

TANZANIA / JUDGMENT

Land Appeal No

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND APPEAL NO. 5539 OF 2022 (Originating from Application No. 312 of 2018, Temeke District Land and Housing Tribunal) HASSAN MAGANGA MBEYU.....APPELLANT
VERSUS HADIJA HARUBU (Administratrix of the Estate of the Late Rashid Mohamed Mbegu)..... 1st RESPONDENT HILAL SAID SALUM..... 2nd RESPONDENT And by Way of Cross-Objection HADIJA HARUBU (Administratrix of the Estate of the Late Rashid Mohamed Mbegu)..... ..APPELLANT VERSUS HILAL SAID SALUM..... 1st RESPONDENT HASSAN MAGANGA MBEYU..... 2nd RESPONDENT

JUDGMENT

21st to 28th June, 2024 E.B. LU VAN DA, J The Tribunal in its judgment subject to this appeal decreed in favour of the Second Respondent named above to the main appeal as the lawful owner of a Plot No. 53 Block "L" House No. 105 located at Maunda Street, Temeke, Dar es Salaam, also hold that a sale agreement between the late Bibie Omari Ismail (an erstwhile administratrix of the estate of the late Rashid Mohamed Mbegu) being lawful and adjudged the Appellant to the main appeal as a trespasser to the suit land and to have been occupying it illegally since 1985. The Appellant who alleged to had derived his title from his father Mbegu Maganga (deceased) allegedly purchased the suit property vide public auction in 1985 for a sum of Tsh 125,000, was aggrieved by the above verdict, and preferred this appeal, on the following grounds: One, the Honorable Chairperson erred in law and fact when failed to determine a preliminary objection and give ruling before determining the application on merit; Two, the Honorable Chairperson erred in law and fact for failure to abide to the order of the High Court of Tanzania (Land Division) in Land Appeal No. 17 of 2014. Meanwhile the First Respondent who is the successor (take over from the late Bibie Omari Ismail who vended the suit house to the Second Respondent in the course of administering the estate of the late Rashid Mohamed Mbegu) also made a cross appeal. In the memorandum of appeal she grounded that: One, the trial Tribunal erred in law and fact by allowing the application without considering that the sale and transfer of the land in dispute in favour of First Respondent was signed by a person who was not the administratrix of the deceased (Rashid Mohamed Mbegu) and without compliance to section 67 and 68 of the Land Registration Cap 334 R.E. 2019, but the same was disregarded by the Tribunal without any legal

justification; Two, the trial Tribunal erred in law and fact by declaring the First Respondent as the bonafide purchaser of the land in dispute without considering contradicting evidence showing that the land was purchased at the value of Tsh: 4,000,000/= from Bibie Omari while the other contract indicated that the land was purchased at the value of the Tsh: 22,000,000/= but only Tsh: 15,000,000/= was paid and the remained balance is not yet paid as the First Respondent had not proved his case as required by section 110 (1) and (2) of the evidence Act, CAP 6 R:E 2019; Three, the trial Tribunal erred in law and fact by failure to record clearly the Appellant's evidence, failure to consider Appellant's submission in chief, analyze, evaluate parties evidence, prior coming to the decision which lead to arrive on unjust decision; Four, the trial Tribunal erred in law and fact by failure to consider parties pleading which lead to enter a decision not based on parties' pleadings without any legal justification for none considering it; Five, the trial tribunal erred in law and fact by refusing the assessors opinion without giving reasonable ground for such refusal; Six, the trial Tribunal erred in law and fact by failure to consider that the issue relating to the land in dispute was determined by Temeke Primary Court as exhibit H-6 which reflected the Primary Court decision was admitted by the trial Tribunal without any objection from the Respondents. 3 It is to be noted that the appeal and cross objection was heard simultaneously. The Appellant to the main appeal, submitted that the dispute was on the ownership of Plot No. 53 Block L house No. 105 registered in the name of Rashid Mohamed Mbegu who purchased it in 1985 and passed away in 1990, arguing for the entire period remained undisturbed until in 2007 where the application was instituted by the Respondent, citing item 22 Part I of the Schedule to the Law of Limitation Act, Cap 89 R.E. 2019, for an argument that suit to recover land is twelve years. Also cited Uru Central Cooperative Society vs Laitolya Tours & Safari Limited, Civil Appeal No. 204 of 2020. He submitted that in this matter the Second Respondent did not show the reason as to why he did not claim the said property since 1985. Ground number two, the Appellant cited the directives of this Court in Land Appeal No. 17 of 2014 at page 8, for a proposition that this Court ordered for him to be sued as an administrator of the estate of the late Maganga Mbeyu, argued in this matter it was not complied with and the Tribunal entertained the matter while he was not sued as an administrator. He submitted that the Tribunal framed issues in disregard to the directive and issues proposed by this Court. He cited Harbours Authority vs Mohamed R. Mohamed [2003] TLR 76, for a proposition that parties and the Tribunal were under obligation to abide to the court orders. 4 In reply, Mr. Jamal learned Counsel for the Second Respondent on the main appeal, submitted that facts herein shows that the Second Respondent knowledge and interest to the suit property started at the time he purchased it on 23/05/2006, citing paragraph 7(a)(v) to the application and a sale agreement exhibit H-1, arguing it is not in 1985 where the Appellant alleges his father was in possession of the suit property. He submitted that counting from 2007 to 2018 is a total of eleven years, arguing the application was within time. Ground number two, the learned Counsel for the Second Respondent submitted that the allegations are misconceived for the explanation that the order for the Appellant to appear as the administrator of the estate of the late Maganga Mbeyu was never directed to the Tribunal, arguing it was the Appellant himself. He submitted that failure of the Appellant to appear as an administrator was caused by the negligence of the Appellant himself, arguing he cannot benefit from his own wrong, citing Riggs vs Palmer, (New York Court of Appeal (1889) 115 NY506/22 NE

188, for a proposition that no person is required to benefit or take advantage for his or her own wrong. Mr. Alex Enock learned Counsel for Appellant on the cross appeal, abandoned ground number six. He submitted on the first ground of appeal that: That the trial Tribunal erred in law and fact by allowing the application without considering that the sale and transfer of the land in dispute in favour of First 5 Respondent was signed by a person who was not the administratrix of the deceased (Rashid Mohamed Mbegu) and without compliance to section 67 and 68 of the land registration Cap 334 of 2019, but the same was disregarded by the Tribunal without any legal justification. He submitted that the deceased land was and is still a registered land; the disposition of the deceased land which is registered has to undergo some steps which is mandatory to be complied with and in particular is sections 67 and 68 Cap 334 (supra). He submitted that, in the present appeal according to the First Respondent application and based on his evidence and exhibit H-1, it reveal that the land in dispute was sold on 23rd May 2006 on the same date when Bibie Omar Ismail was appointed on 23rd May 2006 to administer the estates of Rashidi Mohamed Mbegu. He submitted that if one read page 5 paragraphs 1 of the impugned judgment the First Respondent confessed that he was supplied with the copy of offer which was admitted as exhibit H-3, prior the appointment of Bibie Omar Ismail, means the First Respondent was aware that the owner of land was Rashidi Mohamed Mbegu (deceased). He submitted that on 23rd May 2006 when the administrator of Rashidi Mohamed Mbegu was appointed she had nothing to sale even if such intention of sale could have existed, though according to Appellant's evidence such intention was not in existence; as the land in dispute being registered as Plot No. 53 Block "L" House No. 105 located at Maunda Street, Temeke Dar es Salaam could not be sold and transferred without complying to section 67 and 68 of Cap 334 (supra) which require the administrator of deceased estate which is registered, to apply under the power of legal representative to be registered as the owner prior sale being conducted. He submitted that in the present cross appeal, while the trial Tribunal declaring the First Respondent as the owner of the land after purchasing the same from Bibie Omari, there was no consideration of this position of the law which was clearly submitted by the Appellant herein in the final submission at the trial tribunal, that the First Respondent was not a bonafide purchaser as requirement of the law as cited was not complied with, citing Philemon Vanai Saiteru Mollel Vs. William Titus Mollel (as an Administrator of the Estate of the late Titus Aron Morllel And Another, Civil Appeal No. 407 of 2021, Court of Appeal of Tanzania at Dar es Salaam at page 7 to 11 (Reported on Tanzlii). He submitted that the First Respondent while transferring the land in dispute he was aware that he had not purchased it based on his pleading in which the trial tribunal was duty bound to consider the same. He submitted that the pleading of the trial tribunal, particularly First Respondent application on paragraph 7 (a), (iv) contain annexure 3 which is copy of letter of offer of right of occupancy, land form No. 30 and land form No. 35. He submitted that PW1 being the First Respondent/applicant he prepared form No. 35 on 29th May 2006, four days 7 after signing the alleged affidavit admitted as exhibit H-1, in which the vendor was Bibie Omari, who is alleged to be the administratrix of Rashidi Mohamed. He submitted that according to the record there was no administrator named as Bibie Omari, and there is no deceased named as Rashidi Mohamed, since first administrator for Rashidi Mohamed Mbegu was Bibie Omar Ismail and not Bibie Omari according to the letter of administration which was tendered by the First Respondent at

the trial tribunal as exhibit H-2. He submitted that the presented land form No 30 and 35 to the commissioner for land which lead to the issuing a new offer as per annexure 3 was signed by a person who was not the deceased administrator and without complying to section 67 and 68 Cap 334 (supra) therefore it was required not to be relied upon by the trial tribunal in arriving to its decision taking into account that the same was not tendered as exhibit at the trial tribunal. He cited the case of Abbas Ally Athumanbantulaki And Another Vs. Kelvin Victor Mahity (Administrator of the estate of the late Peter Watcher) Civil Appeal No. 385 of 2019, Court of Appeal of Tanzania at Dar es Salaam at page 7 to 17 (Reported on Tanzlii) For ground number two: "That the trial Tribunal erred in Law and fact by declaring the First Respondent as the bonafide purchaser of the land in dispute without considering contradicting evidence showing that the land was 8 purchased at the Tune of Tsh: 4,000,000/= from Bibie Omari while the other contract indicated that the land was purchased at the value of the Tsh: 22,000,000/= but only Tsh: 15,000,000/= was paid and the remained balance is not yet paid as the 1st respondent had not proved his case as required by section 110 (1) and (2) of the evidence Act, CAP 6 R:E 2019" The learned Counsel cited section 110 (1) and (2) of the evidence Act, Cap 6 R.E 2019; Hemed Said Vs, Mohamed Mbilu [1984] TLR 113 for a proposition that he who alleged must prove the allegations. He submitted that the burden of proof was upon the First Respondent to prove at the trial tribunal that he is the legal owner of the land in dispute. He submitted that going by the trial tribunal judgment, the evidence of the First Respondent is summarized from page 4 to 5 of the typed judgment in which three witness were called being SMI, SM2 and SM3. He submitted that SMI being the First Respondent/applicant he tendered four exhibits at the trial tribunal being exhibit H-1, H-2, H-3 and H-4, the other witness, their evidence was not supported by any document. He submitted that both exhibit tendered by First Respondent do not show the tracing or history as to how the First Respondent become the owner of the land in dispute, arguing still the trial Chairperson proceeded to enter a judgment that the First Respondent is the legal owner after purchasing the land in dispute. He submitted that exhibit H-1, is the alleged affidavit showing that the First 9 Respondent had purchased the land in dispute before Temeke Primary Court Magistrate, however in the witness who was brought by the First Respondent who was the applicant, none of them was called from Temeke Primary Court to prove the existence of such allegation that Temeke Primary Court had witnessed such disposition contract and no any reason was given at the trial tribunal for failure to call such key witness in proving the case. He submitted that it was in the trial tribunal judgment and evidence of SMI evidence that he had not paid in full the purchase price; though in the First Respondent's pleading or application in the trial tribunal under paragraph 7(a)(iii) and (iv), its annexures indicated that the 1st respondent had purchased the land in dispute for Tsh: 4,000,000/= which was aimed to be applied at Temeke Municipal Council to change owners name from Rashid Mohamed Mbegu to the First Respondent's name. He submitted that if one trace from the First Respondent's evidence there is no evidence which was given at the trial tribunal as to how the First Respondent become the owner of the land in dispute. He submitted that the evidence of SM3 who is the land officer from Temeke Municipal, she just testified that the applicant/1st respondent is the owner of the land in dispute without proving as to how he become a possessor of the land in dispute which formally was registered in the name of deceased one Rashid Mohamed Mbegu. He submitted that SMI in

his evidence at the trial tribunal he proved that former 10 administrator of the late Rashid Mohamed Mbegu had issued to him a copy of the offer which was admitted as exhibit H-3, but there is no evidence on the records or pleading as to how First Respondent and Temeke Municipal managed to use a copy to change the ownership using a copy of offer without even a loss report as the original offer was in the hand of SU-4 who tendered the original offer in the trial tribunal as exhibit H-7. He cited the case of Mwinihatibu Jumaa Hatibu Dhidi Ya Ridhiwani Juma Hatibu, Civil appeal No. 70 of 2020, Court of Appeal at Tanga, (reported on Tanzill) page 13 to 19; Jacqueline Jonathan Mkonyi And Another Vs. Gausal Properties Ltd, Civil Appeal No. 311 of 2020, Court of Appeal of Tanzania (Reported on Tanzlii) the Court held that. He submitted that the admission by the First Respondent that he had not completed to make payment, by itself could have moved the trial tribunal to dismiss the application as the 1st respondent/applicant had no valid claim as against the appellant in the present appeal. He submitted that since there is no proof as to how the appellant became the owner, failure to prove mode in which he paid the purchase price all these can be considered by this Court that the First Respondent had failed to discharge his duty and the trial tribunal was not justified to enter the judgment in favour of the First Respondent as there was no evidence which had proved as to how he was registered as the new owner. Ground number three of appeals that; "That the trial Tribunal erred in Law and li fact by failure to record clearly the appellant's evidence, failure to consider appellant's submission in chief, analyze, evaluate parties evidence, prior coming to the decision which lead to arrive on unjust decision". The learned Counsel submitted that the trial tribunal while composing its judgment the chairperson did not give reasoning as to how the parties evidence and the tendered exhibit had assisted the tribunal to arrive to its decision which is subject of the present appeal. He submitted that at the trial tribunal apart from the oral evidence, eight exhibits were admitted; which were exhibits H-1, H-2, H-3, H-4. H-5, H- 6, H-7 and H-8; which can be seen at page 15 and 16 of trial tribunal judgment; exhibit H-1, H-2 and H-7 were mentioned, in the cause of composing judgment but it is not clear as to how the same assisted the trial tribunal in arriving to its decision which we are challenging in this cross appeal. He submitted that exhibit H-3, H-4, H-5, H-6 and H-8 were not considered in the trial tribunal reasoning, as the tribunal reasoning can be traced from page 14 to 20 of the typed judgment and there was no reason as to why such exhibits were ignored by the trial tribunal in its decision. He submitted that exhibit H-6, which was the primary court letter to Municipal Director which was tendered by SU-3, there is no evidence in the typed judgment regarding such exhibit though the same was testified by the Appellant in the trial tribunal; and there was no reason as to why such evidence was not involved in composing judgment. He submitted that, 12 at the conclusion of hearing parties were allowed to file the final submissions, however the only submission for the First Respondent was reflected in the trial tribunal judgment at page 11 to page 14, and at page 14 it was the trial tribunal observation that the Appellant in this cross appeal and the Second Respondent herein had not filed their final submission which was not correct position; and the act of none considering the Appellant's evidence in exhibits in composing judgment has lead the trial tribunal to be nullity, citing Abubakari I. H. Kilongo And Another Vs. The Republic, Criminal Appeal No. 230 of 2021, Court of Appeal, at Dar es Salaam. He submitted that the trial tribunal is required to be guided by regulation 20(1) (a), (b), (c) and (d) of the land Disputes Courts (the District land and Housing

tribunal) regulations, 2003; which required the Chairman to consider all the requirement in composing a judgment, in which the trial tribunal while composing the judgment did not considered the same. He submitted that it is the settled law that a judgment entered without considering parties evidence, reasoning based on parties'arguments and reason for accepting or refusing parties'argument such decision become a nullity, citing Edwin Isdori Elias V. Serikali Ya Mapinduzi Zanzibar (2004) T.L.R Page 297; Hamis Rajabu Dibagula Vs. Republic (2004) T.L.R page 181: Kilongo (supra) for a proposition that in this case the Court decided to nullify the whole judgment and ordered the composing of the new judgment which needs to be 13 in according to the law. He submitted that in the present case the better remedy is to appraise the parties' evidence, exhibit and submission and come up with the judgment which reflects the requirement of the law, being the first appellate court it has such powers Ground number four: That the trial tribunal erred in law and fact by failure to consider parties pleading which lead to enter a decision not based on parties' pleadings without any legal justification for none considering it. The learned Counsel submitted that that going through the trial tribunal judgment in which the decision on the agreed issue can be traced from page 14 to 20 which ended in giving judgment in favour of the First Respondent; such judgment is not in agreement with the pleading/Application presented by the First Respondent at the trial tribunal, citing paragraph 7(a) (ii) of the application which was filed in the trial tribunal by the First Respondent's on 22nd October 2018. He submitted that from the above paragraph what can be seen is that the First Respondent had not paid in fully the alleged purchase amount and even during hearing, in the evidence of SMI, who is the First Respondent in this cross appeal he admitted that he had not completed the payment as the said evidence can be seen at page 5 paragraph 4 of the trial tribunal typed judgment. He submitted that based on the above facts available in the First Respondent pleading and his admission in his evidence that he had not completed to pay the alleged 14 purchase price as per exhibit H-1, it was the duty of the trial tribunal to dismiss the claim as the First Respondent had no legal claim of ownership based only on such piece of evidence, citing Yara Tanzania Limited Vs. Ikuwo General Enterprises Limited, Civil Appeal No. 309 of 2019, Court of Appeal of Tanzania, at Dar es Salaam, from page 9 to 15, (Reported on Tanzlii), for a proposition that the Court had discussed the situation of relying on un admitted document and pleading in which it held that; he submitted that if one trace from the First Respondent evidence at the trial tribunal nowhere it was evidenced that the said alleged unpaid amount that was paid; though according to the appellant in this cross appeal there was no any contract relating to sale of the land in dispute was signed between the first administrator and the First Respondent, he submitted that since no amendment which was made by the First Respondent showing how he purchased the suit land, the trial tribunal was not correct to believe the mere words of the First Respondent who was the Applicant that he is the legal owner as his evidence is not in agreement with the pleaded facts in the application filed at the trial tribunal. Ground number five: That the trial tribunal erred in law and fact by refusing the assessors opinion without giving reasonable ground for such refusal. He submitted that though the assessors were ordered to present their opinion by the trial tribunal, and such opinion was read before the parties in which both 15 had opined that the application which was before the trial tribunal be dismissed as the applicant/1st respondent in this cross appeal had failed to prove his case. He submitted that the trial chairperson while refusing the

assessors opinion did not give reason to differ on the assessors opinion, citing page 20 paragraph 4 of the impugned judgment; section 24 of the Lands Disputes Courts Act Cap: 216 R:E 2019. He submitted that tribunal to be well constituted need to sit with two assessors and a chairman in which each assessor is required under the law to give their opinion upon conclusion of hearing as stipulated under section 23

- (2) Cap 216 (supra). Also cited regulation 19 (2) of the land Disputes Courts (the District land and Housing Tribunal) Regulations, 2003, for a proposition that it require every assessor to give his opinion in writing and the same opinion may be given in Kiswahili. He submitted that the assessors' opinion has not reflected in the trial tribunal judgment rather what was reflected in the judgment is the trial tribunal general opinion which is contrary to the law. Mr. Jamal, A learned Counsel for the First Respondent on cross appeal, submitted that execution of the documents is one thing and the transfer process is another thing, once the parties have executed an agreement means also rights of ownership also transferred to the other parties. He submitted that Bibie Omar Ismail being the lawful administratrix of the estate of the late Rashid Mohamed Mbegu has the powers to sell and transfer the property to the First Respondent. He submitted that there is no evidence tendered during the trial that Bibie Omar Ismail did not sign and file the application as legal personal representative of the estate of the late Rashid Mohamed Mbegu. He submitted that Mercy Komba (PW3) who is the Land Officer from Temeke Municipal Council testified that the administrator Bibie Omar Ismail submitted the documents to transfer ownership to the name of the First Respondent, arguing all process were complied and the ownership was lawful transferred to the name of the First Respondent. He faulted the argument of the learned Counsel that the administrator was one Bibie Omar Ismail and not Bibie Omar or the deceased was Rashid Omari Mbegu and not Rashid Omar, to be baseless, for the explanation that Bibie Omar Ismail was the first administrator of the estate of the late Rashid Mohamed Mbegu, arguing it is Bibie Omar Ismail who sold the disputed property to the First Respondent. Ground number two, the learned Counsel submitted that the testimony of PW1, PW2 and exhibit H1 and H4 indicating that PW1 purchased the disputed land for consideration of Tsh 20,000,000 and on the date of execution the First Respondent paid Tsh 15,000,000 remained a balance which was agreed to be paid after one month, but delayed due to the issue of handing over the premises and agreed to transfer the suit property for a promise that the remained balance will be paid after handing over. He submitted that even after the demise of Bibie Omar Ismail the Appellant had the knowledge, citing exhibit H4. He submitted that exhibit H3 indicate that the First Respondent is the registered owner of the suit premises. He submitted that there is no any records in the proceedings indicating contradicting agreements for the alleged Tsh 4,000,000. He submitted that the First Respondent is still aware that he has to pay the remained balance and is willing to pay, citing exhibit H4 which requires payment of remained balance to be during handingover. Ground number three, the learned Counsel submitted that exhibit H3, H4, H5, H6, H8 were indeed considered in the trial court. He submitted that in composing judgment there is no need for the Chairman to specific mention a certain exhibit in its consideration, arguing the content of the judgment

are the one which will show on either exhibits were considered or not. He cited page sixteen third paragraph of the impugned judgment that it considered exhibit H1, H2 did prove that the disputed property was sold legally to the First Respondent. He cited page twenty of the impugned judgment that it considered a letter of administration exhibit H5 by ruling that DW3 cannot object the work done by Bibie Omar Ismail due to the fact that both were administratrix of the estate of the same estate and previously Bibie collaborated with the First Respondent to file Land Application No. 65 of 2007. He submitted that a death certificate in respect of Rashid Mohamed Mbegu exhibit H8 was considered at page fifteen 18 paragraph two of the impugned judgment. He submitted that the Counsel for Appellant to the cross appeal failed to bring evidence that he filed final submission in compliance with the order of the Tribunal, for his allegation that it was not considered. Ground number four, the learned Counsel submitted that the Appellant has misconceived herself by stating that just because the consideration price of the disputed property was not fully paid then the First Respondent had no legal claim of ownership of the property. He submitted that there is no violation of the law on the manner the contract between the late Bibie Omar Ismail was formulated, to the effects that the remaining balance would be paid during handing over of the disputed property, citing exhibit H1 and H4. He submitted that the Appellant to cross appeal sitting in the same chair of the late Bibie Omar Ismail in the same capacity is barred in law from challenging agreement executed by her predecessor, citing *Habiba Ahmadi Nangulukuta & Two Others vs Hassan Ausi Mchopa* (Administrator of the Estate of the Late Hassan Nalino) and Another, Land Appeal No. 7 of 2018, HC Mtwara. Ground number five, the learned Counsel, cited page twenty paragraph four of the impugned judgment, arguing that the Chairperson has explicitly gave reason for the refusal. He submitted that regulation 19 of GN 174 only require the 19 Chairman to reflect what has been stated by the assessors and not to write specific words on what has been stated by assessors. On my part, I will start tackling grounds for the main appeal. For ground number one, this ground is without substance. The objection in respect of the point that the suit is time barred was overruled by the Tribunal on 27/05/2019, where the Tribunal reproduced the decision and directive issued by this Court in Land Appeal No. 65 of 2017. And ruled the matter to continue in pursuance to the directives of this Court. The same concern was ruled by the Tribunal on 14/07/2022, that it was a continuation of the directives issued by this Court. Therefore, the argument by the Appellant is misplaced. For ground number two, this ground is misconceived as well, because it was taken up to defeat the Appellant's own course. At the trial the Appellant did not raise this concern. After filing his defence he did not seek leave to implead himself as an administrator of the estate of the late Mbeyu Maganga. When he was testifying on 14/07/2022, he did not introduce any fact depicting that he is an administrator of the estate, neither said he is administering the estate of someone. On his defence he merely asserted that his father started living in the suit house in 1985 up to 1989 when he passed away, and after the demise of his father it is when the Appellant started living there. Directives issued by this Court was for him to petition for letters of administration to enable him to 20 pursue the affairs and interest of his father or to be sued in the intended suit. As alluded by the learned Counsel for the Second Respondent, it was his own laxity and negligence, because

he easily subjected himself to the status of a trespasser to the suit house, as rightly decreed by the Tribunal. In the case of Riggs (supra), it was held that, 'That no person is required to benefit or take advantage for his own wrong' The Appellant who did not have exhibit or document whatever to tender to vindicate a title of his father alleged purchased on auction conducted by Temeke Auction Mart, cannot reap from his own wrong. I now turn to the cross appeal. Ground number one, arguably the provisions of sections 67 and 68 Cap 334 (supra) requires upon the death of the owner of any registered estate or interest, it must be registered first in the name of the executor or administrator prior disposal by the legal representative. For brevity, I reproduce the provisions of sections 67 and 68 Cap 334. Section 67 with marginal notes registration of legal personal representatives, 'On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to the estate of the owner, or of his appointment under Part VIII of the Probate and Administration of Estates Act * or the Fourth Schedule to the Magistrates' Courts Act * shall be entitled to be registered as owner in the place of the deceased' Section 68(1) with marginal notes dispositions and assents by legal personal representative, 'No assent to the vesting of any devise or bequest of any registered estate or interest, or disposition by a legal personal representative, shall be registered unless such estate or interest is registered in the name of such legal personal representative' It is to be noted that the catch word in the above provisions is a registered estate. Therefore, the test here is whether the suit land was registered estate within the strictly meaning of the above provisions of the law. It is common knowledge that what was transferred to the Second Respondent is a letter of offer which was issued by the Mkurgunzi wa Huduma za Maendeleo ya Ardhi and the transfer was done by on 26/03/2018 by the Regional Land Department Officer also PW3 Mercy Emmanuel Komba, confirmed that a transfer was done by the Land Officer at Temeke Municipal vide an offer. Section 2 of Cap 334 (supra) define estate to mean, "estate" means a freehold estate, a lease or any estate which under the provisions of this Act is deemed to be freehold or leasehold, or a right of occupancy in respect of which a certificate of occupancy has been issued, but does not include the title to any building, tree or other thing erected on or growing out of or affixed to land and owned separately from the land' Also define a certificate of occupancy to mean, "certificate of occupancy" means a certificate of occupancy issued under the provisions of the Land Act' Section 2 of the Land Act, Cap 113 R.E. 2019, define a certificate of occupancy to mean, "certificate of occupancy" means a certificate issued under section 29 of this Act' The provision of section 29 Cap 113 (supra) with margin note grant of right of occupancy, provide, '(1) Where the Commissioner determines to grant a right of occupancy to a person who-

- (a) has accepted a letter of offer of a right of occupancy; or
- (b) is in occupation of land under a right of occupancy or under an acceptance of an offer of a right of occupancy; or

- (c) is otherwise entitled to a right of occupancy, he shall issue a certificate, referred to as a 'certificate of occupancy' to that person. 23
- (2) A certificate of occupancy shall be issued in the name of the President and shall be in a prescribed form.
- (3) A certificate of occupancy shall be deemed to be duly and validly executed if it is signed by the Commissioner and sealed with his official seal and purports to be signed and sealed by the President and further proof of such execution shall not be required for the purpose of registration under the Land Registration Act *.
- (4) The occupier to whom a certificate of occupancy is issued shall sign at the bottom of the certificate as acceptance of the terms and conditions of that certificate and no certificate of occupancy shall be valid or give rise to any liabilities on the part of the state or any rights on the part of the occupier to whom the certificate has been issued until it is so signed' May be for the sake of argument, one may say the offer exhibit H7 was issued on 30/05/1962 prior enactment or coming into force of Cap 113 (supra). Certainly true. However section 9 of the Land Ordinance for Tanganyika Territory, Act No. 3 of 2023 Cap 113, provide, 'It shall be lawful for the Governor when granting a right of occupancy or when a person is in occupation of land under right of occupancy or is entitled to a right of occupancy, to issue a certificate thereof under his hand and the seal of the Territory and to require the occupier to sign at the foot thereof acceptance of the terms and conditions of such certificate. Such certificate shall be termed a certificate of occupancy and shall be in the form set out in the first schedule or to the like 24 effect, and there shall be paid therefor by the occupier such fee or duty (if any) as may be prescribed' To my view, and for all purpose and intent, an offer cannot be matched to a certificate of occupancy provided for under either Act No. 3 of 1923 or Cap 113 (supra). Regarding an argument that exhibit H-1, it reveal that the land in dispute was sold on 23/05/2006 on the same date when Bibie Omar Ismail was appointed on 23/05/2006 to administer the estates of Rashidi Mohamed Mbegu. This argument is misleading, a letter of administration Form IV part of the bundle in exhibit H-2, depict the late Bibie Omar Ismael was appointed on 22/05/2006, on the alleged date of 23/05/2006 it is the date when the Form No. IV was issued. To my view a date of appointment is distinct to the date of signing letters of administration. Assuming the grant and appointment were effected on 23/05/2006 and the sale was done on the same date, still there is nothing wrong, neither invalidate anything. Therefore, the argument lacks merit. Ground number two, it is common ground that the title of the First Respondent to the cross appeal is derived from the sale agreement dated 23/05/2006 exhibit H1, executed between the late Bibie Omar Ismail and the First Respondent to the cross appeal. Therefore ,an argument regarding tracing the title of the First 25 Respondent is without substance. In his testimony the First Respondent explained that it was agreed a sale price to be Tsh 22,000,000, he paid a down payment of Tsh 15,000,000 and remained a balance of Tsh 7,000,000 ought to be paid after a month, and one week after concluding the contract, he was told a house to have problem, and case began. In the situation a question as to why a remained balance was not paid to date, become out of

context and obsolete. As alluded by the learned Counsel for the First Respondent, non payment of a remained balance in the circumstances of this case does not invalidate a sale or a contract. A mere fact that during re-examination the First Respondent stated to have paid to the late Bibie a sum of Tsh 5,700,000, then 130,000, and paid to the late Bibie and Abeid Hambu a sum of Tsh 4,000,000 in August 2006 and remained a balance of Tsh 1,300,000, to my view does not amount to serious contradiction, regard being there was an explanation that they contracted another agreement for the First Respondent to facilitate legal fees for the battle in court. As a matter of fact, nowhere the Tribunal ruled that the First Respondent as the bonafide purchaser. What the Tribunal ruled is that the First Respondent purchased the suit property legally. Ground number three, I go along the argument of the learned Counsel for The First Respondent to the cross appeal that in composing judgment there is no hard and fast rule which say the Chairman should consider and deliberate or 26 explain on each and every facts adduced and documentations tendered during trial. Above all, it is not necessary to pin point each exhibit referred when composing a judgment. If we go by sampling in line with the argument for the learned Counsel for the First Respondent, at page sixteen third paragraph of the impugned judgment, the learned Chairperson considered exhibit H2, H7 along other documentary exhibits were considered by the Tribunal without mentioning its specific exhibit number. At page twenty of the impugned judgment the learned Chairperson considered a letter of administration exhibit H5 by ruling that DW3 cannot object the work done by Bibie Omar Ismail due to the fact that both were administratrix of the estate of the same estate and previously Bibie collaborated with the First Respondent to file Land Application No. 65 of 2007. Again a death certificate in respect of Rashid Mohamed Mbegu exhibit H8 was considered at page fifteen paragraph two of the impugned judgment. It is true that a letter from the Primary Court Magistrate at Temeke which was addressed to the Temeke Municipal Council exhibit H6 was not considered. However, even if could be considered cannot be said to have the effect of changing or deviating the conclusion reached by the Tribunal. This is because the weight of that letter was almost negligible or none. In exhibit H6, the Magistrate merely asked to know the legality of the offer issued to the First Respondent vis-a-vis the offer which was in possession of the heirs. Which query 27 was not respondent to date, as per the evidence on record. Therefore, exhibit H6 on its standalone had no any weight which could be attached to it. Regarding an argument that the trial Tribunal observation that the Appellant in this cross appeal and the Second Respondent herein had not filed their final submission, which the learned Counsel argued was not a correct position. It is true that at page fourteen, paragraph four of the impugned judgment the learned Chairperson commented that the Respondents therein, did not file their closing submission. Going by the records of the Tribunal only the submissions of the Applicant therein are in the file, the submissions by the Respondents therein are missing. Therefore, there is nothing upon which the Tribunal could deliberate. In other words, the Tribunal is faulted for nothing. Ground number four, this ground was partly covered in ground number two. It appears the Appellant to the cross appeal is challenging the acts and contracts or agreement executed by his predecessor administratrix. The main ground is that the recognized administratrix was Bibie Omari

Ismail (citing a letter of administration Form No IV, part of exhibit H2 collectively) and they disowned Bibie Omar and that the recognized deceased was Rashid Omari Mbegu (citing certificate of death exhibit H8) and not Rashid Omar. Briefly, the Appellant to the cross appeal was unhappy with the naming by two names instead of three names. But to my view, this argument is baseless, for reason that in the letter 28 crafted by the Mwenyekiti was Serikali ya Mtaa part of a bundle in exhibit H2, the concerned was introduced to the probate court by the name of Bibie Omar. Importantly, a letter of offer exhibit H7 bears the name of Rashid Mohamed. Therefore, the Appellant to the cross appeal they are busy arguing and brining in arguments which defeat their own course and kicking them out. Meaning now they are no longer defending a title in the offer exhibit H7, rather they are fighting for a title of one Rashid Omar Mbegu whose name is missing in exhibit H7. Above all, it is the law that acts done by the previous administrator shall be valid unless there is a proof that she acted fraudulently or in a mala fide manner or detrimental to the interest of heirs. Herein, there is an evidence that the Appellant to the cross appeal was cooperative and recognized the First Respondent to the cross appeal, but in between after the demise of the former administratrix, around 2018 she turned hostile and started disowning what was done or administered by her predecessor administratrix. Section 46 of the Probate and Administration of Estates Act, Cap 352 R.E. 2002, provide, I hold an applicable part, 'On the death of a sole or sole surviving executor who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in 29 granting such letters of administration the court shall apply the same provisions as apply to original grants' By implication the law take into cognancy of what was administered by the previous administrator. Ground number five, in the impugned judgment at page twenty, the learned Chairperson considered the opinion by assessors and gave reason for his departure that it was because the First Respondent purchased legally and the Appellant to the main appeal is occupying the suit house illegally. To my view, the learned Chairperson complied with the dictate of the provision of section 24 Cap 216 (supra), which require the Chairman to assign reason in case of departure to the opinion of wise members of the Tribunal. That said, the appeal and cross objection are without merit whatsoever. The decision of the Tribunal is upheld. The appeal is dismissed. However, due to the nature of the dispute, I order 30 Judgment delivered in the presence of the Appellant, First Respondent and Mr. Fraterine Mnane Advocate holding brief for Mr. Ally Jamal learned Advocates for the Second Respondent. 31

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