IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

LAND APPEAL NO. 70 OF 2021

(Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 118 of 2016)

1. **CHARLES JACKSON.....**
2. **GODFREY KAPUNGA.....**
3. **TIMOTH FAYA.....** **APPELLANTS**
4. **CLEMENCE LAMECK.....**
5. **JAPHET KATANI.....**

VERSUS

S.H. AMON ENTERPRISES CO. LTD.....RESPONDENT

JUDGMENT

Date of last Order: 31.03.2022

Date of Judgment: 27.05.2022

Ebrahim, J.

The herein appellants filed an instant appeal challenging the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (the DLHT) made in Application No. 118 of 2016 dated 23rd October, 2020.

Before the District Land and Housing Tribunal the appellants were sued by respondent, S.H. Amon Enterprises Co. Ltd for trespass to land. The subject matter is the surveyed land in Plot No.

32 Block "BB" Uyole Industrial Area (to be referred to as the disputed land or the land alternatively). It was alleged that the respondent acquired the disputed land by way of purchase from one Century Properties Limited in the year 2011. It was further alleged that the latter (Century Properties Limited) had purchased the disputed land in 2006 from one Kaburutu Nyika Farm. The said Kaburutu Nyika Farm was thus a first person to own the land through allocation way back in August, 1987. The land is under the survey plan Number 24260 that was registered on 25th September 1990.

Within the plot, the respondent had constructed two houses. The dispute is on the part within the same plot where it was alleged that the appellants encroached that part of land by starting making bricks and clearing it by cutting down the trees. The respondent prayed for the trial Tribunal to declare the disputed land as her lawful property, declaration of the appellants as the trespasser hence be permanently restrained from that act.

On their part, the appellants protested the claim. They claimed that the disputed land is theirs. That they acquired it from their parents and grandparents who were the indigenous. After a

full trial the DLHT decided in favour of the respondent. Discontented by the decision, the appellants filed the instant appeal raising the following grounds:

1. The trial District land and Housing Tribunal erred in law and fact when it entered judgment for the respondent in disregard if the strong evidence by the appellants showing that the appellants had deemed right of occupancy as indigenous occupiers.
2. The trial erred in law and fact when it disregarded strong defence evidence showing that the applicant's certificate was obtained unlawfully.
3. That the trial Tribunal Chairman erred in law when he refused to join the 115 interested parties as respondents and unlawfully proceeded hearing a case with a clean non-joinder of necessary parties.
4. That the trial Chairman erred in law for disregarding a legal fact that the respondent's case contravened Order VII rule 1 (e) as it did not state when a cause of action arose.
5. The trial tribunal erred in law and fact when it relied on hearsay evidence adduced by PW1 who was not there in dates he testified for and admittedly stated "sijawahi kushiriki chochote"
6. That the trial tribunal erred in law and fact by relying on evidence of PW2 which did not establish how the land was acquired from the hands of the appellants.

7. That the trial chairman erred in law when he refused to remove himself from the hearing this case while he was a witness in criminal case No. 169 of 2016 at the District Court of Mbeya where he stated that the land in dispute belongs to the respondent herein.
8. That the whole of the decision of the trial tribunal is bad in law and irregular as the judgment does not reflect what was stated in court hence reflecting that the proceedings in record were badly recorded.

At the hearing of the appeal the appellants were represented by advocate Sambwee Mwalyego Shitambala, whereas the respondent was represented by advocate James Berdon Kyando. They argued the appeal by way of written submissions.

Supporting the appeal Mr. Shitambala argued the grounds of appeal in seriatim abandoning the 8th ground. About the 1st ground of appeal, Mr. Shitambala contended that in trial Tribunal the appellants adduced heavier evidence than the respondent, surprisingly the trial Tribunal erroneously decided in her favour. According to him the respondent did not give evidence regarding the status of the land before being allocated to one Kaburutu Nyika Farm.

Mr. Shitambala said that the appellants managed to prove that they inherited the suit land from their parents and/or grandparents. He also argued that the appellants' parents owned the land under customary right of occupancy. He sought the aid from the provisions of section 2 of the Land Act, Cap. 113 and the Village Land Act, Cap. 114 as well as the case **Rupiana Tungu and 3 Others vs Abudul buddy and halk abdul**, Civil Appeal No. 115 of 2004 (unreported) to support the stance that customary right of occupancy and right of occupancy stand on the same footing.

As to the 2nd ground of appeal Mr. Shitambala contended that the tribunal failed to decide that the certificate of title was unlawfully obtained since the respondent failed to prove the procedure he applied in obtaining the same. He also contended that the respondent did not give evidence on how and who owned the land before survey in1987.

Mr. Shatambala firmly argued that, the respondent was supposed to prove all the procedures applicable in transfer of the right of occupancy as provided for under sub-part 3 of the Land Act. He proposed that it was necessary for the respondent to prove the transfer with the sale agreement between him and the

seller (i.e Century Property Limited). Counsel was of the view that failure to prove the procedure the certificate must be nullified.

In other way, Mr. Shatambal submitted that it was necessary for the respondent to prove if he paid compensation to the indigenous owners. That the appellants were not compensated of the trees which they planted in the land. He contended that the law requires payment of compensation to the improvement or loss of any interest or any interference with the occupation of the land. He relied on **section 34 (3) (b) of the Land Act.**

With regard to the 3rd ground of appeal Mr. Shitambala submitted that the proceedings and the judgment were incurably fatal since there was a non-joinder of necessary parties. Notwithstanding the acknowledgment that a case cannot be defeated for non-joinder or misjoinder of parties as per Order I rule 9 of the Civil Procedure Act, Cap 33 R.E 2019, he however, argued that the trial tribunal erred when it dismissed the application of 115 person who applied to be joined in the case but were denied of that opportunity. Mr. Shitambala claimed that those 115 applicants were necessary parties whose absence rendered the proceeding fatal. He relied on the case of **Khadija Ali Almas v. the**

Tabora Municipal Council and Others Land Appeal No. 39 of 2018 where it was decided that non-joinder of parties render the judgment incompetent.

Mr. Shitambala further contended that the respondent failed to join the seller i.e Century Property as a necessary party to prove the status of the land at the time of sale. He relied on the case of **Juma B. Kadala v. Laurent Nkande** (1983) TLR 103 where it was held that non-joinder of seller is fatal to the proceedings. Thus, the Tribunal failed to pass an effective decree, he argued.

As to the 4th ground of appeal counsel argued that the trial Tribunal failed to appreciate that the respondent's application in the Trial tribunal was defective since it did not disclose the time when the cause of action arose. According to him, Order VII rule 1 of the CPC requires the application to disclose the cause of action and when the same occurred. He supported his stance by the case of **Juma B. Kadala** (supra). Mr Shitambala argued that the disclosure of time when cause of action arose necessitates the court in determining time limitation of the suit. He also relied on the case of **John Mwombeki Byombalirwa v. Agency Martime International (Tanzania) Ltd** (1983) TRL 1 in which the court

emphasised on the importance of disclosing cause of action as per Order VII Rule 11(a) of the CPC.

In regard to the 5th ground of appeal, Mr. Shitambala submitted that the testimony of PW1 ought to be disregarded by the trial tribunal on an account that it was hearsay evidence. It was the counsel's argument that PW1 was employed by the respondent in 2016. That he gave hearsay evidence which is contrary to **section 62 (1) of the evidence Act, Cap. 6 R.E. 2019.** Mr. Shitambala also supported the position that hearsay evidence is inadmissible in court as held in the case of **Juma Yusuph Myella vs. Linda Abdul Manus,** Land Appeal No. 86 of 2021.

On the 6th ground of appeal counsel for the appellant submitted that PW2 failed to prove how the land was acquired from the hands of the appellants in 1987 when it is alleged to have been surveyed. That PW2 was duty bound to also prove if the appellants were paid compensation.

Regarding the 7th ground of appeal, Mr. Shitambala argued that the trial chairman erred when he refused to recuse himself from hearing of the case. He complained that the trial Chairman did not warn himself on the likelihood of being biased as he was

the witness in Criminal Case No. 169 of 2016 before the District Court of Mbeya District. That the chairman committed a misconduct under Code of Ethics for Judicial officers of 2020. Mr. Shitambala referred to **Rule 9 of the Code of Conduct and Ethics for Judicial Officers of 2020.** He thus, prayed for this court to allow the appeal with costs.

In reply, Mr. Kyando generally opposed the appellants' complaints. He started by praying to this court to determine this appeal basing on the issues which were framed and determined by the trial Tribunal. When conversing the 1st ground of appeal Mr. Kyando argued that the respondent proved the case to the required standard since she managed to give the account that she purchased the land from Century Property Limited. He also argued that there was no need for the respondent to prove how the land was acquired from the hands of the appellants since it was not among the issues dealt by the Tribunal.

Mr. Kyando contended that the land was surveyed way back in 1987 and the appellants had never complained. He maintained that the appellants claim of ownership of the disputed land under customary right of occupancy was not proved. It was

the counsel's argument that the appellants only gave oral testimonies that they were apportioned the land from their parents the evidence which were insufficient.

As to the 2nd ground of appeal, Mr. Kyando gave a long argument which in essence was to the effect that the appellants' complaint that the certificate was unlawfully obtained is a mere allegation. He maintained that the respondent proved that procedures were followed that is why he was availed with a Certificate of Title (exhibit P3). Mr. Kyando argued alternatively that the appellants ought to have filed a counter claim in which they would have included the claim. He relied on the case of **Amina Maulid Ambali and 2 others v. Ramadhani Juma**, Civil Appeal No. 35 of 2019 CAT at Mwanza (unreported). In that case also it was decided that, a person with certificate of right of occupancy is considered a lawful owner, Mr. Kyando argued. He added that the law is clear that when registration is finalized no need of establishing a chain of titles.

In opposing the 3rd ground of appeal Mr. Kyando submitted that those 115 people were neither proper parties nor necessary parties. He relied on the meaning of necessary party as defined in

C.K Takwani, Civil procedure, fifth edition 2003 that a necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. According to him, the trial Tribunal passed an effective judgment in the absence of those 115 persons. He was also of the view that the respondent had no any relief to claim against all those parties.

Mr. Kyando further contended that the trial Tribunal denied them of their application since they did not adduce good reasons for them to be joined as parties. About the non-joinder of Century Property Limited, Mr. Kyando argued that she was not a necessary party since the respondent had no cause of action against her.

Responding to the 4th ground of appeal, Mr. Kyando submitted that, the appellants' complaint has been properly determined by the trial Tribunal through a preliminary objection raised by the appellant's counsel. He resisted on the account that the respondent indicated the cause of action in his application. According to him the provision of the CPC (i.e Order VII Rule 1) cited by counsel for the appellants in relation to the complaint is not applicable in the DLHT. Mr. Kyando argued that the

application filed in the Tribunal has its form different from the form and content of the plaint as provided under Order VII Rule 1 (e) of the CPC. He also stated that the decisions referred by the appellants' counsel are distinguishable.

As to the 5th ground of appeal, Mr. Kyando forcefully resisted the account by the appellants' counsel that PW1's evidence was hearsay. He argued that PW1 based on documentary evidence which does not constitute hearsay evidence as long as PW1 has capacity to tender them.

Submitting against the 6th ground of appeal, Mr Kyando maintained that the appellants' counsel allegations about the evidence of PW2 is the misreading of the court. He thus invited the Court to rely on the evidence on the record. His invitation relied on the decision of the CAT in the case of **Michael Yohana @ Babu and Another vs Republic**, Criminal Appeal No. 95 of 2017 CAT at Dar es Salaam (unreported) where it was said that decisions of the court should always be based on the evidence on record and the applicable law.

Regarding to the 7th ground of appeal, Mr. Kyando forcefully protested the complaint by the appellants that the Chairman of

the Tribunal refused to recuse himself from the case. Mr Kyando told this court that the appellants had never raised any complaint against the trial Tribunal. He wondered on act of the appellants and their counsel to raise such a concern at this stage. According to him the complaint is a mere allegation which is supposed to be ignored by this court. Mr. Kyando therefore, prayed for this court to dismiss the appeal with costs.

In his rejoinder submissions, Mr. Shatambala made a detailed submissions trying to traverse each and every argument made by Mr. Kyando. However, the arguments are the replica of the submissions in chief. He told this court that the case of **Amza Maulid Ambali and 2 others** (supra) cited by the respondent's counsel is distinguishable in the matter at hand. He also added that in that case it was the court's decision that the registration under the land titles system is more than a mere entry in a public register which means that all procedures prior to registration must be followed according to the law. Mr. Shitambala thus, reiterated his previous prayers.

I have dispassionately followed the rival submissions by the parties' counsels. I have also thoroughly scanned the proceedings

of the trial Tribunal. I find it apposite to resolve each ground of appeal as argued by the parties in exclusion of the 8th ground which was abandoned. Nonetheless, I will firstly resolve the 7th, 4th and 3rd grounds then I will revert to the rest.

Starting with ground 7 of the appeal, without spending the precious time of this Court in my view, Mr. Kyando for the respondent is correct that, before the trial Tribunal no complaint was raised by the appellant in relation to the recusal of the trial Chairman. I say so because, I have gone through the entire proceedings of the trial Tribunal no reflection suggesting that the appellants made any prayer before the trial Chairman to recuse himself from the hearing of the case. Mr. Shitambala also did not refer to any date in the proceedings when the appellants made a such prayer. As correctly argued by Mr. Kyando, the complaint is a mere allegation. I therefore dismiss it.

As to ground 4 of the appeal, the line of argument by counsel for the parties which was also a preliminary objection at the Tribunal was the provision of **Order VII rule 1 (e) of the CPC**, the grain of which is that "*the plaint shall contain the facts constituting the cause of action and* ***when it arose***".

While Mr. Shitambala is claiming that the respondent application was incompetent for non-disclosure of the time when the right of action occurred. The respondent counsel maintains that the said provision is inapplicable since land cases before the Tribunal are not instituted by Plaint but by Application. Mr. Kyando also maintained that the law providing for the application is self-sufficient. It need not be fulfilled by the provisions of the CPC as per the requirement of **section 51 of the Land Disputes Courts Act, Cap. 216 R.E 2019.** The issue for consideration is thus, whether or not the application before the DLHT contravened the law.

Counsels for the parties are at one that the CPC applies in the DLHT vide **section 51(2) of Cap. 216**. This means where there is inadequacy in the **Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 G.N. No. 174 2003.** It is also undisputed that applications in the DLHT are governed by **Regulation 3(2) of G.N No.174.** It provides that an application be made in the prescribed form with the contents among other **'nature of the disputes and cause of action'**; see **Regulation 3(2)(c).**

In my concerted opinion, the reliance under the CPC by Mr. Shitambala is a misconception of the law. The contents of the application are provided for under the Regulations, and its format is provided under the prescribed form in the 2nd schedule to the Regulations. It is thus, not true that the respondent's application contravened the law. Even if, I would for the sake of argument, said that the cause of action should disclose the time of its occurrence, I would have found no fatality in the application filed in the trial Tribunal. This is because, paragraph 6(a) i) – iv) tells all. It described *inter alia* that the respondent purchased the disputed land in June, 2011. This means that the claimed trespass is within June, 2011 and 2016 when the suit was instituted. In the circumstance, that ground of appeal is also unmeritorious. It is thus, dismissed.

As regard to the 3rd ground of appeal, the issue for consideration is whether it was fatal to deny 115 persons to be joined as respondents. I find that it was not. For the reasons that I am about to demonstrate. Certainly, Counsel for the appellants is mindful of the provision of Order I Rule 9 of the CPC. Which provides that:

> *"**A suit shall not be defeated by reason of the misjoinder or non-joinder of parties,** and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it."*

In the instant case, the applicant/respondent claimed trespass against the appellants in exclusion of the others. The trial Tribunal found the 115 persons' application having no cogent reasons to be joined as co-respondents. At the end it passed a judgment declaring the appellants as trespassers and held the respondent the rightful owner of the suit land.

I have read the judgment I did not pinpoint any shortfall to warrant this court to hold that the trial Tribunal's judgment is wanting of merits due to the non-joinder of the said 115 persons. Mr. Shitambala's view that there is an objection proceeding filed in the trial Tribunal by 16 persons from that group of 115 people does not in my view invalidate the judgment.

Moreover, Mr. Shitambala did not also state a plausible account showing how he found the judgment ineffective either to the respondent or to the appellants. It is thus, my finding that denial of joining 115 persons in the trial Tribunal did not occasion

any injustice to either the appellants or the respondent. The 3rd ground of appeal is therefore rejected and dismissed.

Having resolved the above grounds of appeal, I now turn to the rest of grounds of appeal which are 1st, 2nd, 5th and 6th grounds of appeal. I have to state from the outset that, these grounds of appeal are related to the evidence adduced before the trial Tribunal. A note should be taken thus the trial Tribunal dealt with the evidence by the parties on two issues which were framed and agreed by the parties; to wit; (i) who is a lawful owner of the suit plot; and (ii) reliefs if any.

In that regard, Mr. Kyando urged this court in considering this appeal to confine itself in those two issues. I think his view based on the principle of law that an appellate court cannot allow matters not taken or pleaded in the court below, to be raised on appeal. This has been enunciated by the CAT in a number of decisions including; **Hotel Travertine Ltd and 2 Others vs NBC** [2006] TLR 133, and **James Funke Gwahilo vs A.G** [2004] TLR 168.

Nevertheless, as I read the submissions by Mr. Shitambala, his theme is that when the land is surveyed then allocated to a person than the indigenous owner, that indigenous owner is

supposed to be paid compensation to an unexhaustive improvement or any interest accrued in that land. His theme however, was not made one of the issues determined in the trial Tribunal. In spite of that fact, I have seen it prudent to consider it albeit briefly.

I am mindful of the fact that land is the most valuable property. The land policy and the law described the value of the land; and whoever takes someone's land is required to pay compensation relating to the interest in it. This is the spirit of **Section 3 (1) of the Land Act, Cap. 113 R.E. 2019** specifically paragraphs (f) and (g). The provision requires the court to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest; to pay full, fair and prompt compensation to any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act.

The same spirit was underscored in the case of **Attorney General vs Lohay Akonaay and Joseph Lohay** [1995] TLR 80, the

CAT emphasized the recognition of customary land use and the adequate compensation. The Court cited the Nyerere Doctrine of Land Value, which states that:

> *"When I use my energy and talent to clear a piece of ground for my use it is clear that I am trying to transform this basic gift from God so that it can satisfy a human need. It is true, however, that this land is not mine, but the efforts made by me in clearing that land enable me to lay claim of ownership over the cleared piece of ground. But it is not really the land itself that belongs to me but only the cleared ground which will remain mine as long as I continue to work on it. By clearing that ground I have actually added to its value and have enabled it to be used to satisfy a human need. Whoever then takes this piece of ground must pay me for adding value to it through clearing it by my own labour."*

Regarding customary right in land, the CAT observed that:

> *"For all these reasons therefore we have been led to the conclusion that customary or deemed rights in land, though by their nature are nothing but rights to occupy and use the land, are nevertheless real property protected by the provisions of art 24 of the Constitution. It follows*

therefore that deprivation of a customary or deemed right of occupancy without fair compensation is prohibited by the Constitution. The prohibition of course extends to a granted right of occupancy. What is fair compensation depends on the circumstances of each case. In some cases a reallocation of land may be fair compensation. Fair compensation however is not confined to what is known in law as unexhausted improvements. Obviously where there are unexhausted improvements, the constitution as well as the ordinary land law requires fair compensation to be paid for its deprivation."

Following the above observations, the issue for determination in relation to the case at hand is *whether the respondent proved ownership of the disputed land*. In resolving that issue, I will be considering the complaints embodied under the 1st, 2nd, 5th and 6th grounds of appeal. Depending to the answer in that issue, this court will be in a better position to decide *whether or not the appellants were entitled to compensation.*

Bearing in mind that the first appellate court, when parties are at squabble on the evaluation of evidence is duty bound to re-appraise the evidence of the trial Tribunal in its original jurisdiction and if so found come to a different conclusion.

For easy re-assessment of the evidence, I consider as crucial to give a summary of the evidence adduced by the parties.

The respondent gave testimony vide her manager one Gratian Kyaruzi as PW1. He testified that the respondent purchased the disputed land i.e surveyed Plot No. 32 Block BB Uyole Industrial Area from Century Properties Limited in 2011. That the respondent successfully transferred the title in her name. That the suit land is measuring 11 hectors and there are two houses. He also testified that there are trees which were planted by the first owner one Mary Katule Mwasambili, trading as (T/a) Kaburutu Nyika Farms. PW1 then tendered Official Search Report, and a copy of Certificate of Right of Occupancy (collectively admitted as **(Exhibit P1)** and Building Permit **(Exhibit P2).**

One witness testified in the respondent's favour. It was Faid Mwasukana who testified as PW2. He gave evidence from the office of the Registrar of Titles as a legal officer authorised to enter documents in the register, keep and maintain land records. PW2 testified that the disputed land is in the record of the Registrar of Titles. That, the record shows the history that the suit land was surveyed in 1987, it was allocated to Mary Katule T/a Kaburutu

Nyika Farm in 1987. It was then transferred to Century Properties Limited who then transferred it to the respondent since 17th June, 2011. He further stated that since 1987 they have never recorded any complaint in relation to the survey. PW2 tendered Original Certificate of Right of Occupancy with the name of the respondent Transfer Deed from Century Properties Limited to the Respondent which were collectively admitted as **Exhibit P3**.

In turn, the 1st appellant who testified as DW1 said that the disputed land belonged to him as it was owned by his parents who had passed on. He claimed that his land is measuring 45 and 12 paces. That he planted trees in the land in 1993. He then said that the same was apportioned to him in 2008 by his grandmother. But he did not know when and how his grandmother acquire it.

The 2nd respondent, testified as DW2 said that he was given the land by his mother in 1981 but did not know how she got the same. He did not know the size of his land, but he estimated to be ½ acre.

The 3rd appellant testified as DW3 said that the land was owned by his parent before 1975. That he was given the land

measuring 16 x 54 metres in 1985. He did not know how his parents acquired it.

The 5th appellant, testified as DW4 said that his land is measuring ½ acre. That it was farmed by his parents in 1989 and they passed it to him in 1990. He did not know how and when his parents got the same.

Kangele Pajela Mwasapili legal representative of the 4th appellant, testified as DW5 said that he was told by the 4th respondent (the late Clemence Lameck Mwasapili) that he was given the land in 1992 by his father. DW5 also did not know how the deceased's father got the land.

Another witness in favour of the appellants was one Samwel Joshua, testified as DW6. He told the tribunal that he knew well of the disputed land, that in it has a piece of land measuring 60 x 107 meters. That he was apportioned the land by his father in 1998. That his father passed away in 2018. He also stated that the land has trees but he did not know when they were planted.

The last witness in favour of the appellants was one Lameck Mwasapili who testified as DW7. His evidence was to the effect that he was the one who gave land to the 4th appellant in 1992.

He also testified that he was given the same by his father one Mwasapili Mwazyele.

In their testimonies, all appellants declined to have knowledge about the survey. However, when they were cross-examined if they knew the holder of the certificate right of occupancy, they agreed to know the respondent as the owner on the fact that he has a right of occupancy, but claimed that they were not compensated.

In accordance with **section 2 of the Land Registration Act, Cap. 334 R.E. 2019**, defines "owner" to mean, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered.

The CAT in the cases of **Amina Maulid Ambali and Others** (supra) and **Leopold Mutembei v. Principal Assistant Registrar of Titles, Ministry of Lands, Housing & Urban Development and the Attorney General,** Civil Appeal No. 57 of 2017 (unreported) held that when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to have lawfully obtained.

In **Leopold Mutembei** (supra) the CAT cited with approval the following excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. SJ. Mramba, Law Africa, Dar es Salaam, 2017 at page 330:-

> *"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 confers, 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.***" (Bold emphasis added).

In the case at hand, when keenly looking at the parties' evidence. It is apparent that the disputed land is surveyed. It is also undisputed that the respondent has a certificate of right of occupancy. PW2, the officer from the Registrar of Titles confirmed that the respondent successfully transferred the title from the previous registered owner (i.e Century Properties Limited). Again, the evidence of PW1 and PW2 was essentially corroborated by DW3. In his testimony DW3 was recorded to have said that they (appellants) had made the follow up to the Ministry for Land and to the City Council requesting the cancellation of the survey and

the certificate of right of occupancy, but they refused to cancel them; see at pages 117 -118 of the proceeding.

The appellants relied on oral evidence, each saying that he was given by his parents or his grandparents. There was no any documentary evidence suggesting that they are owner of the suit land. They insisted in their evidence that their parents and grandparents were indigenous owners.

Conversely, the respondent's evidence on the chronological of ownership of the disputed land and the confirmation by PW2 that the registration of respondent's title was faultless. In comparison with the appellants' evidence. I am confident to hold that the respondent proved the case/ownership to the balance of probabilities. This means, the respondent's evidence is more cogent than that of the appellants.

Having so said, it is my concerted opinion that the 1st ground of appeal that the appellants' evidence proved customary right of occupancy is disallowed. In the equal bases the 5th and 6th grounds of appeal that PW1's evidence was hearsay and that PW2's evidence did not establish how the land was acquired from

the hands of the appellants respectively, are also rejected. They are thus dismissed.

I have left with the 2nd ground of appeal which complained that the Certificate of Right of Occupancy was unlawfully obtained. That complaint resembles the complaint which was placed in **Leopold Mutembei** case (supra). In that case the appellant was confronting the Certificate of Title on an account that it was fraudulently registered.

In that case, the CAT in resolving the appellant's complaint; quoted with approval the pertinent part from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. SJ. Mramba, Law Africa, Dar es Salaam, 2017 at page 330, which I have already re-quoted hereinabove. In their appreciation of the excerpt as aforesaid. At page 17 of the judgment, their Lordships had this to say:

> *"We wholly subscribe to the above view. On this basis, we find exhibit* ***D.2 is not just proof of the state of ownership over the property in dispute by the persons named therein, but also evidence confirming the underlying transactions that conferred or terminated the respective titles to the persons named therein.*** *By dint of logic, therefore, the appellant's*

contention that Mr. Airo's registration was secured without the consent of the commissioner for lands or that it was secured on the strength of a bogus certificate is hollow."

Needless to say, the above observation answers the issue at hands. Like it was in that case, counsel for the appellant in the case at hand maintained that the Certificate of Right of Occupancy was unlawfully obtained since the respondent's witnesses did not tender the sale agreement which necessitated the transfer of title from the first owner to the current owner. With due respect to the counsel, the respondent after adducing the certificate of right of occupancy (exhibit P3) bearing her name, and after PW2, the officer from the office of the Registrar of Titles confirmed that there is no registered dispute regarding the ownership of the land by the respondent, there was no need of proving the registration with the sale agreement.

If I may add, for the sake of argument, I think, it could have been necessary for the respondent to tender sale agreement if the dispute was between the seller and the purchaser. In the instant dispute there was no any dispute concerning the purchase by the respondent. In the circumstances, the 2nd ground of appeal is meritless. It is therefore dismissed.

Finally, the issue I have posed above i.e as to whether the appellants were entitled to compensation suffers a natural death. This is because, I have already come to the findings that the appellants did not have any right neither customary right nor anything else. Additionally, I wish the appellants be aware that it not always the case that, when the land is surveyed by the responsible authority then allocated, the allocatee is responsible for paying compensation. See the CAT observation in the case of **Linus Chengula vs Frank Nyika (administrator of the Estate of the Late Asheri Nyika,** Civil Appeal No.131 of 2018 [2020] TZCA 267 TanzLii. At page 18 it has this to say:

> *"..... At any rate, it has not been suggested that the respondent who was a mere allocatee of the disputed land was responsible for payment of compensation."*

Owing to all what have been said and done, I hereby hold that the appeal lacks merits. Consequently, it is dismissed with costs.

Ordered accordingly.

R.A. Ebrahim
JUDGE

Mbeya
27.05.2022

Date: 27.05.2022.

Coram: Hon. A.E. Temu - DR.

1st Appellant: Present.

2nd Appellant: Absent.

3rd Appellant:
4th Appellant: Present
5th Appellant:

For the Appellants:
Respondent: Absent
For the Respondent:

B/C: Gaudensia.

Court: This appeal is coming for judgment today.

The same delivered in a chamber court in the presence of the 1st, 3rd, 4th and 5th appellants only.

A.E. Temu

Deputy Registrar

27/05/2022

DEPUTY REGISTRAR
HIGH COURT OF TANZANIA