

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 298 OF 2017

**GLORIA PETER KOMBE (MINOR) by PETER ALPHONCE
KOMBE HER NEXT FRIEND and guardian.....PLAINTIFF
VERSUS**

MAUREEN ERNEST ULIMALI.....1ST DEFENDANT

**MAUREEN ERNEST ULIMALI as a legal personal representative of
ERNEST DESIDERY**

MASSAWE ULIMALI (Deceased).....2ND DEFENDANT

IZADINI JUMABADRU KALOKOLA.....3RD DEFENDANT

JUDGMENT

Date of last order: 27/11/2020

Date of Judgment: 11/12/2020

NDUNGURU, J.

The plaintiff in this case; one of Gloria Peter Kombe (Minor) by Peter Alphonc Kombe her next friend and guardian is praying for judgment and decree against the defendants as follows:

- (i) A declaration that the plaintiff is a lawful owner of all that land known as **FARM NO. 1376, MSONGOLA MLANDIZI, KIBAHA DISTRICT** registered under Certificate of Occupancy No. 45760.

- (ii) A permanent injunction restraining the defendants whether by themselves, their servants agents or otherwise from trespassing into Farm No. 1376 or dealing with it in any manner.
- (iii) An order cancelling the defendant's name in Certificate of Occupancy No. 45760 and directing the Registrar of Titles to registrar the Plaintiff as the lawful owner of the of the Right of Occupancy registered under C.T. No. 45760.
- (iv) Costs.
- (v) Any other relief as may be deemed just.

The facts which gave rise to this suit are briefly summarized as follows: By written Sale Agreement dated 29th November 2005 one Ernest Desidery Massawe Ulimali (the vendor) sold and transferred to the plaintiff his interest and property in suit land to a tune of 5,000,000/=. Having paid the purchase price the vendor handed to the plaintiff the Certificate of Title No. 45760 and the conveyance documents as well a possession of the said land.

That the plaintiff processed the conveyance by paying notification fee, stamp duty and approval fee so as initial disposition by way of transfer of

the Title No. 45760 in order to register the plaintiff as the owner of the suit land. However, upon payment of all necessary fees, the plaintiff was informed that the Registrar of Title cannot registered him, as the owner of the said suit land FARM No. 1376, Title No. 45760, because the 2nd defendant was already registered as owner of the said property through transmission following the death of Ernest Desidery Massawe Ulimali.

In proving the case the plaintiff's case was paraded with five witnesses. The plaintiff's case went as follows: Peter Aphonce Kombe, testified as PW1. His evidence was to the effect that in 2005 he purchased the suit land a Farm No. 1376 with Title No 45760 located at Msongola Mlandizi Kibaha from one Ernest Desidery Massawe Ulimali. That he purchased the said farm for his daughter one Gloria Peter Kombe who was a minor by then PW1 tendered payment acknowledgment as exhibit (Exh. P1). That the said payment was done at CRDB Bank Lumumba branch. That PW1 tendered the sale agreement of the said farm/suit property as exhibit (Exhibit "P2"). The said sale agreement was executed on 05/12/2005. PW1 told the court that having executed the agreement the vendor handed to him a certified copy of the tiled deed because the original was lost. PW1 tendered the Copy of Government Gazette of 28 May 2004 in which the loss of the title was

announced as exhibit which was marked as Exh. "P3". He went on saying having paid for necessary fees he was issued with the letter of offer by Kibaha District Council (Exh. P4). That the letter of offer was issued on 23/12/2005. That thereafter he started the process of transferring the title to his name. PW1 said he paid the land rent (exh. P8). He further paid stamp duty 936,000/=, approval fee 80,000/= and notification fee 40. PW1 told the court that later on he was informed that his transfer could not be affected because there was another transfer of the same suit land. That is from Ernest Desidery Massawe Ulimali to Maureen Ernest Ulimali: PW1 tendered the letter which informed him that the same had been transferred to Maureen Ernest Ulimali as Exh. "P1" PW1 went further saying he went to Kawe Primary Court where the probate cause of Ernest Desidery Massawe was intertained and got a proceeding which shows that the farm was not part of the estate as it was sold as earlier (Exh. "P10"). That he filed Revision at Kinondoni District Court applying for an order of removing the said suit Land in the list of estates of the deceased Ernest Desidery Ulimali as it was sold before his death. The revision is still pending.

When cross examined PW1 said he purchased the suit land (Farm) from Ernest Desidery Massawe. He paid the purchase price on 01/12/2005. The

sale agreement was prepared on 29/11/2005. The payment acknowledgment note was written by John P. Mlay. That he paid money to John P. Mlay because he trusted him as they visited the farm together and were together in the whole transition. That the Vendor never told him that he has family. Ernest died in 2011, six years after he had sold a farm/suit land. He said he does not know anything regarding spouses consent. That farm found one Kalokola (3rd defendant) had trespassed his farm. That he doesn't believe that the documents of Maureen were correct. They were illegally signed by the Registrar of Title.

When cross examined by the counsel of the 3rd defendant PW1 said he paid cash 5,000,0000/= to John P. Mlay. Mlay is not a party to the suit, the one who received the money on behalf of the Ernest Desidery Massawe. That he was not aware as to who was the wife of the vendor. Upon re examination PW1 said he did not know if Maureen was the wife Ernest Ulimali that he had no doubt to pay Mlay due to the relationship existed between Ulimali and Mlay. That his conveyance documents were not worked upon because Maureen had also lodged her transfer documents. He left a person watching the Farm. It is Mlay who introduced him to Ulimali. That he paid all the Money to Mliya who deposited into Ulimali's account. The sale

agreement was executed at Kibaha he was supplied his copy having been witnessed because was living at Dar es Salaam.

Gloria Peter Kombe, testified as PW2. Her testimony was to the effect that Peter Alphonse is her father thus her guardian. That when the suit land was purchased for her she was six years old in the year 2019 her father told her that there arose dispute on the farm (suit land). PW2 said what she prays is that the court should declare her the lawful owner of the suit land and issue restraint order to any person to enter in the Farm land and the court grant her the costs of the suit.

When cross examined, PW2 said she doesn't know to whom the suit land was bought. She has never visited the farm. It is in 2019 when she came to know the existence of the dispute over the land purchased for her. She doesn't know the value of the land in dispute. It is PW1 who have details of the disputed farm. PW3 is Jon Paul Mlay. His evidence was to the effect that he knew Ernest Ulimali way back 1987. That Ulimali purchased the land in dispute from his mother in law. That when Ulimali purchased the said farm was for his own use not for family. By then the farm was not yet surveyed. When Ulimali Processed the survey PW3 is the one who supervised the exercise. That Ulimali left the Shamba for a long time, the Village authority

of Msongola told her to clear the farm. Ulimali decided to sell it PW3 said he is the one who found the purchaser. He said it is the plaintiff who purchased the farm. The purchase price was 5,000,000/=. That he was involved in the sale transaction as a witnesses. PW1 said he was given 500,000/= from the sale price as his commission and transfer expenses, the rest was deposited in the vendor's account at CRDB at Mnazimmoja. That having executed the agreement Ulimali handed the title deed to Peter Alphance Kombe. PW3 told the court that he is the one who signed the acknowledgment note of the payment. That when the payment transaction was done Ulimali was present. PW3 identified the payment acknowledgment note (Exhibit P1) and sale Agreement (Exh. P2)

PW3 went further saying apart from coming from the same village with Ernest Ulimali, he again met Ulimali at Tabora where he was working while PW3 was at Land institute studying. That he knew that wife of Ulimali while at Tabora she is for the time being. PW3 told the court that after the death of Ernest Ulimali his wife phoned to her asking him if the farm was sold. PW3 told the court that he told her that it was true the Shamba was sold, but he never met her neither knew her name. PW3 said he got informed

that the said Shamba (Farm Land) has been resold. The re-sale was illegal because it was already sold to Kombe.

When Cross examined, PW3 told the court that he is the one who received the money from Kombe, but it was a sale proceeds. That the payment not does not show the account number and whose account the money was deposited. That he did not sign the sale Agreement (Exh. P2). He said, he was the one who introduced the vendor and purchaser to the attestator of the agreement PW3 said he did not have any document which authorized him to receive payment on behalf of Ernest Desidery Massawe Ulimali: He further said he was not aware if Maureen (2nd defendant) was the administrator of the estate of Ernest Desidery Ulimali Massawe. That Ulimali had wife but he never told Kombe that Ulimali had wife. PW3 said he was not aware of what went on regarding transfer process. He was working (as surveyor) at Kibaha District Counsel Land Office.

When further cross examined by the counsel of the 3rd defendant, PW3 said when payment was done at Lumumba CRDB Bank they were all three meaning himself, Kombe and Ulimali. He is the one who received money and deposited in the account of Ulimali. That the bank slip was given to Kombe. That he is the one who acknowledged payment. When the argument was

signed at Kibaha Kombe was present. He was involved to survey the disputed farm while working as a surveyor of the District Counsel. The title did was announced in the Gazette to have been lost in 2004. When re-examined PW3 said he had not seen the wife of Ulimali ever since he left Tabora. J.P Mlay and John Mlay is one person. He was trusted because he was the one who handled the transaction . At the bank they were all three.

Pw4 one Eva Frank Mauki, was of the testimony that she is the land officer at Kibaha District council she said according to the record present in the Land office, Form No. 1376 located at Msongola Mlandizi was allocated the Ernedt Desideriy Massawe Ulimali by certificate of Occupancy No. 45760 issued in 1995. The witness said the office received application for transfer from, Ulimali to Peter Kombe in 2005. The application was accompanied with Certificate of occupancy issued in 2004, sale and agreement. The certificate was a duplicate one as it appeared the original was lost. It was further stated by the witness that the office prepared "deed of surrender and letter of offer to Peter Kombe (Exhibit P4). That the documents were sent to the commissioner for Lands for transfer. That the transfer could not be effected because some of documents attached with were not proper (i.e deed of surrender). But having rectified the error so that the transfer process could

continue, the Ministry wrote again a letter to Kibaha Land office in forming that the process could not take place because the title has been transferred from Ernest Ulimali Massawe to Maureen the administrator of the estate of the late Ernest Desidery Massawe Ulimali who has again applied for transfer to Izadini Juma Badru Kalokola. That Maureen was appointed as administrator on 01/03/2012. The title deed Maureen used was issued certified on 13/11/2012, while the one Kombe used for Transfer was a certified copy issued of 2004 after the original one was lost.

PW3 told the court that the duplicate copy issued in 2012 was on application and the Registrar used his power to certify it. But at the same time the certified copy of 2009 was in the hands of the commissioner for land for Transfer purpose that was because of the miscommunication. The effect is that the title issued later becomes invalid. When cross examined PW3 said when the title issued over another title the is invalid. There is only one allocation which was allocated to Ernest Desidery Massawe Ulimali. In issuing the certified true copy there must be application made. She did not see the application because it was made to the Registrar of Titles. It was not correct to issue Letter of Offer to Peter Kombe. The Commissioner for Land did not work on the application of Kombe. The documents of Kombe were

submitted at Kibaha Land office in 2005. Surrender and transfer cannot be done simultaneously.

DW5 was Edelfrida Camiluis Lekule. Her testimony was that she is the Land officer working in the office of Assistant Commissioner for Lands. That the Form No. 45760 was granted to Ernest Desideriy Ulimali Massawe. That the office of the Commissioner for Lands received application for transfer in 2005. That the Commissioner could not effect the transfer because it had wrongly submitted as the transfer was accompanied with the deed of surrender. Those were two different processes which could not go all together. That among the document were certified title No. 45760 which having been surrendered (submitted in 2005) to the commissioner is still there to date. The delay to transfer was a result of conflicting transactions which were applied. It was Peter Kombe who applied for transfer.

PW5 told the court that the commissioner having received the complaint when consulted the Registrar of Title on the transaction he was told that the Certificate of title was announced to have lost in 2004. The certified copy was issued but again there was an application of recognizing the administrator of estate and the same was registered/transferred to the

administrator of Estate. The fact that the certified copy issued in 2004 was not lost the other which was issued later in invalid but it is not automatic.

When cross examined PW5 told the court that it is the Registrar of Title who keeps the record, he is also the one who certified the titles and the one who can declare the title to be invalid (batili) . It is the Registrar of Title who can tell the court who is the lawful owner of the title. Further the title becomes known invalid having been communicated to the Holder. When documents are submitted to the commissioner can be returned when the submitting office request is or when the documents have been worked upon. The one to be blamed is the owner of the documents because he ought to be diligent to make follow up of the said documents. The administrator could have gone to Kibaha Land office before going to the Registrar of Title. But as to what transaction was done there is no fraud. PW5 further said he never saw the bundle of the documents submitted by Peter Kombe, thus she is not certain if consent of the spouse was one of the documents submitted for disposition and transfer.

Fending the case DW1 one Maureen Ernest Ulimali told the court that she is the wife of later Ernest Desidery Ulimali who dies on 27/11/2011. That they were blessed with three children. That they celebrated their marriage

in 1990 at Tabora when they were working by then. That she was working at the Ministry of Works and Youth Development and later at the President's office at the Economic advisory department. That through their joint account they managed to acquire various assets including the Farm No. 45760 located at Msongola Mlandizi Kibaha District. That the farm was purchased from one Yasiri Kayage in 1995. The purchase price was 400,000/=. When purchased it, it was not surveyed they then surveyed and got a "title deed" which was issued in 1996.

DW1 told the court that following the death of her husband through probate cause No. 44 of 2012 on 01/03/2012 she was appointed as the administrator of the estate of late Ernest Desideriy Massawe Ulimali. The witness said one day when she visited the farm, one Chacha who was taking care of the farm told her that someone called Kombe is seen at the farm saying to have purchased it. DW1 said she tried her best to trace the said Kombe, she managed to meet him one day at Mlimani city. Thereafter she never met him any more.

DW1 told the court that she started looking for the title deed of the said farm but didn't find. She processed loss report, affidavit and letter of appointment and sent them to the Ministry where the loss was announced.

following the announcement the certified copy of the title deed was issued to her (Exh. D1). as a legal personal representative (Exh. D2) she said in registering the title deed in her name as personal representative she has not committed any fraud. DW1 told the court that to the time when this case is proceedings she is not aware if the farm was sold because she was not consulted as a spouse. That as the administrator having got the title she decided to sell/dispose the farm to one Izadini Kalokola. The purchasing price was 60,000/=.

When cross examined, DW1 told the court that Ernest Desidery died on 27/11/2011, that Ernest was her husband , it is Ernest who processed the survey of the farm. She had never met Kombe, when looking for him wanted to tell him that she was the husband of deceased. Though the title had the name of Ernest Desidery but it was the matrimonial Property as they trusted each other.

DW2 testified to the effect that Ernest Desidery Masawe was her cousin. That he died in 2011. That following his death his wife one Maureen Ernest Ulimali was appointed as an administrator of the estate. Maoureen was married by the deceased in 1990. DW1 went further saying she was very close to the deceased.

DW1 went further saying some of the properties of the deceased she knew are; the house located at Keko, the farm located at Msongola and a plot located at Tegeta. That she knows the farm as she used to visit during the life time of Ernest Desidery Ulimali. She told the court that after Maureen had been appointed she sold the said farm to Izadini Kalokola in 2013. When cross examined DW2 said she visited the farm for the last time in 2012. That she was close to the deceased. The deceased purchased the farm in 1995. That she attended the clan meeting which appointed Maureen to administer the deceased's estate.

DW3 one Izadini Juma Kalokola testified that, he purchased the farm plot No. 1376 with the title deed No. 45760 from Maureen Ernest Ulimali in 2014. That before he bought the said farm having visited and testified made an official search to the Registrar of Title and found that Maureen Ernest Ulimali was the owner of the said farm and the farm had no any incumbrancer. That the purchase price was 60,000,000/= DW1 tendered the official search and sale agreement as exhibits ("D3" and D4 respectively.) The witness tendered Bank transfer receipt as Exhibit ("D5").

DW3 told the court that when he started developing the said farm the dispute arose. That was in 2015. That they tried to settle the dispute at the

Police station but in vein. Then the plaintiff filed this case. When cross examined DW3 said he purchased the said farm from Maureen Ernest Ulimali. That he executed the sale agreement. It is Kombe who reported the matter to the Police station.

The above being the plaintiff and defendants evidence the issues to be determined are;

- (1) Whether the sale of the suit Land to the plaintiff by late Ernest Desideriy Ulimali was valid.
- (2) Whether the sale of the suit land to the 3rd defendant by Maureen Ernest Ulimali as a legal representative of the late Ernest Desideriy Ulimali was valid.
- (3) Who is the lawful owner of the disputed land.
- (4) To what reliefs are the parties entitled to.

As to the 1st issue above it is evident that the land in dispute, which is the farm No. 1376 with Title deed No. 45760 located of Msongola Mlandizi Kibaha was granted to Ernest Desideriy Massawe Ulimali of P.O. Box 72542. But further it is not disputed that the original title deed got ^{lost} in 2004 as shown by the piece of the Government. Gazzete of 28/05/2004 (Exh. P3.)

From, the evidence available PW1 alleges to have purchased the said Farm in 2005 from Ernest Desidery Massawe Ulimali in the year 2005 **by executing sale** agreement further that purchasing price was 5,000,000/=. That PW1 tendered the sale agreement as exhibit which was admitted and marked as Exh. P2 and acknowledgment of payment note which was also admitted as exhibit P1. By producing these two documents in court (Exh. P2 & P1) the plaintiff (PW1) intended to prove that the suit land was disposed to him, by way of sale.

Though these two exhibit P1 and P2 were admitted by the Court because there was no objection from the defence side, it is the duty of the court to put these exhibits under scrutiny so as to determine the evidential value to be placed on them. This is because it is common that admissibility of evidence during the trial is one thing and the weight to be attached to it is a different matter. See **Steven s/o Jonson and Two Others V.R.** Criminal Appeal No. 79 of 199⁹ and **Asia Rashid Mohamed v. Mgeni Seif** Civil Appeal No. 128 of 2011 (both unreported).

In the circumstances of this case exhibit P2 is the sale agreement which PW1 (the plaintiff) entered with the Vendor. According to the Stamp Duty Act. 1972 (R.E. 2002) this sale agreement of the landed property being

a conveyance instrument is duty chargeable. This is provided under section 38 of the Act. Having scrutinized the sale Agreement (Exh. P2) it is found that the said sale agreement has not been stamped as the law requires. The effect of not stamping the instrument which is chargeable is provided under section 46 of the Stamp Duty Act. The section provides;

46(i) "No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by the law or consent of parties authority to receive the evidence or shall be acted upon, registered or authenticated by any such person or by any Public officer Unless such an instrument is duty stamped"

The above being the position of law, notwithstanding the admissibility of the said Sale Agreement as exhibit. I accord no evidential weight. The Exh. P2 has therefore no any evidential value.

Apart from Exh. P2 (the Agreement) the other piece of evidence which the Plaintiff (PW1) ^{relies} ~~release~~ upon concretize his assertion that he purchased the suit farm from Ernest Desidery Massawe Ulimali is the payment acknowledgement note (Exh P1). For easy of reference I find it prudent to reproduce it hereunder.

" Nimepokea Cash kiasi cha Tshs. 500,000/= (Mia Tano Elfu) kutoka kwa Mr. Kombe ikiwa ni malipo ya ununuzi wa Shamba la E.U Massawe. Kiasi kingine kimedipostiwa leo 1- 12- 2005 katika tawi la CRDB Lumumba (Tshs. 4,500,000/= Million Nne na nusu) ikatofanya juma ya Tshs. 5,000,000/=.

Mimi John P. Mlay

Sgn.

1/12/2005

This exhibit "P1" was produced by PW1 (the Plaintiff) for the purpose of proving that he really purchased the suit land to the like sum. Further, that the said Sale consideration was paid to vendor one Ernest Desidery Massawe Ulimali. The author of the document is John P. Mlay. It is John P. Mlay who acknowledge to have received the money from one Mr. Kombe. It is not certain if Mr. Kombe who was referred is PW1 (the Plaintiff). The said document has no clear description of the said Shamba. Whether the Shamba be referred is the subject of this suit or another. Again whether E. U. Massawe is referred to Ernest Desidery Massawe Ulimali or not. Worse still when the author says "Kiasi kingine kime depostiwa leo 1-12-05 katika tawi la CRDB Lumumba". It is not known to whose account the 4,500,000/= was deposited. The document is silent as to whether the money was deposited to the account of John P. Mlay who received the money or not.

PW1, (the Plaintiff) when testified told the Court that having visited the farm land and being satisfied with it Ernest Desidery Massawe Ulimali told him to pay the money to John Mlay and he did not hesitate because John Mlay was with them at the farm and taking into account the existed relationship between Mlay and Ernest Desidery Massawe Ulimali he had no doubt to hand the money to Mlay. Thus he with Mlay went to the Bank (CRDB Lumumba Branch) and paid money to Mlay who then deposited to the account. According to him at the bank he was with John Mlay only.

Contrary to the above, PW2 John Mlay was of the view that when the payment was done at the bank Ernest Desidery Massawe Ulimali was also present. That he (PW2) is the one who queued for depositing the money to the account of Ernest Ulimali. That Ernest Desidery gave him (PW2) the account number so that he may deposit the said money while himself (Ernest Desidery) was present in the bank. These are two contradicting versions. To my view the contradiction goes to the root of the Plaintiff case. This is because in the Sale agreement the only:

Consideration which makes the agreement executed is payment of purchase price. Therefore a proof of payment of purchase price is key in these kind of cases. From the above made analysis I am inclined to subscribe that there

was no sale agreement at all between the vendor (Ernest Desidery Massawe) and the purchaser one Peter Alphonse Kombe.

Assuming all the above permitted short falls were not as they appear to be the evidence on record is that DW1 was the wife of Ernest Desidery Ulimali and that the said suit land was acquired by joint of effort during the existence of their marriage. This is according to testimony of DW1 and DW2. Further that PW3's testimony was that Ernest Desidery Ulimali had a wife when lived at Tabora. The evidence of DW1 is to the effect that before shifted to Dar es Salaam Ernest Desidery Massawe Ulimali lived at Tabora. The fact that the Sale of the landed suit was done during the life time of the vendor and while the marriage was in existence according to Section 59 of the law of Marriage Act Cap. 24 (R. E. 2002) the vendor has to obtain consent from DW1. It was the duty of the purchaser to ascertain whether vendor has a spouse and spouses consent. From all documents tendered by PW1 (the Plaintiff) no consent has been tendered.

Though the landed property is under the name of one Spouse alone (Ernest Desidery Massawe Ulimali), then he could not deprive the other spouse his right over the property. The property being in the name of the husband one Ernest Desidery Massawe Ulimali, then that does not

necessarily mean that the 1st Defendant (PW1) had no interest whatsoever in the suit property. See National Bank of Commerce Limited vs. Nurbano Abdallah Mulla, Civil Apepal No. 283 of 2017 (Court of Appeal of Tanzania – Unreported). In the premises even if all other factors in explained above could have been proper, lack of spouse's consent could have made the sale a nullity. Being the position I find the 1st responds negatively.

As far as the 2nd issue is concerned, that is whether the sale of the Suitland to the 3rd defendant by Maureen Ernest Ulimali as a legal representative of the late Ernest Desidery Ulimali was valid. In this aspect the contentious issue is whether Maureen Ernest Ulimali had a title to pass to the 3rd defendant.

The Plaintiff's argument is that the 2nd defendant got registered after alleging that the original certificate of Title No. 45760 was lost and upon being issued with a certified copy she had applied registered herself as the owner of the suit land. This is per paragraph 15 of the plaint.

The second argument is that registration of the 2nd Defendant as the owner of the certificate of Title No. 45760 is tilted with fraud and it is void. This is stipulated at paragraph 16 of the Plaint. In the same paragraph the Plaintiff has set the particulars of fraud in paragraph 16 (a),(b),(c),(d). The

particulars of the fraud are that, the defendant knew or had a reason to believe that her late husband had since 2005 sold and transferred the title and possession of the suit property to the Plaintiff. That the defendants approached the Plaintiff asked to be paid additional money otherwise the property will be resold. That the defendants falsely represented to police and Registrar of titles that they had lost the original Certificate of occupancy No. 45760. That the defendants have been trying to trespass the suit land though are aware the same belongs to the Plaintiff since 2005.

The above being the particulars of fraud alleged, I had an opportunity to go through the Plaintiff's case evidence. Neither of the Plaintiff's witnesses testified on how the defendants knew or had reason to know that the fault land was disposed way back 2005. The testimony of PW1 was that PW2 did not tell him whether the vendor had wife or not. The same was the testimony of PW3 who said he did not know whereabouts of the PW1's wife ever since he saw her at Tabora. Further that he didn't tell PW1 on vendor's marital status. That was perhaps the title deed had the name of Ernest Desideriy Massawe Ulimali only.

Again no Plaintiff's witnesses has testified on how the defendants claimed additional amount of money. PW1 testified that he was not told by

PW3 about vendor's family/marital status. PW3 testimony on marital status was rather confusing. One of his versions was that over since he saw the vendor's wife while at Tabora then he did not know the whereabouts of the said wife. But the other version is that one day the vendor's wife phoned to him asking him if the farm was sold. No evidence is produced on the claim of additional money.

The PW1 in his testimony did not go further to state why he so alleges on all the particulars of the fraud. The position of law on allegations of this nature has long been settled In **Ratilal Gordhanbhai Patel vs. Lalji Makanji [1957]** E. A. 314 AT 316, the erstwhile court of Appeal for East Africa articulated.

"Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required."

The same position was taken by the Court of Appeal of Tanzania in **Omary Yusuph vs. Rahma Ahmed Abdul Kadri {1987}** TLR 169 at 174 held:-

".....It is now established that when the question whether someone has committed a crime is raised in Civil proceedings that allegations need be established on a higher degree of

probability than that which is required in Ordinary Civil cases....."

The Court went on to state the rationale behind this, it's said:-

".....the logic and rationality of that rule being that the stigma that touches to an affirmative finding of fraud justified the imposition of a strict standard of proof. Though as Rupert Cross cautions and illustrates in his text-book on Evidence at page 124 the application of that rule is not always commodious....."

In view of the foregoing, it is clear that the allegations of fraud in Civil Case, the particulars of fraud, being a very serious allegations must be specifically pleaded as has been done in the plaint at para 16 and the burden of proof thereof, although not that which is required in criminal cases; of proving a case beyond reasonable doubt, it is heavier than a balance of probabilities generally applied in Civil Cases. See also **City Coffee Ltd Vs. The Registered Trustees of Iloilo Coffee Group**, Civil Appeal No. 94 of 2018 (CAT – unreported).

Adverting to the case at hand, no complaint came forth regarding fraud. During cross examination DW5 told the court no fraud has been committed by the act of Registrar of Title issuing a Certified copy of the Certificate of Occupancy that of 2012.

In view of the above, I do not think the Plaintiff has proved this allegation to the standard required; a standard higher than the balance of probabilities not even on the balance of probabilities required in civil cases. DW1 has told the court on the process she undertook on applying for the certified copy of the certificate of occupancy which satisfied the Registrar of Title to issue the said copy I find her evidence conngent and strong and leaves no doubt.

As to the 2nd issue whether the Sale of the suit land to the third (3rd) defendant by Maureen Ernest Ulimali as a legal representative of the late Ernest Desidery Massawe Ulimali was valid; the evidence of DW1 is to the effect that, she being a wife of the late Ernest Desidery Massawe Ulimali, was appointed to administer the estate of Ernest Desidery Massawe Ulimali. The appointment is not disputed. Further that after her appointment as the administrator by Kawe Primary Court vide probate cause No. 44 of 2012 on 01/03/2012, she made the Application to be a legal personal representative of the estate of Ernest Desidery Ulimali (Exh. D2) the application was granted and thus applied to transfer to her name the certificate of occupancy. The Registrar of Title being satisfied with the whole process issued a certified copy (D1) a title (ownership) to Maureen Ernest Ulimali. Having a title on the land suit, DW1 (Maureen Ernest Ulimali) had all legal powers to dispose by


any way the suit property. I thus hold that the sale of the suit land done by Maureen Ernest Ulimali to the 3rd defendant was valid.

On the 3rd issues as to who is the lawful owner of the disputed land, I hold that the fact that DW1 had a title over the suit and a decides to pass the said title to DW3 and the fact that DW3 entered into Sale Agreement and paid for the purchase price as evident in the tendered exhibits (D4 and D5), I hold that the 3rd defendant is the owner of the suit and should proceed with the transfer process which he had stated and was blocked by legal proceedings (this case).

In view of what I have stated above, I find the burden shouldered to the Plaintiff of proving the case to the balance of probabilities has not been performed. In other words the Plaintiff has failed to proof the case to the standard required by the law.

I hereby dismiss the case in its entirety. Costs to follow the event.

It is so ordered.


B.D NDUGURU
JUDGE
11/12/2020



Right of Appeal Explained.