

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 44 OF 2023**

**AFRICAN ART LIMITED.....1<sup>ST</sup> PLAINTIFF  
CLAUDIA CARMELA ORTEGA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MAGESA MACHENJA..... DEFENDANT**

**CONSENT JUDGMENT**

Date: 23<sup>th</sup> May 2023.

**L. HEMED, J.**

Initially, the 1<sup>st</sup> plaintiff had purchased the property on Plot No. 184 Mbezi Beach Area, Kinondoni Municipality under the Title Deed No. 44379 and executed land forms for purposes of transfer. Immediately after the purchase, the 1<sup>st</sup> plaintiff took possession of the disputed plot at the consent of the defendant and lodged all original documents, including the Certificate of Title, to the Ministry for Lands for purposes of transfer to its name.

The transfer could not be effected as there was a pending Land Case No. 141 of 2007 between the one AIDAN GEORGE NYONGO and the defendant herein on ownership of the suit land. The said land case was determined by the High Court on 18<sup>th</sup> July, 2016 where the defendant was declared legal owner of the suit property. AIDANN GEORGE NYONGO,

appealed to the Court of Appeal of Tanzania *vide* Civil Appeal No. 292 of 2017. On 3<sup>rd</sup> March, 2022 the Court of Appeal delivered its judgment dismissing the whole appeal.

However, despite the decisions of the High Court and the Court of Appeal declaring the defendant owner of the suit landed property, instead of assisting the 1<sup>st</sup> plaintiff to finalize the transfer, the Defendant lodged a caveat against transfer process and issued notice of vacant possession to the plaintiff. From that end, the Plaintiffs lodged the suit at hand claiming for the following against the Defendant: -

- (a) A declaration order that the defendant's notice to vacate the suit Plot No. 184 Mbezi Beach, Kinondoni District, Dar es Salaam under CT No. 44379 against the plaintiffs is illegal unlawful and unjustifiable.
- (b) An order to compel the defendant to withdrawn the Caveat dated 4<sup>th</sup> April, 2022 filed with the Registrar of Title so that the transfer of property may proceed.
- (c) The defendant, his agent, assign and any person acting for him be permanently prevented from entering into and evicting the plaintiffs

from the suit Plot No. 184 Mbezi Beach, Kinondoni District Dar es Salaam under CT No. 44379.

- (d) In the alternative, in case the notice for vacate possession is found to be valid, the defendant be ordered to compensate the 1<sup>st</sup> plaintiff for unexhausted improvement for sum of Tsh. 1. 330,800,000/- or actual value at a time of the order.
- (e) The defendant be condemned to pay general damages as shall be assessed by the Court.
- (f) Costs be proved for.
- (g) Any other relief as the Court may deem just to grant.

The defendant disputed the claim and raised a counter claim, claiming for a sum of Tshs 1,152,000,000/=, being the rental fee for sixteen years from 1<sup>st</sup> January 2007 together with interest thereon at the rate of 20% until payment in full. He also prays for eviction of the plaintiffs and any other persons residing under their authorization in the suit properly and for permanent injunction restraining the plaintiffs from trespassing the suit premises.

Upon completion of pleadings, 1<sup>st</sup> pretrial conference was held and the matter was referred to Mediation Center for mediation processes. Hon. Z.

Maruma J successfully administered the process. Deed of settlement was signed by the parties on 04/04/2023 and on 23<sup>rd</sup> May 2023, Parties appeared before the trial Judge to record settlement pursuant to Order VIII Rule 33(a) and 34 of the Civil Procedure Code, (Cap 33 RE 2019) as amended by GN. No. 381 of 2019.

Parties consented as follows:

1. The 1<sup>st</sup> Plaintiff purchased the suit plot No. 184 Mbezi Beach, Kinondoni Municipality Dar es Salaam from the defendant.
2. The balance on the purchase price is about USD 15,000, and the defendant has incurred more costs in prosecuting the Land Case No. 141 of 2017 in the High Court Land Division and Civil Appeal No. 292 of 2017 in the Court of Appeal.
3. The defendant has accepted the sum of USD 42, 700 (Forty two thousand seven hundred) to settle the balance of the purchase price and other costs in the said cases as full settlement of the case.
4. Upon the settlement of the agreed amount in paragraph 3, the 1<sup>st</sup> Plaintiff will be a legal owner of Plot No. 184 Mbezi Beach Kinondoni Municipality and the defendant shall have no more claim over the

property upon payment of USD 42, 700 (Forty two thousand seven hundred).

5. The sum of USD 42, 700 (Forty two thousand seven hundred) shall be paid on or before 30<sup>th</sup> June, 2023.

(a) In case of default the full amount shall attracts an interest of 6% in every month of default.

(b) In case of further default up to 30<sup>th</sup> September, 2023 the defendant shall cause execution of the decree of Consent Settlement Order by making valuation and attachment for sale of the suit property to recover the full amount of the cost of the house.

6. The defendant shall obtain the consent of his wife to the disposition of the property by June 2023 and execute all land forms for purposes of transfer the property to the name of the 1<sup>st</sup> plaintiff upon the full payment of the agreed amount in paragraph 3 above.

7. The defendant shall remove caveat he has filed with the Registration of the property and registrations of the same to the name of the 1<sup>st</sup> plaintiff and simultaneous with the payment hand over all documents of ownership to the 1<sup>st</sup> Plaintiff soon after the payment.

8. The defendant's right, interest and benefits accruing under the Land Case No. 141 of 2007 and Civil Appeal No. 292 of 2017 in which the defendant was decreed as a legal owner will be the defendant relinquish all claims over the same.
9. Each party to bear its own costs.

Judgement is hereby entered as consented by parties. It is so ordered.

**Date at Dar es salaam** this, 23<sup>rd</sup> May 2023.



**L. HEMED**  
**JUDGE**



**COURT:** Consent Judgment is delivered in the presence of Mr. Thomas Rwebangira and Joyce Magubu, Advocates of the plaintiffs and the defendant appearing in person, this 23<sup>rd</sup> May 2023.



**L. HEMED**  
**JUDGE**  
**23/05/2023**

