IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL CASE NO. 232 OF 2023

(Arising from Land Application No. 506 of 2018, delivered at Kinondoni Land and Housing Tribunal)

MAGRETH FABIAN MRINA (As Administratrix

Of the estate of the late Fabian Steven Mrina) ..... APPELLANT

VERSUS

EFC TANZANIA MICROFINANCE BANK ..... 1ST RESPONDENT

KELVIN NGUMA ..... 2ND RESPONDENT

FADHIL BARIKI TWEVE ..... 3RD RESPONDENT

LOCUS DEBT MANAGEMENT LTD ..... 4TH RESPONDENT

BARAKA MAREGESI ..... 5TH RESPONDENT

JUDGMENT

29th September, 2023 & 13th October, 2023

L. HEMED, J.

At the District Land and Housing Tribunal for Kinondoni, the appellant herein, **MAGRETH FABIAN MRINA** (the administratrix of the estate of the late **FABIAN STEVEN MRINA**) sued the respondents

herein, **EFC TANZANIA MICROFINANCE BANK, LOCUS DEBT MANAGEMENT LTD, KELVIN NGUMA, FADHILI BARIKI TWEVE** and **BARAKA MAREGESI,** seeking for nullification of the sale by public auction, the suit landed property, located at Madale Mivumoni area, Wazo, Kinondoni Municipality, Dar es Salaam. The claims of the Appellant before the trial Tribunal were such that the suit property which was sold to the 3rd Respondent by the 2nd Respondent under the instructions of the 1st Respondent was the property of her late father one **FABIAN STEVEN MRINA,** whose estate was under her administration.

The appellant alleged further that, on 11th August, 2018, the 2nd Respondent working under instructions of the 1st Respondent, conducted a public auction on the disputed land property without any notice to the her as administratrix of the deceased's estate. Having made follow-up, she discovered that the 4th respondent applied for a term loan facility of Tshs. 25,000,000/= from the 1st respondent, that was secured by the disputed land alleged to be located at Mivumoni Street Wazo, Kinondoni Municipality, Dar es Salaam City, together with a motor vehicle made Toyota Noah with registration No. T. 754 DKT, the properties which the 4th respondent claimed to be the owner.

Having deliberated over the matter, the trial Tribunal found that the appellant herein had failed to prove her claims. It ended up dismissing the entire suit with costs. Aggrieved by the said decision, the appellant opted to knock the gates of this Court with a Petition of Appeal containing the following grounds: -

> *" 1. That the trial Tribunal erred in law and fact to declare the 2nd respondent as the bonafide purchase of the suit land without any prove of payment from either the 1st respondent, 2nd respondent or 4th respondent who conducted the alleged actuation.*
>
> *2. That the trial tribunal erred in law and fact to declare that the land in dispute was mortgaged to secure the 3rd respondent loan based on the documents from Mtaa Government introducing the 3rd respondent and the appellant's mother as the husband and wife, and the owner of the disputed land without taking into account that land ownership is based on the document and not personal statement.*
>
> *3. That the trial tribunal erred in land and fact by delivered its decision in contravention with Regulation 20(a), (b), (c) and (d) of the Land Disputes Courts (The District Land and Housing*

Tribunal) Regulations, 2003 without any legal justification for not complying to it.

4. That the trial tribunal erred in law and fact by failure to consider regulation 12(1), (2) and (3) (a) and (b) prior proceeding with hearing of the suit without any legal justification for not complying with it.

5. That the trial Tribunal erred in law and fact by failure to consider that the 1st and 4th respondent prior effecting and after effecting the illegal disposition they did not comply to the laws and procedure governing disposition of land in public auction, and non considering the evidence of the appellant which was challenging the legality of sale, it lead to unfair decision.

6. That the trial tribunal erred in law and fact to rely on alleged mortgage deed, which was not and is not registered anywhere and the same had no proof of payment of the stamp duty prior being admitted as evidence, but the same was relied upon by the trial tribunal in arriving to the decision without any legal justification for not complying to the laws.

7. The trial tribunal erred in law and fact by determining the suit without taking into account of several exhibits tendered by the parties without any legal justification for non considering it.

8. That the trail tribunal erred in law and fact by determining the suit based on the technicalities which were not raised at any stage of the proceeding, which is in contravention with regulation governing the business of the District land and housing tribunal in Tanzania.

9. That the trial tribunal erred in law and fact to raise the new issue and resolved the same without afford the parties to address on the new issues prior coming its decision without any reasonable justification."

The appellant is therefore praying for the following orders: -

i. That the trial tribunal decision be quashed and set aside.
ii. The appellant be declared the owner of the disputed property.
iii. The 1st and 4th respondents be ordered to collect their debt from the asset which was given as security by 3rd respondent.
iv. Permanent injunction be granted against both respondents not to interfere the appellant's land.
v. The declaration of the 2nd respondent as a bonafide purchaser be nullified.
vi. The 1st, 2nd, 3rd and 4th Respondents be ordered to pay cost.
vii. Any other relief(s) this honourable Court mat deem fit and just to grant

The appeal was argued by way of written submissions. **Mr. Alex Enock**, learned advocate, represented the appellant, the 1st and 2nd

respondents enjoyed the legal services of **Mr. Cleopas James,** learned advocate, while the 3rd respondent acted in person. The matter proceeded *ex parte* against the 4th and 5th respondents who despite being duly served they opted not to appear.

The learned counsel for the Appellant and the 3rd Respondent submitted to support the appeal. In determining the appeal, I opted to analyse all grounds of appeal as presented.

In the 1st ground of appeal the appellant is faulting the decision of the trial Tribunal for having **declared the 2nd Respondent bonafide purchaser of the suit landed property without any prove of payment from either the 1st Respondent or, 2nd Respondent or 4th respondent who conducted the auction**. In respect to this ground of appeal, the counsel for the appellant and the 3rd respondent argued that, the records of the tribunal has nothing to prove the payment of 25% of the purchase price as it was one of the condition in conducting such auction as per exhibit D5. They argued that the 4th respondent who was required to certify the payment of 25% never appeared before the trial Tribunal. They were of the view that it was not proper for the trial tribunal to declare the 2nd respondent as the *bona-fide* purchaser of the disputed land.

In reply thereto, the counsel for the 1st and 2nd respondent contended that, the duty of the appellant was to prove ownership of the suit property and not to question the payment of the purchase price as the appellant was not privy to the loan agreement between the 1st and 3rd respondents. The learned counsel referred the court to the decision in the case of **D. Moshi t/a Mashoto Auto Garage vs the National Insurance Corporation,** Civil Case No. 210 of 2000 (Unreported) and the case of **Puma Energy Tanzania Limited vs Spec – Check Enterprises Ltd,** Commercial Case No. 19/2019 (HCT) to cement on his argument.

I have gone through the record of the trial Tribunal and found that the 1st and 3rd respondents entered into a loan agreement where the suit property was pledged as security to the said loan. The 3rd respondent defaulted to repay the loan, as the result thereof, the 1st respondent instructed the 4th respondent to sale the suit landed property by public auction, where the 2nd respondent emerged the highest bidder and purchased the suit landed property.

Evidence on record reveals that before the trial Tribunal payment of purchase price was not among the facts in issue. All parties were in agreement that the suit property was auctioned for purposes of realizing

the money advanced to the 3rd respondent by the 1st respondent. The dispute before the trial Tribunal was centred on the validity of the sale of the suit landed property. This is evidenced from issues which were framed for determination before the trial Tribunal. The issues were as follows:-

> *"1. Je, mnada uliofanyika kwenye eneo bishaniwa ulikuwa batili au halali.*
>
> *2. Je, eneo bishaniwa lililopo Madale Wilayani Kinondoni liliwekwa rehani kwa mdaiwa wa kwanza kama dhamana ya mkopo uliotolewa kwa mdaiwa wa 4 na mdaiwa wa kwanza.*
>
> *3. Nani mmiliki halali wa eneo bishaniwa kati ya wadaawa.*
>
> *4. Nafuu zipi wadaawa wanastahili kupatiwa."*

The above issues are translated into English as follows:

1. Whether the auction of the suit property was void or valid.
2. Whether the suit property located at Madale in Kinondoni District was pledged as security to the 1st respondent for the loan issued to the 4th respondent
3. Who between the parties is the lawful owner of the disputed property.

4. To what relief are the parties entitled.

From the pleadings and the issues framed at the commencement of the trial, parties were not disputing on whether or not the purchase price was paid. The appellant herein was challenging the validity of mortgaging the suit landed property as she was alleging that the said suit land belonged to the late **FABIAN STEVEN MRINA**. It is trite law that the duty of parties in a suit is to prove only what has been pleaded pursuant to the principle laid down by the Court of Appeal of Tanzania in **YARA Tanzania Limited vs IKUWO General Enterprises Limited**, Civil Appeal No.309 of 2019. The court stated that parties are bound by their own pleadings. In other words, during trial parties have the duty to prove only disputed facts and not otherwise. In the instant matter, payment of purchase price was not in dispute and therefore it was not necessary to prove that payment of the purchase price was effected prior to declaring the 2nd respondent *bona-fide* purchaser of the suit landed property. From the foregoing, I find no merits in the 1st ground of appeal.

Regarding the 2nd ground of appeal, the appellant is blaming the trial Tribunal to **declare that the land in dispute was mortgaged to secure the 3rd respondent loan based on the documents from**

***Mtaa* Government, introducing the 3rd Respondent and the appellant's mother as the husband and wife and owners of the disputed land without taking into account that land ownership is based on the document and not a personal statement**. The learned counsel for the Appellant asserted that, the 3rd respondent alleged to be the husband of the appellant's mother without proof of marriage as no marriage certificate was tendered. The marriage certificate which was tendered was that of the deceased and the mother of the Appellant which in his opinion was not considered by the trial Tribunal.

It was also argued that the 3rd Respondent did not prove ownership of the property he mortgaged. The 3rd respondent supported the assertion of the appellant as he submitted to have had no title to the land in dispute.

In response thereto, the counsel for the 1st and 2nd respondents contended that, the appellant failed to prove ownership of the suit landed property. He argued that, evidence brought by the 1st respondent was heavier than that of the appellant in regard to ownership of the suit land. With regards to the question of marriage between the 3rd Respondent and the mother of the appellant it was

stated that there was no matrimonial dispute at the trial tribunal and therefore it was not necessary to prove marriage.

I have extensively examined the proceedings of the trial Tribunal and found that, both the pleadings and proceedings do not display the existence of matrimonial dispute or any fact that needed to be proved by marriage certificate. The appellant herein sued the respondents challenging the legality of mortgage and the sale of the suit land by public auction claiming that it was the property of the late Fabian Steven Mrina and thus part of his estate. That being the case, it was the duty of the plaintiff to prove her claims that the suit land belonged to her late father. The fact that there was no matrimonial dispute then the marriage certificate was not relevant to the facts in issue before the trial Tribunal.

The duty of the appellant to prove that the suit landed property was part of the estate of the late Fabian Steven Mrina is pursuant to the principle that he who alleges must prove as embodied in section 110(1) of the Evidence Act, [Cap.6 RE 2022]. It provides that:-

> *"110.-(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

I have examined the proceedings of the trial Tribunal and found that the Appellant did not manage to prove her allegation. She tendered the document purported to be the sale agreement (exhibit P1) used by his late father to purchase the land. The said document however, was in a photocopy form and the trial Tribunal hesitated to consider and rely on it in making its decision. Record of the trial Tribunal shows that the appellant never told the court the where about of the original document and why she opted to rely on the photocopy. Section 66 of the Evidence Act (supra) provides thus:

> *"...Documents must be proved by primary evidence except as otherwise provided in this Act."*

I am of the firm view that the trial Tribunal was right to negate exhibit P1 because it contravened the above-cited section. Apart from exhibit P1, the Appellant had no other tangible evidence to prove ownership of the suit landed property. The fact that the appellant failed to prove that the suit land was part of the estate of the late Fabian Steven Mrina, then the trial Tribunal was right to dismiss the suit. From the foregoing, I find no merits in the 2nd ground of appeal.

The 3rd ground of appeal is that the trial Tribunal erred in law and fact by delivering its decision in contravention with Regulation 20(a),

(b),(c) and (d) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 without any legal justification for not complying to it. I have revisited Regulation 20(1)(a) up to (d) of the Regulations, it concerns with the contents of the Judgment of the Tribunal. It provides thus:

> *"...The Judgment of the Tribunal shall always be short, written in simple language and shall consist of:*
>
> *(a) a brief statement of fact;*
>
> *(b) findings on the issues;*
>
> *(c) a decision; and*
>
> *(d) reasons for the decision."*

The counsel for the appellant submitted that the judgment of the trial Tribunal contravenes regulation 20 of the Regulations above. In his arguments to oppose the ground of appeal the learned counsel for the 1st and 2nd respondents was of the view that the judgment of the trial DLHT complied with the provision.

I have gone through the Judgment of the trial Tribunal and found that it is short and is in Swahili language. The said judgment consists of a brief statement of fact, findings on the issues and the decision has

reasons thereof. In the premises, I find no merits in the 3rd ground of appeal.

As to 4th ground of appeal, the counsel for the appellant and the 3rd respondent submitted that, the trial Tribunal failed to observe Regulation 12(1), (2) of GN No. 174 of 2003 by not reading the contents of the application prior to the commencement of hearing, that lead to unfair judgment and injustice. To bolster the arguments, the appellant cited the case of **Fatuma Ida Salum vs Khalifa Khamis Said** (2004) T.L.R 423, **Edwin Isdori Elias vs Serikali ya Mapinduzi Zanzibar** (2004) T.L.R 297, **Hamis Rajabu Dibagula vs Republic** (2004) T.L.R 181 and **Kilongo and Another vs The Republic**, Criminal Appeal No. 230 of 2021.

In reply thereto, the counsel for the 1st and 2nd respondents submitted that, procedural irregularity cannot vitiate proceedings if no prejudice has been occasioned to a party. He supported his arguments by the decision of this court in **Issa Ndege vs Tlagasi Shangwe,** Land Appeal No.105 of 2022.

I have considered the said ground of appeal in respect to non compliance of Regulation 12 of the Regulations. I have perused the proceedings and found that no where it has been indicated that the trial

Chairman caused the application to be read to the defendants before commencement of the trial. The question that arises is whether the said omission is fatal.

In determining the fatality of the omission, one has to assess whether or not such omission has occasioned an injustice. In the case of **Issa Ndege vs Tlagasi Shangwe** (Supra) at page 4, this court while discussing regulation 12 of the Regulations, GN. No.174/2003 observed thus:-

> *"... is the omission to read and explain the contents of the application to the respondent fatal to the extent of vitiating the proceedings?* ***In my considered opinion, the same is not fatal because the respondent had an opportunity to admit the claims if he wishes to do after hearing the applicant's testimony*** *and that could serve the same purpose envisaged in Regulation 12 of the Land Tribunal Regulations..."*
> (Emphasis added)

In fact, I subscribe to the position taken by this court in the above case. I am holding so because the rationale of the requirement to read the contents of the application to the respondents is to enable them to understand the disputed and undisputed facts so as to speed up the

trial. This requirement is similar to that of preliminary hearing in criminal proceedings, where, the contents of the charge is read over to the accused person, and the accused person admits or denies the facts contained therein. Failure to comply with the preliminary hearing cannot vitiate the proceedings. This position was set in the case of **Onesmo Boniface vs R,** Criminal Appeal No. 34 of 2003, it was held that: -

> *"It is mandatory to conduct preliminary hearing, but when the case proceeds to the conclusion without conducting it, it is not fatal as its purpose is overtaken by events. It would be ridiculous to quash the proceedings and order a re – trial because the preliminary hearing was not conducted whether speedy or delayed."*

Likewise, in trials at the District land and Housing Tribunal, though it is necessary for the chairman to read the contents of the application to the respondent, but when the case proceeds to the conclusion without reading the same, it will not be fatal as its purpose is only to speed up the proceedings. I am of the firm view that it would be ridiculous to quash the proceedings on the only reason that application was not read to the respondents. After, all failure to read the

application to the respondent cannot in anyway cause miscarriage of justice on either party to the proceedings. I am holding so because, according to regulations 6 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN. No.174 of 2003, the respondent in the matter before the District Land and Housing Tribunal has the right of being served upon filing the Application. In view of regulation 7(1)(a) of the Regulations, once served, he has the opportunity within 21 days, to file written statement of defence. It is thus obvious that, when responding to the application, the respondent gets to know and understand the nature of the claims raised against him. From the foregoing, I find no merits in the 4th ground of appeal.

With regard to the 5th ground of appeal, it was argued that, the appellant and the 3rd respondent were not issued with 60 days notice as provided under Section 127(1) and (2) of the Land Act, [Cap 113 R.E 2019]. To cement the arguments, the decisions in **Judith Athuman Shani vs National Microfinance Bank PLC and 2 Others,** Land Appeal No. 5 of 2021 (Unreported) and **Bagamoyo View Hotel Limited vs EFC Tanzania M.F.C Limited and two others,** Land Case No. 54 of 20198, High Court of Tanzania (Land Division) Unreported, were referred.

In response thereto, the counsel for the 1st and 2nd respondents contended that, the 1st respondent issued the 60 days' notice which was admitted during the trial as Exhibit D2. He stated that, since the appellant was not a party to a loan agreement, the 1st respondent was not obliged to issue a default notice to her.

The I have extensively examined Exhibit D2 tendered and admitted at the trial Tribunal and found that, 60 days' notice was issued to the 3rd respondent (the borrower and defaulter) on 27th October, 2017. I am of the firm view that Notice of default could not in any way be issued and served to the appellant because she was neither a borrower nor a guarantor to the loan agreement. In other words, it was proper for the appellant to be not served with the 60 days' notice of default because she was not privy to the loan agreement.

I am of the firm view that the fact that the 3rd respondent was issued with the notice as per the requirement of Section 127(1) of the Land Act, Cap 113, then it was enough. In that regard, I find the 5th ground of appeal to have no merits.

Regarding ground No.6, the counsel for appellant and the 3rd respondent submitted that, the loan issued to the 3rd respondent was based on a mortgage created on land which was not registered, contrary

to section 113 to the Land Act, *supra.* They further stated that the stamp duty was not registered as per Section 11 of the Registration of Documents Act, [Cap 117 R.E 2019] and sections 18, 22 and 47 of the Stamp Duty Act [Cap 189 R.E 2019]. They cited the case of **Malmo Montagkonsult Tanzania Branch vs Magret Gama**, Civil Appeal No. 86 of 2001, to cement their argument. It was also asserted that the trial Tribunal acted improperly to take into account Exhibit DI which had contravened the legal requirement.

In reply, the counsel for the 1st and 2nd respondents submitted that, Exhibit DI is not a mortgage deed, rather it is an Offer for a term loan. Therefore, the issue of registration does not apply. He further stated that, the stamp duty was duly paid in compliance with the provision of Section 18 of the Stamp Duty Act, [Cap 189 R.E 2019].

I have examined Exhibit D1 and found that it was a loan agreement which does not fall under the requirements of Section 113 of the Land Act (supra), because the disputed property is not a registered land. I have also noted that exhibit D1 is not a Mortgage Deed but an Offer for a Term loan. Regarding to the payment of the stamp duty, I have found that the same was paid an it is vivid evidenced at page 4 of Exhibit DI below the signature of one **Fadhili Bariki Tweve**. Therefore,

the requirement provided under section 18 of the Stamp Duty Act *supra*, of payment of stamp duty was complied with.

From the foregoing, I find that section 113 of the Land Act (supra) does not apply to mortgages concerning the unregistered land like in the matter at hand. With regard to payment of stamp duty, it is on record that stamp duty was duly paid. In the circumstance, ground 6 has no merits at all.

With regard to the 7th ground of appeal, it was submitted by the appellant that, the trial Tribunal did not consider Exhibit D11, which related to a car with registration No. 754 DKT which was also pledged as security of the loan. In response thereto, the counsel for the 1st and 2nd respondent contended that, the trial Tribunal is empowered to determine only land disputes. He stated further that, there was no issue on ownership of the said car and whether it was among the pledged securities for the loan.

I am at one with the counsel for the 1st and 2nd respondents that the issue on ownership of the alleged car and the same being pledged as security for the loan could not be determined by the trial Tribunal. I am holding so because according to section 167 of the Land Act, [Cap.113 RE 2019] and section 33 of the Land Disputes Courts

Act,[Cap.216 RE 2019], the District Land and Housing Tribunal, is mandated to determine only land disputes. Section 33(1) of the Land Disputes Courts Act, [Cap 216, R.E 2019] provides thus:-

> *"33.-(1) The District Land and Housing Tribunal shall have and exercise original jurisdiction- (a) in all proceedings under the Land Act, the Village Land Act, the Customary Leaseholds The Land Disputes Courts Act [CAP. 216 R.E. 2019] 16 Cap.113 Cap 114 Cap 377 Cap.339 Cap.267 (Enfranchisement) Act, the Rent Restriction Act and the Regulation of Land Tenure (Established Village) Act; and*
>
> *(b)* ***in all such other proceedings relating to land under any written law in respect of which jurisdiction is conferred on a District Land and Housing Tribunal by any such law****..."*
> *(Emphasis added)*

From the foregoing, dispute on ownership of a car cannot be a matter that falls within the jurisdiction of the District Land and Housing Tribunal. It was therefore proper for the trial Tribunal to hastate to determine the issue of ownership of a car and it being pledged as security. The 7th ground of appeal has been found to have no merits.

The 8th ground of appeal was to the effect that the trial Tribunal erred in law and fact by determining the suit based on technicalities

which were not raised at any stage of the proceedings, which contravenes regulations governing the business of the District Land and Housing Tribunals in Tanzania.

The learned counsel for the appellant argued that the trial tribunal while making the final decision, had one sided position. It was the view of the learned counsel that the appellant was prejudged before the final determination of the matter before the trial Tribunal contrary to regulation 20 of GN. No.174 of 2003.

In reply thereof, it was argued by the counsel for the 1st and 2nd respondents that there is no any technicality that was deployed by the Tribunal in determining the dispute before it except there was a concrete reasoning which was based on the legality of the appellant is ownership of the suit land.

I have taken time to examine the entire judgment of the trial Tribunal and found that ground 8 is similar to ground 3. I thus reiterate what I have stated while analysing ground three (3). In fact, I could not find anything in the trial Tribunal's judgment that contravenes regulation 20 of GN No.174 of 2003. What I have observed from the judgment of the trial Tribunal is that, the trial chairman in the course of analysing

evidence he was raising some questions which helped him in making analysis of evidence. Therefore, ground 8 has no merits at all.

In ground 9 of appeal, the appellant asserts that the trial Tribunal erred in law and fact to raise the new issues and resolve the same without affording the parties to address on the new issues prior to coming to making its decision. In his submissions, the learned counsel for the appellant stated that in the judgment of the trial Tribunal, the chairman raised a question which formed the bases of the decision. He quoted the paragraph at page 20 of the typed judgment of the trial Tribunal that readth;

> " *kama nyumba ni ya marehemu babake mdai, iweje mdaiwa wan ne aishi kwenye nyumba hiyo na mama yake mdai, alafu mdai ajiite msimamizi wa mirathi wa nyumba hiyo asifahamu chochote"*

It was the view of the counsel for the Appellant that the above question was not part of the issues which was raised at the commencement of the trial. It was the appellant's submission that, the act of the trial tribunal raising question and determining them without showing that the parties were afforded time to comment on such question raised by the trial Tribunal goes to the root of natural justice principles that makes the decision of the trial Tribunal invalid. To fortify

his arguments, he cited the decision of the Court of Appeal of Tanzania in **Ramadhani Mlindwa vs Republic,** Criminal Appeal No. 159 of 2017, CAT (Unreported); and Jamali **Ahmed vs CRDB** (2016) TLR page 106, regarding the necessity of affording parties the right to be heard on new issues.

In his reply, the counsel for the 1st and 2nd respondent contended that, no issue which was raised by the trial Tribunal rather it was the critical reasoning of the trial Tribunal in respect of the ownership status of the appellant.

I am at one with the arguments of the learned counsel for the 1st and 2nd respondents that no new issue was raised by the trial Tribunal when composing judgment. I have examined the quoted question herein above alleged to be a new issue and realized that the question was not a new issue, rather a question raised by the trial chairman in the course of reasoning. Questions like this raised by the judicial officer in the course of composing judgment/ruling are acceptable as they form part of reasoning in the decision. In the instant matter, the question "*kama nyumba ni ya marehemu babake mdai, iweje mdaiwa wanne aishi kwenye nyumba hiyo na mama yake mdai, alafu mdai ajiite msimamizi wa mirathi wa nyumba hiyo asifahamu chochote",* was actually raised

while determining the issue of ownership of the disputed land. The question was based on evidence on record. Therefore, the ground of parties being not afforded the right to be heard cannot have any weight in the circumstance of this case. From the foregoing, I find no merits in the 9th ground of appeal.

In the final analysis, all grounds of appeal have failed. I therefore proceed to dismiss the entire appeal with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 13th day of October, 2023.

L. HEMED

JUDGE