

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.49 OF 2020

JUDITH BARTHOLOMEW MAKOI (as Administrator of the Estate
of the late **BARTHOLOMEW PETER MAKOI**) **PLAINTIFF**

VERSUS

DISUZA TRYPHON KAJUMLA **DEFENDANT**

JUDGMENT

Date of the last order: 08.12.2021

Date of Judgment 17.12.2021

A.Z.MGEYEKWA, J

The Plaintiff, JUDITH BARTHOLOMEW MAKOI an administratrix of the Estate of the late BARTHOLOMEW PETER MAKOI also known as Andrew Makoi brought this action against DISUZA TRYPHON KAJUMLA, the Defendant. The Plaintiff is claiming in 2002 she and the late Bartholomew Peter Makoi during their subsistence of marriage and

through joint efforts bought the suit land from the administrator of the estate of the late Tryphon Zuma Kajumla appointed by the court under the name of Grace Kajumla. The Sale of Agreement was prepared and they made a full payment whereas the vendor, Grace Kajumla handled over all legal documents including the title deed.

Accordingly to the Plaint, the Plaintiff managed to make a substantial improvement on the suit land whereas they build a matrimonial house which the Plaintiff and his family are living in there. On 15th June, 2007 they started to process the transfer of the suit land and they submitted all original documents such as transfer of documents and title deed to the Ministry of Land. The pleadings shows that transfer is yet to be concluded despite physical and written follow-ups the Registrar of Title failed to finalize the process. The Plaintiff claimed that they developed the suit land without any interruption from anybody and they have been paying taxes. On 16th March, 2020 the Registrar of title informed them that there is a transfer process over the suit land carried out by the Defendant, claiming that he is the new owner and about to obtain a Certificate of Title.

In the Plaint, the Plaintiff prays for Judgment and Decree against the defendant as follows:-

- a. *Declaratory order that the Plaintiff in the is the legal owner of Plot No. 437 Block "G" with Title Number 41968 Kinondoni Municipality, Dar es Salaam.*
- b. *Declaratory order that any attempt of transfer of the right of occupancy from Grace Kajumla to Defendant is null and void for being done fraudulently.*
- c. *Payment of General Damages to be assessed by the Court.*
- d. *Interests of amount awarded as general damages in paragraph (d) at the Court rate of 7% from the date of filing of the suit to the date of judgment and 12% from the date of judgment to the date of final payment.*
- e. *For any other orders, this Court deems just and fit to award.*
- f. *costs.*

On the other hand, the Defendant, in response to the Plaintiff' claims, filed a Written Statement of Defence and denied the Plaintiffs claims and urged for this court to declare the Defendant a lawful owner of Plot No. 437 Block G with title No. 41968 located at Kinondoni Municipality within Dar es Salaam.

It is imperative at the outset to point out that, this matter has also gone through the hands of my brothers; Hon. Maige, J (as he then was) who

conducted 1st Pre -Trial Conference. Hon. Madeha, J who tried to mediate the parties. I thank my predecessors for keeping the records well and on track. I thus gathered and recorded what transpired at the disputed land and now have to evaluate the evidence adduced by the witnesses.

During the hearing of this suit, the Plaintiff was represented by Mr. Sosten Mbedule, learned Advocate whereas Mr. Simon Mkwizu, learned counsel represented the Defendant.

Upon completion of all preliminaries, the Final – Pre Trial Conference was conducted on 10th March, 2020 where the following issues were framed by this Court:-

1. *Whether the Plaintiff is a lawful owner of the disputed plot.*
2. *Whether the contract of sale of the disputed plot is legal*
3. *What is the relief for the parties entitled to?*

The Plaintiff (PW1) testified to be the administratrix of the estate of the late Bartholomew Peter Makaoi against Disuza Kajumla. The Plaintiff told the court that she married her late husband in 1990 and his husband passed away on 11th March, 2011, eventually she was appointed to administer the estate of her late husband. To substantiate her testimony he tendered a letter of administration of the estate (Exh.P1).

The Plaintiff went on to testify that in 2001 they searched for a Plot to buy at Mbezi Beach and through a middleman they got Plot No.437 Block G at Makonde Mbezi Beach near NSSF Flats. One Joseph who was a caretaker of the plot connected them with Grace Kajumla, the owner. She was selling the plot to get some money to pay for her children's school fees. The Plaintiff stated that she bought the suit land at a tune of Tshs. 5,000,000/=. The late Bartholomew Peter Makoi conducted an official search in January, 2002 and the lawful owner was Tryphone Kajumla. To substantiate her testimony she tendered a search document in relation to Plot No. 437 Block G dated 17th January, 2002 which was admitted and marked as exhibit P2.

A marriage certificate and a letter of administration of the estate of the late Tryphone Kajumla (Exh.P3) that was issued on 12th August, 1998 proved that Grace Kajumla was married to Bartholomew Peter Makoi. The Plaintiff went on to testify that they asked Grace Kajumla to transfer ownership from her husband's name to her name.

The Plaintiff continued to testify that Grace Kajumla told them that they were two administrators of the estate of the late Tryphone Kajumla; Grace Kajumla and Vedasto Rutaigwa Joseph who passed away. The Plaintiff started to develop the suit land and in April, 2003 they moved into their

residential house where she is residing to date. To substantiate her testimony she tendered a photo of the house (Exh.P4). PW1 testified that they started the transfer procedure at the Ministry of Land and she had some receipts to prove her testimony which was admitted by this court as exhibit P5. PW1 also tendered a copy certificate of occupancy, which was admitted as ID1. They wrote a reminder letter (Exh.P6) to the Ministry of Land requesting them to finalize the transfer. The Plaintiff said that they made several follow-ups to the Ministry, but there was no any reply and in 2011, Bartholomew Peter Makoi passed away.

The Plaintiff continued to testify that after the death of her husband she was stressed, sorting out debt and paying school fees thus she delayed making follow-up at the Ministry of Land. In 2020, PW1 was called to appear before the local government and was informed that one Disuza demanded that he is the owner of the suit land. PW1 testified that Disuza threatened her through text messages. When PW1 was transferring the ownership she realized that Disuza was also transferring the ownership concerning Plot No. 437 Block G thus, she lodged a caveat. The Plaintiff urged this court to declare that her late Husband one Bartholomew Makoi is the lawful owner of Plot No. 437 Block G located at Mbezi Beach and she urged this court to order the Defendant to pay disturbance costs.

When she was cross-examined, PW1 testified that the death certificate of her husband reads Andrew Makoi Sarikoki and his other name is Bartholomew Makoi. She testified that the Certificate of Tittle reads Tryphone. She said that she was the one who was paying land rents (Exh.P4) from 2007 to 2020. PW1 testified that the name still reads Grace Lilian Kajumla as legal representative of Tryphone Kajumla. PW1 stated that she was not aware whether the Registrar of Title wanted to issue the transfer to Disuza.

Mr. Jamhuri Johnson testified as PW2, he testified that IN 2012, he was working with the Tanzania Electric Supply Company (TANESCO). PW2 testified that he witnessed the Sale Agreement between Makoi Grace Kajumla, administrator of the estate of the late Tryphone Kajumla concerning Plot No.434 Block G, Mbezi Beach. PW2 identified the said Sale Agreement (Exh.P3) and proceeded to tell the Court that Grace Lilian Kajumla was a legal representative of the deceased's property as she was duly appointed as administratrix.

During cross-examination, PW2 stated that the Sale of Agreement was signed by Grace Kajumla alone as the vendor as Vedasto Rutaigwa Joseph, the co-administrator did not sign the Sale of Agreement. He said that transfer by legal representative came later thus he only witnessed the

Sale Agreement. He testified that Vedasto Rutaigwa Joseph passed away first and Grace Kajumla passed away later.

Adelfrida Lekule was the third witness (PW3). She stated that she is working with the Ministry of Land, Housing and Human Settlement Development, she was dealing with the application for transfer of ownership. She said the applicant Grace Kajumla tendered the Original Certificate of Title No. 41968, a Form of administration of the estate and thus the transfer to the administratrix was registered on 04th June, 2006. PW3 continued to testify that the Sale Agreement between Grace Kajumla and Bartholomew Makoi, Transfer Deed Form No.35 from Grace Kajumla to Bartholomew Makoi, Application for Disposition Form No. 30 and Notification for Disposition, Form No.29 were also submitted to the office of the Commissioner for lands. PW3 said that the Commissioner handled the applications but he could not approve the transfer because there was a need to amend Forms No. 29 and 30 as Grace had filled the said Forms as if she was disposing of the property as her own and not as administratrix of estate.

During cross examination, PW3 testified that in transferring a title deed one must have the following; Original Certificate of Title, Sale Agreement, Transfer Deed, Form No. 35, Land Form No.29, Notification and Land

Form No.30- Application for transfer, Valuation Report, taxes receipts, and National ID. She went on to testify that if the applicant is an executor or administrator of the estate, letters of appointment, Death Certificate, and the judgment must also be submitted.

On his part, the Defendant had five witnesses, Disuza Tryphone who testified as DW1, Rehema Ally who testified as D2, Clara Tryphone, testified as DW3 and Waziri Masoud Mganga was the fifth witness (DW5). During the hearing of the Defence case they tendered the following documents; Original Certificate of death of Typhrone Zuma Kajumla (Exh.D1), a letter of administration of the estate of the late Tryphone Zuma Kajumla issued to Vedatos Rutaigwa Joseph (Exh. D2), a copy of Death Certificate of Grace Kajumla and Vedasto Rutaigwa Joseph collectively were admitted and marked as exhibit D3. Documents related to the administration of the estate of the late Tryphone Zuma Kajumla were collectively admitted as exhibit D4. Lost Report and affidavit collectively were admitted as exhibit D5.

Disuza Kajumla testified that he is an administrator of the estate of the late Tryphon Zuma Kajumla, his biological father. He testified that his father passed away on 01st December, 1997 and after his death, Grace Kajumla and Vedasto Rutaigwa Joseph were appointed to administer the

estate of the late Tryphone Zuma Kajumla. He testified that Grace Kajumla passed away on 04th June, 2007, and Vedasto Rutaigwa Joseph passed away on 17th October, 2016. DW1 testified that after the death of both administrators he was appointed to administer the estate of the late Tryphone Kajumla. To prove his testimony he tendered a minute sheet and Form No.4. DW1 testified that when he wanted to transfer the ownership of Plot No. 437 Block G Mbezi Beach, he noted that there was a caveat.

The 1st Defendant went on to submit that he conducted a search and found that the lawful owner was Tryphone Kajumla, he registered his title deed on 01st July, 1986. He claimed that he paid land rents and taxes. DW1 testified that the original title went missing thus in 2018 he obtained a lost report. DW1 testified that Grace Kajumla could not sell the suit plot since in 2002, she was not appointed to administer the estate of the Tryphone Kajumla and she was registered as a legal personal representative on 04th September, 2006. It was his testimony that one cannot sell a plot without being registered by the Registrar of Title. He tendered an application for legal personal representative dated 28th November, 2009 and the registration was done in 2009.

DW1 went on to testify that the transmission is done by the Registrar of Title. He testified that a party who wants to register must have an original title, Form 67 registered by the Registrar of Title. Minutes of the Meeting and death certificate. Insisting, he testified that registration cannot be effected without paying rent. DW1 testified that the Plaintiff claims are unfounded he urged this court to declare Tryphone Zuma Kajumla a lawful owner of the suit land and he is the legal personal representative of the late Tryphone Zuma Kajumla. DW1 also prayed for this court to declare the sale and transfer from Grace Lilian Kajumla to Bartholomew Makoi illegal and dismiss the suit with costs.

During cross-examination, DW1 testified to the effect that the late Tryphone Kajumla passed away in 1997 when he was eight years old. He said that Grace Kajumla was the legal wife of his late father. He said that he was not aware that Grace Kajumla was registered. He testified that as per the Registrar of Title the one who registered was Grace Kajumla and she had the power to sell the plot. He testified that he paid land rent in 2005. He testified that the Minutes shows that Grace Kajumla passed away in 2006 and the death certificate state that she passed away in 2007. He testified that the information at the Registrar of Title and Commissioner of Land are genuine.

Rehema Ally testified as DW2. She said that Disuza Kajumla is his biological son. She testified to the effect that Grace Lilian Kajumla was married to Tryphone Kajumla was pointed to administer the estate of the late Tryphone Kajumla and she passed away in 2007. DW2 testified that Grace Kajumla could not sell the suit land without informing her. It was her testimony that the suit land was not sold thus the lawful owner is Tryphone Kajumla.

The third Defence witness was Clara Kajumla (DW3) she testified to the effect that she is the daughter of the late Grace Lilian Kajumla who passed away on 04th September, 2007. Clara Kajumla (DW3) confirmed the testimony of DW2.

The last witness, Waziri Masoud (DW5) testified to the effect that he is working with the Registrar of Titles, dealing with the registration of title deeds. He narrated that the registration of title procedure starts from the Municipality offices, they request a certificate of approval from the Land Officer and a set of documents; transfer permit, tax clearance, and an original Certificate of Title. He added that the applicant is required to pay a registration fee and check the transfer documents. DW5 testified that in their office there was no any transfer form in the name of Bartholomew, Plot No. 437 was registered on 29th June, 1993 and the owner was

Tryphone Kajumla. DW5 testified that when the applicant is an administrator of the estate he is required to tender an application for the legal personal representative, original Certificate of Title, Probate letter issued by the court. In a situation where there are two administrators, one administrator can transfer and in case the other administrator wants to object then he can file an objection.

DW5 continued to testify that if the administrator has two names then the administrator is required to file an affidavit otherwise his transfer will be rejected. He testified that exhibit P2 and exhibit P5 are official search documents issued by the Registrar of Titles he said that Disuza Kajumla filed an application for transfer of ownership but they received a caveat from one Judith Bartholomew thus the transfer is on hold.

When he was cross-examined by Mr. Sosten DW5 testified to the effect that after the Commissioner for Land issues a certificate of approval, the Registrar of Titles proceeds with the transfer process. He said that Disuza Tryphone tendered a lost report dated 20th August, 2018 requesting the Registrar to issue a new title and he claimed that the title went missing on 13th August, 2018 with the contradictions of dates the Registrar of Titles could not proceed with the said transfer. DW5 testified that they did not any claims from Vedasto Rutaigwa Joseph, the 2nd administrator of the estate of the late Tryphone Kajumla.

By the consent of the parties, on 2nd December, 2021 both learned counsels filed their Final Written Submissions whereas both counsels complied with the court order. I take this opportunity to express my appreciation to both learned counsels for their industry in research. Both learned counsels have exhibited sufficient expertise to represent their clients. The ball is now in my court.

After having gone through the testimonies and the submissions made by both parties, let me now turn to the issues as they were framed before the commencement of the hearing. Regarding the **first and second issues**, which I wish to consolidate, *whether the Plaintiff is a lawful owner of the disputed plot and whether the contract of sale for the disputed plot is legal*. The Plaintiff is the one who filed this suit before this Court, therefore she is the one to prove that she is the lawful owner of the disputed land. The standard of proof was clearly elaborated in the case of **Barelia Karangirangi v Asteria Nyalwambwa, Civil Appeal No. 237 of 2017 (unreported)**

"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or did not. If the tribunal is left in doubt, the doubt is resolved by a rule

that one party or the other carries the burden of proof. If the party who bears the burden of proof falls to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned to and the fact is treated as having happened.”

Likewise, in the case of **First National Bank Tanzania Ltd V Hussein Ahmed Salwar T/A Pugu Hardware & Another**, HC (Commercial Case No. 2019) Dar Es Salaam, the Court held that:-

“In the present suit likewise, the plaintiff is anticipated to fully comply in the sense that, the affidavit in proof of the claim outlined in the plaint, albeit on the balance of probabilities despite the fact the deposition will not encounter challenges from the defendant. This includes the authenticity, relevance, and admissibility of document or annexures accompanying the affidavit deposed.”

One of the canon principles of civil justice is for the person who alleges to prove his allegation. Sections 110 (1) & (2) and 112 of the Evidence Act, Cap.11 [R.E 2019] places the burden of proof on the party asserting that partly desires a Court to believe him and pronounce judgment in his favour. Section 110 (1) of the Act provides as follows:-

“110 (1) Whoever desires any court to give judgment 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. On whom the burden of proof lies

111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof of the particular fact.

112. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person.”

To prove that the Plaintiff had an interest in the suit land, she testified to the effect that she was the administratrix of the estate of the late Bartholomew Peter Makoi. To substantiate her testimony, she tendered a letter of administration of the estate of the late Bartholomew Peter Makoi. However, the name of the deceased in the death certificate reads Andrew Sarikoki Makoi. The plaintiff in her Complaint claimed that the names were used interchangeably. She did not tender any affidavit of names or deed poll.

The defendant's Advocate in his final submissions argued that by failure to adduce supportive evidence such as of affidavit of names or deed poll proving that the said names are of one person and should be used interchangeably, the Plaintiff intended to mislead the Court to deprive the defendant's right as a legal administrator of the estate of his late father. I am in accord with the defendant's Advocate that where the person uses more than one name, there must be evidence to prove that such names refer to one person.

I do agree that in the present case there was no affidavit or Deed Poll tendered to prove that Andrew Sarikoki Makoi and Bartholomew Peter Makoi refer to the same person. However, while going through the oral evidence adduced by the Plaintiff under oath I noted that she once told this Court that the said names refer to the same person. I have asked myself whether it is not enough to believe the said facts stated orally by the Plaintiff before this Court under oath.

It is my firm view that facts stated orally by the witness under oath are as good as the facts stated in the affidavit or Deed Poll. The only difference between an affidavit or Deed Poll and the facts stated orally under oath is that affidavits are written facts made under oath while the facts adduced orally before the Court are Oral facts made under oath. The

two, in my firm opinion they carry the same evidential value. I have also considered the fact that the Plaintiff's is using his late husband's name; Judith Bartholomew Makoi. Therefore it is my firm conclusion that from the evidence so adduced, it is enough to believe that the two names of Bartholomew Peter Makoi and Andrew Sarikoki Makoi refer to the same person.

In the matter at hand, to prove her case, the Plaintiff tendered a letter of administration of the estate of the late Bartholomew Peter Makoi (ExhP1), Official search (Exh.P2), Certificate of administration of the estate of the late Tryphone Kajumla (Exh.P3), a copy of a photo (Exh.P4), Transfer document (Exh. P5) A Certificate of Occupancy (ID1), A letter of transfer (Exh.P6). Both parties do not dispute that the suit land title deed bears the name of Tryphone Kajumla. The Plaintiff has narrated how the suit property was acquired by starting from starch when she and her late husband searched for a plot and met one Grace Kajumla who sold to them Plot No. 437 Block G at Makonde, Mbezi Beach at Kinondoni District within Dar es Salaam Region. The suit land from the date when they bought the suit land, it is not the same and it is developed. The Plaintiff and his late husband constructed a residential house (Exh.P4).

PW1's husband passed away on 11th March, 2011, thus, she was appointed to administer the estate of her late husband on 20th April, 2011. It is not a disputed fact that the Plaintiff's late husband obtained the suit land from the late Grace Lilian Kajumla. During and the late Grace Lilian Kajumla handed over the Certificate of Title and a copy of administration of the estate of the late Tryphone Kajumla to Bartholomew Makoi. When the Plaintiff instituted this instant case, she was in the process of transferring the title to her name. Examining the evidence on record and documentary evidence, it is clear that Grace Lilian Kajumla was a legal representative of Tryphone Zuma Kajumla. The official search was conducted by the Defendant on 09th July, 2019 (Exh.D5) confirms that Grace Lilian Kajumla was a legal personal representative of Tyrphone Zuma Kajumla.

I am in accord with the defendant's Advocate that the Plaintiff did not tender an original certificate of title, instead she tendered a copy of Certificate of Title (ID1). However, the witness from the Commissioner of Land (PW3) tendered a copy of the Certificate of Title regarding Plot No. 437 Block 'G' Mbezi and confirmed that Grace Kajumla tender an Original Title No. 41968 accompanied by a form of administration of the estate in the name of Grace Kajumla. In my view, this information suffices to prove

that the Original Title was in place and was used in the process of transferring the ownership from Grace Kajumla to Bartholomew Makoi.

In a summary, in the situation at hand, the suit land is in the name of Grace Lilian Kajumla as the legal personal representative of the late Tryphone Kajumla and the Plaintiff is in the process of transferring the title Grace Lilian Kajumla as the legal personal representative of the late Tryphone Kajumla's name to her name. Therefore, Grace Lilian Kajumla as the legal personal representative of the late Tryphone Kajumla had the power to transfer the suit land to Bartholomew Makoi.

The law requires the legal representative to apply to the Registrar of title to transfer the said land into his/her name. The same entitles the administrator of the estate to be registered as the owner of the deceased land. For ease of reference I reproduce section 67 of the Land Registration Act, Cap.334 [R.E 2019] as hereunder:-

“ 67. On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to the estate of the owner, or of his appointment under Part VIII of the Probate and Administration of Estates Act or the Fourth Schedule to the

Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased.

*"68. No assent to the vesting of any devise or bequest of any registered estate or interest, or disposition by a legal personal representative, shall be registered unless such estate or **interest is registered in the name of such legal personal representative.** [Emphasis added]*

Based on the above provision of the law, it is clear that Grace Lilian Kajumla was acknowledged as the legal personal representative of Tryphone Zuma Kajumla. It is my respectful opinion that as long as the vendor, Grace Lilian Kajumla sold the suit land as a legal personal representative of Tryphone Zuma Kajumla the same suffices to hold that the Plaintiff obtained the suit property legally.

I have noted from the submissions made by the defendant's Advocate who argued that, since there were two administrators of the estate of the late Tryphone Zuma Kajumla, then the sale of the suit land by one administrator was illegal. They also argued that since the transfer of the right of occupancy has not been effected on the reason of the Commissioner for lands failure to approve the transfer, then the Plaintiff cannot be said to have title over the suit land. It is true that where there is more than one administrator then every transaction must be approved by all administrators. In the present case, only Grace Lilian signed the Sale

Agreement and is the only person who was registered the Title Deed as the legal personal representative of the deceased.

The defendant's Advocate argued in her final submissions that at the time Grace Kajumla was disposing of the suit land the other administrator Vedasto Rutaigwa Joseph had already passed on. It is my opinion that if at all there was another administrator and he was not pleased with what Grace Lilian Kajumla was doing, he could object any transaction done by his co-administrator. The fact that there was no objection to the transaction, I take the position that he consented to what Grace Lilian Kajumla did.

As to the absence of the approval or consent of the Commissioner for lands, it is unequivocally adduced that the Commissioner for lands could not consent to the transfer because the vendor had improperly signed Forms No.29, 30, and 35 and she died before correcting them. It is thus clear that, the Commissioner did not refuse consent and that if the late Grace Lilian would have filled the form properly, the transfer of the property to Bartholomew Peter Makoi would have been affected.

I have also noted that the defendant is the successor administrator to the late Grace Lilian Kajumla. In my opinion, the defendant being the succeeding administrator is bound by all previous transactions which were

made by his predecessors. In my view, the defendant ought to have facilitated the process of transferring the property to the estate of the late Bartholomew Peter Makoi instead of becoming an obstacle. As long as Grace Lilian Kajumla sold the suit plot in the capacity of the administratrix of the estate of the late Tryphone Zuma Kajumla, then the said Sale Agreement was and is still lawfully. Failure to transfer the ownership does not vitiate the fact that Grace Lilian Kajumla sold the suit plot to Bartholomew Peter Makoi.

Consequently, the move of Disuza Tryphone Kajumla to change the ownership from Grace Lilian Kajumla as a legal representative of Tryphone Zuma Kajumla cannot hold water since the former administrator of the estate of the late Tryphone Kajumla already been sold the suit land in the capacity of administrator of the estate of the late Tryphone Kajumla.

The learned counsel for the defendant in his final submission contended that the Sale Agreement was not finalized and thus the sale was not completed. I have scrutinized the Sale Agreement specifically paragraph 3 which state that:-

"The purchaser shall pay the remaining part of purchase price to the vendor after obtaining the necessary consent from the Commissioner."

As I have stated earlier, the process of transfer was ongoing which means Bartholomew Makoi was required to pay Grace Lilian Kajumla the outstanding amount to the tune of Tshs. 2,500,000/= after the completion of the transfer process. Unfortunately, Grace Lilian Kajumla passed away before accomplishing her task as an administratrix of the estate. The first and second grounds are answered in affirmative.

Now comes the last issue of reliefs to which the parties are entitled. I must confess that this issue, especially concerning the second prayer, has taxed my mind greatly. The Plaintiff has, in his first prayer, asked this court to declare her the lawful owner of the disputed Plot No. 437 Block G with Title Number 41968 at Kinondoni Municipality, Dar es Salaam. This court finds that since the sale was valid it is, therefore, crystal clear that the interests' over the suit plot were sold to Bartholomew Peter Makoi whose estate is now under the administration of the Plaintiff.

The Plaintiff also sought for grant of general damages, however during the trial, she could not adduce evidence to prove damage suffered for the court to base upon in granting damages. In the circumstance, thereof damages cannot be awarded.

The last prayer is about the costs of the suit. The award of costs is in the discretion of the court as provided for under Section 30 of the Civil Procedure Code Cap.33 [R.E 2019]. It is a fact that the Plaintiff would not have bothered to come to court if the Defendant had messed up, as a result, the Defendant acts necessitated the plaintiff to incur costs in hiring an advocate, filing fees, transport et cetera and therefore.

On my part, I think the plaintiff is entitled to the costs of the suit. I shall demonstrate. The plaintiff has prosecuted this case to its finality and, certainly, has incurred costs in this endeavour. These are costs involved in the suit which the Defendant must shoulder and I find no sufficient reason why the plaintiff should be deprived of the same. In the case of **Bowen, L.J. in Cropper v Smith** (1884), 26 Ch. D. 700, at p. 711, quoted by the High Court of Uganda in **Waljee's (Uganda) Ltd v Ramji Punjabhai Bugerere Tea Estates Ltd** [1971] 1 EA 188 in which His Lordship stated:

"I have found in my experience that there is one panacea which heals every sore in litigation and that is the cost. I have very seldom if ever, been unfortunate enough to come across an instance where a party ... cannot be cured by the application of that healing medicine".

In a similar tone, Hon. Othman, J. (as he then was) the foregoing excerpt in **Kennedy Kamwela v Sophia Mwangulangu & another**, Misc. Civil Application No. 31 of 2004 (unreported) when confronted with an identical situation with the following simple but powerful and conclusive remark:

“Costs are one panacea that no doubt heals such sore in litigations”.

I share the sentiments of their Lordships in the foregoing quotes respecting costs as a panacea in litigation. I recap that costs are one panacea that soothes the souls of litigants that, in the absence of sound reasons, as is the case in the present case, this court is not prepared to deprive the Plaintiff of. These are foreseeable and usual consequences of litigation that the Defendant must shoulder. Based on the foregoing, I find and hold that the plaintiff is entitled to the costs of this suit.

In the final analysis, the Plaintiff has managed to prove her case. I thus proceed to enter judgment for the Plaintiff with the following orders:-

1. The suit landed property; Plot No. 437 Block 'G' Mbezi Beach area with Title No. 41968 Kinondoni Municipality, Dar es Salam is part of the estate of the late Bartholomew Peter Makoi under the administration of the Plaintiff.

2. The suit landed property be registered in the name of Judith Bartholomew Makoi as Administrator of the Estate of the late Bartholomew Peter Makoi.
3. The last installment Tshs. 2,500,000/= be paid as per the Sale Agreement.
4. The Plaintiff is entitled to the costs of the suit.

Order accordingly.

Dated at Dar es Salaam this date 17th December, 2021.




A.Z.MGEYEKWA

JUDGE

17.12.2021

Judgment delivered on 17th December, 2021 in the presence of Mr. Sosten Mbedule, learned counsel for the Plaintiff, and Mr. Simon Mkwizu, learned counsel for the Defendant.




A.Z.MGEYEKWA

JUDGE

17.12.2021

Right to appeal fully explained.