

**IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)**

AT MOROGORO

LAND CASE NO 7 OF 2021

MOHAMED RASHID ABDALLAH.....1ST PLAINTIFF

AHMED RASHID ABDALLAH.....2ND PLAINTIFF

ADNAN RASHID ABDALLAH.....3RD PLAINTIFF

VERSUS

FAHIM NIZAR MUKHI.....1ST DEFENDANT

THABIT YUSUPH PANGA.....2ND DEFENDANT

THE COMMISSIONER FOR LANDS.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

JUDGEMENT

DATE OF JUDGEMENT- 31ST MAY 2024
LATIFA MANSOOR J

The plaintiffs, herein shall be referred to as "the plaintiffs" were enjoying the services of Advocate Derick Vicent, while the 1st defendant's case was proved exparte since he did not enter appearance and did not file any defense, the 2nd defendant died, and Athuman Hussein Omar was appointed the



Administrator of his estate, and he was represented by Advocate S.T Kumwenda. The 3rd and 4th Defendants were represented by the Office of the Solicitor General.

The case of the plaintiffs is as stated in the Amended Plaintiff filed in court on 22 August 2022, in which the plaintiffs sought to be declared the lawful owners and bonafide purchaser of the land known as Plot No. 14, Block D, within Kilosa Road in Ifakara Township contained in the Certificate of Title No. 108592, (the disputed land) issued to Abdulaziz Bandali Abdulla Mukhi on 14th May 1992. Ownership of the disputed land was transferred to Fahim Nizar Mukhi on 13.4.2016 through an entry in the Register of Land. Fahim Nizar Mukhi was endorsed as the owner of the disputed property/land as the Legal Personal Representative of Abdul-Aziz Bandali Abdullah Mukhi who was the deceased. The original Certificate of Title was presented in Court which was received as evidence and marked as Exh P2.

The plaintiffs acquired ownership of the disputed property/land through conveyance as they jointly purchased the property from Fahim Nizar Mukhi on 1st April 2016. Copies of the Sale Agreement dated 1st April 2016 was admitted in Court and marked as Exhibit P1. However, there is no proof provided as to whether there was transfer of title or ownership from Fahim

Nizar Mukhi to the plaintiffs. The plaintiffs aver at paragraph 6 of the Amended Plaint that when they applied for transfer of ownership or title to the suit property before the Commissioner for Lands, the Commissioner neglected or refused to transfer the ownership of title to the plaintiffs. When the plaintiffs inquired as to why the Commissioner for Lands is neglecting to give his consent for transfer of ownership, the plaintiffs were informed by the Ifakara Township Authority that one Thabiti Yusuph Panga claims ownership of the disputed land. Thabiti Yusuph Panga is now the deceased and he is represented by Athumani Hussein Omary as his Legal Personal Representative.

The plaintiffs aver at paragraph 8 of the Amended Plaint that one Melkiad Mmanda, the Authorized Land Officer for Ifakara Township Council has demanded the plaintiffs to surrender the Title Deed for Plot No. 14, Block D, Ifakara Town, for alterations and rectification of the Register of Titles. The plaintiff says they received a letter from the Authorized Land Officer of Ifakara Township, the letter dated 19th April 2021, requesting them to surrender the Title Deed for rectification. Upon receiving the letter from the Authorized Land Officer, they rushed to the High Court in Dar es Salaam where they filed and obtained an order of injunction and maintenance of

status quo. The Order was issued by the High Court, Land Division on 19th April 2021.

The plaintiffs aver at paragraph 10 of the Amended plaint that they cannot make any investments on the suit property as there are delays of transfers of title to their names, the delay which was caused by the defendants jointly and severally, and they are now facing financial storms, and unprecedented loss.

They also aver that they gave the 90 days' notice to sue the Government, and eventually filed a suit in court against the four abovementioned defendants severally and jointly demanding for the following reliefs:

1. The declaration that the plaintiffs are the owners and bona-fide purchasers of the property situate at Plot No. 14, Block D, in Kilosa Road, Ifakara Township, Morogoro;
2. A declaration that Thabit Yusuph Panga, his heirs, administrator or assignees are the trespassers of the suit property;
3. An order against the 3rd and 4th defendants to effect the transfer of the title to the property in the names of the plaintiffs;
4. Payments of general damages as shall be assessed by the court;

5. Costs of the suit;
6. Any other relief as the Court might deem fit and just to grant.

The 3rd and 4th defendants filed their joint written statement of defense. They firstly and foremost disputed the Sale Agreement between the plaintiffs and the 1st defendant, saying it is not a valid sale of the Right of Occupancy as there was no approval of the Commissioner for Lands or any Authorized Land Officer. They also disputed the payments of Capital Gains Tax to Tanzania Revenue Authority saying that there was no proof that the 1st defendant, Mr. Fahim Nizar Mukhi paid the money to TRA out of the purchase price he had received from the plaintiffs as Mr. Fahim Nizar Mukhi never signed any transfer documents and never requested for approval of the Right of Occupancy as required by the provisions of the Land Act. The 3rd and 4th defendants however acknowledged at paragraph 5 of the plaint that it is true that Mr. Thabit Yusuph Panga claims interest in Plot No. 14, Block D, Kilosa Street in Ifakara Township. They also acknowledged at paragraph 7 of the defense that it is true that the Authorized Land Officer Mr. Melkiad Mmanda wrote a letter to the plaintiffs requiring them to surrender the Certificate of Title for Plot No. 14 Block D, Ifakara Township for purposes of rectifying the

Land Register, after he had discovered that there was a mistake in numbering the plots, and that Plot No. 14, Block D, is the plot that was allocated to the Late Thabit Yusuph Panga (now the deceased), and not to Fahim Nizar Mukhi.

The 3rd and 4th defendants state at paragraph 8 of the defense that there was a mistake committed by the office of the Commissioner for Lands in issuing the Certificate of Title to Mr. Fahim Nizar Mukhi as Mr. Mukhi's property is situate on Plot No. 13, Block D, and that the Certificate issued to him indicating that he owns Plot No. 14, Block D was a mistake, and this is why they were recalling for the original Certificate of Title in order to rectify the error. They state and acknowledge that Plot No 14, Block D, Kilosa Street within Ifakara Township is owned by the Late Thabit Yusuph Panga, and that the house of Thabit Yusuph Panga is located on Plot No. 14, while the property of the plaintiffs is located in one part of Plot No. 13, Block D, Kilosa Street, Ifakara.

At paragraph 9 of the written statement of defense by the 3rd and 4th defendants, they urge the court to visit the locus in quo, and the reality will be known, that actually the property of Thabit Yusuph Panga is located on

Plot No 14 while the property of the plaintiffs is located on part of Plot No. 13.

The 3rd and 4th defendants say at paragraph 9 of the defense that they invited Mr. Fahim Nizar Mukhi who was wrongly issued with the Certificate of Title for Plot No 14, Block D, in order to rectify the mistake, but he completely ignored the invitations, and wanted to take advantage of the mistake committed by the Commissioner for Lands to take the property of Mr. Thabit Panga claiming that it is his property.

The 3rd and 4th defendants say that they were never aware that there was a Misc. Land Application No. 205 of 2021 lodged before the High Court, Land Division Dar es Salaam against them, and that there was an order of maintenance of status quo issued, they therefore requested for strictest proof of this fact from the plaintiffs.

The 3rd and 4th defendants deny to have caused any delays in transferring the title to Plot No. 14 to the plaintiffs as that Plot does not belong to the plaintiffs, and never belonged to Mr. Fahim Nizar Mukhi, who is the purported seller but it belongs to Mr. Thabit Yusuph Panga.

The 3rd and 4th defendants prayed for the dismissal of the suit, with costs, they also requested the Court to order the plaintiffs to surrender to the

Commissioner for Lands, the Original Certificate of Title for Plot No. 14, Block D, Ifakara, which was wrongly issued to Mr. Fahim Nizar Mukhi, the 1st defendant herein.

The 2nd defendant, Athuman Hussein Omary, being the Personal Legal Representative of the Late Thabit Yusuph Panga filed a written statement of defense and a counter claim in which he said he is the rightful owner of Plot No. 14, Block D, Ifakara, and that the Title Deed issued to the 1st defendant Mr. Fahim Nizar Mukhi was a mistake. That upon realizing the mistake, the Commissioner for Lands wrote to Mr. Fahim Nizar Mukhi requesting him to surrender the Title Deed for rectification, Mr. Mukhi ignored the request by the Commissioner for Lands, and this is why to date no rectification was done. He also filed a counter claim in which he prayed to be declared the lawful owner of Plot No. 14, Block D, Kilosa Road within Ifakara Township, and that the plaintiffs be declared to be the owners of Plot No. 13 Block D, Kilosa Road, Ifakara Street. He also prayed for general damages. It is on record that, on 12th October, 2022, the counterclaims were struck out following an objection on point of law raised by the plaintiffs on its competence.

After the completion of filing of pleadings, the matter went through mediation, but mediation failed on 18th November, 2021. Following failure to mediate despite the serious efforts taken by the Mediator Judge, the trial began on 14th June 2023 before Honorable Judge Ngwembe. Before Hon Judge Ngwembe parties agreed on the following issues, which were adopted and recorded by the Trial Judge:

1. Who is the rightful owner of the suit land;
2. Whether the suit land has only one plot of land or otherwise;
3. Whether the 3rd defendants refused to transfer ownership of the suit land from the 1st defendant to the plaintiffs;
4. To what reliefs are the parties entitled to.

As stated hereinbefore, trial of the plaintiffs' case commenced before Hon Judge Ngwembe on 14 June 2023. He recorded the evidence of PW1 who was Mohammed Rashid Abdallah, and the evidence of PW2 Ahmed Rashid Abdallah; he also recorded the evidence of PW3, and PW4, Adnani Rashid Abdallah and Benjamin Jonas, respectively. Before Honorable Judge Ngwembe, the plaintiffs closed their case, and so it was marked closed on 9th August 2023. Honorable Judge Ngwembe also recorded the evidence of DW1 Mr. Melkiad Marcel Mmanda on 22 August, 2022, but before he finished

recording the testimonies of the rest of the defendants' witnesses, he was elevated and was appointed the Justice of Appeal. Due to those reasons he could not proceed with the case, and the case file was assigned to Hon Judge Mansoor, who under the powers conferred to court by Order XVIII Rule 10 of the Civil Procedure Code, Cap 33 R: E 2022 decided to deal with evidence recorded by the predecessor Judge as if such evidence was recorder by her, and proceeded to record the evidence of the rest of the defense witnesses from the stage where the predecessor judge left it.

The evidence produced by PW1 was the Sale Agreement which was received in Court and marked as Exhibit P1, and the Certificate of Title for Plot No. 14, Block D, Ifakara which was issued to the 1st defendant, which was received as evidence and marked as Exhibit P2.

Honorable Judge Mansoor recorded the evidence of DW2 one Athumani Hussein Omari, the Personal Legal Representative of the Late Thabit Yusuph Panga, the 2nd defendant's in the suit, who produced the Letters of Administration issued to him by the Court to administer the Estate of the Late Thabit Yusuph Panga, which letters were admitted as Exhibit D1. The 2nd defendant, however, prayed before the Court to recall DW1 Melkiad Marcel Mmanda, he was permitted that he be recalled to tender the

documentary evidence. He tendered the Minutes of the Meeting dated 6th May 2019, this meeting was held at Ifakara between the Land Officer and owners of Plot No 13 and Plot No 14 for implementations of the recommendations made by the Commission composed by the Prime Minister for resolving the dispute on Plot No. 14, Block D, Ifakara. DW1 also tendered a letter from the Municipal Director of Ifakara Township dated 3 March 2017, which was received and marked as Exhibit D3.

That marked the end of the defense case, however, the Court found it necessary to visit the locus in quo, and so on 3rd April 2024, the Court made a visit to the Locus in Quo in Ifakara Township. At the Locus, the Chairman of Ifakara Street Mr. Rahmani Fanga was present. Also present were Noela Paulo Chui, MEO, Omar S Omar, WEO, Robert Bega, Acting Afisa Tarafa, Lazaro John, Land Surveyor for Ifakara Township, Melkiad Mmanda, the Authorized Land Officer from Ifakara Township, Kisogona P Uyalo, the Mapping and Survey Technician from Ifakara Township Council. The real situation was found on the ground at the locus in quo that Plot No. 14, Block D, Ifakara Urban containing 8,720 square feet is actually occupied by the 2nd defendant who has his house and shops thereon, and in Plot No. 13, Block D, which is located next or adjacent to Plot No. 14 , Block D there are two houses, one occupied by the plaintiffs herein, and another is occupied by a

person known as Mr. Marcel Maico Mushi, and that Mr. Marcel Maico Mushi is in possession of the Certificate of Title No. 24367 for Plot No. 13, Block D, Ifakara Urban Area containing 10,160 square feet. Having discovered that Plot No. 13, Block D, is occupied by two people, and that the Certificate of Title was issued to Shamshudin Kassamali Rajabali since 1979, and that Shamshudin Kassamali Rajabali sold one house situate at plot No. 13 Block D to Marcel Maico Mushi in 1983, the Court decided to call the said Marcel Maico Mushi who appeared before the Court and certified that he purchased only one house from Mr. Rajabali in 1983 and that the house he is occupying is containing only 5000 sq. feet, and that the house next to it is also on plot No. 13, Block D, and it is occupied by the plaintiffs containing about 4000 sq. feet. It be noted that since Mr. Mushi is not a party to this suit but was willing to enter into a memorandum of understanding with the plaintiffs in order to have plot No 13 divided into two parts, the court asked him to sit with the plaintiffs to have a settlement, and record the settlement in court. It was however reported by the Counsel of the plaintiffs, Mr. Derick Vincent, that his clients were not willing to have a settlement with Mr. Mushi, and instead they insisted that Plot No. 14, Block D belongs to the plaintiffs having lawfully purchased it from Mr. Fahim Nizar Mukhi, and that the Certificate of Title issued to Mr. Mukhi was correct and valid.

Having the above as the evidence on record, the first issue is whether the plaintiffs are the lawful owners of the land known as Plot No. 14 Block D, Ifakara Town containing in the Certificate of Title No. 39897 issued to Abdulaziz Bandali Abdullah Mukhi in 1992, and later on transferred to Mr. Fahim Nizar Mukhi as his Legal Personal Representative.

Having been at the locus in quo, it is clear and undisputed that the Commissioner for Lands made an error in issuing the Certificate of Title No 39897 to Abdul-Aziz Bandali Abdullah Mukhi for Plot No. 14, Block D, Ifakara Urban Area as the house he occupies is located in Plot No. 13 and not Plot No. 14. It is also not disputed as seen during the visit at the locus in quo that that the 2nd defendant is in actual possession and occupancy of Plot No. 14, Block D, Ifakara Urban Area. It is without a flicker of doubt that the Commissioner for Lands committed an error when he issued the Certificate of Title No. 39897 to the 1st defendant. It is also in evidence that the Commissioner for Lands realized that he made an error, and sent various communications to the 1st defendant asking him to surrender the Certificate of Title for Plot No. 14, Block D, issued to him wrongly, but the 1st defendant refused to adhere. It be noted that under Section 99(1), of the Land Registration Act (Cap 334 R.E 2019) herein "The Registration Act", the

Registrar of Titles who works under the Commissioner for Lands has powers to rectify the Land Register. This Section provides:

*Section 99 (1) **Rectification of land register***

(f) "in any other case, by reason of any error or omission in the land register or by reason of any memorial made under mistake, or for other sufficient cause it may be deemed just to rectify the land register."

In fact, the Registrar of Titles is permitted under the provisions of Section 99(1) (f) of the Registration Act to rectify the Land Register by following the steps provided under Section 99 of the Act, which reads:

"99, - (1) Subject to any express provisions of this Act, the land register maybe rectified pursuant to an order of the High Court or by the Registrar subject to an appeal to the High Court, in any of the following cases: -

(f) If any other cases, where by reason of any error or omission in the land register or by reason of any memorial made under a mistake, or for other sufficient cause it may be deemed just to rectify the land register."

The law is clear that before any decision is made by the Registrar of Titles, a party who will be adversely affected by the rectification must be given a

notice which is actually an opportunity to be heard. In this case, it is clear from the evidence adduced by Mr. Melkiadi Mmanda (DW1) that the 1st defendant who is the person who was wrongly and by mistake given the Certificate of Title No 39897 for Plot No 14, Block D, was asked to surrender the Certificate of Title but neglected. It is also clear from the Minutes held as evidenced by Exhibit D2 that the 1st defendant was told that the Certificate of Title issued to him was an error, and that he must surrender it, and he will be issued with the correct Certificate of Title after Plot No. 13 is divided into two sub plots, the 1st defendant refused to surrender the Certificate of Title. Thus, from the records it is vividly clear that the 1st defendant who is shown to own Plot No. 14, Block D, was afforded a right to be heard but he waived that right.

What the Commissioner for Lands is required to do is to exercise his powers given under Section 99 of the Land Registration Act, he must issue the Notice to Mr. Fahim Nizar Mukhi, the 1st defendant notifying him that the Register will be rectified for the reasons of mistake and error in numbering his plot and according to the Registration Act after the service of the notice of rectification and upon expiry of 30 days of the Notice, the Registrar would be justified to rectify the Register unless the High Court orders otherwise. To be more precise, in order for the rectification to be effective, all parties

with interest to the property must be notified of the intended rectification. See the case of **African Terminal Limited Vs. The Registrar of Titles & Others, Misc. Land Case Appeal No. 58/2018**, Hon Makani, Judge held:

"Indeed, the Assistant Registrar of Titles has the power and mandate to rectify the Land Register under section 99(1) of the Land Registration Act. However, according to section 99(1)(c) rectification of the register can be at any time with the consent of all persons interested. In other words, there has to be a notification to the party who is going to be affected with the rectification for purposes of awareness and consent."

Since it is established that Mr. Fahim Nizar Mukhi's property is situate in Plot No. 13 and not 14, the Registrar of Titles can take steps required under Section 99 of the Land Registration Act and rectify the Register without even asking for surrender of the Certificate of Title wrongly issued to the 1st defendant.

Before I conclude as to whether the plaintiffs are the legal owners of Plot No. 14 Block D Ifakara Urban Area, I must address an issue of Exhibit P1, which is the Sale Agreement between the 1st defendant as the Vendor, and the plaintiffs as the purchasers. It is not in dispute that the property is situate

in Plot No 13, and that the 1st defendant was to surrender the Certificate of Title wrongly issued to him, and the Land Register for Ifakara would have been changed and rectified, and probably he would have been issued with the proper Certificate of Title. Since Mr. Mukhi, the 1st defendant is not the owner of Plot No. 14 Block D, he cannot sell what he does not own. Say, for purposes of discussing whether Exhibit P1 is the Sale Agreement and confers the plaintiffs' ownership of Plot No 14, Block D, even when I hold that the 1st defendant is the owner of Plot No. 14, Block D, and that the Certificate of Title No. 39897 was correctly issued to him, (which is not the case here), still, there was no valid sale of the Right of Occupancy from the 1st defendant to the plaintiffs.

It is the requirements of the law that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements

of section 9 of the Registration of Documents Act and will not confer any title nor transfer any interest in an immovable property.

Again, under Section 36 of the Land Act [Cap 113 R.E 2019], disposition of a Right of Occupancy which does not comply with the provisions of section 37, 38, 39 and 40 of the Land Act is void. This section reads:

'36.- (1) A disposition of a right of occupancy shall-

(a) comply with the provisions of this section and sections 37, 38, 39 and 40.

(b) be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with'.

It is seen from the materials that on 1st April 2016 there was a contract of disposition of a Right of Occupancy titled as 'Agreement for Sale' executed by the Vendor, Mr. Fahim Nizar Mukhi, and the Purchasers, Mr. Mohamed Rashid Abdallah, Mr. Ahmed Rashid Abdallah and Mr. Adnan Rashid Abdallah for a consideration of TZS 70,000,000 (Exhibit P1). The Vendor and Purchasers never executed a Transfer of Right of Occupancy (Form No. 35), and they

never received the Certificate of Approval of a disposition from the Commissioner for Lands as required under the Land Act.

It is clear from the evidence on record that the transfer was never registered as there is no proof of registration, and also there was no proof that the Vendor delivered possession of Plot No 14 to the alleged purchasers, the property that is in possession of the plaintiffs (the purchasers) is situate on part of Plot No. 13 Block B, and never on Plot No. 14 Block B, thus the alleged Vendor, Mr. Mukhi could not have possibly delivered possession of the property situate at Plot No 14 Block D as that property is owned and under the possession of the 2nd defendant herein.

Section 39 (8) of the Land Act provide for the answer to this question:

Section 39 (8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until

all the premia, taxes and dues have been paid accordingly.

- (9) *The Commissioner, an authorized officer, or any other officer to whom any premia, taxes or dues is or are required to be paid under this section shall endorse and sign a receipt for that premium, tax or due on the certificate of approval.*
- 10) *The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy the subject of a disposition to which this section applies unless and until he is satisfied that all premia, taxes, and dues in respect of that disposition have been paid and a receipt for the same has been validly endorsed on the certificate of approval.*

Thus, Registration of Transfer is done by the Registrar upon making an entry on the register, and he cannot make such entry unless and until all premia, taxes, and dues in respect of the disposition have been paid. It is therefore clear that as per the Contract of disposition, the Vendor could not have handed over vacant possession or even delivery of property to the purchasers unless and until the Transfer was registered. To date, no transfer was

registered, thus no delivery of suit property to the purchaser could have been done when the transfer was not registered and completed.

Again, according to section 36 (3) of the Land Act, the Vendor was required to notify the Commissioner for Lands of his intention to dispose the Right of Occupancy. The Vendor was supposed to File a Landform No. 29 as a Notification to the Commissioner for Lands of the intended disposition. Section 36 (3), (4) and (5) of the Land Act provides:

Section 36 (3) Any person proposing to carry out a disposition, other than a disposition to which section 38 applies, shall send, or deliver a notification in the prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premia, taxes and dues prescribed in connection with that disposition.

(4) The Commissioner shall, subject to the provisions of section 37, on receipt of a notification under subsection (3) and the payment of all premia, taxes and dues which may be prescribed, with all due dispatch, endorse that notification with his

signature and official seal and send or deliver a copy to the Registrar.

- (5) *The Registrar shall not make any entry on the register in respect of any disposition, or any right of occupancy transferred because of a disposition to which subsection (3) applies unless and until he is in receipt of a copy of a notification endorsed in accordance with subsection (4).*

Again, the Vendor was also required to File a Land Form No 30, applying for approval of disposition of the Right of Occupancy as required under section 37 of the Land Act, and that a disposition of a Right of Occupancy without the approval of the Commissioner for Lands is inoperative, this is provided under Section 38 (5) of the Land Act, which reads:

'Section 38 (5) A disposition which has been carried out without first obtaining the approval of the Commissioner shall be inoperative.'

There was no proof from the plaintiffs that the Vendor had completed Land Form No 29 for notifying the Commissioner for Lands that he intended to carry out a disposition of a Right of Occupancy, and that the Notification was received and approved by

the Commissioner and that the Commissioner had endorsed it in accordance with Section 36 (4) of the Land Act. Again, there was no proof that the Vendor had applied for approval of disposition of a Right of Occupancy as required by section 37 of the Land Act. There was no Landform No. 30 which is an application for approval for a disposition of the Right of Occupancy, and there was no proof that the Commissioner had approved the disposition.

Therefore, since the procedures for conveyancing were not complied with by either the alleged Vendor (the 1st defendant), nor the purchasers (the plaintiffs), there cannot be said that there was a valid sale of the Right of Occupancy from the 1st defendant to the plaintiffs.

To answer the first issue therefore, and from the discussions herein above, and the cited provisions of the law, the property situate in Plot No. 14, Block D, Kilosa Street, Ifakara Township contained in the Certificate of Title No. 39897 does not belong to the plaintiffs.

Issue No 2, on whether the disputed Plot No 14, Block D has only one plot. As depicted from the visit at the locus in quo, the whole of Plot no. 14 containing of 8,720 square feet is occupied by the 2nd defendant, who has erected a house, and shops, and that there is only one Plot. It is on part of

Plot No. 13, Block D, that the house occupied by the plaintiffs is situated together with the house and Shops of Mr. Mushi. It is the findings of the visit that Mr. Mushi's property is containing about sq. feet 5000, while that part of the house occupied by the plaintiffs is containing about 4000 sq. feet. It has also been discovered from the visits that the Certificate of Title for Plot No. 13, Block D, Ifakara Urban was issued to Shamshudin Kassamali Rajabali since 1970, and that in 1983 Shamshudin Kassamali Rajabali transferred the Title to Plot No. 13, Block D to Mr. Mushi.

Regarding issue No 3 on whether the 3rd defendant refused or neglected to transfer the ownership of Plot No. 14, Block D, Ifakara Urban to the plaintiffs, as discussed herein above, not only that the 1st defendant is not the lawful owner of the land situate on Plot No. 14 Block D, Ifakara Urban as the Certificate was mistakenly issued to him, and a need for rectification but also the Vendor (the 1st defendant), and the purchasers of the property situate on part of Plot 13 Block D, did not comply with the requirements of the Land Act (as discussed hereinabove), and thus, the Commissioner for Lands, the 3rd defendant herein was under no obligation to act on Exhibit P1. The plaintiffs and the 1st defendant ought to have complied with all the requirements provided under the Land Act to have the title of the property

(if any), transferred from the Vendor (the 1st defendant) to the purchasers (the plaintiffs).

To answer, the third issue therefore, the 3rd Defendant had no reasons to refuse to perform his duties if the plaintiffs and the 1st defendant had complied with the requirements of the Land Act for a valid disposition of the Right of Occupancy.

As to what reliefs the parties are entitled, this Court makes the following orders:

1. The Plaintiffs are not the lawful owners of the land and property situate on Plot No. 14, Block D, Kilosa Street, Ifakara Urban within Ifakara Township.
2. The 2nd defendant is declared the lawful owner of the land and property situate on Plot No. 14, Block D, Kilosa Street, Ifakara Urban within Ifakara Township.
3. The Certificate of Title No 39897, LO No. 108592 for Plot No. 14 Block D, Ifakara Urban Area issued to Abdul-Aziz Bandali Abdulla Mukhi (and endorsed on 13.04.2016 in the name of Fahim Nizar Mukhi (the Legal Representative of Abdul-Aziz Bandali Abdullah Mukhi) was wrongly issued, and the Commissioner for Lands through the Registrar of Titles

can rectify the Land Register under Section 99 of the Land Registration Act;

4. The Plaintiffs and the 1st defendants are ordered to surrender the Original Certificate of Title No. 39897, LO No. 108592 for Plot No. 14, Block D, Ifakara Urban Area issued to Abdul-Aziz Bandali Abdulla Mukhi (and endorsed on 13.04.2016 in the name of Fahim Nizar Mukhi (the Legal Representative of Abdul-Aziz Bandali Abdullah Mukhi) to the 3rd Defendant for rectification of the errors.
5. Since the mistake or error was made by the 3rd defendant, and since no party has proved that he has suffered damages as a result of the error, I shall order no payments of indemnity or general damages.
6. Costs of the suit shall be borne by the plaintiffs.

It is so ordered.

DATED AND DELIVERED AT MOROGORO THIS 31ST DAY OF MAY

2024



Latifa Mansoor
(LATIFA MANSOOR)

JUDGE

31ST MAY 2024