

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 186 01 OF 2021 SIMBA DEVELOPERS LIMITED VS SALIM SAID SALIM 8 OTHERS

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM fCORAM: NDIKA, J.A., KEREFU. J.A. And NGWEMBE, J.A.^ CIVIL APPLICATION NO. 186/01 OF 2021 SIMBA DEVELOPERS LIMITED..... APPLICANT VERSUS SALIM SAID SALIM..... I st RESPONDENT FATMA MOHAMEDALLI REMTULLA KARA (As Legal Representative o f the Estate o f the late REMTULLA KARA)..... 2nd RESPONDENT JAYANDER GULABCHAND CHOCHAN..... 3rd RESPONDENT PRASHANT CHANDRAKANT CHOCHAN {As Legal Representative o f the Estate o f the late CHANDRAKANT GULABCHAND CHOCHAN..... 4th RESPONDENT SURESH GULABCHAND CHOCHAN..... 5th RESPONDENT DEEPAK GULABCHAND CHOCHAN..... 6th RESPONDENT THE COMMISSIONER FOR LANDS..... 7th RESPONDENT THE REGISTRAR OF TITLES..... 8th RESPONDENT THE ATTORNEY GENERAL..... 9th RESPONDENT (Application for Revision from the Decision of the High Court of Tanzania, at Dar es Salaam) (Rwizile, J.^ dated the 1st day of March, 2021 in Land Case No. 82 of 2016 RULING OF THE COURT 17th & 24th July, 2024 KEREFU. 3.A.: The Court is being moved in this matter pursuant to section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and rule 65 (1) and (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to revise the i proceedings and decision of the High Court (Rwizile, J.) dated 1st March, 2021 in Land Case No. 82 of 2016. The High Court's decision declared the landed property described as Plot No. 1, Block 73, Flur II, situated at Livingstone Street, Kariakoo area in Dar es Salaam Region (the suit property) to be part of the estate of the late Remtulla Kara, the second respondent, under the administration of the first respondent. The application is founded on two grounds, that:

- 1) The applicant who has an interest in the suit property was not made a party to Land Case No. 82 o f 2016 that determined the ownership and rights o f the parties; and

- 2) The High Court wrongly and unlawfully determined the issue of ownership of the suit property without affording the applicant, who has interest in the property, an opportunity to be heard before reaching the final decision. The applicant's principal officer, Yusuf Sheikh Hatimali Ezzi, has duly affirmed an affidavit that supports the notice of motion. Conversely, the first and second respondents have submitted a joint affidavit in response that vigorously opposes the application. At this juncture, it is important to note that the third, fourth, fifth and sixth respondents, as well as the seventh, eighth, and ninth respondents, have explicitly stated that they are not opposing the application in their respective joint affidavits, which were lodged on 22nd July, 2021 and 18th May, 2021, respectively. To gain a more comprehensive understanding of the application at hand, it is essential to provide a brief background of the situation. In 2014, the applicant, which was then known as Al-Hatimy Developers Limited, was approached by the third, fourth, fifth, and sixth respondents to finance and execute a project for the construction of an eight-storey building on the suit property. Prior to the commencement of the aforementioned project, the applicant conducted a search of the land Register to confirm the status of the suit property. The applicant discovered that the third, fourth, fifth, and sixth respondents were the registered owners of the suit property and that it was free of any encumbrances. Additionally, the applicant obtained a building permit and drawings for the proposed building. Consequently, on 26th March, 2015, the aforementioned parties executed a Joint Venture Agreement (JVA) regarding the aforesaid undertaking. It was agreed that, upon the conclusion of the project, the applicant would be the owner of four floors, while the third to sixth respondents would take ownership of three floors. The remaining floors would be divided between the parties in accordance with the agreed-upon percentages. This is in accordance with clause E of the JVA. Subtitles were issued in the names of the third to the sixth respondents upon the completion of the aforementioned project; however, the applicant's share of the suit property had not yet been transferred to her. In the course of making follow-ups on the transfer of the aforementioned share, the applicant was informed about the Land Case No. 82 of 2016 in respect of the suit property. That, the judgment, in that case, was entered in favour of the first respondent on 1st March, 2021. Considering the aforementioned revelation, the applicant became aware that a land dispute had arisen between and among the respondents, which had begun sometime in 2016, after she had already engaged into a JVA with the third to sixth respondents. The applicant contended that the third to sixth respondents omitted this information from her during the trial, despite their knowledge of her interest in the matter under the JVA. The applicant decided to submit the current application on the grounds as hinted above, as she was aggrieved and was persuaded that the outcome would have been different if she had been included in the aforementioned case. 4 Ms. Raya S. Nassir, learned counsel, represented the applicant at the hearing before us, with the assistance of Mr. Ally Mohamed Ismail, also learned counsel. Conversely, the first and second respondents were represented by Messrs. Samson Mbamba and Emmanuel Nasson, learned counsel, respectively. The third, fourth, fifth, and sixth respondents were represented by Ms. Neema Kayuni, learned counsel, and the seventh, eighth, and ninth respondents were represented by Ms. Mercy Kyamba, learned Principal State Attorney, with

the assistance of Mr. Thomas Mahushi, learned State Attorney. It is important to note that the learned counsel for the parties had previously submitted their respective written submissions in support of or in opposition to the application in accordance with rule 106 (1) and (7) of the Rules. These submissions were adopted into their respective oral submissions. At the outset, it is imperative to deal with a preliminary procedural matter that we addressed prior to the application hearing. The first respondent's letters of administration in respect of the estate of the late Remtulla Kara were revoked by the Primary Court of Kariakoo vide Probate and Administration Cause No. 28 of 2010, and Ms. Fatma Mohamedali Remtulla Kara was appointed in his place on 16th July, 2021. When the application was initially presented to us for hearing on 15th July, 2024, Mr. 5 Nasson brought this fact to our attention. Mr. Nasson utilized Ms. Fatma's letters of administration to support his submission in this regard. Similarly, Ms. Kayuni informed the Court that Chandrakant Gulabchand Chohan, the fourth respondent in this case, passed away on 1st May, 2023. The District Court of Temeke subsequently appointed Prashant Chandrakant Chohan as an administrator of his estate at the One Stop Judicial Centre vide Probate and Administration Cause No. 818 of 2023. She presented a copy of the letters of administration from the aforementioned administrator, which were dated 21st September, 2023. Subsequently, both Mr. Nasson and Ms. Kayuni moved us informally, pursuant to rule 57 (6) of the Rules as amended by the Tanzania Court of Appeal (Amendment) Rules, 2024, as published in Government Notice No. 188 of 2024, to include Ms. Fatma Mohamedali Remtulla Kara in this application in the place of the late Remtulla Kara, the second respondent, and Mr. Prashant Chandrakant Chohan in the place of the late Chandrakant Gulabchand Chohan, the fourth respondent. We granted the said prayers and ordered the requested joinder in accordance with rule 57 (6) of the Rules, as there was no objection. The hearing of the application was subsequently adjourned to 17th July, 2024, at which time all parties filed their appearances, as previously mentioned. Ms. Nassir initiated her submissions by embracing the contents of the notice of motion and the affidavit in support of the application. The historical context of this application was narrated in a significant portion of the aforementioned documents. For the first ground, Ms. Nassir contended that the applicant, who holds an interest in the suit property through the JVA, was not included in the Land Case No. 82 of 2016, in which the trial court determined the property's ownership. She maintained that considering the applicant's undeniable interest in the suit property through the JVA, her attendance at the trial as an interested or necessary party was unavoidable. Therefore, she held the third to sixth respondents accountable for failing to notify the applicant of the existence of the aforesaid case, despite their awareness of her interest under the JVA. She contended that the conduct of the four respondents in question, in conjunction with the sequence of events in the aforementioned case, raises concerns that they may have conspired with the other respondents to defeat the applicant's rights to the suit property. She cited the cases of *Amon v. Raphael Tuck and Sons* (1956) 1 Q B 357 and *Abdullatiff Mohamed Hamis v. Mehboob Yusuf Osman & Another*, Civil Revision No. 6 of 2017 [2018] TZCA 25: [1 August 2018: TanzLII] to substantiate her assertion. Ms. Nassir conceded that the applicant's interest in the suit property was not registered when asked whether it was registered in accordance with section 33 of the Land Registration Act, Cap.

334 (the Land Registration Act). However, she urged us to conclude that it was improper for the trial court to determine the ownership of the suit property in the absence of the applicant, as the decree may not be executable. Again, when asked whether the affidavit in support of the application contains a specific paragraph to substantiate her submission, Ms. Nassir also conceded that the affidavit is silent on that aspect. However, she maintained that the applicant's interest in the suit property is guaranteed because the JVA is registered. Consequently, she submitted that the applicant's participation at the trial was essential. She cited the cases of NIC Bank Tanzania Limited v. Princess Shabaha Company Limited & 2 Others, Civil Appeal No. 248 of 2017 [2020] TZCA 219: [13 May 2020: TanzLII] to substantiate her argument. As for the second ground, Ms. Nassir contended that the omission to implead the applicant as a party in Land Case No. 82 of 2016, is fatal and violates the principles of natural justice and the provisions of Article 13 (6)

- (a) of the Constitution of the United Republic of Tanzania 1977, as the applicant was not granted the right to be heard. Consequently, the applicant was subjected to a miscarriage of justice. She cited the cases of Mbeya-Rukwa Autoparts and Transport Limited v. Jestina George
- v. Mwakyoma [2003] T.L.R. 251 and Oysterbay Villas Limited v. Kinondoni Municipal Council & Another, Civil Appeal No. 110 of 2019

[2021] TZCA 190: [7 May 2021: TanzLII] and Abbas Sherally & Another

- v. Abdul Sultan Haji Mohamed Fazalboy, Civil Application No. 133 of 2002 [2005] TZCA 105: [17 November 2005: TanzLII] to substantiate her stance. She implored us to grant the application, quash and set aside the impugned decision and its subsequent orders. In his rebuttal, Mr. Mbamba vehemently opposed the application, submitting that Ms. Nassir's assertion was unfounded and deceptive. He contended that the law mandates the registration of an interest in a registered landed property, which is not established by a licensee, invitee, or investor. He cited section 33 of the Land Registration Act to elucidate that the legal interest of the landowner is the sole factor that generates interest in the landed property after it has been registered. Therefore, his argument was that the applicant's application is unmaintainable, as Ms. Nassir has conceded that the applicant is not a registered owner of the suit property, as clearly indicated in paragraphs 5, 10, 12, and 13 of the applicant's affidavit. His submission was based on the Court's decisions in 9 Mekhiades John Mwenda v. Gizelle Mbagi, Civil Appeal No. 57 of 2018 [2020] TZCA 1856: [13 November 2020: TanzLII] and Leopard Mutembei v. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development & Another, Civil Appeal No. 57 of 2017 [2018] TZCA 213: [11 October 2018: TanzLII]. Then, he maintained that the applicant's claims in this application are unfounded, as she does not possess any registrable interest in the suit property. The first and second respondents in Land Case No. 82 of 2016 sought relief exclusively against the registered occupiers of the suit property. Consequently, Mr. Mbamba distinguished the case of Abdullatiff Mohamed Hamis (supra) that Ms. Nassir relied upon by contending that the facts in that case are not pertinent to the current application. In the aforementioned case, the applicant was able to establish his registered interest in the suit

property, which is not the case in this instance. As such, Mr. Mbamba urged us to determine that the applicant's complaint under the first ground is without merit. The learned counsel argued that the applicant's complaint under the second ground is misconceived because she has not provided evidence of her purported interest in the suit property. Consequently, he argued that the entire application should be dismissed with costs due to its lack of merit. Mr. Nasson, Ms. Kayuni, and Ms. Kyamba did not oppose the application. They expressed their support for Ms. Nassir's submissions and expressed their hope that the application would be granted. In a brief rejoinder, Mr. Ismail reiterated the submissions that Ms. Nassir had made earlier, emphasizing the importance of granting the application. The primary issues for our determination are whether the applicant has an interest in the suit property and, if the answer is in the affirmative, whether she was a necessary or interested party to Land Case No. 82 of

2016. We have meticulously reviewed the record of revision and the opposing arguments. The applicant claims an interest in the suit property, which is a registered land. This is the first issue addressed in the first ground of revision. A letter of offer, a certificate of title, or an instrument of disposition of the right of occupancy can be used to establish ownership and interests in the registered land. This is in accordance with sections 19, 27, 36, and 37 of the Land Act, Cap. 113 (the Land Act), as well as sections 8, 27, 33, and 41 of the Land Registration Act read together with sections 8 and 9 of the Registration of Documents Act, Cap. 117. The acquisition, transfer, and disposition of rights and interests in a landed property are subject to explicit regulations and procedures in accordance with the aforementioned provisions. This Court has issued its stance on the procedures on numerous occasions. See, for example, the cases of Leopold Mutembei (*supra*) and Amina Maulid Ambali & 2 Others v. Ramadhani Juma, Civil Appeal No. 35 of 2019 [2020] TZCA 19: [25 February 2020: TanzLII]. In the latter instance, the Court specifically stated that: "...when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be the lawful owner unless it is proved that the certificate was not lawfully obtained." Besides, the Court in Leopold Mutembei (*supra*) cited an excerpt from the book "Conveyancing and Disposition of Land in Tanzania: Law and Procedure" by Dr. R.W. Tenga and Dr. S. J. Mramba, published by LawAfrica in Dar es Salaam in 2017, at page 330, and noted that: 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 transactions 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 chain of titles to the property, for the register itself is conclusive proof of the title." [Emphasis added]. It is evident that vested interests in landed property must be registered, and a certificate of title is conclusive evidence of ownership and/or interests in the property, unless otherwise demonstrated, considering the aforementioned legal position. The applicant's interest in the suit property is not registered, as Ms. Nassir readily acknowledges in the instant application. This is substantiated by paragraphs 5, 6, and 8 of the applicant's affidavit in

support of the application, which we reproduce hereinbelow: "4. That, in 2014 the J d, 4h, 5th and 6th respondents approached the applicant to finance and construct/develop a project on their property after having obtained permits and drawings under the names of the 3rd, 4th, 5th and 6th respondents (as the registered owners);

5. That, subsequently thereafter on the 2nd March 2015, the applicant under the name of AI-Hatimy Developers Limited entered into the JVA for purposes of constructing an eight-storey building with the 3rd, 4th, 5th and 6th 13 respondents who are registered owners of the plot in dispute...;
8. That, the applicant being both financier and a contractor commenced construction upon obtaining all relevant permits from the 3rd, 4th, 5th and 6th respondents (as the registered owners) and the applicant as the developer...; and
12. That, consequently, following completion of the said construction, subtitles have been issued under the names of the J d, 4h, 5th and 6th respondents respectively, of which the respondents are yet to transfer the applicant's share on the property under the applicant's name..." [Emphasis added]." Given the circumstances and the fact that the applicant is not a registered owner of the suit property and that she has no registrable interest in the suit property, we concur with Mr. Mbamba's submission that the applicant's claims in this application are unfounded and lack legal support. We are cognizant of the fact that, Ms. Nassir acknowledged that the applicant's interest was not registered in the land register as required by law. Nevertheless, she exhorted us to determine that the interest was registered upon the registration of the JVA. We are unable to concur with her on that point, as the registration of vested interests in landed property and the registration of agreements are governed by distinct laws and procedures. We hold this opinion with the utmost respect. The submission made by Ms Nassir on that point was merely a counsel's statement from the Bar, as it was not specified in the affidavit in support of the application, by any standard. In the cases of *Fweda Mwanajoma & Another v. Republic*, Criminal Appeal No. 174 of 2008 [2010] TZCA 96: [23 March 2010: TanzLII] and *Farm Equipment Company Limited v. Festo Mkuta Mbuzu*, Civil Application No. 111 of 2014 [2017] TZCA 209: [27 October 2017: TanzLII], we declined to consider a statement made by the counsel from the Bar. In the same vein, this Court is unable to evaluate the submission made by Ms. Nassir in this application. Ultimately, we hold that the first ground for revision is devoid of merit. We are not required to spend much time on the second ground for revision after determining the first ground in the manner described above. It is self-evident that the applicant was not intended to be included in the proceedings of Land Case No. 82 of 2016, as it is evident that she does not possess a registrable interest in the suit property. As a result, we also determine that the applicant's complaint regarding the second ground for revision is unfounded and unsubstantiated. 15 In the event, and for the foregoing reasons, we hereby dismiss the application in its entirety with costs. DATED at DAR ES SALAAM this 23rd day of July, 2024.
G. A. M. NDIKA JUSTICE OF APPEAL R. J. KEREFU JUSTICE OF APPEAL P. J. NGWEMBE JUSTICE OF APPEAL The Ruling delivered this 24th day of July, 2024 in the presence of Ms.

Mariam Salehe, learned counsel for the applicant and Mr. Emmanuel Nasson, learned counsel for the 2nd respondent also holding brief for Mr. Samson Mbamba, learned counsel for the 1st respondent, Ms. Neema Kayuni, learned counsel for the 3rd, 4th, 5th and 6th respondents and in absence of 7th, 8th and 9th respondents is hereby certified as a true copy of the original. 16

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