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Immovable Property Bequests and Matrimonial bounties Rights by Foreigners in Tanzania and Zanzibar: Legislative Enforcement Challenges and Perspectives

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Abstract

This paper gives the society a chance to go back to immovable property rights to foreigners that inhere to him or her by virtue of foreign decrees or decisions arising from matrimonial and succession decision. The study focuses on Tanzania and Zanzibar despite the fact that Tanzania includes Zanzibar but Zanzibar stands alone in some matters considered being nonunion. It is because when Tanganyika and Zanzibar united, they signed the Article of union establishing what laws and articles of the union refer to as Union and non-Union Matters, hence land as a non-union matter. However, Zanzibaris can own land In Tanzania mainland but non Zanzibaris cannot own land In Zanzibar. The nature of the union is not the case to this study but observing cross border rights on immobile properties while going to the core issues of extracting conditions from rights as these matters appear to have been left quiet but impending enjoyment of the two. The roadmap to this approach is doctrinal and is lead by the notable decisions of the Courts of Law of Tanzania in ***Ghalib Abdallah Juma v Kay Mlinga***, and a decision in ***Emmanuel Marangakis as Attorney of Anastasios Anagnostou v Administrator General***. The former is the matrimonial decision with foreign bases but to be enforced in Zanzibar while the latter is a probate based decision with foreign beneficiaries of the estates for the deceased and it was and is to be enforced in Tanzania Mainland. This paper advocates that probating foreign and enforcing matrimonial decrees on immovable hinders justice and establish superfluous legal principles over others unnecessarily. Atlast, the conflict of laws becomes uncertain infringing rights of individuals if not taken keenly while losing objectives of Law.

Keywords: Foreign judgments, rights, conditions, matrimonial, probate, immovable properties.

I. Introduction:

'If future Generations in our country are to make their decisions on the bases of adequate background information, History Recording must be accorded the Weight it deserves. It is very unwise. We believe to shut doors on yesterday and throw the key away' (Sammata, CJ, in Mahina and Bisimba,2005)

No impression that originates from naught (Rwegasira,2012). As this study is built on property rights by foreigners as reflected in conflict of Laws, it yields importance to first remind the society on what is indeed conflict of laws. In nutshells, Conflict of laws is referred to in other jurisdictions as private international law (Slomason, 2003). It is a body of law applied by the nation to private transactions

which implicate two different nations. Conflict of laws is not Public international law. The difference is that, the public International law regulates inter states relationship (Wallace, 1997). This relationship is extended to individuals, international organizations and companies (Cheng, 1982). Conflict of Laws encompasses a set of rules applicable to cases or dealings and or occurrences involving or connected to more than one nation (Garner,2019). Conflict of deals with cross border private transactions and participants involving foreign elements or the subject matters involving foreign elements, rules, the laws, and principles under conflicts of laws are used to determine and actually replies to questions of jurisdiction, applicable laws and enforcement of foreign judgments according to American Law Institute(1971).

It is expected that the different legal systems are built on difference in laws, norms and framework (Crawford, 1998). Collins and Dicey (2008) contend that these concerns have been mutual in laws of agreement. North and Fawcet (1999), McClean and Beevers(2009) and Rogers(2013) are of the similar proposition that cross border contracts are leading areas to find elements of conflicts of laws.

The legal philosophical underpinning this study is based on the domestic laws of the state versus conflict of law principles establishing principles governing land matters against rights of the foreigner in court decisions outside Tanzania and Zanzibar or domestic but giving rights to foreigners and apparently in probate and matrimonial decisions. Much as the concern of this paper as said above is on immovable, it takes the study to what is referred to as '*the situs'* meaning the laws of the state where the immovable property is situated. With the *situs*, one must think of the Conflict of Laws, political affairs and public policies and legislative policy. The Reasons behind this outlook is due to different reasons.

A reflection by Albertus(2020), is to the effect that politicians may wangle demands of policy which may be blocked by powerful parliaments the result of which during economic problems international conditions may be raised to among other things put emphasis on greater conditions on property rights. In some other jurisdictions, with politicians would mean the politics of the ruling political part as it is, would be the one usually implementing its manifestation in the hands of the government. Therefore the good manifesto the good the policy the good the law and in other words the better the politics the better the policy and the head of the state shall be in the good position to lead when it happens when politics to be associated with the Government. This would be a reflection of the theme by Werrema (2012). Further, it is in the light of Wolf (1950) that law guards against both vested rights constituted abroad but also legal relationship capacities out of which capacities, powers, or the extinction of duties and charges or invalid acts may rise. Being a Cross cutting issue, immovable rights have direct impact in enjoyability of human rights, peoples' identity and human livelihood(UN,2015) yet these rights have remained out of human rights perception.(Gilbert,2023). This study much as it is controlled by the two notable cases as it shall be witnessed, shall as well play the role of discussing some used terms for further and better particulars to the society of Tanzania and the global at large.

II. Immovable Properties Rights and Realty under Private International Law.

With immovable property means land and each and everything attached to it permanently. The Statutory definition of Tanzania includes the surface of the earth and the earth below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water(Section 2 of the Village Land Act[1]. Equally Section 2 of the Land Act[2] provides for

[1] Cap. 114 of the Laws of Tanzania

the similar definition of Land. In other jurisdictions, land is referred to as real estate or real property. Singer (2018) refers to property as possessions we own. It is the relationship of the person in relation to things. The old property elements include a bundle of rights in thing rather than the whole (Nohfeld,1913). In the legal approach, land is a comprehensive asset due to its presence. The inclusion is related to attachment. A degree of attachment is taken to be a fixture (Howarth, 1994). The right to land subject to this discussion is the right in rem in its sense being capable of being enforced globally and not right *in personam* or both but with foreign elements. The right in rem means the rights in the thing itself (Howarth, 1994). With foreign elements simply means a contact with categorical system of cross border laws (Morris, 1980).

The Universal Declaration of Human Rights (1948) recognizes the presence of property rights as human rights. This recognition is enshrined under Article 17(1) and (2). Equally the Constitution of the United Republic of Tanzania[3] provides for the similar position under Article 24. The presence of the above two instruments are not necessarily effective to the rights in the property and their safeguard. Despite these provisions under instruments referred to, Land rights has remained not the human rights in human rights developments.(Rogers,1993). Singer (2014) observes that the laws applicable on the property law need and goes beyond managing their complexities arising human interaction but need to go beyond that whereby human behaviors need to be engulfed by such laws. He does not deep in over the category of behaviors he is referring too. Nyerere(1966) relates land to national property establishing rights to be owned by all as there is no human efforts involved in land as it is God's Gift. Nyerere remains of the view that much as one has cleared land and he goes on using it, it belongs to him seemingly has all rights to that land and, that cannot be taken away by anyone. For the purpose of conflict of laws in immovable via selected cases, human behavior and interactions, the study casts eyes on two legal behaviors and approaches. This study builds the said behavior on recognition and enforcement of foreign or domestic decisions whereas one is pivoted on probating foreign property decree whereby foreign implies a domestic decree with foreign beneficiaries for the purpose of this study.

To matrimonial side, this study limits itself on foreign matrimonial decisions with decree holders who are non-indignant in Zanzibar and Tanzania mainland. As a General rule, in the very issue of the property, Writers and educated elites have differed to some extent over some aspects of Conflict of Laws. Hussein and Khartoum (2016) are of the position that such all cross border decision need to be embraced as the integration is inevitable and the globe has become one. They suggest for the uniform of rules to cover the environments. Some lawyers are of the position that some jurisdictions do not decide on the bases of logic but expediencies that shall be considered to take comfort to the society. While others are of the view that the scattered nature of conflict of laws and sovereignty issues would assist in checking against the principles of Res judicata and preclusion whereby the American tool of Full Faith and Credit would apply (Corwin, 1933) The position is also supported by Reynolds (1994)and others. The Principle is elaborated by Merriam Webster (2024) the acknowledgement and execution of the public legislations, records, and court records of interstate.

[2] Cap 113 of the Laws of Tanzania

[3] Of 1977 as amended

In support of the proposition by Reynold(1994) and Corwin(1993) one would come in the position of Haute for better reflection. Haute (1954) once referred to the decision in the case of ***Re Delhi Electric Supply and Traction Limited***[4] and the decision in ***The Estate of Maldonao***[5] contending that decision in the above cases are as an unruly horse comparing with the public policy performing strange strikes with un trust elegancy. In the case though not on movables, the government of India could not prove in the English laws of the Liquidation of solvent company for income tax and thus due to impossible proof, the English Law would not enforce the Indian or foreign claims. In the latter case, the Spanish Government could claim English Immovable entitled to it on the death of someone who domiciled in Spain but under English Law Successors of immovable Property determined by the Laws of Spain, the Spain was the beneficiary and thus Spain decision was upheld. These two decisions and good researched positions of the private international laws tell us of uncertainty of the Laws perhaps hidden on principles and policies. However, the proposition that recognition and enforcement is all about interstate positive relationship is noted (Hussein, 2008). It is also to be noted that despite all struggles, decisions of one state does not bind another as reiterated by Wren(1963).

The challenge to conflict of law application has remained the state's public policy (Shahibu, 2007). Old as it is, the issue of the public policy has remained attention. Public policy has remained the big challenge in conflict of law effectiveness. The state would not work on the other states decision if it is against the public policy Godrich(1933). In the light of Finch (1996), the policies and challenges would not be a problem at all. What is and has been suggested by Finch (1996) is to name the experience of the legal system so as to ascertain aspects of the laws and other environments so as to ensure understanding of the aspects arising in conflicts of law.

Without prejudice to contract and the rules of the property, Finch reiterates that whatever would displace the choice of Law Doctrine would cure the purpose. Still there are possible circumstances under which the domestic laws are proposed not to apply. According to Sprague (1983) one of the reason under which the court may not apply the *situs* is where it would be found to be unfair. Therefore, it is stated and has been the custom that a forum cannot apply foreign laws which are repugnant to its domestic laws. Sprague observes that there has been a challenge whereby the court encounters defies in distinguishing societal policies from legislative policies. While policies are technical and political, they contain goals and how to rich those goals (Cashore, 2014). It costs nothing if these two policies in a nutshell are clarified. Birkland(2001) classifies the policy into two categories which are Public and Private Policies. Mădălina (2008) considers the public policy as the guide to actions towards those likely to achieve desired outcome. Birkland therefore considers the public policy as the policy with influences of the state matters. Dye(1972) defines the public policy as anything that the government choses to do or not to do. It is the course of action of the Government used to monitor achievement of the desired goals. To Cambridge (2013), the public policy refers to a government policy that affects everyone in a country or state or policies in general. Having looked on the concept of policy and public policy in particular, the study goes to the legislative policy so as to clear doubt as to the similarity or difference if any as would be reflected in the definition concept.

[4][1953]3 WLR1085

[5] [1954]2 WLR.64

Cornell School of Law (2022) approaches the concept of policy as the principle that scar to the public profit as a ground of refuting deals or other transactions. The school takes it as the concept that underlie rules which are frequently unwritten and implemented done programs as a course of action established or registered by the government or Nonprofit Making Organizations. It is the archetypal used to confront certain issues via legislations according to Gómez and Roche (2019). In Legislative policies, emphasis is put on consistence with the constitution with intent to come up with the good law (Gómez and Roche, 2019). No doubt that be it a public policy or legislative policy, it is dynamic and to law in particular they are not static goals of the law as seen by Theodore(1972). Finally to the policy part and concept, contention by Michael (2008) that public policy is where the theory and exercise meet in interpolation of matters, how it is to be loomed, professed, goals and so on is noted. Those who are of the view that effectiveness of the Conflict of laws is on the principle of Comity sensitizes this paper to in a nutshell trace the implication of Comity. The principle of comity is also referred to as the rule of comity. A good number of educated elites disagree to agree that comity is the rule of laws as this paper is going to witness bellow.

No doubt that Private international law among other things is built on the doctrine of Comity. Some writers are of the view that comity is the rule of law others are against the contention (Joel, 2008) . It is a challenged doctrine but much put into play to back up the operation of the conflict of laws before the judiciary (Schultz and Ridi,2017). This is the principle in Conflict of law that presuppose that a certain jurisdiction recognizes for and enforce decisions of the other state (Bleimaier,1979). It is one of the doctrines considered to be worthwhile as it expedites the execution of the focal purpose of the Law(Shahib,2007). According to Yogis (2014) comity is the practice and or principle involving judiciary, states or countries of different jurisdictions act as one to each other. The application of this principle or practice is not mandatory as it depends on the interests of the state, country or the forum to which is to be recognized for or enforcement.(Yogis,2009). Talking of Comity, one talks of the national or state sovereignty (Cornell School of Law, 2022). No matter how challenges the principles of the conflicts of laws meet challenges in their applicability, Comity is still elevated as an assisting principle in the arena of conflict of Laws (Schultz, 2016).

The above thematic discussion has availed to the required theme of this paper. I summary thereof, to this particular part, may take a reflection from Dicey and Mossris and Vanloon before going to the case analysis specifically. Dicey and Morris (1991) while restrict themselves on the *situs*, propounds that proposition that where a testator has duo nationality compliances with the law of either nationality is sufficient. To the part of marriage, if the marriage does not conflict the law of a state to where it was cerebrated, the marriage remains positively good globally (Dicey and Morris, 1993). Unless stated otherwise, with the legal marriage, it is expected to have a matrimonial property arising from joint efforts. Van Loon(2007) observe the marriage contrary to Dicey and Morris. To him, the differing legal systems of private international law cause matters such as contracts, wills, Marriage and so on vary according the legal system of a given jurisdiction due to the challenge of conflicting laws. The study is not dealing with divorce or death but the estates of the diseased to the foreigner beneficiaries or accommodating foreign issues under domestic laws of immovable in both cases of succession and matrimonial.

III. The *Situs* and Response of the States of Tanzania and Zanzibar: Case Analysis

As this study is leading us to two cases analysis, they give two different results arising from the court decisions. This is the norm of conflict of laws on immovable as revealed by literatures one side, justification of applicable laws and choice of laws. With norms of conflict of laws enlightens of existence of rules over something but rules describing the negative hence making the law losing the legal logical order and certainty as contended by Armgardt et al(2015). Equally Vranes(2006) observes that the norm in conflict of law rises where two parties cant adhere to treaties of their obligations. Although this is the writers' position, it is still to be remembered that there are non-judgmental and obstructive norms, still norms which may as well conflict each other. Being so minded, the study rests on the realty that jurisprudentially what entitles a legal norm to be a norm is because a norm is validly legislated, a proposition which is also supported by Keating (2014). Options on how to go about the issues of conflict of laws would as well need to be a quality and reliable norm. It is suggested to be accompanied by an evaluation of the outcome as contended by Bix(2003). Bix connotes that options should be associated and appraised on consequentialisms bases due to the fact that the outcome may be pleasure and or pain to the individual. This particular part leads the study to intended Case Laws as here under itemized as case 'a' and 'b' followed by the case themselves after each item.

a. Gharib Abdallah Juma V Kay Mlinga[6]

The decision of the court of Law in this Case reflects the overwhelming environment s by which foreign matrimonial decisions are treated in Zanzibar. The decision involved divorce, division of matrimonial property some which are immovable and the decree and settlements entitling some rights a non Zanzibari. The contents of the facts of the judgments and the verdict shall be copied as they are with minimal a annotation that does not affect the records of the judgment.

Briefly the appellant, a Tanzanian from Zanzibar, lived in Denmark where he got married to the respondent, a Tanzanian from the Mainland cerebrating their marriage in Denmark. Apparently, Denmark was one of those countries in Europe which practiced (and perhaps still practices) the system of community of property to married people. So, in order to avoid the full effect of that system the appellant decided to enter into a marriage settlement with the respondent two days before marriage. At that time he owned a flat in Copenhagen and he wanted to exclude it from matrimonial property. The appellant had other properties before Marriage and they were in Zanzibar. These were a house in Mwembeladu, Zanzibar which he said he inherited from his mother, a house at Mwanakwerekwe which he had bought and with which its construction was at the roofing stage, another house at Mfereji wa Maringo in Zanzibar, which he had built partially and modified and finally and a house at Kwa Haji Tumbo.

That sometime after marriage the respondent went to live in Zanzibar and supervised the construction of some houses including the one at Mwanakwerekwe. After construction was completed the respondent leased it. The Parties' Marriage enjoyed a judicial separation and finally, on 14th April, 1999 the couple was formally divorced. Both the judicial separation and the divorce occurred in Denmark. There was no order for division of matrimonial property.

[6]Appeal No. 10 of 2001,Court of Appeal of Tanzania.

After divorce the respondent brought a suit in the High Court in Zanzibar praying for division of matrimonial fruits and costs of the suit. The Properties subject to the applications where those in Zanzibar Tanzania Mainland. The respondent based her claim on the marriage settlement which, after excluding the flat in Copenhagen. In his defense the appellant said the respondent had contributed nothing to the acquisition of the properties of which she was claiming a share. Besides, he claimed, the marriage settlement related to properties in Denmark only and did not relate to properties which belonged to him before marriage and which he had inherited from his late mother. He further contended that the marriage settlement being a Danish Contract could not be interpreted and enforced in Zanzibar. Decision of the High Court was that the marriage settlement was valid and enforceable and ordered for distribution of the properties after being evaluated.

The interests of this study go sequentially with the court verdict and a reason for admissibility of the agreements by the parties was opposed for lack of consideration under the Laws of Zanzibar. The Court of Appeal ruled out that Much as it is accepted that the validity of a contract depends on the *lex loci contractus* and there was no evidence that the marriage Settlement was illegal under Danish law, the High Court in Zanzibar had no option but to accept it in evidence for what it was as a good marriage settlement This issue was decided positively. Further, that had it been that the agreement was given in Zanzibar the respondent would thereby own land in Zanzibar, is a challenge.(Emphasis Main). The position of the Court of Appeal is that the general rule is, land and other immovable properties are governed by *lex situs.* This is the law of the place where the land is situated. That similarly, any interest in land is situated where the land is situated. As to Constitutional Right contended by the appellant, the Court heaped itself on the laws of the land of which immovable are governed. Briefly the court referred to Section 8 **(1)** of the Land Tenure Act,[7] Considering this provision of significance, the provisions provide for categorically that only a Zanzibari can own land in Zanzibar and thus the contention that Article 24 of the Constitution of the United Republic of Tanzania[8], confers on all Tanzanians a right to own property, including immovable property, has no legs upon which to stand. With this argument, the court distinguished constitutional right to own property and the legal conditions for exercising that right. In those environments, Section 8 (1) of the Land Tenure of Zanzibar provides the conditions for exercising the right to own land in Zanzibar. The court in its position encouraged on distinction between rights and conditions. It is that a right to own property does not abrogate legal conditions regulating the exercise of the right.

Back to the issue, the court alerted that in the absence of proof that the respondent became a Zanzibari the courts of law cannot help her to realize her rights under the marriage settlement to own her share of the immovable property in Zanzibar. Therefore the appellant had to either pay the respondent of the share value in the property or the property to be realized and each part to get the applicable share.

The coming question would need to clearly stipulate as to what are rights and Conditions. Deigh(1988) connotes that usually no rights without obligations. A right is a claim or title to any subject matter (Babel,2001). This right includes a corporeal and incorporeal as it was among other things observed by

[7] Act No. 12 of 1992 of the Laws of Zanzibar

[8] Cap 1 of the Laws of Tanzania (of 1977 as amended)

the Court of Law in India in the case of *Jastjit Singh v SMT. Charanjit Kaur*.[9] Corporeal rights are rights in the property which has a physical existence (Lamwai, 2006). Land and Goods are good example. The opposite is an incorporeal right. Copyright license and easement are good example. On the other hand, Conditions involves something agreed upon as a requisite to do something (Babel, 2001). In the view of this study, conditions must not over ride rights otherwise would amount to infringement. Conditions must stand and procedural laws in immovable while rights standing as substantive establishment. As the matter of conflict of law, disposing of the property should be at the option of decree holder otherwise would tantamount to unconscionable contract. Going to a farewell to this particular part, environments that conditions to own land superior to the constitutional rights to own land in the laws of states as seen in Kay's case above. It is unconstitutional. A good law must not conflict the mother law(Semu,2005). Therefore no principle law or legislation is expected to stand above the law and it is ineffectual once it conflicts the constitution (Rutinwa,1996).

b. Emmanuel Marangakis as Attorney of Anastasios Anagnostou V The Administrator General[10]

This is the second Case to be analyzed. It is basically the probate case arising from Tanzania mainland. This is the decision of the High Court of Tanzania (Tanzania Mainland). It enlightens difficult issues touching on land by allocation and grant to a foreigners and implications surrounding the Provisions of Sections 19 and 20 of the Land Act.[11] The matters also touches on avenues under which are considered to enable a foreigner to own Land. The Facts, analysis and the position of the Court are here under given and analyzed. Facts of the case and verdict of the court are expunged from the judgment as they are with some elaborations which do not take the contents of the judgment away as it is witnessed below.

On 7th May 2006, a Tanzanian lady of Greek origin, Diana Artemis Ranger, née Anagnostoy Georgio, died intestate in Tanzania. She left behind an estate comprising, among other things, a landed property at Plot No. 648 Upanga, Dar es Salaam, registered under Certificate of Title No. 186172/28. Though the parties state that the deceased had only one surviving heir, her brother Anastasios Anagnostou. It would appear that she had at least two others, Iranis Anagnostou, a niece and Georgious Anagnostou, a nephew. All three of them were apparently non-Tanzanians. The brother was a Greek citizen.(Source: Copied from The Case above) By Power of Attorney, the said Anastasios Anagnostou appointed Emmanuel Marangakis, who is acting on his behalf herein, to be his attorney and agent in respect of his interests in the estate of his late sister. The Power of Attorney also gave the said Emmanuel Marangakis the power to "donate the property by gift *inter vivos* to anyone, including himself by a self-agreement" and generally to deal with the property as he deemed fit. With the consent of Anastasios Anagnostou, Emmanuel Marangakis applied for Letters of Administration of the deceased's estate in Probate and Administration Cause No. 46 of 2006. His application was opposed by the deceased's niece, Iranis Anagnostou and nephew, Georgious Anagnostou. In a ruling delivered on 7th May 2007, appointed the latter to be the administrator of the estate. The Plaintiff was not satisfied. He appealed to the Court of Appeal in Civil Appeal No. 51 of 2007 and partly succeeded. The Court of Appeal removed Georgious Anagnostou as Administrator and appointed the Defendant Administrator General instead. While the appeal was pending in the Court of Appeal, the Administrator (presumably the then Administrator

[9] A.I.R.1995,Punjab.

[10] Civil Appeal No,.1 of 2011

[11] Cap 113 of the Laws of Tanzania

Georgious Anagnostou) disposed of a second landed property at Masaki, Dar es Salaam. In a compromise between Anastasios Anagnostou, Iranis Anagnostou and Georgious Anagnostou, it was decided that the rest of the estate, for our particular purposes the suit property at Upanga, Dar es Salam, should go to Anastasios Anagnostou, the deceased's brother and the Plaintiff herein. According to the Plaint, a letter from Georgiuos Anagnostou dated 4th May 2010, the heirs further agreed to each other that Georgiuos Anagnostou distributes the assets from the sale of the house in Masaki (belonging to the estate) and other minor assets already in his hands, together with bank balance in Tanzania, to all the heirs except Anastasios Anagnostou. Anastasios Anagnostou gets the house at Upanga (the suit property) and the car and Emmanuel Marangakis is relieved of having to pay rent for the use of the house and the car over the past four years. However, the Defendant Administrator General felt that he could not distribute the suit property to Anastasios Anagnostou because, in his view, being a non-citizen, the said beneficiary is not entitled to own land in Tanzania by virtue of the provisions of the Land Act.[12]

Anastasios Anagnostou claims his right to inherit as a beneficiary of the estate of his sister (and upon the consent of all the other heirs). It is his position that it is not upon the Defendant as Administrator of the estate to choose what to bequeath to him and what not. He has himself has already "passed over" the property to Emmanuel Marangakis, his Attorney herein, who is a Tanzanian citizen of Greek origin. The Attorney is at liberty to deal with it as he deems fit. He cannot understand why the Administrator General should not comply with his wishes. Hence, the dispute that this Court is called upon to determine, according to the Plaint filed under Special Case procedure, relates to a determination of the issues being whether the Administrator General can legally bequeath the House on Plot No. 648 Upanga, Ilala District, Dar es Salaam, registered under CT No. 186172/28, L.O. No. 30616 and LD No. 71622 to Anastasios Anagnostou, who is a Greek citizen and a beneficiary of the estate of the late Diana Artemis Ranger, his sister in the light of the provisions of the Land Act. Whether the said Anastasios Anagnostou, the beneficiary, can pass his interest and have his share of estate as aforesaid transferred to Emmanuel Marangakis who is a Tanzanian, his duly appointed Attorney and Whether the only solution is to dispose of the property and pass the proceeds to the beneficiary or his Attorney and so on(Source: From the case with some personal author's emphasis).

Basing on the above contents of the facts extracted from the court decision, the court noted that the dispute was all about section 20(1) of the Land Act. This provision of the Law establishes conditions and restriction of the foreigner to own land In Tanzania. The words used by the law and actually adopted by the court are to the effect that a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act.[13] Today Cap 38 of the Laws of Tanzania is a repealed Law where as it is today Act No 10 of 2022. Although it is a dead law, themes in relation to land for investment are living.

The court is minded on Rights and Incidents of Land Occupation. Going to Section 19 of the Land Act, rights to occupy land under the Act are declared to be The rights to occupy land which a citizen, a group of two or more citizens whether formed together in an association under this or any other law or not, a

[12] Supra 113

[13] Cap 28 R.E.2002. This is a repealed law since 2022.

partnership or a corporate body, in this Act called right holders. Such enjoyable Rights are granted right of occupancy and a right derivative of a granted right of occupancy, in this Act called a derivative right.

The court having looked on such other elements of the facts, rights to land, and how such rights are bon, used words in section 20(1) of the Land Act visa vi the rights to foreigner in relation to land, goes to the reality and basis of the central issue as to whether it is legally proper to bequeath a right of occupancy belonging to a deceased's estate to a heir who is not a Tanzanian. Indeed, the issue raises some other pertinent questions, such as whether a non-Tanzanian son or daughter of an owner of land in Tanzania can succeed his/her parent in the ownership of landed property in view of the restriction imposed by section 20 (1) of the Land Act.

The court held that a bequest of deceased's property upon his/her the death is neither a grant nor an allocation of a right of occupancy. Consequently, it is legally possible for a bequest to be made in favor of a non-citizen. In addition, the position I have taken is fortified by the provisions of sections 68, 71 and 140 of the Land Registration Act,[14] relates to what is termed a "Transmission on Death." These are the applicable provisions where landed property devolves to an heir. Section 68 of The Land Registration Act[15], provides for dispositions and assents by legal personal representative. The procedure for such registration is provided for under section 140, 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 Fourth Schedule to the Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased. These transmissions are to be recorded under section 71 of the Land Registration Act which gives the Registrar powers to do so. It is also of some significance to say that nowhere in the Land Registration Act, is there restriction against a transmission by operation of law in terms of section 68 of the said Act, against a non-Tanzanian.

The Contestation being on bequest, a transmission by operation of law of a property in the estate of the late Diana Artemis Ranger. The court demonstrated the processes to acquire land and satisfied itself that no restricted under section 20 (1) of the Land Act that restricts inheritance. The court observes that It was plainly not the legislature's intention to place any such restrictions. The court concluded by a verdict that the Administrator General can legally bequeath the House on Plot No. 648 Upanga, Ilala District, Dar es Salaam, registered under CT No. 186172/28, L.O. No. 30616 and LD No. 71622 to Anastasios Anagnostou, who is a Greek citizen and a beneficiary of the estate of the late Diana Artemis Ranger, his sister in the light of the provisions of the Land Act. Secondly that Anastasios Anagnostou (the beneficiary) can pass his interest and have his share of estate as aforesaid transferred to Emmanuel Marangakis who is a Tanzanian, his duly appointed thirdly that it is not correct, in the eyes of the law, to say that the only solution is to dispose of the property and pass the proceeds to the beneficiary or his Attorney.(Source: The Judgment of the Court with little omission and emphasis by the author). There court atlast ordered that the Defendant Administrator General should bequeath the suit property to the

[14] Cap.334 of the Laws of Tanzania
[15] Ibid

Plaintiff Anastasios Anagnostou, either directly or through his duly constituted Attorney, in accordance with the procedures laid down under sections 68, 71 and 140 of the Land Registration Act of the Laws of Tanzania.

From the decision of the court in the above case, no doubt that The Land Act of Tanzania restricts a foreigner from owning Land in Tanzania unless the same is for investments and via Tanzania Investments centre. This proposition is in accordance with the section 20 of the Land Act. The restriction is based on land grant and allocation but not to rights which inhere to a person via probate laws and transmission of the Law. The latter rights are not subject to conditions which are not infringing rights of the decree holders or beneficiaries but conditions that derivers a complete registration of the interests or title in the land at hand if registable. The situation is quite different from Zanzibar which is the second hand of Tanzania. They meet at one point. While in Zanzibar law states categorically that a non Zanzibari can't own land in Zanzibar, the Law in Tanzania states so but in the sense of a foreigner to be granted or allocated land. But, Tanzania has an alternative way by which one's rights to own land would be affected and that is as beneficiary via probate matters and other operation of the Laws procedures.

IV. Discussion

In the light of Wallace,(1997) the international legal systems is essential built of consensus and neat to attract strong enforcement machinery upon their establishment. Bederman(2001) is of the view that once the international is founded on declarations, a declaring state may not come across legal obligations as may be binding, non-binding or soft obligation but being non-binding may trigger the nation to start practicing it. To the issue of judgment specifically may not require enforcement but recognition only(J.G.Collier,2001). To him, nullity, divorce and judgment *in personam* only need recognition while maintain ace, damage, order, recovery stand needs enforcement. There is important to look on how the principles of *Res judicata* and *res sub judice* to remain on their position whereby customs may be created to effect fully recognition of foreign decision so as to save time and check double vexation by looking the substantive requirements of will, immovable and other substantive laws likely to be affected by the conflict of Law in Tanzania. If the immovable would be entrenched on non-certainty of the law its value also would diminish or become weak. In support of this, Singer(2014) draws an example whereby he gives an example of securitizing mortgage in many states what shall be the market of the mortgage in such states with different *the situs* the result is the complexity of the *situs.* From the ontology point of view as the branch of Science of what is as reiterated by Smith (2003) the conflict of law on *the situs* in relation to immobile is staggering and a pseudo law. Be it based on the polarity of natural lawfulness and the legality to express the validity of the law to its effectiveness, still certainty would be a good judge. The understanding of Justice and certainty, law and power as discussed by Kaufman(1963) is noted.

No doubt that Tanzania experiences what is referred to as resealing the foreign succession decrees. The probate and Administration of Estates Act[16]provides for sealing under section 95 read together with Rules 97 and 98 made under the the law Probate and Administration of Estates Act. According to the Law it is only the High Court of Tanzania main registry having powers of sealing. Resealing is away

[16] Chapter 352 of the Laws of Tanzania

from the Conflict of Laws and therefore this paper has not ventured in in the Matter. Likewise the judgment and or decrees pertaining with this paper are excluded from the matters under the Reciprocal Enforcement of Foreign Judgments Act[17] and therefore won't be looked at. Likewise to Judgments extension Act.[18]

V. Conclusion

No doubt that for a rule to be applicable, needs to be interpreted while at and before its application the constitution significance need to be eminently observed (Abadinsky,2003). It is as well noted that interpretation of the law by the judiciary can deprive the people of their rights to resolve disputed issues in accordance with the ordinary processes of the self-governing self-governance which is political rather than that of judiciary (Abadinsky, 2003). So as to go beyond, laws and policies need to reveal a positive society norms considering that its law that reflect and a society's value as reiterated by Arberteman et al(1994). No doubt that the validity of the of agreement to the forum depends on the law of the place it was cerebrated as observed by Graveson(1969). This means if laws allow something, it does not inflict the principles of the Conflict of laws. It establishes the question to study if the decision and observation of the court of Appeal in Kay's case that rights to property as established by Article 24 of the Constitution of Tanzania are correct but being subjected to impediments of the conditions is real or infringement or obstruction as to enjoyment of property rights by the foreigners in Tanzania and Zanzibar. The Bentham's utilitarianism theory contended by Bentham that he nature has placed man under the empire of pleasure and pain (Singh, 2006) is important but not necessary in the current global of inevitable integration.

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[18] Cap 7 of the Laws of Tanzania

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