

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE No. 136 OF 2019**

**1. MARTHA JOHN MUSHI----- PLAINTIFF**

[Administratrix of the estates of the  
late John Stephen Mushi]

**Versus**

**1. RUTH ISACK MJEMA**

**2. COMMISSIONER FOR LANDS**

**3. HON. ATTORNEY GENERAL**

**DEFENDANTS**

**JUDGMENT**

28.10.2021 & 02.11.2021

F.H. Mtulya, J.:

This is one of the judgments which depicts the expansion of Dar Es Salaam City (the city) towards Tegeta and Boko areas of Kinondoni District in the city after independence of Tanganyika and acquisition of lands in the named areas in 1970s. The story of stretching of the city displays that in early years of 1960s, the city was a small area and only few areas were planned and occupied, and were mostly in the vicinity of the city center.

However, in the late years of 1960s, many indigenous of Tanganyika started to move from various part of Tanganyika towards the city, the then capital of Tanganyika, to earn their living. In 1969,

Mr. John Stephen Mushi (the deceased) and Mrs. Martha John Mushi (the plaintiff) were not left behind in that great migrations of 1960s. The dual being wife and husband, migrated together from their home village of Machame in Kilimanjaro region to Kunduchi area (currently known as Tegeta Kibaoni) within Kinondoni District in the city.

Upon arrival, the deceased had acquired and occupied a large portion of land in swamp areas of Tegeta by traditional approach. As the area was swamp, many residents of the area did not prefer it hence the deceased had occupied a large portion of the land, nearly eight (8) acres. The dual stayed in the area undisturbed since 1969 doing farming, cultivation and businesses of chicken and butchery, until when planning of the city of Dar Es Salaam extended to Tegeta Kibaoni in 1978.

In that year, 1978, the Ministry of Lands, Housing and Development of Human Settlement (the Ministry) introduced Tegeta Site and Services where large portions of lands in Tegeta and Boko areas were acquired by the Ministry from the natives of Tegeta and Boko areas. Following the acquisition process, the lands were planned and granted to several persons with priorities of the grant of the lands to previous occupiers. Evidences on the acquisition, survey, planning, & granting of the lands and consultations of the affected

individuals in the areas of Tegeta and Boko areas, in all processes, were not registered during the hearing of the present case.

Sometimes in 2009, Mr. John Stephen Mushi expired and his wife, the plaintiff applied and was granted letters of administration of the deceased's estates on 25<sup>th</sup> November 2009. Following the grant of the letter, the plaintiff alleged that part of the deceased land was planned and acquired by the Commissioner for Lands (the Commissioner) and named it: **Plot No. 263 Block E Tegeta within Kinondoni in Dar Es Salaam** (the plot) and was granted to Ms. Ruth I. Mjema without any justifiable cause. The plaintiff then decided to approach this court on the 10<sup>th</sup> October 2019 praying for an order to declare her as the rightful owner of the plot.

This story was briefly registered by witnesses who were brought by parties in this case to assist this court in arriving at justice on balance of probability as required by the law in section 3 (2) (b) of the **Evidence Act** [Cap. 6 R.E 2019] (the Evidence Act) and precedents in **Attorney General & Others v. Eligi Edward Massawe & Others**, Civil Appeal No. 86 of 2002; **Anthony M. Masanga v. Penina (Mama Mgesi)**, Civil Appeal No. 118 of 2014; and **Samson Ndawanya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017. In total, the parties summoned seven (7) witnesses, and in order to

appreciate the facts and evidences registered in this case, the witnesses testified briefly on the following facts and evidences:

The plaintiff (PW4) testified that the deceased occupied and used the land since 1969 when it was a bush and built in it a house, huts for animal rearing and part of the land was used for cultivation purposes. PW4 testified further that they lived in the land undisturbed since 1969 up to 2019, when some people came and destroyed properties attached on the plot without any justifiable cause.

In order to substantiate the administration of the estates of the deceased, PW4 tendered in the case the letters of administration of the deceased's estates issued on 25<sup>th</sup> November 2009 by the **Resident Magistrates Court of Dar Es Salaam at Kisutu in Probate and Administration Cause No. 60 of 2009** admitted as P.1 collectively. However, PW4 did not tender any document related to ownership of the land of the deceased as she claimed the deceased started to clear a big forest, as she pronounced it in Swahili: *Kushika Pori* and that since the occupation and use of the land, the deceased had not paid land rent or any other land payments.

To support her testimony, the plaintiff marshalled three (3) residents who were neighbors to the deceased in 1960s to 1990s, namely: Mr. Selestin Jailo (PW1); Bakari Seif Matimbwa (PW2); and

Geoffrey Sifuel Malisa (PW3). In their brief testimonies, PW1 testified that he lived at Tegeta Kibaoni since 1969 and was neighbor with the deceased at the northern part of his land and the deceased built houses, butchery and huts and was running chicken and butchery businesses in the plot. According to PW1, in all of his stay at Tegeta Kibaoni he had never heard or knew Mariam A. Mnondwa, Domina Clavery Feruzi or Ruth Isack Mjema (the first defendant) as residents of Tegeta Kibaoni area. However, PW1 testified that he cannot describe with certainty of the deceased's land, but by use of eyes it could be about eight (8) acres and that the plot emanated from the deceased's land.

PW2 on his part testified that he was born and raised at Tegeta Kibaoni, now commonly known as Tegeta Nyuki within Kawe Constituency of Kinondoni District in Dar Es Salaam Region where the deceased lived before his demise. According to PW2, after completion of his secondary education, he served in several administrative posts at Tegeta, including Secretary of Mtaa wa Tegeta in 1992 and Chairman of Mtaa wa Tegeta in 2004. His testimony shows further that in 1980s lands in Tegeta were acquired, planned, allocated to persons without consultation and to some of the natives without payment of compensation in their acquired lands, including the deceased's farmland which was planned for the plot.

In his testimony, PW3 stated that that sometimes in 1998, he established business of retail shops, cold drinks, car wash and Oryx gas sale point at the plot, but the business and properties on the plot were demolished by Kinondoni Municipal Council without notice during the demolition exercise in 2019. According to PW3, he was given the place for business purposes in the plot by the deceased and was doing business free of charge. To PW3's testimony, at one point in time, he was prosecuted in the District Land and Housing Tribunal based in Kinondoni by Mr. Chediel Zephania Senkoro (DW1), who acted on behalf of the first defendant to sue him for the plot, but the suit was struck out for want of *locus standi*. However, during hearing of the case, PW3 did not tender any business licence or any document which justified existence of the business, ownership of the land to the deceased and extent of damage caused on his part.

On the other hand the defence invited three witnesses to substantiate its case, namely: DW1, Hilder Connie Matovu (DW2) and Hellen Philip (DW3), a land officer from the Ministry. In their testimonies, DW1 stated that the plot belongs to the first defendant and he was instructed through the power of attorney to process and acquire title deed of the plot in 2000 at the Commissioner and upon success to build an apartment in the plot. However, according to DW1, upon visitation and inspection of the disputed land, he found

three (3) huts erected at the plot allegedly belonged to Mr. Geoffrey Malisa hence went for verification at the Ministry which through various correspondences confirmed the land belongs to the first defendant against Mr. Geoffrey Malisa.

In his testimony, DW1 stated that some of the correspondences required the trespassers of the land to vacate the plot, but declined to vacate the plot hence in 2007 preferred a case against Mr. Malisa and trespassers at the Kinondoni Land and Housing Tribunal. However, according to DW1, the case was dismissed in 2010 for want of *locus standi* on part of the applicant in the Tribunal. In justifying his testimony, DW1 tendered exhibit D.1 and D.2 collectively which contained: special power of attorney signed on 8<sup>th</sup> November 2007 by DW1 and Ruth Isack Mjema; letter from the Ministry dated 14.05.2007 referenced LD/134346/18/GGH; Police Loss Report on letter of offer of the plot dated 22.07.2007 referenced OB/B.1/Vol. XVI/3338; and copy of the letter of offer of the plot issued on 24.03.1992.

However, when he was cross-examined, DW1 conceded that the first defendant did not tell him how she had acquired the plot; did not ask where the first defendant was since 1992, when the offer was granted, to 2007 when the power of attorney was granted to him; it

was Hilder Connie Matovu (DW2) who introduce the first defendant to him and knew her from the travelling document passport which had her picture; and that since 2008 when the tribunal dismissed the application to the filing of the present case, he had been following up the matter at various authorities and to date the title deed is yet to be acquired by the first defendant. Finally, DW1 stated that he is not an expert to state on the presence of three (3) different signatures of the same first defendant in the draft title deed in the pleadings, and in two separate power of attorneys in D.1 and D.3.

When DW2 was called to testify, she stated that she was empowered by the first defendant under a special power of attorney signed on 15<sup>th</sup> December 2020 and registered in Tanganyika Registry of Documents on 30<sup>th</sup> September 2021 (D.3) to stand as attorney for the first defendant to defend cases, including the present case, as the first defendant travels a lot and currently is based in Nairobi, Kenya.

In her brief testimony, DW2 stated that the plot in dispute was granted to the first defendant by the owner of the land, the Commissioner, after following all necessary procedures in granting right of occupancy. DW2 testified further that the land was initially owned by Domina Feruzi who could not meet the conditions in the right of occupancy hence the plot was transferred to the first



defendant. In order to bolster his testimony, DW2 tendered in this court four D.3; four exchequer receipts on payment of land rent in the name of the first defendant which were admitted in D.4; and letter from the Commissioner on the plot dated 9<sup>th</sup> March 2018 referenced LD/134346/75 which was admitted in D.5.

However, DW2 testified that she is not an expert to state on presence of different signatures of the first defendant signed on the same day, 15<sup>th</sup> December 2020 as displayed in exhibit D.3 and Amended Statement of Defence; there is no any document related to the transfer from Domina Feruzi to the first defendant; she was at one time, by oral application, given a copy of a draft title deed signed by the first defendant in 1992 and was attached in the pleadings of this case; and that the first defendant was not busy following up the title deed between 1992 and 2007 because she was busy pursuing her studies abroad.

Land officer, Hellen Philip (DW3) from the office of the Commissioner was summoned to testify on acquisition of lands in Tegeta and Boko area in 1970s by the Commissioner for Tegeta Site and Services. In her testimony, she stated that large areas of lands were acquired, planned and allocated to indigenous people of Tegeta, Boko and other people from different parts of the country in 1978.

According to DW3, the plot was planned and granted to Mariam A. Mnonwa in 1991 and later in 1992 was transferred to Domina Clavery Feruzi in 1992 and finally in the same year was transferred to the first defendant. In Her testimony, DW3 stated that the land in the plot was owned by the Government before its acquisition in 1978 and was acquired, planned and allocated to persons according to the laws regulating land matters and that the name of Mr. John Stephen Mushi was not in the list of affected persons in Tegeta and Boko areas. In order to substantiate her testimony, DW3 tendered in this court two (2) letters of offer showing the names of Mariam A. Mnonwa and Domina Clavery Feruzi, which were admitted as D.6 collectively.

However, DW3 did not produce any document in this court to justify ownership of the Government in the plot before 1978; she did not produce any reasons of transfers of offer letters from Mariam A. Mndolwa to Domina Clavery Feruzi and finally from Domina Clavery Feruzi to the first defendant; she had no lists or names of persons who were affected by the acquisition or compensated during the exercise in Tegeta and Boko; she stated further that there is no need of consultation to affected persons when land use is changed by the Commissioner; she declined to tender draft right of occupancy attached in OSG 1 of the second defendant Written Statement of Defence; that the first defendant was not granted right of occupancy

since 1992 to date because she failed to produce proof of citizenship in birth certificate or travelling document; and finally, DW3 prayed for this court to rely on her oral testimony on all statements which were supposed to be substantiated by documents, as she is an expert in land matters.

After registration of the facts and evidences in this case, the learned minds in Mr. Leonard T. Manyama, Ms. Narindwa Sekimanga and Mr. Ngasa Ganja Mboje, who represented the parties in this suit, fine-tuned the facts and evidences with the help of authorities. According to Mr. Manyama for the plaintiff, the plaintiff testified that the deceased occupied the land under customary law and the Government acquired the same without payment of compensation as per precedent in **Attorney General v. Lohay Akonaay & Joseph Lohay** [1995] TLR 80.

According to Mr. Manyama, the plaintiff brought in this court three (3) witnesses, PW1, PW2, and PW3, who were neighbors to the plot and testified the presence of the deceased in the plot for different period of time since 1969. Mr. Manyama also invited this court to visit and peruse directives of the Court of Appeal in the precedent of **Jane Kimaro v. Vicky Adil** (As administratrix of the

Estate of the late Adil Daniel Mande), Civil Appeal No. 212 of 2016 for appreciation similar facts like the present case.

However, Mr. Manyama contended that the three (3) witnesses who were brought in this case by the defendants, namely DW1, DW2 and DW3, testified that the first defendant is a fixious person who can own different signatures in D.1, D.3 and the Written Statement of Defence and cannot be brought to court to be questioned on acquisition of the land and her signatures. To the opinion of Mr. Manyama, the name of the first defendant is just used by the defendants to deprive the plaintiff's land without any record of original owner of the plot and the receipts tendered in D.5 are mere documents that cannot be legally considered as conclusive documentary evidence or confirm ownership in lands, as per precedent in **Registered Trustees of Joy in Harvest v. Hamza K. Sungura**, Civil Appeal No. 149 of 2019.

On the other hand, Mr. Ngasa for the first defendant submitted that the land was surveyed and allocated to the first defendant legally in 1992 and the allocation is still valid to date. To Mr. Ngasa's submission, the plaintiff has never complained of the plot since 1992 when John Lugombola was taking care of the land until 2007. According to Mr. Ngasa, the plaintiff and her witnesses testified that

the deceased occupied the land since 1969, but did not say who granted him the plot in 1969 or produced any documentary evidence to substantiate ownership of the plot. Mr. Ngasa contended further that plaintiff witnesses did not disclose how the deceased acquired the land either in 1992 or during Operation Vijiji in 1978.

According to Mr. Ngasa, under such circumstances, the plaintiff cannot be entitled to the reliefs claimed as she has not discharged her duties under the law in sections 110 (1) & (2) and 111 of the Evidence Act [Cap. 6 R.E. 2019] (the Evidence Act) and decision in **Suzana Kakubukubu & Others v. Walwa Joseph Kasubi & Mwanza Municipal Director** [1988] TLR 119 and in any case she is not entitled to specific damages for want of specific proof of the same as per precedents in **Moselele General Agencies v. African Inland Church Tanzania** [1994] TLR 192 and **Morris A. Susawata v. Mathias Maleko** [1980] TLR 616.

Ms. Sekimanga on her part contended that the record in this case shows that the first defendant is a rightful owner of the land as per documents tendered in D.1 to D.6, and the plaintiff failed to establish his case on balance of probability. In order to bolster his argument, Ms. Sekimanga submitted that the plaintiff did not tender any document showing ownership of the plot to Mr. John Stephen

Mushi whereas the first defendant showed how she acquired the plot from the Commissioner who acquired the same from the Government. In her opinion, the plaintiff did not establish her case as per law in section 110 & 111 of the Evidence Act and precedents in **Abdul Karim Haji v. Raymond Nchimbi Alois & Another**, Civil Appeal No. 99 of 2004 and **Mohamed S. Ghona v. Mahamoud Mwemus Chotikungu**, Land Case No. 42 of 2015, and the plaintiff is not supposed to be granted specific damages for failure of strictly substantiating the same as per decisions in **Zuberi Augustino v. Anicet Mugabe** [1992] TLR 137 and **Strabag International (GMBH) v. Adinani Sabuni**, Civil Appeal No. 241 of 2018.

On my part, I think, the issue which was brought in this court for determination is: *who is the rightful owner of the plot described as Plot No. 263, Block E Tegeta area, Dar Es Salaam under letter of offer No. LD/129401/5/JKD (the plot)*. In land disputes, it is about ownership of the land. In the present case, there is allegation of ownership of the plot to the deceased. Witnesses who were brought before this court. PW1 to PW3 testified that they were neighbors and lived next to the deceased since 1969 and PW2 testified that, he was present and witnessed the acquisition process, which did not consult or compensate some of the natives, including the deceased.

This piece of evidence on stay of the deceased and prosecution witnesses at Tegeta and unchecked exercise of acquisition of the land was not contested. This fact shows that between 1969 and 1992, the deceased occupied the plot. I understand the defendants questioned on documents to justify his ownship. This is unfortunate question. This court takes judicial notice on the history land grabbing in this state and considers evidences registered by PW2 that the lands around Tegeta were mostly forest, wetland and unplanned occupied by the natives of Tegeta, and when he was born in 1970s, he found the deceased on the plot. In any case, the deceased cannot be asked to produce document of ownership as we are all aware of the method of acquisition of lands in unplanned areas outside township.

In the present case, the original owner of the land was allegedly said to be the Government. However, there were no evidences which were tendered in this court to substantiate the same. I understand, DW3 stated that the process of acquisition towards Tegeta Site and Services in 1978, the Commissioner acquired the lands from the Government, but did not tender any document which showed the Government occupied the same before 1978 or any document of the transfer from the Government to the Commissioner 1978.

Transfers of lands start with the original rightful owner of the lands. The owner may have acquired the land either by clearing virgin land or by long occupation. Lands may also be acquired under the grant of right of occupancy, gift or through buying of the same. However, when it comes to the right of occupancy, the Government or Commissioner is also bound by the practice of this court to show how it acquired lands which are changed into plots. When it comes to lands transfers, any person claiming to pass title of lands to another person must first show he has good title of the same.

The position finds support in Latin Maxim: *nemo dat quod non habet*, meaning *no one gives a better title to property than he himself possesses*. These words have already received judicial interpretation in our jurisdiction (see: **Farah Mohamed v. Fatuma Abdallah** [1992] TLR 205, **Maganga v. Kitinga Mbarika**, Civil Appeal No. 240 of 2017 and **Charles Mushatshi v. Nyamiaga Village Council & Another**, Land Case No. 8 of 2016). The text found in the precedent of **Farah Mohamed v. Fatuma Abdallah** (*supra*) states that: *he who has no legal title to the land cannot pass good title over the same to another*.

In the present case, the defendants claim that the Government is the original owner of the land, but did not register evidence showing ownership prior to 1969 as the Government is moved by



either hard or soft records. There is also no neighbors to the plot who were brought by the Government, the defendants, Mariam A. Mnondwa or Domina Feruzi. It is unfortunate that even documents related to application, grant and transfers of the land were not tendered in this court. During the hearing of the case, DW3 prayed for this court to rely on her mere words as she is from the office of the Commissioner. This is unfortunate prayer to be registered in court of law from government official and in any case there is already precedent in place in favour of documentary evidence in lieu of oral (see: **Parters v. Sunday Post Limited** [1958] 1 EA 424).

On the other hand, the plaintiff and her witnesses showed that the deceased started by clearing bush areas, including swamp areas in the plot in 1969 to acquire the disputed plot. Neighbors and leaders in the area were brought to justify possession of the plot by the deceased and testified on how the process of acquisition of the lands in Tegeta lacked transparency, openness and consultation of the natives of Tegeta. There are also plenty evidences to show that the deceased was using the land by cultivating, rearing animals and running businesses without any interference until when the acquisition exercise started in 1970s.

I understand during the hearing of the present case, defendants were requesting documentary evidence from the plaintiff as a proof of ownership of the land. I think, to my opinion, the defendant or their learned minds representing the defendant have decided to decline in opening their eyes to the history of land laws, particularly after introduction of **Land Ordinance of 1923** by the British and its impact to this country. This court cannot be detained on the subject as there is already precedent set and gives the background of the matter (see: **Charles Mushatshi v. Nyamiaga Village Council & Another** (supra)). In brief, the colonial rule question of asking or requiring documents to prove deemed right of occupancy to individual villagers in our villages, is no longer part of questions in our courts of law, as of today. The history and holding of English courts in Tanganyika on deemed right of occupancy cannot be cherished by this court.

This court is currently cherishing new enactment in sections 34 (3) of the **Land Act** [Cap. 113 R.E. 2019] (The Land Act) and 18 of the **Village Land Act** [Cap. 114 R. E. 2019] (the Village Land Act). The enactment in section 34 (3) 18 of the Land Act and Village Land Act respectively are part of the current **National Land Policy** in this country enacted in section 3 of both statues and this court will not hesitate to cherish in its decisions (see: **Charles Mushatshi v.**

**Nyamiaga Village Council & Another** (supra) and **Amin Abdulnuur & Two Others v. Muleba District Council**, Land Case No. 17 of 2016).

This thinking is also supported by our superior court in the precedent of **Melchiades John Mwenda v. Gizelle Mbaga & Two Others**, Civil Appeal No. 57 of 2018. In this precedent, the Court of Appeal started that: *the fact that the second respondent is in possession of the original Certificate of Title is not ipso facto proof that he is the lawful owner of the disputed land.* Therefore, the thinking of the defendants which heavily relied on the letters of offer in D.2 and D.6 collectively is misplaced and has no legs to stand in the current thinking of this court and Court of Appeal.

I am aware during the hearing of the present case, DW3 alleged that the first defendant was asked on proof of citizenship in 1992 to date, she has not registered the same. This claim was not replied by all the defendants during the hearing of the matter and in final submissions of the parties.

That silence in an important matter like allegation on absence of proof of citizenship has its meaning in law. It may imply acceptance of the truthfulness of the point raised (see: **William Getari Kagege v. Equity Bank & Ultimate Auction Mart**, Civil Application No. 24/08 of 2019, **Finn Von Wurden Petersen & Milimani Farmers Limited v.**

**Arusha District Council**, Civil Application No. 562/17 of 2017, **Shadrack Balinago v. Fikiri Mohamed v. Tanzania National Roads Agency (TANROADS) & Attorney General**, Civil Appeal No. 223 of 2017, **Paulina Samson Ndawavya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017, **Yokobeti Simon Sanga v. Yohana Sanga**, Civil Application No. 1 of 2001, **Bashiri John v. Republic**, Criminal Appeal No. 486 of 2016, **Cyprian Athanas Kibogoy v. Republic**, Criminal Appeal No. 88 of 1992, **Sprianus Angelo & Six Others v. Republic**, Criminal Appeal No. 481 of 2019, and **Fabian Dumila v. Republic**, Criminal Appeal No. 136 of 2014). I am wondering whether it is possible for a person who has not exhausted administrative procedures can ask this court to grant him or her rights, in this case, the right of occupancy in title deed.

It is unfortunate that at one point the plaintiff's learned counsel complained in fictitious person on part of the defendants created to deprive the plaintiff's right to the plot. Again, the first defendant has been available in Dar Es Salaam for signing power of attorneys and letters of offer in D.1, D.2, D.3 and draft right of occupancy in different signatures without any proof of affidavit. It was stated in this case that the first defendant is busy with studies and work abroad, but it seems she cannot be busy following her cases in courts for almost thirty (30) years. She has not entered her presence for

appearance in this case and previous disputes since 1992. It is difficult for this court to comprehend. Similarly, there is allegation of John Lugombola being a caretaker of the plot. However, no any evidence to substantiate the claim was tendered in this court. Oral statements of that nature cannot be trusted by this court.

Finally, this is a court of law and is not restricted to analysis of facts registered and interpretation of the laws only. Precedents in this court and Court of Appeal show that this court may give advice to the Government and justice stakeholders (see: **The Hon. Attorney General v. Reverend Christopher Mtikila**, Civil Appeal No. 45 of 2009 and **Amin Abdulnuur & Two Others v. Muleba District Council** (supra). In the present case, this court advises the Government to take probe and necessary measures on what transpired during acquisition of lands for Tegeta Site and Services Project.

Having said so, and considering the evidences produced in this case, I find merit in this case. The plaintiffs has produced good evidence on balance of probabilities as per requirement of the law in section 3 (2) (b) of the Evidence Act and precedents in **Attorney General & Others v. Eligi Edward Massawe & Others** (supra); **Anthony M. Masanga v. Penina (Mama Mgesi)** (supra); and **Samson**

**Ndawanya v. Theresia Thomas Madaha** (supra) and persuaded this court to decide in her favour.

I have therefore decided to declare the plaintiff as a rightful owner of the land located at **Plot No. 263 Block E Tegeta area within Kinondoni in Dar Es Salaam**. The plaintiff is awarded costs of this suit. With specific damages emanated from loss of business incomes and structures erected on the plot, this court will not grant as there is no any evidences of the same were tendered in this court. The law in precedents is certain on the subject. Specific damages must be strictly and specifically proved (see: **Moselele General Agencies v. African Inland Church Tanzania** (supra), **Morris A. Susawata v. Mathias Maleko** (supra), **Zuberi Augustino v. Anicet Mugabe** (supra) and **Strabag International (GMBH) v. Adinani Sabuni** (supra).

Ordered accordingly.



F. H. Mtulya

**Judge**

02.11.2021

This Judgment is delivered in Chambers under the seal of this court in the presence of Hilder Connie Matovu and in the presence of learned counsel, Mr. Ngasa Ganja Mboje for the first defendant and holding brief of Mr. Leonard T. Manyama for the plaintiff and Ms. Narindwa Sekimanga for the second, third and fourth defendants.



A handwritten signature in blue ink, appearing to read "H. Mtulya", with a long horizontal flourish extending to the right.

H. Mtulya

**Judge**

02.11.2021

Estate of the late Adil Daniel Mande), Civil Appeal No. 212 of 2016 for appreciation similar facts like the present case.

However, Mr. Manyama contended that the three (3) witnesses who were brought in this case by the defendants, namely DW1, DW2 and DW3, testified that the first defendant is a fixious person who can own different signatures in D.1, D.3 and the Written Statement of Defence and cannot be brought to court to be questioned on acquisition of the land and her signatures. To the opinion of Mr. Manyama, the name of the first defendant is just used by the defendants to deprive the plaintiff's land without any record of original owner of the plot and the receipts tendered in D.5 are mere documents that cannot be legally considered as conclusive documentary evidence or confirm ownership in lands, as per precedent in **Registered Trustees of Joy in Harvest v. Hamza K. Sungura**, Civil Appeal No. 149 of 2019.

On the other hand, Mr. Ngasa for the first defendant submitted that the land was surveyed and allocated to the first defendant legally in 1992 and the allocation is still valid to date. To Mr. Ngasa's submission, the plaintiff has never complained of the plot since 1992 when John Lugombola was taking care of the land until 2007. According to Mr. Ngasa, the plaintiff and her witnesses testified that