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ABRAHAM SYKES VS ARAF ALLY KLEIST SYKES (CIVIL APPEAL NO. 226 OF 2022) [2024] COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (UNREPORTED)

It has been held by the Court of Appeal in many instances that the contents of an exhibit admitted without any objection are effectively proved. This recent decision of by the Court of Appeal is a game-changer. In decision the triers are reminded by the Superior Court, to distinguish between admissibility and the weight given to evidence.

The dispute between the appellant and respondent, who are blood relatives, is primarily centered on land property situated in Mbezi in Dar es Salaam. Their late father (who died in 2013) purchased the land in 1987, and registered it under the name of the respondent, who was then thirteen years old. It was alleged by the appellant that, all the documents relating to the acquisition of the land were executed by their late father. And that, before his death, their late father, for love and affection, gave the property in question to him (the appellant) through a deed of gift. His contention was that the process of transferring the land to his name from that of his younger brother, the respondent, was initiated and executed in 2009. In the year 2014 he (the appellant) offered the land to guarantee an overdraft facility for his company extended by a bank which prompted it to file a notice of deposit of the certificate of title of the land. Having been notified of this move initiated by his brother, respondent filed a caveat at the office of the Registrar of Titles and claimed to be the lawful owner of the land offered as a guarantee of the sought facility. In turn the bank abstained from granting the overdraft facility to the appellant.

According to the appellant, being denied the overdraft facility had an impact on his business operations and caused losses to his companies. He, then lodged a suit in the High Court against the respondent claiming among other things that he is the lawful owner of the land and that the caveat filed by the respondent was unlawful and be vacated.

The respondent in repudiating the appellant's claim filed a written statement of defence, alleging that his brother was an invitee, having been authorized by him. Regarding the documents that were relied upon by the appellant, the respondent asserted that they were counterfeit and therefore false. He also lodged a counterclaim seeking a declaration that the transfer of the suit property by the

Should you require any assistance please contact our Partner, Daudi Ramadhani, via:
email: d.ramadhani@rexattorneys.co.tz
web: www.rexattorneys.co.tz

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Dar es Salaam

REX House,
344 Ghuba Road | Toure Drive,
Oysterba
Dar es Salaam
Tanzania.
Tel. No.: +255 22 221 1180-8
Email: info@rexattorneys.co.tz

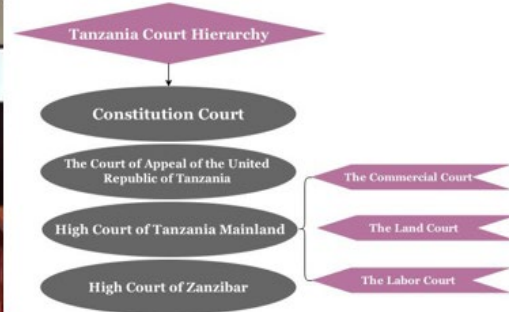
Zanzibar

Mbweni,
Zanzibar, Tanzania.
Tel. No.: +255 22 221 1180-8
Email: info@rexattorneys.co.tz

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appellant to his name was unlawful since he was a lawful owner. He also sought an order striking out the name of the appellant from the register of titles and restoring his name.

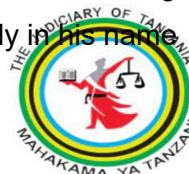
The High Court rejected the appellant's claim and ruled in favor of the respondent's counterclaim, stating that there was no evidence to show that the deceased father of the parties actually authorized the transfer of the title to the appellant. And since the respondent was above the age of majority when the transfer alleged by the appellant was initiated, then the transfer was unlawful. Finally, it was the Court's holding that, the respondent is the lawful owner of the suit property.

Disgruntled by the High Court's decision, the Appellant lodged his appeal to the Court of Appeal. Among his ground of appeals, the appellant faulted the High Court for failure to hold and declare that the appellant is the lawful owner of the property in dispute considering the evidence he and his witnesses adduced.

In support of his appeal, the appellant submitted that the High Court should have ruled in his favor considering the fact that, he presented sufficient evidence and tendered a deed of gift, the certificate of occupancy of the land in question and other exhibits that were accepted without objection, proving that he is the owner of the disputed land.

The respondent submitting against the appeal asserted that it was the appellant's evidence during trial that the person who made the transfer of the disputed land from the respondent to the appellant was their father. According to the respondent, the alleged transfer was unlawful because he was already an adult, so he should have been involved in the transactions related to the disputed land.

In determining the appeal, the Court of Appeal, had an ample time to go through pleadings and exhibits by the disputants. Upon a perusal of the documents tendered in the trial court, such as the deed of gift the Court realized that it was made on 7/11/2008 and it reveals that the respondent was born in 1974. That means, by the time the alleged deed of gift was issued, the appellant was above the age of eighteen years and therefore he could transact on his own, including executing the deed of gift for the suit property because it was already in his name.



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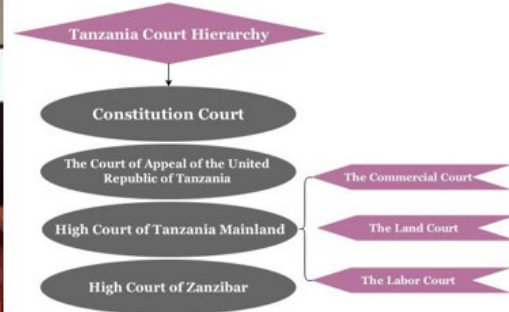
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before the transfer. As such, it was improper for their deceased father to affect the transfer through a deed of gift while he had no such a right without the respondent's authorizations who was at that time capable of transacting.

In what seems to be a modified position of the mundane principle enunciated in various Court of Appeal decisions that, the contents of an exhibit admitted without any objection are effectually proved; the Court in this appeal held that, such a principle should be applied while considering the facts of each case. In this particular appeal, although the respondent did not object on tendering of the deed of gift and other exhibits, the same could have not been relied upon by the High Court and upheld by the Court of Appeal in favour of the Appellant, since it was issued by an inappropriate person without title to the suit property.

It was thus the holding of the Court that, the lawful owner of the land remained to be the respondent, since on the balance of probability he proved that, at the time of the purported transfer of the disputed land, he was a lawful owner, capable of transacting and he was not the one who initiated the same.

This is a welcome decision in adjudication functions. It calls upon the triers to always differentiate between the admissibility of the evidence and the weight to be accorded on a particular evidence. By merely the fact that, the adverse party did not object on the tendering of the evidence, it does not always mean that the court should outrightly rely upon it in grounding its decision.

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