

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 47 OF 2022**

THE REGISTERED TRUSTEES OF MITO

YA BARAKA FOUNDATION..... PLAINTIFF

VERSUS

MOSES BARNABAS.....1ST DEFENDANT

GALUS MUKAMI.....2ND DEFENDANT

ANASTAZIA MUKAMI.....3RD DEFENDANT

KEITH MUKAMI.....4TH DEFENDANT

BORA MUKAMI.....5TH DEFENDANT

JUDGMENT

Date of last Order: 10/11/2023

Date of Judgment: 13/12/2023

A. MSAFIRI, J.

The plaintiff hereinabove have instituted this suit against the defendants as shown above. The plaintiff claims against the defendants jointly and severally for declaratory orders that the plaintiff is the true owner of the land property located at Mbezi Beach including Plot No. 94 Block M, Kinondoni Municipality and surrounding areas (generally referred herein as the suit property or suit premises).

It was pleaded that on 31st July 2018, the 2nd and 3rd defendants who are biological parents of the 4th and 5th defendants, sold the suit property to the plaintiff but the payments were made to the 4th and 5th defendants

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on the ground that it was a gift to the 4th and 5th defendants. That having purchased the suit property, the plaintiff built a church and made other development to the suit property. That however sometime in July 2021, the 1st defendant emerged claiming that part of the plaintiff's suit property belongs to him. That the 1st defendant has been interfering with the peaceful occupation and development of the suit property by the plaintiff. The plaintiff claim that the 2nd and 3rd defendants have been pleaded in the suit for being sellers of the suit property while the 4th and 5th defendants have been joined as necessary parties to the suit having been gifted the suit property by the 2nd and 3rd defendants, their biological parents.

The plaintiff prays for the judgment and decree against the defendants jointly to the effect that;

1. Declaration that the plaintiff is the rightful owner of suit property.
2. Permanent injunction against the 1st defendant from interfering with peaceful enjoyment of the suit property.
3. Costs be provided for.
4. Costs and any other relief that this Honourable Court may deem it fit to grant.

The 1st defendant initially filed his written statement of defence on 25th April 2022 but later prayed to make the amendments. The amended

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WSD was filed on 19th November, 2022 in which he also filed a counter claim. The 1st defendant denied the claims by the plaintiff and claimed that he is the lawful owner of unregistered piece of land located at Mbezi Beach Area, Kinondoni Municipality within Dar es Salaam with an area code "15019", "20951", "24", "203" as indicated in the gift deed.

He prayed for the judgment and decree against the plaintiff as follows;

- a) For a declaration that the 1st defendant is a lawful owner of unregistered piece of land located at Mbezi Beach Area, Kinondoni Municipality within Dar es Salaam with an area code "15019", "20951", "24", "203" as indicated in the gift deed.
- b) For an order of permanent injunction against the plaintiff restraining him, his agents, assignees, heirs, allocates or any person claiming under them, from entering or trespassing into the landed property described under paragraph a) above,
- c) For demolish (sic) of the constructed building by the plaintiff at the premises of defendant,
- d) For indemnification of any cost, loss or liability incurred by the 1st defendant due to the plaintiff's unlawful trespassing act,
- e) For payment of costs of this suit, *Alls.*

f) Any other relief(s) as the Honourable Court may deem fit and just to grant.

The hearing proceeded in absence of the 2nd, 3rd, 4th, and 5th defendants after they were duly summoned and for the reasons known to themselves, they chose neither to appear in Court nor filed their defence.

Before the commencement of the trial, three issues were framed and adopted by the Court as the issues in dispute. They are;

- i. Who is the rightful owner of the suit property?*
- ii. Whether the counter claim of the 1st defendant is maintainable for non-joinder of necessary party.*
- iii. To what reliefs are parties entitled to.*

During the trial, the plaintiff was represented by Mr. Godwin Musa Mwapongo, learned advocate assisted by Mr. Stephen Mwakibolwa, learned advocate. The 1st defendant was represented by Ms. Ened Makame, learned advocate.

After the close of the hearing on all parties, with leave of the Court, the parties filed their final submissions which this Court have taken in consideration while determining this suit.

I will determine each of the three framed issues by first analyzing the evidence which was presented before this Court by parties to the case.

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To establish her claims, the plaintiff had one witness only and tendered a total of nine (9) exhibits to prove her case while the 1st defendant had two witnesses and produced one exhibit.

Bruno Richard Mwakibolwa testified as PW1, the sole plaintiff's witness. He said that he is a Bishop at the plaintiff's church and also a member of the Registered Trustees of Mito ya Baraka Foundation who is the plaintiff in this case. That in this case, the plaintiff have sued the five defendants. That the 1st defendant Moses Barnabas was the caretaker or a guard of the people who sold the suit property to the plaintiff. That the 2nd defendant Galus Mukami was the owner of the suit property and the 3rd defendant, Anastazia Mukami is his wife. PW1 stated further that the 4th defendant, Keith Mukami and the 5th defendant, Bora Mukami are the children of the 2nd and 3rd defendants.

PW1 testified that the plaintiff administer Mito ya Baraka Church which was formerly located at Jangwani swamp area but due to floods, they had to look for another place to build the Church. That they were taken to one Antony Mulokozi who is a "dalali" who told them that the 2nd -5th defendants were selling their area located at Mbezi Juu. That Mulokozi took them to meet the 2nd defendant who lives at Goba, Dar es Salaam and he admitted that the suit property was on sale. That the 2nd defendant *Alle.*

told PW1 and other members of the plaintiff that the suit property was gifted to their children the 4th and 5th defendants.

That the 2nd defendant directed them to where the suit property was located and they met the 1st defendant who is a guard who was taking care of the property. That when they arrived there, the 1st defendant show them around the area which was for sale. That they inspected both the surveyed and unsurveyed land. He said further that the 1st defendant was living in the surveyed Plot No. 94 Block M. That the area was undeveloped.

PW1 stated that they agreed with the sellers to buy the two pieces of land, surveyed and unsurveyed for TZS 200 Million. That the sale agreement was drafted and signed on 31/7/2018 and the plaintiff started to make payments on 01/8/2018. That as per the terms of agreement, the first instalment of TZS 100 Million was paid on 01/8/2018. The copy of the sale agreement was admitted in Court as exhibit P1 for the reason that the original one was in the custody of the Kinondoni Municipal Council.

The witness also produced a duplicate of payment slip of the first instalment of TZS 100 million. It was admitted as exhibit P2. PW1 stated that the money were deposited in the account of Bora Mukami as directed by the sellers. He stated further that after that first payment, there was further payments made on 02/01/2019, six months of the first payment. *Adls.*

He did not state the amount paid. He said further that after payment, the parties agreed that the guard who was taking care of the suit property, the 1st defendant should vacate the premises so that the plaintiff can start construction. That the 1st defendant was living in the hut which was built in the surveyed area. That the 1st defendant refused to vacate the premises.

PW1 said further that the plaintiff communicated with previous owners about the 1st defendant's refusal to vacate the premises and Keith Mukami, the 4th defendant wrote a letter to the 1st defendant asking him to vacate. The letter (a copy) was admitted in Court as exhibit P3. That the plaintiff tried to assist the 1st defendant in all ways so that he could vacate the suit premises. This included giving the 1st defendant TZS One (1) million so that he can rent another place of his own choice whereby he agreed, took the money and vacate the premises.

That after that the plaintiff paid taxes, rents and capital gains on the suit premises, totaling TZS 38,272,900/= at Tanzania Revenue Authority. The form showing the said payments was admitted as exhibit P4. That the plaintiff requested for change of use of suit premises and followed all the required process including advertising and nobody raised any objection. The notice of intended change of use was admitted as exhibit P5. That then the plaintiff requested for building permit to the Director of

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Kinondoni Municipal and the building permit was issued on 23/10/2020. The request and the Permit were admitted as exhibits P6 and P7 respectively.

PW1 said that no one came forward to claim the suit property hence they started construction of building structures on the suit property. That while the construction was going on, the plaintiff received a letter from the office of the District Commissioner of Kinondoni (herein the DC Office) informing them that one Moses Barnabas claims that the suit property belongs to him. That he, PW1 went to the DC office with all necessary documents to prove the plaintiff ownership of the suit property.

PW1 said that Galus Mukami, the 2nd defendant sworn an affidavit stating that he and his family has never given or granted the ownership of the suit property to the 1st defendant. The said affidavit was admitted in Court as exhibit P8. That the DC Office tried to settle the matter amicably between the parties but the 1st defendant refused to cooperate. In cross examination by the counsel for the 1st defendant, PW1 said that he met with Gallus Mukami but never met Anastazia Mukami. He said that the sale agreement was between them and Gallus Mukami. He also said that the sale agreement does not show that they bought the suit property with the surrounding areas. He also admitted that in the affidavit of Gallus Mukami (exhibit P8), it shows that Gallus Mukami was the lawful owner

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of the suit property while in the sale agreement it shows the two owners Gallus Mukami and Anastazia Mukami.

PW1 was asked where they signed the sale agreement and replied that they did not sign together the sale agreement but it was brought to them and they signed their part. He admitted to have not seen Anastazia Mukami and that there is a possibility that she did not sign the agreement. In re-examination, PW1 stated that the one who witnessed the sale agreement is advocate Charles Augustino Mmasi. That the sale agreement is attached with a map of the area which shows both surveyed and unsurveyed plots.

After closing the plaintiff's case, the 1st defendant summoned one Michael Samson Fongo who testified as DW1. He stated that he has lived at Mbezi Beach for about nine (9) years now. That among his neighbours is the plaintiff Mito ya Baraka. That before the area was occupied by the plaintiff, the area was owned by one Mama Mukami who has put the family of the 1st defendant to take care of the area. That before that the land in dispute was owned by his mother Eda Ipopo Fongo who is now deceased. That Mama Anastazia Mukami bought the land in dispute from Mama Eda Ipopo Fongo.

DW1 said further that the family of the 1st defendant have been living on the suit property for about 15 years now, taking care of the land. *Alls.*

He said that Mama Mukami was expecting to travel hence he wrote a letter to her children informing them that she is giving/ gifting Moses a piece of her land. That she asked him DW1 to be a witness.

DW1 said further that after that the plaintiff was searching for land to buy and they have already contacted Mama Mukami showing interest to buy her land. That Mama Mukami instructed one Mulokozi to accompany Moses to show the plaintiff the area they were interested to buy. That it was that Mulokozi and the 1st defendant who showed the plaintiff the area and after that the plaintiff purchased the landed plot.

DW1 testified that the 1st defendant told him that the whole area including the piece which was given to him was sold to the plaintiff. That he contacted Mzee Mukami (2nd defendant) who told him that the land in dispute has been sold and that it belonged to their children. That, one day Mzee Mukami came at the area in dispute and said that the 1st defendant was just a care taker being paid salary. That since the area have been sold to the plaintiff, the 1st defendant should vacate the premises. That Mzee Mukami said those words before DW1, the 1st defendant and 1st defendant's wife.

DW1 said that he saw Anastazia Mukami for the last time in 2015. And that after that they used to communicate through phone calls. He said that the plaintiff made an effort to assist the 1st defendant to get *All*.

another place to stay after they purchased the suit property. That they offered to pay for the house to stay for the 1st defendant and his family. DW1 said he accompanied the 1st defendant to look for the alternative place. That the dispute reached the Street Government and the two parties were summoned for reconciliation. That the plaintiff offered the money to the 1st defendant who took them.

DW2 was Moses Barnaba, the 1st defendant. He said that he knows the 2nd -5th defendants and he has known them for about 15 years as he used to work for them as a shamba boy. That, the 3rd defendant Mama Anastazia Mukami had a fight with her husband the 2nd defendant. That after the fight, Mama Mukami called the 1st defendant and informed him that she has her farm located at Mbezi Beach Voda and that she bought it without the knowledge of her husband. That the 1st defendant asked Mama Mukami to give her the place to live, and she decided to give him that farm at Mbezi Beach (suit property).

DW2 said that he moved to Mbezi Beach at Mama Mukami's place and started to live there with his family. That Mama Mukami built a three roomed hut in the said area where the 1st defendant lived therein with his family. That one day Mama Mukami came at the place and asked the 1st defendant to call Michael Fongo(DW1). That Mama Mukami told Fongo that she wants to write a letter. She wrote the said letter before Fongo, *Aella*

the 1st defendant and his wife and children. That in the said letter Mama Mukami made decision to give him, the 1st defendant a piece of land from her farm as a gift. The said letter was admitted as exhibit D1.

DW2 said that in exhibit D1, Mama Mukami was asking one Mulokozi that he should give him, the 1st defendant the piece of land and that even if the land will be sold, he, DW2 should be given that land. He said further that after that, the plaintiff came and wanted to evict him from the suit plot but he refused as he was given that plot by Mama Mukami.

He stated that after that one day his hut which he was living in with his family was demolished and his properties lost by the plaintiff. Therefore he went at the DC Office to complain. He denied to have receive any money from the plaintiff as shown in exhibit P8. He prayed for this Court to order that the piece of land which the 1st defends claims in the counterclaim to be reverted to him.

In cross examination, DW2 said that he don't know who built the hut he was living in with his family. He said that the letter exhibit D2 was addressed to Mulokozi who is a surveyor. That exhibit D2 was the words of Mama Mukami giving him the 1st defendant, her land as gift. DW2 said that it was Michael Fongo, (DW1) who allowed the hut on the suit property to be demolished. That in the disputed area, there are two pieces of land, the one owned by Mama Mukami and the other one owned by the 1st *Alk.*

defendant. He said that the children of Mama Mukami were the one who sold the land in dispute. He said that he don't know how Mama Mukami owned the piece of land in dispute.

After going through the evidence which was adduced in Court along with the documents, I will now determine the issues. **The first issue is who is the rightful owner of the suit property?**

It is trite law that the one who alleges must prove those allegations. This is provided under Section 110 (1) of the Evidence Act, Cap 6 R.E 2022 that;

"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".

In this dispute, the plaintiff claims that she is the owner of the suit property which she purchased from the 2nd and 3rd defendants but payments were made to the 4th and 5th defendants on the ground that the suit property was gifted to them by their parents. I have seen the sale agreement exhibit P1. It shows that Gallus Mukami and Anastasia Mukami (referred in the agreement as "vendor") are the lawful owners of unregistered landed property located on Plot No. 94 Block 'M', Mbezi Area, Kinondoni Municipality, Dar es Salaam.

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In the plaintiff's final submission, Mr. Mwapongo, counsel for the plaintiff submitted that the plaintiff have purchased the suit property comprising Plot No. 94 Block 'M' Mbezi and **the surrounding area which have not been surveyed**. However, **the sale agreement describe the purchased land as unregistered landed property located at Plot No. 94 Block 'M', Mbezi Area, Kinondoni Municipality, Dar es Salaam City.**

In the final submission of the plaintiff, Mr Mwapongo referred to exhibit P1 that it is shown that the property earmarked for sale is the property described under Recital A above. And according to Mr. Mwapongo, Recital A is a map of the property attached as annexure 'A'. However, having seen and read the sale agreement, I believe that the words "Recital A above" does not refer to the attached map but they refer to item A in the sale agreement.

Even if the words "Recital A" could have been referring to annexure A the map of the property, I find it to be unclear as to which part is the suit property described as Plot No. 94 Block 'M', and which part is the "surrounding areas". The map just shows two plots named as "old survey" with size of 3190 sqm and "New Plot" with area of 4755 sqm. The annexure does not indicate clear that it is the map of Plot No. 94 Block M and the surrounding area. The heading of the annexure called Recital A

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itself does not state that it is a map of which particular area, it is blank.

The heading states thus;

**"SKETCH OF PLOT NO.....BLOCK.....AT
MBEZI WANI KINONDONI MUNICIPALITY DSM CITY"**

From this, I again state firmly that the annexure RECITAL A does not specifically state or indicate that it is a sketch or a map of Plot No 94 Block M or any Plot No. as it is blank. Although the plaintiff would like the Court to believe that the sketch plan attached in the sale agreement is one of the disputed plot, this Court finds that there is no evidence which prove that fact.

In his final submission, the 1st defendant through his advocate Ms Makame, submitted that parties are bound by their contract. That the sale agreement gives description as to what was sold to the plaintiff to be the unregistered property located on Plot No. 94, Block M, Mbezi Area, Kinondoni Municipality, Dar es Salaam City.

I agree with the final submission of the 1st defendant on the description of the landed property which was sold to the plaintiff. The sale agreement exhibit P1 does not state that the vendors are the owners of the suit property as described with the surrounding area. These words "surrounding area" were added in the Complaint but does not feature in the sale agreement.

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In their final submission, the plaintiff through the counsel Mr. Mwapongo, admitted that it is a legal principle that parties are bound with the terms of their contract which they entered freely. The counsel referred this Court to the case of **Simon Kichele Chacha vs Aveline M. Kilawe**, Civil Appeal No. 160 of 2018, CAT at Mwanza, where the Court of Appeal held that;

"It is a settled law that parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract...."

Guided by the above cited principle, I find that the parties to the sale agreement exhibit P1 are bound by the terms of their agreement. In the agreement, the vendors are Gallus Mukami and Anastasia Mukami who are declared to be the owners of the disputed property described therein. The plaintiff did not establish her claims that the disputed property was owned by the 4th defendant and 5th defendant as the sale agreement state clearly that the vendors who are the 2nd and 3rd defendants are the owners of the suit property. From the evidence, it is clear that the plaintiff purchased from the 2nd and 3rd defendants, a suit property described as being located on Plot No. 94, Block M, Mbezi Area, Kinondoni Municipality, Dar es Salaam. And this is the answer to the first

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issue that the plaintiff is the lawful owner of the suit property as per the sale agreement exhibit P1.

Since I am on determination of the ownership of the disputed plot, in the counterclaim, the 1st defendant claims that in the year 2015, Anastazia Mukami who was the owner of the suit property, initiated the survey of the suit property and initiate that the last part of the farm (suit property) to be surveyed in the name of the 1st defendant (plaintiff in the counterclaim). The 1st defendant indicated in his evidence that a piece of unsurveyed land was gifted to him by Anastazia Mukami (the 3rd defendant) who was the owner of the said land. That the plaintiff (the defendant in the counterclaim) claims that they have purchased the whole of the suit property are not true because the 1st defendant owns a piece of land which he was gifted by the 3rd defendant in the main suit.

During the hearing of the case, the 1st defendant prayed to tender the letter which he claim to be a gift deed. The plaintiff through his counsel objected on grounds that the letter is inadmissible as it does not meet the conditions necessary for a document to be qualified to be a gift deed. He referred this Court to the definition of the term gift deed as per the Black's Law Dictionary, 10th Edition.

This Court admitted the letter on the grounds that the raised objection needs the Court to ascertain on facts which is the matter of evidence and

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cannot be determined during objection. However, the Court stated that it will decide whether to accord the weight on the letter exhibit D1 after having determined whether the letter qualifies to be a gift deed or not.

Now I will determine on whether the letter exhibit D1 is the gift deed. I have read the said Black's Law Dictionary, 10th Edition which was produced to me by the counsel for the plaintiff. The gift is defined as the voluntary transfer of property to another without compensation. It is further stressed that the things essential to make a valid gift are such that;

"the donor must have the capacity to make a gift, he must have an intention to make it, his intention must be to make it now and not in the future, he must deliver, either actually or constructively the thing given to done,..... there must be an acceptance by the donee...."

Guided by the above requirement, I have read the contents of exhibit D1. It read as follows;

"Mimi Anastasia Mukami

Naomba sehemu ya shamba (chini mwishoni kabisa langu Mbezi Juu-kipande chenye ukubwa wa 15019,20951 na 24, 203 kipimwe kwa jina la Moses Barnaba"

Alls-

The letter was signed by Ana Mukami on 07/3/2015 and was witnessed by Lt. Col. M.S Fongo (rtd) who also signed on the same date 07/3/2015.

It is my finding that the letter exhibit D1 does not qualify to be termed as gift deed as per above conditions. I say so for reason that first, the letter was addressed to nobody, not even the purported donee. Second, the addressee is not gifting the purported donee the stated land but she was requesting someone to survey the named land in the name of Moses Barnaba. This cannot be said that the addressee Anastasia Mukami was granting or gifting the said land to Moses Barnaba. She should have stated clearly that she is gifting the said land to Moses. Third, there was no acceptance from the purported donee. This was simply because the letter was not addressed to Moses but to unknown person who maybe was known to Anastasia Mukami but since she never entered appearance to defend and be heard in her case, then this remains to her knowledge only.

From this analysis, I find that the letter exhibit D1 does not qualify to be a gift deed. It is just a letter, addressed to no one in particular, requesting for a piece of land with the described measurement to be surveyed in the name of Moses Barnaba.

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On the weight of evidence by the exhibit D1, I find it to be heavily against the claims by the 1st defendant that he is the owner of the disputed land the same having been gifted to him by Anastazia Mukami. My reason is based on the evidence relied upon by the 1st defendant to prove his claims. This evidence is exhibit D1 and the evidence of DW1. DW1 said that Mama Mukami wrote a letter informing her children that she is gifting Moses a piece of her land and that she made him DW1 a witness. However, exhibit D1 was not addressed to anyone let alone the claimed children of Mama Mukami. Furthermore, it was DW1 who said that when the plaintiff came to inspect the land for purchase, it was the 1st defendant Moses Barnaba and one Mulokozi who showed them around. And that after the purchase, it was discovered that the plaintiff have bought the whole land. In his evidence, the 1st defendant never indicated that during inspection, he told and showed the plaintiff the piece of land he was gifted by Anastasia Mukami. This shaky evidence is supported by exhibit D1 which shows the said mama Mukami requesting the part of her land to be surveyed in the name of Moses Barnaba. The description of the gifted land does not show whether the said land gifted to Moses Barnaba is the same land described as suit property and which was claimed by the plaintiff to have been purchased from the 2nd and 3rd defendants. I find *Acclb.*

that the 1st defendant in his counterclaim as the plaintiff have failed to establish that he is the lawful owner of the suit property as per his claims.

Having dealt with the first issue, I will now determine the second issue on **whether the counter claim of the 1st defendant is maintainable for non-joinder of necessary party.**

During the proceedings, Mr. Mwapongo for the plaintiff raised this issue as issue on law. That he have observed that the counter claim does not show the value of suit property which confer pecuniary jurisdiction of the Court as provided under Order VI Rule 1(i) read together with Order VII Rule 11(2) of the Civil Procedure Code Cap 33 R. E 2019. He also raised the issue of non-joinder that the Court should order the plaintiff in a counterclaim to amend the same to join the necessary parties. Ms. Makame for the 1st defendant who is also a plaintiff in a counterclaim refused to join the other defendants as necessary parties for reason that it was not necessary to do so.

Reading the counterclaim of the 1st defendant, he has sued only the plaintiff, the Registered Mito ya Baraka Foundation as the defendant in the counterclaim. In their final submission, the counsel for the plaintiff to the main suit submitted that, the plaintiff to the counter claim is claiming to have been given land in dispute by Anastazia Mukami. That, the 1st defendant failed to join the said Anastazia Mukami in the counterclaim as

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co- defendant or even call her as a witness while he knew that Anastazia Mukami participated in the sale of suit property. It was the counsel for the plaintiff's view that the non-joinder is fatal to the proceedings. To bolster his point, the counsel for the plaintiff stated that it is trite law that in a suit for recovery of land, the buyer must be joined with the seller. He referred the case of **Juma B. Kadala vs. Laurent Mnkande** TLR [1983], 103.

As I have observed earlier in my order during the proceedings of 12/6/2023, the plaintiff in the counter claim is the one who alleges and must prove his claims. The plaintiff to the counter claim was granted the leave to amend the counterclaim to join the necessary parties as deemed fit but the plaintiff in the counter claim did not see it necessary to join the other parties than the current defendant in the counterclaim. I know that Order VII Rule 17 gives the Court discretion to amend the pleading at any stage of the proceedings and that the amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

In the instant case, according to the circumstances of the case, this Court did not feel that it was necessary for the plaintiff in the counterclaim to join Anastasia Mukami. This is for the reason that Mama Anastasia Mukami did not sell the suit property to the 1st defendant (plaintiff in *Aelle*).

counterclaim) but she gifted the same to him. Therefore as long as the plaintiff in counterclaim is concerned, it was the plaintiff (defendant in counterclaim) who have grabbed the land which has already been gifted to the plaintiff in the counterclaim. Also the reliefs being sought in the counterclaim can be executable if granted, in the absence of Anastazia Mukami. I find that the circumstances in the instant case is distinguishable with the case of **Juma B. Kadala vs. Laurent Mnkande(supra)**. I answer the second issue in negative that the non-joinder does not make the counterclaim fatal. In addition, the 1st defendant have failed to prove that he is the owner of the area described as suit property.

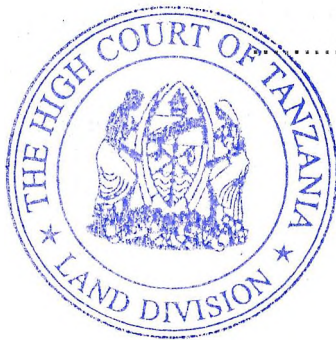
The third is the issue of reliefs which are entitled to the parties, this need not take much time. The plaintiff is praying for the orders that he is the lawful owner of the suit property. I have already found that the plaintiff have managed to establish that they are lawful owners of the suit property as per their sale agreement. And that a permanent injunction should be issued against the 1st defendant on suit property. However, the 1st defendant has no case against the plaintiff because he has failed to establish his claims. The counterclaim is hereby dismissed with costs.

On the plaintiff' claims, this Court decide partly in favour of the plaintiff and orders as follows;

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1. It is hereby declared that the plaintiff is the rightful owner of suit property as described in the sale agreement.
2. Permanent injunction is entered against the 1st defendant from interfering with peaceful enjoyment of the suit property.
3. Costs to be borne by the 1st defendant.

It is so ordered. Right of appeal explained.



A. MSAFIRI

JUDGE

13/12/2023