

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 416 OF 2016**

**ZAHORO SALUM ZAHORO.....PLAINTIFF**

**VERSUS**

**SALMA ISSA MTAMBO (being administratrix  
of the estate of the late Katende Simba).....1<sup>ST</sup> DEFENDANT**  
**HALIMA ISSA MTAMBO.....2<sup>ND</sup> DEFENDANT**  
**MHANDO ISSA MTAMBO.....3<sup>RD</sup> DEFENDANT**  
**KASSIM CHUMA .....4<sup>TH</sup> DEFENDANT**  
**MOSHI MASOUD KIGULU.....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**I. MAIGE, J**

The dispute that I am called upon to resolve is on the ownership of a landed property at Plot No. 47 Block 70, Kariakoo within Ilala District in Dar Es Salaam Region with certificate of title number 137730 (“the suit property”). The **suit property** is irrefutably registered in the name of Mr. Zahoro Salumu Zahoro, the plaintiff in this case. The certificate of title (exhibit **P1**) was issued in the name of the first defendant SALMA ISSA MTAMBO in her capacity as the a legal personal representative of KATENDE SIMBA who expired on 8<sup>th</sup> June

1997. She was constituted as such by the primary court of Kariakoo on 6<sup>th</sup> September 2013 vide **Mirathi No. 104 of 2013**. The endorsement at the last page of exhibit **D1** by the Registrar of Titles indicates that the **suit property** was transferred from the first defendant to the plaintiff on 18<sup>th</sup> April 2016 in consideration of Tshs 600,000,000/=.

Initially, this suit was instituted against the first three defendants. These are blood relatives and there is no dispute that, they are all the beneficiaries of the estate of the late Katende Simba. As against these three defendants, the plaintiff claims in essence for three substantive reliefs. First, declaration that he is the lawful owner of the **suit property**. Two, an order restraining them and /or their agents from trespassing unto the **suit property**. Three, payment of both special and general damages. The claim is based on the proposition that, despite his purchase of the **suit property** from the first defendant as a legal representative of the late Katende Simba for consideration and registering the transfer in his own name, the first three defendants are refusing to yield him vacant possession of the same.

In their defense, the second and fourth defendants deny that the **suit property** has been legally sold to the plaintiff. They deny to have consented for the sale of the same as well. By way of counter claim, they further claim for payment of TZS 400,000,000/= as their shares in the deceased estate of the late Katende Simba. In his final

submissions, Mr. Daimu for the plaintiff has doubted the jurisdiction of this Court to deal with such an issue. In his view, which I entirely subscribe to, the issue whether the second and third defendants are entitled shares in the deceased estate and the quantum thereof is within the domain of the probate and administration court. On that account and without misusing the precious time of this Court, I will strike out the counter claim by the second and third defendants for being incompetently before the Court.

On his part, the fourth defendant has no blood relationship with the first three defendants. Neither is he claiming any beneficiary interest in the estate of the late Katende Simba. His interest is traceable from the estate of the late Asha Mwinyimvua, the widow of the late Nassoro Simba. In his defense, the fourth defendant blames the first defendant for transferring the **suit property** in total disregard of  $\frac{1}{4}$  interest of the late Asha Simba on the **suit property** and violation of various court orders that, the **suit property** would be sold upon determination, by the probate and administration court, of the value of the same.

On the basis of the interest as aforesaid, the fourth defendant has raised a counterclaim against the plaintiff for  $\frac{1}{4}$  of the value of the **suit property**. From the evidence available, including the decisions of the High Court in exhibits **D6** and **D7**, such right appears to have been declared and granted from 1989 in favour of the late Asha

Mwinyimvua. It is expressly admitted by the plaintiff both in pleadings and evidence. Equally so for the first three defendants. The fourth defendant prays therefore to be declared to have beneficiary interest on the **suit property** to the extent as aforesaid. He is also claiming for nullification of the sale under discussion and an order that the **suit property** be sold by public auction as previously ordered by the probate and administration court.

The fifth defendant sought to be joined in the suit as an administrator of the estate of the late Nassoro Simba as per letters of administration issued by the primary court of Kariakoo on 19<sup>th</sup> September 2016 vide Mirathi 87 of 2016. It transpired, on the first date of hearing however that, the appointment has been revoked by the same primary court and the first respondent restored as the successor administrator of the estate of the late Nassoro Simba. That was raised in the preliminary objection by Mr. Daimu for the plaintiff. I did struck out the counterclaim and reserve the determination of the point in relation to the joinder of the fifth defendant as the defendant.

It is a fact that when this Court was ordering his joinder, it had in its mind that, the 5<sup>th</sup> defendant was the administrator of the estate of the late Nassoro Simba and beneficiary thereof. With the evidence of the revocation of his grant, his joinder as a necessary party in his administrative capacity becomes totally irrelevant. In any event, the fifth defendant, for the reason better known to himself, did not enter

appearance to defend his claim. The matter proceeded in his absence. For those reasons, I will strike off his name from the suit.

On their parts, the second and third defendants refute the sale on account that it was made without them being involved as the beneficiaries of the estate of the late Katende Simba. I do not think that their claims is valid. The position of law on succession of properties of a deceased person is settled. Once an administrator is appointed, the deceased property vests in him right away. This position, as I shall further discuss elsewhere in this judgment, is stated, in among others, the decision of the Court of Appeal in **JOSEPH SHUMBUSHO VS. MARY GRACE TIGERWA AND OTHERS, CIVIL APPEAL NO. 183 OF 2016, CAT, DSM (UNREPORTED)**.

In my view therefore, the claim by the second and third defendants that they are entitled shares in the **suit property** falls within the parameters of succession proceedings. As between them as beneficiaries and the first defendant as the administrator, the issue should have been dealt with in probate and administration proceedings as rightly submitted for the plaintiff. It is for those reasons that I will not accept their defense.

As against the first defendant, the legality of the sale of the **suit property** is challenged on account that, the sale agreement between

the plaintiff and first defendant was not conclusive as it was a mere pre-sale agreement and that, the first defendant did not receive the full purchase consideration. In her testimony on cross examination however, the first defendant concedes to have sold the **suit property** at the purchase price of TZS 600,000,000/= and that the same was paid in full.

On his part, the fourth defendant does not agree that the sale of the **suit property** by the first defendant was at the purchase price of TZS 600,000,000/= as alleged by the plaintiff. He claims that the suit same sold at TZS 1,000,000/=.

In paragraph 6 of the initial plaint, the plaintiff claimed to have purchased the **suit property** on 3<sup>rd</sup> February 2015. Conversely, what was attached thereto and marked SZS-1 was a sale agreement dated June 2013. In the amended plaint, the said sale agreement has been referred as annexure SZS-1 but has not been attached. In his testimony, the fourth defendant produced the said agreement which was admitted and marked **D-17** along with other three sale agreements (exhibits **D 15, 16, D-18** and **D-19**).

The admissibility of the above agreements was questioned by Mr. Daimu, learned advocate for the plaintiff, on account that, they were not stamped in terms of the Stamp Duty Act. A similar objection was raised in relation to the sale agreement in exhibit **D1** which was

tendered by way of cross examination. I admitted them with a note that the reason for overruling the objection would be incorporated in the judgment. The documents in questions were tendered by the fourth defendant who was not privy to the agreement to establish misrepresentation by the plaintiff on the purchase price of the **suit property**. Exhibit **D1** was tendered at the instance of the fifth defendant who was also not privy to the agreement to establish misrepresentation. They were not tendered with a view to establish transfer of the **suit property** in favour of the plaintiff. The fourth defendant being not the purchaser of the **suit property** was not the person responsible for payment of stamp duty in respect of the said transactions as well. Equally so for the fifth defendant. In the premises, the documents were admissible under section 51 (1) (a) of the Land Disputes Courts Act, Cap. 216, R.E, 2019 which provides as follows:-

*51.-(1) In the exercise of the respective jurisdictions, the High Court and District Land and Housing Tribunal shall apply the Civil Procedure and the Evidence Act-*

*(a) subject to regulations made under section 49 may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to adduction and reception of evidence.*

Under cross examination by advocate professor Safari on there being various versions of sale agreements, **PW1** told the Court that, though he signed only one agreement, he used to sign and cause the first

defendant sign wherever he paid. This statement finds support from the said exhibits. I will explain.

In all the five sale agreements, the total purchase price is TZS 1,000,000/=. Item 2 of in Recital clause in exhibit **D17** suggests that, the plaintiff agreed with the first defendant, on 4<sup>th</sup> May 2013, to purchase the **suit property** at the total purchase consideration of TZS 1,000,000/-. Recital 3 thereof indicates that, the plaintiff paid, on the same date, TZS 100,000, 000/=. This is confirmed by clause (f) of the sale agreement in exhibit **D15** dated 4<sup>th</sup> May 2013 wherein the first defendant represented himself as the administrator of the estate of the late Nassoro Simba. Clause 2 of exhibit **D15** clearly indicates that, the plaintiff would pay the first defendant the first installment of 100,000,000/= upon execution of the said pre-sale agreement. Clause 3 and 4 of the exhibit indicated that the said agreement was a pre-sale agreement.

Recital 3 of exhibit **D17** stipulates that the second installment of TZS 200,000,000/= had also already been paid. This is confirmed by clause 1 and 2 of sale agreement dated 13<sup>th</sup> May 2013 (Exhibit **D16**) which indicates that a payment of TZS 200,000,000/ as a second installment was made upon execution of the same. Clause thereof 3 puts it very clearly that the balance of TZS 700,000,000/= would be paid on mutual agreement between the parties.



Recital 4 of exhibit **D17** suggest of there being paid, upon execution of the same, the sum of TZS 200,000,000/= which according to clause 1 thereof, it was the third installment. It is put very clearly therein that by that time, the plaintiff had paid, out of TZS 1000,000/= the sum of TZS 500,000,000/=. Clause 2 of the agreement provides as follows:-

*“2 Kwamba baada ya malipo hayo kufanyika mnunuzi atabaki anadaiwa na muuzaji jumla ya Tshs. 500,000,000/= (Shilingi Milion Mia Tano tu) ambazo ataendelea kuzilipa kwa awamu tofauti kutokana na jinsi watakavyokubaliana na muuzaji”.*

Exhibit **D18** which is the sale agreement dated 17<sup>th</sup> September 2013 incorporate the terms of the agreement and the three installments evidenced in exhibits D15,16 and 17 and add that, the balance of TZS 500,000,000/= would be paid upon execution of the said agreement. Exhibit D19 is an agreement executed in 2014. Aside from incorporating the terms in exhibits D15, D16,D17 and D18, it adds another payment of TZS 100,000,000/= as the fourth installment marking the purchase price paid as 600,000,000/=. Clause (k) of exhibit D19 clearly states that the balance of TZS 400,000,000/= would be paid upon execution of the said agreement. Exhibits D15-19 were all witnessed by advocate Magafu while exhibit D1 which was signed subsequent thereto was witnessed by advocate Majaliwa. Under cross examination, the plaintiff told the Court that, it was advocate Magafu who used to witness receipt of payment of the installments. Exhibit D1 does not make any reference to the

previous agreements. It can therefore not be said in any way that the same amended any terms of the said previous agreements which appear to be in succession. In my view therefore, while the sale agreements in exhibits D15, D16,17 and P18 were mere pre-sale agreements, the one in exhibit D19 is a conclusive agreement officiating and concluding the previous pre-sale agreements. Express therein was that, the last installment would be paid upon execution. The plaintiff has not proved payment of the said balance. I have noted however in her testimony under cross examination the first defendant admitting receipt of **TZS 600,000,000/=**.

Before I answer the second issue, I will hold, as a point of fact that, the purchase consideration of the **suit property** between the plaintiff and the first defendant was TZS 1,000,000/= and that out of that amount, the plaintiff has proved payment of TZS 600,000,000/=

I now remain with the claim against and by the fourth defendant. As I said above, the plaintiff does not have a claim against the fourth defendant. He has however been joined, as an interested party upon application. The fourth defendant does not claim beneficiary interest from the estate of the late Katende Simba. Neither does he directly claim beneficiary interest to the estate of the late Nassoro. As a legal personal representative of the late Asha Mwinyimvua, the fourth defendant is claiming her established share of  $\frac{1}{4}$  on the **suit property** which was granted by the primary court of Karikaoo in

probate and administration cause number 50 of 1989 (exhibit **D3**) as her *kithumuni*.

In his written statement of defense and counter claim, the fourth defendant has raised four grounds to challenge the legality of the sale. First, it was done without notice to him and/ or his predecessor despite there being duly entered a caveat on the register. The caveat was produced into evidence and received as **D20**. Two, the sale was done in violation of the order of the primary in exhibit **D4** that the **suit property** should be sold by a public auction and the fourth defendant be given  $\frac{1}{4}$  shares of the purchase price. Three, it was based on the forged affidavit of consent in exhibits **D13** and **D21**. On that, the fourth defendant relied on forensic examination report exhibited (**D25**) and spacemen signatures in exhibits **D22**, **D23** and **D24**.

It worth of note that, the admissibility of the above pieces of documentary evidence was objected by the counsel for the plaintiff and first defendant. The caveat in exhibits 20 and the judgment in exhibit D4 were objected on account that they were photocopies and not certified. While exhibit D20 was admitted tentatively with a note that the issue of admissibility would be considered in the final judgment, exhibit D4 was absolutely admitted with a note that, the reason for overruling the objection would be incorporated in the final judgment. Exhibits D13, D22, D23, D24 and 25 which sought to

establish forgery, were objected on account that they were neither pleaded nor listed in the list of documents. I tentatively admitted them with a note that the issue of admissibility would be considered in the final judgment.

I will consider first the admissibility of Exhibits D13, D14, D21 D22, D23, D24 and D25. As I said above, the said exhibits were tendered to establish of there being forgery. The elements of the forgery was that some of the deponents in the affidavit in exhibit D13 and D21 did not sign. In the amended Plaintiff, this fact was pleaded in paragraph 12(i) where the plaintiff averred as follows:

*12. That, when the Plaintiff waiting for expiry of the issued thirty days notice, he notices that the Defendants fraudulently dealt with him in respect of transection involving the suit plot. The following are the particulars of fraud:*

*(i) The Plaintiff gave the Affidavit of consent bearing the name, picture and Signature of the beneficiary named **Mboni Issa Mtambo** who died since 2008.*

By rule against departure from pleadings set out in order 6 rule 7 of the **CPC** and estoppel by record, the plaintiff is estopped from denying or giving any evidence inconsistent with such factual assertion. I will take it from the respective paragraph that, the issue of the affidavit in exhibit **D13** and **D21** being forged has never been in dispute as to oblige the defendants or either of them to adduce evidence in proof thereof. The dispute, it would appear to me, is on the effect of the said forgery. On that account therefore, there is no reason to reject

documents in exhibit **D13, D21, D22, D23, D24** and **D25**. In my view, the documents are admissible under section 51 (1) (a) of the Land Courts Disputes Act. The preliminary objections are henceforth overruled.

Mr. Daimu submits that, the forgery was inconsequential because the said affidavit was not the basis of the transfer. It was indeed, submits Mr. Daimu, not one of the essential document for conveyance of a landed property by an administrator. To him, the basis of the transfer was the sale agreement. The first defendant, it is further submitted, was vested, by virtue of being an administrator, with power to register the property in her name as an administrator and transfer it, for the purpose of administration, without there being a consent from the heirs. His contention was cemented on various judicial pronouncements. One such authority is the **AZIZ DAUDI AZIZ VS. AMINA AHMED ALLY, CIVIL APPEAL NO. 30 OF 1990 (UNREPORTED)** where the Court of Appeal held that;

*“Once an administrator of the estate was appointed, then the house of the deceased owner of the property is changed in all documents and it is left to his discretion to administer the estate in the best way he can”.*

He submits therefore that, since at the time of the sale, the first defendant was the administrator of the estates of both Nassoro Simba and Katende Simba, he had title to pass to the plaintiff. The capacity of the administrator to sell the property of the deceased, it is further

submitted, is absolute and does not require a consent from the beneficiaries. Reliance was placed on an authority of the Court of Appeal in **MOHAMED HASSAN VS. MAYAZA MZEE AND MWANAHAWA MZEE (1994) TLR 225** where it was held as follows:-

*“With regards to the question whether consent of all the heirs should have been sought before selling the house, firstly, it was impossible to obtain such consent from the two hostile groups. Secondly, the administrator was not legally required to obtain such consent”.*

On his part, Professor Safari has insisted in his submissions that, the consent of all beneficiaries was necessary. He has not cited any authority. On my part, I have read the authorities just referred. I am in agreement with Mr. Daimu that, an administrator of the estate enjoys power, subject only to the direction of the probate court, to sell the deceased property without necessarily procuring consent or approval from the beneficiaries. On that account therefore, and in the absence of evidence of the involvement of the plaintiff in the making of the affidavit in exhibit **D13** and **D21** or prior knowledge of the flaws therein, the forgery in the said affidavit cannot be a ground for vitiating the sale and registration of the **suit property** in the name of the plaintiff.

Let me proceed with the issue of the caveat in exhibit D20. The admissibility of the caveat was objected for the reason that it was a mere photocopy. I attentively admitted it and reserved the

consideration of the issue in my judgment. The caveat appears to have been presented by the late Asha Mwinyinvua and registered on 10th April 2008 under section 32(1) of the Registration of Documents Act. The registration of the **suit property** in the name of the first defendant was made in 2015. There is a difference of more than seven years in between. A caveat entered in terms of section 32(1) of the Registration of Documents Act is valid for a period of only one year. This is according to section 32(2) of the Act which provides as follows:-

*(2) A caveat shall be effective only for one year from its date and only for such number of documents as are covered by the fee paid.*

The fourth defendant did not before producing the document or at all adduce any evidence to suggest enlargement of the period of the validity of the caveat. On that account therefore, the caveat in so far as it had, at the time of the transaction in question expired, it is irrelevant in the fact in issue and it is inadmissible even if it was the original. The preliminary objection is thus sustained. The document shall not be given any weight.

There was also a submission that, the sale of the **suit property** was in violation of the order of sale of the same by the primary court in exhibit **D4**. The admissibility of the document was questioned for being a photocopy and not certified. I overruled the preliminary

objection with a note that, the issue of admissibility would be considered in my judgment. The reason for overruling the preliminary objection is obvious. The document in question constitute a ruling of the District Court duly signed by the presiding magistrate. The genuineness of the photocopy of the decision has not in anyway been doubted in pleadings and evidence. Neither in the counsel's submissions. On my part, I see the document on the face of it worthy of belief. In the circumstance, the document is admissible under section 51(1)(a) of the Land Courts Disputes Act and that is the reason for overruling the preliminary objection.

The factual foundation of this ground, it would appear from the evidence and the counsel's submissions, is from the decision of the primary court of Kariakoo in Mirathi No. 50 of 1989 dated 15<sup>th</sup> May 1989 (exhibit **D3**) read as follows:-

*Kwa vile wote wamekubaliana hivyo mwombaji Katende d/o Simba awe msimamisi wa mirathi ya marehemu Nassoro Simba na Katende d/o Simba ni warithi pekee wa mali hiyo mke wa marehemu apewe ¼ ya mali yote baada ya kujulikana thamani yake ni kiasi gani magawanyo yatatolewa siku 90 na baada ya hapo jina la marehemu Nassoro Simba lifutwe na liandikwe la mrithi wa nyumba hiyo Katende d/o Simba.*

The late Katende Simba expired in 1997 and the first defendant was irrefutably appointed the successor administrator of the estate of the late Nassoro Simba on 6<sup>th</sup> May 2009. In accordance with the judgment of the High Court in exhibit **D6**, the status of the **suit**



**property** until on the death of the said Katende Simba was as follows:-

*By the time the administrator of the estate (Katende Simba) died in 1997 appellant had not been paid her share of the estate, but the administrator had already transferred the house of the estate to her own name as evidenced by a transfer deed dated 14.04.1990.*

Two inferences, for the purpose of this dispute, can be drawn from the said evidence. First, the transfer of the **suit property** in the name of the late Katende Simba was done on 14.04.1990. Two, until 1997 when the first plaintiff herein was constituted the successor administrator of the late Nassoro Simba, the late Asha Mwinyimvua had not been paid her share on the **suit property**.

The position appears to be the same until on 6<sup>th</sup> September 2013 when the first defendant herein was being appointed the administrator of the estate of the late Katende Simba vide Mirathi No. 104 of 2013.

In accordance with the evidence in exhibit **D6** and **D5**, the main reason why it had taken so long to pay the said share to the late Asha Mwinyinvua is disagreement in the valuation of the **suit property**. The issue, it would appear to me, was resolved in the judgment of the High Court in exhibit **D6** wherein the late Asha Mwinyimvua was the appellant and the first defendant the respondent. In resolving the

issue, His Lordship, Juma, J, as he then was, held at page 6 of exhibit **D6** as follows:-

*The Kariakoo Primary Court- (Probate No. 50 of 1989) in my opinion should have allowed opposing valuation to be presented before it instead of directing the compilation of the report only by a Government Valuer. Since the appellant has a vested interest in the value of the estate of her deceased husband it is prudent in the circumstances of this appeal to let not only the Government Valuer to conduct valuation of the property at issue, but to also allow valuations by any other "qualified valuer" as defined by section 2 of the Land Act, Cap 113,*

Having so remarked, the High Court remitted the file to the primary court for determination of the issue of valuation of the **suit property**. It further directed the first defendant herein to pay the appellant her  $\frac{1}{4}$  share of the estate within 90 days from the date of the decision on valuation.

In accordance with judgment of the High Court in exhibit **D7**, the order in exhibit **D6** could not be timely complied with for the reason of the death of the late Asha Mwininvua. It is also evident in exhibit **D7** that, the compliance of the said order was further prolonged by the reason of the direction in the decision appointing the fourth defendant administrator of the estate of the late Asha Mwinyimvua. Unlike in the decision in Mirathi No. 50 of 1989 as confirmed in the judgment in exhibit **D6**, in the decision appointing the 4<sup>th</sup> defendant an administrator, the ratio of the share of the late Asha Mwinyimvua in the estate was reduced to  $\frac{1}{8}$  of the value of the **suit property**.

On revision to the District Court, the decision reducing the ratio was set aside and substituted with the original ration of  $\frac{1}{4}$  share (exhibit **D5**). The decision in exhibit **D5** was confirmed in the decision in exhibit **D7** which was delivered on 29/3/2016.

In the decision in exhibit **D6**, I have noted, the High Court did not order that the sale of the **suit property** be by supervision of the court. It only directed the primary court to determine the valuation of the **suit property**. The obligation of the first defendant was to pay, within 90 days of the decision,  $\frac{1}{4}$  of the value of the **suit property**.

It may perhaps be worth of note that, in accordance with grant in exhibit **D3**, the late Katende Simba and Asha Mwinyimvua were the sole heirs of the estate. Further that, it was express in the order that upon paying the  $\frac{1}{4}$  shares, the late Katende would automatically be entitled to change the **suit property** in her name as the heirs and not as a mere administrator. It is a fact also that, in accordance with exhibit **D6**, the late Katende though was yet to give what was due to the late Asha had, by 1990, transferred the title in the **suit property** in her own name. She might have been wrong. Nonetheless, throughout the time, what would appear a premature transfer has never been invalidated. The issue, in so far the property is concerned has been on payment of the said ratio and value thereof. In effect, the claim would appear in the form of non-possessory encumbrance rather than proprietary right on the part of the late Asha

Mwinyimvua. In law, this would not prevent further transfer of the **suit property** subject to the said encumbrances.

I would hold therefore without hesitation that, by virtue of the decision of the primary court of Kariakoo in Mirathi No. 50 of 1989 as confirmed by the decision of the High Court in exhibit **D6**, the title of the late Katende Simba which passed to the first defendant by operation of law was, prior to the sale in question, encumbered by  $\frac{1}{4}$  interest thereon in favour of the estate of the late Asha Mwinyimvua. It is also my finding that, the quantum of the said share was subject to determination by the primary court in Mirathi No. 50 of 1989 of the value of the **suit property**. I am also settled from the evidence available and more so from the facts in paragraph 8 of the amended plaint that, the plaintiff was quite aware, when he was purchasing the **suit property** of the said encumbrance. Since the order in exhibit **D3** was payment of the value of the interest and the **property** remains under the ownership of the late Katende Simba, I cannot say that, the transfer of the **suit property** from the personal legal representative to the plaintiff was invalid. What I can say with certainty is that, the plaintiff purchased the **suit property** with an encumbrance of  $\frac{1}{4}$  value of the **suit property** in favour of the fourth defendant.

There has however not been adduced any evidence nor raised any claim that the plaintiff was aware of the order in exhibit **D6**

subjecting the payment of the said amount to valuation by the probate and administration court. Besides, the fourth defendant did not in his counterclaim plead any value of the **suit property** over and above the purchase price in exhibit **D18**. The evidence of the value of the **suit property** being that which is reflected in exhibit **D19**, this Court, for the purpose of determining the validity of the sale agreement and the effect thereof would imply that TZS 1,000,000 was the correct value of the **suit property**. The fourth defendant is therefore entitled  $\frac{1}{4}$  of the value of the suit property. To that extent therefore, the first two issues are answered in favour of the plaintiff. In the final result, I will make the following orders: -

1. The **suit property** has been validly sold to the plaintiff at the purchase price of TZS 1,000,000,000/= with the encumbrance of the value of  $\frac{1}{4}$  of the **suit property** in favour of the 4<sup>th</sup> defendant.
2. The performance of the contract is incomplete on account that the plaintiff has not paid the balance purchase price of TZS 400,000,000/=. TZS 250,000,000/= which is  $\frac{1}{4}$  of the total purchase price should be paid directly to the fourth defendant as the decreed share of the estate of the late Asha Mwinyimvua.

4. Upon full payment of the purchase price as aforesaid, the plaintiff shall have vacant possession of the **suit property** against the first four defendants and each of them.
5. The counter claim by the second and third defendants is struck out for want of jurisdiction.
6. The counterclaim by the fifth defendant is struck out for want of *locus standi*.
7. Each party to bear its own costs.



**I. MAIGE,  
JUDGE  
29/09/2020**

Judgment delivered this 29<sup>th</sup> day of September 2020 in the presence of Daimu Halifani, for the plaintiff, Mussa Kiyobya for the second and third defendants and also holding brief for Mr. Magusu for the first defendant, Professor Safari for the fourth defendant and in the absence of the 5<sup>th</sup> defendant.



**I. MAIGE,  
JUDGE  
29/09/2020**

