

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 213 OF 2022**

MERIMENT NANGASU MSELI PLAINTIFF

VERSUS

FELISTER ROBERT SEKIDIO1ST DEFENDANT

LINAH ROBERT SEKIDIO 2ND DEFENDANT

CALVIN ROBERT SEKIDIO 3RD DEFENDANT

JUDGMENT

Date of last Order: 09.03.2023

Date of Judgment: 24.03.2023

A.Z. MGEYEKWA, J:

At the centre of controversy between the Plaintiff and the Defendants is unsurveyed land (MKAMBA FARM) measuring 93 acres located at Plot No. 565 Block 'B' Sinza Area at Kinondoni Municipal within Dar es Salaam Region (henceforth the suit premises). The material facts of this case brief and not difficult to comprehend. They go thus: Meriment Nangasu Mseli, the Plaintiff sued the Defendants jointly and severally for a declaration

that the 1st Defendant fraudulently acquired the free consent of the Plaintiff to transfer her interest in the suit premise and registered as Plot No. 565 Block 'B' Sinza Area in Kinondoni Municipality, Dar es Salaam (suit landed property) by way of Deed of Gift into the ownership of the Defendants .

According to the Plaint, the Plaintiff on 1st December 1992 was granted an offer through Ref. No. D/KN/A/14162/7/MT and was approved as the rightful owner of the suit-landed property. The Plaintiff is the biological mother of Robert Sekidio (deceased) the father of the Defendants and he has other eight children from different mothers. Plaintiff intended to give away the suit property to all her grandchildren.

On 26th July 2017 without understanding what was written in the document, signed believing that her signature would effectively dispose of her interest in the suit property to all her grandchildren. After questioning the 1st Defendant, she informed her that the disposition process was ongoing. Hence, the Plaintiff decided to consult a lawyer and was able to conduct an official search, the report revealed that the owner of the suit landed property was the 1st Defendant.

On 2nd May, 2022, the Plaintiff lodged a caveat against the suit landed property by the Plaintiff. The Plaintiff claims that the disposition of the suit property from the Plaintiff to the Defendant is tainted with illegality and the Plaintiff's wishes are to revoke the disposition, return unto her ownership, and distribute the landed property to all her grandchildren as per her wishes.

In response to the Plaint, the Defendants filed a joint Written Statement of Defence disputing all the claims. According to the Written Statement of Defence, the Plaintiff held the suit premises in trust or on behalf of her deceased son Robert John Sekidio. The 1st Defendant avers that she is the lawful owner. The Defendants urged this court to dismiss the entire suit with costs.

The Plaintiff prays for Judgment and Decree against the Defendants as follows: -

- 1. Declaratory order that the Deed of Gift and Deed of transfer are void for want of free consent from the Donor/ Plaintiff.*
- 2. Declaratory order that the disposition of the suit property by way of a Deed of Gift and Deed of Transfer from the Plaintiff to the Defendants was tainted with illegality.*

- 3. Order revoking the title deed of the suit property showing the 1st defendant as the rightful occupier of the same.*
- 4. Order declaring the Plaintiff as the rightful owner of the suit.*
- 5. Declaratory order that the suit property be returned into the ownership of the Plaintiff.*
- 6. The cost of this suit be paid by the defendant.*
- 7. Any other reliefs this honorable court may deem fit and just.*

On the other hand, the Defendants , in response to the Plaintiff's claim, have filed a Joint Written Statement of Defense.

It is imperative at the outset to point out that, the matter has also gone through the hands of my learned sister Hon. Makani J, who conducted preliminary stages, and Mango J, who conducted mediation. I thank my predecessors for keeping the records well and on track. I thus gathered and recorded what transpired at the disputed land and now have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

At all the material time, the Plaintiff was represented by Mr. Benson Kuboja and Bongani Said Nassor, learned Advocates, while the

Defendants were represented by Katala Kalimba and Lizyberth Thomas Assey, learned Advocates.

Upon completion of all preliminaries, the Final- Pre Trial-Conference was conducted and the following issues were framed by this court; -

- 1. Whether the consent of the Plaintiff to sign a deed of gift disposing of her rights to the Defendants was obtained fraudulently.*
- 2. To what reliefs are the parties entitled.*

To prove the above issues the Plaintiff side had two witnesses, Meriment Nangasu Mseli, who testified as PW1, Jane Muhina who testified as PW2. The Defendants called 4 witnesses; Maimuna Abdulabi who testified as DW1, Felister Robert Sekidio who testified as DW2, Rosemary Boniphace Nyandu who testified as DW3, Lina Robert Sakidio who testified as DW4 and Calvin Robert Sekidio (DW5).

The Plaintiff side tendered a total of four documentary exhibits to wit; Official Search Report (Exhibit P1) dated 17th March 2022, Notice of Registration of Caveat (Exhibit P2) dated 2nd May 2022, Deed of Gift dated 20th July 2017 (Exhibit P3), a copy of Letter of Offer dated 1st December 1992 (Exhibit P4).

On their side, the Defendants tendered eight exhibits namely, a Deed of Gift (Exh.D1), a Transfer of Right of Occupancy dated 26th July 2017 (Exh.D2), an Original Passport dated 21st May 2018 (Exh.D3), a Letter titled Plot No. 565 Block B Sinza dated 18th January 2019 (Exh.D4), a Certificate of Approval of Disposition dated 23rd September 2019 (Exh.D5), Certificate of Occupancy dated 1st April 2021 (Exh.D6), A letter dated 16th August 2021 (Exh.D7), an Affidavit dated 22nd March 2018 (Exh.D8).

It was the Plaintiff's case that she is 98 years old. She is the owner of the suit-landed property located in Sinza. She testified that she told DW1 to write the name of all of her eight grandchildren in the Deed of Gift. PW1 testified that the purported Deed of Gift and Certificate of Title was fraudulently obtained and since she had no intention to transfer the ownership to the Defendants in exclusion of her other grandchildren. The Plaintiff realized later that she was defrauded. PW1 remembered telling Robert (deceased) the father of the Defendants that she will transfer her house to all of her grandchildren.

During cross examination, PW1 testified that she has a house located at Sinza. That she obtained the house like other people, and she went to the Ministry for Land to obtain the Certificate of Title. She further testified

that she assigned DW2 to write all the names of her grandchildren. DW2 told her to sign the documents while she was in bed. Her efforts to transfer the ownership of the suit landed property was futile since the PW1 transferred the same into her name.

Jane Mhina (PW2) supported PW1's testimony. She testified to the effect that she conducted an official search and found that the suit land is registered in the name of the 1st Defendant. According to PW2, the suit landed property belongs to Meriment Mseli. The Plaintiff managed to halt the procedure of transferring the right of ownership. PW2 testified that they entered a caveat to stop the transfer. To substantiate her testimony she tendered an official search dated 17th March 2022 (Exh.P1). PW2 also tendered a caveat which was admitted as exhibit P2, Deed of Gift (Exh.P3), a copy of Letter of Offer dated 1st December 1992 which was admitted as exhibit P4.

The first witness was Maimuna Abdulabi (DW1) who testified to the effect that she is living in Sinza. According to her evidence, DW1 sold the suit land to Robert Sekidio who is the Defendants' father. DW1 testified to the effect that she sold a Plot to the tune of Tshs. 550,000/= . DW1 further testified that Robert Sekidio had marital problems with his wife. DW1 testified that on unknown date, the late Robert and the Defendants

informed her that they wanted to transfer the Letter of Offer in the name of all children. The transfer was effected, and the title was transferred to the names of all three children.

Felister Robert Sekidio is among the three Defendants. She is the second witness (DW2). She testified to the effect that Robert Sekidio is the lawful owner of the suit premises, he bought the suit land from Maimuna between 1990 and 1992 by that time he was married to Lucy Peter Anacoura. DW2 testified that there was a dispute between her parents, and her father decided to change the name of the ownership of the suit landed property from his name to the Plaintiff's name. The offer was issued in the name of Plaintiff. She testified that the Plaintiff was registered as a ghost owner. DW2 further testified that when they grow up their father told them to process the transfer of the suit landed property from the Plaintiff to their names and their father informed the Plaintiff, aunty; Rose, Eliza, and their uncle.

She also testified that before signing the Deed of Gift, the Defendants, Plaintiff, their late father and Rosemary headed to their aunty to convene a family meeting. DW2 said that their grandmother was well informed and they prepared a write-up and no one opposed it. She further testified that all the arrangement was done when their father was still alive. DW2

testified that they went to the Registrar of Title and obtained a Certificate of Title. They noted that the CT was registered by the name of Felister Sekidilo, contrary to their wishes, they wanted to register the suit land in the names of all Defendants. To substantiate her testimony, she tendered a Deed of Gift which was admitted as exhibit D1, a copy of Transfer of Right of Occupancy (Exh.D2), a Letter titled Plot No.565 Block 'B' Sinza which was admitted as exhibit D4. A copy of the Certificate of Approval of Disposition (Exh.D5), a copy of the Certificate of Title which was admitted as exhibit D6, and a Letter dated 16th August, 2021 (Exh.D7).

The third witness was Rosemary Boniphace Nyandu (DW3). She said that she lives and works for gain in Zanzibar as a private Advocate. DW3 testified that the suit landed property was transferred to the Defendants' names and the previous owner was the Defendants' father. On the material date, DW1, herself, Lina, Kelvin, Plaintiff, the late Robert Sekidio and Andrew Chima, advocate headed to Felister's aunty's house at Sinza Lion. DW3 testified that Sekidio's family were exchanging documents, they read over the Deed of Gift in English and Kiswahili language and all of them were present and signed the document except Andrew Chima, the Advocate did not sign.

Lina Robert Sakidio was the second Defendant and fourth witness. She backed up the testimony of DW2. She testified to the effect that their father was the owner of the suit land, and their father trusted PW1 hence her name was reflected in the Title. DW4 said that one day the Defendants, and their late father escorted their grandmother (PW1) to Primary Court of Sinza to swear an affidavit. She testified to the effect that they went to the said Court by a car.

Kelvin Robert Sekidio was the third Defendant also cemented the testimony of DW2. He further testified that the land belongs to their father and his grandmother knew that the transfer of the suit land involved three Defendants. He testified that at one day his sisters, father and their grandmother headed to Primary Court of Sinza by foot and the Plaintiff signed an affidavit in the presence of a Magistrate who witnessed the signing of the said affidavit. He tendered an original affidavit which admitted as exhibit D8.

Having heard the testimonies of both parties and considering the final submission of all learned counsels, I should state at the outset that, while determining this case, I will be guided by the principle set forth in civil litigation and which will guide this Court while determining this suit. The said principles include the following: the same is stipulated under section

110 of the Evidence Act, Cap.6 [R.E 2019] which places the burden of proof on the party making the assertion which that party desires a Court to believe him and pronounce judgment in his favor. Section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] provides that: -

"110 (1) 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.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Similarly, in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113 it was held that:-

"He who alleged must prove the allegations".

See also the cases of **Charles Richard Kombe v Evarani Mtungi and Two Others**, Civil Appeal No. 38 of 2012; and **Barclays Bank (T) Limited v Jacob Muro**, Civil Appeal No. 357 of 2019 (both unreported).

Another salient principle of the law, which are applicable in civil litigation and which will guide this Court in the course of determining this suit is "Parties are bound by their own pleadings." Pleadings in this sense include the Complaint, Written Statement of Defence, affidavits, and reply therein if any. Therefore, in its broader meaning pleadings include all documents

submitted and annexed thereto and those which were listed along with the plaint or produced before the first date of hearing of the suit. The Court is required and expected to examine the entire pleadings and the totality of evidence tendered, together with an assessment of the credibility of the witnesses who appeared before the Court. The evidence adduced before the Court must be weighed and not counted.

The first issue as to *whether the consent of the Plaintiff to sign a Deed of Gift disposing of her rights to the Defendants was obtained fraudulently.* The analyses of this issue show that the parties herein lock horns on who is the lawful owner of the suit property and *whether or not the Deed of Gift was valid.*

Before the said suit could be heard and determined, both learned counsels stated that the issue of the lawful owner is not disputed. However, during the trial, the issue of ownership was clearly featured in the testimonies of both parties, specifically the Defendants ' side.

To the Defendants testified to the effect that Rober Sekidio, their late father was the lawful owner of the suit land and he registered the Plaintiff as a ghost owner. The Defendants were certain that the Plaintiff was not the lawful owner of the suit property. Their testimonies are to the effect that the land was just registered in the Plaintiff's name by their father due

to the fact that their parents had a dispute and their mother wanted a division of property thus, their late father decided to register the suit property in the Plaintiff's name. The Defendants' defence rendered this Court to investigate more on the issue of ownership of the suit land.

The Plaintiff testified to the effect that she is the originally registered owner of the suit land. To substantiate her testimony she tendered a copy Letter of Offer (Exh.P4). This evidence was backed up by the DW5 who tendered an affidavit (Exh.D3) sworn by the Plaintiff indicated that she is the lawful owner of the suit land. According to section 2 of the Land Registration Act, Cap.334 R.E 2019 the term owner has been defined to mean:-

"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 fact that the Plaintiff was registered in the land registry that means she was the owner by virtue of the above provision.

DW1 tried to prove that the owner of the suit land was Robert Sekidio but she failed to prove his allegations because she did not tender any document. The Defendants in their testimonies testified to the effect that

they were instructed by the Commissioner for Land to process the transfer and hence obtain an affidavit of the Plaintiff. These are mere words, there is no any letter from the Ubungo Municipal Council or Commissioner for Land that directed the Defendants to obtain an affidavit in transferring the ownership from the Plaintiff to the Defendants.

In the record, there is only a letter from the Ubungo Municipal Council dated 18th January 2019 (Exh.D4) informing the Defendants to pay Tshs. 80,000/= for transfer of ownership.

Reading the evidence on record, I have noted some contradictions, the Defendants in their testimonies testified to the effect that the suit property belongs to their late father while in paragraph 4 of their Written Statement of Defence, the 1st Defendant avers that she is the lawful owner, it clears the perceived contradiction. As I have pointed out earlier that parties are bound by their own pleadings. In the case of **YARA Tanzania Limited v. Charles Aloyce Msemwa and 2 others;** Commercial Case No.5 of 2015, HC Commercial Division at DSM (unreported), the Court held that:-

"It is a cardinal principle of the law of civil procedure founded upon prudence that parties are bound by their pleadings. That is, it is

settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings".

The law is settled that minor contradictions that do not go to the root of the case are inconsequential. See the case of **Ombeni Kimaro v Joseph Mishili t/a Catholic Charismatic Renewal**, Civil Appeal No. 33 of 2017 (unreported). However, the above contradiction is not minor it goes to the root of the case in proving ownership of the suit property.

From the above authority, the Defendants were not supposed to present something which is contrary to the pleadings otherwise it affects the credibility of their witness (s).

Another shortfall is regarding the affidavit (Exh.D8). The fact that the Defendants tendered the affidavit in Court means they pleaded that the Plaintiff is the owner of the suit land. I have scrutinized the purported affidavit and noted that the same was prepared after eight months from the date when they prepared the purported Deed of Gift. What was the purpose of preparing an affidavit after a lapse of 8 months?

It is presumed that the Defendants took the Plaintiff to Sinza Primary Court to swear an affidavit. The testimony of DW4 was to the effect that the Defendants and their father took the Plaintiff before the Commissioner

for Oath to swear an affidavit. The question to ask is if the Plaintiff was not the lawful owner of the suit property why the Defendants took their grandmother (PW1) to swear an affidavit? For ease of reference I find it apposite to reproduce part of the affidavit hereunder:-

1. *Mimi Meriment Nangasu Mseli, umri 94, Dini Mkristo, Kabila Mpare, wa S.L.P 16448- DAR ES SALAAM.*
2. *Nikiwa na akili zangu timamu bila kulazimishwa au kushawishiwa na mtu yeyote **naapa na kuthibitisha mbele ya Mahakama kuwa nina nyumba yenye kiwanja Na. 565 Kitalu 'B' eneo la Sinza Dar es Salaam kuwa ni mali yangu.***
3. *Na kwamba nyumba hiyo nimeamua kwa hiari yangu, kuwapatia wajukuu zangu ambao ni:-*
 1. *LINAH ROBERT SEKIDIO*
 2. *FELISTER ROBERT SEKIDIO*
 3. *CALVIN ROBERT SEKIDIO na wasibughudhiwe na mtu yeyote katika nyumba hiyo. [Emphasis added]*

From the above excerpt, it is clear that the Plaintiff was the lawful owner of the suit property and the Defendant persuasively wanted to deprive the Plaintiff's right of ownership and transfer the same in their names.

Reverting to the first issue *whether the consent of the Plaintiff to sign a Deed of Gift disposing her rights to the Defendants was fraudulently obtained*. On 26 July 2017, the Plaintiff signed the Deed of Gift (Exh.P3) to transfer her rights of the suit property to the Defendants. The Certificate of Approval (Exh.D5) contains the names of Defendants and the purported Certificate of Title is registered in the name of the 1st defendant alone. The main question for determination is the manner in how the consent to sign the Deed of Gift was obtained.

The evidence reveals that the Plaintiff admitted to having signed the Deed of Gift but in her defence, she claimed that on the material date, she was sick and DW2 approached her and obtained her consent fraudulently. It was her intention to give away the suit landed property to all her grandchildren, however, the 1st Defendant told her to sign a document which she expected to have transferred her ownership to all of her grandchildren. During cross examination, she stated that she was sick for eight years and when signing the Deed of Gift, she was well informed that the transfer will involve all eight children, however, to her surprise, the purported Certificate of Title was registered in DW2's name alone. PW1 testimony was backed up by PW2.

The general rule is that once a person signs a document, he is bound by the content of the document. The signature implies that he has read, understood, and agreed on the content of the said document. However, reading between the lines the Plaintiff testimony, she testified to the effect that her consent was obtained by fraud. She does not dispute the fact that she willingly wanted to give away her property as a gift but not to only three grandchildren. PW1 intended to give the house to all of her grandchildren which is why she believed that she signed the Gift Deed for that reason. The Plaintiff's defence is stated under the doctrine of *non est factum*. **Tanganyika Bus service Co. Ltd v National Bus Service Ltd (Kamata)** (1987) TZHC 11 Mwalusanya J, (as he then was) stated that:-

"Non est factum is the name given to the argument raised when the defendant in a contract suit alleges that a document that he has signed should not be binding upon him because he was induced to sign it on the understanding that it was of completely different nature from what it is in fact".

He added that.

*"That is very difficult point to establish because the mistake must be one relating not to the content but **to the character of the subject matter.**" [Emphasis added].*

Applying the above authority in the case at hand, the evidence reveals that Plaintiff signed the document with the expectation that the Deed Gift will include all of her grandchildren. However, later she came to learn that the Title Deed was registered in the name of DW2 alone.

Now reverting back to the first framed issue; *whether the consent of the Plaintiff to sign a Deed of Gift disposing her rights to the Defendants was obtained fraudulently.*

The Plaintiff has not denied having signed the Deed of Gift but she claimed that DW1 fraudulently made her sign the documents in her room without reading them aloud. The Defendants claim that PW1 freely signed the Deed Gift and the same was read loud in front of their aunty and their Advocate.

Rosemary Nyandu, DW3, was called to testify in court. However, her testimony was contrary to DW2, DW4, and DW5 testimonies because she testified to the effect that on the material dated, the Advocate did not sign the Deed of Gift while DW2, DW4, and DW5 testified to the effect that on the material date, the Advocate signed the Deed of Gift. I have perused the purported Deed of Gift and noted that it contains an undated signature of Andrew Chima, the same contains an Advocate stamp though

it is not dated, and therefore, it is not clear when exactly, Andrew Chima witnessed the endorsement of the said Deed of Gift.

It leaves a lot to be desired whether the Advocate was present on the material date and signed the Deed of Gift in front of the parties or he prepared the purported Deed of Gift prior to the said family meeting. I have also considered the fact that the Plaintiff testified she signed the purported Deed of Gift while lying on her bed and she signed it believing that the Deed of Gift included all of her grandchildren's names.

In addition, it leaves a lot to be desired seeing the Deed of Gift was drawn by Meriment Mangasu Mseli, the Plaintiff while the Defendants testified to the effect that the same was prepared by their Advocate. The question to ask is who prepared the Deed of Gift? This question could have been answered by Andrew Chima, the purported Advocate, unfortunately, the Defendants did not call Andrew Chima to testify in court to state his story on how he prepared the purported Deed of Gift.

When DW3 was cross-examined, she testified that in case an advocate approves a document while he had no legal power to do so then the document is fatal. The evidence made me check the information of Andrew Chima, on the eWakili website and noted that in 2017, when the

alleged Deed of Gift was prepared, Andrew Chima was not even registered and in 2018 he was not active.

Again, the Defendants in their testimony testified that the Plaintiff is the ghost owner. This implies that the Defendants used the Plaintiff just to sign the document which she did not know its contents because of her old age.

The above shortfalls, renders this Court to believe that the Plaintiff's was taken through a process that was different from her expectations or wishes. This means that her consent was fraudulently obtained.

The definition of a valid contract as provided under section 10 of the Law of Contract Act, Cap. 345 [R.E 2019] provides that:-

*"All agreements are contracts **if they are made by the free consent of parties competent to contract**, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void:" (emphasis supplied)*

In order to determine if there is a meeting of mind (consensus ad idem) section 13 of the Law of Contract Act, (supra) states that:-

*"Two or more persons are said to consent when they agree upon **the same thing in the same sense.**" [Emphasis supplied].*

The fact that the Plaintiff was 94 years of age, unwell, and denied having transferred the property to Defendants, proves that there was no free consent.

Moreover, the fact that on 2nd May 2022, PW1 filed a caveat (Exh. 2) claiming that she has an interest in Plot No. 565 Block B at Sinza, Ubungo and the fact that the Defendants involved PW1 in the whole process as a ghost owner implies, the two parties were not in the same sense.

According to section 19 of the Law of Contract Act, Cap 345 [R.E 2019], if consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the contract is voidable. For ease of reference, I find it apposite to reproduce section 19 of the Law of Contract Act, Cap. 343 [R.E 2019] hereunder:-

"Where consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused:"

The fact that the Plaintiff consent was not obtained properly, means there was no meeting of mind on what the Plaintiff intended and the outcome, this agreement is voidable at the option of the Plaintiff who is the owner of the suit land.

Again, there is a lot to be desired, the question is why the Defendants failed to call material witnesses; the Defendants in their testimonies mentioned their aunt Rose and Andrew Chima who were alleged to be present at that family meeting that approved the legality of the purported Deed of Gift. The Defendants have testified that their aunt and Andrew Chima witnessed the signing of the Deed of Gift, unfortunately, they were not called to testify in court. Therefore the Defendants' testimonies are mere words and not supported by cogent evidence. Failure to do so implies that on the material date, their aunt and Andrew Chima were not present and if the witnesses were called, they would have given evidence contrary to the Defendants' interests. In the circumstances, this court is entitled to draw an adverse inference against that failure. In **Hemedi Saidi v Mohamedi Mbilu** [1984] TLR 113, in which, quoting from the headnote, it was held that:-

"Where for undisclosed reasons, a party fails to call material witnesses on his side, the court is entitled to draw an inference that if the witnesses were called, they would have given evidence contrary to the party's interests."

With the aforesaid shortfalls, I decline to believe that the Deed of Gift was valid. This implies that the consent of the Plaintiff to sign the Deed of Gift



was obtained fraudulently. Therefore the first issue is answered in affirmative.

On the second issue *to what reliefs are the parties entitled*. The Plaintiff in Plaintiff has listed several relief. The law requires every claim must be proved, however, some of the Plaintiff's claims are not proved to the standard of the law and the documents tendered did not prove if the transfer is smoothly effected. Regarding prayers; (c), and (f) this court is not moved to grant the said prayers, therefore, the same crumbles. However, I find logic in prayers (a) and (b), (d), and (e), since the Deed of Gift is declared void that means the Plot No. 565 Block 'B' at Sinza, Ubungo is still in the possession of Mariment Nangasu Mseli, the Plaintiff.


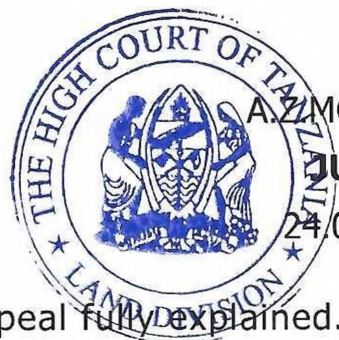
In case there are any procedures done by the Defendants to transfer Plot No. 565 Block 'B' at Sinza, Ubungo the same are void in the eyes of the law because the legal owner of the suit landed property is the Plaintiff.

In the case at hand, the Plaintiff has prosecuted her case successfully and, certainly, has incurred costs in this endeavour. However, since the matter involves family matters, I find it prudent not to award the Plaintiff any costs. The Plaintiff's prayers in Plaintiff are granted and the Court declares an order as follows:-

- a) The Deed of Gift is declared void for want of free consent from the Donor/ Plaintiff.
- b) The disposition of the suit property by way of Deed of Gift and Deed of Transfer from the Plaintiff to the Defendants is tainted with illegality.
- c) The Plaintiff is the lawful owner of Plot No. 565 Block B at Sinza, Ubungo.
- d) The Defendants to return the suit property into the ownership of the Plaintiff.
- e) Each party to bear her/his own costs.


A.Z. MGEYEKWA
JUDGE
24.03.2023


Judgment was delivered on 24th March, 2023 in the presence of Mr. Benson Kuboja, counsel for the Plaintiff and Ms. Lizyberth Assey, counsel for the Defendants.


A.Z. MGEYEKWA
JUDGE
24.03.2023


Right of Appeal fully explained.