

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

**LAND CASE NO. 158 OF 2019**

**JUMA RAJABU FURAJI ..... PLAINTIFF**

**VERSUS**

**KASSE PETER & 26 OTHERS ..... 1<sup>ST</sup> DEFENDANT**  
**SALMIN SHABANI.....2<sup>ND</sup> DEFENDANT**  
**SALEHE SULEMANI.....3<sup>RD</sup> DEFENDANT**  
**PETER PASTORY TILYA.....4<sup>TH</sup> DEFENDANT**  
**HEMEDI IDRIS.....5<sup>TH</sup> DEFENDANT**  
**SHELUKINDO FATAKI.....6<sup>TH</sup> DEFENDANT**  
**SARA DANIEL.....7<sup>TH</sup> DEFENDANT**  
**ELIA MALONGA.....8<sup>TH</sup> DEFENDANT**  
**MUSTAFA NGUKU.....9<sup>TH</sup> DEFENDANT**  
**MUSSA JUMA.....10<sup>TH</sup> DEFENDANT**  
**CATHERINE DANIEL.....11<sup>TH</sup> DEFENDANT**  
**HABIBA IDDY UGANDO.....12<sup>TH</sup> DEFENDANT**  
**BAHATI HASSANI.....14<sup>TH</sup> DEFENDANT**  
**MWANAHAMIS MOHAMED.....15<sup>TH</sup> DEFENDANT**  
**MWEGE MOHAMED.....16<sup>TH</sup> DEFENDANT**  
**PHILIPO JOSEPH.....17<sup>TH</sup> DEFENDANT**  
**SALUMU MALENGO.....18<sup>TH</sup> DEFENDANT**  
**ASHA SALEHE.....19<sup>TH</sup> DEFENDANT**  
**ALLY SHEMENGWA.....20<sup>TH</sup> DEFENDANT**  
**IDDY SHEMENGWA.....21<sup>ST</sup> DEFENDANT**  
**MZEE MASULA.....22<sup>ND</sup> DEFENDANT**  
**HARUNA IBRAHIM.....23<sup>RD</sup> DEFENDANT**  
**HAMISI YUSUFU.....24<sup>TH</sup> DEFENDANT**  
**BENSON MWANGOSI.....25<sup>TH</sup> DEFENDANT**

**ASHA MUSA.....26<sup>TH</sup> DEFENDANT**  
**RODA JAMES.....27<sup>TH</sup> DEFENDANT**  
**MAIKO JOHN.....28<sup>TH</sup> DEFENDANT**  
**HEMEDI HASSANI.....29<sup>TH</sup> DEFENDANT**

*Date of last Order: 17/11/2022*

*Date of Judgment: 25/11/2022*

## **JUDGMENT**

### **I. ARUFANI, J**

The plaintiff, Juma Rajabu Furaji filed in this court the suit at hand against the above named 27 defendants claiming for vacant possession of land property namely Plot No. 227 Block "I" located at Bunju Area in Kinondoni Municipality within the City of Dar es Salaam (hereinafter referred as the land in dispute). The plaintiff is also praying for declaratory order that he is the exclusive owner of the land in dispute, defendants are trespassers to the land in dispute, permanent injunction against the defendants, their agents and workers to restrain them from trespassing into the land in dispute, general damages and costs of the suit.

After the defendants being served with the copy of the plaint and summons to file their written statement of defence the 1<sup>st</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> filed in the court their joint written statement of defence which was accompanied by a counter claim which was filed in the court on 8<sup>th</sup> April, 2021 against Christopher Michael,

Tito Oswald and the plaintiff. As the rest of the defendants failed to appear in the court and they didn't file any defence in the court, the court ordered hearing of the suit to proceed ex parte against them. Again, the court ordered hearing of the counter claim to proceed ex parte against Christopher Michael and Tito Oswald as they failed to appear in the court and they didn't file their written statement of defence to the counter claim filed in the court by the mentioned defendants.

During hearing of the matter, the plaintiff was represented by Mr. Tumaini Sekwa Shija, learned advocate and the defendants were represented by Mr. Abdul B. Kunambi, learned advocate. The issues framed for determination in the matter are as follows: -

1. Whether Christopher Michael and Tito Oswald (the first and second defendant in the counter claim) lawfully obtained the land in dispute.
2. Whether the Certificate of Title No. 118365 is valid.
3. To what reliefs are the parties entitled.

In a bid to prove his claims the plaintiff testified before the court himself as PW1 and called two witnesses namely Hellen Philip and Happiness Nyamhanga, who testified in the matter as PW2 and PW3 respectively. In their rebuttal the defendants adduced their evidence and in addition to their evidence they called Anastazia Aloyce Joseph, Selina

Peter, Najim Omari and Hassan Selemani Mnongwa who testified as DW4, DW5, DW11 and DW15 respectively.

While being led by his advocate the plaintiff who testified as PW1 told the court he is the owner of the land in dispute and stated to have purchased the same from Christopher Michael and Tito Oswald. He stated after purchasing the land in dispute he followed the required procedures to change the ownership of the land in dispute into his possession. He told the court the Certificate of Title issued to him was taken by PCCB as a security for a case is facing at the PCCB. He tendered to the court a letter from the PCCB and a certified copy of the Certificate of Title which were admitted in the matter as exhibit P1 and P2 respectively.

He told the court that, initially the certificate of title over the suit premises was granted to Christopher and Tito by the Government but on 7<sup>th</sup> May, 2014 the ownership of the land in dispute was transferred to him. He told the court he has never shifted his ownership to the land to any other person. He prayed the court to declare him lawful owner of the land in dispute and declare the defendants are trespassers into his land. He also prayed the court to evict the defendants from the land in dispute so that he can develop his land.

When the plaintiff was cross examined by the counsel for the defendants, he said he is not a resident of Bunju and he don't know

anything about Bunju. He said he don't know residents of Bunju except only Christopher and Oswald who sold the land in dispute to him. He also said he don't know Said Mbaraka alias Mzee Said Mbaraka. He said the land in dispute is not beside the river Mpiji but is adjacent to the Simba Sports Club's football pitch. He said he don't know if Christopher and Oswald have ever lived on the land in dispute. He said he don't know if Christopher and Oswald used unfaithful persons to get Certificate of Title, they gave to him.

Hellen Philip (PW2) told the court she is a Land Officer working at the office of the Commissioner for Lands at Dar es Salaam. She said exhibit P2 was issued for the land in dispute and it was granted to Christopher and Oswald as joint owners of the land in dispute. She said the land in dispute was surveyed by the Government through the Project of Twenty Thousand Plots at Bunju (Mradi wa Serikali wa Viwanja Eifu Ishirini Bunju). She said the land was acquired from the persons who were owning the same through the required procedures and the original owners were paid compensation before their land being acquired.

She said after the land being surveyed, Christopher and Oswald were allocated the land in dispute but later on in 2014 the mentioned persons transferred ownership of the land in dispute to the plaintiff. She said from when the land was surveyed by the Government and allocated

to people there has never been any claim or complaint which has been raised about compensation paid to the original owners of the land. She added that, from when the land was transferred to the plaintiff it has never been transferred to anybody else. She said she don't remember when the area in dispute was surveyed. She said the record and information they have is that the land in dispute is the property of the plaintiff.

When she was cross examined by the counsel for the defendants, she said she started work at Dar es Salaam in 2011. She stated she don't know Christopher and Tito and said she is not the one processed their application of being allocated the land in dispute but it was processed and issued by their office. She said in order to effect transfer of ownership of a registered land there must be a sale agreement or disposition of the land and the said disposition must be approved by the Commissioner for Lands. She said the Commissioner for Lands approved transfer of the land in dispute from Christopher and Tito to the plaintiff.

She testified further that, she doesn't know who was the original owner of the land in dispute before being acquired and surveyed by the Government. She added that the file of their office has no sale agreement entered between the plaintiff on one side and Christopher and Tito on the other side. She stated there is no application for approval of transfer of

the land in their file and there is no sketch map of the land in dispute in exhibit P2. When she was re-examined by the counsel for the plaintiff, she said the use of the land in dispute is for service trade and not any other use. She stated that, if the certificate of title is missing some pages and is not accompanied by sale agreement that cannot be a reason for the Certificate of Title to be a nullity.

Happiness Nyamhanga who testified as PW3 told the court is a Land Officer working in the office of the Registrar of Title which is under the office of the Commissioner for Land and under the Ministry of Lands. She was shown exhibit P2 and said the land in dispute is owned by the plaintiff. She said the use of the land is for service trade. She tendered to the court certificate of occupancy of the land in dispute and it was admitted in the case as exhibit P3. When she was cross examined by the counsel for the defendants, she stated exhibit P3 was issued by the Commissioner for Lands in 2011 and said before that year there was no certificate of title which had ever been issued in respect of the stated land. She said their file has no document showing Michael and Oswald applied and allocated the land in dispute.

In their defence all defendants who appeared in the court testified before the court and gave the similar evidence to show how they acquired the land in dispute. The said defendants and the way they were identified

in brackets are 7<sup>th</sup> defendant (DW7), 9<sup>th</sup> defendant (DW6), 10<sup>th</sup> defendant (DW3), 11<sup>th</sup> defendant (DW14), 14<sup>th</sup> defendant (DW1), 19<sup>th</sup> defendant (DW10), 20<sup>th</sup> defendant (DW13), 21<sup>st</sup> defendant (DW8), 23<sup>rd</sup> defendant (DW2), 24<sup>th</sup> defendant (DW9) and 25<sup>th</sup> defendant (DW12).

The mentioned defendants told the court that, they are residents of Kihonzile Area of Bunju Ward within Kinondoni Municipality in Dar es Salaam Region. They said that, they went beside the bank of river Mpiji on different dates for purposes of cultivating vegetables. They said their houses where they were living beside the river Mpiji were demolished by flood occurred in 2000. They said after their houses being demolished by flood; they went to Said Mbaraka and as he was aware of their problem, he welcomed them and showed them the place to stay. They said they built shelters on the land of Said Mbaraka and lived there.

They went on saying that, Said Mbaraka was a traditional healer and he died in 2004. They said that, after the burial of Said Mbaraka they continued to live on the land in dispute and thereafter they started building their houses on the land left to them by the late Said Mbaraka. They said they have lived on the land in dispute from 2000 to date which is almost 22 years. DW1 said is the mother of Anastazia Aloyce Joseph who testified in the matter as DW4. DW1 said DW4 was born in 2003 at Lugalo Hospital and said she has been living with her at the land in dispute



from when she was born to dated. She tendered to the court the birth certificate of DW4 which was admitted in the case as exhibit D1.

DW1 and DW2 said that, in 2008 there were land surveyors went to their area and told them they wanted to survey the land of Simba Sports Club and said they were using their land to get squire of the football pitch. She said from there she didn't see the said people again. They went on saying that, in 2009 there was a person called Lema who said the land they were living belonged to him. They said the mentioned person went to the Village Office and said after going to go to the office of the District Commissioner the said Lema was called but he ran away and they have never seen him again.

When DW1 was cross examined by the counsel for the plaintiff, she said she was not allocated the land in dispute by Village or Government. She said the land was the property of Said Mbaraka. She said the owner of the land did not give the same to her but the owner of the land left them to live on the land in dispute when he died in 2004. When tenth defendant namely Mussa Juma Ramadhani testified in the court as DW3 was cross examined by the counsel for the plaintiff he said he is a grandchild of the late Said Mbaraka. He said his mother was sister of the late Said Mbaraka.

When he was asked how comes that he is a grandchild of the late Said Mbaraka while his mother was the sister of the late Said Mbaraka he said he don't know. He said after the death of Said Mbaraka his members of the family divided the land whereby other members of the family decided to sale their land and departed from the land of late Said Mbaraka. He said the land where the late Said Mbaraka was living was different from the land in dispute and the two area were demarcated by road which is passing between the two lands. He said he was given the land he is living land in dispute by Said Mbaraka after the flood occurred in 2000 and demolished their houses, they had built beside the river Mpiji.

When Mustapha Ramadhani Nguku (DW6) was cross examined by the counsel for the defendant he said the late Said Mbaraka showed him the place to live by using his finger. He said he has built a permanent house on the land in dispute. He said the late Said Mbaraka did not show him any document of owning the land in dispute. When Sarah Daniel (DW7) was cross examined by the counsel for the defendant she said she was living in the land in dispute with Samuel Chilindila Chinyanje who was the father of her child from 2000 until 2019 when he divorced her. She said Samuel left her and her children at the land in dispute. She said DW3 is her neighbour and said he was relative of the late Said Mbaraka.

When Ally Amir Shenengwa (DW10) was cross examined by the counsel for the defendant he said in 2009 there were people namely Juma and Lema who went into their land claiming the land they were living is belonging to them. He said there is no matter taken to court by that time. He said after going to the District Commissioner the said persons did not show up and he has never seen them again.

Selina Peter (DW5) who is not a party in the suit gave the evidence which is similar to the one given by the defendants who testified in this matter. She said she was given the land she is living by Said Mbaraka in 2000 after the house she was living beside river Mpiji being demolished by flood. Najim Omari (DW11) said he started living at Bunju Kihonzile in 2005 and said the defendants are his neighbours. He said he used to meet the defendants on different social activities. When he was cross examined by the counsel for the plaintiff, he said he purchased the land he is living and said he don't know how the defendants acquired their lands.

Hassan Seleman Mnongwa (DW15) told the court is the Chairman of Kihonzile Street within Mabwepande Ward and Kinondoni Municipality. He stated he started living at Bunju from 1989 and said he know Saidi Mbaraka who was living at Bunju within Kinondoni Municipality. He said Saidi Mbaraka had more than two to three acres of land. He said he knows the defendants as are residents of Kihonzile area and said they started

living in the said area from 2000. He said before that year they were living beside river Mpiji and due to the flood occurred in 2000 which demolished their houses they went to live in the land of Saidi Mbaraka.

When he was cross examined by the counsel for the plaintiff, he said he is Kihonzile Street Chairman from 5<sup>th</sup> December, 2019. He said before the mentioned date he was Secretary for Kihonzile CCM Branch. He said he don't know if there is a dispute which was taken to the District Commissioner. He said Kihonzile Street Government was established in 2014. He said he saw when the defendants were shifting to the land in dispute but he doesn't know if they were supervised by the Government. He went on saying Saidi Mbaraka had two wives and children who are still living at Kihonzile but not in the land in dispute. He said he don't know when twenty plots of Mabwepande were surveyed as he was at Tanga and added before the said survey the owners of the land were paid compensation.

After hearing the evidence from both sides, the counsel for the parties prayed and allowed to file in the court their final submissions. The counsel for the plaintiff stated in his submission in relation to all issues framed for determination in this suit how ownership of a land in dispute is proved where the land is surveyed and there is a certificate of occupancy issued in respect of the land in dispute. He referred the court

to section 29 of the Land Act, Cap 113 R.E 2019, section 40 of the Land Registration Act, Cap 334 R.E 2019 and section 37 of the Evidence Act, Cap 6 R.E 2019 and argued they provides for how ownership of a registered land is supposed to be proved.

He also referred the court to the cases of **Leopold Mutembei V. Principal Assistant Registrar of Titles & Two Others**, Civil Appeal No. 57 of 2017, CAT at Mwanza, **Seranduki Kipara V. Francis Mpyaliani & Nine Others**, Land Appeal No. 03 of 2021, HC at DSM and **Amina Maulid Ambali & Two others V. Ramadhani Juma**, Civil Appeal No. 35 of 2019 CAT at Mwanza (All unreported) where it was stated what should be looked at and done when there is allegation that certificate of occupancy was fraudulently obtained. He prayed the court to follow the decision made in the cases referred hereinabove to find Christopher and Tito obtained ownership of the land in dispute lawfully and the plaintiff is the lawful owner of the land in dispute.

On his part the counsel for the defendants argued the plaintiff was required to bring evidence to prove how Christopher and Tito acquired ownership of the land in dispute. He referred the court to sections 64 (1), 36 (1), (3) and (4) together with section 37 and 39 (1) of the Land Act. He also referred the court to Regulation 5 (2) of the Land (Disposition of right of Occupancy) Regulations, 2001 which deals with approval of

disposition of right of occupancy. He argued there is no evidence adduced by the plaintiff to prove he purchased the land in dispute from Christopher and Tito and instead of that, the certificate of occupancy which its certified copy was admitted in the case as exhibit P2 was fraudulently obtained.

He stated his submission is supported by the fact that the vendors of the land in dispute were not brought to the court to show how they acquired ownership of the land in dispute and proved they sold the land in dispute to the plaintiff. He also referred the court to section 25 of the Land Act which deals with how application for right of occupancy is made and argued there is no evidence to establish the procedures provided in the cited provision of the law were followed.

He submitted that, the defendants' evidence has proved they have lived in the land in dispute from 2000 after their houses being demolished by the flood and the person gave them the land in dispute was Saidi Mbaraka who was the initial owner of the land in dispute. He submitted that the plaintiff's case is dominated by fraud from the process of obtaining certificate of title and the entire process of disposition of the certificate of occupancy. At the end he prayed the court to declare the defendants are lawful owners of the land in dispute and dismissed the plaintiff's case with costs.

The court has carefully heard the evidence from both sides and painstakingly considered the final submissions filed in the court by the counsel for the parties. The court has found before going to the determination of the issues framed in the suit at hand it is proper to state at this juncture that, the position of the law as provided under sections 110 (1) and (2) and 112 of the Evidence Act states clearly that, whoever desires a court to give judgment in his or her favour is required to prove the facts he has alleged are in existence. The stated position of the law was emphasized by the Court of Appeal in the case of **Abdul Karim Haji V. Raymond Nchimbi Alois & Another**, Civil Appeal No. 99 of 2004 (unreported) where it was stated that: -

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

It was also stated by the Court of Appeal in the case of **Anthony M. Masanga V. Penina (Mama Gesi) & Another**, Civil Appeal No. 118 of 2014 that, the party with legal burden also bears the evidential burden on the balance of probabilities. That being the position of the law the court has found the plaintiff has a burden of proving is the lawful owner of the land in dispute and the defendants have a burden to prove their claims in the counter claim that they are the lawful owner of the land in dispute.

I will start with the first issue which states whether Christopher and Tito lawfully obtained the land in dispute. The court has found the stated issue stemmed from paragraph 17 of the counter claim filed in the court by the defendants where it is alleged that, the defendants in the counter claim who are the plaintiff in the main suit together with Christopher and Tito have neither lived nor owned the land in dispute and the certificate of occupancy attached in the plaint was fraudulently obtained. The plaintiff who is the third defendant in the counter claim disputed the stated allegation at paragraph 15 of his written statement of defence to the counter claim and put the plaintiffs in the counter claim to the strict proof of the alleged facts.

The court has found it is true that the plaintiff in the main suit who testified as PW1 said he has never lived on the land in dispute and he didn't say if the vendors who sold the land to him had ever lived on the land in dispute. However, the court has been of the view that, a mere fact that a person has lived or not lived on a land is not sufficient criteria to prove a person is the owner or not owner of a land. To the view of this court there must be evidence to establish a person is lawfully occupying or living on the land in dispute or not.

The court has found while the plaintiff in the main suit alleges that he purchased the land in dispute in 2014 from Christopher and Tito who



were granted and registered as the lawful owner of the land in dispute in 2011, the defendants alleges that they were given the land in dispute by Saidi Mbaraka in 2000 after their houses being demolished by flood occurred in the river Mpiji in the mentioned year and their evidence was corroborated by the evidence of DW5, DW11 and DW15. The court has found the question as to who is an owner of a land is answered by section 2 of the Land Registration Act which define the term "owner" as follows:-

*"owner" means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered;"*

The position of the law stated in the above quoted provision of the law is also echoed under section 40 of the same Land Registration Act cited in the final submission of the counsel for the plaintiff which states that, a certificate of title shall be admissible as evidence of the several matters therein contained which to my view includes the size of the land, boundaries, location, ownership, term of occupancy and information pertaining to survey of the land.

That being the meaning of the owner of any estate or interest in a land the court has found in proving who is the owner of the land in dispute in the present suit the plaintiff gave his personal evidence and called two witness who testified as PW2 and PW3. He also tendered to the court the

copy of certified certificate of right of occupancy of the land in dispute which was issued to Christopher and Tito who later on sold the land in dispute to him.

The evidence of PW1 which was supported by the evidence of PW2 and PW3 who are land officers from the Ministry of Lands states the land in dispute was surveyed by the Government in its project of Twenty Thousand Plots at Bunju where the land in dispute situates. PW2 said after the land being surveyed the owners of the land were paid compensation and the land was distributed and granted to different people. She stated the ownership of the land in dispute was granted to Christopher and Tito who later on transferred the same to the plaintiff.

The court has found the defendants stated in their evidence that they were given the land in dispute by Saidi Mbaraka in 2000 which is before the land being surveyed and issued to Christopher and Tito in 2011. The defendants have no any document to show the land in dispute has ever been registered in their names or in the name of the person gave the same to them or how the person gave them the land in dispute obtained ownership of the land in dispute. To the contrary the court has found when some of the defendants like DW 6 were cross examined they said the person gave the land in dispute to them did not show or gave them

any document to show he was the lawful owner of the land he gave to them or how he lawfully acquired the land he gave to them.

That being the position of the matter the court has found if it will be taken ownership of the land in dispute by the person gave the same to the defendants was under deemed right of occupancy and as it was said by PW2 the land in dispute was surveyed in 2011 it is crystal clear that the ownership of the mentioned person to the land in dispute cannot co-exist with the granted right of occupancy issued to Christopher and Tito who later on transferred their ownership of the land to the plaintiff. The stated view of this court is being bolstered by the case of **Charles Kalukula & Another V. Humphrey Robert**, [2014] TLR 129 where it was held inter alia that: -

*"Title to urban land depends on grant and in the instant case it is the respondent who was granted that right of occupancy. Holders of deemed right of occupancy, therefore, cannot own the disputed land in co-existence with the holder of granted right of occupancy."*

The court has also found it was stated in the case of **Amina Majid Ambali & Others V. Ramadhani Juma**, Civil Appeal No. 35 of 2019, CAT at Mwanza (unreported) that, when two persons have competing interest in a landed property, the person with a certificate of occupancy will always be taken to be a lawful owner unless it is proved that the

certificate of occupancy was unlawfully obtained. The court has found that, as PW2 said the land in dispute was surveyed and the previous owners were paid compensation then ownership of the land in dispute by the previous owners ceased to apply. The above view of this court is backed by the position of the law stated in the case of **Felician Mchuruza V. Zindunza Mnaku**, [2013] TLR 204 where it was held inter alia that, once an un-surveyed area is surveyed and allocated to another person and the person holding that land under customary law paid compensation, the holding of the land by that person ceases to apply.

The court has found the counsel for the defendant based his submission on the argument that Christopher and Tito did not lawfully obtain the certificate of occupancy for the land in dispute and submitted the certificate of occupancy was fraudulently obtained by the mentioned persons. The counsel for the defendants argued that, there is no evidence adduced in the court to prove Christopher and Tito have ever applied and granted certificate of occupancy in respect of the land in dispute as required by section 64 (1) read together with sections 36 (1), (3) and (4), 37 and 39 (1) of the Land Act.

After reading the above cited provisions of the law the court has found section 64 (1) of the Land Act is dealing with enforceability of contracts relating to disposition of a right of occupancy and states if the

contract is not in writing it should not be enforceable. The court has found that, as root of ownership of the land in dispute for Christopher and Tito is based on being granted by the Government and not on any contract of disposition of the land in dispute to them, the cited provision of the law cannot be invoked in the matter as the matter before the court is not about enforceability of a contract for disposition of the land in dispute to the mentioned Christopher and Tito.

The court has been of the view that, if the counsel the defendant was targeting disposition of ownership of the land in dispute from Christopher and Tito to the plaintiff the same will be considered after seeing what is provided in other provisions of the law cited by the counsel for the defendants. The other provisions of the law cited by the counsel for the defendants are sections 36, 37, 38, 39 and 40 of the Land Act which were cited to show disposition of the land in dispute by Christopher and Tito to the plaintiff was not lawful as there is no evidence adduced before the court to establish the requirements provided in the mentioned provisions of the law were complied with.

The court has found it is true that there is no written contract adduced in the court to establish Christopher and Tito sold the land in dispute to the plaintiff so as to fulfil the requirement of the law provided under section 64 (1) of the Land Act cited hereinabove. The court has also

found that, although it is true that there is no evidence adduced to the court to prove the stated requirements were complied with but as stated by PW2 it cannot be said lack of the said evidence is sufficient ground to establish the plaintiff is not the lawful owner of the land in dispute and the lawful owners of the land in dispute are the defendants.

The court has arrived to the stated finding after seeing the person who was supposed to explain if the stated requirements of the law were complied with or not before ownership of the land being transferred to the plaintiff is the Commissioner for Lands who has not been made a party either in the main suit or in the counter claim filed in the court by the defendants. If the defendants wanted to obtain a judgment that they are the lawful owner of the land in dispute on ground that the acquisition and disposition of the land in dispute to the plaintiff was made contrary to the requirement of the law, the defendants had a burden as stated in the case of **Leopold Mutembei** (supra) cited in the submission of the counsel for the plaintiff, to join in the matter the stated Commissioner for Lands as a relevant authority which dealt with the stated acquisition and disposition of the land in dispute to answer their allegations that certificate of occupancy of the land in dispute was issued to Christopher and Tito and later on transferred to the plaintiff fraudulently.

The court has found that, although the counsel for the defendants submitted the certificate of occupancy of the land in dispute was issued fraudulently to the persons sold the same to the plaintiff but there is no scintilla evidence adduced in the court by the defendants to support the stated allegation of fraud. It is an established principle of law that, once allegation of fraud is raised in civil matter the same must strictly be proved beyond normal standard of proving civil cases which is on preponderance or balance of probability. The stated view of this court is getting support from the cases of **Omari Yusufu V. Rahma Ahmed Abdulkadr**, [1987] TLR 169 and **City Coffee Ltd V. The Registered Trustees of Iloilo Coffee Group**, [2019] TLR 182 where it was held in the latter case that:

*"The position of the law on allegations of fraud has long been settled. It is clear that regarding allegations of fraud in civil cases, the particulars of fraud, being a very serious allegation, must be specifically pleaded and the burden of proof thereof, although not that which is required in criminal cases; of proving a case beyond reasonable doubt, it is heavier than a balance of probabilities generally applied in civil cases."*

Since the court has already stated the issue of validity of disposition of the land in dispute from the persons sold the same to the plaintiff cannot be determined in the matter at hand where the relevant authority

vested with powers to approve disposition of the land in dispute is not a party to state whether the requisite written sale agreement and other necessary forms for the purpose of approving disposition of the land in dispute was presented to him before approving disposition of the land in dispute to the plaintiff, the court has found it cannot be said the allegations of the defendants that disposition of the land in dispute was done fraudulently as argued by the counsel for the defendants cannot be sustained.

The court has found the defendants stated in their evidence and it was argued by their counsel in his final submission that the defendants have stayed in the land in dispute for more than twenty two years from when they were given the land in dispute by the late Saidi Mbaraka in 2000. To the view of this court the defendants wants to establish they have acquired ownership of the land in dispute by way of adverse possession as they have stayed in the land in dispute for more than twelve years provided under item 22 of Part I of the Law of Limitation Act, Cap 89 R.E 2019 which prescribes twelve years as a limitation period within which to institute action in court to claim back the land.

The court has found the principle of adverse possession cannot favour the defendants in the present suit because as stated by the plaintiff and his witnesses together with the copy of the certificate of occupancy



admitted in the matter as exhibit P2 the vendors of the land in dispute were granted the certificate of occupancy over the land in dispute in 2011 and they sold the same to the plaintiff in 2014. If you count from 2000 when the defendants alleged they stated living on the land in dispute until 2011 when the land was allocated to Christopher and Michael you will find it is only eleven years which had passed while the limitation period of time to claim for adverse possession of land is twelve years.

Besides, the court has found if you will count from 2011 when the land in dispute was acquired by the Government and granted to the vendors who sold the same to the plaintiff in 2014 until when the present suit was filed in the court in 2019 you will find it is hardly eight years which had passed which cannot entitle the defendants to rely on the principle of adverse possession to claim they are the lawful owners of the land in dispute.

In the premises the court has found the evidence adduced in the court and the final submissions filed in the court by the counsel for the parties have led the court to come to the finding that, the first issue which states whether Christopher Michael and Tito Oswald (the first and second defendant in the counter claim) lawfully obtained the land in dispute is supposed to be answered in affirmative. This makes the court to move to

the second issue which states whether the certificate of occupancy is valid.

The court has found the issue of validity of the certificate of occupancy which its copy was admitted in the case as exhibit P2 was mainly based on the ground that the stated certificate of occupancy is missing some of the important information which were required to be included in the certificate of occupancy. The stated information as stated by the counsel for the defendants includes lack of necessary documents in exhibits P2 and P3 which copies and original certificate of occupancy like sale agreement, notification of disposition, application for approval and tax clearance certificate.

The court has found as it has already stated in the first issue that the relevant authority vested with powers to approve allocation and disposition of the land in dispute was not made a party in the matter to respond to the stated allegation it cannot be said by this court that certificate of occupancy issued to Christopher and Tito and later on transferred to the plaintiff is not valid. In the premises the court has found the second issue is supposed to be answered in affirmative that the certificate of occupancy issued to Christopher and Tito and later on transferred to the plaintiff is still valid until when it will be determined otherwise.

Coming to the last issue which is about the reliefs the parties are entitled the court has found that, although all the preceding issues have been answered in affirmative and in favour of the plaintiff but the plaintiff has not managed to establish his claim of general damages he has prayed in his relief clause as there is no any evidence which has been adduced in the court to establish which damages suffered by the plaintiff and how much damages is entitled to be awarded. The court has also come to the stated view after seeing it was stated in the case of **Anthony Ngoo & Another V. Kitindi Kimaro**, Civil Appeal No. 25 of 2014, CAT at Arusha (unreported) that: -

*"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award".*

Since there is no evidence to prove any damage suffered by the plaintiff the court has found there is no justification for granting the plaintiff the claim of general damage he has pegged in his relief clause. Basing on all what I have stated hereinabove the court has come to the settled finding that, the plaintiff has managed to prove his claims contained in the plaint save for the claim of general damages and the defendants have failed to prove the claims, they have raised in their counter claim and the defendants' claims are dismissed in their entirety.

Therefore, judgment is hereby entered in favour of the plaintiff in the main suit and against the defendants as follows: -

- (1) The plaintiff in the main suit is declared rightful owner of the land in dispute;
- (2) The defendants are declared are trespassers to the land in dispute;
- (3) The defendants are ordered to vacate from the land in dispute;
- (4) A permanent injunction is granted against the defendants, their agents and workers to restrain them from trespassing in the land in dispute and;
- (5) The plaintiff is awarded costs of the suit.

It is so ordered.

Dated at Dar es Salaam this 25<sup>th</sup> day of November, 2022



  
I. Arufani

**JUDGE**

25/11/2022

**Court:**

Judgment delivered today 25<sup>th</sup> day of November, 2022 in the presence of Mr. Erick Kamala, advocate for the plaintiff and in the presence of Mr. Adam Kasegenya, advocate holding brief of Mr. Adam

Kunambi, Advocate for the 1<sup>st</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, and 25<sup>th</sup> defendants. The rest of the defendants are absent. Right of appeal to the Court of Appeal is fully explained.



*I. Arufani*

I. Arufani

**JUDGE**

25/11/2022