

TANZANIA / JUDGMENT

DONALD DANIEL MASAWÉ V

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IN THE HIGH COURT OF TANZANIA ARUSHA DISTRICT REGISTRY AT ARUSHA. LAND CASE NO. 15 OF 2023 DONALD DANIEL MASAWÉ PLAINTIFF VERSUS GENES FIDELIS KIMARIO1ST DEFENDANT THE DIRECTOR, ARUSHA CITY COUNCIL.....2ND DEFENDANT THE COMMISSIONER FOR LANDS.....3RD DEFENDANT THE REGISTRAR OF TITLES.....4TH DEFENDANT THE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

Date of Last Order: 5/06/2024 Date of Judgment: 14/06/2024 B. E. K. Mganga, J. On 22nd March 2023, Donald Daniel Massawe, the abovenamed plaintiff filed this case alleging that, Genes Fedelis Kimario, the Director, Arusha City Council, the Commissioner for Lands, the Registrar of titles and the Attorney General, the abovenamed, 1st, 2nd, 3rd, 4th and 5th defendants, jointly and together, colluded and interfered with ownership of his plot No. 696 block J, Njiro area within Arusha City with Certificate of title No. 24494. It was alleged by the plaintiff that, he acquired interest in the said plot in 2008 by way of gift from Mary Mushi, the latter being his sister. Plaintiff alleges that, the said Mary Mushi was allocated the said land in 1994 and that she was issued with a letter of offer in 2005. Plaintiff alleges that, the said Mary Mushi developed the said plot with a fence and concrete pillars and a foundation for a house and further that, the said Mary Mushi was paying land rent in respect of the said plot. It is further alleged by the plaintiff that, after being given the said plot by Mary Mushi, he developed it and that, in 2008 he was issued with a certificate of title No. 24494. Plaintiff complains that, on 8th May 2019, he received a letter written by counsel for the 1st defendant attached with a certificate of title No. 28081 showing that the said title deed was issued to the 1st defendant in 2010. Plaintiff complained further that, in 2022, 1st defendant trespassed on the disputed plot and demolish structures built on by the plaintiff. Plaintiff claims that the said structure was valued TZS 23,264,582/=. Plaintiff claims that, due to trespass done by the 1st defendant and acts of the 2nd, 3rd and 4th defendants issuing a new title deed over the plaintiff's plot, he has incurred irreparable loss because 1st defendant has demolished structures thereon hence unable to enjoy the fruits of the said plot. Based on the foregoing, plaintiff has filed this case praying the court to enter judgment and decree in his favour and (i) declare him as the lawful owner of the dispute plot, (ii) declare the 1st defendant as trespasser over the disputed land, (iii) a declaration that issuance of the second title deed to the 1st defendant by the 2nd, 3rd and 4th defendants is illegal, (iv) on order the 4th

defendant rectify the land registry by deleting the entry of the title deed registered in the name of the 1st defendant. On his part, 1st defendant filed the written statement of defence stating inter alia that, he is the legal owner of the disputed plot since 2009 as he has been paying rent. In his written statement of defence, 1st defendant stated that, in 2010, he was issued with certificate of title No. 28081 and doubted genuineness of certificate of title No 24494 issued to the plaintiff. The 1st defendant further stated that, he was the one developing the disputed plot and further that, plaintiff, without clour of right, demolished the said development. It was further stated by the 1st defendant that, plaintiff has never possessed or enjoyed the use of the disputed plot since 2008 and that, for the first time plaintiff trespassed on the disputed plot in 2018. The 1st defendant further stated that, no revocation could be made to the plaintiff's Certificate of title since the latter owns nothing on the disputed plot. First defendant disputed the allegations that in 2022 he trespassed on the disputed land and demolish the structures thereon. He further stated that plaintiff has not suffered irreparable loss because he is not the owner of the disputed 3 plot and prayed the suit be dismissed with costs and that the court should declare him as the rightful owner of the disputed land. On the other hand, in the joint statement of defence, 2nd, 3rd, 4th and 5th defendants disputed the claim of ownership of the disputed plot of land by the plaintiff. In their joint statement of defence, the 2nd to the 5th defendants stated that, there is no point in time the 2nd and 3rd defendants allocated the suit land to the plaintiff. They further stated that, plot No.696 Block J, Njiro area was allocated to the 1st defendant by the 2nd defendant and that, plaintiff was not entitled to be issued with a certificate of title because the same was obtained illegally. The 2nd to the 5th defendants further stated that, in February 2013 Mary Mushi submitted a purported deed of gift, application for approval of disposition, notification of disposition and transfer of right of occupancy intending to transfer her ownership already revoked in 2009 for failure to develop the suit land. They further stated that, transfer of ownership was not completed because Mary Mushi had no good title to pass the suit land to the plaintiff. The 2nd to 5th defendants stated further that, on 10th June 2022, plaintiff filed a caveat and statutory declaration in the office of the 4th defendant claiming that he is the owner of the suit land purchased from Mary Mushi in 2007 while at the same time claiming that he was given the said land by Mary Mushi by way of gift. In the said 4 joint written statement of defence, the 2nd to 5th defendants admitted that, in 1994, the disputed land was allocated to Mary Mushi and in 2005 a letter of offer was re-issued to the said Mary Mushi and maintained that the said ownership was revoked in 2009 for failure to develop the suit land contrary to what is provided in the letter of offer and approval letter. The 2nd to 5th defendants stated further that, after the said revocation, the suit land was reallocated to the 1st defendant as an alternative to plot No. 733 block H, Njiro which had some discrepancies. They further admitted that, the 1st defendant's certificate of title was prepared in 2010 and that, before issuance the said title to the 1st defendant and stated that, there was no any certificate of title over the disputed land because ownership of Mary Mushi was already revoked. The 2nd to 5th defendants further stated that, 1st defendant was issued the certificate of title in accordance with the law and that, he is the lawful owner of the disputed land. Based on that, the 2nd to 5th defendants prayed the court (i) to declare 1st defendant as the lawful owner of the disputed land, (ii) declare the plaintiff as trespasser and (iii) order plaintiff to pay costs of this case. The five issues that were drawn and

agreed upon by the parties that require determination are (i) who is the rightful owner of plot No. 696 block J Njiro area in within the city of Arusha, (ii) whether there was 5 revocation of plot No. 696 block J, Njiro area, within the city of Arusha, (iii) whether the certificate of title issued to the plaintiff was obtained legally, (iv) whether plaintiff made development on plot No. 696 block J Njiro, area within the city of Arusha, and (v) to what relief(s) are the parties entitled to. In the bid to prove the abovementioned issues, Donald Daniel Massawe(PW1), testified that, in 2008, he was given plot No. 696 block J, Njiro, Arusha by his sister Mary Mushi(PW2) by way of gift. PW1 stated that PW2 gave him various documents including inter-alia allocation letter (exhibit P2), a letter dated 27th April 1994 written by PW2 accepting allocation of the said plot(exhibit P3), various receipts evidencing that PW2 paid land rent and other payments (exhibits P4 to P11) relating to the disputed plot from 1994 to 2008, a letter of offer No. 00139301 dated 22nd December 2005 for plot No. 696 block J, Njiro issued to Mary Mushi (exhibit P17). He added that, land officers directed the said Mary Mushi to write a letter to show that she has given him the said land and that, at that time, the said plot had a wired fence and house foundation. PW1 went on that, he developed the said plot by constructing a eight rooms building with seven(7) lines bricks up and continued to pay land rent. 6 It was further evidence of PW1 that, in October 2008 he was issued with a certificate of title No. 24494 for thirty-three(33) years in his name(exhibit P1). PW1 added that, he continued to pay land rent after 3rd defendant has made assessment for the said plot for the period from 2008 to 2022(exhibits P12, 13, 14 and 15). PW1 went on that, on 4th June 2022, he was called to the scene and found 1st defendant has demolished the structure he(PW1) developed on the disputed plot. He added that, he reported to police, as result, 1st defendant was arrested and investigation was conducted. It was further evidence of PW1 that, the loss he incurred due to demolition of the said structure by the 1st defendant is TZS 23,268,560/= according to valuation report that was carried out. He also testified that, in 2019 a dispute arose between him and the 1st defendant and that, the latter filed a case before the District Land and Housing Tribunal but the said case was struck out. He added that, after the said case was struck out, Mr. Omary, the advocate of the 1st defendant wrote a demand letter (exhibit P18 with its annextures) to the 2nd defendant attaching certificate of title (exhibit P1), certificate of title No. 28081 issued on 3rd March 2010 to the 1st defendant (exhibit D4) requiring the 2nd defendant to solve the dispute over the said plot between him(PW1) and the 1st defendant. He added that, in exhibit P18, 1st defendant indicated that he is the owner of the disputed land and 7 further that, PW1 should be stopped from developing the said plot. That in the said letter it was also stated that PW1 should be ordered to demolish the structure built on the disputed plot. PW1 went on that, according to exhibit P18, 1st defendant bought plot No. 733 block H, Njiro from Abuu Shaban. It was further evidence of PW1 that, on 23rd May 2019, Kijana S. Lukumay, for the 2nd defendant, responded to exhibit P18 by writing a letter (exhibit P19) requiring the 1st defendant to submit proof of allocation of the disputed plot, original offer, original certificate No. 28081 and proof of payment for the said plot. It was further evidence of PW1 that, he has been paying land rent and that, there is no revocation of certificate of title No. 24494. He added that, in July 2022 he made official search (exhibit P20) in the office of Registrar of land Arusha and find that, the said certificate has not been revoked and that it is his property. PW1 concluded his evidence in chief praying the court (i) to declare that he is the rightful owner of the disputed plot, (ii) order the 1st defendant to

pay TZS 23,264,000/= being value of the structure demolished, (iii) the 1st defendant to pay costs of this case and (iv) the court to nullify certificate No. 28081 issued in the name of the 1st defendant. While under cross examination, PW1 stated that, exhibit P17 required payments be made within 30 days but that he cannot recall 8 which amongst of the receipts he has tendered proves that payment was done in 2005 within 30 days as provided in exhibit P17. He maintained that, Mary Mushi gave him the dispute plot as gift and that, the said deed of gift is attached to the certificate of Title. In his evidence under cross examination, PW1 admitted that, he did not tender the deed of gift, documents showing how the said plot was transferred from Mary Mushi to him or documents showing that he is the one who made development on the said disputed plot. He further admitted that, he did not submit any document at land office praying to transfer ownership of the said plot from Mary Mushi to himself. He stated further that, in 2013, he went to the land offices where he was informed that procedures for transfer of the said plot was not completed. In further cross examination, PW1 admitted that, there is no deed of gift that he was given by Mary Mushi. PW1 also testified that, he started to develop the disputed plot in 2012 and maintained that the letter of offer issued to Mary Mushi was not revoked because there is no letter to that effect. It was evidence of Mary Mushi(PW2) that, in 1994 she was allocated the disputed plot as per exhibit P2 and that she accepted the said allocation by writing a letter (exhibit P3). She further testified that, exhibit P2 required her to pay for the offer but there was no specific time within which payment could be made and added that, she paid all 9 payments that she was required to make. She also testified that, in 2000, she built a house foundation and concrete pillars with fence wire over the disputed plot. PW2 also testified that, she paid all land rent up to 2008. It was evidence of PW2 that, in 2008 she gave the said plot to her young brother namely, Donald Daniel Massawe (PW1) as gift. She added that, she gave PW1 all documents relating to the said plot and that, both herself and PW1 went to the land offices where she prayed a certificate of title be issued in the name of Donald Daniel Massawe(PW1). She went on that, Land officers directed her to write a letter showing that she was praying the said plot be registered in the name of PW1. It was further evidence of PW2 that, PW1 developed the said plot but he was told that land officers required deed of gift. She added that, in 2013 she signed the deed of gift before Kinabo advocate and gave it to PW1. PW2 further testified that, ownership of the said plot was never revoked because, she did not receive any letter to that effect. She also stated that, she is the one who paid payments evidenced by exhibits P4 to P11. She further testified that, in 2005 she was issued a letter of offer (exhibit P17) and that, she paid all payments shown on exhibit P17. While under cross examination, PW2 stated that, she built a house foundation of 8 rooms over the disputed plot and that she was 10 allocated the said plot in 1994 of which she accepted and that, the offer was issued in 2005. PW2 stated further that, apart from the deed of gift, she doesn't recall to have signed any other document. On further cross examination, PW2 stated that, PW1 was issued with a certificate of title in 2008 and that, in 2013 she signed deed of gift in favour of PW1. She maintained that, she was unaware revocation of owner ship of the disputed plot. She further stated that, at the time of transfer, she filled letter of allocation, letter of acceptance, letter of offer and all receipts for payments that she did. She also stated that, she doesn't recall to have submitted building permit to land officers as required by exhibit P17. It was evidence of Hamza Juma Njiku(PW3) the chairman of block J, Njiro that, the owner of the

disputed plot is the plaintiff(PW1). It was evidence of PW3 that, in the disputed plot there was unfinished house that was constructed by PW1. It was further evidence of PW3 that, the said house was demolished on 4th June 2022 by Genes Kimario, the 1st defendant. He added that, he was phoned by Mrs. Massawe that 1st defendant is demolishing the said house and that, on his arrival to the scene, he found the 1st defendant has already demolished the said house. PW3 also stated that, prior to demolition, 1st defendant came to his house in possession of building permit showing that he wants to develop the disputed plot but he told the latter that the said plot is owned by PW1. PW3 added that, he advised 1st defendant to resolve the dispute with the plaintiff(PW1) but the former did not agree with that advice as a result, he started preparation of constructing foundation. While under cross examination, PW3 stated that, he has no document proving that the disputed plot is owned by the plaintiff. He also admitted that he arrived at the scene and find 1st defendant has already demolished the said unfinished house and that, he was informed by Mr. Massawe and neighbours that the said house was demolished by the 1st defendant. On further cross examination, PW3 testified that, he used to see plaintiff developing the disputed plot. In his evidence, PW3 admitted that, PW1 did not submit to him a certificate of title and that, he doesn't know the previous owner of the disputed plot. In his evidence, Paskas Methew Matundu(PW4), an employee of the Ministry of Land, Housing and Settlement Development working with the 1st defendant as valuer, stated that, on 6th June 2022 he received a letter from police requiring him to conduct valuation over the disputed plot following destruction of the property thereon. PW4 clarified that, it is the Arusha City Director who gave him the said letter and that, having received the said letter, he went to police and met one Samson, a police officer, who was conducting investigation and the two went together to the disputed plot to determine the extent of destruction. PW4 stated further that, at the said plot, they met plaintiff who was the complainant. PW4 went on that, while at the disputed plot, he observed the extent of destruction and prepared valuation report. PW3 testified further that, his valuation report shows destruction that was done on the house and fence. It was further evidence of PW4 that, his valuation report shows that the property that was destroyed is valued at TZS 23,264,582. It was further evidence of PW4 that, he prepared only one report and submitted it to police and that, he did not retain a copy in his office. While giving evidence under cross examination, PW4 stated that, his report ended to police officers who prayed for valuation. On the other hand, it was evidence of Genes Fidelis Kimario(DW1), the 1st defendant that, in 2008 he purchased plot No. 733 block H, Njiro from Abuu Shaban for TZS 3,200,000/=. That, having purchased plot No. 733 block H, Njiro area, from the said Abuu Shaban, he went to land offices Arusha but he was told that the said plot No. 733 block H, Njiro has been allocated to another person. DW1 testified further that, the authorized land officer, Arusha City informed him that he will be allocated another plot. DW1 went on that, in 2009, the said land officer wrote a letter (exhibit D1) requiring him to go to land offices where he was allocated the disputed plot No. 696 block J, Njiro, area and that, he was required to make payment so that a certificate of title can be issued in his name. DW1 stated that, in 2009 he made payments with a view of developing the disputed plot and was issued with receipts (exhibits D2 and D3). He added that, he was shown the disputed plot by land officers after he had paid the amount indicated in exhibit D1. DW1 testified further that, in March 2010 he was issued with certificate of title No. 28081(exhibit D4) for 99 years. DW1 went on that,

he has been paying land rent for the disputed plot to the 2nd defendant after assessment being done by the 3rd defendant as evidenced by exhibits D5, D6, D7, D8 and D9. It was further evidence of DW1 that, the dispute over the disputed plot arose in 2021 when he took materials for construction namely, sand and stones to the said plot and found that plaintiff also has sent sand to the said plot. DW1 went on that, he called plaintiff over the phone so that they can discuss but the latter did not appear. DW1 added that, he reported to the 2nd defendant where he was told to continue to develop the disputed plot. It is also evidence of DW1 that, he filed a land case in the District court which he cannot recall its number but the same was struck out. DW1 testified further that, after the said case was struck out, his advocate, one omary, wrote a letter to 2nd defendant (exhibit P18) seeking interventions. DW1 added that, he wrote a 14 complaint letter to land officers Arusha city as a result, land officers replied to his letter that he is the owner of plot No. 696 block J, Njiro. In his evidence in chief, DW1 denied to have demolished the property of the plaintiff and that he only cleared the said plot by removing structure that was built thereon. DW1 admitted to have been arrested and sent to police on allegation that he demolished plaintiff's property and added that plaintiff failed to prove that he is the owner of the said plot as a result, he was not charged in court. DW1 maintained that he is the rightful owner of the disputed plot and prayed the court to issue an order that plot No. 696 block J, Njiro is owned by him as per certificate of title No. 28081. While under cross examination by counsel for the plaintiff, DW1 stated that, he bought plot No. 733 block H, J, Njiro area from Abuu Shaban who is not an employee of land offices. He further stated that, he is claiming ownership of the disputed plot because it was allocated to him. In his evidence under cross examination, DW1 also admitted that, he did not tender contract showing that he purchased plot No. 733 block H, Njiro. He maintained that he was notified by land officers that plot No. 733 block H, Njiro was owned by another person. DW1 admitted that, he did not go back to Abuu Shaban, the seller of plot No. 733 block H, Njiro, to claim refund of his money. DW1 stated that, the 15 reason for that failure is that, the said Abuu Shaban had evidence showing that he is the owner of plot. No. 733 block J, Njiro. When cross examined on exhibit P18, DW1 admitted that, Abuu Shaban was claiming ownership over plot No. 731 block H, Njiro area. DW1 stated further that, he has a contract of sale and transfer from Abuu Shaban showing that he was the owner of plot No. 733 block H, Njiro. He went on that, the said transfer was approved by land officers. He added that, after approval of transfer of ownership of plot No. 733 block H, Njiro, he was given a document by Abuu Shaban while at land offices. In his evidence under cross examination DW1 also admitted to have instructed his advocate to write exhibit P18 in which he asked the land officers to stop plaintiff from developing the disputed plot and order him to demolish a structure erected on the disputed plot. DW1 stated further that, there were two buildings with seven(7) line bricks up, constructed on the disputed plot and that he demolished them. DW1 further stated that, Certificate of title No. 28081(exhibit D4) issued in his name was registered on 3rd March 2010 while certificate of title No. 24494 (exhibit P1) issued to the plaintiff was registered on 8th October

2008. DW1 admitted that, exhibit P1 was registered prior to registration of exhibit D4. DW1 stated that, he paid land rent for the last time in 2019 and admitted that receipts he tendered (exhibit D5 to D9) shows 16 that he paid land rent up to 2017. DW1 further stated

that, he was advised by the 2nd defendant to send sand and stones to the said plot in 2021 so that plaintiff can appear. In disapproving the plaintiff's case, the 2nd to the 5th defendants called Mary Malendecha (DW2), the authorized land officer, who testified that, in 1994 plot No. 696 block J, was issued to Mary Mushi (PW2) who accepted the said allocation. She testified also that, in 2005, PW2 was issued with a letter of offer in respect of the said plot. DW2 testified further that, PW2 did not develop the said plot for long period, as a result, the said plot was allocated to Abuu Shaban as compensation because, Abuu Shaban's plot No. 733 block H, Njiro was acquired by the 2nd defendant and allocate to a person whose name she didnt recall. DW2 testified that, Plot No. 696 block J, Njiro is owned by Genes Kimario, the 1st defendant who is in possession of certificate of title. It was further evidence of DW2 that, ownership of the said plot by the 1st defendant started in 2009 but registration was in 2010. DW2 stated that, practically, it is not possible for the same plot to be issued two offer to the same person but with different years and that she doesn't know why PW2 was issued two different offer on the same plot with different years. 17 It was further evidence of DW2 that, PW2 failed to comply with conditions of the letter of offer, as a result, a warning letter was sent to PW2 that the said plot may be allocated to another person. DW2 added that, between 2006 and 2007 PW2 was further served with a notice to that effect. It was evidence of DW2 that, ownership of PW2 over the disputed plot was revoked. DW2 testified further that, after PW2 has failed to comply with conditions of the offer, plot No. 696 block J, Njiro was allocated to Abuu Shaban. She went on that, Abuu Shaban sold plot No. 731 block H, Njiro but it was found that, it has a dispute as a result, the said Abuu Shaban was allocated plot No. 733 block H, Njiro. DW2 added that, Abuu Shaban sold plot No. 733 block H, Njiro to Genes Kimario, the 1st defendant. In her evidence in chief, DW2 stated that, there is no document in the file that could have enabled the 2nd defendant to approve ownership of plot No. 733 block H, Njiro by Genes Kimario, the 1st defendant. DW2 testified further that, in lieu of plot No. 733 block H, Njiro, the 2nd defendant allocated plot No. 696 block J, Njiro to Abuu Shaban after revocation of ownership of the said plot by PW2. It is further evidence of DW2 that, the said Abuu Shaban and Genes Kimario, the 1st defendant went in the land offices while in possession of sale agreement relating to plot No. 733 block H, Njiro. DW2 went on that, after plot No. 696 block J Njiro was issued to Abuu 18 Shaban, the same was transferred to Genes Kimario, the 1st defendant, who, in 2010 was issued with a certificate of title. DW2 testified further that, they made official search prior issuing certificate of title to 1st defendant and found that plot No. 696 block J, Njiro was unallocated. In her evidence, DW2 admitted that, she is aware that there are two certificates of title issued to two different persons namely Genes Kimario, the 1st defendant whose certificate was issued in 2010 and Donald Massawe, the plaintiff whose certificate was issued in 2008. DW2 further testified that, in March 2024 plaintiff complained that his plot namely, plot No. 696 block J, Njiro was allocated to another person. She added that, after the complaint by the plaintiff, they perused their records to see genuineness of the two certificates of title. It was further evidence of DW2 that, the certificate issued to the 1st defendant is valid because, it has a valid land office number. She went on that, up to now, land office number starts with 322...

while land office number of the plaintiff's certificate of title starts with 333... which, according to DW2, they have not reached to that serial number. It was further evidence of DW2 that, land office of the plaintiff's certificate of title(exhibit P1) is 332987 while land office number issued to the certificate of title of the 1st defendant (exhibit D4) is 311916. It was also evidence of DW2 that, the valid certificate is exhibit D4 that was issued to the 1st defendant 19 though she admitted that the certificate that was registered first is exhibit P1 that was issued to the plaintiff. DW2 stated in her evidence in chief that, the procedure to be adhered to, in transfer of ownership is that, if there is sale, parties must attach sale agreement or, if it is by deed of gift or by inheritance or, probate, documents to that effect must be submitted to the authorized land officer. She added that, plaintiff only submitted a document relating to transfer from Mary Mushi to him but the process was not completed because transfer was not approved. When cross examined by counsel for the plaintiff, DW2 stated that, in order for a certificate of title to be issued, applicant must submit documents showing how he/she acquired the plot. She added that, the applicant must submit evidence showing how he/she acquired the said plot, costs must be calculated by land officers and paid by the applicant and finally draft of certificate is prepared. She also stated that, they ceased to issue letters of offer in 2010. On further cross examination DW2 stated that, she cannot recall exactly the year they ceased to issue letters of offer. DW2 stated further that, Certificate (exhibit D4) was prepared in 2009 and that, it was not a requirement of law to issue letter of offer. DW2 admitted that, both certificates (exhibits P1 and D4) were registered by the Commissioner for land. She added that she can't tell which is genuine between the two. She further admitted that, exhibit P1 was registered prior to exhibit D4 and that both certificates (exhibit P1 and D4) were signed by the Commissioner for Lands. She went on that, preparation for registration of exhibit P1 started in October 2006 but it was registered in 2008 and that, preparation for registration of certificate of title starts in the land office. It is further evidence of DW2 that, there is no record in office relating to existence of certificate of title No. 24494 for plot No. 696 block, J, Njiro (exhibit P1). She further admitted that, ownership is based on certificate of title and not land office number(LO No.) because, the latter only helps land officers to make reference of the certificate of title and other applications in relation to the plot. In her evidence, DW2 also admitted that, a letter of offer (exhibit P17) that was issued to PW2 in 2005 is valid because PW2 made payments as prescribed in the said letter of offer. She also stated that, according to exhibit P17, ownership of Mary Mushi(PW2) started on 01st October 2005 but the same was revoked between 2007 and 2008. She further stated that, revocation was done because PW2 failed to complete development within three years. On further cross examination, DW2 admitted that, from October 2005 three years ended in October 2008 but the said ownership was revoked in 2007. Testifying on 21 procedures that was used in revocation of the said ownership, DW2 stated that, a warning letter was issued to PW2 followed by 90 days notice and that, a revocation form was signed by the Minister on behalf of the president but the same is not in her office. In further cross examination, DW2 admitted that PW2 was not notified of the said revocation. In her evidence, DW2 also stated that, the allocation committee meeting was held and decided that Abuu Shaban be compensated

plot No. 733 block H, Njiro area but after noting that the said plot had a dispute, the said Abuu Shaban was allocated plot No. 696 block J, Njiro. She further stated that, she can't recall the date the said plot was allocated to the defendant. In further cross examination, DW2 admitted that, exhibit P2 and P3 shows that Mary Mushi (PW2) was allocated the disputed plot and accepted it. DW2 admitted that, exhibit P3, P4, P5, P6 and P7 are payments for the disputed plot by PW2 for the year 1994 and 1995. She further admitted that, exhibit P7 dated 12th September 1994 is valid payment for survey deed plan. She also admitted that, exhibit P6 dated 12th September 1994 is valid payment for certificate of title of the disputed plot and that, exhibit P5 is valid payment for land rent from 1st July 1994 to 30th June 1995. She also further admitted that, exhibit P8 22 to P11 relates to payment of land rent from 1st July 2006 to 30th June 2009, 2003/2004 to 30th June 2005, 1st July 2002 to 30th June 2003, 1st July 2000 to 30th June 2002 for the disputed plot. DW2 also admitted that, exhibits P12, 13, 14, and 15 are valid documents from their system and that, the name appearing in their system in respect of the said documents is that of Donald Daniel Massawe, the plaintiff. DW2 also stated that, Land rent for the disputed is paid by the defendant but there are some pending payments. When cross examined in relation to exhibit P15, She admitted that, the said exhibit shows that, the last date payment of land rent was done by the plaintiff is 6th June 2022 because the said exhibit P15 relates to payment for the year 2020/2021 and 2021/2022. In the same evidence, DW2 admitted that, exhibit P20 is official search for the disputed plot and that, it shows that certificate of title No. 24494 was issued to the plaintiff as the owner. On further cross examination, DW2 stated that, exhibit P19 is a valid letter from Arusha City Council requiring 1st defendant to submit some documents and that, she has not seen any reply from the 1st defendant. She added that, she doesn't know why the office demanded 1st defendant to submit those documents. She further stated that, exhibit D9 is payment of land rent from 1st July 2010 to 30th June 2012 and exhibit D8 is payment of land rent from 1st July 2010 to 30th June 23

2011. She stated further that, she cannot say that both receipts were for payment of land rent for 2010 and 2012. She also stated that, exhibit D7 is payment for land rent from 1st July 2013 to 30th June 2014 and exhibit D6 is payment of land rent from 2013/2015 and added that, the said exhibits were not supposed to show same years. On further cross examination, DW2 stated that, there are documents in office showing application of transfer from PW2 to the plaintiff. She stated further that, the said documents were submitted in 2013 but they were not worked on because, a certificate of title was already issued in the name of the plaintiff who was the transferee. DW2 stated further that, transfer fees were not paid. She stated that, she doesn't know what happened for the certificate of title to be issued while transfer was not completed, and no transfer fee paid. But when she was cross examined by counsel for the 1st defendant, DW2 stated that, there is no proof that PW2 paid land rent mentioned on letter of offer issued in 2005. The 2nd to 5th defendants further called Dotto Paulo (DW3), the Assistant Registrar as their witness. In his evidence, DW3 stated inter-alia that, the disputed plot has two different certificate namely (i) No. 28081 (exhibit A1) in the name of Genes Fidelis Kimario, the 1st defendant that was registered on 5th March 2010 with land

office No. 311916 and (ii) No. 24494 (exhibit A2) in the name of Donald Massawe, 24 the plaintiff, that was registered on 13th October 2008 for 33 years from 1st October 2006 with land office No. 332987. DW3 stated further that, the said certificates have office stamp and stamp of the Registrar of title. DW3 went on that, they received certificate both certificates of title No. 24494 and 28081 from the Commissioner for lands which is why they registered them. He further stated that, initially, title numbers were issued manually, therefore, it is possible, by mistake, that the two certificates were issued on the same plot. He went on that, after noting that there are two certificates of title over the same plot, they took both certificates and put them together to prevent any transactions, such as transfer, mortgage etc while the commissioner for lands is verifying as who is the rightful owner between the two. He added that, up to now, they have not established the rightful owner of the disputed plot because, it is the duty of the 2nd defendant to prove the rightful owner between the two. He testified further that, on 10th June 2022 caveat No. 2802 (exhibit A3) was registered after an application by the plaintiff. DW3 further stated that, in statutory declaration, the caveator (plaintiff) stated that he bought the said plot in 2007 from Mary Mushi(PW2). He added that, the caveator indicated further that, the 1st defendant has also a certificate of title in respect of the same plot. He further stated that, the office has made no action in relation to the said caveat. DW3 25 admitted that, the Registrar of title has registered two Certificates of title namely No. 24494 and 28081 and that, both are recognized as valid titles. When DW3 was cross examined by counsel for the plaintiff, he stated that registration of the first certificate is not a guarantee that it is genuine because genuiness depend on how the person was properly allocated the plot and procedures adhered to in an application for issuance of the certificate. He also stated that, in order for a certificate to be issued, there must be inter-alia letter of allocation and payment in respect of the plot. DW3 stated further that, if ownership of a plot is revoked, a deed of revocation must be filed to the registrar of title. He added that, Registrar of titles has not received any revocation notice relating to the disputed plot. When cross examined by counsel for the 1st defendant, DW3 stated that, if a plot has no certificate of title, there cannot be notice of revocation or any notification. DW3 stated further that, if there is any breach of condition prior to registration of certificate of title, the authorized land officer and the Assistant Commissioner for land can issue notification to the owner of the plot and take necessary steps including allocating the plot to another person. He also testified that in exhibit A3 the caveator did not attach any sale agreement to prove that he has an interest in the said plot. 26 After conclusion of evidence of the parties, learned counsel prayed to make oral final submissions and the same was granted. In her submissions, learned council for the plaintiff opted to start with the 2nd issue relating to revocation of ownership of the disputed plot by PW2. Ms. Sanare submitted that PW1, PW2 and DW2 all testified that, initially the disputed plot was allocated to Mary Mushi who was legally issued with the letter of offer (exhibit P17) for 33 years from October 2005. Learned counsel cited the provisions of Section 47 of the Land Act [Cap.113 R.E.2019] and submitted that, for revocation to be done, it is mandatory for the owner to be served with the notice showing that the owner has violated conditions of ownership. She submitted further that, the said notice gives a room to the owner not only to know the

conditions violated but also to rectify what was violated. She further cited Section 48 of Cap. 113 R.E. 2019 (supra), to bolster her submissions that, after issuance of the notice, the Commissioner for Land must serve the revocation notice to the owner of the plot and any other interested persons on the plot. Learned counsel for the plaintiff added that, the revocation notice can only be issued if the provisions of section 47 Cap. 113 R.E. 2019 (supra) has been complied with. She went on that, section 49(1) of Cap. 113 R.E. 2019(supra) provides that revocation must be published in the gazette 27 and any other newspaper circulated in the area. She strongly submitted that 2nd to 5th defendants has not proved that they complied with those provisions. She added that, no documentary evidence or oral evidence was adduced by the 2nd to the 5th defendants showing that they complied with the said provision. Learned counsel for the plaintiff cited the case of Tanzania Milling Company Limited v. The Attorney General and Another, Civil Appeal No. 98 of 2020, CAT(unreported) to cement on her submissions that it is mandatory to comply with the provisions of sections 44 to 50 of Cap. 113 R.E. 2019(supra) when there is allegation of violation of conditions of ownership of land and that, failure to comply with those provision, revocation becomes invalid. She maintained that, there was no revocation and submitted that, in her evidence, PW2 stated that she developed the disputed plot since 2000 hence there was no violation of conditions of ownership. Learned counsel for the plaintiff further cited the provisions of section 110 of the Evidence Act[Cap.6 R.E. 2019] to bolster her submissions that 2nd to the 5th defendants had a duty to prove that there was revocation but they failed. She also cited the provisions of section 48(1) of Cap. 113 R.E. 2019 (supra) relating to the powers of the Commissioner for Land to revoke ownership of land and submitted that, 2nd to the 5th defendants have failed to call the Commissioner for land to 28 prove that ownership of the disputed plot by Mary Mushi was revoked. She further cited the case of Andrew J.M. Kitenge v. Maua Hamis Rai and Another, Land Appeal No. 255 of 2022, HC(unreported) to support her submissions that, failure to call a material witness is fatal and a negative adverse inference can be drawn. Learned counsel for the plaintiff submitted that, Commissioner for land was not called because the 2nd to 5th defendants feared that evidence of the Commissioner for Land would negatively affect their evidence relating to revocation. Arguing the 1st issue relating to ownership of the disputed plot, Ms. Sanare cited the case of Salum Matheo v. Mohamed Matheo

[1987] T.L.R 111(HC) to support her submissions that proof of ownership is by letter of offer or certificate of title. She argued that, in the disputed plot, a letter of offer(exhibit P17) was issued as it was also identified by DW2. She went on that, DW2 admitted that exhibit P17, P2 up to P18 are valid documents issued by the 2nd defendant. She further submitted that, the said exhibit proves that the disputed plot was initially owned by Mary Mushi(PW2) and that, plaintiff(PW1) has proved that he was given the said plot by PW2. She went on that, plaintiff(PW1) has a certificate (exhibit P1) which was confirmed by DW2 and DW3 to be a valid certificate that has not been revoked. 29 On whether the 1st defendant is the owner of the disputed plot, Ms. Sanare submitted that, that is questionable because DW2 stated that compensation of a plot is through land committee. She added that, DW2 did not prove

that 1st defendant was compensated the disputed land by land committee. She went on that, DW2 testified further that 1st defendant bought plot No. 733 block H, Njiro, area, Arusha from Abuu Shaban but defendants have not called the said Abuu Shaban to prove that he sold plot No. 733 block H, Njiro to the 1st defendant or he was claiming compensation of any plot from the 2nd defendant and whether, he was compensated any plot. She argued that, failure to call the said Abuu Shaban has left doubt as to whether, 1st defendant bought any plot from the said Abuu Shaban. She therefore, prayed the court to draw adverse inference against the 1st defendant for his failure to call the said Abuu Shaban. Submitting on presence of two certificate of title over the disputed plot, learned counsel for the plaintiff cited the case of Colonel Kashimiri v. Naginder Singh Matharu[1988]TLR 162(CA), Ombeni Kimaro v. Joseph Mishili T/a Catholic Charismatic Renewal, Civil Appeal No. 33 of 2017,CAT (Unreported) to support her submissions that, where two or more people are claiming each to have a title over the disputed land, a party who acquired it earlier will be deemed to have 30 better or superior interest over the other. Ms. Sanare submitted further that, in the dispute at hand, plaintiff acquired the certificate of title in 2008 while the 1st defendant acquired in 2010, hence plaintiff has a superior interest than that of the 1st defendant. Submitting on the 3rd issue namely, whether plaintiff was issued with a certificate of title legally, Ms. Sanare submitted that, exhibit P1 was lawfully issued because DW2 and DW3 admitted that the said certificate is valid. Ms. Sanare cited Kitenge's case (supra) and argued that, since the Commissioner for Lands was not called, plaintiff should benefit and the court should hold that the said certificate was lawfully issued. Ms. Sanare argued that, confusion of Land office number(LO) testified by DW2 does not hold water because that was issued by the office where DW2 works. She added that, DW2 did not bring evidence to prove that Land office number appearing on exhibit P1 was not issued by her office. She further submitted that, the court should consider that when there is documentary evidence, oral evidence has no chance. She therefore concluded that, exhibit P1 was obtained legally because defendants have not proved that the said exhibit was obtained illegally. Submitting on the 4th issue relating to development over the disputed plot and destruction if any, Ms. Sanare submitted that, PW1, PW2 and PW4 proved that there was development over the disputed 31 plot and that the same was done by PW1. She added that, 1st defendant(DW1) also testified that the said plot was developed and further that, in 2022 he demolished buildings built on the disputed plot. She went on that, PW1 stated that there were two building with seven

- (7) line bricks up. Submitting on the 5th issue relating to reliefs, Ms. Sanare submitted that evidence adduced by the parties, is clear that plaintiff is entitled to be declared as the rightful owner of the disputed plot. She submitted further that, since plaintiff developed the said plot and as it was admitted by 1st defendant, he is entitled to compensation of TZS 23, 264,582/= being the value of his property that was demolished by the 1st defendant. She further prayed that costs be awarded and any other remedy this court will deem just to grant. On the other hand, Mr. Denis, learned counsel for the 1st defendant arguing the 1st and 3rd issues, submitted that it was the duty of the plaintiff to prove allegation relating to

ownership of the disputed plot. Learned counsel submitted further that, evidence of the plaintiff centered on ownership of the disputed plot by Mary Mushi but did not tender exhibits relating to transfer of ownership from Mary Mushi to himself. He went on that, Plaintiff did not tender any original or copies of documents listed by DW3 relating to transfer of ownership from Mary 32 Mushi to himself. Learned counsel submitted that, that failure has created doubt as to how plaintiff obtained certificate of title(exhibit P1). He further submitted that, mere registration of a certificate of title prior to the other, is not a conclusive proof that the said title is valid. He cited the case of Bilali Ally Kinguti v. Ahadi Lulela Said and 4 Other , Civil Appeal No. 500 of 2021, CAT(unreported) to the position that, certificate of title is a conclusive proof of ownership and bolster his submissions that 1st defendant has a valid certificate of title. Learned counsel further argued that, PW1 has failed to prove how the disputed plot was transferred from Mary Mushi(PW2) to himself, ownership of the disputed plot by Plaintiff and the manner hence the plot was obtained is doubtful. Mr. Denis relied on evidence of DW1 and DW2 and exhibit D1 to D4 and submit that 1st defendant is the rightful owner of the disputed plot. He added that, since there is no evidence to show transfer of ownership from Mary Mushi(PW2) to PW1, he prayed the 3rd issue be answered in the negative meaning that, plaintiff obtained certificate of title (exhibit P1) illegally. Submitting on the 4th issue, Mr. Denis submitted that, plaintiff has failed to tender any document to prove that he made development over the disputed plot. He further submitted that, PW3 while under cross examination admitted that plaintiff did not submit to him building permit 33 to prove that plaintiff made development thereon. He added that, based on exhibit P17, it is a requirement that, owner must obtain building permit and that plaintiff did not tender any building permit or documentary evidence proving that there was eight rooms buildings over the disputed plot. During submissions, Mr. Denis conceded that, it is not a requirement of law that owner of a plot must submit building permit to the chairperson of the street where the plot is located. He therefore, prayed the 4th issue be answered in the negative. Submitting on the 5th issue relating to reliefs, Mr. Denis submitted that, evidence of PW3 is hearsay hence cannot be relied upon. He added that, PW1 testified that he reported to police that 1st defendant demolished his property, but the said case was not filed in court. Learned counsel added that, 1st defendant has not been found guilty based on plaintiff's complaint. He went on that, PW4 failed to prove his valuation of the property destroyed hence there is no actual value of the property alleged destroyed. Learned counsel for the 1st defendant further submitted that, the court should hold that plaintiff is not entitled to any relief instead, 1st defendant be declared as the rightful owner of the disputed plot and costs be awarded in favour of the 1st defendant. It was submissions of Ms. Johannes, learned State Attorney for the 2nd to the 5th defendants that, in this dispute of ownership of the 34 disputed plot, parties are bound by their own pleadings and that they should not be taken by surprise. She cited the case of James Funge Gwagilo v. the Attorney General [2004] TLR 161, CAT, Thomas Okello Atito v. Unilever Tanzania Limited, Civil Appeal No. 270 of 2021, CAT(unreported) and Amos Njile Lili v. Nyanza Cooperative Union (1984) Ltd and 2 others, Civil Appeal No. 126 of 2020, CAT(unreported) to that position. She further cited section 110 of Cap. 6 R.E. 2019 (supra) and the case of Rock Beach Hotel Limited v.

Tanzania Revenue Authority, Civil Application No. 52 of 2003, CAT(unreported) to support her submissions that, he who alleges must prove. Submitting on the 1st and 4th issues, learned State Attorney submitted that, both PW1 and PW2 failed to prove how transfer was done from PW2 to PW1. She added that, there is no proving that plaintiff acquired the disputed land from Mary Mushi as gift. She further submitted that plaintiff did not comply with the provisions of section 61 and 62(1) and(2) of Cap. 11 R.E. 2019(supra). Ms. Johannes submitted that, PW2 stated that she gave the disputed land to PW1 in 2008 by way of gift and that, in 2013 she submitted to the 2nd defendant's office documents for while certificate of title(exhibit P1) has already issued to PW1. Learned State Attorney added that, exhibit P1 was obtained prior 35 to transfer of ownership was completed in violation of the afore cited provisions hence certificate of title No. 24494 is invalid. She prayed the 1st and 4th issues be answered in favour of the defendants due to absence of documentary evidence tendered by the plaintiff. Submitting on the 2nd issue relating to revocation of ownership of PW2 over the disputed plot, Ms. Johannes submitted that, the issue of revocation was not a fact pleaded by the plaintiff in his plaint and that, it was not disputed in the reply to the joint written statement of defence by the 2nd to the 5th defendants hence plaintiff departed from his pleadings. When probed by the court, learned State Attorney conceded that plaintiff did not file a reply to the joint written statement of defence by the 2nd to the 5th defendants. She further submitted that, DW2 testified that ownership of Mary Mushi (PW2) ceased after revocation of the letter of offer of PW2 dated 2005. She added that, there is no evidence adduced by the plaintiff showing that the letter of offer (exhibit P17) is still existing. She went on that, presence of certificate of title of the plaintiff(exhibit P1) shows that the letter of offer (exhibit P17) is no longer existing. Ms. Johannes submitted that, failure of the 2nd to the 5th defendants to call Commissioners for Lands as witness, does not shift a burden of proof to the defendants because revocation of a letter of offer of PW2 was done in accordance with the law and plaintiff did 36 not adduce evidence to the contrary. She cited the case of Paulina Samson Ndawavya v. Theresia Thamasi Madaha, Civil Appeal No. 45 of 2017, CAT(unreported) to the position that burden of prove cannot be shifted to the defendants. When probed by the court, learned State Attorney conceded that, it is the 2nd to the 5th defendants who raised the issue of revocation in the pleadings. She was however quick to submit that, DW2 proved the issue of revocation. Submitting on the 3rd issue relating to development of the dispute plot, Ms. Johannes submitted that, the said issue was not proved due to failure of the plaintiff and his witness to tender documentary evidence showing development to the disputed land. Submitting on the 5th issue relating to reliefs, Ms. Johannes submitted that, plaintiff has failed to prove his case in regard to ownership of the disputed plot hence he is not entitled to any relief. She added that, the disputed plot was lawfully allocated to the 1st defendant and that his ownership has been proved by DW2 who stated that the person who is recognized in their office is DW1 and prayed 1st defendant be declared as the rightful owner of the disputed plot and prayed the court to order Registrar of title to rectify the registry to that effect. Ms. Johannes further prayed the court to declare plaintiff as trespasser to the disputed plot. 37 I have carefully considered evidence of the parties and submissions made thereof. I should, at the first place, thank all counsel for their

submissions that were brief and focused. I should point out as it was correctly submitted by the learned State Attorney that parties are bound by their own pleadings. I should further point out that, the issue of revocation was pleaded by the 2nd to the 5th defendants which is why, it was amongst the issues to be decided by this court contrary to what was submitted by the learned State Attorney. It is undisputed by the parties that in 1994 the disputed plot was allocated to Mary Mushi (PW2) and that she accepted the said allocation. It is also undisputed that, in 2005 PW2 was issued with a letter of offer for the disputed plot. It is further undisputed by the parties that, both the plaintiff and the 1st defendant were issued by certificate of title over the disputed plot. It is also undisputed that, the plaintiff was issued with a certificate of title prior to that of the 1st defendant. It is further undisputed that both certificates are registered and are existing. From evidence of the parties, it is clear that both plaintiff and the 1st defendants were paying land rents over the disputed plot. It is claimed by the plaintiff that he was given the disputed plot by way of gift by PW2. On the other hand, it is claimed that 1st defendant purchased plot No.733 block H, Njiro area from Abuu Shaban who 38 initially was the owner of plot No. 731 block H, Njiro area but later on was allocated plot No. 733 block H, Njiro. It is claimed that 1st defendant was allocated the disputed plot after noting that, plot No. 733 block H, Njiro that he purchased from Abuu Shaban has disputes. It was submitted by counsel for the defendants that, ownership of the disputed land did not pass from PW2 to him because PW2 did not tender the deed of gift and approval of transfer thereof. It was strongly submitted on behalf of the 2nd to the 5th defendants that there was violation of sections 61 and 62(1) and(2) of Cap. 11 R.E. 2019(supra) hence the certificate of title was illegally issued to the plaintiff. I should point out that, failure to tender exhibit that is a subject of the dispute is not fatal because, sections 61 and 62 of the Evidence Act,[Cap. 6 R.E. 2019] does not provide that, oral evidence must be supported by documentary exhibit. This court did put it clear in the case of Julius Billie v. Republic [1981] T.L.R. 333 (HC), this Court (Samata, J as he then was) held:- "The non-production of a thing which is a subject matter of court proceedings goes only to the weight and not to the admissibility of the testimony concerning or relating to it." It was testified by both PW1 and PW2 that the plaintiff acquired ownership of the disputed land by way of gift from PW2. In my view, 39 failure of PW1 or PW2 to tender the said deed of gift is not fatal. What matters is credibility of their evidence when closely examined in totalilty with evidence of the defendants. It was admitted by DW2 that, application was made by PW2 in favour of the plaintiff but the same was not worked upon. In other words, there was no transfer of ownership from PW2 to the plaintiff. It can be said that, there was violation of 61 and 62(1) and(2) of Cap. 11 R.E. 2019(supra). On the other hand, no evidence was adduced by the defendants proving that Abuu Shaban was allocated plot No. 731 block H, Njiro. There is also no evidence showing how the said Abuu Shaban was thereafter allocated plot No. 733 block H, Njiro which 1st defendant claims to have purchased from the said Abuu Shaban. In addition to that, 1st defendant did not tender evidence of the alleged purchase. It is my view that, since the said Abuu Shaban has no evidence of ownership of the disputed plot, no ownership passed from the said Abuu Shaban to the 1st defendant. A person who is not the owner cannot pass ownership to the other be it by alleged sale or whatever means. See the

case of Bilali Ally Kinguti vs Ahadi Lulela Said & Others (Civil Appeal No.500 of 2021) [2023] TZCA 17337 (13 June 2023). 40 More so, as it happened to the plaintiff, no evidence was adduced as to whether 1st defendant complied with the provisions of 61 and 62(1) and(2) of Cap. 11 R.E. 2019(supra) in relation to submission of sale agreement and approval of transfer from the said Abuu Shaban to himself in relation to plot No. 733 block H, Njiro. In my view, a conclusion by counsel for the defendants that, no title passed from PW2 to the plaintiff should also apply to the 1st defendant that, no title passed to him from the said Abuu Shaban. Since no title passed to the 1st defendant from Abuu Shaban who, it is alleged sold plot No. 733 block H, Njiro to the 1st defendant, allocation of the disputed plot to the 1st defendant based on whatever reason, of which evidence is wanting, cannot be valid. More so, the said Abuu Shaban was not called as a witness and no reason was disclosed. I therefore agree with submissions by counsel for the plaintiff that, 1st defendant feared that the said Abuu Shaban will testify against his favour or that he is a fictitious person who does not exist. I therefore draw adverse inference against the 1st defendant for his failure to call the said Abuu Shaban as his witness. It is undisputed that both plaintiff and 1st defendant are in possession of valid certificate of title over the disputed plot. It has been held several times by this court and the Court of Appeal that, possession 41 of certificate of title is conclusive evidence of ownership. See the case of Nicholaus Mwaipyana vs The Registered Trustees of Little Sisters of Jesus Tanzania (Civil Appeal No.276 of 2020) [2023] TZCA 17578 wherein it was held that:- “In the judgment, the trial court observed that, a certificate of title was conclusive evidence of the ownership of the suit property. In our view, that is the correct position of law according to section 40 of the Land Registration Act.” In the case at hand, it is undisputed that, both plaintiff and 1st defendant have certificates of title that are registred and they are paying land rents. The issue is, which certificate of title between the two should take precedence over the other. It was submitted by counsel fo the defendants that, plaintiff’s certificate was issued illegally hence he has no good title. With due respect to both counsel for the defendants, that submission cannot be valid. As pointed out hereinabove, there is no proof as to how 1st defendant acquired plot No. 733 block H, Njiro and how finally he came into possession of certificate of title No. 28081 for plot No. 696 block J, Njiro, the disputed plot. There is no proof that 1st defendant complied with the provisions of section 10(2) of Land Registration Act (Cap. 334 R.E. 2019) that requires an application for first registration of title be accompanied by all documents of title to support 42 such possession. I have examined certificate of title No. 28081(exhibit A1) that was tendered by DW3 and find that, no document was submitted by the 1st defendant showing how he acquired the disputed plot. In short, registration of certificate of title No. 28081 is also questionable, contrary to what the defendants wants this court to believe. In the case of Madam Mary Sylvanus Qorro vs Edith Donath Kweka (Civil Application 102 of 2016) [2019] TZCA 47 (4 April 2019), the Court of Appeal having found that there was no evidence on how the land was acquired had this to say:- “In view of the missing vital documents to the purported sale transaction of the suit premises between the appellant and Elipokea Mbise, we are persuaded to share the feeling expressed by Mr. Mahuna that, the registration of the appellant as the lawful owner of the disputed plot of land was done dubiously...In the same

vein, the absence of paper trail leading to the registration of the appellant as the lawful owner of the suit premises in the instant appeal, coupled with the way in which the process of the registration was fast tracked that is, the application for an offer and the letter of offer being made on the same date that is the 1st day of April, 2009, and the certificate of right of occupancy being granted some twelve months later on the 13th April, 2010, to us looks unusual, suggesting that there was some fishy arrangement between the appellant and the Land Officer who effected the registration.” It is my view, that 1st defendant acquired the disputed land through fishy arrangement with the 2nd to the 4th defendants which is why, there is no clear evidence on how he acquired the disputed plot. 43 The foregoing being the position, then, I am forced to decide as which certificate of title between the two was registered first. Evidence is clear as it is undisputed by the parties that, certificate of title No. 24494 (exhibit P1) issued to the plaintiff was registered prior to certificate of title No. 28081(exhibit D4) that was issued to the 1st defendant. Normally, a certificate of title that was registered prior to the other has to take priority. See the case of James Funge Gwagilo v. the Attorney General [2004] TLR 161, CAT, Ombeni Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal (Civil Appeal 33 of 2017) [2021] TZCA 343 (2 August 2021), Joachim Ndelembi vs Maulid M. Mshindo and Others (Civil Appeal 106 of 2020) [2023] TZCA 158 (29 March 2023) and Amina Maulid Ambali & Others vs Ramadhani Juma (Civil Appeal No. 35 of 2019) [2020] TZCA 19 (25 February 2020). In Amina’s case (supra) the Court of Appeal held inter-alia that:- “In our considered view, when two persons have competing interests in a landed property, the person with a certificate of title is always to be taken the lawful owner unless it is proved that the certificate was not lawfully obtained... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a 44 chain of titles to the property, for the register itself is conclusive proof of the title. As pointed herein above, in the case at hand, there is no evidence showing that plaintiff obtained the disputed land unlawfully. Again, in of Nicholas Mwaipya vs The Registered Trustees of Little Sisters of Jesus Tanzania (supra) that: - “It is our further view that, for the presumption under discussion to be rebutted under section 33 (1) (b) of the same Act, the person seeking to rebut the same must produce not only evidence of prior ownership interest over the respective land but evidence of prior possession or use of the same as well.” In the matter at hand, both certificates of title are legally valid and were prepared and registered by the land authority as it was testified by DW3. In terms of section 40 of Cap. 334 R.E. 2019(supra) both certificate of title No. 24494 and 28081 exhibits No. A2(P1) and A3(D4) respectively are proof that the plaintiff and the 1st defendant are owners of the disputed plot. As pointed hereinabove, there is no evidence adduced by the defendants proving that plaintiff obtained the said plot fraudulently for this court to conclude that plaintiff obtained the said certificate illegally. It is my view that, inaction by the 2nd to the 4th defendants is a justification for intervention by this court and issue an order that plaintiff is the lawful owner and order cancellation of 45 ownership of the disputed plot by the 1st defendant. If any thing, it is

upon for the defendants to find a way on how to resolve the issue amongst themselves including but not limited to allocating another plot to the 1st defendant if they find it proper. I am of that view because, 2nd to 4th defendants were aware of this dispute for a long period but they have failed to take action. In my view, disputes cannot remain unresolved for unspecified period. The 2nd to the 5th defendants, were, in my view, supposed to have intervened prior the filing of this case in court. It is my view that, their inaction may lead to undesirable results in the society. This court cannot wait to see that happening. In fact, Registrar of titles has not exercised his powers provided for under section 37 of Cap. 334 R.E.2019(supra). That is inaction that cannot be tolerated. It seems that defendants wants to justify issuance of certificate of title No. 28081 to the 1st defendant based on allegation that, the offer that was issued to PW2 was revoked in 2007. Strange as it is, that cannot be acceptable for various reasons. One, there is no proof that PW2 violated conditions of the offer leading to revocation of the said offer. Assuming that she violated the conditions, of which evidence is wanting, yet there is no proof that PW2 was served with the notice of 46 revocation as required by section 46 and 47(1) of the Land Act(cap. 113 R.E. 2019). It is a precondition that, the notice of breach must be served to the occupier of land and revocation cannot be done without proof that the notice was served. In the matter at hand, PW2 stated that she was not served with the alleged notice of breach of conditions. Evidence of PW2 was supported by evidence of DW3 who testified that, there is no record in their office showing that PW2 was served with the alleged notice. In terms of section 48(1)(a), (b) (i), (ii) and (2) and 49 of Cap. 113 R.E. 2019(supra), revocation can only be done (i) after a notice has been served to the occupier that there is breach of conditions, (ii) breach must be serious and of farreaching consequences that it would be impracticable for the occupied to remedy the situation or that the occupier has clearly demonstrated unwillingness to comply with the conditions of the grant of right of occupancy, (iii) the Commissioner for land must notify the Registrar of the service of the notice and the latter must record in the land register, (iv) the notice shall be for the period of 90 days and (v) the revocation notice must be published in the Gazette or one of the newspapers circulating in the area. There is no evidence on record proving the 2nd to the 5th defendants complied with the said conditions. More so, revocation form was not tendered. In fact, it was admitted by DW3 that, there is no 47 evidence in their office relating to revocation of ownership of PW2. What I have pointed shortly hereinabove is supported by what was held by the Court of Appeal in the case of Zubeda Ahmed Lakha vs Hajibhai Kara Ibrahim & Others (Civil Appeal 238 of 2018) [2022] TZCA 310 (25 May 2022) that, there must be evidence of revocation and that the same was done upon good cause. It was duty of the 2nd to the 5th defendants not only to prove that there was revocation because they are the ones who alleged, but also they were supposed to prove that the said revocation complied with the law, that is to say, was upon good cause and procedures thereof were complied with. See the case of Charles Christopher Humphrey Richard Kombe T/a Humphrey Building Materials v. Kinondoni Municipa Council, Civil Appeal No. 125 of 2016, Mrs Zubeda Ahmed Lakha v. Hajibhai Kara Ibrahim & 2 Others, (Civil Appeal 238 of 2018) [2022] TZCA 310 (25 May 2022), Ramadhani Selemani Kambi vs The Commissioner for Lands and Others (Civil Appeal 14 of 2020) [2023] TZCA 144 (10 March

2023), Tanzania Milling Company Limited vs The Attorney General & Another (Civil Appeal No. 98 of 2020.) [2023] TZCA 17908 (7 December 2023) and Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal No. 45 of 2017) [2019] TZCA 453 (11 December 2019). In Tanzania Milling's case, (supra) the Court of Appeal having reproduced the provisions of section 45, 46 and 47 of Cap. 113 R.E. 2019 (supra) had this to say:- "What is clear from the provisions which have been reproduced above is that, where a condition of a right of occupancy has been breached, the Commissioner has discretion to issue a notice to the occupier and it is that notice, issued in the prescribed form, that initiates the revocation process. In our view therefore, the requirement of issuing a notice is mandatory." Since there is no proof of revocation of right of PW2, then, 1st defendant was illegally issued with certificate No. 28081 for the disputed plot. It was testified by DW3 that, if breach of conditions occurs prior to issuance of a certificate of title, the owner must be served with a notification that ownership will be revoked. In the matter at hand, there is no evidence proving that PW2 was served with the said notification. It is therefore, difficult to believe evidence of DW2 that ownership of the disputed plot by PW2 was revoked in 2007. For all what I have discussed hereinabove, I hold that plaintiff is the rightful owner of the disputed plot and that certificate No. 24494 was legally issued to him because there was no revocation of offer that was issued to Mary Mushi (PW2). It was testified by both PW1 and PW2 that plaintiff made development on the disputed plot. It was further evidence of the 4th plaintiff (PW1) that 1st defendant demolished structures that were built on the disputed land. It was further evidence of the plaintiff that the said structures were valued TZS 23,264,582. Evidence by the plaintiff that the buildings that he built at the disputed was valued at TZS 23,264,582 was supported by PW4 who made valuation report. In his evidence, 1st defendant (DW1) admitted that he is the one who demolished the buildings that were built on the disputed plot. With that evidence, I confidently answer the (iv) in affirmative that plaintiff developed the disputed plot and further that 1st defendant demolished the buildings that were built by the plaintiff. In short, plaintiff has proved his case to the required standard. On the relief the parties are entitled to, I hereby, (i) declare plaintiff as the lawful owner of plot No 696 block J, Njiro, Arusha, (ii) declare that 1st defendant is a trespasser and that he has trespassed over plot No 696 block J, Njiro, Arusha, (iii) I declare that the 2nd, 3rd and 4th defendants illegally issued certificate of title No. 28081 in respect of plot No 696 block J, Njiro, Arusha to the 1st defendant. I therefore direct the 4th defendant to rectify the land registry by deleting the entry of the title deed registered in the name of the 1st defendant. I further award plaintiff to be paid TZS 23,264,582/= by the 1st defendant being 50% the value of the plaintiff's property that was destroyed by the 1st defendant. I further hereby order defendants permanently from interfering the plaintiff in enjoying his right over plot No 696 block J, Njiro, Arusha. In addition, the defendants shall pay the costs of this suit. Dated in Arusha on this 14th June 2024. B. E. K. Mganga JUDGE Judgment delivered on this 14th June 2024 in Chambers in the presence of Bethy Sanare, Advocate for the plaintiff, Moria Denis, Advocate for the 1st Defendant and Zamaradi Johannes, State Attorney for the 2nd to the 5th Defendants. B. E. K. Mganga JUDGE 51

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