

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

LAND CASE NO. 170 OF 2018

KURUTHUM YUSUF (suing as Administratrix of the
Estate of SUGRA JAFARI).....**PLAINTIFF**

VERSUS

SHABANI HASSAN.....**1ST DEFENDANT**
HASSAN SEIF MTUNGAKOA.....**2ND DEFENDANT**
SALEHE SEIF MTUNGAKOA.....**3RD DEFENDANT**
ALLY SEIF MTUNGAKOA.....**4TH DEFENDANT**

Date of Last Order: 30.08.2022
Date of Judgment: 07.10.2022

JUDGMENT

V.L. MAKANI, J

The plaintiff in this suit is KURUTHUM YUSUF suing as the Administratrix of the estate of the late Sugra Jafari. She is praying for the following orders against the defendants jointly and severally as follows:

- a) That this honourable court be pleased to declare that the suit property known as House No. 86, Plot No. 2 Block 11 Kongo Street, Kariakoo Area, Ilala Municipality, Dar es Salaam is the property of SUGRA JAFARI the subject matter of Mirathi No. 416 of 2014 administered by the plaintiff.*

- b) That this honourable court be pleased to order the defendants to give vacant possession of the suit land.*
- c) That this honourable court be pleased to order permanent injunction restraining the defendants herein, their workmen, agents or anybody else from any involvement to the suit property known as House No. 86, Plot No. 2, Block 11, Kongo Street, Kariakoo Area, Ilala Municipality, Dar es Salaam such as by alienating or transferring it to any Third Party in pretext of any right whatsoever.*
- d) That this honourable court be pleased to order defendants to pay the plaintiff mesne profit at the tune of Tanzania Shillings Two Hundred Million (TZS 200,000,000/=).*
- e) That costs be provided for.*
- f) Any other reliefs the Honourable court may deem fit and just to grant.*

According to the plaint House No. 86, Plot No. 2 Block 11 Kongo Street, Kariakoo Area, Ilala Municipality, Dar es Salaam (the **suit property**) was initially owned by Muungano Omari who had one daughter by the name of Sugra Jafari. The plaintiff being the administratrix of the estate of the late Sugra Jafari is claiming ownership of the said suit property as a Legal Representative. She was appointed administratrix by virtue of Mirathi No. 416 of 2014.

The defendants in their Written Statements of Defence (the **WSDs**) denied the plaintiff's allegations and claimed that the suit property

was purchased by their father the late Seif Hassan from Salum Hemed Bin Masoud. In that respect they said the suit cannot be under the administration of the plaintiff. They prayed for the court to dismiss the suit.

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

- 1. Whether Sugra Jafari is the lawful owner of the suit property namely, House No. 86, Plot No. 2 Block 11 Kongo Street, Kariakoo Area, Ilala Municipality, Dar es Salaam.*
- 2. Whether the defendants are trespassers and if so whether they ought to give vacant possession.*
- 3. Whether the plaintiff is entitled to mesne profit of TZS 200,000,000/= as prayed.*
- 4. To what reliefs are the parties entitled to.*

In this case the plaintiff was represented by Mluge Karoli Fabian, Mr. Mashaka Edgar Mfala, Mr. Alphonse Kubaja and Ms. Moses, Advocates. The 1st defendant was represented by Mr. Amin Mshana, Advocate and Mr. Job C. Kerario, Advocate represented the 2nd, 3rd and 4th defendants.

The plaintiff's case comprised of four witnesses. The first witness was the plaintiff herself, Kulthum Yusuf (**PW1**). In her testimony she said she was claiming the suit property from the 1st defendant Shabani Hassani. She said she started claiming the property since 1995. She said the suit property belonged to Muungano Binti Omari and it later went to Sugra Jaffari who was the sole child of Muungano d/o Omari. She said she was appointed the administratrix of the estate of Sugra Jaffari by Kariakoo Primary Court (**Exhibit P1**). She said the beneficiaries of the estate of Sugra Jaffari were Abas Yusuf, Asgali Jaffari and herself and further that she is the only remaining heir as both Abas and Asgali are deceased. **PW1** said she is claiming the suit property because when Sugra Jaffari died, the 1st defendant claimed that the house belonged to him, but this was not true because before her death Sugra Jaffari was still collecting rent and she did not say that she had sold the suit property to anyone. She said the suit property belonged to her mother Sugra Jaffari.

On cross-examination **PW1** said the suit property belonged to her grandmother Muungano Omari and when she died in 1959 her daughter Sugra Jaffari took over the suit property as a guardian to Asgali Yusuf. She admitted that she does not have anything to present

to show ownership of the suit property but Asgali Yusuf, whom she termed a drunkard, took the Certificate of Title from them by force. She said there was another case at the Primary Court which was filed in 1996 between Ally Juma and the 1st defendant. She said Ally Juma was her uncle and her mother did not have any other property except the suit property.

PW2 was Edith Emilian Mganga who identified herself as Land Officer of Ilala Municipality. She said according to the record the first owner of the suit property was Mnungano d/o Omari. There was a Letter of Offer that was issued on 01/01/1957 and the owner signed it on 05/04/1957. She said there was a conveyance to Mohamed Salum Batteh who was the Administrator of the estate of Mnungano in Cause No. 172 of 1957. She said there was transfer to Sugra Jafari as guardian of Asgali Yussuf but there was disturbance as Letter of Offer read Muungano d/o Omari while the conveyance read as Nongono d/o Omari and there was no affidavit or Deed Poll to change of names. She said the conveyance was subject to Probate Cause No. 172 of 1957 but there were no supporting documents in respect of the conveyance such as Probate Forms No. I, II, III and IV. PW2 said there was a short-term Letter of Offer that was in the name of Sugra

d/o Jafari as guardian of Asgali Yusuf (minor) but she said the Letter of Offer which was prepared in 1957 has not been signed by the recipient to date making it invalid.

PW2 went on saying that in 1974 there was a Telegram from Kariakoo Primary Court which directed that the names of Muungano and Sugra Jafari be erased from the Letter of Offer and a Title be issued in the name of Asgali Yusuf. She said the Savings Telegram (**Exhibit P2**) was not dated but it only mentioned October, 1974 and the heading was Mirathi No. 71 of 1974 and it was accompanied by an affidavit of Asgali Yusuf (**Exhibit P3**) stating that she has sold the suit property to Salim Hemed Masoud at TZS 20,000/=. **PW2** said the Telegram does not have a folio number as is the procedure of all the documents that are received by their Office, so she concluded that the Telegram was not properly received. **PW2** said the sale in the affidavit is invalid as title had not passed to Asgali Yusuf. She said for a registered land to be transferred, Asgali Yusuf had to get ownership first so that she could sell the suit property. She said there was a Letter of Offer addressed to the Primary Court Kariakoo as administrator of Sugra Jaffari in respect of the suit property and there was a transfer prepared from the Magistrate to Asgali Yusuf and then

to Salum Hemed bin Masoud. She said the record shows that the documents were prepared in October, 1974 but there is no exact date. She said the Magistrate signed and so did Asgali Yusuf and the attestation does not show the Commissioner for Oaths whether it was an Advocate or Magistrate and there is no date just the month of October, 1974. She said the documents do not reflect the name of the Magistrate it is just signed as "*magistrate*". She concluded by saying that Asgali Yusuf has never had a Letter of Offer and according to the records the owner of the suit property remains to be Mnungano d/o Omari the original owner who was granted the Letter of Offer.

In cross-examination **PW2** said the records show that the original owner of the suit property is in the name of Mnungano d/o Omari. They do not recognise Nongono or Muungano as there is no affidavit of change of name or Deed Poll. She continued to say that Sugra Jafari did not inherit the suit property and Asgali has never applied to be owner of the suit property. She said the plaintiff had applied for a Certificate of Title, but the Commissioner for Lands directed that the matter be resolved by the court.

PW3 was Fatma Nassoro and she identified herself as the daughter in law of the plaintiff. She said she is married to the plaintiff's son one Sameer Sadik Mohamed. she said she knows some of the history of the suit property because she keeps some of the documents for her mother-in-law. She said the suit property is owned by her mother-in-law as she inherited it from her mother Sugra Jaffer who died on 15/06/1971 (**Exhibit P4**). She said Sugra Jaffer had three children the plaintiff, Asgali Yusuf and Abasi Yusuf, and the latter two are now deceased. **PW3** said she knows the 1st defendant and there are several cases between him, and her mother-in-law and the cases started way back in 1999 at Kariakoo Primary Court. She said the main subject of the many cases is the suit property. She said the last case was at the High Court where it was decided that the parties should address their matter before the relevant court with competent jurisdiction. The decision of the High Court is **Exhibit P6**.

PW4 was Stanley Kevela Court Broker and Managing Director of Yono Auction Mart. He said he knows that the suit property belongs to the plaintiff. He said on 07/02/2012 the Primary Court Kariakoo ordered the eviction of trespassers in the suit property vide Case No. 09 of 1996. The plaintiff in the case was Shabani Hassani (the 1st defendant

herein) and the defendant was the plaintiff herein. The court ordered the eviction of Shabani Hassani. He was given notice and on 09/02/2012 he vacated the suit property and took everything, and we handed the suit property to the plaintiff herein and reported to the court completion of the work. He said Shabani Hassani vacated on his own accord, but the plaintiff herein told me after two days the said Shabani Hassan came back forcefully and evicted her. **PW4** said she advised the plaintiff to go to court and Shabani Hassani was imprisoned for 21 days for going contrary to the court order. He said Shabani filed application for revision No. 2 of 2012 to stay the execution at the District Court in Samora Street, but the court dismissed the application because it was overtaken by events (**Exhibit P7**). He said the plaintiff entered a contract with them to demolish the house on the suit property, but Shabani Hassan was resisting claiming the house belonged to him, so they did not continue with the demolition. He said there was another case by Shabani against the plaintiff and their company for a claim of TZS 2 billion for demolition of the house on the suit property. The said case Civil Case No. 134 of 2019 was struck out because the said Shabani had no locus standi (**Exhibit P8**). On cross-examination **PW4** emphasized that he had instructions of demolition of the house at the suit property

by the owner who is the plaintiff herein because he had already completed the eviction as ordered by the court.

DW1 was Haji Mussa. He was the witness in support of the case of the 2nd, 3rd and 4th defendants. He said he is aware of the dispute on the ownership of the suit property. He said his uncles Seif Hassan and Mwinjuma Hassan vide their company Farmers Vegetables Supplies bought the suit property in 1975. He said before 1980 one of the uncles Seif Hassan died and he and others were called as witnesses in the distribution of the properties. He said he used to live in the house at the suit property from 1976 to 1980. He said he left after the distribution. The meeting for the distribution had many witnesses including Khatibu Hassan Mtungako, Mohamed Hassan Mtungakoa, Khatibu Issa, Mzee Ally Assa Saidi and another whose name he forgot. He said the meeting had participants from the two sides that is from Seif and Mwinjuma Hassan. He said by then the 2nd, 3rd and 4th defendants who are the sons of Seif Hassan were very young. The properties between the two partners Seif and Mwinjuma were according to the document (**Exhibit D1**). He said he knows the plaintiff and that she wanted to demolish the house, but he alerted

the then Inspector General of Police, Said Mwema, and the demolition did not continue.

On cross-examination **DW1** said Seif and Mwinjuma Hassan bought the house from Masoud who was their neighbour. He said he was not involved in the transaction, but he was present and saw the Sale Agreement. He said it was the company that bought the house. He said though Mohamed Hassan was the administrator of Seif Hassan but the properties were handed over to him. He said when the house was demolished in 2012 it was Shabani Hassan who was acting on behalf of the children that is the 2nd, 3rd and 4th defendants.

Salehe Seif Mtungakoa appeared as **DW2**. He is the 3rd defendant in the suit. He said he is a co-owner of the suit property. He said they were four co-owners but now they are three that is the 2nd, 3rd and 4th defendants. Their brother died and **DW2** was appointed the administrator. He said the house is inheritance from their father Seif Mtungakoa and the administrator of his estate was by then their uncle Mohamed Hassan Kaoneka. He said his late father got the house from the share in business with Mwinjuma Hassan in 1976. He said his father paid taxes in respect of the suit property as per **Exhibit D2**

which is the Demand Notice for payment of taxes in respect of the suit property from the Ministry of Finance and Planning dated 13/05/1986 addressed to the late Seif Hassan. He said according to the records the house was purchased by his father and his partner from Salum Hemed bin Masoud who bought the said suit property from Asgali Yusuf by virtue of the affidavit sworn by Asgali Yusuf himself (**Exhibit D3**). He said Asgali Yusuf inherited the house from Muungano Omari under the guardianship of his mother Sugra Jaffari. He said they owned the suit property without problems until 2012 and they were given a Letter of Offer (**Exhibit D5**) in the name of Mohamed Kaoneka as their guardian and since the Letter of Offer no ownership has changed and they were in the process of removing the guardianship and getting a Certificate of Title from Ilala Municipal Council. He said they wanted to verify the boundaries and they have the letter which returned the Letter of Offer to the Municipal Council (**Exhibit D6**) and he said they had also requested for a survey by virtue of **Exhibit D7**. He went on saying that he is also the administrator of the estate of his father Seifu Hassan (**Exhibit D8** and **D10**) and his brother Zamil Seifu Mtungakoa (**Exhibit D9**).

On cross-examination **DW2** admitted that the initial owner of the suit property was Muungano who had one child Sugra. He said Asgali, Kulthum and Abasi were the children of Sugra. He said Sugra is the legal inheritor of Muungano and in Probate Cause No. 71 of 1974 Sugra was the administrator of the estate of Muungano on behalf of Asgali. He further admitted that there is no Sale Agreement between Asgali and Salum Hemed and Asgali and anybody else. He said he has never seen any Agreement between his father and Salum Hemed nin Masoud. He said by 1983 when Probate Cause No. 39 of 1983 was decided and he was given administration he was 5 years old.

DW2 went on saying that the original administrator was Mohamed Kaoneka but he admitted that he did not have the Letters of Administration of Mohamed Kaoneka in respect of the estate of his father Seif Hassan and he did not know if the said Mohamed Kaoneka obtained a Letter of Offer and the said Letter of Offer. He further admitted that the Letter of Offer (**Exhibit D5**) does not show that Mohamed Kaoneka was the Administrator of the estate of Seif Hassan but just their guardian and there is no proof that Mohamed Kaoneka applied for and was granted guardianship. He said Mohamed Kaoneka died in 2016 and he filed Letters of Administration in 2017 because

he was in the village and by then the estate was under Mohamed Kaoneka. He said when their father was alive the property belonged to him and his partner Mwinjuma Hassan. Their father's share was given to Shabani Hassan and afterwards to Mohamed Kaoneka in 1983. Shabani Hassan was administrator customarily. As for **Exhibit D4** the sale of Salum Hemed bin Masoud, he said he did not know who witnessed it because the document is faint, and he was given the same by Mohamed Kaoneka in 2015. He said the originals are with Shabani Hassan because when Mohamed Kaoneka was sick, he referred them to Shabani Hassan who refused to give them the originals. He said Shabani Hassan only gave them the Letter of Offer he said he did not have other documents. He said the Letter of Offer in the Land Registry shows that Mohamed Kaoneka is the guardian, and it was registered in 1996. He said transfer could not be effected, as there is a caveat that was filed in 2018. He said the property is in the name of his father to enable transfer to the Administrator.

Further said on cross-examination DW2 said that the affidavit of Asgali Yusuf says the sale was in 1974 but there is nowhere that Salum Hemed bin Masoud has acknowledged receipt of the property. He admitted that Asgali Yusuf and Salum Hemed bin Masoud have

never been granted Letter of Offer or Certificate of Title. But Sugra as guardian of Asgali got an Offer. As for **Exhibit P5** he said they have not sent any proof of Probate Cause No. 7 of 1975 as was requested by the court. And the documents in WSD in Probate Cause No. 71/1974 was received from the plaintiff. He said Shabani Hassan and Mohamed Kaoneka were supposed to keep the documents in safe custody though there is no document that shows that they were responsible.

Shabani Hassan Kaoneka was **DW3**. He is also the 1st defendant herein. He said the dispute is on the suit property which belongs to the late Seif Hassan his brother. He said in 1976 the house belonged to Seif and Mwinjuma Hassan who were doing business together. He said on the same year Seif Hassan got sick, he paralysed so Mwinjuma Hassan remained, and he appointed him to assist with the vegetable business. He said he was assisting in the business on behalf of Seif Hassan. He said he was introduced to Salum Mohamed Masoud who was selling the suit property and Mwinjuma Hassan agreed to buy the suit property as he said it was beneficial for the company. He said Salum Mohamed Masoud sold the suit property at TZS 40,000/= but **DW3** was the one who paid the money to Salum Mohamed Masoud

and a Sale Agreement was perfected before an Advocate. He said the house was initially owned by Seif and Mwinjuma Hassan and he did not know Kulthum Yusuf or Asgali Yusuf. He said at Kariakoo Primary Court he informed the court that he was only a caretaker of the suit property and the owners Hassan, Saleh and Zamir Seif were young, so he was representing them. He said from 1976 to 2012 the suit property was in the hands of Mwinjuma and Seif Hassan but in 1985 they distributed properties and the house remained in the hands of Seif Hassan. He said currently the house is in the name of Mohamed Hassan Kaoneka who died in 2016, but the suit property is currently in the hands of the children. He said he is sued because he is seen within the vicinity of the suit property.

In cross-examination **DW3** admitted that though there was a Sale Agreement between Salum Hemed bin Masoud and Seifu and Mwinjuma Hassan but he has never seen the Sale Agreement. He said when he was making payment in respect of the purchase there was a document, but he did not bring it to court. He denied filing any WSD though the signature is his. He said he first met the plaintiff in 1996 and the children requested him to assist them in respect of the dispute. He said he knows he was acting for them though in their

defence they say that they don't know him. He pointed out that he is not aware that Salehe Seif the 3rd Defendant (**DW2**) is administrator of his father Seif Hassan but he knows that Mohamed Kaoneka was administrator in 1983 and he does not know if in 1983 **DW2** was also appointed administrator. He insisted that Seif Hassan died in 1980 and not 1982. He said the Letter is of 1980 but by then **DW1** was only 4 years while the letter is of 1983 and so the letter (**Exhibit D8**) is a forgery. He said Mohamed Hassan Kaoneka did not give him anything an affidavit or Letter of Offer. He said the Letter of Offer and everything else including the Deed of Transfer is with **DW2** and he said **DW2** is not telling the truth because he has the original documents. He said he has not handed over the house to the children and since the death of Mohamed Hassan Kaoneka in 2016 an administrator of the estate of Seif Hassan has not been appointed because of the present case. He insisted that the house belongs to all the children and not **DW2** alone. He said **DW2** has all the original documents, and he is tricky, and he wants the suit property for himself.

Final submissions on behalf of the parties were duly filed by the respective advocates who represented the parties, and the said

submissions will be addressed when the court would be analysing the evidence.

Before I proceed to consider the substantive issues, I find it necessary to determine the issue of the admissibility of the **exhibits** which in the course of the hearing their admissibility was challenged for various reasons but were tentatively admitted with caution that the validity or admissibility of the document would be determined in the judgment. I have taken asylum in this procedure for the reason of accelerating trials by admitting a document tentatively with a note that its admissibility would be considered in the judgment. In the case of **Salmin Mbaraka Salim t/a East African Investment vs. Permanent Secretary Ministry of Works & Another, Land Case No. 1 of 2015 (HC-Land Division)** (unreported) my brother Hon. Maige (as he then was) quoted with approval the case of **Republic vs. Shule s/o Tanzania & Another, Criminal Session No. 212 Of 2013 (HC-Mwanza)** (unreported) which also quoted **Bipin Shatilal Panchal vs. State Of Gujarat & Another, 2002 (1) LW (Cr.) 115** and **East West (1999) Investment Company Vs. Karpesh Sangar, Land Case No. 54 of 2015**, where the Supreme Court of India was of the considered opinion that, for the purpose of

accelerating trials, admission of a document with a note that its admissibility shall be considered in the final judgment is the best approach. The Justices of the Supreme Court of India had the following to say:

"Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it dear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed. The above procedure if followed will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witness. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding the objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that the measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

Hon. Maige, J (as he then was) in the said case of **Salmin Mbaraka**

Salim t/a East African Investment further observed that:

"I reiterate as I said in my two referred decisions that, the principle propounded in the above Indian authority is very relevant in our jurisdiction. For, strict adherence to the existing practice of determining each and every objection as to admissibility of evidence whenever raised, can in some cases, be an obstacle towards steady and swift disposal of proceedings."

In the present case **Exhibits P8, D11, D3** and **D4** were admitted tentatively. **Exhibits P8** and **D11** are decisions of the High Court and District Court respectively. Objection was raised as to the High Court ruling that it was not among the documents listed. But the plaintiff's advocate requested the court to take judicial notice of it under section 59(1)(a) of the Evidence Act CAP 6 RE 2019 which provision was also objected to. As for the other judgment of the District Court the objection was that it was faint. The court will take judicial notice of these documents under section 59(2) of the Evidence Act as the court may resort for aid of this judgments as documents of reference. Though **Exhibit D11** is faint but it is legible. The said exhibits are hereby admitted accordingly.

Exhibit D3 is the affidavit of Asgali Yusuf on the sale of the suit property. The said exhibit is faint and not readable and so the court will not admit it. In any case, the plaintiffs tendered the same document which is **Exhibit P3** and it is readable. There was also an

objection as regards the Sale Agreement **Exhibit D4** because it is faint. But I have taken a look and has found it to be readable, and it is hereby admitted accordingly.

Having disposed of the issue of admissibility of the documents I will now embark on the substantive issues.

The plaintiff alleges that Sugra Jaffari is the owner of the suit property by inheritance. That the suit property was owned by Muungano d/o Omari who passed it on to his daughter Sugra Jaffari as guardian of his grandchild Asgali Yusuf. The plaintiff is now alleging ownership by virtue that she is the only surviving heir of Sugra Jaffari as Asgali and Abas Yusuf (who are also children of Sugra) are all deceased. With these alleged facts, the plaintiff has the duty to prove that Sugra Jaffari is the owner of the suit property and that as an administrator of the estate of Sugra Jaffari she has a right to ownership of the suit property. What this court is to decide upon is whether the burden of proof has been sufficiently discharged by the plaintiff.

Before I tackle the pertinent issues on record, I would address the question of the names of Mnungano, Nungano and Muungano d/o

Omari which have been used interchangeably in the course of the hearing. While the plaintiff said their grandmother who owned the property was known as Muongano d/o Omari, **PW2** said that according to the records the property is in the name of Mnungano d/o Omari and there is also Nungano which features in the documents. I agree that these may be different names but it is my considered view the names means one and the same person because the documents in the Land registry are of a long time (1957) so there might have been a typographical error. Further all the names refer to ownership of the same suit property, and even the defendants do not dispute that Muungano d/o Omari was the original owner of the suit property including **DW2** on cross-examination who admitted that initial owner of the suit property was Muungano Omari who had one child Sugra and that Sugra children were Asgali, Kulthum and Abasi and was of the view that Sugra is the legal inheritor of Muungano. For that reason, the difference in names have no controversies and should not detain us. Subsequently, the name Mnungano d/o Omari should also mean Muungano d/o Omari, Nungano d/o Omari and vice versa.

As for the first issue whether Sugra Jaffari was the lawful owner of the suit property, the plaintiff availed in court **Exhibit P2** as proof of

ownership of the suit property by Sugra Jaffari. The said exhibit is the telegram from Kariakoo Primary Court stating that Asger Yusuf is the owner of the suit property by virtue of being heir of Sugra Jaffari and Muungano Omari. The telegram directs the Lands Office Ilala to remove the names of Muungano and Sugra on the register as owners of the suit property. I have given a detailed look at the said **Exhibit P2** and I agree with **PW2**, the Lands Officer from Ilala Municipal Council that **Exhibit P2** is questionable as there is no folio and this is not the procedure of admitting documents as all documents in the file must have folio numbers. Mr. Kerario argued that the said exhibit carries a folio but with due respect there is none which is visible. On the other hand, if indeed the primary court wanted to give directives, then there ought to have a proper order of the court which would have a force of law and not a telegram. I am also in agreement with **PW2** that though on record there is a short-term letter of offer prepared in favour of Sugra Jaffari as guardian of Asgali Yusuf but the said letter was not signed by the office hence not complete. In other words, the short-term letter of offer is not valid. For that reason, there is no known disposition from Muungano d/o Omari who according to **PW2** remains on record as the owner of the suit property to Sugra Jaffari or any other person. The evidence of **PW2**

to the effect that the property remains in the name of Muungano d/o Omari was not controverted and as said by **PW2** there is nothing that has been presented to prove conveyance of the suit property from the said Muungano d/o Omari to Sugra Jaffari, or Asgali Yusuf. In essence therefore the suit property remains in the name of Muungano d/o Omari and I hold as such.

There was also the issue of the affidavit (**Exhibit P3**) by Asgali Yusuf for sale of the suit property to Salim Hemed bin Masoud. As it has been established that there is no known disposition from Muungano d/o Omari to anyone including Asgali Yusuf, then no title could have passed to Salim Hemed bin Masoud; and if there is any sale then it would be a nullity. This can also be corroborated by the evidence of **DW2** who on cross examination said he has never seen any Sale Agreement between Asgali Yusuf and Salim Hemed bin Masoud and this was cemented by **DW3**. Mr. Mshana for the 1st defendant said **Exhibit P2** (the telegram) and **Exhibit P3** are indisputable because they were in the records of the Land Office meaning that there was sale of the house to Salim Hemed bin Masoud. I beg to differ with Mr. Mshana because as explained above, **PW2** disputed **Exhibit P2** as having no folio as it was inserted in the records (*imepachikwa*) and

this fact was not controverted. Further, as for the affidavit, that is, **Exhibit P3** the title had not passed to Asgali Yusuf, so he did not have title to pass on to Salim Hemed bin Masoud. In any case, if there was any sale between Asgali Yusuf and Salim Hemed bin Masoud, then one would have expected a Sale Agreement to be presented, but there is no such Sale Agreement and **DW2** testified that they did not see any Sale Agreement between Asgali Yusuf and Salim Hemed bin Masoud. **DW2** admitted that there was no signature by Salim Hemed bin Masoud in the affidavit and there is no acknowledgement of the property by Salim Hemed bin Masoud. In any case in a disposition of land an affidavit cannot replace a Sale Agreement. All in all, there is no proof that title had passed from Muungano d/o Omari to Sugra Jaffar and then to Asgali Yusuf. Subsequently, the said Asgali Yusuf did not have good title to land to pass over the same to another including Salim Hemed bin Masoud (see **Farah Mohamed Said vs. Fatuma Abdallah [1992] TLR 205**) and **Mished Chunilal Kotak Vs Omary Shabani & 2 Others, Misc. Land Application No.617 of 2020 (HC-Land Division)** my Sister Hon. S.M. Maghimbi, J had this to say at page 10:

"At this juncture I am in agreement with Mr. Chitale that during the sale of the suit house to the applicant herein the third respondent had no better title to pass to the applicant. The situation is a pure case of the principle of Nemo dat quod non habet or no one can give better title than he himself has. This common law rule means that the first person to acquire title to the property is entitled to that property not withstanding any subsequent sell of the same."

Mr Kerario pointed out in his submissions that since there was a short-term letter of offer to Sugra Jaffari as guardian of Asgali Yusuf then the suit property was bequeathed to Asgra Yusuf thus there was no further interest that was created to compete with the interest of Asgali Yusuf. The argument by Mr. Kerario is misconceived because, as clearly stated by **PW2** the short-term letter of offer was not signed as such was not valid hence a nullity. The argument by Mr. Kerario that the process could have been accomplished anytime is misplaced and have no legal basis. There was also a claim by the defendants that they had original documents regarding the disposition of the suit property, but these documents were not tendered in court. For instance all along the defendants said Mohamed Kaoneka was the administrator of Seif Hassan, but there was no such document that was presented in court. And in their testimony **DW2** said their uncle **DW3** had the documents, but when **DW3** gave evidence he said it was **DW2** who had all the documents. The contradiction creates doubt as to whether there were such documents or at all.

With the above explanation it is without dispute Muungano d/o Omari remains on record as the owner of the suit property as no title to land has passed to anyone. It is also without dispute that Sugra Jaffari was the only surviving heir of Muungano d/o Omari. And as correctly stated by Mr. Mluge Fabian Karoli that there are no records that show that the late Muungano d/o Omary left a will or created a gift to any person. In the circumstances

therefore, the plaintiff, as the sole survivor, beneficiary and administratrix of the estate of Sugra Jaffari becomes the owner of the suit property and I hold as such.

The second issue is whether the defendants are trespassers in the suit property. Having established that the suit property is under the ownership of the plaintiff this issue is straight forward that the defendants are trespassers in the said suit property.

That last issue is whether the plaintiff is entitled to mesne profits of TZS 200,000,000/=. Mesne profits falls under special damages and it is settled law that specific damages have to be specifically pleaded and strictly proved. In her pleadings the plaintiff has not specifically given particulars of the said mesne profits of TZS 200,000,000/= see the cases **Samwel Kimaro vs. Hidaya Didas, Civil Appeal No. 271 of 2018 (CAT-DSM)** (unreported) and **Stanbic Bank (T) Limited vs. Abercrombie & Kent (T) Limited, Civil Appeal No. 2001, (CAT-DSM)** (unreported). The plaintiff had the duty in law to prove the losses incurred, if any, towards the alleged loss in use of the suit property. In other words, the plaintiff has failed to pinpoint the quantum of losses for which the court could have assessed the specific damages. In view thereof, I don't find reason to award the mesne profits as prayed.

In the result it is decreed as follows that:

1. The plaintiff is the lawful owner of the suit property namely House No. 86, Plot No. 2 Block 11 Kongo Street, Kariakoo Area, Ilala Municipality, Dar es Salaam.
2. The defendants are ordered to give vacant possession of the suit property.
3. The defendants their workmen, agents, or anybody else are restrained from any involvement in the suit property by alienating or transferring it to any Third Party.
4. The defendants are condemned to costs of this suit.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
07/10/2022