayers in the Paragraph 6(a)(v) on enforcement to handover the title deed to the respondent. The same is repeated in the reliefs declaration of ownership by the respondent. The second was enforcement of the contract.

Further, it was argued that the Tribunal's Chairman at page 5 stated the issues for determination namely: First, who is rightful owner of the

disputed land. Second, whether there was lawful disposition. Third, what are reliefs the parties are entitled to.

It was reiterated that the appellant misdirected itself by emphasizing the participation of Reverend Bishop (Baba Askofu). The members were PW 2, PW 3 and PW 4 participated. It was the evidence at the Tribunal that Baba Askofu of DCT participated in the agreement to sell but not in the execution of the final document to the respondent.

Regarding existence of Sale Agreement, the respondent argued that there is no standard format of the sale agreement, thus Exhibit A.E. 1 is a Sale Agreement. Also, a common seal had been affixed and exist in the sale agreement (Exhibit AE 1). It was respondent's view that seal does not appear in copies of the documents but clear on original records. Further, Exhibit A.E. 1 was not objected during the trial thus failure to object the admission of the Exhibit A.E. 1 meant that the appellant's counsel agreed to the contents therein.

Regarding trustees of the appellant, it was the respondent's submission that PW 2 stated that he was a Trustee up to 2006 thus he was competent to sign the document in 2007. PW 2 was a Trustee in 2004 when the agreement was made. Exhibit AE 1 reveals that those who executed the documents are Sara Lusinde and Reverend George Chomola (PW 2). Their tenure as Trustees ended up 2006. The purported challenged members of the Board of Trustees were trustees when the agreement was made in 2004. Also, it is submitted that as to who should sign the deed of transfer is a purely internal arrangement of the appellant.

According to respondent, it was the appellant who were required to bring to the trial Tribunal the trustees. Execution of the documents in 2007 was right as those who executed were trustees during the sale. PW 3 (AW III) Reverend Chomola was a Trustee in 1996 to 2006. In 2004, there was an agreement. This person participated and it is revealed at page 21 of the proceedings.

The appellant ought to have cross-examined and challenge the evidence of PW 3 and PW 4 Daudi Tandila former Secretary General 2010 to 2015, who stated that the house was not in the appellant's possession as the same was already sold and disposed. Failure to bring material witnesses by the appellant is the one which failed the appellant's case before the Tribunal. A case **Adam Angetile versus Republic**, Criminal Appeal No. 422 of 2022 had enumerated two principles applicable to the current appeal. First, adverse inference principle has basis on evidence that could be produced by a party, but that party withheld it then adverse inference principle is applied against that person. Second, failure to call material witness attracts adverse inference against that party. There is no reasons for appellant's failure to bring to the tribunal Reverend Bishop of the Diocese of Central Tanganyika as participated in the sale agreement. Further, the appellant failed to bring the list of all the properties of the DCT to the Trial Tribunal. They failed to bring list of Trustees who were there in 2004.

It was respondent's view that evidence of that PW 1 and DW 1 and DW 2 agree that there was agreement in 2004 and the disputed house was handed over in 2004 at its construction stage. Respondent argued that

failure to exhibit the list of Diocese of Central Tanganyika properties by DW 1 confirmed that the disputed property was sold to the respondent hence supported respondent's case.

On adverse possession, the respondent argued that the decision of trial Tribunal was not based on the adverse possession rather it was based on proof of sell as per the Exhibit AE 1 and AE 3. There is no issue of adverse possession at all. It was thus argued that section 72 of the Land Registration Act on title acquired by adverse possession does not apply.

Regarding execution of Sale Agreement, the respondent stated that: First, there exists a seal in the document which is Exhibit AE 1 thus within the ambits of Sections 8 and 12 of the Trustees Incorporation Act. Second, Justice Rwehumbika was advocate of the Diocese of Central Tanganyika thus lawful attorney of the appellant. Third, the persons who signed were members of the Board of Trustees in 2004 when the land was sold. The appellant did not bring any member of the trustees from the Board of Registered Trustees in 2004 to rebut. Fourth, the provisions of sections 38-40 of the Land Act are not applicable to the circumstances. The Tribunal's Chairman categorically stated that the Certificate of Title should be handed over to the respondent to complete the remaining part of disposition and changing the name. In the case of **Kibaigwa Cargo Porters Cooperative Society vs Karibu Finance Ltd**, Civil Appeal No. 242 of 2020 -contracts of previous leaders are binding on successors. In case DCT wanted to challenge the nonexistence of the contract, it could do so through charging the leaders who entered into agreement criminally or through a civil case.

The respondent emphasized that in the case of **Phillipo Joseph Lukonde**, it was stated that absence of Sale Agreement/transfer deed does not nullify the agreement. They are only applicable to change the name. The Court of Appeal ordered the handing over of the title deed. The Court admitted that there was no sale agreement and it ordered disposition of the suit on that ground. At page 20, the Court of Appeal stated that breach of contract should be seriously addressed. Also, in page 22 of the judgment reveals that agreement should be adhered to by the parties.

At the end, it was the respondent's prayer that this appeal deserves to be dismissed with costs thus confirm the judgment of the trial Tribunal as the same was correct and legally sound decision.

In rejoinder, the appellant argued that Exhibits A.E. 1 to A.E. 5 are not sufficient evidence to substantiate existence of the sale as they lack legal back up to prove the existence of the sale agreement.

On timing of the Sale Agreement/disposition, it was submitted that the only available evidence is that all agreements must be documented. There is no tangible evidence that in 2004 there was any agreement to sell the land in question. Record reveals that only in 2007 there was a Sale Agreement /Transfer Deed which is Exhibit A.E. 1. Thus, there is no sale at all.

Also, there are no member DCT Board of Trustees who participated in the processes of sale. There is no single document showing Baba Askofu's participation as allegedly alluded by the respondent and held by the Tribunal. Exhibit AE 1 does not reveal participation of those members of

the registered board of trustees nor signing of the same. It was argued that participation and documentation were sufficient to decide as to who is the rightful owner.

Additionally, the appellant reiterated that case of **Phillipo Lukonde**'s case this Court should note that the contestation in all the grounds of appeal have basis on the aspects applied by the trial Tribunal to declare ownership to the respondent. In the cited case, issues were only two: First, whether disposition was operative; and second, whether there was a binding agreement. These were the issues, there was no issues of ownership in that case.

In the instant case, the alleged agreement has no approval of the Commissioner for Lands thus it is inoperative. The most important point is the validity and bindingness nature of the contract in this case i.e. the Deed of Transfer. The question is whether the Tribunal had powers to order ownership based on that contract.

It is argued that the pleadings in the Tribunal was only on enforcement of the agreement but not on ownership of the land. Paragraph 6(a)(v) and 7(ii) of the Application the prayer was order handover of the title to the respondent. PW 1 only prayed for handover of the title, thus declaring the respondent as lawful owner was overboard. There is nowhere in the proceedings question of ownership was prayed by the respondent. Thus, declaring the respondent lawful owner was erroneous, incorrect and against the law.

It is a further argument of the appellant that Tribunal ought to have decided on the validity of the agreement alone and order the respondent could enforce the terms of the contract and not to grant ownership of the disputed land.

On capacity to sign, it was reiterated that persons allegedly signed Exhibit AE 1 are allegedly include Rev. George Chomola was not a Trustee at the time of signing of Exhibit A.E. 1. The signing is not internal matters. It is a requirement of the law, compliance is a must especially on members who are required to sign for the body corporate and the existence of seal are mandatory.

It was stated that AW 4/PW 4 Secretary General of the Diocese of Central Tanganyika participated in the sell agreement. The persons competent are the trustees not otherwise as the Trustees Incorporation Act. It does not state that Secretary General may participate.

On alleged failure to bring the valid Trustee and reliance of the failure to call material witness draws adverse inference, it was submitted that: First, it was the respondent's obligation to prove the case as it is the one who alleged the existence of the agreement /disposition. It was not the appellant's duty. Second, The Trustees who signed the transfer deed were not valid as they were not Trustees at that time. Third, Justice Ruhumbuka, advocate was not an attorney envisages in the cited provision of the law. The law requires attorney appointed on that behalf. There is no proof of appointment to act on behalf of Trustees and he acted as witness to both alleged Transferor and transferee. Thus, argument that he was appointed attorney is baseless.

The matter before this Court whether the trial District Land and Housing Tribunal for Dodoma was correct to find out that the respondent herein are the lawful owner of Plot 9 Block No. 6 within the Dodoma Municipality, and that appellant should hand over the title deed to the respondent herein for his necessary transfer. In essence, these two aspects are central to the determination of this appeal. Having heard the rival submissions of the parties on the appeal, thoroughly perused the record of the trial Tribunal including the proceedings, judgment and decree, it should be noted that determination shall focus on three broad categories of reasons. First, the existence of valid Sale Agreement thus ownership of the disputed land. Second, inactions of the appellant leading to respondent use of land undisturbed for long time. Third, existence of the valid disposition. The first and third sets of grounds are the one going to the core of the dispute as claims are based on existence of contract.

In resolving the appeal, I am guided by the principles set out by the Court of Appeal in **Amos Njile Lili vs Nyanza Cooperative Union (1994) Ltd & Others** (Civil Appeal No. 126 of 2020) [2024] TZCA 13 (31 January 2024), pages 15-16, where the Court observed that:

> *In our determination of the complaints before us, we shall be guided by the following principles of law. One, is that in civil cases, the burden of proof lies on the person who alleges anything in his favour founded on section 110 of the Evidence Act. Two, is that the burden of proof envisaged above is on the balance of probabilities as stated in various decisions of this Court, including*

Anthony Masanga v. Penina Mama Mgesi and Another, *Civil Appeal No. 118 of 2014 and* ***Hamza Byarumshengo v. Fulgencia Manya and 4 Others,*** *Civil Appeal No. 33 of 2017 (both unreported). Three, under section 10 of the Law of Contract Act, parties are bound by the agreements they freely entered into. The cardinal principle of the law of contract being the sanctity of the contract as expounded in numerous cases including* ***Abualy Alibhai Azizi v. Bhatia Brothers Ltd*** *[2000] T.L.R. 288 and* ***Unilever Tanzania Ltd v. Benedict Mkasa t/a Bema Enterprises,*** *Civil Appeal No. 41 of 2009 (unreported).*

It is so stated that these principles are guidance in the light of this appeal because all the issues revolve around existence and validity of the so-called sale agreement/transfer of right of occupancy dated 23/11/2007.

Trial Tribunal's having declared the respondent as the lawful owner of the disputed property and the parties having addressed the matter at length in this appeal, it pertinent to reiterate the position of the law on the proof of ownership of surveyed and registered land. Section 22(1)(d) of the Land Act, Cap 113 R.E. 2019 provides that "a granted right of occupancy shall be required to be registered under the Land Registration Act, to be valid and, subject to the provisions of that law and this Act, indefeasible."

It is settled law of the land that validity and indefeasibility of the surveyed land lies on its registration process. The person who is registered

as owner of a piece of land is having a valid title over any other person unless the contrary is demonstrated.

The provision of the Land Act requiring the registration of the granted right of occupancy to be valid and indefeasible is reiterated in section 33 of the Land Registration Act, Cap 334 R.E. 2019. It states as follows:

> *33.-(1) The owner of any estate shall, except in case of fraud, hold the same free from all estates and interests whatsoever, other than-*
> *(a) any incumbrance registered or entered in the land register;*
> *(b) the interest of any person in possession of the land whose interest is not registrable under the provisions of this Act;*
> *(c) any rights subsisting under any adverse possession or by reason of any law of prescription;*
> *(d) any public rights of way;*
> *(e) any charge on or over land created by the express provisions of any other law, without reference to registration under this Act, to secure any unpaid rates or other moneys;*
> *(f) any rights conferred on any person under the provisions of the Mining Act, the Petroleum Act, the Forests Act or the Water Resource Management Act (other than easements created or saved under the provisions of the last-mentioned Act); and*

(g) any security over crops registered under the provisions of the Chattels Transfer Act.

Essentially, this provision of the law provides for the paramountcy of the interests of registered owner of the land over any other person's interests. Simply, a registered owner has a superior title over the land except if the other person's ownership falls under the exception to that general rule.

My perusal indicates that the so-called Sale Agreement (Exhibit A.E. 1) purports to have been made under the Registration of Documents Ordinance, Cap 117. Sections 8 and 9 of the Registration of Documents Act 1) state that all non-testamentary documents relating to creation, assignment, limitation or extinction of any right, title or interest is compulsorily registrable. In case of documents affecting interest in land that are not registered such document becomes invalid.

Exhibit A.E. 1 is not exceptional to the legal position expounded above. Whether the document is Sale Agreement or Transfer of Right of Occupancy is compulsorily registrable under the Land Registration Act and the Registration of Documents Act.

The evidence on record indicates that Exhibit A.E. -5 is an extract of a copy of the title deed of Plot No 9 Block 6 indicating that the registered owner is Registered Trustees of the Diocese of Central Tanganyika stating that the deed is held at Diocesan office. The tenure of the certificate of is from 3rd March 1962 to 30th June 1963. The contents therein indicates that the special conditions are that: renewal of the Right of Occupancy on

these terms is conditional on payment of rent, so that if the rent is not paid within 21 days after it is due for payment, the Right of Occupancy may be terminated without notice. If, however, rent is paid promptly, the Right of Occupancy shall be determined only by either party giving the other of them six calendar months' notice in writing expiring at the end of a rental year.

Exhibit DE. 1 is a copy of title deed No 33274-DLR registered on 25th August 2017 in the name of Registered Trustees of Diocese of Central Tanganyika (DCT) for 99 years from first October 1986.

I have carefully reviewed these two documents Exhibit A.E 5 and Exhibit D.E. 1. I shall treat them as "the Old Title" and "New Title". They share a common feature, but they are different. The common feature is that they are registered in the name of "The Registered Trustees of the Diocese of Central Tanganyika."

The main differences between the two documents are that the New Title has different terms and conditions regarding the ownership are different from the Old Title. The New Title is for a term of 99 years from 1st October 1986 while the Old Title was renewable yearly by payment of rent.

In fact, issuance of New Title for 99 years replaced for all purposes and intent the Old Title on the same piece of Land. It is settled law that issuance of New Title did extinguish any claims, rights and interests over the disputed plot in favour of anyone who might be in possession of the Old Title. The legal position is lucidly provided for under section 38(2) of the Land Registration Act, Cap 334 R.E. 2019. The Act states that:

"A new certificate of title issued under the provisions of subsection (1) shall be deemed to replace for all purposes the certificate of title previously issued, and any person discovering the certificate previously issued shall surrender it to the Registrar for cancellation by him."

It is on this legal position that the Court of Appeal in **Melchiades John Mwenda vs Gizelle Mbaga & Others** (Civil Appeal No. 57 of 2018) [2020] TZCA 1856 (13 November 2020), stated that:

In view of the provisions of section 38 reproduced above, we think, when the Registrar of Titles issued a certified Certificate of Title the old original Certificate of Title was no longer valid and, in terms of subsection (2) of the Land Registration Act reproduced above, the second respondent ought to have produced it before the Registrar of Titles for cancellation.

The Exhibit A.E 5 therefore was of no effect whatsoever to support the respondent's case. First, it is an Old Title that in law was replaced effectively on 25th August 2017 by issuance of the New Title. Second, there is no evidence on record of the trial Tribunal to indicate how the same came into possession of the respondent. The main issue was for an order to compel the appellant to hand over the title. Exhibit A.E 5 is copy of Certificate of Title tendered at the trial Tribunal by respondent.

Section 40 of the Land Registration Act, Cap 334 reiterates the evidence of ownership of the registered land. It states that:

40. A certificate of title shall be admissible as evidence of the several matters therein contained.

It is lucid that a certificate of title is the evidence that the person named therein is the rightful owner of the piece of land in question. That is the import of the provision. Therefore, the person in whose name is the title registered is under the law the rightful and lawful owner of the disputed land.

In the case of **Athumani Amiri vs Hamza Amiri & Another** (Civil Appeal 8 of 2020) [2022] TZCA 772 (6 December 2022) (TANZLII), at pages 14-16, where it stated that:

> *It is settled that the certificate of title is conclusive evidence to prove ownership over the land unless proved otherwise. We subscribe to the above view and find that, exhibit P2 is not just proof of the state of ownership over the suit property by the parties herein, but also the evidence confirming the type of their ownership. It is on record that, in determining the dispute between the parties, the trial court properly applied the above position as she correctly observed, at page 253 of the record of appeal, thus: "It is my finding that the Title Deed is conclusive evidence of ownership. See the cases of* ***Namusisi & Others v. Ntabaazi*** *[2006] 1 EA 247 and* ***Mbarak v. Patel & Another*** *[1972] EA 117. A deed of transfer is a document which only prove transfer of title as*

such apportionment of shares or interest owned by each co-owner is supposed to be indicated in the Title Deed. As the Title Deed show that parties are co-owners in equal shares and both parties have signed that document evidencing their consent, then this court concludes that shares contained in the Title Deed that they own equal shares prevails."

That being the case, there is no dispute that at the time of determination of the Land Application No 221 of 2019 the land in question was registered in the name of "The Registered Trustees of the Diocese of Central Tanganyika (DCT)." As per prevailing laws of Tanzania enumerated above and precedents of the superior Court of the land i.e. the Court of Appeal the rightful and lawful owner of the disputed land is the Registered Trustees of the Diocese of Central Tanganyika (DCT).

It was a serious error on part of the trial District Land and Housing Tribunal for Dodoma to declare the respondent as the rightful owner of the disputed property with clear evidence on record that the Certificate of Title is in the name of the Appellant. The decision contravened well established principle on land ownership that ownership of registered land is established by Certificate of Title and not otherwise. It went beyond what was proper for the trial Tribunal in the circumstances. It was supposed to recognise existence of valid sale agreement and order enforcement of the terms of the agreement. That was the only limit in the circumstances for the matter. Anything beyond that would lead to injustice and contravention of the law as demonstrated above. Thus, the first and fourth grounds of appeal are

meticulously correct thus I hereby uphold them for being valid in substance.

The only plausible exception for the trial Tribunal to find out that that respondent is entitled to the disputed land is the so-called sale agreement. The respondent has argued throughout and wishes this Court to believe that there exists a valid sale agreement. It is my considered opinion that to address this issue there are three main aspects to consider. First, what is the nature of document. Second, whether it was subject to registration. Third, if it was a Sale Agreement, is it valid agreement under the law?

The first limb is whether the agreement is a Sale Agreement or Transfer Deed. Once that is resolved, it shall be easy to determine the second aspect relating to registration needs and the third aspect on validity.

The contention is whether Exhibit AE 1 is a Deed of Transfer or Sale Agreement. The appellant throughout argued that this is Deed of Transfer thus there existed no sale agreement. On the other hand, the respondent argued that the document is a Sale Agreement and not a transfer deed as that stage was yet to be reached thus compulsion of the appellant to hand over the certificate of title is intended to facilitate transfer.

In my humble view, sale agreement or transfer deed fall within the term disposition. Section 3 of the Land Act provides for the meaning of term disposition. Accordingly, "disposition" means any sale, exchange, transfer, grant, partition, exchange lease, assignment, surrender, or disclaimer and included the creation of an easement, a usufructuary right or other servitude or any other interest in a right of occupancy or a lease

and any other act by an occupies of a right of occupancy over that right of right of occupancy or under a lease whereby his rights over that right of occupancy or lease are affected and an agreement to undertake any of the dispositions so defined.

That being the case, it appears that all dispositions whether sale agreement or transfer deed are subjected to same legal requirements. Section 36 of the Land Act, Cap 113 R.E. 2019 requires mandatorily that any disposition of right of occupancy should comply with the requirement of the law. One of such basic requirements is the approval of the Commissioner to any disposition of the right of occupancy. Further, the law under sub section (2) states that failure to comply with requirements including that of Commissioner's approval renders the disposition void. Furthermore, provisions of section 37(1) and (5) is categorical that Commissioner for Lands has powers to consider and approve disposition and if there is any disposition that fails to meet this criterion then it should not be operative to dispose that land.

Though the parties have divergent views as to the nature of Exhibit A.E 1 whether it is Sale Agreement or Transfer Deed, it is my settled opinion that the document itself is self-explanatory. The title of Exhibit A.E 1 is Transfer of Sale of an Offer of Right of Occupancy, and the contents therein are lucid. It reveals that:

> *"...In consideration of the sum of Shillings Seven Million and Two Hundred Thousand only, we,* ***THE REGISTERED TRUSTEES OF THE DIOCESE OF CENTRAL TANGANYIKA****, incorporated under the provisions of*

Trustees Incorporation Ordinance, 1956, of Postal Office Box 15, DODOMA, TANZANIA, ***HEREBY TRANSFER*** *to* ***MOSES PANDAKILIMA*** *of Post Office Box Number 133, DODOMA (AS GUARDIAN OF SALMA PANDAKILIMA,(An Infant), the Right of Occupancy registered under the above reference.*

The term used in the document (Exhibit A.E. 1) does not require legal interpretation. It is a Transfer Deed of the Right of Occupancy as reflect in the title and body of the document. It is not Sale Agreement.

The second limb, relate to failure to register the disposition in question. The land in question being surveyed land would entail that every disposition of right of occupancy including sale such disposition must be registered. Registration of disposition is mandatory under section 61 and 62 of the Land Act, Cap 113 R.E. 2019. To illustrate this point, section 62(2) of the Land Act is quoted in verbatim for easy of reference It states that:

(2) ***No instrument effecting any disposition*** *under this Act* ***shall operate to sell or assign a right of occupancy or create, transfer or otherwise affect any right of occupancy,*** *lease or mortgage* ***until it has been registered in accordance with the laws relating to the registration*** *of instruments affecting the land in respect of which the disposition has been made.*

It can be gathered from the above provision of the law that absence of registration of disposition invalidates any attempt to sell, transfer or assignment of the Right of Occupancy. Such incompleteness and ineffectual process does not change the status regarding ownership of land.

It is settled law that registration requirement for disposition, sale of right of occupancy inclusive, is covered in the Land Registration Act, Cap 334 R.E 2019. Section 41 of the Act provides as follows:

> *41.-(1)* ***The disposition of land shall be registered by the Registrar.***
>
> *(2) An applicant for disposition of land shall submit to the Registrar all relevant documents accompanied by a prescribed fee.*
>
> *(3)* ***When so registered, a disposition shall be effectual to create, transfer, vary or extinguish any estate or interest in any registered land.***
>
> *(4) Upon registration, the Registrar shall submit a notice accompanied by the relevant document to the Commissioner for Lands who shall enter in the register particulars relating to such change of ownership.*

As have noted, any disposition whether sale or transfer of the right of occupancy should comply with the legal requirements otherwise such disposition is regarded void and inoperative. Non-registration of the disposition of the right of occupancy makes the whole disposition inoperative.

In the case of **Registered Trustees of Holy Spirit Sisters T. vs January Kamili** (Civil Appeal 193 of 2016) [2018] TZCA 32 (6 August 2018), page 19-20, the Court of Appeal stated that:

> *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 inoperative and of no effect.*** *If we may just cite a few, in* ***Patterson and another v Kanji*** *(1956) E.A.C.A. 106, dealing with a similar regulation, the defunct Court of Appeal for Eastern Africa stated that one cannot seek "to enforce at law which he can only establish by relying on a transaction declared by law to be inoperative".*

Further, in the case of **Idrissa Ramadhani Mbondera vs Allan Mbaruku and Another** (Civil Appeal 176 of 2020) [2023] TZCA 204 (27 April 2023), at page 31, the Court of Appeal reiterated that:

> *Moreover, it is worth noting from the evidence that, the purported sale agreement was not approved by the Commissioner for Lands and, the process of transferring land title as required in terms of section 41 of the Land Registration Act, Chapter 334 of the Revised Laws which is a prerequisite condition for registration of any interest in land and other land transactions was not followed. In the peculiar circumstances of this case which we find rather disquieting, saying, as one might get the feeling, that,*

perhaps the first respondent was completely not aware of all these and other requirements in real property transactions, would be to put it mildly. But all things considered, what is non-fictional, is the fact that, ***the omissions by the first respondent carry dire consequences which he may have to be advised to ultimately endure.***

At this juncture, I am certainly sure that the two aspects have been addressed lucidly that **Exhibit A.E 1** appears to be transfer deed than a Sale Agreement as per its contents. Also, there is non-compliance with the legal requirements on disposition of land as provided for in the Land Act, Cap 113 R.E. 2019 and the Land Registration Act, Cap 334 R.E. 2019 thus making the so-called Sale Agreement null and void. The consequence for non-compliance is to make it illogical for the trial Tribunal to find it as the basis of declaring the respondent as the owner of the disputed land.

For purposes of clarity, we can consider the Exhibit A.E. 1 as a Sale Agreement. This would assist to address the question of validity of the same. According to the respondent, there existed a valid agreement capable of enforcement as the same falls in the first stage of the process of land disposition.

Indeed, this Court is guided by the Court of Appeal directives on existence of the two staged process in the disposition of landed property. The first stage is contractual, and the second stage is actual disposition i.e. change of names. In the case **Philipo Joseph Lukonde vs Faraji Ally**

Saidi (Civil Appeal 74 of 2019) [2020] TZCA 1779 (21 September 2020), pages 20-23, the Court stated that:

> ***We take any such deliberate breach of contracts very seriously. Once parties have duly entered into a contract, they must honour their obligations under that contract.*** *Neither this Court, nor any other court in Tanzania for that matter, should allow deliberate breach of the sanctity of contract...This decision demarcates two distinct stages through which a parcel of registered land passes from a vendor to a purchaser.* ***The first stage is contractual,*** *where parties enter into private agreement over parcel of land earmarked for sale.* ***The second stage is the more formal involving actual transfer and change of ownership.*** *It is in the second stage when consent of the Commissioner for Lands is applied for before new titles change ownerships.*

The respondent's submission is that trial Tribunal was correct legally to declare the respondent as the lawful and rightful owner of disputed plot. According to the respondent, Exhibit AE 1 is a contract of sale of the land that the respondent intended to enforce. The validity of the sale agreement (disposition) which is exhibit AE 1 comes into question. Was the agreement valid and enforceable under the law?

The guidance on the validity of an agreement stems from the provision of section 10 of the Law of Contract Act, Cap 345 R.E. 2019. It provides that:

> *10. All agreements are contracts if they are made by the free consent of **parties competent to contract**, for a lawful consideration and with a lawful object, and **are not hereby expressly declared to be void:***
> *Provided that, nothing herein contained shall affect any law in force, and not hereby expressly repealed or disapplied, by which any contract is required to be made in writing or in electronic form or in the presence of witnesses, or any law relating to the registration of documents **(Emphasis added).***

There are few important aspects to note at this juncture in relation to this provision of the law of contract. First, it provides for elements of valid contract namely (a) free consent (b) competence of the parties (c) presence of lawful consideration (d) lawful object. Second, it requires such agreement should not be declared by the law explicitly to be void. Third, the proviso has effect of not excluding the requirements of other laws relating to registration or those requiring the agreement to be in writing.

The ingredients of a valid contract were fully demonstrated and articulated in the case of **Amos Njile Lili vs Nyanza Cooperative Union (1994) Ltd & Others** (Civil Appeal No. 126 of 2020) [2024] TZCA 13 (31 January 2024), pages 17-18, where the Court of Appeal illustratively held that:

Taking into account the above contending positions, the underlying issue is whether the disputed contract is valid. To determine this, we are guided by the provision of section 10 of the Law of Contract Act which provides:"10. All agreements are contracts if they are made by the free consent of parties competent to contract, fora lawful consideration and with a lawful object; and are not hereby expressly declared to be void: Provided that nothing herein contained shall affect any law in force, and not hereby expressly repealed or disapplied, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents." [emphasis added].

Indeed, section 10 of the Contract Act outlines the fact that free consent of parties competent to contract for a lawful consideration and object are essential components in establishing a valid contract.

I shall hasten to say that if the so-called sale agreement is viewed in light of the disposition under the law relating to disposition of land, then there is no valid contract. This is because it violated the provisions of the sections 36-40 of the Land Act which declare that any disposition agreement in contravention of the requirement for approval of the Commissioner for Lands is inoperative and void.

The second limb of validity can be pegged on the competence of parties to the agreement. It is not disputed that the land in dispute was

and has continued to be in the name of the Registered Trustees of the Diocese of Central Tanganyika. Thus, it is the Registered Trustees who can legally dispose the same. This is in accordance with section 8(1) (a), (b) and (c) of the Trustees Incorporation Act, Cap 318 R.E. 2019. The section in effect provides that once incorporated, the registered trustees shall have a perpetual succession and common seal, capable of suing and being sued, and shall have powers to own, hold and dispose land.

In course of disposition of the properties, land inclusive, the registered trustees, Section 12 (1) of the Act requires that where registered trustees are party to any deed such deed shall be executed by such body under its common seal or by an attorney appointed in that behalf under such common seal.

Exhibit A.E 1 indicates that the same was executed on 23/11/2007 by two persons on behalf of the Registered Trustees of the Diocese of Central Tanganyika, namely Rev. George Sauli Chomola and Sara Lusinde.

Further, it should be noted that the Land Registration Act provides that:

> *92. A deed shall be deemed to have been executed -*
> *(a) if signed and delivered by a natural person;*
> *(b)**if sealed with the common seal of a corporation and delivered;***
> *(c)in the case of a corporation not required by law to have a common seal, **if signed and delivered by such persons as may be authorised** in that behalf by any law or by the statute of the corporation or, **in the absence of any express provision, by two or more persons***

appointed for that purpose by the corporation in the general meeting.

The necessary preconditions under the Land Registration Act where disposition is done by a body corporate like the Registered Trustees of Diocese of Central Tanganyika should met. First, it shall be sealed with the common seal and delivered. Second, it must be signed by two or more persons appointed for that purpose.

It should be noted that signing of the deed is also reiterated in the Land Act as the illustrated by the Court of Appeal in the case of **Nicholaus Mwaipyana vs The Registered Trustees of Little Sisters of Jesus Tanzania** (Civil Appeal No.276 of 2020) [2023] TZCA 17578 (30 August 2023), 16-17, the Court of Appeal stated that:

It was submitted for the appellant that under section 64(1) of the Land Act, the respondent acquisition of title on the suit property in so far as it emanated from a purchase agreement, was only provable upon production of the respective purchase agreement. For clarity, we shall reproduce the relevant provision hereunder: "64(1) A contract for the disposition of a right of occupancy or any derivative right in it or mortgage is enforceable in a proceedings only if (a) the contract is in writing or there is a written memorandum of its terms; (b) ***the contract is in writing or the written memorandum is signed by the party against whom the contract is ought to be enforced****." The above provision, in its clear and*

unambiguous words, does not provide for the way of proving ownership of a landed property but rather, for the manner and conditions under which a contract for purchase of land can be enforced. It would have been relevant perhaps if the respondent had instituted a suit against DW1 for specific performance of the sale agreement or for mandatory injunction compelling DW1 to perform any terms of the contract. It cannot apply in the case at hand where the claim is for vacant possession against a person not privy in the purchase agreement.

The main question at this juncture is whether there was signature to the Deed of Transfer/Sale Agreement at hand. I have stated that one George Sauli Chomola and Sara Job Lusinde are the two persons signed the Deed of Transfer on behalf of the Registered Trustees of the Diocese of Central Tanganyika. The document (Exhibit A.E 1) was signed on 23/11/2007. Pertinently, it is crucial to establish whether the duo were Members of the Registered Trustees of the Diocese of Central Tanganyika (DCT) at the time of signing the so-called Sale Agreement.

The answer is certainly in the negative. A thorough perusal of the evidence on record is to the effect that both George Sauli Chomola and Sara Job Lusinde ended their tenure as Members of the Registered Trustees of the Diocese of Central Tanganyika in year 2006. This was a lucid testimony of AW III (PW 3) one George Sauli Chomola. This testimony is explicit without flicker of doubt that at the time of signing of the Deed of Transfer/ Sale Agreement, the two were not members of

Registered Trustees thus the Registered Trustees of the Diocese of Central Tanganyika was not party to the so-called Sale Agreement as the persons who signed had no capacity to sign on behalf of the Registered Trustees of the Diocese of Central Tanganyika.

Having found that the Registered Trustees of the Diocese of Central Tanganyika were not part of the so-called Sale Agreement, it a settled that such agreement could not be enforced against it. Exceptionally, the situation would be different if the persons who signed the agreement on behalf of the Registered Trustees did so in 2004 when allegedly the sale was done. The successors Registered Trustees of the Diocese of Central Tanganyika who came into power from 2006 todate would be bound by the terms of the agreement as the same would have been entered by persons with capacity. However, the 2007 action of signing does not bind the Registered Trustees of the Diocese of Central Tanganyika as it was signed by persons without capacity thus seriously violating one of the cornerstone ingredients of a valid contract. It is an irregularity that is so fundamental that it goes to the root of the case.

Accordingly, one of the fundamental elements of a valid contract i.e. competence or capacity of the parties is categorically missing in the agreement. Thus, the Deed of Transfer/ Sale Agreement dated 23/11/2007 is null and void for lack of competence of parties to contract on the part of the purported seller. That is the law not otherwise. The trial Tribunal ought to find that Exhibit AE 1 had no probative value in establishing the ownership as it was a nullity. As a result, the finding by the trial Tribunal that there was lawful disposition of the suit premises is misplaced and

erroneously. Thus, the 10th ground of the appeal is valid thus uphold for its merits.

Before I conclude this judgment, I shall shortly demonstrate three aspects touching on the matter. The first one is the line of argument taken by the trial Tribunal's chairman to address the issue of who is the rightful owner of the suit premises. These are possession of receipts by the respondent to prove sale was effected. Second, long term use and undisturbed for the respondent despite the land being closer to the office of the appellant. Third, participation of members of the diocese, among them trustees, secretary of the diocese and even Baba Askofu (as referred to in evidence and submission) in the sale agreement. Fourth, failure to bring material witnesses thus drawing adverse inference against the appellant.

It is a settled law of this jurisdiction that receipts do not establish ownership of landed property. It was the decision of the Court of Appeal in **the Registered Trustees of Joy in The Harvest vs Hamza K. Sungura** (Civil Appeal 149 of 2017) [2021] TZCA 139 (28 April 2021) that receipts are not conclusive evidence of ownership. The Court, at page 12 and 13 stated that:

> *We must pose here and clarify one point, that is receipts that were tendered to show that the respondent was paying land rent in respect of the disputed property, cannot legally be considered conclusive documentary proof vesting title or conferring ownership of the disputed property to the respondent.*

In fact, the emphasis by the respondent that the Transfer Deed dated 23/11/2007 is a Sale Agreement has two effects. First, it makes the receipts dated 2004 not supportive of the transaction concluded in 2007. How could the sale be concluded in 2007 while consideration was paid in 2004. It is a law that past consideration is no consideration unless it is acknowledgement of debt. There is nowhere the appellant acknowledging debt in 2007. Second, having found that there was no valid contract between the parties, the receipt cannot substitute non-existence of the sale agreement.

In respect of the long use of the land by the respondent, it is the settled view of this Court that such action does not prove existence of sale agreement or ownership as the respondent's claim of ownership is not based on adverse possession rather sale agreement. The respondent therefore always knew that originally the land in dispute belonged to the appellant thus it was a serious error on the trial Tribunal to base its decision on who is the owner of the disputed land on long term peaceful enjoyment of the suit premises by the respondent. If the respondent wished to be so recognised there are clear procedures under the Land Registration Act, Cap 334 R.E. 2019 on registration of ownership through adverse possession.

This Court is guide by the decision in the case of **Registered Trustees of Holy Spirit Sisters T. vs January Kamili** (Civil Appeal 193 of 2016) [2018] TZCA 32 (6 August 2018), at pp. 24-25, the Court of Appeal stated that:

In our well-considered opinion, neither can it be lawfully claimed that the respondents' occupation of the suit land amounted to adverse possession. Possession and occupation of land for a considerable period of time do not, in themselves, automatically give rise to a claim of adverse possession. ***It is trite law that a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner or in pursuance of an agreement for sale or lease or otherwise.***

It is obvious that the facts in instant appeal fall in all four corners of this decision as the basis of claim by the respondent is on existence of sale agreement. The insistence by the trial Tribunal on non-disturbances to the respondent throughout the 15 years in law that does not entitle the respondent to be the rightful owner of that land.

On the last limb is who participate in the sale. It was wrong for the trial Tribunal to find out that members of the diocese, among them trustees, secretary of the diocese and Baba Askofu participate in the sale agreement. This was appalling analysis of the available evidence.

It is evident that in so called Sale Agreement, there in nowhere the Reverend Bishop of Diocese of Central Tanganyika appears to have signed. There is nothing on all the tendered exhibits to substantiate that fact. In my perusal, the following aspects are vivid: First, the basis of the claim is the so-called Sale Agreement dated 23/11/20007. Second, that document is signed by two persons namely George Sauli Chomola and Sara Job

Lusinde. I need not to re-emphasize that the tenure of the duo as members of Registered Trustees of DCT ended in 2006. Third, the receipt dated 10/04/2004 is only signed purportedly by one Robert Masimba and the letter purporting acknowledgment of the receipt of the money is signed by Robert Masimba. There is no iota of evidence that Mr. Robert Masimba was a member of the Registered Board of Trustees nor produced any evidence to show that he was once employee of the DCT. Thus, an action of bystander cannot bind the Registered Trustees of the Diocese of Central Tanganyika.

There is nowhere in all the Exhibits tendered by the parties where it is indicated that member of diocese participated in the sale let alone the participation of Reverend Bishop. There was no such evidence. The basis of the claim being an agreement, section 101 of the Evidence Act, Cap 6 R.E. 2019 categorically provides that oral evidence cannot override the documentary evidence on the contents of the document.

In **Charles Richard Kombe t/a Building vs Evarani Mtungi & Others** (Civil Appeal 38 of 2012) [2017] TZCA 153 (8 March 2017) (TANZLII), at pages 10-11, the Court of Appeal instructively held that:

> *Once it is shown as in this case that the contract was reduced into writing then in terms of S. 101 of the Evidence Act, Cap 6 R.E. 2002 (the TEA), a party to such contract is not permitted to adduce oral evidence for the purpose of contradicting, varying, adding or subtracting from its terms. In view of the foregoing, therefore, the 2nd*

respondent is barred from adducing oral evidence for the purpose of subtracting that written contract.

The exhibits tendered in the trial Tribunal were to the effect that persons who participated are Robert Masimba, George Chomola and Sara Job Lusinde. Those are the only ones appearing in the exhibits forming part of documentary evidence on the Sale Agreement. There is nowhere Reverend Bishop of Diocese of Central Tanganyika appears to have participated. Having found that George Sauli Chomola and Sara Job Lusinde were not members of the Registered Trustees of Diocese of Diocese of Central Tanganyika on 23/11/2007 when the sale agreement was executed then it is explicit that the trial tribunal serious erred to so hold.

The fourth aspect is on failure to bring material evidence thus adverse inference against the appellant. This aspect entails the following: First, failure to bring material witness namely Reverend Bishop Chilongani who was allegedly participated in the process of sale. Second, failure to tender a list of registered trustees in 2004 to buttress fact the George Chomola and Sara Job Lusinde were not competent to sign. Third, failure to bring inventory/list of all properties of the Diocese of Central Tanganyika that would have proved that the land in question was disposed off. Fourth, failure to cross examine on PW 3 and PW 4 meant that appellant admitted the testimonies to be the truth.

It is true that failure to call material witnesses have implications on the party who withheld such witnesses. This is also for failure to cross examine a witness. In **Masanyiwa Msolwa vs Republic** (Criminal

Appeal 280 of 2018) [2022] TZCA 456 (21 July 2022) (TANZLII), at page 18, the Court stated that:

> *It is trite law that as a matter of principle, as indicated earlier on, a party who fails to cross examine a witness from the adverse party on a certain matter, is deemed to have accepted that point not cross examined and will be estopped to ask the trial court to disbelieve what the witness said. See,* ***Paul Yusuf Nchia v. National Excutive Secretary, Chama Cha Mapinduzi and Another,*** *Civil Appeal No. 85 of 2005,* ***George Maili Kemboge v. R,*** *Criminal Appeal No. 327 of 2013,* ***Damian Ruhere v. R, Criminal*** *Appeal No. 501 of 2007 and* ***Nyerere Nyague v. R****, Criminal Appeal No. 67 of 2010 (all unreported), just to mention but a few. In other words, failure by the appellant to cross examine PW1 amounted to his admitting the fact that what she testified was indeed true.*

It is my settled opinion that it was the duty of the respondent to prove that he has a good title over disputed land, and that a valid sale agreement exists. Lamenting that the appellant failed to bring material witnesses is an afterthought and would tend to shift the burden of proof to the appellant. Proof of ownership of disputed land is not established merely by tendering an inventory of list of all properties of the DCT rather tangible evidence acceptable under the law. The most applicable evidence of title is the Certificate of Title.

To hold that adverse inference be drawn on the appellant is unacceptable as it would tend to shift the burden of proof to the appellant. At the trial Tribunal, it was the duty of the respondent to prove that disputed land belonged to him as it the respondent who claimed both ownership and existence of valid sale agreement.

It is a settled law under Section 110 of the Evidence Act that whoever desires the court to enter judgment in his favour must prove existence of such facts. It provides that:

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

On these analysed aspects it is the findings of this court that 5th, 6th and 7th grounds of appeal are meritorious thus they are upheld.

The basis of the decision of the trial Tribunal in Land Application No 221 of 2019 was misplaced and in contravention of the well-established legal principles on ownership of land and existence of valid contract. It lacks proper reasoning on each of the most important aspects of the matter before it. That decision deserves nothing other than quashing the whole of the decision and setting aside the decree thereto by this appellate Court.

The Court of Appeal in **M/S. St Anthony Secondary School v. Lukumburu Investment Co. Ltd** (Civil Revision No 388/16 of 2022) [2024] TZCA 123 (23 February 2024) (TANZLII), at page 13 stated illustratively that:

It is observed that the strength of any decision lies on its reasoning. Reason is the soul and spirit of a good judicial decision without it there cannot be any valid decision.

I subscribe fully to this guidance of the Court of Appeal. It is the finding of this Court that based on the available evidence and analysis of the issues as demonstrated above, the appellant is the lawful owner of the dispute premises by virtue of being the registered owners of the land described as Certificate of Title No. 33274-DLR, L.O 356495 for Block 6 Plot No. 9 Madukani Dodoma Municipality registered on 25/08/2017. Also, it is the declaration of this Court that there was no valid Sale Agreement between the appellant and respondent capable of being enforced for lack of competence of the parties and violating the laws governing disposition thus null and void.

Totality of the available evidence is to the effect that the respondent did not manage to prove to the required standard that there was a valid sale agreement between the appellant and respondent capable of enforcement and that it was the respondent who was entitled to the decision of the case. Considering the decision of the Court of Appeal in the case of **Amos Njile Lili vs Nyanza Cooperative Union (1994) Ltd & Others** (**Supra**), the respondent failed to demonstrate to the required standard of balance of probabilities that he is entitled to the decision. It is the respondent who was duty bound to prove as he was the one alleging to be the rightful owner and that there existed a valid sale agreement between the parties.

In the upshot, the appeal has merits, and it is hereby upheld. The judgment of the District Land and Housing Tribunal in Land Application No 221 of 2019 and the decree thereto are set aside. The appellant is declared to be lawful and rightful owner of the disputed land thus the respondent should give vacant possession immediately. Costs shall follow the cause.

It is so ordered.

DATED at **DODOMA** this 3rd day of June 2024

E.E. LONGOPA
JUDGE
03/06/2024