

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

LAND CASE NO.199 OF 2017

LATIFA HASSAN ALIBHAI..... PLAINTIFF

VERSUS

JAYENDRA J AMARCHAND..... 1st DEFENDANT
RAKHEE JAYENDRA
JAGJIWAN.....,..... 2nd DEFENDANT

Last Order: 10/05/2022
Judgment: 30/06/2022

JUDGMENT

NANGELA, J.:

It is a /proverbial language of the past, which has its application even in the present, that, when hatred is allowed to parade itself along the verandas of a compound, love escapes through the cracks of the walls. As Martin Luther King, Jr., once stated: *“Hatred paralyzes life; love releases it. Hatred confuses life; love harmonizes it. Hatred darkens life; love illuminates it.”*

This case is an expression of sad moments which can befall on neighbours who are expected to live in love, peace and harmony. The Plaintiff is suing the Defendants seeking for judgment, decree and orders of this Court as follows:

1. Declaration that house (Flat) on right wing of Plot No.5 Block 35, House No.1 is a legal property of the Plaintiff as per the Share Agreement certificate issued by Suchak Flats Limited.
2. That, the Defendants collectively to pay damages of TZS 100,000,000 or as the Court deem fit to the Plaintiff for mental and physical torture caused.
3. Defendants be ordered to remove their swing and all other things kept in the corridor of the house (Flat) to allow free movement of Plaintiff in and out of her Flat/house easily.
4. Defendants be restrained from interfering with the Plaintiff's peaceful enjoyment of Flat/House No.1.
5. Costs of this suit.
6. Any other relief this Honourable Court may deem just to grant.

On 21st May 2019, the Defendants filed a joint amended Written Statement of Defence in response to claims in the Plaint. They disputed all such claims and urged this Court to dismiss the entire suit with costs.

In brief, the controversy between the Plaintiff, LATIFA HASSAN ALIBHAI and the Defendants, JAYENDRA J. AMRCHAND and RAKHEE JAYANDRA JAGJIWAN, is centred on the ownership of a Flat/apartment House No. 1,

located on the third floor of Plot No. 5 Block 36 at Kariakoo Area, Ilala District, within Dar es Salaam Region.

Whereas, on the one hand, the Plaintiff contends that she is a legal owner of that suit property, as per *Share Agreement Certificate* issued by *M/s Suchack Flats Limited* who were the owners and builders of the flats from who the suit property was bought, the Defendants, on the other hand, claim that the same suit property is rightfully theirs having rented it to the Plaintiff.

In the course of hearing this case, the Plaintiff was represented by Mr. Martin Frank (holding brief for Mr. Gulam Yusuf Hassan) and Ms. Hawa Tulusia, learned Advocates, while Ms. Winjaneth Lema, learned Advocate represented the Defendants. At the final pre-trial conference, the parties agreed to and the following issues were framed by this Court:-

- 1) Whether the Plaintiff is the lawful owner of the house in dispute
- 2) To what reliefs are the parties entitled to.

In what seemed to be a bitterly contested trial, the Plaintiff called four witnesses to establish her case. The witnesses were Mrs. Latifa Hassan Alibhai, who testified as **Pw-I**, Mr. Murtaza Akbarali Ibrahimanji Suleimanji (**Pw-2**), Mr. Nilesh Ashbin Suchack (**Pw-3**) and PF.1988 Assistant

Inspector Michael Ikusumwa (**Pw-4**). A total of three (3) exhibits were tendered to support the Plaintiff's case.

On the other hand, the Defendants called two witnesses to establish the Defence case. These were Mrs Rakhee J. Jagjiwan, who testified as **Dw-1**, and Mr. Jayandra J. Amrchand who testified as **Dw-2**. The Defendants tendered twelve (12) exhibits to support their defence case. Due to the circumstances of this case, this Court summoned one witness, Mr. Waziri Masoud Mganga from the office of the Registrar of Titles who testified as **CW1** and, furthermore, recalled Pw2 as well as Pw3. Unfortunately, Pw-3 could not turned for some reasons beyond control.

In her testimony to the Court, Mrs. Latifa Hassan Alibhai (Pw1) testified in chief that, she has had a dispute with her neighbor for a long time now. She told this Court that, the Defendants have been claiming that the flat in which she lives in is theirs. Pw-1 told this Court, however, that, she it is now about 30 years since she started to live in that flat as she started living in that house in 1990. She told this Court that, the Defendants who are her neighbour came to their flat on or about the year 2001 and they found her living in the left wing on the same floor but on left wing as she stays on to the side right wing. The two wings are adjacent to each other.

Pw-1 went on to tell this Court that, in the year 1998, her late husband bought the apartment (flat) for about **TZS**

16,000,000/= from his friend and got a share certificate from the owners (developers) of the Flats, namely, M/s Suchack Flats Limited. According to her testimony, the whole building was owned by the company (about six flats) and it sold the flats to other people including her husband.

Pw-1 told this Court that, she has been paying the Land rent and property tax in respect of the said apartment (house). She tendered in Court receipts which were admitted as **Exhibit P-1 and P-2**. Pw-1 told this Court that, ever since her neighbour Jayendra (Dw-1) started to live in his flat, the latter has been harassing Pw-1, including placing a swinging pendulum and a shoes-stand-ramp at her door step as well as shouting at her all time long. She further told this Court that, Dw-1 has been causing her trouble whenever she passes on the corridor leading to her flat.

Moreover, she testified that, Dw-1 has been reporting her to the City Council and to the 'Mtaa Chairman' claiming that the apartment (flat) in which she lives belongs to him. She told this Court that, Dw-1 had even filed a Police Complaint at Central Police only to harass her. Besides, Pw-1 testified that DW1 even reported Pw-1 to the *Ilala Boma* Ward Executive Officer claiming that Pw-1 has occupied his veranda. She tendered in Court various letters which she claimed to have been served upon her by the Defendants.

All such letters tendered in Court were admitted as *Exh.P.3 (a)*, *Exh.P.3 (b)* and *Exh.P.3(c)*. Pw-1 continued to state further that, she submitted her complaint to the Chairman of their 'Serikali ya Mtaa' about the kind of harassments she was experiencing from the Defendants and the threats she has been receiving from them in respect of the ownership of her house (flat).

Finally, she testified that, due to the harassment caused by the Defendants she has suffered health problems, her sugar level has been disturbed and has also suffered mentally for more than 20 years now. For those reasons, she prayed to this Court to guarantee her peace, order that the swinging pendulum placed by the Defendants at her door entrance be removed and all the nuisances from her corridor be stopped, the house be declared hers and she be compensated for all the harassment caused to her by the Defendants.

During her cross-examination, Pw-1 told this Court that, the flat (apartment) belongs to her and, that; she only owns the right wing-side. She admitted that, the left wing-side belongs to the Defendants and, that, they only share a corridor. She also told this Court that, Pw-1's husband (now deceased) had paid all money to Murtaza (Pw-2) before a 'wakili' (an advocate). Pw-1 stated further during cross-examination, that, her husband bought the house in her name and, that; he paid the money by instalments until they

finished paying for the apartment. However, she told this Court that, she does not know about the Title Deed but what she knows was that, the flat/ apartment belongs to her and she was to process for a title deed at 'Ardhi' offices.

During re-examination, Pw-1 told this Court that, her husband bought the shares from Mr. Murtaza who bought the respective apartment from M/s Suchack Flat Limited, and that, M/s Suchack Flat Limited had never told her that her shares (*Exh.P1*) were revoked.

The second witness in support of the Plaintiff's case was Pw-2, (*Mr. Murtaza Akbarai Ibrahimaji*). After being sworn, he testified that, the conflict between the Plaintiff and the Defendants started long time. He told this Court, however, that, it was him who earlier bought the apartment in the second floor of the storey building at Kariakoo from Suchack in 1986 but he never stayed there and, that, afterwards, he sold it to Pw-1 and her husband.

During cross-examination by Ms Lema, Pw-2 stated that, it was wrong to say that he did not buy the apartment from Suchack only because he did not come with the agreement. He went further to state that, at first he rented the house to Pw-1's husband (Mr. Hassan Alibhai) for a consideration of **TZS 50,000/=** per month and had to stay for 3 years as he did not sell it right away. He testified further that, later he agreed to sell it to the Plaintiff's husband for

TZS 25,000,000/= and they used to pay him on instalment basis.

The third witness for the Plaintiff's case was **Mr. Nilesh Ashbin Suchack** who testified as Pw-3. He introduced himself as the 4th child of Mr. Suchack. He testified that, in the past there was a dispute over the door entry between the parties in respect of the same floor. He told the Court that, he used to stay on nearby flat since there are two storey building/ flats facing each other and both were built and owned by his father.

Pw-3 told this Court that, the Plaintiff lives alone in her apartment and, that, when she decided to create a gate at the mid of entrance to the balcony which separate the two houses, Mr. Jayendra (Dw-1), claimed not to get free air access to his house and, that, his washing sink was at that backyard corridor. Pw-3 told this Court that, given the Plaintiff's situation, as she is used to stay alone in her house, it was seen to be fair for her to have a gate fixed where it was fitted.

In his testimony Pw-3 told this Court further that, the dispute concerning the gate erected by the Plaintiff went to various entities and from there the 1st Defendant (Mr. Jayendra) claimed that the Plaintiff's house belongs to him, but the real source was the gate which the Plaintiff erected to separate the entrance to her house.

Upon being shown Exh.P1, Pw-3 recognized it as a share certificate which, among other shares, was issued on their flats by the son of Mr. Suchack who administered all properties and business of his late father and, that, he was the one who sent the certificate to the Plaintiff which is for a recognition that Pw-1 is the owner of the flat. Pw-3, told this Court that, there was no sale agreement between the Defendants and M/s Suchack Flat Limited.

Pw-3 told this Court further that, the M/s Suchack Flat Limited never issued a Title Deed to their occupiers of the flats. Instead, M/s Suchack Flat Limited issued share certificates only for those who bought their properties. He went on to testify that, he was once summoned by the Police concerning the dispute between the parties. He concluded by affirming that, the Plaintiff is the legal owner of her flat/house.

During cross-examination, Pw-3 told this Court that he is the administrator of his late father Mr. Suchack. He went on telling this Court that, the Company had only two shareholders. Pw-3 stated further that, Mr. Murtazar (Pw-2) did surrender his share and the same was issued to the person who bought it from him. He told this Court that, the Pw-1 bought the shares of 16,000,000/= divided into 160 shares and the share certificate was issued on 1998.

The other witness to testify was **PF.19181 Assistant Inspector Michael Ikusuwa**. He testified as Pw-4. In his testimony, Pw-4 told this Court that, he knows this dispute very well because the 1st Defendant (Mr. Jayendra) once reported at the Central Police Station an incident regarding forgery of certificate of share of ownership of the house by one, Ms. Latifa Alibhai, the Plaintiff.

Pw-4 testified further that, following such allegations, he investigated the matter by looking for the people who prepared the certificate alleged to have been forged. In the course of his investigation, he came across Exh.P.1, a share certificate which shows shares which Ms. Latifa owns in M/s Suchack Flats Limited.

PW4 testified further that, after his office's investigation which involved interrogating the people who prepare the certificate and taking of specimen signatures of the accused (by then Ms. Latifa) and the Director Mr. Suchack (now deceased) to the Forensic Bureau for further investigation. He told this Court that; the results were that, the certificate was not a forged document. PW4 told this Court further that, afterwards the DPP's office ruled out that, there was no crime committed and directed that, the file should be closed.

Pw-4 told this Court further that, a letter was written by the Police Force to the Registrar of Titles seeking to unveil

the truth about the ownership of the flats/apartments. According to Pw-4, from the Registrar of Title it was noted that, Ms. Latifa owns $\frac{1}{6}$ th of the flats. Pw-4 also visited the place and found that the building has 3 floors which are partitioned at the middle. The 2nd floor is the floor where the Plaintiff and Defendants also lives, but in a separate wing. He concluded his testimony by stating that, since the 3 floors are divided in 2 wings, therefore $\frac{1}{6}$ th of it is the one owned by Ms. Latifa (Pw-1).

The Plaintiff's case came to a closure and the Defence case opened. As I stated, earlier, the Defendants called three witnesses two of them being the Defendants themselves. The first witness was Mrs. Rakhee Jayendra Jagiwan who testified as Dw-1. She told this Court that, she is a legal owner of the house with CT. 31498, Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo. The house is in the 2nd Floor of the Three Storey Building.

Dw-1 told this Court that, the 2nd floor is divided into two as the Defendants partitioned it and leased it to the Plaintiff. She told the Court that, the Flat where the Plaintiff lives belongs to her as it was bought by her Father from one Shantilal Babulal Chudasama and Bharti Shantilal Chudasamah and she started to live there in 1994. She testified that, the Chudasama's transferred the house to her father in 2002 as her father bought it for her and later she

obtained a Certificate of Title (CT) No.31498 and has been paying rent. The CT was admitted as **Exh.D.1**.

Later Dw-1 told the Court that, the house was bought in 1994 by her parents who lived there since 1995 and they rented it to the Plaintiff and her husband Hassan Alibhai. She told this Court that, they did not have the means of transferring the property to their name by then until the year 2002 when it was transferred into her name Rhakee Jayendra Jagjiwan.

Dw-1 told this Court further that, the house had six rooms - three separate and three rooms separate after they partitioned it. She tendered in Court various property tax receipts which were received as **Exh.D2**. She told the Court that, the receipts are in respect of her house with CT. 31498, Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo. She, thus, urged this Court to declare that, she is the rightful owner of the property in dispute and dismiss the Plaintiff's case.

During cross-examination, Dw-1 told the Court that, her house is No.36 with CT. 31498, Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo and that, her neighbour is the Plaintiff. She maintained that, she had rented the house to the Plaintiff. When asked how much rent she was paying her, Dw-1 responded that the Plaintiff has never paid her rent. She, however, told the Court that, she had agreed

with the Plaintiff's late husband that, she would be given a "*Dala-Dala-DCM Make*" (commuter bus).

Dw-1 told this Court further that, they rented the house to the Plaintiff and her husband in 1995 and they were to be given the "*Dala-Dala*" on the third year but that, she was never given the bus after the three years and that, the Plaintiff's husband later died in a fire accident. She stated that, their agreement was oral. She admitted that, the CT (Exh.D.1) is written " $\frac{1}{6}$ th" of undivided shares but she said it means she owns the whole of the apartment.

Dw-1 told the Court that, they purchased the whole of 2nd Floor for TZS 15,000,000/=. She admitted, however, that, nowhere in Exh.D1 is it shown that she purchased the entire 2nd floor of the building. She maintained, however, that, they had partitioned the house in 1995 and rented it. She admitted that, no document was tendered in Court to show that the house was partitioned in the year 1995 but said her witness is Dw-2.

Dw-1 admitted further that, $\frac{1}{6}$ shares, means that, one sixth of the shared apartment belongs to her. She stated that, the area she occupies is square feet 2940. She admitted that, it is a wall which separates where the Plaintiff and Defendants live and that; she was not the one who built the separating wall. She told the Court, however, that, she only built a partition which was burnt down as it was made of

wood, but the wall was built by the Plaintiff when the Dw-1 had gone to Tanga.

During re-examination, Dw-1 told this Court that, the house is a storey building and has stairs that leads to each floor. She also told this Court that, the 3rd Floor has two apartments but she owns the 2nd Floor. She told the Court further that, **Exh.D1** shows that the nature of entry: Shantilal Babulal Chaudasama $\frac{1}{2}$ shares and Bharti Chaudasama $\frac{1}{2}$ shares. She said they owned the shares together.

When asked by the Court whether they reported to the Municipal Authorities when they found that, the Plaintiff has build a partition wall in the house, Dw-1 told this Court that, they reported and that, the Plaintiff was told to demolish it. However, she offered no evidence to that fact. She also told the Court that, she did not have a lease agreement showing that she had rented the house to the Plaintiff and, that, she has never gone to Court to claim for my unpaid rent since 1995 and by now it is 26years.

Dw-1 further admitted that, the Plaintiff has lived in the house for 26 years and, that; the Defendants were there all these years. She also admitted that, the entire storey building was property of Suchack and, that; her Father had bought the apartment from Shantilal who bought it from Suchack.

The second witness for the Defence was **Mr Jayendra Jagjiwan Armachand** who is the 2nd Defendant in this case.

He testified as Dw-2 and told this Court that, he is the husband of Dw-1 (the 1st Defendant).

According to Dw-2, this dispute started in 2016 after he had travelled to Tanga with his family and upon his return he found that the Plaintiff had create a wall in their house at Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo, with CT. 31498. He testified that, the building has six (6) apartments and his wife owns the 2nd floor.

Dw-2 told this Court that, before, the area was owned by Mohamed Alwai who sold it to Ashwin Jamnadas Suchack who built the storey buildings (Flats) on Plot 5, Block 36 building thereon six apartments. He testified that, later on, a part of the bulding was sold to Shantilal Babulal Chudasama and Bharti Shantilal Chudasama who bought the 2nd Floor and that, his father in-law, who is known as Kantilal Suchand Chohan bought it from the Chudasama's for Ms Rhakee their daughter (the 1st Defendant) in 1994. He told the Court that, in 2002, her wife managed to transfer the title to her own name.

Dw-2 testified further that, in 1995 him and the wife Dw-1 rented the house to Hassan Alibhai (the Plaintiff's husband) on condition that, he will give Dw-2 a **Dala-Dala DCM Make** (commuter bus) after 3 years of stay. He told the Court that, they had to partition the house with plywood since it was a one floor apartment.

After a year or, stated Dw-2, a fire ensued and Mr Alobhai died in that fire accident. He told the Court that, the partition also got fire and burnt down. He testified that, being under that shock, he decided to travel with his family to Tanga where they stayed for two months. He stated further that, upon returning to Dar-es-Salaam, he found that the Plaintiff had created a brick-wall partitioning the house. He told the Court that, he ignored her act as she is a widow, so they let her stay with her son, on Ilfan Hassan Albhai who later took all vehicles and the Dala-Dala to his father in-law.

Dw-2 told this Court further that, when they arrived from Tanga, they also found that the Plaintiff had erected a gate that blocked their air from moving into his window and Dw-2 had to report her to the Municipality. He tendered in Court a copy of a letter dated 07/03/2017 which was admitted as **Exh.D-3**.

He told this Court that, **Exh.P3A** was a letter addressed to the Plaintiff requiring her to demolish the gate she had erected which blocked Dw-2's family from accessing the washing area. He stated that, later they were sued and hence this case. Dw-2 told this Court that, **Exh.P1** is a share certificate of the Plaintiff and that, Dw-1 and Dw-2 did a search at Ardhi offices as they were surprised that the Plaintiff was paying land rent/property tax.

He tendered in Court a search reports which were admitted as **Exh.D4** and **Exh.D5**. He also tendered a document regarding the shareholders of M/s Suchak Flats Ltd, and this was admitted as **Exh.D.6**. He also tendered in Court a letter to the Registrar of Title which was admitted as **Exh.D.7** and 2 letters from the Ministry of Land, as **Exh.D8** and **Exh.D9**.

Further still, he tendered a letter from "BRELA" which was admitted as **Exh.D10**. Dw-2 tendered in Court as well a letter from the Ilala Municipality dated 29/8/2019 which was received as **Exh.D11** and a letter from Registrar of Titles which was received as **Exh.D12**. He urged this Court to make a finding that, the house in dispute belongs to the 1st Defendant and the suit be dismissed with costs.

During cross-examination, Dw-2 told the Court that he started to live in the house he lives in since 1994 and was living there together with his wife, 3 kids and his father in-law. He stated that during the time the hose had 6 rooms. He admitted that no evidence was tendered to show that he started living there since 1994.

He told this Court that, the Plaintiff was not their tenant but what he had agreed orally with the Plaintiff's husband was that he was to give them a used **Daladala 'DCM Make' Bus**. He admitted that there was a subtitled (Hati

Pacha) issued over the property in dispute. He admitted that Dw-1 owns $\frac{1}{6}$ of the building.

The third witness for the Defence case was Mr Waziri Masudi Mganga, who testified as Dw-3. He told this Court that he is an employee of the Registrar of Titles. He told this Court that Plot No.5 Block 36 Street Sikukuu/Amani-Kariakoo, is owned by Suchack Flats Ltd and Ms Rhakee Jayendra own $\frac{1}{6}$ of shares which she bought from Shantilal Babulal Chudasama who owned it with Bharti Sanatilal Chudasama.

He told this Court that, the Chudasamas bought the same from Aswin Jamnadas Suchack on the 19th of August 1988 and, theirs was a limited ownership of $\frac{1}{6}$ share which they owned equally and the transfer of it to the 1st Defendant took place on 06/06/2002. He testified that, after the transfer, the 1st Defendant was given a separate title CT No. 31498. According to Dw-3, a separate title means that, the main title was divided and $\frac{1}{6}$ of it was derived out for Dw-1. The whole of Plot 5 Block 36 has a 2940 square meter but the size of $\frac{1}{6}$ was not specified.

During cross-examination, Dw-3 told the Court that, the 2940 m² is not the area for the $\frac{1}{6}$ part owned by Dw-1 but the size of the whole area of Plot 5 Block 36. He told the Court that, the drawings contained in Exh.D1 have never been brought to the attention of the Registrar of Titles and

seem to have come later to the record. He told the Court that Exh.P2 shows the owner who paid rent was the Plaintiff.

After the closure of the Defendants case, this Court decided to recall Pw-2 and Pw-3. However, only Pw-2 was available. On 12th April 2022, thus, Pw-2 was recalled by the Court and the Court visited the *locus in quo*. In his further testimony, Pw-2 told this Court that, what he bought was 1/6 of the Suchack property as there were six flats (apartments). He told the Court that the floor has two apartments (Flats) and he had bought Flat No.2 as the other side is where the Defendants live and was bought by Chudasama. Each apartment has its own sanitary services.

Upon being cross-examined by Ms Lema, Pw-2 emphasized that the two apartments were separate from the time when he house was built as there is a wall that permanently separate the two and each had a sitting room.

As I stated, this Court paid a visit to the *locus in quo*. Upon visiting the locus in quo, Pw-2 showed the Court the two flats (apartments) which were able to accommodate two families in the second floor of the building. He stated that, before the fire accident, the wall separating the two apartments was there and, that, this was the place where the Plaintiff and her husband were living and the fire took place from their master bed room.

This Court did also ask the neighbour in the third floor who name was **Ms Munira Musa, 53 yrs old**, whom I shall refer as **CW-1**. She told this Court that she came to that building some 14 years ago and found the Plaintiff and Defendant living in the 2nd Floor apartments. She told the Court that, when they bought her apartment, there were two separate units in the third floor separated by a wall and their hose had two doors, one for the first unit and the other leading to the 2nd unit.

However, when they bought the two units, they decided to demolish the wall and make it as one house. He told the Court that, both units were independent each with its own kitchen etc. and, that, the whole house was surrounded by a corridor in such a way that, anyone interested to go out he/she had to pass by the balcony.

The parties were also made to testify while at the site. Pw-1 told the Court and showed the Court her unit and the wall which separates the two, her kitchen and that, they never shared kitchen but they shared the corridor and the balcony. She also showed to the Court the gate she erected at her entrance.

When Dw-1 was further examined, at the *locus in quo*, and stated that, when they bought the apartment in the 2nd floor the third floor was occupied by expatriates from India who later left. He said that, they did partition the house in

1995 and rented it to the Plaintiff. He stated that he was the one who invited the Plaintiff and her husband. He told the Court that, it was not the master bed room which was gutted down by fire.

At the site, this Court did make its observations, that, the Plaintiff and the Defendants live in two separate units with different entrances. The first entrance leads directly to the Defendants house while the side get which was created by the Plaintiff, leads to her unit. This Court did make up a sketch showing the two units and, since all parties had no further comments or questions to make, the Court closed the evidence.

Before I embark on the discussion regarding the issues framed by this Court in agreement with the parties, let me state that, it is trite law that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Likewise, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person. Such cardinal principles are part of our law under section 110 to 112 of the Evidence Act.

In this suit, this Court framed two issues only. The first issue was as here under:

Whether the Plaintiff is the lawful
owner of the house in dispute

As per the testimonies of Pw-1, Pw-2 and Pw-3 and even Dw-2, there is no doubt that the Plaintiff has lived in the unit (apartment) in which she is currently continuing to live for about 26 years or more now. Further, according to the testimony of Pw-1 which was supported by Pw-2, Pw-3, Pw-4 and Exh.P-1, the Plaintiff is the rightful owner of the apartment. I hold so because, Pw3 and Pw-4 did acknowledge that **Exh.P-1** was genuine and was issued by the first owner of the building which houses the apartments, including the one in dispute.

In my view, the claim that Pw-1 was renting from Dw1/Dw-2 could not be established and no scintilla of evidence was adduce to establish it. In fact, it does not get into the mind of any reasonable person that Pw-1 was rented the unit by Dw-1/Dw-2 without there being a lease agreement and, further, that, no rent was ever paid for the past 26 years and no claim has ever been raised. That, in my view, is unheard of.

In my considered view, the fact that Dw-1 holds a Title Deed (**Exh.D-1**) does not mean that, that title Deed was for the two apartments. As rightly stated by Dw-3, the titled deed was a $\frac{1}{6}$ share of the $\frac{6}{6}$ units in the same building. For that

matter, the Defendants only owns 1 unit (which is a $\frac{1}{6}$) and not two units. **Exh.D1** is evident to that fact.

Besides, as I stated herein earlier, this Court visited the *locus in quo*. In the case of **Kimnidimitri Manthealis vs. Ally Azim Dewji and 17Others**, Civil Appeal No.4 of 2018, the Court of Appeal did point out that:

“the essence of a visit on *locus in quo* in land matters ...is to enable the Court to see objects and places referred to in evidence physically and to clear doubts arising from conflicting evidence in any about physical object.”

In the visit made by this Court, all parties were present with their advocates and witnesses and all witnesses were made to testify at the site and be cross-examined. A record of the proceedings was produced, including this Court's observations, and a sketch map was drawn showing how the two units are indeed separated.

In the course of the visit, this Court did also take evidence as the record will show; that, even the neighbours present were requested to testify and their testimony recorded. According to Pw-2 and the testimony of **CW-1**, it was made clear that the houses or units in second and the third floors were two separate units. It was also clear to the Court during the visit to the *locus in quo*, that, the two units

were created as part of the original plan from the beginning as rightly stated by Pw-2 and CW-1 and not a partition created afterwards as Dw-1 and Dw-2 suggest or would wish that I believe them.

In fact, I cannot take the version of Dw-1 and Dw-2 that the separating wall which separates the two units was created by the Plaintiff and that, the Defendants upon returning from Tanga in 1997 did nothing about that fact. In my view, that could not have been the true state of the affairs. Consequently, taking the evidence on record as a whole there is no doubt that, what Dw-1 and Dw-2 stated were all frame up stories which could not be substantiated.

I hold, therefore, that, even if the Plaintiff did not tender in Court documentary evidence that he bought the apartment from Pw-2, the fact that Pw-2 orally testified to that fact and, the fact that Pw-3 who is the son of the owner of the buildings who initially built them and sold the apartment to Pw-2, testified in favour of Pw-1, do suffice to vindicate Pw-1's claims that, her late husband and her did purchase the unit from Pw-2 and, that, she was given **Exh.P1** by M/s Suchack Flats Limited.

The 1st issue is therefore responded to in the affirmative as the Plaintiff is the rightful owner of the 2nd unit (apartment).

That being said, the second issues issue is:

To what reliefs are the parties entitled to.

Essentially, it is trite that, the party who has been able to establish its case to the required standards should win the day. As I stated earlier here above, the burden of proof rests upon the party (the Plaintiff or the Defendant), who substantially asserts the affirmative of the issue. Such a burden remains fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it, and never shifts in any circumstances whatever. See **Joseph Constantine Steamship Line vs. Imperial Smelting Corporation Limited** [1942] A.C. 154,174.

In a case like the one at hand, being a civil case, the standard of proof required in establishing any fact in relation to it is on a balance of probabilities. In **Miller vs. Minister of Pensions** [1947] ALL E.R. 372; 373, 374, Lord Denning J (as he then was) held a view regarding the discharge of such a burden of proof, that:

"If the evidence is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal, it is not."

In this instant suit at hand, I find, without a flicker of doubt, that what the Plaintiff has been able to establish that

she is the rightful owner of the apartment in the 2nd floor of the building known as Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo. The Plaintiff owns the first unit which is yet to be registered and, hence, has no Certificate of Title. The Defendant owns the 2nd unit which is registered and has a CT. No. 31498, Plot No. 5 Block 36, House No. 26 Street Sikukuu/Amani-Kariakoo.

In her prayers in the Plaint, the Plaintiff has asked for a payment of **TZS 100,000,000** as damages for mental torture by the Defendants. The position of the law is that, where there has been substantial physical inconvenience, or discomfort caused by a party to another, the inconvenienced party may be awarded damages. See the Ugandan cases **UCB Vs Kigozi** [2002] EA 305; **Musisi Edward vs. Babihuga Hilda** [2007] HCB Vol 83 and **Robbidac Pants (U) Ltd vs. KB Construction Ltd** [1976] HCB 49).

It is trite law, however, that, the extent of the quantum of damages is a matter for the discretion of the individual judge which of course has to be exercised judiciously. See, for that matter, the case of **Southern Engineering Company Ltd vs. Mulia** [1986-1989] EA 541.

According to the available evidence on record and considering the testimony of Pw-1 and Pw-4, there is no doubt that the Plaintiff has been suffering inconvenience as a result of the Defendants conduct. However, even if the

Plaintiff has claimed to be paid **TZS 100,000,000** as damages, this Court does not see a justification for payment of such a huge sum.

In my view, and taking into account that these are neighbours who are expected to live in peace with each other, this Court, in the exercise of its discretion, will, therefore, settle for a token amount of **TZS 100,000/-** as general damages to the Plaintiff for the inconveniences she suffered in the hands of the Defendants. All said and done, and, since the Plaintiff has proved her case to the required standards, it is the finding of this Court that she is entitled to judgment and decree and, for the reasons aforesaid, this Court settles for the following orders, that:

1. This Court does hereby declare that, the house (Flat/apartment unit) on right wing of Plot No.5 Block 35, House No.1 is a legal property of the Plaintiff as per the Share Agreement certificate issued by Suchak Flats Limited.
2. That, the Defendants collectively are to pay **TZS 100,000 (Hundred thousand only)** to the Plaintiff as general damages arising out of inconveniences suffered owing to the conducts of the Defendants.

3. Defendants are hereby ordered to remove their swing and all other things kept in the corridor of the house (Flat/apartment unit) to allow free movement of Plaintiff in and out of her Flat/apartment unit easily.
4. Defendants are hereby permanently restrained from interfering with the Plaintiff's peaceful enjoyment of her Flat/apartment unit No.1.
5. The Defendants are to pay all costs incurred by the Plaintiff in this suit.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 30TH DAY OF
JUNE 2022**



A handwritten signature in black ink, appearing to read 'Deo John Nangela'.

**HON. DEO JOHN NANGELA
JUDGE,**

**The High Court of the United Republic of Tanzania
(LAND DIVISION)**