

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 427 OF 2016

JOSEPH MSHANA

(Administrator of the Estates of the

Late NAGINDER SINGH MATHARU) PLAINTIFF

VERSUS

EVALYNE MBUNA.....DEFENDANT

JUDGEMENT

DATE OF JUDGEMENT- 22 /08/2022

The plaintiff is suing as the administrator of the estate of the Late Naginder Singh Matharu who died intestate on 20th March 2020. Before he died, he instituted this case on 6th December 2016, claiming for vacant possession of the property known as Plot No. 1370, Msasani Peninsular, Dar es Salaam, comprised in a Certificate of Title No. 36304, herein referred to as "the suit property."

He also claims from the defendant the sum of USD 360,000 (USD Three Hundred and Sixty Thousand) being five year's rent denied to the plaintiff by the defendant at the rate of USD 6,000 per month. He also prayed for general damages and costs of the suit.



The plaintiff says he is the registered owner of the suit property, and he produced in Court the Title Deed for Plot No. 1370 Msasani Peninsular, Dar es Salaam, Certificate of Title No. 36304, which was registered in the name of Naginder Singh Matharu, and this Title Deed was admitted as Exhibit P2. He also produced a Search Report dated 17th May 2016, which also shows that the owner of the suit property is Naginder Singh Matharu of P.O. Box 1850, Dar es Salaam, this Search Report was admitted in court as evidence and marked as Exh. P5.

The plaintiff says he had an overdraft with Habib Africa Bank Limited and had deposited this Title Deed with Habib Africa Bank Limited as security for the overdraft. The payment of the overdraft was not good, and Habib Africa Bank Limited "Habib Bank" had initiated a case against the borrower who is Kenzal Matharu Construction Limited and four others including Naginder Singh Matharu as the 5th defendant in the case. It was Land Case No. 349 of 2013, in which an exparte judgement was delivered on 17th September 2019. Habib Bank was authorized by the Court to auction the suit property to realize the credit. The Exparte

Judgment of Land Case No. 349 of 2013 was admitted as evidence and marked as Exh. P3.”

The plaintiff also avers that the auction, which was intended to take place on a Sunday, did not take place as the borrower had paid the decretal sum on a day before the intended auction i.e., on a Saturday, and it was recorded in Misc. Land Application No. 509 of 2016, that the borrower Kenzal Matharu Construction Limited and four others had already paid the money, and so the auction was stopped. A copy of the proceedings in Misc. Land Application No. 509 of 2016 was availed to Court and it was received as evidence and marked as Exhibit P4.

PW2, Mr. Sibtain, the General Manager of Habib Bank confirmed before the court that it is true that Kenzal Matharu Construction Limited was issued with an overdraft facility with Habib Bank, and they had deposited this Title Deed with the Bank as the Security for the overdraft. He also confirmed that they had created a caveat in respect of the suit property, and that since the borrower was not performing, the Bank instituted the case at the High Court Land Division against the borrower and the guarantors, and that on 17th

September 2015 they got an ex parte judgement against the borrowers and the guarantors, wherein, the Bank was allowed to realize its money by auctioning the mortgaged or the charged property. He continued to state that the Court Broker was appointed to conduct the auction, and on the day of the auction, the occupant of the suit property obstructed the execution of the court decree, and the auction could not take place. PW2 did not know the occupant but he said she was an influential lady, and the daughter of the Late Retired President Mkapa. PW2 also confirmed before the Court that the borrower paid the decretal amount, and the Court had cancelled the auction.

The plaintiff, in his plaint prayed for the following reliefs:

1. Vacant possession of the suit property.
2. Accrued rental income of USD 360,000 lost by the plaintiff as of 2016.
3. Payment of rent at the rate of USD 6000 per month from December 2016 until the date of vacant possession.

4. Accrued interest on item 2 and 3 of the reliefs prayed at the rate of 12 % per annum cumulatively from the date of judgement until vacant possession.
5. General damages
6. Any other reliefs deem fit and just to grant.
7. Costs of the suit.

The defendant resisted the claims, she filed the written statement of defense stating that there has never been any Tenancy Agreement between the plaintiff and the defendant, thus the defendant is not entitled to the payment of mesne profits claims, and any further payments of rents. The defendant claims that she is the legal and beneficial owner of the suit property, having inherited the suit property from her late husband Joseph Mbuna. That the Late Joseph Mbuna purchased the suit property from Mr. Naginder Singh Matharu on 31st January 2006 for a consideration of TZS 95,000,000. The sale consideration was paid in cash, and there was the execution by the parties to the Sale, a Sale Agreement. The Sale Agreement and the Transfer of a Right of Occupancy was executed by the Late Naginder Singh Matharu, as the Vendor, and

the Late Joseph Mbuna as the Purchaser on 1st February 2006. The Agreement was concluded before Advocate Mafuru Mafuru, and the execution of the Sale Agreement was witnessed by Advocate Waziri J Mchome. The defendant avers that on the same date of the execution of the sale agreement, the Vendor was paid the full purchase price, and he had handed over all the documents of sale including the original Title Deed to the purchaser. On the same date the Vendor gave vacant possession to the purchaser.

The defendant further alleges that the Commissioner for Lands had consented to the disposition, and the Vendor was required by law to pay capital gains tax but the Vendor, the plaintiff herein, never paid the capital gains tax as a result the transfer of the suit property to the purchaser could not be done. That, the purchaser, Mr. Joseph Mbuna died on 2nd July 2009, and the heirs and beneficiaries of Mr. Mbuna's estates tried to locate the Vendor to pay the capital gains tax, but the vendor could not be found.

The defendant claims that the Late Naginder Singh Matharu forged the Title Deed, and fraudulently mortgaged the Title to obtain a loan facility from Habib African Bank Limited, and the defendant

admits that Habib African Bank Limited had created a caveat on the property on 27th April 2011. She also acknowledged that Habib African Bank Limited intended to auction the suit property in 2016, on a Sunday, but the auction was stopped. The defendant also admits that to date the property is still registered in the name of the plaintiff, Naginder Singh Matharu. The defendant denies being a trespasser but claims that it was the plaintiff who handed over peaceful vacant possession to the defendant's husband on 1st February 2016 after he was paid the full purchase price.

Now, to resolve the dispute, the court had framed the following issues:

1. Whether the Sale Agreement between Naginder Singh Matharu and the Late Joseph Mbuna was valid.
2. Whether the defendant has trespassed into the suit premises situate at Plot No. 1370, Msasani Peninsular, Dar es Salaam.
3. Who is the lawful owner of the suit premises.
4. To what relief's are the parties entitled.

The case was filed in December 2016 but due to the death of the plaintiff, the case abated on 31st August 2020 but was restored by the Court in April or May 2022, a lapse of two years. The Life span of the case which expired since 13th September 2020 was extended by the Court on 15th August 2022, it was extended for 12 more months effective from 15th August 2022.

During the hearing of the plaintiff case, Mr. Joseph Fredrick Mshana who is the Administrator of the estate of the Late Naginder Singh Matharu testified as PW1. He produced the Title Deed and the Search Report (Exh P2, and Exh P5, respectively) proving that the property is registered in the name of the Late Naginder Singh Matharu. He also produced Exh P3, which is the Judgement in Land Case No. 349 of 2013, which proved that the Title Deed of suit premises was deposited with Habib African Bank Limited as security for the overdraft facility, and since the borrower in that case who is Kenzal Matharu Construction Limited did not service the credit, the court ordered the suit property to be auctioned by the bank so as to realize the credit offered to Kenzal Matharu Construction Limited. Exhibit P4 was

the proceedings of Misc. Land Application No. 509 of 2016, in which the auction of the suit premises was stopped by the Court since the decretal sum ordered in Land Case No. 349 of 2013 was settled. PW1 said he is not aware if there was any sale of this property to the defendant, and that the defendant had trespassed into the property since 2011. That the Late Naginder Singh Matharu tried to remove the trespasser from the suit property, and eventually, he filed this case in 2016 to get an order of eviction from the court, and to be awarded mesne profits, and rental accruals, and general damages.

PW2 was Mr. Syed Mukhtar Sibtain, the General Manager of Habib African Bank Limited. He confirmed that they advanced an overdraft facility to Kenzal Construction Limited, and Mr. Naginder Singh Matharu had deposited the Title Deed for Plot No. 1370 Msasani Peninsular as security for the overdraft. He also confirmed that since the borrower was not performing, the Bank created a caveat on the property on 27th January 2011, and in 2013, the Bank instituted the case against the borrower Kenzal Matharu Construction Limited, and four others, and that

Naginder Singh Matharu was the fifth defendant in that case, it was Land Case No. 349 of 2013. The Bank won the case, and it was ordered that the credit be realized through auctioning the suit property, and that the owner of the suit property was Naginder Singh Matharu. He continued testifying that the court broker was appointed to auction the property but on the date of the auction, one influential lady who claims to be the occupant of the suit property used the police to obstruct the auction, and the auction could not take place. He also said as the decretal sum was settled by Kenzal Matharu Construction Limited, a day before the auction, the auction was stopped.

Foster Mbuna Mkapa appeared as DW1 for the defendant's case. She said she is the daughter of the Late Joseph Mbuna and that her Late father purchased this property from the Late Naginder Singh Matharu in 2006. She said there was the sale agreement, which was prepared by Advocate Mafuru Mafuru, and sale transactions were witnessed by Advocate Waziri Mchome. She said her mother has been in possession of the property since 2006 and that the property is occupied by the tenants. She

agrees that she was aware that the property was about to be auctioned by Habib African Bank Limited, but she went to report to police, police went to the auction to make sure that the auction does not proceed. She said the Manager from the Bank was also present at the auction, and it was the Manager that had stopped the auction since the decretal sum was already paid.

She also claims that they could not transfer the title to the property to the name of her father since the plaintiff did not pay capital gains tax. She said there was no written demand sent to the plaintiff for payments of capital gains tax as the efforts to find him proved futile.

DW2 was Waziri Masoud Mganga who works as the officer at the Registrar of Titles. He produced Exhibit D1, which is a counterpart of the Title Deed for Plot No. 1370 Msasani Peninsular, Dar es Salaam. DW2 said Exhibit D1 is the counterpart of the original Title Deed for the suit property, and this counterpart is kept with the Registrar of Titles, and they call it Land Register. The other part that is given to the owner is called the Title Deed. He says Exhibit P2 which is the Title Deed

produced by the plaintiff in court is not a genuine Title Deed as it does not have the two transactions endorsed in Exhibit D1. He says Exhibit P2 does not have a stamp which shows that there was a Notice of Deposit by Delphi's Bank T Limited endorsed on 16 February 2011, and the Notice of Deposit by Savings and Finance Bank Limited endorsed on 16th April 2002. He also says the papers used to make Exhibit P2 are not the papers used by the Registrar of Titles to prepare Title Deeds. He also said the signature of the Commissioner for Land in the Title Deed (Exhibit P2), and the signature of the Registrar of Titles in Exhibit P2 are forgeries. DW2, however, he confirmed that the name of the owner of the property is still Naginder Singh Matharu as shown in both Exhibit D1 and Exhibit P2.

DW3 was the defendant herself who produced in Court Exhibit D2 and D3. Exhibit D2 is the Contract of Disposition of the suit property. Exhibit D3 is the Transfer Deed and Certificate of Approval of disposition issued by the Commissioner for Lands. She said she was given vacant possession of the suit premises since February 2006, and that since then the suit property is

occupied by the tenants and she receives rents. She was appointed the administrator of her husband estate in 2020, and she was bequeathed this property, and now she is the owner of the property. She says she has never seen the vendor, the Late Naginder Singh Matharu but she was in custody of the documents she produced in court. She says the transfer of disposition could not be done since her husband got sick and died in 2009, and again due to covid and the problems in the administration of the deceased property they could not complete the registration of the transfer. She also said that the property could not be registered in her husband names since the vendor did not pay capital gains tax.

Now, having heard the parties and their witnesses, the first issue to be determined is whether the Late Naginder Singh Matharu sold the suit property to the Late Joseph Mbuna on 31st January 2006.

The Registration of documents Act, and Land Registration Act requires documents containing contract to transfer for consideration (agreements of sale etc.), relating to any immovable property, to be registered. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of section 9 of the Registration of Documents Act and will not confer any title nor transfer any interest in an immovable property. According to the Land Registration Act, an agreement of sale, whether with possession or without possession, is not a conveyance as sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter unless it is registered. Again, under Section 36 of the Land Act, 1999, disposition of a Right of

Occupancy which does not comply with the provisions of section 37,38, 39 and 40 of the Land Act is void. This section reads:

36.- (l) A disposition of a right of occupancy shall-

(a) comply with the provisions of this section and sections 37, 38, 39 and 40.

(b) be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with.

Now, lets see whether the defendant had led any evidence which confirms that there was a sale of the suit property by the plaintiff to the late Joseph Mbuna, and whether the sale deed or deed of sale was registered in accordance with the requirement of the Land Registration Act and that the disposition complied with section 37, 38, 39 and 40 of the Land Act.

Mr. Msemwa, the Learned Advocate vehemently contended that the defendant has miserably failed to prove that there was a deed of sale signed and executed by the plaintiff and has also miserably failed to prove that the sale price was paid by the defendant's

husband, the late Joseph Mbuna. Advocate Msemwa also contended that there was no demand for payment of capital gains tax issued by the Ministry of Lands to the Late Naginder Singh, and that the Late Naginder Singh failed to fulfill his obligation under the Agreement for Sale and in those circumstances, the plaintiff is not bound to convey the suit property in favor of the defendant.

The plaintiff disputed to have ever sold the suit property to the Late Joseph Mbuna in 2006 and disputed that he never entered a contract of disposition with the husband of the defendant for sale of the suit property at a sale consideration of TZS 95,000,000.

It is seen from the materials that on 1st January 2006 there was a contract of disposition of a Right of Occupancy (Landform No. 38) executed by the Vendor, Mr. Naginder Singh Matharu, and the Purchaser Mr. Joseph Mbuna for a consideration of TZS 95,000,000. The condition for payment of the purchase price as shown in the Contract is Cash and the Deed of Disposition was to be signed after payment of the purchase price. The Contract of Sale also clearly

stated that the delivery of possession and necessary documentation to the purchaser would be after the registration of transfer, and covenants binding upon the purchaser was to be paid purchase price after consent from the Commissioner for Lands was obtained. This Contract of Disposition was executed on 31st January 2006. On 1st February 2006, the Late Naginder Singh Matharu and the Late Joseph Mbuna executed a Transfer of Right of Occupancy (Form No. 35), and the Certificate of Approval of a disposition was issued by the Commissioner for Lands on 18th September 2007.

If I analyze the Contract of Disposition there was indeed a contradiction between the covenants stated therein regarding payment of the purchase price, and delivery of possession of the property and documentation. In the Contract of Disposition, the purchase price was to be paid in cash, and soon after the payments is made, a Deed of Disposition would be executed. Again, in the same Contract of Disposition, the Vendor was to be paid after the transfer is approved by the Commissioner for Lands. There was no proof forthcoming from the defendant as to when the purchase price was paid, was it paid on 31st January 2006 when the Contract

for Disposition was executed or on 1st February 2006 when Form No. 35 (the Deed of Disposition or a Transfer of Right of Occupancy) was executed, or whether the purchase price was paid after the consent of the Commissioner for Lands was obtained, which is on 18th September 2007. Again, there was no proof as to when the delivery of possession of the suit property and documentation including the Title Deed was delivered to the defendant's husband. The Contract for Disposition stated that the date of delivery of possession of the property and necessary documentation would be after registration of transfer. It is clear from the evidence on record that the transfer was never registered as there is no proof of registration, and thus the Vendor could not have delivered possession of the property before the transfer was registered. Perhaps we should ask as what they meant in the Contract when they said, "after registration of transfer". Does this mean that after registration of the Contract of disposition or after the Title was transferred in the name of the Purchaser? Section 39 (8) of the Land Act provide for the answer to this question:

Section 39 (8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly.

(9) The Commissioner, an authorized officer, or any other officer to whom any premia, taxes or dues is or are required to be paid under this section shall endorse and sign a receipt for that premium, tax or due on the certificate of approval.

(10) The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy the subject of a disposition to which this section applies unless and until he is satisfied that all premia, taxes, and dues in respect of that disposition have been paid and a

receipt for the same has been validly endorsed on the certificate of approval.

Thus, Registration of Transfer is done by the Registrar upon making an entry on the register, and he cannot make such entry unless and until all premia, taxes, and dues in respect of the disposition have been paid. It is therefore clear that as per the Contract of disposition, the Vendor could not have handed over vacant possession or even delivery of property to the purchaser unless and until the Transfer was registered. To date, no transfer was registered, thus no delivery of suit property to the purchaser could have been done when the transfer was not register and completed.

Again, a Certificate of Approval should have been sent to the Applicant, as it was the Applicant according to section 36 (3) of the Land Act who was to notify the Commissioner for Lands of his intention to dispose the Right of Occupancy. The Vendor was supposed to File a Landform No. 29 as a Notification to the Commissioner for Lands of the intended disposition. Section 36 (3), (4) and (5) of the Land Act provides:

Section 36 (3) Any person proposing to carry out a disposition, other than a disposition to which section 38 applies, shall send, or deliver a notification in the prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premia, taxes and dues prescribed in connection with that disposition.

(4) The Commissioner shall, subject to the provisions of section 37, on receipt of a notification under subsection (3) and the payment of all premia, taxes and dues which may be prescribed, with all due dispatch, endorse that notification with his signature and official seal and send or deliver a copy to the Registrar.

(5) The Registrar shall not make any entry on the register in respect of any disposition, or any right of occupancy transferred because of a disposition to

which subsection (3) applies unless and until he is in receipt of a copy of a n

Again, the Vendor was also required to File a Landform No 30, applying for approval of disposition of the Right of Occupancy as required under section 37 of the Land Act, and that a disposition of a Right of Occupancy without the approval of the Commissioner for Lands is inoperative, this is provided under Section 38 (5) of the Land Act, which reads:

Section 38 (5) A disposition which has been carried out without first obtaining the approval of the Commissioner shall be inoperative.

There was no proof from the defendant that the Vendor had completed Landform No 29 for notifying the Commissioner for Lands that he intends to carry out a disposition of a Right of Occupancy, and that the Notification was received and approved by the Commissioner and that the Commissioner had endorsed it in accordance with Section 36 (4) of the Land Act. Again, there was no proof that the Vendor had applied for approval of disposition of

a Right of Occupancy as required by section 37 of the Land Act. There was no Landform No. 30 which is an application for approval for a disposition of the Right of Occupancy, and there was no proof that the Commissioner had approved the disposition.

To make matters worse for the defendant, and even from the oral evidence of DW1 and DW3 which would have amply show that the defendant's husband paid cash to the plaintiff to complete the transaction, it is not clear as to why the Defendant failed to lead oral evidence in support of the claim that indeed her Late Husband purchased the suit property from the Late Naginder Singh Matharu, and that he paid the purchase price either before the Execution of the Transfer Deed i.e. on 31st January 2006 or 1st February 2006 or 17th September 2007. It is also not clear why she did not bring the advocates who witnessed the sale or those who drew the sale agreement in the witness box, though it is stated that the sale was made in the presence of the advocates. Had the plaintiff not disputed the sale, I would definitely believe the testimony of DW3 that her husband purchased the property from Naginder Singh Matharu in 2006 as shown in Exhibit D2 and D3, but on the other

hand it is the defendant that needed to prove that her Late husband Joseph Mbuna purchased the property from Naginder Singh Matharu and that Naginder Singh Matharu complied with all the conditions for Sale or Transfer of Right of Occupancy as required under Section 36, 37, 38, 39 and 40 of the Land Act. In those circumstances, apart from the Contract of Disposition (Exh 2) and Transfer Deed (Exhibit D3), and Consent from the Commissioner for Lands (Exh D3) produced by the defendant to prove that there was sale of the property by Naginder Singh Matharu to the Late Joseph Mbuna in 2006, the defendant ought to have led the evidence that the purchase price was paid and received by the plaintiff to complete the sale, that the Vendor notified the Commissioner for Lands of the intended disposition as per section 36 (3-5) of the Land Act, and that the Vendor applied for approval of disposition, and that the Commissioner for Lands had approved the disposition.

On record, there is Exhibit D3 which is the Certificate of Approval of disposition, but this Certificate was sent to Joseph Mbuna of P. O Box 8764 Dar es Salaam. According to Section 39 (8), this

Certificate of Approval was supposed to be sent to the Applicant, and the Applicant under the Land Act is the Vendor. The Certificate of Approval was supposed to be accompanied by a note for payments of taxes, and this is in accordance with Section 39 of the Land Act, which reads:

Section 39 (6) A consent under subsection (5), in this Act referred to as a "certificate approval" shall-

(a) be personal to the applicant.

(b) not be assignable.

(c) be valid for one year from the date on which it was given.

(7) A determination by the Commissioner under subsection (5) shall be

(a) in the prescribed form.

(b) signed by the Commissioner.

- (c) where it is a certificate of approval, accompanied by a demand for any premium, taxes or dues which may be prescribed, or which is determined by the Commissioner.
 - (d) copied to the Registrar.
 - (e) delivered or sent by registered letter to the applicant to his last known abode or his usual place of business.
- (8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly.

The Certificate of Approval is personal to the applicant and not assignable (section 39 (6), and (8) of the Land Act), and it must be accompanied by a demand for any premium, taxes or dues which may be prescribed, or which is determined by the Commissioner. The Certificate of approval was not sent to the Applicant (the Vendor), and it was not accompanied by a demand for payments of premiums or taxes dues or prescribed by the Commissioner. Thus, making the Certificate of approval invalid and inoperative. In any case, section 38 (8), a person who receives the certificate of approval is mandatorily required to pay all premia, taxes, and dues, thus, since the certificate of approval was sent to Joseph Mbuna, and not to Naginder Singh Matharu, it was Joseph Mbuna who was required under the law to pay all the premia and taxes due to as to have the disposition valid. The Vendor did not apply for disposition of a Right of Occupancy, and this is clear reasons as to why the Commissioner sent the Certificate of Approval to the purchaser, and did not send it the Vendor as required under the Lan Act. All these anomalies and discrepancies makes the disposition of the Right of

- Occupancy inoperative, as such there was no valid sale of the Right of Occupancy.

Further, an agreement made without consideration is void as provided in section 25 of the Law of Contract Act, also an agreement, the meaning of which is not certain, or capable of being made certain, is void, as provided in Section 29 of the Law of Contract Act.

If the Agreement is clear but if the condition prescribed or even described in the contract of disposition have not been performed by one party to the contract, undoubtedly, such contracts become not enforceable. The events enumerated in the contract, is to pay the purchase price before the execution of the Deed of Disposition, and to pay the purchase price after the Consent from the commissioner for Lands is obtained, not only that the time for payment of purchase price is uncertain, also it has not been proved by the defendant if at all, the payments of the purchase price was effected by the purchaser and received by the Seller/Vendor. Secondly, the delivery of possession and documentation as per the Contract of

. disposition was to be after the transfer was registered, however, DW1 as well as DW3 have all said that they were handed over vacant possession of the suit premises in 2006 even before the consent of the Commissioner for Lands was given, and even before the Transfer was registered and this contradicts the terms of Exh D1, the Contract of Disposition. In the Sale Deed the registration of transfer was one of the pre-conditions for delivery of possession and documentation to the purchaser by the buyer, and since the defendant entered the suit property before the transfer was registered, she went against the terms of the contract, thus making her the trespasser.

To answer issues No 3, since there was no valid sale of the property, and since Exhibit D1 (Land Register), and Exhibit P5 shows that the suit property is still registered in the name of Naginder Singh Matharu, the lawful owner of the suit property is Naginder Singh Matharu, and that his Legal Representative is entitled to ownership and vacant possession of the suit property.



- I shall not determine the issues of mesne profits, and rentals since the plaintiff could not prove that he had rented the house to the defendant, and trespassers do not pay rents. However, since the plaintiff was denied the use and occupation of the property since 2006 to date, he is entitled to general damages to the Tune of TZS 1,000,000,000, (TZS One Billion Only) being general damages. The plaintiff is also entitled to the costs of the suit.

Thus, the plaintiff is declared the lawful owner of the suit premises. The defendant is the trespasser and shall yield vacant possession of the suit property immediately. The plaintiff is entitled to general damages to the tune of TZS 1,000,000,000, (Tanzanian Shillings One Billion Only) and costs of the suit.

It is so ordered.

**DATED AND DELIVERED AT DAR ES SALAAM THIS 2nd DAY OF
AUGUST 2022.**



**L. MANSOOR
JUDGE
22nd AUGUST, 2022**