

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 156 OF 2021

ABDALLAH IDDI MCHEKWAPLAINTIFF

VERSUS

ALLY SAIDI MBEGU (*Administrator of the Estate*

***of the Late ASHA ALI PAZI*)..... 1ST DEFENDANT**

MNAYENU KASSIM 2nd DEFENDANT

REHEMA SEIF LUAMBO 3rd DEFENDANT

ZANE MICRO CREDIT LTD 4th DEFENDANT

AHMED HUSSEIN ABDULKARIM 5th DEFENDANT

COMMISSIONER FOR LANDS 6th DEFENDANT

THE HON. ATTORNEY GENERAL 7th DEFENDANT

MARK AUCTIONEER AND COURT

BROKERS COMPANY LIMITED 8th DEFENDANT

CONSENT JUDGMENT

27th June 2023

L. HEMED, J.

The plaintiff herein filed the instantaneous suit against the defendant claiming to be the *bonafide* purchaser and owner of the suit landed known as Plot No. 734, Block "B", Kinyerezi Area, within Ilala Municipality, Dar es Salam. It was further alleged that the said suit landed property was unlawfully sold to the 5th defendant by the 1st, 2nd and 3rd defendants. Having purchased the suit property, the 5th defendant procured the loan facility from the 4th defendant, pledging the suit land as a security thereof. The 5th defendant defaulted repaying the loan eventually the 8th defendant acting on the instructions of the 4th defendant issued a notice to the 5th defendant of the intention to auction/sale the suit landed property. In consequence thereof, the plaintiff rushed to the gates of this Court and lodged the present suit praying for the following reliefs: -

- "(a) A declaration that the plaintiff is the bonafide purchaser and owner of the suit land.*
- (b) A declaration that the 5th defendant is owning the suit land unlawfully.*
- (c) A declaration that the 1st, 2nd and 3rd*

defendants transferred unlawfully the suit Land to the 5th defendant.

- (d) An order that the 6th defendant cancels the land title issued to the 5th defendant and the same be issued in the names of the plaintiff.*
- (e) An order directing the 5th defendant to demolish all the permanent buildings and structures erected in the suit land.*
- (f) An order for payment of 200,000,000/= as general damages*
- (g) Costs of the suit."*

The defendants disputed all the plaintiff's claims by filing the written statement of defence. In the course, parties amicably settled the dispute and filed the Deed of Settlement which, on 27th June, 2023 was recorded. In the Deed of Settlement, parties have mutually agreed as follows: -

1. That the plaintiff and 5th defendant have agreed that the landed property described as Plot No. 734, Block B, located at Kinyerezi Area, Ilala Municipality in Dar es Salaam region be sold and disposed off to any prospective purchaser at price not less than Tshs.200,000,000/= (Two Hundred Million Shillings).
2. That upon the sale of the said landed property by the

plaintiff and the 5th defendant, the plaintiff and the 5th defendant shall pay the 4th defendant the sum of Tshs.70,000,000/= to recover the loan and incidental costs caused by the 5th defendant by defaulting repayment of the loan facility advanced by the 4th defendant.

3. That, upon the sale of the said property, the plaintiff and the 5th defendant have agreed to share the proceeds of the sale whereas the sum of Tshs.90,000,000/= shall be paid to the plaintiff and the sum of Tshs.40,000,000/= shall be taken by the 5th defendant.

4. That, the plaintiff and the 5th defendant undertake to sale the said property and pay the 4th defendant the sum of Tshs.70,000,000/= within the period of one (1) year from the date of signing this Deed and in the event they fail to pay within such period of time, then the 4th defendant shall proceed with transfer under power of sale which is currently pending at the office of the Registrar of Titles in favour of **EUGENE GIVONCE KITILYA.**

5. That, after been paid the said amount of TSHS

70,000,000/=, the 4th defendant shall withdraw the pending transfer under power of sale in favour of **EUGENE GIVONCE KITILYA** and hand over the original certificate of title of the said property to the plaintiff.

6. That, the plaintiff and the defendant, jointly and severally have the responsibility and right to search for a prospective purchaser provided that the agreed purchase price shall not be paid in installment.

7. That each party shall bear his own costs.

Following the signing and filing the deed of settlement in the instant case, this Court marks the matter settled and hereby enters consent judgment as consented by the parties hereinabove. It is ordered.

DATED at **DAR ES SALAAM** this 27th day of June, 2023.




L. HEMED
JUDGE