IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

LAND CASE NO. 4364 OF 2024

GERALD KAMKALA (The Administrator of

the Estate of the Late Jane Gervas Kamkala).....PLAINTIFF

VERSUS

CORNELIS HENDRICK VAN VIANNEN.....1ST DEFENDANT

OCTAVIAN JOSEPH KIDIMA.....2ND DEFENDANT

CRDB BANK PLC LTD.....3RD DEFENDANT

JUDGMENT

16th April & 4th May, 2026

KAMANA, J.

Following the death of Jane Gervas Kamkala, her business partner and cohabitant, one Cornelis Hendrick Van Viannen, was duly appointed by this Court as the administrator of her estate. In the exercise of that authority, Van Viannen, who is the first defendant in this suit, sold the deceased's property known as Plots No. 188 and 189, Block X, Capri Point, Mwanza Region, for a sum of TZS 195,000,000.

The purchaser of the said property was one Octavian Joseph Kidima, who is the second defendant in this suit. Upon acquiring the

property, he charged it as collateral for a loan obtained from CRDB Bank Plc, the third defendant.

Aggrieved by what he considered to be a mismanagement of the deceased's estate, particularly the use of the proceeds of sale by the former administrator for his personal benefit, Gerald Kamkala, the plaintiff and a brother to the deceased, petitioned this Court for the revocation of the administrator's appointment. The Court subsequently revoked the said appointment and appointed the plaintiff as the administrator of the deceased's estate.

Having been appointed, the plaintiff brought this suit claiming the following: ***one***, declaration that Plots No. 188 and 189 Block X belong to the late Jane Gervas Kamkala; ***two***, declaration that all transaction and mortgage made in respect of the said property could not pass a better title hence nullity; and ***three***, costs.

In determining the suit, the parties proposed issues which were adopted by the Court: The issues are: ***one***, whether the first defendant had the legal title to sale the disputed land to the second defendant; ***two***, whether the act of first defendant to sale the disputed property and use money he received for his own gain made the transaction

between the first and the second defendant invalid; and ***three***, whether the mortgage created is valid or otherwise; and ***fourth***, the reliefs the parties are entitled to.

During the hearing both parties were represented by learned Counsel. Mr. Remegius Mainde represented the plaintiff. The first defendant had the services of Mr. Geoffrey Kange. The second and third defendants were, respectively, represented by Mr. Ernest Mhagama and Mr. Deogratius Maya.

The plaintiff (PW1) testified that the first defendant had been appointed by this Court as the administrator of the deceased's estate. He further stated that, following the first defendant's failure to file an inventory as required by law, he successfully applied for the revocation of that appointment. In support of his testimony, he tendered in evidence the ruling and order appointing the first defendant, as well as the ruling revoking his appointment, which were admitted as Exhibits PE1 and PE2.

PW1 testified that, in the course of preparing an inventory of the deceased's estate, he discovered that the suit property had already been sold by the first defendant. This discovery prompted him to conduct an

official search. According to him, the search report revealed that the property had been transferred to the second defendant. He tendered the said report in evidence, and it was admitted as Exh. PE3.

The witness further testified that the Registrar of Titles furnished him with Form No. 35, evidencing the transfer of ownership of the suit property from the first defendant to the second defendant. The said form was tendered in evidence and admitted as Exh. PE4.

PW1 testified that, according to Form No. 35, the first defendant sold the suit property in contravention of section 67 of the Land Registration Act, Cap. 334 [R.E. 2023]. He stated that, although the first defendant purported to act as administrator, the sale did not comply with the legal requirements governing dealings in a deceased's estate, particularly the requirement that such disposition must lawfully be effected by a duly authorized legal personal representative in accordance with the Act.

The plaintiff testified that the first defendant's authority to sell the suit property was questionable, as he effected the sale before filing an inventory as required by the Court that appointed him. He stated that this omission amounted to a contravention of the Court's order. He

further asserted that, taken together with the first defendant's use of the sale proceeds for his personal benefit, these circumstances rendered the first defendant's title to sell the property doubtful.

The plaintiff testified that the first defendant, being a non-citizen, had no lawful right to sell the suit property. He further asserted that under the laws of Tanzania, the first defendant could not lawfully be registered as proprietor of the disputed property under section 67, as non-citizens are restricted in holding rights of occupancy in land.

To sum up his evidence, the witness beseeched this Court to invalidate the sale of the disputed property as the first defendant had no title. Moreover, the witness asked this Court to remove the property from being collateral for a loan taken by the second defendant from the third defendant and the costs.

Kamkala's evidence was supported by his brother Anthony Tembe Simon who testified as PW2.

The first defendant testified as DW1. In his evidence, he did not dispute the fact that he was appointed to administer the estate of the deceased whom he referred to as his wife. DW1 supported PW1's evidence that he sold the disputed property to the second defendant for

TZS 195 million. He testified that he sold the property in the capacity of the administrator of the deceased's estate.

The witness evidenced that after selling the said property, the second defendant became the lawful owner. He stated that the plaintiff was not entitled to get proceeds accrued from the sale, as by being the deceased's brother, he is not a beneficiary. He asserted that he is a lawful beneficiary as he was the deceased's husband. In summing up his evidence, he implored this Court to dismiss the suit.

The second defendant testified as DW2. In his evidence, he supported what was testified by DW1. He evidenced further that before purchasing the disputed property, he was satisfied that the first defendant was duly appointed to administer the deceased's estate, including to sell the disputed property.

Given that, DW2 asserted that he purchased the property and after the transfer he became the lawful owner. He evidenced that he is not concerned with the distribution of the proceeds accrued by the first defendant from selling the property. He prayed this Court to dismiss the suit for lack of merit.

James Charles Msabila (DW3), a loan officer of the third defendant, testified that the second defendant is the third defendant's client who was issued with a loan. To substantiate this evidence, DW3 tendered a loan agreement which was admitted as Exh.DE2.

The witness evidenced that the loan was secured by a certificate of title in respect of the disputed property. The certificate was admitted as Exh.DE1. He asked this Court to dismiss the suit.

After the closure of the defence case, I found it apposite to summon the Assistant Registrar of Titles for Mwanza to tender a report and other documents relating to the disputed property.

According to Jacqueline Songora (CW), an Assistant Registrar of Titles, the current owner of the disputed property is the second defendant. She testified that the second defendant acquired ownership from the first defendant who was the administrator of the deceased's estate and a registered legal personal representative of the deceased under section 67. She tendered a report and its annextures which were admitted as Exh. CW1.

Having heard the evidence adduced by the parties, this being a civil case, a party that alleged the existence of a certain fact must prove

the same on the balance of probability. This principle has been enunciated in numerous decisions including the case of **Barelia Karangirangi v. Asteria Nyalwamba,** Civil Appeal No. 237 of 2017, CAT (Unreported) where it was held thus:

> *'At this juncture, we think it is pertinent to state the principle governing proof of case in civil suits. The general rule is that he who alleges must prove.'*

In highlighting the source of the said principle, the Court went on to state that:

> *'…the rule finds a backing from sections 110 and 111 of the law of Evidence Act, [Cap 6 RE. 2002] which among other things state:*
>
> *110. Whoever desires any court to give judgment as to any legal right or liability depends on existence of facts which he asserts must prove that those facts exist.*
>
> *111. The burden of proof in suits lies on that person who would fail if no evidence at all were given on either side.'*

It was further held in the same decision that:

'It is similarly, that in civil proceedings, the party with legal burden bears the evidential burden, and the standard in each case is on the balance of probabilities.'

As regards the first issue, the same is premised on the plaint particularly on paragraph 11 of the plaint in which the plaintiff states:

*'**That, in the premises after realizing all the bad intention made by the defendant which are** against the wishes and intention of the deceased as well as **against the Tanzania laws on passing of title by the administrator**, the Plaintiff decided to go extra by making a legal payment at the Land Registry Office to be provided with the transfer of the right of occupancy of the property of the deceased whereby he found that the property was sold to the 2nd defendant…' [Emphasis added).*

I have considered the evidence adduced by the parties and the final submissions. In determining this issue, it is apposite to reproduce section 67 of the Land Registration Act as follows:

*'**67**. On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to the estate of the owner, or of his appointment under Part VIII of the Probate and Administration of Estates Act or the Fifth Schedule to the Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased.'*

From this section, it is clear that the legal personal representative of the deceased person, who is commonly known as administrator of the estate, has a right to be registered as an owner of the property in the place of the deceased.

The rationale behind such provision is the fact that under the Land Registration Act, any disposition of estate by such legal personal representative is not registrable unless such estate has been registered in the name of the personal legal representative. This is provided under section 68 of the Land Registration Act as follows:

*'**68**.–(1) An assent to the vesting of any devises of bequest of any registered estate or interest, or disposition by a legal personal representative, shall not be registered unless such estate or interest is registered in the name of such legal personal representative.'*

In taking this position, I am supported by the position of the Court of Appeal in the case of **Abbas Ally Athuman Bantulaki and Another v. Kelvin Victor Mahity (Administrator of the Estate of the Late Peter Walcher),** Civil Appeal No. 385 of 2019-CAT (Unreported). In the said case, the apex Court had this to state:

'In terms of section 67 of the LRA, an administrator of the deceased property is permitted to apply for a deceased property to be registered in his own name. …… Further, the provisions of section 67 of the LRA, a legal representative is required to apply to be registered as owner of a deceased property in the place of the deceased and upon being so registered he becomes vested with the mandate to exercise various powers stipulated therein in terms of section 68 of the LRA including disposition.'

From the evidence adduced by the parties, I am satisfied that the plaintiff has failed to prove his allegations to the required standard. In proving his claim, the plaintiff relied heavily on Exh.PE4 (Form No. 35). According to Exh. PE4, the first defendant transferred the disputed property to the second defendant as an administrator of deceased's estate. It was his testimony that an administrator of the estate has no such powers unless registered under section 67 as legal personal representative.

In my view, such evidence is so weak. This is because under section 2 of the Land Registration Act, the title "legal personal representative" is interpreted to mean the executor or administrator for the time being of the deceased person. The section provides:

> *'legal personal representative" means the executor, original or by representation, or administration for the time being of a deceased person;'*

That being the position, in my view, in the context of the Land Registration Act, an administrator or executor of the deceased's estate is a legal personal representative. In other words, the one who is entitled to apply for registration as an owner of the deceased's estate under

section 67 is either the administrator or executor of the deceased's estate. In that case, naming the first defendant in Form No. 35 as administrator of the deceased's estate is equal to say that the first defendant is a legal personal representative of the deceased.

I further hold the plaintiff's evidence as weak for a reason that the evidence adduced particularly by DW3 especially the certificate of title (Exh. DE1) shows clearly that the first defendant was the legal personal representative of the deceased since 16th February, 2018.

This evidence was supported by CW who testified that her office registered the first defendant as the administrator of the deceased's estate. According to the report (Exh.CE1), on 24th January, 2011, the office of the Registrar of Titles for Mwanza received an application for caveat from the plaintiff stating that he had an interest in the disputed property.

The report reveals that on 16th February, 2018, the Registrar of Titles received an application for the registration of the legal personal representative from the first defendant. Following the said application, the Registrar issued a 30 days' notice to the plaintiff in the capacity of a caveator informing him of impending application from the first

defendant. According to the report, the notice required the plaintiff to submit an order restraining the registration from the Court within the specified time.

The report shows that Registrar did not receive any order restraining the registration of the first defendant as a legal personal representative from the plaintiff and proceeded to register the first defendant in such capacity. This evidence concerning the issuance of the notice was not cross-examined by the plaintiff. This means that he was not in dispute with such evidence.

It is further on record that on 6th July, 2020, the Registrar received an application for transfer of ownership from the first defendant to the second defendant. Such application was granted.

The report shows that on 22nd August, 2023, the Registrar received an application for the registration of mortgage from the third defendant. The said application was granted.

With that evidence, it is my conclusion that, in the context of section 67 of the Land Registration Act, the first defendant had the title to transfer the disputed property as a legal personal representative of

the deceased as he was duly registered under section 67 of the Land Registration Act.

I noted that the first defendant testified that he was not registered as such under section 67. However, he being a layperson, I agree with his testimony that he does not know the difference between the administrator of the estate and the legal personal representative under section 67. Afterall, when the document speaks for itself, oral evidence is not allowed to prove what is provided in the document. This is per section 101 of the Evidence Act, Cap. 6 [RE.2023] as follows:

> *'**101**. When the terms of a contract, grant or any other disposition of property, have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.'*

Exh.DE1 (certificate of title) speaks for itself that the first defendant was registered as the legal personal representative of the deceased. In such circumstances, the confusion by the first defendant is cured by Exh.DE1 and Exh. CE1.

The plaintiff in his evidence complained that the first defendant had no title to sell disputed land as he contravened the ruling of this Court when appointing him. He evidenced that as per the ruling, the first respondent was required to file an inventory and final accounts before dealing with the deceased's estate. He evidenced that the first defendant was ordered by the Court appointed him not to sell the deceased's property but to divide the same to rightful heirs.

In defence, DW1 testified that he sold the disputed land in the capacity of the administrator of the deceased's estate. He conceded that he sold the said property before filing an inventory.

In determining this aspect, I wish to reproduce the relevant part of Exh.PE1 of the ruling that furnished reasons for the appointment of the first defendant as administrator of the deceased's estate. It states:

'From the above foregoing, I find the defendant [Plaintiff] has failed to prove the unsuitability of the Plaintiff [First

Defendant] herein for the appointment of administrator. For that matter, this court hereby appoints the Plaintiff, ***CORNELIUS HENDRIK VAN VIANNEN*** *to be the Administrator of the estate of the late Jane Gervas Kamkala, on condition that, he shall fulfils all conditions requisite for a person appointed to be an Administrator, including but not limited to taking an Administrator's Oath, having in place a sufficient Administrator's Bond with two Sureties and also to file Certificates as to the Sureties financial position, and finally, to file in this court an inventory in accordance with the law. Each party to bear own costs.'*

I am of the considered view that, even in the absence of a specific order of this Court, the first defendant was under a legal obligation to comply with the conditions in question, the same being statutorily prescribed under the Probate and Administration of Estates Act, Cap. 352 [R.E. 2023] (PAEA). Needless to emphasise, the PAEA itself provides for the consequences and remedies attendant upon non-compliance with such statutory requirements.

In so far as the filing of an inventory is concerned, I am of the opinion that its primary purpose is to ensure transparency and accountability in the administration of estates, by clearly disclosing the assets and liabilities comprising the deceased's estate. This position finds support in **Odelia Masay v. Sabina Nene,** PC Civil Appeal No. 1 of 2023 (HC) (Unreported), where the importance of an inventory in estate administration was underscored as follows:

> *'After filing an inventory, the administrator or the administratrix should file a statement of accounts in Form VI. This informs heirs how the administrator intends to deal with the deceased's assets.* ***This procedure enhances transparency in the administration of the deceased's estate.'*** *[Emphasis added].*

That being the position, I am further of the considered view that the sale of a deceased's property by the first defendant in the capacity of the legal personal representative under section 67 prior to the filing of an inventory does not, without more, vitiate his capacity to pass a valid interest in the property to the second defendant provided that the latter is a bonafide purchaser. This is because it is a settled principle of land law that the rights of a bona fide purchaser for value without notice are

jealously protected. This principle is grounded in the broader doctrine of indefeasibility of title, which underpins registered land systems.

In taking this position, I am supported by the position of the Court of Appeal in the case of **Dativa Nanga v. Jibu Group Company Ltd and Another,** Civil Appeal No. 324 of 2020-CAT (Unreported). In the said case, the apex Court had this to state:

> *'Moreover, as we noted above, while Sale Agreement was entered on 15th January, 2011, the inventory relied upon by the appellant was filed on 31st March, 2016. In the circumstance,* ***even if for the sake of argument, we agree with the appellant's complaint that when RITA took over the matter after revocation of the first administrator, she was allocated the dispute property, yet we find that it could not nullify the sale of the dispute property while there were interests of the third party (the buyer) who was a bona fide purchaser.'***

The apex Court having taken that position went on to hold:

'In the final analysis, having considered that the first administrator sold the dispute property (whether honestly or otherwise) to the first respondent before the revocation of his appointment, the buyer remained to be a bona fide purchaser.'

From **Dativa Nanga (supra)**, I am convinced that once an administrator of a deceased's estate is vested with legal authority to dispose of estate property, any prior irregularity or defect in the administration process does not automatically invalidate a subsequent sale of the property. The law leans in favour of protecting transactions entered into in good faith, and therefore a sale to a bona fide purchaser for value without notice remains valid and enforceable.

This position is anchored on the principle of indefeasibility of title and the need to protect innocent third parties who rely on the apparent authority of an administrator acting under grant of letters of administration. Accordingly, unless fraud, misrepresentation, or notice of defect is established against the purchaser, the transaction cannot be impeached merely on account of procedural defects in the administration of the estate.

Guided by the foregoing position, I have carefully examined the evidence of PW1 and PW2 and find nothing on record suggesting that the second defendant was not a bona fide purchaser for value without notice. Neither PW1 nor PW2 adduced evidence demonstrating that the second defendant acted in bad faith or that he had knowledge whether actual or constructive of any defect, irregularity or fraud affecting the first defendant's title to dispose of the disputed property.

I would have taken a different view had it been established by evidence that, at the time of the sale, the caveat allegedly lodged by the first defendant was still in force and binding on the register. However, no such evidence was placed before the Court.

In the circumstances, and particularly in light of the second defendant's testimony that he satisfied himself as to the competence and authority of the first defendant to sell the property, a version of evidence I find credible, having already held that the first defendant was a lawful personal representative of the deceased, I am of the considered view that the second defendant qualifies as a bona fide purchaser for value without notice.

In his evidence, PW1 stated that had the second defendant made inquiries into the status of the disputed land, he would have discovered that the property was subject to pending court proceedings, and in that event, he would not have proceeded with the purchase. While this assertion may appear logical on its face, I am of the considered view that it does not correctly state the legal position.

A bonafide purchaser for value without notice is not, as a general rule, required to conduct inquiries beyond the land register. The law entitles such a purchaser to rely on the register as the authoritative record of title and interests affecting the land.

Accordingly, once the register does not disclose any encumbrance or restriction, a purchaser acting in good faith is not expected to search outside the register or investigate unregistered claims or pending disputes, unless there are circumstances that would reasonably put him on inquiry. To hold otherwise would be to render the land register meaningless and to impose upon prospective purchasers an onerous duty of investigation akin to that of a detective, rather than allowing them to rely on the integrity and conclusiveness of the register.

In this, I am fortified by the position of the Court of Appeal in the case of **Idrissa Ramadhani Mbondera (Administrator of the Estate of the Late Ramadhani Ally Mbondera) v. Allan Mbaruku and Another,** Civil Appeal No. 176 of 2020-CAT (Unreported). In the cited case, it was held:

> *'It cannot be emphasized here and, as we shall see in the emerging jurisprudence on the doctrine, that, the due process demanded by the law to be followed by the buyer entails amongst others,* ***conducting due diligence such as official search on the property with a view to verifying the particulars of the property****, executing a sale agreement with the vendor, obtaining consent to transfer ownership, and payment of stamp duty, rates and other expenses to the Government prior to and after the sale transaction.' [Emphasis added].*

Admittedly, DW2, in his testimony, did not state that he conducted an official search before purchasing the disputed property, although he asserted that he was satisfied that the first defendant had good title and authority to sell the land. In that sense, the purchase was made at his own risk. However, even if an official search had been conducted, it

would not have revealed any encumbrance over the property, as there was no caveat or restriction registered against the title at the material time.

Having taken that position, I now turn to another limb of complaints that the first defendant had no title to dispose of the disputed land as he is a non-citizen. At the outset, I should let it be known that the plaintiff's plaint stated nothing about this complaint. This clearly offends the principle that the parties to a suit are bound by their pleadings.

However, the law is settled that when the parties canvass on the upleaded facts, the assumption is that the parties knew about the issue and left it to the Court to decide. In this, I am reinforced by the position of the Court of Appeal in the case of **Jovent Clavery Rushaka and Another v. Bibiana Chacha,** Civil Appeal No. 236 of 2020-CAT (Unreported). The apex Court stated:

> *'However, where an issue crops up during trial and parties adequately canvass it, by implication the parties knew the issue and left it to the trial for determination. Thus, the mere fact that the issue was not expressly taken in the*

pleadings would not disentitle the trial court from determining it.'

Guided by that position, since the issue was raised in the course of the trial by PW1 and PW2 and considering the fact that the parties cross-examined the witness on that issue, I do not hesitate to entertain such issue.

Both PW1 and PW2 evidenced that under the laws of Tanzania, a non-citizen is not entitled to a right of occupancy. In their view, that being the legal position, the first defendant, a Dutch, could neither be registered under section 67 or dispose the right of occupancy belonged to the deceased.

The first defendant maintained that he had such a right as an administrator of the deceased's estate. Other defence witness did not involve themselves in testifying on that issue.

In determining this issue, I hasten to observe that under the Land Act, Cap. 113 [R.E. 2023], a right of occupancy is, as a general rule, reserved for citizens. The same may only be granted to a non-citizen for investment purposes in accordance with the law.

This position was well accentuated by the Court of Appeal in the case of **the Attorney General v. Emmanuel Marangakisi (As Attorney of Anastansious Anagnostou) and Others,** Civil Application No. 278/01 of 2023-CAT (Unreported). In the said case, the apex Court stated:

> *'As it is, looking at the provisions of section 20 (1) of the Land Act in its totality, we are of a considered view that its intent was to prohibit non-citizens to occupy and use land in any manner save for investment purposes only.'*

The apex Court went on to state that a non-citizen is not allowed to inherit land in Tanzania. It stated:

> *'Having digressed on the forms of acquiring land and the manner the estate or interest in land of deceased person can be bequeathed, we think, we can now tackle the main issue of whether the right of occupancy or interest can be transmitted to the heir or beneficiary who is a non citizen.*
>
> *In our view, our answer is No! Reading section 2 of the Land Act together with sections 67 and 68 of the Land Registration Act, interest in land of the deceased can only*

be bequethed to heirs or beneficiaries through transmission after having been registered in the name of the legal representative of the deceased. As to who will benefit, section 20(1) of the Land Act explicitly prohibits such transmission to non-citizen. According to the said provision of the law, it only permits a non-citizen to occupy land for investment purposes under the Tanzania Investment Act.

It follows therefore, in our considered view that, as the transmission under section 67 of the Land Registration Act gives the beneficiary the right to occupy and use land; and since right to be given in relation to probate matters does not relate in any how with investment purposes, a non citizen cannot inherit landed property in Tanzania. Doing so would be to circumvent the spirit in section 20 (1) of the Land Act.'

The question that arises is whether the registration of a legal personal representative under section 67 of the Act has the effect of conferring a right of occupancy upon such representative. In my considered view, such registration does not amount to a grant of a right

of occupancy to the personal representative as such representative is not entitled to occupy and use the land save for the purposes of sections 67 and 68 of the Land Registration Act.

The purpose of registration under section 67, in my view, is not to vest beneficial ownership in the administrator or executor, but rather to facilitate the administration of the deceased's estate. It enables the legal personal representative to step into the shoes of the deceased for purposes of dealing with the property, including its preservation, management and eventual distribution or disposal.

This position is reinforced by section 68 of the Act, which makes it clear that a personal representative holds the property in a representative capacity. In other words, registration under section 67, read together with section 68, vests in the administrator or executor only the legal title for administration purposes, and not the beneficial ownership of the property.

Given that, the registration of a non-citizen like the first defendant under section 67 does not offend the prohibition against non-citizen ownership of land, since the personal representative, whether a citizen or not, does not acquire the right of occupancy in his own right, but

merely holds the property in trust for the beneficiaries of the estate and for purposes of administration.

Guided by the position in **Marangakisi (supra)**, it is evident that the first defendant, being a non-citizen, could not lawfully acquire the disputed land by way of inheritance. Any purported transmission of such interest in his favour would be in direct contravention of the settled principle that non-citizens are precluded from owning or inheriting land. By disposing of the disputed land, in my opinion, the first defendant was discharging his duty in terms of sections 67 and 68 of the Land Registration Act and in effect he did not inherit the disputed property.

For the reasons I have advanced, it is my finding that the first defendant had the legal title to sell the disputed property.

Concerning the second issue, PW1 and PW2 evidenced that the first defendant sold the disputed property and used the proceeds for his benefit. However, the witnesses did not testify how the alleged swindling by the first defendant affected the transaction between the first defendant and the second defendant. On his part, the first defendant admitted to use the said proceeds on what he claimed to be the deceased's husband.

In determining this issue, I am of the settled view that where an administrator of an estate misapplies or appropriates for his own benefit the proceeds arising from the sale of the deceased's property to a bona fide purchaser for value without notice, the proper recourse lies not in impeaching the validity of the sale, but in pursuing the administrator personally for breach of duty. This is provided under section 138 of the PAEA which reads:

> *'**138**. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.'*

This position was reaffirmed by the Court of Appeal in the case of **Ahmed Mohamed Al Laamar v. Asha Bakari and Another,** Civil Appeal No. 71 of 2012-CAT (Unreported), where it was stated:

> *'**Finally**, although we have no legal obligation to do so, we wish to make these brief observations. **One**, if the respondents genuinely believe that the appellant acted in excess of his mandate or wasted the estate and/or subjected it to damage or occasioned any loss to it*

through negligence, they are free to sue him. Sections 138 and 139 are relevant. ***Two****, if they are also convinced that he either fraudulently converted some properties forming part of the estate, and/or that he deliberately exhibited a false inventory or account, they are equally free to institute criminal proceedings against him in accordance with the provisions of the governing laws.'*

I am also fortified by the position of the Court of Appeal in the case of **Suzana S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44 of 2017-CAT (Unreported). In the said case, the apex Court held the view that once it is proved that the purchaser is a bonafide, it is not proper for a person claiming interest to challenge the transaction but is to deal with the seller personally. In arriving at that conclusion, the Court of Appeal was inspired by the position of this Court in the case that led to that appeal. In the said case, this Court quoted the following passage from **Oxford Scholarship Online** as follows:

'A bona-fide purchaser is someone who purchases something in good faith, believing that he/she has clear rights of ownership after the purchase and having no reason to think otherwise. In situations where a seller

behaves fraudulently, the bona-fide purchaser is not responsible. Someone with conflicting claim to the property under discussion would need to take it up with the seller, not the purchaser, and the purchaser would be allowed to retain the property.'

Guided by that position and considering that this Court found the second defendant a bonafide purchaser, it is my conclusion that the defendant's act of using the proceeds from the transaction with the second defendant does not affect such transactions. If aggrieved by the first defendant's act to use the proceeds for his benefit, the plaintiff is at liberty to sue the first defendant but not to seek invalidation of the transaction on that issue.

The third issue will not detain me. Since I have held that the first defendant had the title to sell the disputed property to the second defendant, it goes without saying that the latter became the lawful owner of the property as reflected in Exh.DE1 and supported by CW and Exh.CE1. That being the case, the second defendant, being the lawful owner had the right to place the disputed property as collateral to the third defendant as it is reflected in Exh.DE2 and the evidence adduced

by both DW2, DW3 and CW. Given that, the mortgage created by the second defendant and the third defendant is valid.

In the final analysis, I dismiss the suit for wants of merit with costs. Order accordingly.

Right of Appeal Explained.

DATED at **MWANZA** this 4th May, 2026.



KS KAMANA

JUDGE