

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: KOROSSO, J.A., RUMANYIKA, J.A., And MGONYA, J.A.)

CIVIL APPEAL NO. 620 OF 2022

ALEX MSAMA MWITA APPELLANT

VERSUS

LEONARD LEED RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
(Land Division) at Dar es Salaam)**

(Opiyo, J.)

dated the 28th day of March, 2020

in

Land Case No. 60 of 2019

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JUDGMENT OF THE COURT

27th September 2023, & 19th June, 2024

KOROSSO, J.A.:

This appeal arises from Land Case No. 60 of 2019 where the parties wrangled over the ownership of landed property with Certificate of Title No. 186234/34 located at Plot No. 914, Msasani Peninsula area, within Kinondoni Municipality in Dar es Salaam Region (suit property). The appellant sued the defendant claiming to be the owner of the suit property allegedly, having purchased it from Abdallah Khamis Rashid. It is alleged that the suit property originally owned by M/S African Company Limited was on 11/5/2014 sold to Abdallah Khamis Rashid (PW2). The appellant filed a suit claiming in his pleadings that the respondent had constantly

trespassed into and used the suit property despite knowing it belonged to the appellant. The relief sought was for an order restraining the respondent from interfering with the appellant's peaceful occupation and use of the suit premises; general damages; and costs of the suit.

The respondent resisted the appellant's claims and fronted a counterclaim against the appellant, Abdallah Khamis Rashid and Joyce Andrew Mpapasingo as the 1st, 2nd and 3rd defendants. In the counterclaim, the respondent sought for a declaration that the appellant's occupation of the suit premises and the 2nd defendant's disposition of the suit property to the appellant are unlawful as M/S African Company Ltd., the 2nd plaintiff (the company) in the counterclaim is its lawful owner. He also claimed that the Power of Attorney in favour of the 3rd defendant to the counterclaim is unlawful not having been sanctioned by the Directors of the Company. The trial court sustained the counterclaim. The appellant was aggrieved, hence the instant appeal.

At the trial, Musa Mohamed (PW1) testified he had been the watchman at the suit property as of the year 2000 and during this period he understood his employers to be John and Hunt. In 2014, his bosses told him that they had sold the suit premises to Abdallah Khamis, the 2nd defendant in the counterclaim whom they introduced to him. Abdallah

Khamis allowed him to retain his position and continue to work at the suit premises. In 2019, he was informed that the property had been sold to the appellant. In his testimony, Abdallah Khamis Rashid (PW2), stated that having bought the suit premises from the company in 2014. He then sold it to the appellant in 2019 as witnessed by John Manning and Samwel Hunt, who represented the company. According to PW2, at the time of purchase of the suit property, he was not given the original title deed and was told it was with the seller in the United States of America (USA), instead, he was handed its copy and promised to be availed with the original when available. As stated earlier, it is alleged that in 2019, PW2 using transfer forms and the sale agreement he had, sold the suit premises to the appellant for Tshs. 290,000,000/=. PW2 handed to the appellant, the copy of the title deed only and had no board resolution from the company to hand it to the appellant stating that it was misplaced.

On his part, the appellant (PW3) testified that his purchase of the suit premises from PW2 had taken place after he had verified from the area leader that the property was sold to PW2 by the African Company Ltd. and consulted his lawyers on the purchase. He testified that he was handed the original sale agreement between PW2 and the company and transfer forms, together with copies of the Memorandum and Articles of

Association of the Company (MEMARTS), a title deed, and copies of passports of the Directors of the Company. He was also given a note stating that the original title deed was lost, and a copy of the passport-size photograph of one of the Directors of the Company. The appellant stated that he also received some other documents which he could not recall their significance easily. The appellant testified further that PW2 had introduced to him Joyce Andrew Mpapasingo, the 3rd defendant in the counter affidavit (PW4) as the one who was making a follow-up on the issuance of a new title deed for the suit property with relevant authorities. He was also introduced to PW1 as the security guard at the suit property. He also stated that he was informed by PW2 of there being tenants still occupying the suit premises. The appellant later asked the said tenants to move out of there to give way for planned renovations of the suit property. In line with the pleadings, the appellant claimed to be the lawful owner of the suit property and prayed to be left to enjoy its use peacefully.

In defence, the respondent who testified as DW1 contended that he was a teacher who had arrived in Dar es Salaam in August 1971, however, he had been living in and out of Tanzania for over 50 years. In 1972, he incorporated the company (African Company Limited) as shown in the certified certificate of incorporation (exhibit D1), and the Company

acquired the suit property. He tendered the Certificate of Title No. 18234/37 (exhibit D2) to cement his assertion. He stated that the company's directors included himself, Samwel Hunt and Fredrick Johnson and that John Henry Manning was never a member or shareholder of the Company. According to him, John Henry Manning was an economist who came to Tanzania and worked in the Ministry of Economic Development and Planning and thus could not be part of a private company. DW1 stated further that in 1974, one Fredrick Johnson resigned from the Company and went back to the USA and has not stepped foot in Dar es Salaam since 1986.

Upon acquisition of the suit premises, in 1995, DW1 initiated the construction of the suit premises and within five years, that is, 1999 or 2000, he managed to finalize its construction. It was DW1's testimony that in 2019, his wife called and informed him that the suit premises had been invaded and taken over by someone else. The said information prompted him to get back in Dar es Salaam and when he visited the suit premises he met around 10-12 guards and was refused entry. The guards informed him that the appellant was the one who was in charge and had purchased the suit premises from a person of Arabic ethnicity. On calling the appellant, DW1 was informed that the appellant had purchased the

suit property from the Company. Having rejected there had been any such sale, the appellant offered him USD 100,000.0 for the suit property which he refused, since it was worth USD 700,000.0 or more.

According to the respondent, in 2000 he had leased the constructed suit premises to the Sea Cliff Resort's General Manager from 2007-2010. Between 2010 and 2017, the suit premise was rented to the then Living Room Company for their General Manager, Mr. Nishit. DW1 tendered extracts of email communication between himself and Mr. Nishit which were admitted as exhibit D3. After the expiry of the contract with the Living Room, and given the low client patronage, the respondent decided to change the use of the suit premises and planned to use it for B & B Business.

DW1 denied claims that the directors of the company had passed a resolution to sell the suit property stating that there was no such resolution. He also rebutted claims that the title deed of the suit premises was lost stating that it was in his custody at all times urging us to hold that PW4 had lied about this and was not known to him. The respondent prayed for a declaration that the property belongs to the company and compensation for the furniture and other home appliances including a

large generator which were in the suit property and allegedly had been taken by the appellant.

After the conduct of the trial, the trial court decided in favour of the respondent's counterclaim, hence the extant appeal. Aggrieved by the decision, the appellant lodged a memorandum of appeal containing nine grounds of appeal that paraphrased fault the trial court for:

- 1. Its determination of the case without assessors or for failure to give an option to the parties of involving assessors in the proceedings.*
- 2. Expunging exhibits P3 and P4 for noncompliance with the Stamp Duty Act.*
- 3. Failure to comprehend that the differences in letters in the court record and TRA had nothing to do with the appellant.*
- 4. Failure to call up the Judicial office to address the differences.*
- 5. Failure to evaluate Exhibit D3.*
- 6. Failure to consider the testimonies that in 2014, John Manning and Samuel Hunt were in Tanzania to execute the sale agreement.*
- 7. Failure to comprehend that the respondent was not entitled to general damages of Tshs. 50,000,000/=*
- 8. Failure to evaluate the testimonies of the appellant's witnesses.*
- 9. Failure to comprehend contradictions in oral testimonies of DW1 and the averments in the written statement of defence.*

On the day the appeal came for hearing Mr. Samwel Shadrack Ntabaliba, learned counsel represented the appellant, whereas, the respondent was represented by Mr. Mafuru Mafuru, learned counsel.

Mr. Ntabaliba, commenced by informing us that he will argue grounds 2 and 3 conjointly and then grounds 1, 4-9 separately. On ground 1, Mr. Ntabaliba informed us that he was not amplifying the ground and left it to the discretion of the Court to determine it accordingly.

On his side, the learned counsel for the respondent who had filed written submissions commenced by adopting them to form part of the oral submission. On ground 1, which faults the trial court for determination of the trial in the absence of assessors, Mr. Mafuru contended that the complaint was misconceived taking into account that the trial started on 9/6/2021, which was after coming into operation of the Written Laws (Miscellaneous Amendment (No. 3) Act, 2010 which amended various laws including section 19 (a) of the Land Disputes Court Act, Cap 216 (Land Disputes Act) and section 167 of the Land Act, Cap 113 (Land Act) to ensure that the High Court was vested with jurisdiction to hear and determine Land Disputes. He argued that further consideration should be on further amendments including those related to the amendments of GN No 63 of 2001 vide GN No. 364 of 2005 on the High Court Registries

(Amendment) Rules, 2005, that essentially revoked and replaced rules 5F and 5G. According to him, the relevance of the said amendments was that it was no longer imperative for the High Court to sit with assessors in land disputes tried by the High Court unless the parties stated otherwise. The learned counsel cited the following decisions of the Court to augment his stance: **Gabriel Mmari (as the Legal and Personal Representative of the estate of the late Gabriel Barbanas Mmari v. Tuna Seti Ayo and 9 Others**, Civil Appeal No. 91 of 2019 and **R. R. Shindika t/a Stella Secondary School v. Kihonda Pitsa Makaroni Industries Ltd**, Civil Appeal No. 128 of 2017 (both unreported).

In the alternative to the above contention, he urged us to invoke the overriding objective principle and hold that no party was prejudiced since the right to be heard was accorded and the Court should not be hindered by technicalities. His other reason was that, if the Court so finds that the conduct of the trial without assessors was fatal, the remedy of ordering a retrial will not suffice in the instant case since it will only delay the process as the appellant never acquired the title to the suit property and that the Court should be guided by the decision of the Court in **Inter Consult Ltd v. Mrs. Kisanga and Another**, Civil Appeal No. 79 of 2015 (unreported), where the Court decided to only address the central issue in the case and

forego the other grounds. The issue was whether the title passed to the appellant. He thus implored us to do the same and find the first ground unmeritorious and proceed to determine the other grounds.

Having heard the submissions from the contending sides, on ground 1 we find the crux of the complaint under consideration is essentially the propriety of the trial where the High Court did not sit with assessors or request the opinion of parties on whether to proceed with the trial without them. In the instant appeal, we revisited the record of appeal and it shows that the suit was filed on 15/5/2019 and the trial hearing commenced on 9/6/2021 as discerned at pages 203 and 204. The record of appeal is vivid that on 9/6/2021 when the plaintiff's case commenced, the trial of the suit proceeded without the aid of assessors. Apart from that, neither learned counsel of the parties was called upon to address whether or not the trial Judge should sit with assessors. Suffice it to say, when the trial began, it was at the time the Written Laws (Miscellaneous) Amendment (No. 3) Act, 2010 had amended the Land Disputes Court Act, Cap 216 (Land Disputes Act) and substituted the definition of the term "High Court (Land Division)" to be:

"High Court means the High Court of Tanzania established by Article 108 of the Constitution of

the United Republic, the term High Court (Land Division) whenever it appears in the Act and shall substitute for it with the term High Court"

To be noted is that the above amendments led to the amendment of section 167 of the Land Act, Cap 113 (the Act) and vested the High Court with jurisdiction to hear and determine Land disputes. Similarly, as alluded to by the learned counsel for the respondent, GN No. 364 of 2005 of the High Court Registries (Amendment) Rules. 2005 which repealed rules 5F and 5G was in operation. Our reading of rule 5F is that the use of assessors in a trial of a suit at the High Court Land Division is mandatory unless the parties opt otherwise to do away with their presence during the trial.

However, we find this is not the case when the High Court is exercising its original jurisdiction under section 37 of the Land Disputes Act. This is because rule 5F cited above applies to land disputes adjudicated in the High Court Land Division and does not extend to when the High Court is exercising its original jurisdiction under section 37 of the Land Disputes Act. We are thus of the view that the ground is unmeritorious.

The learned counsel for the appellant proceeded to expound on grounds 2, 3 and 4 conjointly. Regarding grounds 2 and 3, the learned counsel contended that in composing the judgment, the trial judge had expunged exhibits P2 and P4 despite the evidence of a witness called by the trial court (CW1) from the Tanzania Revenue Authority (TRA) who had explained that the concerned stamp duty was duly paid. He argued that under those circumstances, expunging the two documents when there was evidence that the stamp duty was duly paid was improper and prayed that the grounds be allowed. On ground 4, the learned counsel faulted the Judge for casting doubts on the authenticity of the letters from the Registrar of the High Court when it was not upon the appellant to prove this. He argued that if the Court found there were some differences in the letters, it was not the fault of any of the parties, since none had access to those letters. He thus argued that, in the interest of justice, the proper move should have been for the trial court to call a witness to give evidence to prove the authenticity of the questioned letters. That it would have been proper for the trial court to inquire into the authenticity of the same and arrive at its decision therefrom, failure to do so, meant it misdirected itself. He implored us to allow grounds 2, 3 and 4.

In reply, confronting grounds 2 and 3 jointly, Mr. Mafuru contended that the trial court properly expunged exhibits P3 and P4 for non-payment of stamp duty. He stated that the exhibits are sale agreements from MS African Company Limited to one Abdallah Khamis Rashid (PW2) and from PW2 to the appellant. He contended that the exhibits were not admitted as exhibits *per se*, but were admitted tentatively pending payment of stamp duty and expunged when composing judgment upon failure to pay the requisite stamp duty as required by sections 5(1)(a) and (b) and 47(1) of the Stamp Duty Act Cap 189 (Stamp Duty Act). He implored us to take into account that the trial court had given several directions to the appellant for him to pay stamp duty and also called a court witness, Saidi Benson Mwakagagale from the Tanzania Revenue Authority (CW1) to verify such payment to no avail since his evidence was found wanting by the trial court. He argued that this can be discerned from the contents of exhibit C1. He argued that the trial court found that the process of verification of stamp duty was full of falsity and discrepancies which necessitated the trial court to expunge exhibits P3 and P4 from the record. To bolster his argument, he cited the case of **DPP v. Sharif s/o Mohamed @Athumani and 6 Others**, Criminal Appeal No. 74 of 2016. In the alternative, the learned counsel argued that even if the Court was

to find that the trial court erred in expunging exhibits P3 and P4, then even if they would not have been expunged the issues argued in this appeal are a non-starter since the claims to the title of the suit premises never passed to the appellant from the alleged said Abdallah from M/S African Company Limited since he didn't have any title to pass.

Therefore, relying on the decision of the Court in **Serengeti Breweries Ltd v. Breakpoint Outdoor Caterers Limited**, Civil Appeal No. 134 of 2019 (unreported), where we decided to canvass the central issue arising from the appeal, and he thus urged us to do the same in the instant appeal and find the critical issue. On his part, he urged to consider the critical issue in the instant appeal to be whether the sale agreements exhibits P3 and P4 which were expunged in the judgment, passed title to the alleged buyers and vendors.

The learned counsel contended that there was no proof of the title having passed from Abdallah to the appellant or from M/S African Company Ltd to Abdallah to the standard required. He advanced the following reasons for his stand; One, that there was no proper sale from the Company, 2nd plaintiff by way of counterclaim to one Abdallah for lack of a valid company resolution. Two, there was no proof provided that the Company was paid USD 200,000.00 from the buyer, one Abdallah let

alone the Tshs. 290,000,000/= by the appellant to Abdallah. The absence of the certificate of Title changed in favour of Abdallah or the appellant after the alleged sales was also a concern. Three, copies of passports admitted as exhibit P1 collectively do not have pages of proof of directors of the company who allegedly sanctioned the sale by signing the sale agreement and that they were in Tanzania at the time of signing the agreement. Four, the appellant was not a bona fide purchaser for value and Title to pass to him in line with sections 37(1) and 38(1)(a) and (b) of the Land Act. Since there was no approval of the alleged sales from the company to Abdallah Khamis Rashid and then from Abdallah Khamis Rashid to the appellant. There were no land or Title transfer forms tendered in court or to show government taxes were paid. Five, as per section 3(2) of the Land Registration Act, Cap 334 and the decision in the case of **Salum Matayo v. Mohamed Matayo** (1987) T.L.R. 111, a decision of the High Court stating that the owner of the title is the one whose registration is made in his/her name. Whereas, in this case, no evidence that the appellant is the registered owner. To be noted he contended, the registered name and ownership of title of the suit property up to the time of trial and appeal hearing is in the Company's name. He thus argued that, where the Court was to consider these factors, grounds

1 to 9 would fall a natural death. He beseeched us to consider our decision in the case of **Melchiades John Mwenda v. Giselle Mbaga and 2 Others**, Civil Appeal No. 57 of 2018 (unreported), where we stated that where the sale is invalid, land title cannot pass.

On ground 4, which faults the trial court for failing to call a judicial officer to evaluate exhibit D3, the learned counsel for the respondent argued that it was not the duty of the court to call him but that of the appellant if he thought it was important for his case. Therefore, the appellant should not fault the trial court on this, he contended.

We have heard the rival submissions from the counsel of the parties on grounds 2, 3 and 4 argued and responded conjointly, a direction which we also intend to undertake in addressing these grounds. We are of the view that grounds 2 and 3 essentially address the propriety of expunging exhibits P3 and P4 for lack of stamp duty in contravention of the Stamp Duty Act, while ground 4 queries the propriety of the trial court's failure to call a judicial officer to expound on the letters from judiciary related to the authentication of the payment of stamp duty for exhibits P3 and P4.

The trial court found that exhibits P3 and P4 lacked stamp duty in contravention of section 47(1) of the Stamp Duty Act and thus held that the payments sought to be proved were unauthentic. Having admitted

them into evidence, in the judgment, the exhibits were expunged. The trial court relied on the holding in the case of **Malimo Montage Konsult v. Margaret Gama**, Civil Appeal No. 86 of 2001 (unreported). We find it apt at this juncture to reproduce section 47(1) of the Stamp Duty Act, which stipulates that:

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive the evidence or shall be acted upon, registered in evidence authenticated by any such person or by any public officer, unless such instrument is duly stamped."

It is important however, to take into account that as the first appellate Court, we are constrained to re-appraise the evidence and draw our conclusion under rule 36 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). Our perusal of the record of appeal shows that exhibits P3 and P4 upon being discovered to lack stamp duty, were admitted tentatively by the trial court, subject to compliance with section 47(1) of the Stamp Duty Act within one week after the said order as found on pages 309 of the record of appeal. This was upon the then-learned counsel for the respondent's objection to their admissibility. What we

discerned from the judgment of the trial court on page 363 is that the order was not complied with and the trial Judge stated:

"Based on the finding above that the payments sought to be proved were not authentic, the objection on the authenticity remains sustained. The documents tentatively admitted as P3 and P4 therefore remain inadmissible in terms of section 47(1) of Stamp Duty Act, Cap 189 RE 2019...The same are expunged from the records. Therefore, the two sale agreements remain excluded from consideration in the determination of this matter..."

Moreover, the Court in its previous decisions has pronounced that a document that requires stamp duty cannot be admitted in evidence unless the stamp duty is paid before the admission of the requisite documents. In **Zakaria Barie Bura v. Theresia Maria John Mubiru** [1995] T.L.R. 16, the Court held:

*"The second reason why the appellant could not have obtained the title to the suit premises, even if the sale agreement had not been tainted with illegality, is the fact that neither document containing the agreement bears any indication of payment of stamp duty according to the Stamp duty Act. **By law, such omission renders the***

sale agreement inadmissible as evidence in court, unless the party concerned pays the stamp duty before the document is admitted as evidence.” [Emphasis Added]

Taking account of the position of the law and the circumstances pertaining in the trial court on the absence of stamp duty for exhibits P3 and P4, we find no reason to differ with the finding of the trial court upon lack of evidence of payment of stamp duty, even after providing time for the appellant to rectify the anomaly. Therefore grounds 2 and 3 fail.

The gist of the complaint in ground 4, is the trial judge's failure to call a Judicial officer to testify to address the differences found in the letters in the court record and those from TRA regarding the stamp duty payment. Whilst the learned counsel for the appellant contended that it was the duty of the trial court to initiate an inquiry on the discerned differences in the content of the said letters by calling witnesses who had access to them such as the judicial officers, the learned counsel for the respondent argued that the ground was misconceived. He argued that the trial court had no duty to call any witness to authenticate documents tendered and the appellant should have called such witness if he so required.

To be noted is the fact that given the contending arguments on the genuineness of the TRA Tax payment receipts submitted by the appellant to show payment of stamp duty on exhibits P3 and P4 upon being directed by the trial court to do so to finalize their admissibility into the record. It was ordered that a letter be written to TRA inquiring about the genuineness of the said payments through control numbers 998412306581 and 998412211046. The Court called a court witness (CW1) who also tendered a letter that replied to the query of the authenticity of the payment receipts, the letter of query TRA received, and its attachments, tax payment slips which were collectively admitted as exhibit C1. According to the trial judge, a perusal of the copies of exhibits showed that the control numbers that they inquired about and sought to determine authenticity differed from those referred to in the TRA letter in reply to the court. In addition, the court letter in exhibit C1 alleged to have been received by TRA for inquiry from the court was found to differ from the copy of the letter in the court file. Given the discrepancies found in the letters and exhibits, the trial court found itself unable to determine the authenticity of the payments of stamp duty inquired by the court regarding admitted exhibits and found exhibits admitted as exhibit C1 to be irrelevant.

In the circumstances, we agree with the learned counsel for the respondent that since the appellant wanted to rely on them, it was his duty to prove the authenticity of the documents he expected to rely on to prove payment of stamp duty as ordered by the trial court. Failure to so prove this meant that he failed to discharge the burden of proof to the standard required. Therefore, this ground fails.

We wish to note that the concerns raised by the learned counsel for the respondent relating to the Court moving to decide on only one issue on whether the title to the suit property passed to the appellant or not, will be in the interest of justice be dealt with in due course and not necessarily at this juncture.

Moving to ground 5 which faults the trial court for failure to evaluate exhibit D3. Mr. Ntaliba contended that the trial court erred in taking into account the contents of the exhibit as genuine communication without properly evaluating their authenticity and thus arrived at a wrong conclusion to the detriment of the appellant. He urged us to find the ground to be meritorious and allow it.

Mr. Mafuru urged us to find the ground without substance since exhibit D3 showed evidence of communication between DW1 and the tenants proving that such communication would not have been there if

the appellants were already owners of the suit premises from 2019 as claimed. He argued that such communication was extracted with other evidence to prove the respondent's claims.

Indeed, exhibit D3 contained extracted email communication by the respondent with Living Room Company officials and the certificate of data accuracy. According to DW1, Living Room Company rented the suit property for Mr. Nishit, their General Manager from 2010 to 2017.

To be noted is the fact that the extracted emails were collectively admitted as exhibit D3 after the trial court overruled an objection to their admission from the then-learned counsel for the appellant. However, we have noted that the objection was not related to their content but to the competency of DW1 to tender them and that there was no requisite notice for additional evidence. Therefore, we find the objection now by the learned counsel on their authenticity is an afterthought. We have also noted that the trial judge on page 370 of the record of appeal evaluated the evidence regarding exhibit D3 to some extent. Therefore, it is not true that the trial court did not properly consider the said evidence. We thus find this ground to be misconceived and to lack merit.

In amplifying ground 6, Mr. Ntabaliba challenged the trial court for failure to consider the fact that in 2014, John Manning and Samwel Hunt

were in Tanzania to execute the sale transaction of the suit property for the Company. That is according to the testimony of Richard Chengula (PW4), he had admitted that the two were in Tanzania in that year. The learned counsel argued that the said evidence was in contradiction to the evidence of DW1, who stated that John Manning did not come to Tanzania in 2014. Concerning the contention that John Manning was not a director of the company, the learned counsel urged us not to believe this assertion because it is a fact pleaded in the written statement of defence annexure which also shows that he was a shareholder. He prayed for the ground to be upheld.

The learned counsel for the respondent argued that the assertions in ground 6 are not supported by evidence since there is no evidence adduced in court supporting claims that Samuel Hunt was at any time in Tanzania to sign the alleged agreement between the Company and Abdallah as held by the trial judge. This is because there was no Company resolution with signatures of all three directors or even two of them, showing support for the alleged sale. In addition, he contended that while the marriage certificate shows the alleged marriage between PW4 and John Manning (exhibit P2) was occasioned on 4/12/2017, it contravenes other evidence. This is because 4/12/2017 is a date four years after the

alleged sale of the suit premises by the company in 2014, disputing the assertion by PW4 that when the alleged sale took place in 2014, she and her husband, John Manning were present. This is because from the evidence, in 2014, John Manning was not PW4's husband then. According to the learned counsel, this evidence augurs with the holding of the trial court that exhibit P1 which includes passports of the directors who signed the sale agreement does not support the evidence that John Manning and Samuel Hunt visited Tanzania in 2014 and that the said passports do not have pages that show the two to have visited Tanzania in 2014. The pages produced only showed their faces and personal particulars. He argued that exhibit P1 has copies of the passports of John H. Manning and Leonard Reed, with no copy of Samuel Hunt's passport. The gist of his argument is that the appellant failed to prove the presence of the company directors in Tanzania in 2014 to actualize any sale transaction of the suit property.

We find the issue for consideration in ground 6 is whether John Manning and Samuel Hunt were in Tanzania in 2014 and effected the disposition of the suit property in any way. On this issue, the trial Judge at pages 373 to 375 discussed this stating:

"... Mr. Abdallah is seeking to prove that the suit property was sold to him by the two company directors, John H. Manning and Samwel J. Hunt. He advanced a testimony that the two directors visited the country in 2014 for that purpose after having the company's approval to do so. That proof was also necessary to establish that at least there was the presence of a forum in which the alleged sale of property could have been discussed.... Therefore, as correctly argued by Mr. Mafuru, the above facts remained unproven to the required standard in law. Abdaliah was far from complying with the provisions of the law requiring proof on the balance of probability standard. He did not prove on the balance of probability the presence of the alleged two directors in the country at the date of the alleged sale to him. It is only the visit by one, John Manning was also noted by DW4, but he alone could not have a mandate to sell the property without the necessary resolution..."

A careful perusal of the evidence on record shows as observed by the trial Judge, that on the preponderance of probability, the appellant failed to prove that the alleged two directors were in Tanzania in 2014, and in essence to effect the alleged sale of the suit premises. Section 110

of the Evidence Act, clearly stipulates the principle that "*who alleges must prove*". The pages of the passports admitted as exhibit P1, apart from photographs of the directors of the Company, do not show their presence in Tanzania. The evidence of PW4 and exhibit P2 on this is also wanting. If the marriage certificate shows the alleged marriage between John Manning and PW4 was in 2017, where is evidence that in 2014 they were together for PW4 to prove that John Manning was in Tanzania for the alleged sale to Abdaliah in 2014? There is the fact that no board resolution to show that the Directors resolved to sell the suit premises in 2014. This was not tendered in Court. When all the above is considered together with the fact that neither the appellant nor Mr. Abdallah, the alleged purchaser from the Company, managed to avail the trial court of the Title deed for the suit premises or any transfer documents, leaves gaps in the evidence of the alleged sale. In the circumstances, we agree with the finding of the trial Judge that the appellant failed to prove on balance of probability that there was a transfer of suit property/title to suit property from the Company to Abdallah Khamis Rashid and thereafter to the appellant. Therefore we find the ground to be unmerited.

In ground 7, the complaint is the propriety of the damages of Tshs. 50,000,000/= awarded to the respondent. The learned counsel for the

appellant argued that the record does not show the reasons given by the trial Judge for granting such damages as required by law. He thus urged us to find that in the absence of such reasons, there was no basis for granting the same to the respondent since he was not entitled.

On his part, Mr. Mafuru prayed for the Court to find the ground a fallacy. He contended that it should be borne in mind that the Company joined the suit as plaintiff by way of counterclaim, inclusive of the respondent. According to him, the evidence of DW1, the General Manager of the Company and respondent to a greater extent on the balance of proof showed how the suit premise was invaded, suffered destruction, and items stolen therefrom including a standby generator. That, all the destruction and stolen items were claimed under general damages and that after consideration of the evidence on record and damages suffered, the trial Judge awarded the general damages and provided reasons. He contended further that the awarded general damages were according to the principle on the degree of damages occasioned and suffered loss and the trial court exercised its discretion judicially to grant the same. He urged us to find the complaint lacks merit.

We have considered the rival submissions on this issue, and find the issue for our determination to be whether the awarded general damages

are erroneous. According to Lord Macnaghten in **Stroms v Hutchison**, 1905 A.C. 515, "*general damages*" are such as the law will presume to be the direct natural or probable consequence of the act complained of."

In **Anthony Ngoo and another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported), we cited the definition of general damages found in Black's Law Dictionary Abridged (Sixth Edition) that: -

"Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed or proved to have been sustained."

The need to assign reasons when granting general damages was emphasized in the case of **Alfred Fundi v. Geled Mango and Two Others**, Civil Appeal No. 49 of 2017 (unreported), the Court held:

"The law is settled that general damages are awarded by the trial court after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in awarding general damages although the judge has to assign reasons in awarding the same."

In the instant appeal, having gone through the judgment of the trial court, there is no doubt that the trial Judge considered the evidence on record before awarding general damages as shown on page 385 of the

record of appeal. The trial Judge observed that the plaintiff forcefully acquired possession of the suit property through an illegal process, having been in illegal occupation of the property as of 2019 after invading it without lawful justification and thus unlawfully dispossessed the company of their property. She thus proceeded to exercise her discretion by awarding them general damages for the lack of use of the dispossessed suit property.

Considering the foregoing, undoubtedly, the trial Judge did provide reasons for granting general damages to the 2nd plaintiff in the counterclaim. It should be noted that in the judgment, the trial judge found the 2nd plaintiff to the counterclaim to be the lawful title holder of the suit premises. Therefore, we find nothing to move us to disturb the finding of the trial court on this matter and are of the view that the ground is unmerited.

For the foregoing, we are convinced that the claims by the appellant remain unproven on the preponderance of probability whilst the counterclaim was proved to the standard required. We are also of the view that having reassessed the evidence, there is no ground to interfere with the findings of the trial court on the credibility of the witnesses who testified.

In the circumstances, we find this to be sufficient to dispose of the appeal, the remaining two grounds having essentially been addressed in our deliberations above. All in all, we cannot fault the trial Judge in her judgment. We find no merit in the appeal.

Accordingly, this appeal is dismissed with costs.

DATED at DAR ES SALAAM this 31st day of May, 2024.

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 19th day of June, 2024 in the presence Mr. Augustine Kusalika, learned counsel for the Appellant and Ms. Sia Ngowi, learned counsel for the Respondent is hereby certified as a true copy of the original.



F. A. MTARANIA
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DEPUTY REGISTRAR
COURT OF APPEAL