

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

LAND CASE NO. 24 OF 2019

UNYANGALA ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

HIMNAA ABDALLAH.....1ST DEFENDANT

ARIF ABDULWAHED OSMAN (as Legal Representative of

Abdulwahed Haji Osman (Deceased).....2ND DEFENDANT

Date of Last Order: 13.09.2021
Date of Judgment: 03.12.2021

JUDGMENT

V.L. MAKANI,

UNYANGALA ENTERPRISES LIMITED (the **Company**) has filed a suit before this court praying for orders against the defendants as follows:

- 1. An order for declaration that the Company is the lawfully owner effective the year 2010 after completing full payment of the purchase price of Plot No. 21 Block F with Title No. 23478 located at Msasani Village, Kinondoni Municipal in Dar es Salaam region.*
- 2. An order directing the land register under the Registrar of Titles be rectified to read the Company as owner of Plot No. 21 Block F with Title No. 23478 located at Msasani Village, Kinondoni Municipal in Dar es Salaam region.*

3. *An order for general damages to be assessed by the court.*
4. *An order for interest at court's rate of 7% per annum on the assessed general damages from the date of judgment until full payment.*
5. *Costs of the suit to be paid by the defendants*
6. *Any other relief the court may deem fit and equitable to grant.*

According to the amended plaint, the claim by the Company was that she is the lawful owner of Plot No. 21 Block F with Title No. 23478 located at Msasani Village Kinondoni Municipal in Dar es Salaam region (the **suit property**) from 2010 after completing full payment of the purchase price of the said suit property.

In their joint Written Statement of Defence, the defendants who are mother and son respectively, categorically disputed the Company's claims and stated that the claims by the Company were not valid as the suit property has never been sold to the Company.

The issues that were framed for determination by the court were:

1. *Whether the Company is the lawful owner of the suit property.*

2. Whether there was a valid sale agreement between the Company and the 1st defendant's husband, the late Abdulwaheed Osman.

3. To what reliefs are the parities entitled to.

In this case the Company had the services of Mr. Ngudungi, Advocate; and the defendants were represented by Mr. Buberwa and Mr. Mangula, Advocates. The Company had two witnesses, namely, Patrick Kiswithi Sanga (**PW1**) and Serapius N. Mdamu (**PW2**); while the defendants testified as **DW1** and **DW2** respectively.

In his testimony **PW1** said he works as an Administrator in t the Company and their offices are at Kidongo Chekundu in Livingstone Street, Dar es Salaam. He said he knows the 1st defendant as she used to come to their offices with her husband Abdulwaheed Osman who is now deceased. He said the late Abdulwaheed Osman was friends with their director the late Abel Sanga. He said the late Abdulwaheed Osman took a loan of TZS 10,000,000/= and he gave out his Certificate of Title in respect of the suit property as security to the loan. He said it was agreed between the late Abel Sanga and Abdulwaheed Osman that the loan would be paid within one year and

in case of default the Company through the late Abel Sanga would buy the said suit property for TZS 33,000,000/=. In other words, the Company would pay an additional TZS 23,000,000/= in case of default. He said there was an agreement between the parties to this effect as evident by **Exhibit P1**. He said the late Abdulwaheed Osman failed to pay the loan, so he handed over the property to the Company in 1998 and the late Abel Sanga started development on the said plot in the year 2000 and erected additional buildings to change the existing godowns into classrooms. He said the additional development resulted to additional buildings which were 11 classrooms, offices, and toilets. The plot was turned into a secondary school registered under the name of Sierra Secondary School with registration Number S.1811 and this was in 2004. The school was closed down in November, 2018 after the death of Abel Sanga.

PW1 said the late Abel Sanga and the late Abdulwaheed Osman were in good relationship until the death of Abdulwaheed Osman in 2000. He said even after the death of Abdulwaheed Osman the relationship between the late Abel Sanga and the 1st defendant continued and since she could not pay the loan she requested to be paid the balance of TZS 23,000,000/= according to the Agreement. The 1st plaintiff

was advised to bring the administrator of the estate of the late Abdulwaheed Osman and she brought Letters of Administration reflecting that Abdulghafur Osman was the appointed administrator, and the suit property was also listed among the properties of the deceased and there was also the distribution of the properties of the late Abdulwaheed Osman (**Exhibit P2 and P3**). **PW1** said the 1st defendant came to see them in 2005 and told them that the Administrator, Abdulghafur Osman passed away and that she was now the Administratrix of the estate of his husband. He said they checked the documents, and they went to Mr. Mdamu an advocate and another Agreement was prepared between the Company and the 1st defendant (**Exhibit P4**) which was to the effect that the 1st defendant was to be paid the balance of TZS 18,800,000/= on 29/09/2005 and that the suit property was sold to the Company vide his director the late Abel Sanga. He said the 1st defendant was paid all her money and the last instalment was in 2010 through one of Mr. Abel's companies Koly Finance Limited. **PW1** went on saying that the 2nd defendant has the Certificate of Title and when the search was conducted (**Exhibit P5**) it reflected that the owner of the suit property was the 2nd defendant as a Legal Representative of the estate of his father. He said the 2nd defendant was sued because he

was the one in possession of Certificate of Title. **PW1** said the Company took a loan from CRDB Bank and the security was the suit property. The loan was TZS 70,000,000/= and it was all paid out and the said the last payment of TZS 28,000,000/= was paid by the Company in 2015 (**Exhibit P6**). He said after the payment of the loan they expected that the 1st defendant would effect the transfer but instead she told the late Abel Sanga that her children have refused. The refusal continued until Abel Sanga passed away in 2018. He said from 2004 up until when the school was closed there was no known dispute because the 1st defendant and Abel Sanga had a very close relationship, and the 1st defendant said the children were not satisfied with the sale. He said he knew the two administrators. The first one was Abdulgafur Osman and the second one was the 1st defendant. He said the 2nd defendant had never showed them that he was appointed as an administrator. He said the 1st defendant was paid in the office of Advocate Mdamu. He prayed the court to recognise the Sale Agreement in respect of the suit property between the Company and the late Abdulwaheed Osman and the Company be declared the owner of the suit property. He went on saying that the Company is no longer at the suit property as the defendants entered by force and

took away everything which was for the school and this has caused loss on their part.

On cross-examination **PW1** said though the loan from CRDB Bank was taken and paid by the Company but the Certificate of Title was released to the 2nd defendant that is why they decided to withdraw from suing the Bank. He said there is a notable problem for the Certificate of Title to be released to the 2nd defendant while the loan was taken and was paid by the Company.

PW2 said he had a law firm known as Mdamu & Associates, but he no longer practices because he is sick, he has lost his sight. He said the Company was his client and he used to associate closely with one of the directors the late Abel Sanga. He said he used to sign their contracts and other documents as their advocate. He said he knows the 1st defendant as Mama Osman. He said in 2005 the 1st defendant and Abel Sanga came to his office and he prepared an Agreement for Acknowledgement of TZS 500,000/=. He said Abel Sanga gave out the money and the 1st defendant received the said money. He said he was told that the said amount was part payment of the purchase of a property and that the late Abdulwaheed Osman had already

received the initial payment. He said he was told that the TZS 500,000/= was part of the payment and the rest was to be paid later that is the amount of TZS 18,000,000/=. He said he had never met the late Abdulwaheed Osman but only his wife.

On cross examination the witness acknowledged that the Agreement did not have details of the total price, but he was told at least TZS 14,000,000/= had been paid and there was still an outstanding amount of at least TZS 18,000,000/= He said the agreement was signed in his office located at Sukita Building in Dar es Salaam and the cash money of TZS 500,000/= was paid in his office and he was told that the balance amount would be paid later. He said ever since he prepared and witnessed the Agreement in 29/09/2005 there has never been any dispute about the Agreement.

On the defence side the 1st defendant was **DW1**. She said she is a widow, and her husband was Abdulwaheed Osman. She said has never sold a house situated in Msasani and she does not understand anything about the house. She said her husband died suddenly in 2000 and they did not know anything, but her relatives told her that they have seen her house in Msasani being advertised for sale by

CRDB Bank. She said they went to the Land Office and put a caveat (**Exhibit D1**). There was also a Ruling on injunction (**Exhibit D2**). She said his brother-in-law Abdulgafur Osman was appointed Administrator of the estate of her husband (**Exhibit D3** but he did not stay long he also died on 24/08/2005 (**Exhibit D4**). She said after the death of Abdulgafur Osman she was appointed the administratrix (**Exhibit D5**). She said after her appointment she became sick as she has heart problems and so she handed over the administration to Arif Abdulwahed Osman (the 2nd defendant). She said she was not aware of any Agreement (**Exhibit P4**). She said she was not paid anything by the Company or Abel Sanga. She said she did not know the advocate (**PW2**). She said there was no distribution whatsoever of the properties of her late husband and she has not inherited anything, or the properties have not been distributed as reflected in **Exhibit P2**. She said the Certificate of Title is in the name of the 2nd defendant. She prayed for this suit to be dismissed with costs.

On cross examination she said the suit property is big and has many rooms where they keep wood for carpentry, they keep goats and there are also offices. She said there is no school, or classrooms,

library or staffroom. She said since 1998/99 the building was closed nobody was physically in the buildings on the suit property. She said she was told that the Company opened a school, but they were refused registration because the suit property did not belong to them. She later said she did not know how the Company entered the suit property and admitted that she knows nothing as the 2nd defendant is taking care of everything and the suit property is under him. She said the children went to the police to claim the property, but she does not know why they sought assistance of the police. She also admitted that there was a relationship between the Company and his husband. She said there was an agreement which was entered between her husband and the Company but his husband did not want to involve her and tell them what was going on. She concluded by saying that traditionally women were not involved in issues that are related to men.

DW2 was the 2nd defendant. He said he is sued as the Administrator of the estate of his late father Abdulwaheed Haji Osman. He said he was appointed administrator after the death of his uncle Abdulgafur Haji Osman and after his mother failed to close the probate as she was sick. He said the Company first sued his mother and CRDB Bank

but when they found out that he was the Administrator they removed the Bank and replaced his name. He said they have never sold the suit house because the evidence and all the documents tendered in court have problems. He said **Exhibit P1** is a forgery. He said **Exhibit P4** has a problem too because her mother was appointed administratrix in 2005 so she ought to have signed the said document. He concluded that it was a forgery. He said **Exhibit P2** and **P3** there are differences in dates so there are problems even the addresses are different. As for **Exhibit P6** that is the bank payslip, the reason for the payment is not indicated. He said his mother has never received any payment from the Company and he went further to assert that he only recognises the Agreement between the late Abel Sanga and his late father (**Exhibit D6**). He said his father and Abel Sanga were business partners. In the Agreement Abel Sanga defaulted in payment to the Bank and their house was earmarked for sale.

On cross examination he denied **Exhibit P1** and said he only recognises **Exhibit D6**. He said in **Exhibit P1** the signatures do not belong to his father though he has not gone to experts. He said the two Agreements are different because **Exhibit P1** is dated 01/03/1997 and **Exhibit P6** is dated 03/03/1998. He said they are

also different because in a company there must be two partners according to BRELA. He insisted that her mother did not receive any money from the Company. He said he does not recognise **Exhibit P2** and **Exhibit P3** and he said the Certificate of Title remained in the Bank because his mother was sick and there was a tug of war between them and the Company. On re-examination he emphasized that there is no property of the deceased which has been distributed. He said the properties were given to them together and thereafter their mother gave the children the properties together. There is no distribution which has been done. He prayed for the suit to be dismissed.

The court ordered final submissions to be filed by the parties, but it was only Mr. Buberwa who filed final submissions on behalf of the defendants.

On the first issue as to who is the lawful owner of the suit property, Mr. Buberwa submitted that to answer this issue one needs evidence of three things. One, an express contract which clearly stipulates that the Company bought the suit property from either the 1st defendant's husband or the 1st defendant as the administratrix of the estate of the

late Abdulwaheed Osman. Secondly, failure of an express contract, then proof that the Company had dealt with either the 1st defendant's husband or the 1st defendant as administratrix of the estate of the late Abdulwaheed Osman. And lastly evidence that the 1st defendant's husband or the administratrix of the estate of the late Abdulwaheed Osman received the purchase price from the Company

Mr. Buberwa said as for the first alternative there is no document which proves that the Company bought the suit property to be declared the lawful owner. He said the 1st defendant and the 2nd defendant in their testimony denied ever selling the suit property to the Company. They only recognised document is **Exhibit D6** which is an Agreement between the late Abdulwaheed Osman and Abel Sanga on payment of the loan of TZS 70,000,000/= from CRDB Bank Lumumba Branch dated 03/03/1998. He said the Company relied on **Exhibit P1** which was denied by the 1st and 2nd defendants. He further said the **Exhibit P2** and **Exhibit P3** which are deemed to prove that the suit property was bequeathed to the 1st defendant are not among the forms prescribed by the law that is Rule 10(1) of the Primary Courts (Administration of Estates) Rules GN 49 of 1971. He also relied on the case of **Beatrice Brighton Kamanga & Amanda**

Brighton vs. Ziada William Kamanga, Civil Revision No. 13 of 2020 (HC-DSM) (unreported). He said **Exhibits P2** and **Exhibit P3** contains contradictions as they were prepared on the same date but with different contents which in the view of learned Advocate, were contradictions to the root of the matter as the Company failed to prove which out of the two was genuine to prove that the suit property was bequeathed to the 1st defendant. He went on saying that according to the evidence on record the suit property was not bequeathed to the 1st defendant because Abdulgafur Osman did not file any statement of accounts or inventories to put the matter to an end according to the law. In other words, Abdulgafur Osman did not file the probate Form V and Form VI to close the probate. Mr. Buberwa concluded that the suit property had never been bequeathed to the 1st defendant.

Mr. Buberwa said according to the Company the alleged ownership of the suit property is **Exhibit P1** and **Exhibit P4**. He said **Exhibit P1** is uncertain, particularly Clause 3 and 4 are contradictory that the suit property was mortgaged to the Company and at the same time was used by the late Abel Sanga to obtain a loan from the Bank. He also said Causes 6 ad 7 of **Exhibit P1** are contingent in nature as they

tell of future occurrence of events which are not known if they were fulfilled or not, and there is no evidence was led to that effect. He said according to section 32 of the Law of Contract Act CAP 345 RE 2019 such contracts are void. He said from the uncertainty, **Exhibit P1** is thus void. He said even section 29 of the Law of Contract states that an agreement which is not certain or capable of being made certain is void. He relied on the case of **Alfi East African Limited vs. Themis Industries & Distribution Agency Limited [1984] TLR 250.**

As for the second issue whether the sale agreement between the Company and the 1st defendant's husband is valid. Mr. Buberwa said the Company is a company registered under the laws of Tanzania. He said according to the plaint and its annexures the suit is traced from the Sale Agreement. The said Agreement therefore falls under section 3(1) of the Sale of Goods Act CAP 214. He said **PW1** stated in his testimony that the **Exhibit P1** and **Exhibit P4** was signed by the late Abel Sanga but on unknown authority as there was no Company's seal or stamp and was not executed as required by section 38 and 39 of the Companies Act. Mr. Buberwa said since the Company did not sign the documents according to the law, then there was no valid Sale

Agreement that was tendered. He further said if we assume that the sum of TZS 18,880,000/= was to be paid to the 1st defendant, the same has not been proven and no evidence has been given to prove the same. He said **Exhibit P4** does not indicate whether the Company purchased the suit and the only person who stated this was the late Abel Sanga and not the Company as reflected in clause 1 and 2 of the said Agreement. He said the **Exhibit P4** does not even mention the Company as the purchaser of the suit property because under the Companies Act there must be a separation between its legal personality and its members or shareholders. He relied on the case of **Solomon vs. Solomon (1879) AC 22**. He prayed for the said documents (the Agreements) be disregarded as they do not meet the criterial stated above by the law. He said even in **Exhibit P4** the Company did not sign the said document and it was questionable as to why the Company did not sign on his part. He relied on the case of **Celestial Aviation Trading 7 Limited vs. Alex Lazaro Joge & Others, Misc. Application No. 329 of 2019 (HC-DSM) (unreported)**. He also said since the Sale Agreement was for a registered property then it ought to have been governed by section 64 (1) of the Land Act CAP 113 RE 2019. He said even if the Company entered into an agreement with the 1st defendant as per **Exhibit P4**,

he said the said Sale Agreement is silent as to whether the 1st defendant signed as an administrator or the owner of the suit property. He said as per the Agreement it is said that the 1st defendant was paid TZS 500,000/= as part of the instalment but when the **PW2** was cross-examined he said he did not know about the past instalments since he was not told. He was only called to witness the payment of the TZS 500,000/=. Mr. Buberwa said **PW1** said the last instalment was paid through Kali Finance Limited but there was no evidence to that effect. Though there were receipts annexed to the plaint as **Annexure NCA 4** collectively but the same were not tendered as exhibits in court. He relied on the case of **Felix Tadeo vs. Marium Nkong'wanzoka, Land Case No. 184 of 2015**. Mr. Buberwa said there was a lot of contradictions in the testimonies given. He said **PW1** said the suit property was handed over to the late Abel Sanga and he developed it into Sierra Secondary School. This was also the testimony of **PW2** but in paragraph 11 of the plaint it states that the Company developed the school.

Mr. Buberwa concluded by submitting that the Company is not entitled to the reliefs prayed as she has failed to prove that they are the lawful owners of the suit property as she has failed to prove that

she bought the suit property as the defendants makes it clear that they have never received any amount from the Company as the purchase price. Mr. Buberwa said and even if the defendants were paid the Company has failed to tender any evidence to support this assertion. He further said up until 24/07/2019 the suit property was in the name of the late Abdulwaheed Haji Osman when the 2nd defendant after being duly appointed transferred to his names as the Legal Personal representative. He prayed for the suit to be dismissed with costs.

Having narrated the evidence in summary and the supporting submissions by the defendants I will now proceed to determine the issues raised.

It is trite law that whoever desires a court to give judgment in his/her favour; he/she must prove that those facts exist. This is under the sections 110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2019. These provisions place the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain. In the case of **Abdul**

Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004 (unreported) the Court of Appeal held that:

".....it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Also, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) where it was further held that the party with legal burden also bears the evidential burden on the balance of probabilities.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the Company being the one who alleged that she is the owner of the suit property, by way of sale by the late Abdulwaheed Osman. What this court is to decide upon is whether the burden of proof has been sufficiently discharged by the Company.

In proving that the suit property belongs to the Company, **PW1** relied on **Exhibit P1** dated 03/10/1997 and **Exhibit P4** dated 29/09/2005. In **Exhibit P1** the late Abdulwaheed Osman took a loan of TZS 10,000,000/= from the late Abel Sanga. It is further reflected that in

case the late Abdulwaheed Osman fails to pay the said loan then the suit property which was given as security would be transferred to the Company upon an additional payment of TZS 23,000,000/=. **Exhibit P4** shows that the late Abel Sanga had paid an amount of TZS 14,120,000/= to the late Abdulwaheed Osman, the balance debt was TZS 18,880,000/=.

Throughout the evidence on behalf of the Company, there is nowhere in the testimony of **PW1** or **PW2** that shows how TZS 14,120,000/= was paid and more so how the Company paid the balance amount of TZS 18,880,000/= which would have completed the payment agreed upon and led to the transfer of the suit property to the Company according to **Exhibit P1**. The witness **PW1** merely stated that the said amount of TZS 14,120,000/= was paid but there is no proof of acknowledgement by the late Abdulwaheed Osman or the administrator/administratrix of his estate of the said amount. **Exhibit P4** implies that the 1st defendant received TZS 500,000/= which is part of the TZS 14,120,000 allegedly paid by the Company. **PW1** argued that the debt was paid vide **Exhibit P6** – the payslip of TZS 28,084,885/= to CRDB Bank, however, it should be noted that there was an alleged outstanding amount of TZS 18,880,000/= and not

TZS 28,084,885/= and there is no explanation how the amount escalated to TZS 28,084,885/=, and unfortunately **PW1** was not lead to explain to the court the additional amount appearing in **Exhibit P6**. With these contradictions, there are doubts created as to whether the Company or rather its director the late Abel Sanga paid the outstanding debt of TZS 18,880,000/= to warrant the completion of the transaction and lead to the transfer of the suit property to them as per the terms in **Exhibit P1**.

I have also given a detailed look at **Exhibit P1** and **P4**. The said **Exhibit P1** is an agreement between the Company and the late Abdulwaheed Osman. Section 38 and 39 of the Companies Act, 2002 describes the manner in which documents by a company are to be executed. The sections state as follows:

38. A contract may be made:

(a) by a company, by writing under its common seal, or

(b) on behalf of a company, by any person acting under its authority, express or implied, and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

39 (1) A document is executed by a company by the affixing of its common seal. A company need not have a

common seal, however, and the following subsections apply whether it does or not.

(2) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

In this case, **Exhibits P1** and **P4** were signed by one director and were not sealed. There was no authority by the company express or otherwise for the late Abel Sanga to make the transaction of such a nature or allowing him to sign on behalf of the Company. Since the Company did not follow the requisites of the law regarding execution of company documents then the said **Exhibits P1** and **P4** are invalid as they are contrary to the law. Further, in **Exhibit P4** there is a signature without a name on the part of the Company. In other words, the signature is not owned by anybody, that is, the person who signed for the Company in **Exhibit P4** is unknown. With the highlighted discrepancies, these two documents are thus not valid on the face of the law.

Further to what is stated above, the defendants **DW1** and **DW2** denied the existence and validity of **Exhibits P1** and **P4**. And their testimony was not quite shaken. They insisted that they are aware of **Exhibit D6** which is the only agreement between the late

Abdulwaheed Osman and the late Abel Sanga. The Company attempted to tender this exhibit, but they did not have the original. However, and fortunate to them the same document was tendered by **DW2** and was duly admitted as **Exhibit D6**. It is clear that the Company was also dependent on this document. However, **Exhibit D6** would also fall victim of the discrepancies stated above as it was not executed according to the law. Further, going through it, I am of the view that there is no link between itself and **Exhibit P1, P4** and the alleged debt by the late Abdulwaheed Osman. The said **Exhibit D6** is specifically in respect of payment by the parties (i.e. Osman and Sanga) of the loan of TZS 70,000,000/= to CRDB Bank. The said Agreement does not state that the TZS 10,000,000/= loaned to the late Abdulwaheed Osman is the same as the one reflected in **Exhibit P1** and **P2**. It states that the TZS 10,000,000/= loaned to the late Abdulwaheed Osman is part of the loan by CRDB Bank and there is no mention of the suit property (that is, Plot No. 21 Block F, CT No.23478) as security to the loan. One may conclude that the amount mentioned in **Exhibit D6** might have been another loan covered by another property as security. The fact therefore remains that the Company has not established that the debt, if at all there was one, was fully paid by the Company and or Mr. Sanga to warrant

the alleged transfer of the suit property to them. And even if the Company had paid in full which is not the case as established, then there would have been a Sale Agreement between the parties so that transfer could be effected. A sale agreement in my view would have been an initial proof to show that indeed disposition had taken place. **Exhibit P1** is a loan agreement, and **P4** is an agreement for handover of money, so as correctly said by Mr. Buberwa there is no contract to show that the suit property had changed hands from the late Abdulwaheed Osman to the Company or Abel Sanga.

The Company also relied on the pay in slip **Exhibit P6** alleging that the debt owing to the late Abel Sanga was fully paid. But the said **Exhibit P6** shows that the amount of TZS 28,084,885/= was paid to NPAS Recovery account and not to the account of the late Abdulwaheed Osman or his administrator. The testimony by **PW1** did not explain what is the NPAS Recovery Account and its relationship with the debt owing to the late Abdulwaheed Osman.

PW1 also claimed that the Certificate of Title was released to the 2nd defendant despite that the debt was paid by the Company. He insisted that the Certificate of Title ought to have been released to the Company. In my considered view the answer as to why the

Certificate of Title was released to the 2nd defendant would have been answered very well if there was a witness from the Bank or rather if the Bank was party to the suit. However, the Company decided to amend its plaint and drop the claims against CRDB Bank and bring on board the 2nd defendant. If the Bank was still one of the defendants, she would have given reasons why the Certificate of Title was released to the 2nd defendant because as practice shows, the Bank cannot release such an important document without prior instructions from the mortgagor who was the Company. So, without the Bank, whose removal from the suit raises eyebrows, and since the Company failed to even call an officer of the Bank to testify as to the conditions attached to the release of the Certificate of Title, then the Company is estopped from claiming that the release of the said Certificate of Title was improper.

In view of what has been addressed above, it is apparent that the Company has failed to establish if at all the alleged debt owing to the late Abdulwaheed Osman was paid fully to warrant the passing of ownership of land to the Company. The first issue is therefore answered in the negative that the Company is not the lawful owner of the suit property.

The second issue is straight forward. As established hereinabove, there is nowhere that the Company has managed to show that she fully paid what was agreed upon between the parties. There was no sale transaction between the parties, therefore there was no valid sale agreement between the Company and the late Abdulwaheed Osman. Even if it is argued that there was sale by virtue of **Exhibits P1** and **P4**, but as established above the said exhibits are invalid. The second issue is thus answered in the negative.

The last issue is to what reliefs are the parties entitled to? It has been established that the Company is not the lawful owner of the suit property and further that there was no valid sale agreement between the Company and the late Abdulwaheed Osman, it is therefore clear that the Company has failed to prove her case to the standards required by the of law. The Company is therefore not entitled to any of the reliefs prayed in the plaint. The suit is therefore without merit and is hereby dismissed with costs. It is so ordered.


V.L. MAKANI
JUDGE
03/12/2021

