

**IN THE HIGH COURT OF THE UNITED REPUBLIC  
OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
COMMERCIAL CASE NO.45 OF 2023**

KURINGE REAL ESTATE CO. LTD.....PLAINTIFF

**VERSUS**

MWAZANI ALLY SWAKALI

(Administratrix of the Late

Ally Suleman Swakali .....1<sup>st</sup> DEFENDANT

HALIMA A.S. SWAKALI.....2<sup>ND</sup> DEFENDANT

MWAJABU A.S SWAKALI.....3<sup>RD</sup> DEFENDANT

SHAIBU A.S. SWAKALI.....4<sup>TH</sup> DEFENDANT

RAMADHANI A.S. SWAKALI.....5<sup>TH</sup> DEFENDANT

Last Order: 17/07/2023

Date of Ruling: 14/08/2023

**DEFAULT JUDGEMENT**

**NANGELA, J.:**

The Plaintiff, a duly registered Company incorporated under the Companies Act, Cap.212 R.E 2002, is suing the Defendants jointly and severally, seeking for Judgement and Decree as follows:

1. That, the Defendants refund to the Plaintiff, a consideration valued at TZS 180,000,000.
2. Payment of interest at a rate of 21% per annum on the above principal amount from 2007, the time when the principal sum was paid to date.
3. Payment of court's interest on No.1 and 2 above from the date of

filing this suit to the date of full payment.

4. Payment of general damages at the discretion of the court.
5. Costs of this suit.
6. Any other reliefs this Honourable Court deems fit to grant.

Before I proceed to the nitty-gritty of this suit, I will briefly set out some of its essential facts. Mr. Ally Seleman Swakali (now deceased) was the owner of a house at Plot No.8 Block "C" Kariakoo Area, Ilala Municipality, Dar-es-Salaam. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and the 5<sup>th</sup> Defendants are beneficiaries of the estate of Mr. Ally Seleman Swakali.

On the 1<sup>st</sup> of December 2007 the Defendants as Vendors and the Plaintiff as Purchaser executed a Sale Agreement of a landed property known as House No.12 Plot No.8 Block "C" at Masasi Street, Kariakoo, Ilala Municipality Dar-es Salaam.

The 1<sup>st</sup> Defendant, who is the *administratrix* of the estate of the late Ally Seleman Swakali, is said to have confirmed to the Plaintiff that all other heirs of the estate of the late Ally Selemani Swakali were in

consensus to the sale of the respective property which was sold to the Plaintiff as a price of TZS 180,000,000.

It has been averred that, upon payment and asking for vacant possession of the property in question, such efforts were not successful as the 3<sup>rd</sup> Defendant instituted a Land Case No.162 of 2012 at the High Court (Dar-es-salaam District Registry), claiming for nullification of the sale agreement between the Plaintiff and the Defendants as her consent was not obtained when the sale took effect.

On the 8<sup>th</sup> of August 2017 the Court pronounced Judgement in favour of the 3<sup>rd</sup> Defendant. Although the Plaintiff challenged the judgment, she was unsuccessful. On the 19<sup>th</sup> of April 2023, the Plaintiff instituted this suit seeking for a full refund of the amount of money received by the Defendants jointly as consideration for the purchase of the Property named herein earlier.

On the 23<sup>rd</sup> of May 2023, this suit was called on for orders. On the material date, Mr. Francis Makota, Learned Advocate, appeared for the Plaintiff. All

Defendants were absent. Mr. Makota prayed for a re-service of the summons to the Defendants, a prayer which was duly granted, and the suit was fixed for orders on the 5<sup>th</sup> of June 2023.

On the appointed date, Mr. Egbert Milanzi and Mr. Goodluck Rwiza, Learned Advocates, appeared for the Plaintiff. The Defendants were once again absent. Noting their absence in court for the second time and since it was becoming difficult to serve them, a prayer was made by Mr. Milanzi to effect a substituted service on the Defendants.

This court granted the prayer with an order that, the summons to appear and defend the suit be published in two widely circulating newspapers. The suit was set for orders on the 27<sup>th</sup> day of June 2023. On the material date, Mr. Goodluck Rwiza, learned counsel appeared in court and submitted proof of publication of the summons, this being copies of Mwananchi and Habari Leo Newspapers dated 8<sup>th</sup> June 2023.

On 10<sup>th</sup> of July 2023, when the matter was called on for orders, Mr. Milanzi appeared for the Plaintiff. All

Defendants were absent, none had filed a written statement of defence (WSD). By the 10<sup>th</sup> day of July 2023, 21 days within which the Defendants were to file their Defence following the service of the summons by way of publication had lapsed.

That being the case, Mr. Milanzi pressed for an order to proceed by way of filing Form No.1 under Rule 22 of the *High Court (Commercial Division) Procedure Rules, GN.250 of 2012 (as Amended in 2019)*. I granted the prayer ordering that, Form No.1 be duly filed as per the law.

On the 14<sup>th</sup> day of July 2023, the Plaintiff duly filed Form No.1 under Rule 22 of the High Court (Commercial Division) Procedure Rules, GN. 250 of 2012 (as Amended in 2019). The Form No. 1 was supported by an affidavit of Edward Eugen Mushi, a principal officer of Plaintiff, holding the position of a director.

I have gone thorough the Form No.1 and the accompanying affidavit and its annexures. I am satisfied that the Plaintiff has satisfied the requirements

of Rule 22 of the High Court (Commercial Division) Procedure Rules, GN.250 of 2012 (as Amended in 2019).

Since the Defendants did not file any defence against the claims, and since I am satisfied that the Plaintiff has satisfied the requirements of Rule 22 of the of the High Court (Commercial Division) Procedure Rules, GN.250 of 2012 (as Amended in 2019), this court proceeds to grant a Default Judgement and Decree on the Plaintiff as follows:

1. That, the Defendants are hereby jointly and severally ordered to refund to the Plaintiff, the amount of TZS 180,000,000 received as consideration for the purchase of the house known as House No.12 Plot No.8 Block "C" at Masasi Street, Kariakoo, Ilala Municipality Dar-es Salaam.
2. That, the Defendants are to pay interest on the amount stated in paragraph 1 hereabove at a rate

of 21% per annum on the above principal amount from 2007, the time when the principal sum was paid to date.

3. That, the Defendants are to pay court's interest on No.1 above at a rate of 7% per annum from the date of filing this suit to the date of full payment.
4. That, since the Plaintiff's monies stated in para 1 above have been kept in the Defendants hands since the time when the Defendants received the same, the Plaintiff is entitled to general damages to a tune of TZS 30,000,000 (*Thirty Million Tanzania Shillings*) which monies are to be paid by the Defendants.
5. The Defendants are to pay Costs of this suit.

### **Further orders:**

6. That, in terms of Rule 22 (2) (a) and (b) High Court (Commercial

Division) Procedure Rules, 2012  
(as amended, 2019), the Court  
makes further orders that the  
decree emanating from this suit  
shall not be executed unless the  
decree holder has, within a period  
of ten (10) days from the date of  
this default judgment, publish a  
copy of it (the decree) in at least  
two (2) widely circulated  
newspapers in the country and  
after a period of twenty one days  
(21), from the date of expiry of  
the said ten (10) days, has  
elapsed.

**It is so ordered.**

**DATED at DAR-ES-SALAAM, THIS 14<sup>TH</sup> DAY OF  
AUGUST 2023**



.....  
**DEO JOHN NANGELA  
JUDGE**