

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 148 OF 2014**

AMIR SALEHE MWAMBA PLAINTIFF

VERSUS

ABSA BANK (T) LIMITED..... DEFENDANT

PATRICK MOSEDA NYAMOHANGA..... 3RD PARTY

BY WAY OF COUNTER CLAIM

PATRICK MOSEDA NYAMOHANGA..... PLAINTIFF

VERSUS

ABSA BANK(T) LIMITED..... 1ST DEFENDANT

YONO AUCTION MART LTD..... 2ND DEFENDANT

AMIR SALEHE MWAMBA 3RD DEFENDANT

THE COMMISSIONER FOR LANDS..... 4TH DEFENDANT

THE HON. ATTORNEY GENERAL..... 5TH DEFENDANT

JUDGMENT

28th April, 2023 & 3^d August, 2023

L. HEMED, J.

The instantaneous suit is one of the protracted kind of litigation in land. It commenced in the year 2014 in this Court all the way to the Court

of Appeal of Tanzania and then back to this Court for re-trial. The epicenter of the dispute is a landed property on Plots No.243 and 245 Block 9 Bunju Area, Kinondoni Municipality-Dar es Salaam registered under the Certificate of Title Nos. 107159 and 107170 respectively. The suit properties were formerly registered in the name of one **PATRICK MOSEDA NYAMOHANGA**, the 3rd party in the original suit and the Counter Claimant in the Counter Claim.

The 3rd party and Counter Claimant was once an employee of the 1st Defendant, **ABSA BANK (T)LTD** and was privileged of obtaining three loans from his employer which were, housing, personal and study loans. The suit landed properties were pledged as security for the housing loan. The 3rd party terminated his employment with the 1st defendant before the completion of the repayment of the loan and due to the subsequent default in servicing the said loans, the 1st defendant appointed the 2nd Defendant, **YONO AUCTION MART & CO.LTD**, to sale the suit landed properties to recover the loan.

The sale was conducted on 16th February 2013 *vide* public auction where the plaintiff herein **MR. AMIR SALEH MWAMBA** emerged the

highest bidder and purchased the suit landed properties. Following the said sale transactions, on 26th February 2013, the **REGISTRAR OF TITLES** effected transfer of the suit properties by re-registering the properties in the names of the Plaintiff. After the properties being transferred to him, the Plaintiff started the process to take possession of the properties in vain. In the year 2014, he opted to institute the present suit against the 1st and 2nd defendants praying for Judgment and Decree as follows:-

- (a) *A Declaration that the Plaintiff is a purchaser at a public auction of a house on Plot Nos 243/245 Block 9 Bunju Area and therefore be declared as the owner of the said house.*
- (b) *That the Plaintiff has paid in the full the purchase price through the agent of the Defendant, Auctioneer Yono Auction Mart LTD.*
- (c) *That the Court should order the defendant to effect the transfer of the suit house to the Plaintiff in Vacant Possession.*
- (d) *The Defendant should pay the Plaintiff mean profit at the rate of US Dollars 2,000 per months following of failure of the Defendant to hand over the suit house to the Plaintiff from 1st March 2013 to the date of handing over of the suit house to the Plaintiff whilst in vacant possession.*
- (e) *To order the Registrar of Title to effect the transfer to the Plaintiff to hand over to him the Title of the suit house.*
- (f) *Payments of interest on item(d) above at the bank rate from 1st March 2013 to the date of final payment and handing over of the house to the Plaintiff in vacant possession.*

- (g) Payments of interest at Court rate at 10% from the date of judgment to the date of final payment and handing over the house to the Plaintiff in vacant possession.*
- (h) Costs of this suit.*
- (i) Any other order(s) and relief(s) may this Honourable Court deem it and just to grant."*

The defendants herein disputed all the claims by filing the written statement of defence. The 1st Defendant proceeded further to apply for a 3rd party notice which was granted and eventually led to the joining of the 3rd party to the proceedings. The 3rd Party filed his written statement of defence and thereafter amended it raising a Counter Claim against **ABSA BANK (T)LTD, YONO AUCTION MART & CO.LTD, AMIR SALEHE MWAMBA, THE COMMISSIONER FOR LANDS** and **THE HON.ATTORNEY GENERAL** claiming for the following: -

"(a) Declaration that the sale of the suit premises by the 1st through the 2nd Defendant to the 3^d Defendant was unjustified, unlawful, unprocedural and illegal.

(b) An order nullifying the sale its consent by the 4th Defendant

(c) An Order to register the suit premises in the name of the Plaintiff

(d) General Damages against the Defendants to the Plaintiff

(e) A permanent injunction to restrain the Defendants from interfering with the Plaintiff peaceful occupation of the suit premises

(f) Cost of the suit.

(g) Any other relief as the Hon. Court may deem fit to issue."

At all the material time during the trial of the matter at hand, the Plaintiff was represented by **Mr. James Bwana**, the learned advocate from Bwana advocates; the 1st defendant was represented by **Mr. Tazan Mwaiteleke**, advocate from K&M advocates and the 3rd Party enjoyed the service of **Ms. Aziza Msangi**, learned advocate from Mbamba advocates. The **Commissioner for Lands** and **the Hon. Attorney General** who are the 4th and 5th defendants in the Counter Claim were duly represented by **Mr. Elias Mwendwa**, learned State Attorney.

At the commencement of hearing, issues were framed for determination of both the original suit and the counter claim as follows: -

- 1. Whether the Sale of Plot Nos 243 and 245 Block 7 Bunju Area, Kilungule, Kinondoni, Dar es Salaam, with CT. Nos 107170 and 107159 was lawful.*

2. Whether the consent for disposition of right of occupancy issued by the 4th Defendant was lawful.

3. What reliefs are the parties entitled to.

In proving the above issues, the Plaintiff one **AMIR SALEHE MWAMBA** was the only witness of the Plaintiff's case. He testified as PW1.

He tendered the following documents into evidence: -

1. Habari leo Newspaper advertisement dated 31st January 2013 (Exhibit "P1").
2. Receipt No.088801, issued on 16th February 2013 by Yono Auction Mart and Co.Ltd in favour of Ameir S. Mwamba (Exhibit "P2").
3. Deposits slip dated 19/02/2013 of TZS 26,700,000/= and 19/02/2013 of TZS 34,000,000 collectively admitted (exhibit "P3").
4. Certificate of Sale over the property located on Plot Nos. 243/245 Block 9 Bunju (exhibit "P4").
5. Certificate of Title No. 107170 and Certificate of Title No.107159, collectively admitted (exhibit "P5").
6. Letters dated 15th March,2019, 15th April 2019, 24th October 2019, 2nd February, 2021, 20th September 2021

and 14th September 2021 which were collectively admitted (exhibit "P6").

7. Letter from Barclays Bank dated 21st November 2019 to Bwana Attorneys (exhibit "P7").

The 1st Defendant **ABSA BANK(T) LTD** paraded one witness, one **LUDOVICK SINDIKILAMBO MAHUWI** who testified as PW1. He tendered 15 exhibits as follows: -

1. Letter of offer dated 19th December 2008, (exhibit "D1").
2. Mortgage Deed (exhibit "D3").
3. Bank statement of the study loan (exhibit "D3").
4. Bank Statement of the Staff Housing loan, Account No.3009821 (Exhibit "D5").
5. Bank Statement of Staff Personal loan (exhibit "D5").
6. Statutory Demand Notice (exhibit "D6").
7. Letter by Barclays Bank dated 28th November 2012 demand for payment (exhibit "D7").
8. Letter by Patrick Mosenda Nyamohanga, dated 25th March 2010 (exhibit "D8").
9. Valuation report of Plot No.243 Block 9 (exhibit "D9").
10. Valuation Report of Plot No.245 Block 9 (exhibit "D10").
11. Letter dated 14th September 2017, by Patrick Mosenda Nyamohanga, access to my account (exhibit "D11").

12. Letters by Patrick Mosenda Nyamohanga dated 26th September 2017 and 14th September 2017 (exhibit "D12).
13. Patrick Mosenda Re-Resignation Letter dated 4th December 2009 (exhibit "D13").
14. Notice for Vacant Possession of the Property dated 21st February 2013 (exhibit "D14").
15. Interim Order of Kinondoni District Court in Civil Case No.15 of 2013 (exhibit "D15").

The 3rd Party who is the Counter Claimant called 4 witnesses, **PATRICK MOSEDA NYAMOHANGA** who testified as DW2, **OMARY JUMA SHABANI** - DW3, **NANCY MBUSIRO BAGAKA** - DW4 and **SEIF STAMBULI MOHAMED** - DW5. The 2nd defendant, Yono Auction Mart Ltd called only one witness, **LUCAS NGOLE** who testified as DW-6. On their part, the 4th and 5th defendants paraded one witness, **ATHUMANI KONDO JUMBE**, Assistant Registrar who adduced evidence as DW-7.

Let me begin by addressing the 1st issue **whether the sale of the suit properties Plots Nos 243 and 245 Block 7 Bunju Area, Kilungule to the plaintiff in the original suit and the 3rd Defendant in the counter claim and subsequent transfer thereto was lawful.**

The testimony of the plaintiff (PW1) was to the effect that he purchased the suit land through public auction, which was advertised in

newspaper (exhibit P1/D-22) and conducted on 18th February 2013. As the highest bidder he paid US\$30,000 equivalent to TZS 48,000,000 and was issued with receipt (exhibit "P2"). He later on paid the balance of the bid price through two deposits (exhibit "P3"). Having paid the purchase price, he was issued with the certificate of sale (exhibit "P4"). According to PW1 he was also given Discharge Deeds and original Certificates of Title and took them to the Registrar of Titles for transfer of ownership from the 3rd party to himself (exhibit "P5"). The Registrar of Titles effected the transfer accordingly.

Evidence of the Plaintiff was supported by the testimony of DW-1 who testified to know the Plaintiff as the person who purchased the suit landed properties for TZS 190,000,000/=. DW-1 asserted that the suit premises had secured the 3rd party's housing, study and personal loans advanced to him by the 1st Defendant. He tendered the facility letter (exhibits D1) and Mortgage Deed (Exhibit D2).

According to DW-1, the 3rd party defaulted servicing of the loans after he had resigned from employment with the 1st Defendant. He tendered bank statements for all the loans (Exhibit D3, study loan; Exhibit D4, Housing loan; and Exhibit D5, staff personal loan). DW-1 told the court

that the 3rd party had defaulted the amount of TZS 55,138,382.20. The properties were sold for TZS 190,000,000/= and after settling the debt, the balance of TZS 134,861,616.80 was credited in the account of the 3rd third party.

DW-1 also testified that prior to the sale, the 3rd party was informed through telephone calls, emails and later he was issued with the 60 – days statutory demand notice (exhibit D – 6, Exhibit D – 7) requiring him to pay TZS 49,508,249.34 which ended up in vain. He testified that following those demands, the 3rd party responded promising to pay (Exhibit D – 8) and only paid TZS 10m and no further payments were made by the third party to clear his loans.

DW – 1 informed the court that the disputed land was sold by auction where the plaintiff emerged the highest bidder and complied with all the conditions and was issued with all necessary documents for transfer and the property has been transferred to the plaintiff. DW-1 told the court that the 3rd party is still in occupation of the suit properties because he obtained a **court injunction order** that barred the Bank from evicting him from the dispute land. The testimony of DW – 1 was to the effect that

prior to the disposition, the Bank conducted valuation (Exhibit D – 9 and D – 10) where the total value of both plots in was TZS 190m.

The 3rd party who testified as DW – 2 conceded to have taken the said loan in 2009 which he used to build a house on the dispute land which he also pledged as security for the loan. According to him all loans were being paid through monthly deductions from his salary. He testified that he left employment with the 1st Defendant in December, 2009 where he went to work for Marie Stopes. DW-2 conceded further that at the time of his termination of employment with the 1st defendant, he was still indebted to the 1st Defendant. He undertook to continue servicing the loans, which he did by instructing the 1st Defendant to deduct TZS 10,000,000/= from his terminal benefits which would have covered 17 monthly instalments.

DW-2 asserted further that he continued servicing the loans through his personal accounts with the 1st Defendant, he tendering 7 deposit slips (Exhibit D – 17). According to DW-2, the 1st Defendant was demanding to be paid the entire amount for all loans in full.

DW – 2 continued to testify that he was never served with the statutory notice and Exhibit D – 6 never reached him. He also denied to have seen newspaper advertisement of the auction of the suit properties.

He added that on 16th February 2013, a staff from 2nd Defendant is the one who informed him that the suit properties had been auctioned and that he was supposed to vacate the premises within seven days.

The 3rd party laid claims to 1st and 2nd Defendants for unlawful disposition of the dispute land. He further laid claims against the Commissioner for Lands (4th Defendant) for issuing consent for transfer of ownership, while the sale and transfer of disputed land was unlawful and thus its transfer was equally unlawful.

Another witness was DW – 3, the neighbour to the disputed land, since 1973. He testified not to be aware of the auction of the suit properties. On cross examination he admitted that it was not necessary for the auctioneer to inform him about the auction. He also admitted that auction would have conducted without his physical presence.

DW – 4 is the spouse of the 3rd party. She testified that on 16 February 2013 an officer from **Yono Auctioneers (2nd Defendant)** **informed them that the house has been sold and they had to vacate from it within a week.** On cross examination she said that she married the 3rd party in 2005. They borrowed money for construction of the suit house from Barclays bank, and she consented the home loan.

Another witness was DW – 5, the chairman of the street council (serikali ya Mtaa) of Bunju since 2014. He testified that the disputed house is in his jurisdiction. He testified to live in the neighbourhood with the disputed land where 3rd party with his family live. DW-5 informed the court that he has been living in the area since 1988 and that the 3rd Party is the one who informed him about the sale of disputed land by auction. DW-5 told the court that his office was not notified of the auction of the suit land.

When cross examined DW-5 stated that the executive officer is the one who runs the day to day activities of the office and the one responsible for receiving and maintaining all the records. He also told the court that by the time the 3rd Party made inquiries on the auction, two years had already passed.

DW – 6, was an Operations Manager from the 2nd Defendant. He testified that prior to the auction, his office had issued a 14 – days demand notice to the 3rd Party and advertised the auction into the Habari Leo newspaper of 31st January 2013, (Exhibit D – 20). He told the court that the auctioned properties were security for a defaulted loan at the 1st Defendant. In his testimony, he asserted that, prior to the auction date, their vehicle moved round various places advertising the intended auction

of the disputed land. He testified further that the plaintiff emerged the highest bidder who was issued with the Certificate of Sale (Exhibit P – 4). According to DW-6, after the auction, the occupiers of the disputed land were informed to vacate the house within seven (7) days.

The final witness was DW-7, the Assistant Land Registrar working for the 4th Defendant. He testified to the effect that the suit land has been transferred to the Plaintiff. According to him, the documents relied when effecting transfer were title deed, certificate of sale, discharge deed, evidence of payment of applicable taxes, fees and identity card of the new owner. He told the court that all necessary documents were submitted, and the Registrar of Titles issued notice of 30 days to the existing owner before effecting transfer to the current owner.

DW – 7 testified further that according to the records at the office of the Registrar of Titles, the owner of the disputed land is the Plaintiff. He tendered the Deed of Transfer under Power of Sale issued by the 1st Defendant and registered by the office of Registrar of Titles (Exhibit D – 21) and Discharge of the Mortgage Deed (Exhibit D – 22).

Having gone through the testimonies of all witnesses as afore presented, it is now apt to determine the issue whether the suit landed

properties were legally sold and transferred to the plaintiff in the original suit. The principle provided under section 110(1) of the Evidence Act, [Cap.6 RE 2019] that he who alleges has the burden to prove, will guide the court in the course of determining the issue. This principle has been echoed in various decisions including in the case of **Habiba Ahmadi Nangulukuta & 2 others vs Hassan Ausi Mchopa (The Administrator of Estate of the late Hassan Nalino) & Another**, Civil Appeal No.10 of 2022 (unreported), where the Court of Appeal of Tanzania insisted that the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue and not on the party who denies it.

Evidence on record shows that the Plaintiff in the original suit is the *bona-fide* purchaser of plots No.243 Block 9, Bunju in Kinondoni Municipality, with Certificate of Title No.107170, L.O No.341447 and Plot No.245 Block 9, Bunju in Kinondoni Municipality, registered under Certificate of Title No.107159, L.O No.337665. He purchased the same through public Auction conducted by the 2nd Defendant in counter claim on 16th February 2013. The plaintiff was given certificate of sale after having paid the whole purchase price of Tshs 190,000,000/=. Evidence adduced

by DW-7, officer from the office of the Registrar of Title is to the effect that the suit properties have been transferred and registered in the name of the plaintiff in the original suit (Amir Salehe Mwamba).

I have examined evidence on record and found that it is not in dispute that the suit properties, Plots No. 243 and 245, Block 9 Bunju Area, Kilungule, Kinondoni Municipality- Dar es Salaam, was Mortgaged to the 1st Defendant in both the original suit and the Counter Claim by the 3rd party in the original suit and Counter Claimant in the Counter Claim as security for the loan advanced to him. It is also unequivocally clear that the 3rd Party and Counter Claimant executed a Mortgage over the suit properties in favour of the 1st Defendant. Both, oral testimonies of all witnesses and documentary evidence including that of a letter of offer dated 19th December 2008 (exhibit D-1) and the Mortgage Deed (exhibit D-2) prove the said fact.

It is also on record that the 3rd Party and Counter Claimant (Patrick Mosenda Nyamohanga) defaulted payment of the loan. Following such default, the Mortgagee (the 1st Defendant) opted to exercise its right of sale provided under section 126 of the Land Act, [Cap.113 RE 2019]. Section 126(d) of the Act, provides thus: -

"126. Where the mortgagor is in default, the mortgagee may exercise any of the following remedies –

(a)...

(b)...

(c)...

*(d) **sell the mortgaged land,...**" (Emphasis added)*

In view of the above provision the mortgagee had the right to sale the mortgaged (suit) properties, following the default. The question is whether the sale of the suit properties was conducted pursuant to the laid down procedures. Section 127 of the Land Act, (supra) requires that where there is a default in payment of loan and there is contemplation of selling the mortgaged property, the mortgagee is required to issue a 60 days' Notice to exercise the said remedy.

In the instant case, evidence on record show that statutory demand notices for repayment of the loan were served to the mortgagor (3rd party and counter claimant). The said Demand Notices were issued on 30th July 2012 and on 28th November 2012 requiring him to pay the loan (exhibits D-6 and D-7), but both were not heeded. The law, under section 132(1) of the Land Act (supra) provides thus-

"132. -(1) A mortgagee may, after the expiry of sixty days from the date of receipt of a notice under section 127, sell the mortgaged land." (emphasis added)

In the instantaneous case, 60 days notice issued to the mortgagor (the 3rd party and counter claimant) expired without being heeded as aforesaid. In the exercise of the right provided in the cited provision herein above, the 1st Defendant proceeded to appoint the 2nd Defendant in the counter claim as its receiver to exercise power of sale of the suit landed properties on its behalf. According to section 134(2) of the Land Act (supra), where the mortgaged property is intended to be sold by public auction publication is mandatory. The Act provides thus-

"134.- (2) Where a sale is to proceed by public auction, it shall be the duty of the mortgagee to ensure that, the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the mortgaged land...." (emphasis added)

I have noted from evidence on record that the 2nd Defendant published the intended auction on 31st January 2013(Exhibit P-1) and conducted the public auction on 16th February 2013 where the Plaintiff in

the original suit emerged the highest bidder and paid the whole purchase price of Tshs. 190,000,000/=.

From the foregoing, it is clear that the sale of the suit landed property was justifiable as the mortgagor (3rd Party and Counter Claimant) defaulted payment of the loan. The sale of the disputed land also complied with all legal requirement. The 1st issues is thus answered in affirmative.

Let me turn to the 2nd issue **whether the consent of disposition issued by the 4th Defendant was lawful**. Having found in issue number one (1) that the sale of the suit landed property was lawfully, then it is obvious that the process to transfer the suit landed property to the bona-fide purchaser was lawful. Besides, the Commissioner for Lands (4th Defendant) is not involved in registering the transfer of the land purchased in a public auction under power of sale of the mortgaged property. According to section 51(1) and (2) of the Land Registration Act, [Cap.334 RE 2019], it is the Registrar of Titles who is involved in the registration of transfer of title of the landed property sold in the public auction under power of sale. It provides thus: -

"51.-(1) A bona fide purchaser for value of a registered estate from a lender selling in professed

*exercise of his power of sale shall not be bound, nor shall the Registrar when a transfer is presented for registration be bound, to inquire whether default has occurred, or whether any notice has been duly served or otherwise into the propriety or regularity of any such sale, but the **Registrar shall serve notice 'of such transfer on the owner of the estate and shall suspend registration of such transfer for one month from the date of such notice, and at the expiration of such period the Registrar shall register the transfer as at the date of presentation,** unless in the meanwhile the High Court shall otherwise order, and thereafter the transfer shall not be defeasible by reason that default had not occurred, or that any notice was not duly served or on account of any impropriety or irregularity in the sale.” (Emphasis added)*

From the provision herein above, the Registrar of Titles is required to serve notice of one month on the owner of the estate about the intended transfer of the right of occupancy to the bonafide purchaser. Evidence adduced by DW-7, Assistant Registrar was to the effect that the said Notice was issued to the 3rd party before effecting the transfer. The 3rd party never

challenged the intended transfer by procuring an order of the High Court, as required under section 51(1) of the Land Registration Act (supra). Upon lapse of 30 days of the Notice, the Registrar proceeded with the transfer of the said title from the 3rd Party to the plaintiff in the original suit.

From evidence on record, transfer of the suit landed property was to the Plaintiff in the main suit was in compliance with the law. The 2nd issues is thus answered in affirmative.

The **last issue was on the reliefs parties are entitled** to. In the original suit, the Plaintiff sought to be declared a purchaser of a house on Plot Nos. 243/245 Block 9 Bunju Area and for an order to the Registrar of Title to effect transfer to him. Evidence on record has unequivocally established that the plaintiff in the original suit (Amir Salehe Mwamba) is the one who purchased the suit premises in a public auction. I am of the firm view that a person who purchases a property in public auction like the one at hand in good faith, believing that the vendor had a right to sell and without any suspicious circumstances to put him to on inquiry, is a *bona-fide* purchaser. In **Suzana S. Waryoba vs Shija Dalawa**, Civil Appeal No.44 of 2017, the Court of Appeal of Tanzania had this to say in regard to the *bona-fide* purchaser: -

" A bona-fide purchaser is someone who purchases something in good faith, believing that he/she has clear rights of ownership after the purchase and having no reason to think otherwise. In situations where a seller behaves fraudulently, the bona-fide purchaser is not responsible. Someone with conflicting claim to the property under discussion would need to take it up with the seller not the purchaser, and the purchaser would be allowed to retain the property."

In the matter at hand, the Plaintiff in the original suit purchased the suit landed properties in a public auction believing that the Defendant in the original suit who is also the 1st Defendant in the Counter Claim and 2nd Defendants in the Counter Claim were selling the suit premises under the right of sale of the mortgaged property. In **JM Hauliers Limited vs Access Microfinance Bank (Tanzania)limited former Access Bank Tanzania**, Civil Appeal No.274 of 2021, the CAT held as follows regarding the person who purchases a property in public auction: -

"The purchaser of the mortgaged property becomes a bonafide purchaser right after the fall of the

harmer at the auction and ought to be protected under section 135(5) of the Act."

Apart from being a *bona-fide* purchaser the suit land, the testimony of Dw-7 (Assistant Registrar of Titles) clearly show that the suit landed properties have already been transferred and registered in the name of the Plaintiff in the original suit. Section 51(2) of Land Registration Act, [Cap.334 RE 2019] provides that upon transfer and registration the title over the mortgaged estate shifts to the purchaser. It provides thus: -

"(2) Every such transfer, when registered shall vest the mortgaged estate in the purchaser freed and discharged from all liability on account of such mortgage or of any other incumbrance registered or entered subsequent thereto..."

In the instant matter, the Plaintiff in the original suit (**AMIR SALEHE MWAMBA**) has been registered as owner of the suit properties, he is thus entitled to be declared owner of the suit properties. In view of the definition of the word 'owner' laid down under section 2 of the Land Registration Act, (supra) the plaintiff in the original suit is the owner of the suit landed properties. The word owner has been defined as follow: -

“owner” means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered;”(Emphasis added)

The plaintiff also prayed for payment of mesne profit at the rate of USD 2,000 per month from 1st March 2013 to the date of handling the suit premises. Evidence on record could not prove the basis of the claimed amount. I have also considered the fact that, the 3rd party and counter claimant was the previous owner of the suit premises. His continued stay in the suit premises was due to the pendency of the instantaneous suit. Besides, mesne profit is a remedy claimed against a person who has been found to be in wrongful possession or occupation of the property (a trespasser). In this case, parties have spent all years from 2014 in court disputing on the sale of the suit properties. The 3rd party believing that his properties were unlawfully sold while the plaintiff viewing that he is entitled to take possession of the land he purchased in a public auction. In the circumstance of this case, mesne profit cannot be awarded.

With regard to the Counter Claim, the Counter Claimant has failed to prove his claims as evidence on record has proved that the suit landed properties were lawfully sold. In the upshot I make the following orders: -

1. The Plaintiff in the original suit, AMIR SALEHE MWAMBA is the *bona-fide* purchaser of the suit landed property, Plots No. 243 and 245 Block 9 Bunju Area, Kinondoni Municipality.
2. The plaintiff in the original suit, AMIR SALEHE MWAMBA is the rightful owner of Plots No.243 and 245 Block 9 Bunju Area, Kinondoni Municipality and is entitled to vacant possession.
3. The entire Counter Claim is dismissed with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 3rd August, 2023.




L. HEMED
JUDGE