IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 285 OF 2024

(From the Judgement and Decree of the District land and Housing Tribunal of Kilombero at Ifakara dated 2nd October 2023 in Land Application No. 57 of 2022)

JOHN BERNAD MAKINDA ..... 1ST APPELLANT

EMA BERNAD MAKINDA ..... 2ND APPELLANT

VERSUS

ROBERTINA JOSEPH MKUMBAE ..... RESPONDENT

JUDGEMENT

09/04/2024 & 29/05/2024

KINYAKA, J.:

The appellants were the respondents in Land Application No. 57 of 2022 before the District Land and Housing Tribunal of Kilombero at Ifakara hereinafter, the "Tribunal". They were sued by the respondent for trespass of the suit land measuring 35 acres in which 10 acres were owned by her since 17th August 2004, 10 acres were given to her by Apolonia Mwale and 5 among 6 acres were given to her by Costantino Ndahani.

The appellants' defence was that the respondent was no longer the owner of the 35 acres of land as the same was later on owned by the 1st appellant

by 11 acres, the 2nd appellant 19 acres, together with one, Switbert Bernard Makinda who was granted 5 acres by Mpanga Village Council in 2007. Later on, the appellants and Switbert agreed to give the respondent 10 acres where the 1st appellant, 2nd appellant and Switbert gave the respondent 4 acres, 5 acres and 1 acre, respectively. They stated that the respondent later on agreed to sell her 10 acres to the 1st and 2nd appellant at TZS 2,000,000 where the 1st appellant paid the whole amount and the 2nd appellant was still indebted to the respondent at TZS 800,000.

The Tribunal delivered its decision on 2nd October 2022 in favour of the respondent basing on the reasons that the respondent's evidence was weightier than the appellants' which proved her case on the required standard while the appellants' evidence was contradictory. Dissatisfied, the appellants preferred five grounds of appeal as shown herein below:-

1. That the trial Tribunal findings in favour of the respondent regarding ownership of the suit land were in total disregard of the appellants' customary title deeds (Exhibits JB2 and EB2) without any evidential and legal justification;

2. That the trial Tribunal Chairman erred in law to have misconstrued the defence evidence as to how the appellants acquired the suit land and wrongly proceeded to decide in favour of the respondent;
3. That the trial Tribunal Chairman failed to appreciate that the respondent did not prove title over the land and wrongly proceeded to cast the burden of proof upon the appellants;
4. That the trial Tribunal Chairman failed to appreciate that the respondent's testimony was admission that the appellants acquired part of the suit land having purchased the same from the respondent; and
5. That the trial Tribunal Chairman failed to properly analyze, assess and evaluate evidence on record, thereby reached to a wrong conclusion rendering failure of justice.

On the date of hearing, Mr. Bageni Elijah, learned Advocate appeared for the appellants, while the respondent was represented by Ms. Josephine Mbena, learned Advocate. The appeal was canvassed in writing.

Before submitting on the grounds of appeal, Mr. Elijah, learned Counsel for the appellants reproduced facts which he considered to be relevant and worthy of determination by the Court. These are that the parties are blood

related, the respondent being the big sister of the appellants and SM1, Switbert Bernad Makinda being the brother of the appellants; that the appellants hold customary right of occupancy over part of the suit land, being 31 acres duly registered in their names as per Exhibit JB2 and EB2; and that the respondent received a total of TZS 2,000,000 from the appellants in respect of the suit land.

In support of the first ground, Mr. Elijah submitted that the appellant tendered Exhibits JB2 and WB2 to prove ownership of the suit land by the 1st appellant and second appellant, respectively, which were not objected to, demonstrating that the transactions were lawful. He added that there was no cross examination on how they came into the appellants' hands. He argued that Exhibits JB2 and EB2 proved ownership of 31 acres of land by the appellants as opposed to the respondent's 35 acres. Counsel restated the evidence of the defence witnesses on how they came to own the suit land, how they gave the respondent 10 acres after they received an advice from their mother, and how they bought the same from the 1st respondent. Mr. Elijah contended that if Exhibits JB2 and EB2 were obtained fraudulently or by misrepresentation, the respondent ought to have reported the matter to the police or relevant authorities. He submitted that although the

respondent alleged to have put a caveat to the Mpanga Village office but no evidence was tendered to support the allegations. He added that the dispute arose in 2021 when the appellant changed her mind after she obtained a new buyer while she had already sold her remaining 10 acres to the appellants. He concluded that Exhibits JB2 and EB2 are conclusive proof that the appellants had better title over the land than the respondent relying on the decision in the case of **Amina Maulid Ambali and 812 Others v. Ramadhani Juma, Civil Appeal No. 35 of 2019** which held that when two persons have two competing interests in a land property, the holder of the certificate of title will always be taken to be a lawful owner unless the certificate was not lawfully obtained.

In support of the second and third grounds which were argued together, Mr. Elijah submitted that the respondent had a burden to prove her claim for ownership of 35 acres but she did not, as her evidence had material contradictions and inconsistencies. He contended that while the respondent argued that the appellants were caretakers of her farm, when cross examined, she contended that the 2nd appellant had never been a caretaker of her farm. He added that the respondent fraudulently registered 35 acres while Exhibits JB2 and EB2 depict a total of 31 acres only. He argued that

the respondent failed to prove the manner in which she came to own the suit land as she failed to prove the alleged disposition or transfer from Makrina Libena, Apolinia Mwale and Costantine Ndahani, as Exhibit RJ1 indicated different ownerships between the respondent, Aplonia and Costantino. He ushered a complaint that the respondent failed to call Apolonia, Makrina and Constantine though she alleged that Apolinia and Costantino were no more. He cited section 64 (1)(a) of the Land Act Land Act Cap. 113 R.E. 2019 hereinafter, "the Land Act" which require disposition affecting land must be in writing.

He submitted that there were contradiction in the testimony of SM3 that the respondent acquired the suit land in the year 2008 while in cross examination, he contended that it was in the year 2004. SM3 also testified that the respondent acquired the 35 acres at once different from the testimony of SM5. According to Mr. Elijah, SM4 testified that he participated in allocating land to the respondent on 17th August 2024 while the respondent was accompanied by three people but when cross examined, he contended that there were 9 members and that the respondent was given 35 acres. He added that SM5 testified that she, Apolonia and Costantine

were given lands on 17th August 2004 but Apolonia and Costantine gave her their land in 2007.

He contended that SM1 was a liar and untrusted witness as he testified not to own any land in the suit land or adjacent to it, but Exhibit JB2 prove that he owns land adjacent to 1st appellant at the eastern side. He further contended that in the proceedings recorded on 17th February 2023 SM1 admitted to own four acres within the suit land and was ready to offer one acre to the respondent pending disposal of the case. He submitted that SM1 lied when he testified that the 1st appellant was a child in 2004 while he was 24 years old by then proven by his age of 47 years at the time of the dispute at the Tribunal. He added that SM1 was the one who triggered the dispute as he had interest in the sale of land from the respondent to Nyachi.

He argued that the Tribunal erred to hold in favour of the respondent who failed to prove her case and wrongly shifted the burden to the appellants ignoring the latters' evidence on the allocation of the suit land by the Mpanga village, their respective titles and the purchase of part of the suit land from the respondent. He argued that the appellant discharged the burden, if any, but the Tribunal ignored the same and engaged in misconstruction and misconception of the evidence.

On the fourth ground, Mr. Elijah submitted that the respondent admitted to have received TZS 2,000,000 from the appellants through different means including electronic money transfer which she alleged was rental income, but when cross examined, she admitted to have received TZS 2,000,000 which the appellants intimated that they were for the purchase of the land measuring 9 acres but she received it as rental income which is a clear admission that she sold the land to the appellants. He argued that the 2nd respondent could not rent the suit land as she was not the respondent's caretaker. He added that the respondent is estopped from testifying contrary to her admission as per section 123 of the Evidence Act, cap. 6 R.E. 2022.

Mr. Elijah refrained from submitting on the fifth ground as the same had been covered in the foregoing submissions in respect of the preceding grounds of appeal. He prayed for the appeal to be allowed with costs.

In response, Ms. Josephine Mbena, learned advocate for the respondent opposed the appeal by submitting that the appellants have narrated a false story to mislead the Court. She submitted in respect of the first ground that the respondent did not object to the appellants' customary title deed since they met the test of admission before the Tribunal but what was disputed was how the appellants came into possession of the suit land by obtaining

the said titles. She relied on the case of **Precision Air Service PLC v. Masoko Agencies (T) Ltd, Civil Appeal No. 60 of 2021** which held that failure to object admissibility of a document does not amount to admissibility of its contents. She contended that the appellant acquired the titles through fraud since in their written statement of defence they stated that the 2nd appellant acquired 6 acres from Mpanga village council and bought 5 acres from the respondent making a total of 11 acres but the titles indicate that she owns 19.37 acres. Similarly, she added that the 1st appellant pleaded that he acquired 5 acres from the village council and purchased 5 acres from the respondent with a total of 10 acres but in the title it indicate that he possess 12.28 acres. To Ms. Mbena, this prove fraud in the acquisition of the customary title deed.

In respect of the 2nd and 3rd grounds, Ms. Mbena contended that the proceedings speak loudly that both parties gave testimony on how they came into possession of the suit land and the Tribunal found it just that the respondent is the lawful owner of the suit land considering the appellants' failure to prove the mode of acquisition of the suit land. She submitted that both in her application and testimony, the respondent contended that she acquired 10 acres from the Mpanga village council and 25 acres by way of

gift from three different persons; her friend, sister and son, Constantine which she left the same to her brother Switbert. She contended that in the year 2018, the appellants became caretakers after a conflict arose between them and Switbert but later on they colluded and obtained title deeds to the suit land in their own names.

In respect of the fourth ground, Ms. Mbena admitted that the 1st appellant sent TZS 1,200,000 which was for lease and not purchase of land as they used to send money every year when leasing the suit land. She admitted that the respondent intended to sell part of her suit land. She added that the appellants failed to submit to the Tribunal the sale agreement between them and the respondent as alleged. She submitted that the appellants gave contradictory statements in their written statement of defence different from their testimony regarding how they acquired the suit land. He argued further that the appellants failed to state how the land abandoned by the respondent was offered to them including similarity to the lands given to the respondents by her sister, friend and son. She further submitted that the allegation that there was family meeting to grant the respondent 10 acres is phenomenal as Bendict Makinda whom the appellant alleged to have convened the meeting testified that he was informed of the said meeting.

Regarding the fifth ground, Ms. Mbena submitted that the Tribunal properly analyzed and evaluated evidence from both parties and since the respondent's evidence was consistent and supported by the evidence of relevant witnesses namely, SM1, one of the participant in allocating land to the respondent and a village leader; SM3, a neighbour; SM4, the caretaker of the suit land from 2007 to 2018; and SM2, Costantine's wife, contrary to the appellants' evidence which was inconsistent, contradictory and raised new facts. She prayed for the dismissal of the appeal with costs.

In rejoinder, Mr. Elijah submitted in respect of the first ground that the case of **Precision Air** (supra) has no bearing to the present matter. He prayed the Court to take judicial notice that the survey, registration and issuance of customary title deeds is a legal exercise entailing several process including objection from any interested person, and that the respondent was aware of the whole process of the appellants' obtaining the titles as she claimed to have put caveat to the Village Chairperson in 2021 though she did not adduce evidence to that effect. He argued that the respondent ought to have sued the authorities who issued the titles as held in the case of **Amina Maulid Ambali & Another** (supra). He added that the argument that

Exhibits JB2 and EB2 were fraudulently owned was absolutely and imagination and the respondent did not pray for invalidation of titles.

On the second and third grounds, he reiterated that the respondent did not adduce evidence of transfer of the 25 acres of land from Makrina, Apolonia and Costantine, and failed to call Makrina whom she alleged was in Dar es Salaam. He contended that the respondent's failure to submit on the material contradictions is tantamount to admission of the correctness and validity of same.

Mr. Elijah maintained his submissions in chief in respect of the grounds as according to him, the respondent's counsel circumlocutory and inelegantly coached far from the appellants' comprehension.

On the fourth ground, Mr. Elijah submitted that the respondent's submissions on the ground are nothing but recapitulation of the Tribunal's analysis of evidence, the subject of the present appeal. He concluded that the respondent's counsel failed to point out the alleged appellants' false stories. He prayed for the Court's condemnation of the flimsy and unsubstantiated accusations towards a fellow advocate. He reiterated his prayer for the appeal to be allowed with costs.

I now turn to determine whether the decision of the Tribunal was incorrect that would lead to a conclusion on the merit of the present appeal.

I will determine the first, second, third and fifth grounds of appeal together as they all fault the decision of Tribunal for holding the respondent as the lawful owner of the suit land in total disregard of the appellants' customary title deed without any evidential value and legal justification; having misconstrued the defence evidence on the appellants' acquisition of suit land and casting the burden of proof to the appellants; its failure to appreciate the respondent's failure to prove her acquisition of the suit land; and to have failed to properly analyze, assess and evaluate evidence on record, thereby reaching to a wrong conclusion and rendering failure of justice.

The evidence before the Tribunal reveals that between the appellants and the respondent, the latter was the first to obtain the title to the 10 acres of land on 17th August 2004 as evidenced by Exhibit RJ1 before the alleged 1st appellant's acquisition of his title on 26th June 2018 as evidenced by Exhibit JB2 or the alleged acquisition on 28th December 2007 in the name of his brother, Switbert Makinda as evidenced by Exhibit EB2.

Though the 2nd appellant also acquired 5 acres from the Mpanga Village Council on 17th August 2004, she did not state or testify that the 5 acres

were within the 10 acres granted to the respondent, or 10 acres granted to Apolonia, or 10 acres granted to Macrina, or 6 acres granted to Costantine. This piece of evidence was crucial to disapprove the respondent's claim of ownership of 35 acres inclusive of the 10 acres she acquired in 2004, and the 25 acres she was gifted in 2007. There has been sufficient evidence from the respondent's witnesses including SM1, SM2, SM3, SM4 and SM5 that the respondent owned the 35 acres of land.

Similarly, DW1 and DW2 testified that the respondent no longer owned 35 acres of land as they applied at the village council for some acres of the suit land and were given the same in 2007. They testified that they did so after the respondent lost the suit land upon her abandonment but they later on gave her 10 acres upon an advice from their mother, Suzan in 2016, which they again purchased it from the respondent. The testimonies of DW1 and DW2 together with DW3 that the respondent lost or abandoned the suit land that is why the appellants and Switbert 'compensated' by giving her 10 acres after the advice of their mother, evidence that prior to their alleged acquisitions in 2007 or later on in 2018 or the alleged purchase from the respondent, the respondent owned suit land. In **Ombeni Kimaro v. Joseph**

Mishili c/a Catholic Charismatic Renewal, Civil Appeal No. 33 of 2017 on page 16 through to 17, the Court underlined;

> *"...In cases of double allocation of land, even when it is occasioned by an authority or a person with legal mandate to allocate or transfer the land, the law is that the authority or transferor would have no title to pass to a subsequent grantee or transferee, by the application of the priority principle. The priority principle is to the effect that where there are two or more parties competing over the same interest especially in land each claiming to have titled over it, a party who acquired it earlier in point of time will be deemed to have a better or superior interest over the other - see Colonel Kashimiri v. Naginder Singh Matharu, [1988] TLR 162 and Melchiades John Mwenda v. Gizzelle Mbaga (administratrix of the estate of John Japhet Mbaga, the deceased) and Two Others, Civil Appeal No. 57 of 2018 (unreported) amongst others..."*

On the basis of the above authority, it is my finding that contrary to the appellants' first ground of appeal and the supporting submissions, the Tribunal's holding that the respondent was the lawful owner of the suit land was backed with evidence and had both factual and legal justification.

On how the appellant came to own the 35 acres of land, the subject matter of the third ground of appeal, the respondent's evidence was clear and

straight forward through the testimony of SM1, SM2, SM4 and SM5 that the respondent owned 10 acres and later on, she was gifted the 25 acres by Macrina, Apolonia and Constantine. The 25 acres of land being village lands, the provision of section 64(1) of the Land Act is inapplicable. It is a common knowledge that the Land Act was enacted to provide for the basic law in relation to land other than the village land. Again, even if the said transfer was not substantiated in writing, the appellants did not disapprove that the 25 acres were previously owned by Macrina, Aplonia and Costastine considering the existence of their acquisition vide Exhibit RJ1.

Balancing with the evidence of the defence, it was clearly established that the 2nd appellant acquired 5 acres of land on 17th August 2004 and later on 14 acres in 2007 through the village council. At no point, it was stated that the respondent's 35 acres of land included the 2nd appellant's 5 acres of land which she acquired through the village council on 17th August 2004. Again, both DW1 and DW2 testified to have applied and were given eleven acres and fourteen acres, respectively, by the village council. It is unknown as to how the 1st and 2nd appellants came to own a total of 12.28 and 19.37 acres, respectively, as shown in the customary titles.

Be it as it may, as long as there was cogent evidence through Exhibit RJ1 that the suit land was owned by other persons including the respondent since the year 2004 through acquisition from the same village council, there should have been cogent evidence from the appellants to prove that upon the alleged respondent's abandonment of the suit land, the village council re-acquired the same and distributed it to the appellants after they applied for the same. In the case of **Abdi M Kipoto v. Chief Arthur Mtoi (Civil Appeal No 75 of 2017) 2020 TZCA 26 (28 February 2020),** the Court of Appeal underlined the following on page 19 through to 20 as being the procedures for re-allocation of the abandoned land:-

> *"...If a village council considers land to have been abandoned, it publishes notice stating that adjudication regarding that land will be done by the Village Council and inviting persons interested to show cause why the land should not be declared as abandoned. If no person shows cause, the Village Council will make a provisional order of abandonment which will become final order on expiry of ninety (90) days if no person challenges it in Court. The effect is to render the Right of Occupancy over the land revoked after which it reverts to the village and becomes available for allocation to another person ordinarily resident in the village."*

Looking close at the authority above, it is plain clear that revocation or land acquisition by the government is a legal process which is invoked upon issuance of a notice to the previous land owner. There is no such evidence before the trial.

From the foregoing, I hold that it was correct for the Tribunal to shift the burden of proof to the appellants upon the respondent's discharge of her burden that she owned the suit land through acquisition of 10 acres and 25 acres by gift and never sold the same to the appellants. The burden was properly shifted to the appellants to prove how they came to own the suit land.

All the same, the appellants ought to have proved, among others, that the appellant abandoned the land and lost the same. This is the legal requirement as provided for under sections 110 of the Evidence Act, Cap.6 R.E. 2022 reproduced hereunder;

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

Not only that the appellants failed to provide sufficient proof of abandonment, but they informed the Tribunal that they had to give the respondent 10 acres for consideration that the latter had previously owned but who lost it. It was not stated to whom did the respondent lost the land. Further, the allegation as to the respondent's abandonment was disproved by the evidence of the respondent's witnesses especially that of SM1, the brother to the appellants that he was taking care of the suit land for the respondent up to 2018 when the dispute arose during which the appellant contended to have procured customary titles over the suit land in the name of SM1. This evidence was corroborated by the testimonies of SM3, and SM5. Further, the appellants ought to have demonstrated that the suit land was re-acquired by the village council and later on offered to new acquirers. As Exhibit RJ1 show that the suit land was granted by the same village council, there should have been sufficient proof that the same was re-acquired, the respondent, or together with Apolonia and Constantine were notified of the re-acquisition and all legal procedure as provided for under section 45 of the Village Land Act, Cap 114 were followed in the process. The appellant failed to present any witness from the village council to testify on the re-acquisition

or revocation of the previous titles that entitled the appellants to be given the suit land through the customary titles.

The appellants were also obliged to prove their allegations that there was a contractual undertaking be it oral or written for the sale of the respondent's 9 acres within the suit land to the appellants. The appellants pleaded in their written statement of defence and indicated to have attached the sale agreement between them and the respondent but nothing was attached.

Although the respondent failed to prove fraud in the appellants' procurement of the titles, but on balance of probability, and as intimated above, the appellants failed to prove how they obtained the titles in respect of the suit land which were granted to the respondent, Macrina, Apolonia and Costantine in 2004 by the same village council without any notice or letter of revocation or re-acquisition of the same. This is contrary to the respondent's evidence that she has been in constant ownership of the same since 2004 until when the dispute arose.

I have also considered the allegation of contradictions between the testimonies of both the appellant's and the respondent's witnesses. I agree with the Tribunal that the contradictions in the evidence of the appellants' witnesses were fundamental and diminished the value of their testimonies

and their credibility as found on page 10 of the judgement of the Tribunal. This include their separate acquisitions that led to the 1st and 2nd appellants' ownership of a total 12.28 and 19.37, respectively as indicated in the titles. On the other hand, the contradiction in the testimony of SM3, the respondent's neighbour is not material as he testified in cross examination that they acquired the suit land in 2004 supported by Exhibit RJ1. SM3's testimony that the respondent acquired the suit land is also not material as she was neither the acquirer nor the village council to know how she acquired the entire 35 acres. Again, I find the contradiction of SM4's testimony regarding the difference between 17th August 2024 and 17th August 2004 could be caused by the witness's slip of the tongue or the Tribunal slip of the pen, taking into account that the date and month are the same. Be as it may, the inconsistence would not affect the date of acquisition on 17th August 2004 as evidenced by Exhibit RJ1.

Again, I do not find any contradiction in SM4's testimony that the respondent was accompanied by three people but when cross examined, he contended that there were 9 members as the same are two different versions of evidence. The respondent's company of three people and the total number of members of the village council does not speak of the same thing. Although

SM4's evidence that the respondent was given 35 acres is material, but the same does water down the evidential value of Exhibit RJ1 and the evidence of SM1, and SM5 on how the respondent came to own the suit land.

With the above analysis, I find in respect of the second and third grounds of appeal that that the respondent's evidence was weightier than the appellants' and thus, managed to prove on balance of probability her ownership of the suit land. I also find that the Tribunal was correct to shift the burden of proof to the appellants upon the respondent's discharge of her burden to prove her title to the suit land. Again, in respect of the second and fifth grounds, I find that the Tribunal did not misconstrue the defence evidence on the appellants' acquisition of the suit land but correctly analyzed, evaluated and assessed the evidence on record that sufficiently proved the appellant's ownership on the standard required under section 110 and 111 of the Evidence Act.

It follows that the first, second, third and fifth grounds of appeal have no merit and are dismissed in their entirety.

Turning on the fourth ground, there is clear admission by the respondent in both her testimony before the Tribunal and in the submissions before this Court that the respondent received moneys from the appellants. In her

testimony, the appellant admitted to have received a total of TZS 2,000,000 inclusive of TZS 1,200,000 and TZS 4,000,000 from the appellants while Ms. Mbena submitted that the respondent received TZS 1,200,000.

There is no dispute that the respondent received TZS 2,000,000 from the appellants. What is in dispute is the purpose of the money. While the appellants suggested that the same were paid for purchase of the 9 out of the 10 acres that SM1, 1st and 2nd appellants gave the respondent, the respondent alleged that she received it as rental income from the appellant's leasing of her suit land.

Both SM1 and SM5, the respondent testified that the appellants were caretakers of the suit land. There has been no evidence on part of the respondent to prove that he instructed the appellants to lease the suit land on her behalf. There is no evidence of the period of lease and the income received from the alleged lease.

On the other hand, the appellants clearly stated that they paid the amounts to the respondent to purchase part of the suit land. This was also admitted by the respondent that the appellants gave her money to purchase part of the suit land but she considered them as rental amount for the appellant's leasing the suit land. The respondent testified:

"Walipofika akaenda akakodisha shamba langu na kuleta laki nne akasema ananunua. Sikukubaliana nae swala la kununua kwa kuwa ela ilikuwa ndogo, Emma alitoa fedha shilingi milioni moja na laki mbili kama fedha ya ununuzi kumbe alienda kukodisha. Mimi sikuwaelewa suala la kununua shamba lenye mgogoro ekari 19"

"Emma na John wakati wa kukodisha shamba ni wakati waliponikanidhi fedha wakasema wananunua. Jumla ya milioni mbili nilipokea ela sio za ununuzi ni za kukodisha."

One would ask, if the appellants clearly communicated to the respondent that they were paying money to purchase part of suit land, and the respondent admitted to have received the moneys, at what point did the respondent converted the purpose of the purchase payments to rental payment? Why didn't she refuse to accept the payments which she was clearly informed of its purpose? There is no any evidence on part of the respondent that she informed the appellants that she was accepting the payments as rental income and not purchase price.

From the above observations, it is my considered position that there was neither absolute acceptance, meeting of mind or consent as the purpose of the payment of TZS 2,000,000 to form an agreement either for purchase of the 9 acres or leasing of the suit land as required under sections 7 and 13 of

the Law of Contract Act, Cap. 345 R.E. 2019, hereinafter "the LCA". Section 7 of the LCA provide:-

> *7. Acceptance must be absolute*
>
> *In order to convert a proposal into a promise, the acceptance must—*
>
> *(a)* ***be absolute and unqualified****;*
>
> *(b)* ***be expressed in some usual and reasonable manner****, unless the proposal prescribes the manner in which it is to be accepted; and if the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but if he fails to do so he accepts the acceptance.* [Emphasis added]

It means that there was no acceptance as to the purchase of the 9 acres from the appellants to the respondent. Again, Section 13 of the LCA provide:-

> *13. "Consent" defined*
>
> *Two or more persons are said to consent when they agree upon the same thing in the same sense.*

Further, there was no consensus between the parties for the sale or purchase of the suit land. In absence of an acceptance and consent to purchase and sell the 9 acres, there was no agreement concluded for the purpose of

purchase considering the absence of any purchase agreement. I find that the admission by respondent was not that she received the money to sell part of her suit land to the appellants but a clear admission that she received TZS 2,000,000 as rental income.

With the above demonstrations, all grounds of appeal fail. Consequently, I dismiss the appeal for lack of merit. Considering the parties' blood relationship, I find it prudent not to order costs of the appeal. I order each party to bear its own costs.

It is so ordered.

Right of appeal fully explained.

DATED at MOROGORO this 29th day of May 2024.

H. A. KINYAKA

JUDGE

29/05/2024