

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 32 OF 2021

AMOSI MLASI (Suing as an Administrator of the
Estate of PETER SABATO SANJO).....**PLAINTIFF**

VERSUS

EDOSAMA HARDWARE LIMITED.....1ST DEFENDANT
EDWARD SAGUDA MADUHU.....2ND DEFENDANT
TIB CORPORATE BANK LIMITED.....3RD DEFENDANT
THE ATTORNEY GENERAL.....4TH DEFENDANT

Date of Last Order: 02.12.2022
Date of Judgment: 27.02.2023

JUDGMENT

V.L. MAKANI, J

The plaintiff in this suit is AMOSI MLASI suing as the Administrator of the Estate of the late Peter Sabato Sanjo. He is praying for judgment and decree as follows:

- (i) *A declaration that the act of the 1st, 2nd and 3rd defendants of retaining the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam which belong to the plaintiff after the underlying contract has been expired is illegal and unjust.*

- (ii) *An order against the 3rd defendant to release the plaintiff's Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam unconditionally to the plaintiff and that if the said 3rd defendant so wish to demand another collateral from the 1st and 2nd defendants which is different from Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam which belong to the plaintiff.*
- (iii) *An order to be issued against the 1st and 2nd defendants jointly and severally to pay the plaintiff Tsh. 8,000,000/=to the plaintiff as it was promised by them.*
- (iv) *An order against the 1st and 2nd defendants of paying interest of Tsh. 8,000,000/= (the amount which was promised) at the rate of 35% per annum from 21st July 2018 when they promised to pay to the date of judgment.*
- (v) *An order be issued against the 1st and 2nd defendants to pay the plaintiff Tsh. 50,000,000/= being general damages the plaintiff has suffered so far.*
- (vi) *An interest for any decretal sum at court rate of 12% from the date of judgment to the date of final settlement.*
- (vii) *The costs of this suit to b bone by the 1st, 2nd and 3rd defendants.*

veneration

Before commencement of the hearing of the case, issues were framed in terms of Order VIII Rule 40(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) as follows:

- (a) Whether the 1st and 2nd defendants are justified to hold the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam, in the name of the late Peter Sabato Sanjo (represented by the plaintiff as Administrator) on the basis of the contract entered between the late Peter Sabato Sanjo and the 1st and 2nd defendants.*
- (b) Whether the 3^d defendant is justified in law to retain as security the property of the plaintiff (as administrator of the estate of the late Peter Sabato Sanjo).*
- (c) Whether the plaintiff is entitled to any damages in respect of the breach of contract (if any).*
- (d) To what reliefs are the parties entitled to.*

The plaintiff was the only witness (**PW1**) in support of his case. He was led by Mr. Isaack Tasinga, Advocate. In his testimony, **PW1** said as an Administrator of the estate of the late Peter Sabato Sanjo, he is in court because he is claiming the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam (the **suit property**) from the 1st and 2nd defendants and the 3rd defendant, TIB Corporate Bank Limited (the

Bank). He tendered the Letters of Administration as **Exhibit P1**. He said he has the copy of the Certificate of Title (**Exhibit P2**) while the original is retained by the Bank. He said the 1st defendant entered into a contract with the late Peter Sabato Sanjo where the latter issued to the 1st defendant the Certificate of Title of the suit property, to pledge as security in favour of the Bank for a loan taken by the 1st defendant. **PW1** said according to the contract (**Exhibit P3**) the 1st defendant was supposed to return the Certificate of Title after one year and further that if there was any default then properties of the 1st defendants would substitute the Certificate of Title in the Bank for the purpose of securing the loan. He said the 1st defendant and the Bank have not adhered to the terms of the contract as the 2nd defendant who is also the representative/director of the 1st defendant told the late Peter Sabato Sanjo after one year that no money was received from the Bank and therefore, he could not get back his Certificate of Title. He said there was an understanding that the 1st defendant would pay the late Peter Sabato Sanjo TZS 8,000,000/= for the delay and the 2nd defendant wrote a letter to that effect (**Exhibit P4**). **PW1** went on saying that the promises by the 1st and 2nd defendants have not been fulfilled and this is the sixth year. He said the act of the 1st and 2nd defendants continuing to use the

Certificate of Title of the property is improper as the contract between them and the late Peter Sabato Sanjo has been breached because of the delay in return of the Certificate of Title which was supposed to be after one year or otherwise the security was supposed to be replaced in order to release the said Certificate of Title belonging to the late Peter Sabato Sanjo. He said the Bank gave them copies of the Mortgage Deed (**Exhibit P5**), Facility Letter between the Bank and the 1st defendant (**Exhibit P6**) and Guarantee and Indemnity Agreement (**Exhibit P7**). He said the Bank has retained the Certificate of Title and this is improper as the property is now not saleable and so there is a loss on their part. He said another loss is that there is a sick mother who could have been maintained by the proceeds from the sale of the property. He prayed for payment of TZS 8,000,000/= and 50,000,000/= as damages for loss of time of conducting the case he also prayed for the Certificate of Title to be returned to them and also costs.

On cross-examination **PW1** admitted that the 2nd defendant and the late Peter Sabato Sanjo had a good relationship but there was a slight misunderstanding after failure of the return of the Certificate of Title. He said he did not know if the late Peter Sabato Sanjo was a

beneficiary of the transaction between the Bank and the 1st and 2nd defendants and he also did not know if the late Peter Sabato Sanjo was given a Bajaj costing TZS 7,000,000/=. He said what he is claiming is the Certificate of Title and TZS 8,000,000/= for the delay which was promised by the 2nd defendant.

Further in the cross examination, **PW1** admitted that the Certificate of Title went to the Bank after the late Peter Sabato Sanjo and the 1st defendant agreeing that the property registered under the Certificate of Title could be security in favour of the Bank; and the late Peter Sabato Sanjo therefore, knew the terms and conditions by the Bank one of them being that the Bank cannot release the Certificate of Title until the loan is repaid. But he said he did not know that the 1st and 2nd defendants had defaulted in the repayment of the loan. **PW1** also admitted that the Bank was not a party to the contract between the late Peter Sabato Sanjo and the 1st and 2nd defendants (**Exhibit P3**). He also admitted that the Mortgage and Guarantee of Indemnity (**Exhibits P5 and P7**) were signed by the late Peter Sabato Sanjo in that he consented for the property under the Certificate of Title to be security but was not sure about the guarantee or that in the event of default the late Peter Sabato Sanjo was supposed to pay the Bank.

He also admitted that the dispute is in respect of the 1st and 2nd defendants and not the Bank.

In re-examination **PW1** asserted that he does not know the amount in default by the 1st defendant as he was supposed to get notice but there is none so far. He reiterated that the contract between the late Peter Sabato Sanjo and the 1st defendant was for one year only.

DW1 was Edward Saguda Maduhu the 2nd defendant herein. He said he is one of the directors of the 1st defendant. He went on saying that he knew the late Peter Sabato Sanjo and he was like a father, friend and neighbour to him. He said since 2007 the late Peter Sabato Sanjo used to give him his Certificate of Title as security for purposes of getting loans and there was an understanding that he would give him some money for that before signing of any bank documents. He said he got a loan of TZS 100,000,000/= from CRDB Bank and that after repayment of the loan in 2010 he returned the Certificate of Title to the late Peter Sabato Sanjo. The second loan was from ABC Bank and the amount of the loan was TZS 200,000,000/= and the late Peter Sabato Sanjo was paid his money and the Certificate of Title was returned. He said in 2016 he took another loan from the Bank herein

of TZS 500,000,000/= and the understanding was to buy a Bajaj to the late Peter Sabato Sanjo valued at TZS 7,000,000/= and this money was supposed to be paid before he signed any Bank documents. **DW1** said the late Peter Sabato Sanjo trusted him because he always returned his Certificate of Title in time and during his lifetime, they had no problems save for the last loan which was not paid in time because they were contracted in a desk project by the Municipal Councils but a large sum of money has not been paid. He said this has also caused the default to pay the loan and this fact was discussed with the late Peter Sabato Sanjo.

DW1 said in 2018 they requested the Bank to reschedule the repayment of the loan and the Bank agreed. So, they paid the late Peter Sabato Sanjo TZS 8,000,000/= because he had to sign Bank documents for the rescheduling of payment schedule. He said even after the rescheduling, still the 1st defendant went into default, and this was explained to the late Peter Sabato Sanjo. He told the court that they want to repay the loan so that the Certificate of Title can be returned to the plaintiff, and it is expected that by March, 2023 the loan would be repaid because they have a new project in Dubai. He said they have a genuine intention to pay back the loan.

On cross-examination **DW1** admitted that the contract (**Exhibit P3**) between the 1st defendant and the late Peter Sabato Sanjo was for one year. He also admitted that the family of the late Peter Sabato Sanjo cannot do anything with the property because of the loan. He said the late Peter Sabato Sanjo knew that he was taking a loan, that his property was security and that the Certificate of Title would remain with the Bank until the loan is cleared. He further admitted that the Bank knew nothing about their contract and the late Peter Sabato Sanjo. In re-examination **DW1** insisted that the late Peter Sabato Sanjo was a guarantor of the loans taken by the 1st defendant in CRDB Bank, ABC Bank and the Bank herein.

DW2 was Ayubu Mkwawa Chief Manager of Loan Recovery of the Bank. He said he knows the 1st defendant and that she is their customer. He said in 2016 the 1st defendant took a loan, but she failed to pay. He said the security offered was a legal mortgage in respect of premises in Segerea and Sinza. The guarantor to the loan was Peter Sabato Sanjo and the security given by him was a house in Sinza valued at TZS 135,000,000/=. The other security was property at Segerea owned by the 2nd defendant valued at TZS 225,000,000/=.

He said the loan has not been repaid fully and there were talks engaged with the 2nd defendant who requested for adjustment of penalties so that the loan could be bought by another bank. He said the talks resulted to the reduction of the loan from TZS 404,000,000/= to TZS 375,000,000/= which has not been cleared. He said the plaintiff's claim that the Certificate of Title is being held contrary to the law is not correct because the loan has not been repaid. He said the contract between the 1st defendant and the late Peter Sabato Sanjo (**Exhibit P3**) is not known to the Bank. He said the Bank has the Certificate of Title because the loan has not been paid for a long time despite the negotiations.

On cross-examination **DW2** said that he was not aware what attracted the late Peter Sabato Sanjo who was the guarantor to sign the Bank documents. He said where there is a good customer the Bank would engage in talks before doing any recovery measures and that is what they did in respect of the loan taken by the 1st defendant. In re-examination **DW2** said their loan has not been paid but they want to engage the 1st defendant in talks and negotiations as they believe she can pay.

After the presentation of evidence by the parties, final submissions were filed by Counsel for the parties as was ordered by the court. The relevant part of the submissions will be pointed out in the course of analysing the evidence of the parties.

The first issue for consideration is whether the 1st and 2nd defendants are justified to hold and retain the Certificate of Title of the late Peter Sabato Sanjo. Mr. Shitindi, Advocate for the 1st and 2nd defendants submitted in his final submissions that since the late Peter Sabato Sanjo was a guarantor to the loan then the 1st and 2nd defendants were justified to retain the Certificate of Title. Mr. Nyakiha, State Attorney did not submit on this issue and the third issue. He said, and correctly in my view, that these issues did not touch on the Bank and the 4th defendant.

It is without dispute that the late Peter Sabato Sanjo and the 2nd defendant were guarantors to the loan taken by the 1st defendant from the Bank. Further, there is no dispute that the loan taken by the Bank has not been paid to this date as confirmed by **DW1** and **DW2** in their testimonies. There is also no dispute that among the terms of

the contract between the late Peter Sabato Sanjo contract and the 1st defendant was that the offer of the suit property as security was only for one year and that the Certificate of Title would be returned thereafter. **PW1** said up to this date the Certificate of Title has not been returned to him as an administrator of the estate of the late Peter Sabato Sanjo and **DW1** and **DW2** confirmed that indeed the Certificate of Title has not been returned because it is still retained by the Bank as the loan to the 1st defendant has not been paid. As correctly submitted by Mr. Tasinga in his final submissions, the said contract (**Exhibit P3**) was very clear in Clause 4 that the suit property would be used as security for one year from 15/08/2016 to 14/08/2017. And in Clause C of the said contract if the 1st defendant failed to pay the loan within a year, then the security by the late Peter Sabato Sanjo would be released and substituted with properties of the 1st defendant and the Certificate of Title would be returned to him.

It is the law that once a contract has been concluded between parties not even the court is allowed to interfere or correct the terms as stated in the cases of **Harold Sekiete Levira & Another vs. African Banking Cooperation Limited (Bank ABC) & Another,**

Civil Appeal No. 46 of 2022 (CAT-DSM)(unreported) cited by Mr. Tasinga and **Austack Alphonse Mushi vs. Bank of Africa Tanzania Limited & Another, Civil Appeal No. 373 of 2020 (CAT-Mbeya)** (unreported) cited by Mr. Nyakiha, learned State Attorney for the Bank and 4th defendant. The latter case clearly highlighted the principle of privity of contract in that strangers in a contract do not have a right over the said contract. Since **Exhibit P3** was a contract between the late Peter Sabato Sanjo and the 1st defendant then parties were supposed to adhere to the terms therein, and considering that **DW1** and **DW2** admitted that the Certificate of Title has not been returned it means there is breach of contract, and thus the 1st and 2nd defendants are not justified to hold and retain the Certificate of Title. They were supposed to return it to the late Peter Sabato Sanjo and now the plaintiff as administrator. The reason that the Certificate of Title is with the Bank vis a vis the contract is inconsequential because firstly the Bank, as said above, is not privy to the contract between the 1st defendant and the late Peter Sabato Sanjo. Secondly, the 1st and 2nd defendants knew that they had an obligation, according to the contract, of returning the Certificate of Title after one year and substituting their properties as security to cover the loan taken. There was no term in the contract of grace

period in the event there is any default of repayment of the loan. In view thereof, the parties were supposed to adhere to the terms of the contract and the 1st and 2nd defendants were obliged to inform the Bank in order to substitute the security as agreed. In that regard, the holding and retaining of the Certificate of Title in the name of the late Peter Sabato Sanjo by the 1st and 2nd defendants is not justifiable. The first issue is therefore answered in the negative.

As for the second issue, the evidence on record is clear that the late Peter Sabato Sanjo was a guarantor to the loan taken by the 1st defendant, and this has not been disputed. The loan has not been repaid and as rightly stated Mr. Nyakiha in his final submissions, in terms of the Guarantee of Indemnity (**Exhibit P7**) the late Peter Sabato Sanjo assumed the obligation to repay the loan in case of any default. In that regard, the Bank has a right as a Mortgagee to retain the security until the loan is fully recovered. (See the case of **Austack Alphonse Mushi** (supra). The Bank has no obligation whatsoever in the contract between the late Peter Sabato and the 1st defendant because she is not privy to the said contract. Mr. Tasinga in his submissions pointed out that the Bank did not even bother to issue a default notice to the guarantor. But as intimated by **DW2** and

asserted by **DW1**, the recovery process has not started as they are engaged in talks with the 2nd defendant as director of the 1st defendant who is their good customer on how best to recover the loan. In such a situation the Bank cannot release the security unless the loan is repaid fully or the borrower, who in this case is the 1st defendant, substitutes the said security with another. It is evident therefore that the Bank is justified to hold the Certificate of Title because one, there is a default by the 1st defendant in the repayment of the loan; and two, it is the late Peter Sabato Sanjo who signed and was willing to be guarantor to the loan according to the Guarantee and Indemnity Agreement (**Exhibit P7**). In essence therefore, the Bank is justified in law to retain the Certificate of Title as such the second issue is answered in the affirmative.

Is the plaintiff entitled to any damages? As said hereinabove that the 1st defendant has breached the contract, the remedy thereof is payment of damages. It is apparent that the Certificate of Title was supposed to be returned in 2017 but this was not done until the filing of this case in 2021. The plaintiff is therefore entitled to damages for the disturbances he went through in following up the Certificate of Title resulting to this case. I will thus order a token amount of TZS

10,000,000/= as general damages payable by the 1st and 2nd defendants who shall as well pay the costs of the case.

What are the parties entitled to? According to the contract (**Exhibit P3**) the 1st and 2nd defendants are in breach of the contract between them and the late Peter Sabato Sanjo. On the other hand, though there is a Loan Facility Agreement between the Bank and the 1st defendant, it is a known fact that the 2nd defendant and the late Peter Sabato Sanjo were guarantors, but there is still no recovery process which has been initiated by the Bank. Now, the only remedy available is for the 1st and 2nd defendants to adhere to the contract (**Exhibit P3**) by substituting the security in the Bank as per Clause C, so as to release the late Peter Sabato Sanjo from guarantorship of to the loan, and immediately thereafter, the Certificate of Title be returned to the plaintiff to enable him to continue with the administration of the estate of the late Peter Sabato Sanjo.

The plaintiff also prayed for payment of TZS 8,000,000/= for the delay in return of the Certificate of Title of the suit property as promised by the 1st defendant by virtue of its letter (**Exhibit P4**). **DW1** as the director of the 1st defendant did not controvert the said letter, he merely

stated that the said amount was paid to the late Peter Sabato Sanjo. Since there is no proof of payment tendered to show that indeed, the said amount was received by the late Peter Sabato Sanjo then this court cannot rely on mere words. In that regard, I hold that the said amount of TZS 8,000,000/= is payable to the plaintiff by the 1st and 2nd defendants.

The plaintiff also asked for interest on the amount of TZS 8,000,000/= at 35% per annum from 21/07/2018 to the date of judgment. However, in his evidence the plaintiff did not state, and he was not led to show the basis and how he arrived at this rate. In the circumstance, this prayer is not granted. The court shall only grant interest at 7% court's rate from the date of judgment to payment in full.

In the end result it is hereby decreed as follows:

- (a) That the act of the 1st and 2nd defendants retaining the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam is in breach of the Contract between the late Peter Sabato Sanjo and the 1st defendant and hence unlawful.

- (b) That the 1st and 2nd defendants are ordered to substitute and replace the security offered to the Bank by the late Peter Sabato Sanjo, namely, the suit property under Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam in the name of Peter Sabato Sanjo, with their own properties as per the Contract.
- (c) That after the substitution and replacement of the security as ordered in (b) above, the 1st and 2nd defendants in collaboration with the Bank are ordered to immediately return the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam to the plaintiff as Administrator of the late Peter Sabato Sanjo.
- (d) That the exercise of substitution and replacement of the security by the 1st and 2nd defendants, and the return of the Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam to the plaintiff as in (b) and (c) above, shall be completed within **three months** from the date of this judgment.

- (e) That the 1st and 2nd defendants shall pay the plaintiff TZS **8,000,000/=** being payment for the delay of the return of the Certificate of Title Certificate of Title No. 186282/61 of Plot No. 604 Block "D" Sinza Area in Kinondoni Municipality Dar es Salaam as promised.
- (f) That the 1st and 2nd defendants shall pay interest on the decretal amount at 7% court's rate from the date of judgment until payment in full.
- (g) That the 1st and 2nd defendants shall pay damages to the plaintiff to the tune of **TZS 10,000,000/=**.
- (h) The 1st and 2nd defendants are condemned to costs of this suit.

It is so ordered.




V.L. MAKANI
JUDGE
27/02/2023