

TANZANIA / JUDGMENT

CIVIL APPEAL NO 252 OF 2021 THE REGISTERED TRUSTEES OF THE AL DEWIL MASJID MADRASATU 3 OTHERS VS COMMISSIONER FOR LANDS MINISTRY OF LANDS HOUSING AND HUMAN SETTLE

COURT
TANZLIIDECIDED
1 January 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CORAM: LILA. J.A., KAIRO. J.A. And MGONYA. J.A. CIVIL APPEAL NO. 252 OF 2021 THE REGISTERED TRUSTEES OF THE AL-DUWIL MASJID M ADRASATUL..... i \$t APPELLANT ALLY ABDALLAH A F I F 2nd APPELLANT ALI ASCER S. KASAM ALI.....3 RD APPELLANT MOHAMED A. SULEMANI & SONS CO. LTD..... 4th APPELLANT VERSUS COMMISSIONER FOR LANDS, MINISTRY OF LANDS HOUSING AND HUMAN SETTLEMENTS.....1st DEFENDANT HON. ATTORNEY G E N E R A L..... 2nd DEFENDANT ILALA MUNICIPAL COUNCIL..... 3TM DEFENDANT (Appeal from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam) f Masara, J/> dated the 7th day of December, 2021 in Land Case No. 370 of 2016 JUDGMENT OF THE COURT 24th April & 11th September, 2024 MGONYA. J.A.: Before the High Court of Tanzania at Dar es Salaam, the appellants herein sought, in te r alia, a declaratory order that: The appellants are the lawful owners of all that Land comprised in Title No. 35854, Plot No. 44 Block "Y", Plots No. 45, 46 and 47 Block Ilala Boma, Dar es Salaam and 1 the purported Certificate of Title issued in favour of the 3rd respondent be cancelled. The appellants' case, as can be noted from their amended plaint dated the 6th day of June, 2017 is that; they are the lawful owners of all that land comprising of Title No. 35854, Plot No. 48 Block "Y", Plots No. 45, 46, and 47 Block Ilala Boma, Dar es Salaam City (hereinafter to be referred as the disputed plots) since 1988 and 1989 when they were granted the Certificate of Title and Letters of Offer respectively. That they had been in occupation of the disputed plots until on the 22nd March, 2016 when the 3rd respondent without any legal justification issued a notice requiring the appellants to demolish/remove their buildings, structures and affixtures on the plots within twenty-four hours on the allegation that, the disputed plots belong to the 3rd respondent. That, despite the statutory demand letter to the respondents to have the error be rectified by cancellation of the Certificate of Title issued in favor of the 3rd respondent, the respondents have totally refused to heed to the same. As a result, the appellants opted to institute

the suit subject of this appeal. On the other hand, it was the respondents' response that, it is only the 1st appellant who is the bonafide possessor of the land Title No. 35854 Plot No. 44 Block "V" at Ilala Boma; while other appellants did not comply with condition stated in their Letters of Offer issued to them on 10th August, 1988; which obliged them to pay statutory fees in full within 30 days from the date the said Offers were issued. Consequently, the said Letters of Offer became spontaneously invalid. Further, the respondents claimed that, the 1st appellant impinged the land with coverage of 1.8 meter within which forms a base of boundary between the 1st appellant and the 3rd respondent. From the pleadings, the court framed the following issues:

- a) Who is the lawful owner of the disputed land allegedly located at Plots No. 45, 46 and 47 Block Ilala Boma and Plot No. 48 Block Y;
- b) Whether the plaintiffs have encroached the boundaries of property housing Ilala Boma Primary School; and
- c) To what reliefs are the parties entitled to. At the trial court, the appellants' case made by Abdul Nasar Mohamed (PW1), Ally Abdallah Afif (PW2) and Ally Ascar Kasamali (PW3) was to the effect that: They applied for and allocated the land in Plot No. 44 Block "Y" Ilala Boma, Plot No. 45 (Exhibit P6), Plot No. 46, Plot No. 47 (Exhibit P12) and Plot No. 48 (Exhibit P7) Block Ilala Boma Dar es Salaam. That the allocation of those plots was to the effect that; Plot No. 44 and Plot No. 45 were allocated to the Mosque (Al-Duwil Masjid and Madrasat) while other plots were allocated to the 2nd, 3rd and 4th appellants, respectively. Further, the appellants have been occupying the disputed plots freely until 2016 when the eviction notice was issued to them by the 3rd respondent. It is the said notice which moved them to institute a suit subject to this appeal. The appellants testified further that, the Offers issued to them in 1988 were never revoked and they kept on paying annual rents since 1988 to 2014. Unexpectedly, they received the demand letter instructing them to vacate the suit land and demolish their improvements. It is from the appellants' evidence that the land in Plots No. 45, 46, 47, and 48 were not surveyed due to unwillingness and bureaucracy of the 3rd respondent. That having given a notice to vacate, they jointly wrote a ninety days' notice to sue (Exhibit P11) which was not replied to by the respondents. On the other hand, the respondents' case supported by Hassan Mohamed Mwaluko, Surveyor Officer from the 3rd respondent (DW1), Adelfrida Camilius Lekule, a Land Officer at the Office of the Commissioner for Lands (DW2) and Seif Bakari Mahiza, working at the Ministry for Lands (DW3) was to the effect that: The disputed land belongs to Ilala Boma Primary School. That the Survey Plan No. 14877 ("D" 763/4) was registered in 1969. That the plots reflected on the Survey Plan are Plots No. 38 to 44 only. According to DW1, the school area was surveyed in 1972 and approved in 1989. The respondents' witnesses maintained that, in their record there is no Block or location known as "Ilala Boma/" rather they only have Block "Y" which surrounds the disputed area. Also, they vehemently contented that, Plots No. 45, 46, 47, and 48 Block Ilala Boma does not exist in their record as their office does not have files over the disputed plots, That the record in the office of the Commissioner recognizes only Plot No. 48 Block "Y" Ilala Boma which is owned by "Chama cha Walimu Tanzania", (Tanzania Teachers'

Association). Having analyzed the evidence from parties, the trial court concluded that the appellants' case was not proved. Hence, the decision was in favor of the respondents, and the appellants' suit was dismissed for want of merits. Meanwhile, since the trial court found that there was proof that the appellants were paying the land rent in favor of the disputed plots, the court ordered the respondents to refund the appellants' money with interest at rates of the Bank of Tanzania, as the rent was unlawfully being received for non-existing plots. Being aggrieved with the decision of the High Court, the appellants filed the instant appeal. The memorandum of appeal comprises of seven grounds of complaints which reads:

- i) That the trial Judge erred in law and facts after determining that the plaintiffs' offers were valid and could not go on existing by virtue of plaintiffs' errors on both sides in absence of a valid revocation by the respondents; ii) That the trial Judge erred in law and in fact when he failed to determine that the appellants' offers were issued in the year 1988 which was prior to the approval of Registered Plan No. 16072 (exhibit P-8) approved in the year 1989, the approved registered plan did not absorb free of charge the appellants' plots; iii) That the trial Judge erred in law and facts by deciding that there is no block named Haia Boma while the evidence on record via documentary evidence (exhibits P-10, P-11, and P-12) dictates the contrary, the appellants were offered plots at Ilala Boma, paid for and went on effecting land rents payments bearing the same records from the year 1988 until 2016; iv) That the trial Judge erred in law and facts by deciding that the appellants have encroached the boundaries of the respondents' land as the plaintiffs were lawfully offered the plots in dispute in the year 1988 and have been in occupation of the same for over 30 years without any interruption from the respondents (whom they knew from the year 1989 the said plots were none existed) that could entitle them to adverse possession rights;
- v) That the trial Judge erred in law and facts by awarding reliefs that are not consonant to the case at hand, once the trial court adjudged the respondents to be negligent for mishandling the appellants' case they were entitled to compensation or being given alternative plots; vi) That on the available evidence on record the trial Judge erred in law and facts when he failed to enter judgment in favour of the appellants; and vii) That on the available evidence on record the trial Judge erred in law and facts when he made an order regarding costs of the case as no peculiarity is on record warranting the court to dispense. Like in the trial court, at the hearing of the appeal, the appellants enjoyed the services of Mr. Daniel Haule Ngudungi, learned advocate whereas, Mr. Deodatus Nyoni, learned Principal State Attorney assisted by Messrs. Ayoub Sanga, Boaz Msoffe, and Ms. Agness Gombe learned State Attorneys, appeared and resisted the appeal on behalf of the respondents. When invited to elaborate on the grounds of appeal, Mr. Ngudungi prayed the Court to consider what he had submitted in his written submission which was filed earlier and left the respondents' counsel to respond on it. In his written submission, Mr. Ngudungi opted to drop the 6th ground of appeal, and argued the 1st and 2nd grounds conjointly. Submitting for the 1st and 2nd grounds, Mr. Ngudungi argued that; it has never been disputed by the respondents that, Letters of Offers issued in 1988 were valid and lawfully given to the appellants as it appears in the judgment at page 270 line 20 of the record of appeal. That,

being issued with the said Offers, the appellants complied with the requirements of the law by effecting payments of rent to the 1st respondent in the year 1988. Therefore, the amendment of the Plan in 1989 which came out with Registered Plan No. 16072 (Exhibit P8) without showing the appellants' plots for no reasons, deprived the appellants' rights of ownership in respect of the disputed plots while at the material time of amendment they had valid Offers. Mr. Ngudungi contended further that, in the absence of proof of revocation of the appellants' Offers by the 1st respondent, the appellants' Letters of Offers remain valid to date. Therefore, a mere fact that there was amendment of the Registered Plan No. 16072 in 1989 never absorbed the appellants' land free of charge. The learned counsel referred us to our previous decision in *Ombeni Kimaro v. Joseph Mishili t/a Catholic Charismatic Renewal*, Civil Appeal No. 33 of 2017 and the High Court decision in *A. Merali & Sons Ltd v. The Director, Mwanza City Council*, Land Appeal No. 146 of 2016 which quoted with approval the case of *Hamis Sinahela v. Hassan Mbwele* [1974] T.L.R. 28, where he prayed the Court to consider the priority principle in determining the lawful owner to the disputed land. s

Reacting to the respondents' claims that the appellants did not pay statutory fees within 30 days, hence the Letters of Offers issued to them became invalid, Mr. Ngudungi argued that, the respondents never discharged their burden of proof as they never brought any evidence before the court despite the appellants' evidence for payment (Exhibit P 10). It was the appellants' counsel's submission that, despite the fact that the 1st respondent is the custodian of all documents pertaining to the ownership to land, she neither summoned any material witness nor tender any document to substantiate her claim in their joint written statement of defence. On his part, Mr. Nyoni commenced by adopting the written submission filed on 4th October, 2021 to form part of the respondents' submission. He further expressed that; the respondents are supporting the findings of the trial Judge. Further he contended that, from the appellants' testimonies, the Offers were issued to them while the plots were yet to be surveyed. Therefore, there were no plots for allocation to the appellants for the reason that the land in dispute was already surveyed back in 1972 and approved on 1989. As to how the rent was paid if the plots were not in existence, by referring to our previous decision in *Maigu E. M. Magenda v. Arbogast Maugo Magenda*, Civil Appeal No. 218 of 2017, the respondents' counsel submitted that, it is settled that payments of money to the authority does not amount to ownership of the land. Rejoining, Mr. Ngudungi submitted that, a proof that they were allocated the disputed plots is the letter from the Minister for Lands found at pages 153 - 155 of the record of appeal. In that letter, the appellants were allowed to continue with construction in Plot No. 45 contrary to the respondents' counsel's assertion that the plots were not allocated to them as the same were not surveyed. We have given due consideration to the rival submissions by the parties' counsel in line with the grounds of complaints, the record of appeal and the cited authorities. On our part, we opted to determine the 1st and 2nd grounds of complaints jointly, whereas the remaining grounds will be addressed separately. From the 1st and 2nd grounds of appeal, the main issue is; whether the appellants had valid Offers relating to the disputed plots. It is cardinal principle of the law under rule 36(l)(a) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) that, on any appeal from a decision of the High

Court or Tribunal acting in the exercise of its original jurisdiction, this Court may re-appraise the evidence and draw inferences of fact. See - *Ebony Company Limited v. Watumishi 10 Housing Company Limited*, Civil Appeal No. 29 of 2021, *Nuru Finance & Business Services Co. Ltd v. Benjamini Adamson Masuba*, Civil Appeal No.284 of 2020 and *Isaka Commercial Agency T. Ltd v. Pangea Minerals Limited*, Civil Appeal No. 251 of 2021 (all unreported). It is also settled that, in civil litigations, parties are bound by their own pleadings which form the bedrock of their claims before the court. See, *Paulina Samson Ndawavya v. Theresia Thomas Madaha*, Civil Appeal No. 45 of 2017 (unreported) where this Court underscored what was stated in the case of *James Funke Gwagilo v. Attorney General*

[2004] T.L.R. 161 that: "...another equally important principle of law that parties are bound by their own pleadings and that no party should be allowed to depart from his pleadings thereby changing his case from which he had originally pleaded." See also *Lawrence Surumbu Tara v. The Hon. Attorney General and 2 Others*, Civil Appeal No. 56 of 2016 (unreported). Going through the parties' pleadings, it is gathered from paragraph 6 of the amended plaint that, the appellants' claim that they are the lawful owners of the disputed plots since 1988 and 1989 when they were granted with Certificate of Title or Letters of Offer by the 1st respondent. Whilst, in the amended written statement of defence under paragraphs 2 and 3, the 1st respondent did not deny the issuance of the Certificate of Title and the Letters of Offer to the appellants. However, it was the respondents concern that, the Letters of Offer issued became invalid due to nonfulfillment of the condition spelt out by the offeror, which obliged them to pay statutory fees in full within 30 days from the date of the Offer. For ease of reference, let us quote paragraphs 2 and 3 of the respondents' written statement of defence which states:

2. That the contents of paragraph 5 of the plaint are partly noted in that only the 1st Plaintiff is a bonafide possessor of the land title No. 35854, Plot No. 44 Block "Y" at Ila la Boma. Further, the Defendants avers that the Plaintiff impinged the land with coverage of 1.8 Meter per each side within which forms a base of boundary between 1st Plaintiff and 3rd Defendant. The rest of the contents are vehemently disputed and the Plaintiffs are put to strict proof thereof..."
3. In addition to the above, the defendants avers that the plaintiffs did not comply with conditions stated in their letters of offer that were issued on ICPAUGUST 1988 which obliged them to furnish statutory fees in full within 30 days from the date the said offers were issued hence the said letters became invalid." It is equally elementary that, in civil suits, the burden of proof of any particular facts lies on that person who desires the court to believe in its existence. That means the burden of proof lies on the person who positively asserts existence of certain facts. See - *Paulina Samson Ndawavya v. Theresia Thomas Madaha*, Civil Appeal No. 45 of 2017, *The Registered Trustees of Joy in the Harvest v. Hamza K. Sungura*, Civil Appeal No. 149 of 2017 and *Ikizu Secondary School v. Sarawe Village Council*, Civil Appeal No. 163 of 2016 (all unreported). On our careful analysis of the pleadings, it is our respective view that, the parties are at one on the issuance of the Letters

of Offer but the issue in dispute is on the validity of the issued Offers after the failure of the appellants to fulfill the condition spelt out in the offers. Therefore, since it is the appellants who alleged that they have complied with the prerequisite conditions which involves payment of all the requisite fees within the prescribed time, in our view the burden of proof is placed on them rather than the respondents as submitted by Mr. Ngudungi. Before embarking on determining whether the appellants managed to discharge their burden of proof, we find it apposite to state that, from 13 the record of this appeal, we have observed that, the 2nd and 3rd appellants herein are the Trustees of the 1st appellant whereas, the 4th appellant is a family Company owned by PW1 who is the Chairman of the 1st appellant. As a result, therefore, when prosecuting their case, the 2nd and 3rd appellants were also prosecuting for the 1st appellant's case. Therefore, in assessing whether they managed to discharge the burden of proof which lies upon them, we opted to assess their testimonies in relation to each plot separately. To start with Plot No. 45 alleged to be allocated to the 1st appellant, a Letter of Offer (Exhibit P6) reflected at page 159 of the record of this appeal, reveals that, the offer was issued to the 1st appellant herein, Al- Duwil Masjid and Madrasat on 10th August, 1988. The same was intended to be used for religious purposes as testified by PW1. Apart from oral testimony, PW1 tendered various correspondences with the issuing Authority relating to the said plot. At page 153 of the record, there is exhibit PI which is the application letter written by Alhaji Mohamed Abeid asking for a big plot to construct a Mosque and Madrasat. In his prayer, Alhaj Mohamed Abeid specified the area which he was interested with, where he stated: 14 "Kiwanja hicho kiko I/ala ka ti ya ugaw aji (N .D .L) na duka la rejareja la wafanyakazi wa ugaw aji au R .T .C ." Apart from that, PW1 tendered a letter from the Ministry for Lands, Natural Resources and Tourism (Exhibit P2) responding to Exhibit PI. Among other things, the letter was informing Alhaj Mohamed Abeid that they were supposed to form a Registered Trustees of Al-Daweed Masjid so as to be issued with a Certificate of Title of the required plots. Equally, PW1 tendered another letter written by the Ministry for Lands, Natural Resources and Tourism dated 3rd November, 1988 titled "KIWANJA NA. 45 ILftLA BOMA-DAR ES SALAAM" (Exhibit P3). The said letter was responding to the letter with Ref. No. LD/134190/3/CCC dated 27/8/1988 which was not tendered before the trial court. The contents of Exhibit P3 was to inform Al-Duwil Masjid that after the investigation, it was decided that Plot No. 45 will remain for the religious purposes. Hence, they were allowed to proceed with construction. It is from the above evidence; this Court hasten to hold that; Plot No. 45 was legally allocated to the 1st appellant for religious purposes. Therefore, without any tangible proof that there was formal revocation made by the 1st respondent, we find the Letter of Offer issued to the 1st appellant, valid to date. 15 Moving to the validity of the Letter of Offer issued in respect of Plot No. 46 alleged to be issued to the 2nd appellant (PW2); testifying in respect of Plot No. 46, PW2 stated that, he wrote a letter to the Ministry for Land applying for the said plot. To bolster his testimony, he tendered a Letter of Offer attached with the receipts (Exhibit P10). Going through the Letter of Offer as reflected at page 180 of the record, the same contains among other conditions that, unless the offer is accepted and all fees paid within thirty days from the date of the Letter, the Offer shall lapse. That, after that period, the plot will be

disposed of as the Committee deems fit without any further reference to the offeree. For ease of reference and seriousness of the said condition, we wish to quote part of the said Letter of Offer in that respect, as hereunder: 11 Unless the offer is accepted and all fees paid within thirty days from the date of this letter the offer shall lapse. After this period the plot will be disposed of as the Committee deems fit without any further reference to you." In his testimony PW2 testified that, he paid all the prerequisite fees which, according to the Letter of Offer tendered before the court, he was required to pay fee to a tune of Tshs. 5,697/= which included Tshs. 3,400/= being a Land rent for the period from 1/7/1988 to 30/6/1989. 16 However, in ascertaining whether the said condition was fulfilled, we have thoroughly inspected the receipts attached to Exhibit P10 and observed that, the receipt dated 2nd October, 2014 indicates that the 2nd appellant paid land rent assessment to the tune of Tshs. 766,875/=. Another receipt dated 11/8/1988 acknowledged the payment of Tshs. 3,570/=, as land rent from 1/7/1988 to 30/6/1989. Further, there is a receipt attached to Exhibit P10 which indicates that the 2nd appellant paid Tshs. 515,340/= in

2007. From all the above receipts, we have failed to locate the receipt for payment of fees indicated in the Letter of Offer issued to the 2nd appellant (being Tshs. 5,697/=) including Tshs. 3,400/= land rent for the period from 1/7/1988 to 30/6/1989 to be paid within thirty days. It is on record of this appeal at page 240 line 7, when PW2 was cross examined on the receipt of payment of the amount indicated in the Offer, he admitted that he had no such receipt at that time. Therefore, it is from the above inadequate evidence, we find that, the 2nd appellant failed to prove that he had fulfilled the condition stipulated in the Letter of Offer by paying the requisite fees indicated therein within the period of 30 days to validate the said Letter of Offer. Moving to Plot No. 47 alleged to be allocated to the 3rd appellant (PW3), like the 2nd appellant, PW3 told the court that, having been issued 17 with the Letter of Offer, he paid initial charges and the receipts to that effect were tendered (Exhibit P12). The Letter of Offer alleged to be issued to the 3rd appellant likewise had similar condition that, the offeree was supposed to pay Tshs. 5,697/= as initial charge within 30 days from the date of the Offer. Upon our thorough perusal of the record of appeal, like the 2nd appellant we have failed to find the receipt reflecting the amount of Tshs. 5,697/= which was to be paid within 30 days as clearly stipulated by the Letter of Offer. Therefore, although the 3rd appellant strived to his level best to have some documents to prove that he had valid Offer over the disputed plot, he failed to prove that, he fulfilled the condition stipulated on the Letter of Offer. Consequently, we find that the 3rd appellant equally failed to prove the validity of his Letter of Offer. Taking into account by failure to pay the required fees the Committee was entitled to dispose of the said plot without any further reference to him, hence there was an automatic invalidation of the issued Letter of Offer. Turning to Plot No. 48 alleged to be allocated to the 4th appellant (PW1's family Company); in his testimony PW1 stated that, Plot No. 48 was allocated to his family Company and they fulfilled the conditions as required. When he was given a chance to prove his allegations, PW1 tendered letter of offer (Exhibit P7) showing that the Company was 18 allocated Plot No. 48. However, there was no any receipt tendered by PW1 to prove that he paid Tshs.

5,697/=as the required charges indicated in the Letter of Offer. Therefore, we are inclined to concur with the 1st respondent that the 4th appellant did not comply with the stipulated condition as a result the issued offer became invalid. It is trite that, the Offer cannot stand in vacuum, all the conditions must be read together and complied with before it can be said that there is valid acceptance. Therefore, save for the 1st appellant's Offer which we find to be valid, the 2nd, 3rd, and 4th appellants failed to prove that they properly accepted the Offers and complied with all the conditions stipulated therein which involved payment of the fees within 30 days. Hence, on our interpretation of the terms of the Offer, we concur with the 1st respondent that; the issued offers became invalid upon expiry of 30 days from 10/8/1988, a date the said Letters of Offer were issued. Premising on the above analysis we respond to the issue raised above in the negative. Having found that there were no valid Offers relating to Plots No. 46,47 and 48, the issue whether the 2nd, 3rd and 4th appellants' rights can be absolved freely, dies naturally. 19 Moving to the 3rd ground, it is the appellants' complaint that, the trial Judge erred in his finding that; there is no Block named "Ilala Boma" by relying on the oral testimony of DW3. On our part, having found that the 2nd, 3rd and 4th appellants had no valid Offers, we need not be detained much in determining this ground of complaint. It is our concern that, as the Letter of Offer relating to Plot No. 45 was undisputedly issued by the 1st respondent and the same was identified as Plot No. 45 Block Ilala Boma by the issuing Authority, we totally agree with the appellants that, the trial Judge was wrong to rely on mere words from DW1, who disclosed before the court that, he did not verify from the system the existence of the said Block Ilala Boma. Hence, this ground of complaint has merit. In regard to the 4th ground of complaint that, the appellants encroached into the 3rd respondent's land; as we have discussed earlier in the 1st and 2nd grounds that, the 1st appellant was allocated Plot No. 45 vide Letter of Offer which is still valid. With due respect, we disagree with the findings of the trial court that, the 1st appellant did encroach into the disputed land. Therefore, the ground of appeal has merit in respect of the 1st appellant only. Turning to the 5th ground that the relief awarded by the trial court is not consonant to the case at hand; in elaborating this ground, Mr. 20 Ngudungi referred us to pages 274 - 275 of the record of appeal and went on to fault the court order to refund the appellants' all monies paid as land rents in relation to the disputed plots. It is the counsel's argument that, the award is not consonant to the value of the lost plots. Mr. Ngudungi implored this Court to find that, since the appellants were given Offers and paid the rent for the same, then the land was acquired for public interest, hence the appellants are entitled to compensation. In reply, the respondents' counsel contended that, the assumption that the appellants were supposed to be compensated is wrong. According to him, the appellants had no actual plots on site. Hence, cannot be compensated for nothing other than refund of their money in respect of paid land rents. As rightly argued by the appellants' counsel, it is on record at page 275 of the impugned judgment that, the trial Judge ordered the respondents to refund the appellants' monies unlawfully received. On our part, having found that, the Letters of Offer issued to the 2nd, 3rd and 4th appellants were invalidated for non fulfilment of the stipulated condition by the issuing Authority, therefore, we are not ready to dwell on discussing this ground of

complaint as we also find that the award was wrongly granted. 21 Turning to the seventh and last ground of complaint where the appellants fault the trial court decision for failing to make an order as to costs; Mr. Ngudungi submitted that, the trial Judge expressed the suit arose out of negligence on the respondents' part. Thus, it was wrong for the trial Judge not to award costs to the appellants. In reply, the respondents' counsel submitted that, the assumption is incorrect on the eyes of the law, since the appellants lost their case at the High Court, therefore, they do not deserve any costs. The principle on awarding costs is very clear that, costs follow the event whereby the same are awarded to the winning litigant to be paid by the losing litigant so as to heal the winner's soul. Therefore, a successful party is entitled to be reimbursed the expenses spent in litigation. This Court, in its previous decision in *Shabani Fundi v. Leonard Clemence*, Civil Appeal No. 38 of 2014 (unreported), had this to say: "Costs are a panacea that soothes souls of litigations that, in the absence of sound reasons, the Court will not be prepared to deprive the successful litigant. These are the usual consequences of litigation to which the appellant is not exempt." 22 See also the decisions in *National Bank of Commerce Limited v. National Oil Tanzania Limited & Another*, Civil Appeal No. 4 of 2010 (unreported) and *Njoro Furniture Mart Ltd v. Tanzania Electric Supply Co. Ltd* [1995] TLR 205. Being guided by the above legal position, we agree with the counsel for the respondents that, the learned trial Judge was right not to award costs to the appellants as they were not the winners. Undisputedly, it is on record of this appeal that, in the impugned judgment, the trial Judge blamed the respondents for being negligent in securing public properties and he also commented on flaws in the land management system to the extent of receiving rent for non-existing plots. It is from those comments by the trial Judge, the appellants' counsel faults the court for not awarding costs while there were such blames to the respondents. With respect, we are not ready to agree with the appellants' counsel that, the appellants deserved costs only for the reason that the 1st respondent was blamed for flaws, while the end result was the dismissal of the appellants' suit. In the event therefore, this ground has no merit. In the light of the above findings, we find the appeal with merits in respect of the 1st appellant only to the extent explained above; while the 2nd, 3rd and 4th appellants' appeal is devoid of merits. Consequently, we dismiss the same with costs. DATED at DAR ES SALAAM this 10th day of September, 2024. S. A. LILA JUSTICE OF APPEAL L. G. KAIRO JUSTICE OF APPEAL L. E. MGONYA JUSTICE OF APPEAL The Judgment delivered this 11th day of September, 2024 in the presence of Ms. Maryam Saleh Msean holding brief for Mr. Daniel Ngudungi, learned counsel for the Appellants and Ms. Lightness Godwin Msuya, learned Senior State Attorneys for the Respondents, is hereby certified as a true copy of the original.

0. H. KINGWELE DEPUTY REGISTRAR COURT OF APPEAL 24

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/316867/source_file/5c35b2b56d076603/CIVIL_APPEAL_NO_252_OF_2021_THE_REGISTERED_TRUSTEES_OF_THE_AL-DEWIL_MASJID_MAD_RASATU_3_OTHERS_VS_COMMISSIONER_FOR_LANDS_MINISTRY_OF_LANDS_HOUSING_AND_HUMAN_SETTLEMENTS__2_OTHERS.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/ValidityofLettersofOffer-tanzlii-2021--6a3ea52a3b1caa9129823699>

Prepared on 23 October 2026 · Esheria