

5 May 2022



## Court of Appeal Restores Property Auctioned Two Decades Ago

- Court declares auction unlawful
- Principle of bonafide purchaser clarified
- Importance of search in conveyancing emphasized
- Multi-storey building restored to plot owners
- Demolition order denied as building already constructed
- Subsequent huge investment by purchaser not considered
- Specific damages rejected

### Brief Background of the Case

On 13 April 2022, the Court of Appeal of Tanzania (the Court) in a judgment authored by Justice Issa Maige, JA and bench comprising of Justices M.A. Kwariko and Justice A.M. Mwampashi, in Civil Appeal No. 166 of 2019, delivered a historic judgment relating to a dispute involving a property that was auctioned more than two decades ago. The dispute was in relation to legal ownership of a plot (the suit property) at Kariakoo area in Ilala Municipality, Dar es Salaam region.

The factual background of the case is that, until 2002, the suit property was held under a letter of offer by six siblings. The dispute started with one of the siblings (fourth Respondent) leasing her portion of the suit property to the third Respondent under a tenancy of three years. Unfortunately, the lease was terminated prematurely leading to the tenant suing the fourth Respondent for redress based on such termination. As a result, a judgment was pronounced in favour of the tenant by the Court of first instance, and even after rounds of appeals, the fourth Respondent could not succeed, save for minor variations of the decision.

Consequently, the third Respondent initiated execution proceedings with view to effecting the decision of the Court for wrongful termination of tenancy. In the course of execution proceedings, attachment of the suit property was ordered and sold by auction to the first Respondent and second Respondent on 13 May 2001.

Following the sale, the Appellants were evicted from the suit property and the same was demolished. Subsequently, an eight-floor building was erected by the second Respondent. As a result, the Appellants initiated the legal battle to challenge the whole auction process, eviction, demolition and subsequent title to the suit property by the first and second Respondents. The Appellants lost their suit at the High Court and undeterred appealed to the Court vide Civil Appeal No. 166 of 2019.

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In the said appeal, the Appellants advanced a number of grounds of appeal which were framed into four issues, namely: (i) whether the attachment, sale and subsequent eviction of the appellants from the suit property was illegal and ineffectual; (ii) whether the institution of the suit at the trial Court was barred by law; (iii) whether the second Respondent is the bonafide purchaser for value without notice; and (vi) whether the trial Court was right in holding that, the Appellants were not the lawful owners of the suit property or part thereof.

## The Judgment

The Court held that since the transfer of the suit property to the second Respondent was based on a certificate of sale not made under O. XXI r. 92 of the Civil Procedure Code and in absence of an order confirming the sale, the same was illegal and ineffectual. The Court insisted that where a landed property is held under a certificate of title or letter of offer, the executing Court cannot make any order for sale of the same in execution of a decree without having prima facie evidence of the title of the judgment debtor on the property. Moreover, the Court held that the fourth Respondent was the only judgment debtor and had no title to pass to the second Respondent other than the fourth Respondent's interest in the suit property.

Further, concerning the principle of bonafide purchaser, and in what will also be seen as a warning to would be bonafide purchasers purchasing plots through staged auctions, the Court ruled that, as the suit property was held under a letter of offer with plot and block numbers, and there being information that the same was jointly owned by the fourth Respondent and her relatives, the second Respondent having purchased the property without prior inquiry into the extent of the title of the judgment debtor on the suit property, cannot qualify as a bonafide purchaser for value without notice. The second Respondent was expected to, before purchasing the suit property, inquire and find out in relevant authorities what interests, if any, the said fourth Respondent's relatives had in the suit property. The second Respondent's unreasonable omission to make an inquiry put her to constructive/deemed notice and/or imputed notice of the Appellant's ownership interests in the suit property.

Lastly, the Court declared the Appellants to be lawful owners of the suit property and the developments thereon (an eight-floor building) to the extent of 6/7 shares. The Court further held that whatever investment the second Respondent injected on the suit property was at her own risk. The Court also rejected to grant a demolition order which was sought by the Appellants on the ground that there was nothing wrong with the building. Further, the Appellants' prayer for specific damages of TZS 1.5 Billion was denied because the particulars of damages so sought were not specifically pleaded and proved as required by the law.

To read the Judgment [click here](#).

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