

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: OMAR, J.A., MNZAVAS, J.A., And MFALILA, J.A.)

CIVIL APPEAL NO. 33 OF 1994

BETWEEN

NIZAR SHELL L'ADAWY MUHANNA APPELLANT

AND

REGISTRAR OF TITLES 1ST RESPONDENT

JAMILA MOHAMED 2ND RESPONDENT

(Appeal from the judgment and decree
of the High Court of Tanzania at
Dar es Salaam)

(Kyando, J.)

dated the 18th day of November, 1993

in

Misc. Civil Cause No. 80 of 1991

JUDGEMENT OF THE COURT

MFALILA, J.A.:

In this appeal the dispute is over a house built on plot No. 766 United Nations Road Upanga in Dar es Salaam. The Certificate of Title issued in respect of this plot is No. 186174/85 in the name of one Nizar Shell L'adawy Muhanna. This is the present appellant. The appellant is the son of the late Shell Muhanna who died at Muhimbili hospital Dar es Salaam on 9th April 1990 leaving a widow Jamilla Mohamed the second respondent, but she is not the appellant's mother. The late Shell Muhanna had several wives one of whom was the appellant's mother, although it appears that at the time of Shell's death, she was no longer his wife.

Then sometime in 1991, the appellant saw a general notice in the Government Gazette of 29th March 1991 advertising the loss of a Certificate of Title in respect of Plot No. 766 in the name of Nizar Shell L'adawy Muhanna (deceased) and that the applicant was one Jamila Mohamed. The general notice went on to inform the public that Certificate of Title No. 186174/85 in respect of the above plot was lost and that unless cause was shown to the contrary within two months, a new Certificate of Title would be issued in its place. According to the appellant, when he saw this notice, he was greatly distressed because first he was still alive, secondly the Certificate alleged to be lost was in his possession as ^{registered} owner and thirdly the property was his. He therefore hurried to the offices of the Registrar of Titles to record his objections against the terms of the notice. The second respondent however maintained that the property was part of her late husband's properties and that it was bequeathed to her in his Will. The Registrar of Titles who is the 1st respondent was therefore faced with a dispute between the appellant and his step mother the second respondent on whether Plot No. 766 United Nations Road Upanga, belonged to the appellant or his deceased father as to form part of his estate. Faced with this dispute, the Registrar of Titles mounted an investigation to establish the ownership of this property as between the appellant and his late father. He launched this investigation under what he called powers

vested in him by Section 105 of the Land Registration Ordinance. This section provides as follows:

"105. Where any question arises as to whether any registration or entry should or should not be made, or whether any memorial inscribed in the land register should or should not be corrected or cancelled or where by this Ordinance or any rule made thereunder the Registrar is expressly or impliedly authorised or required to inquire into, investigate, give any decision on or exercise any discretion as to any matter, he may order any person -

- (a) to attend before him at such time and place as he may appoint and be examined on oath which he is hereby authorised to administer; and
- (b) to produce to and allow him to inspect and take copies of all material documents in the possession, power or control of such person.

Following this investigation, the Registrar held that the property belonged to the appellant's late father and that therefore he had rightly disposed it in his Will in

favour of the second respondent. In his appeal to the High Court from this decision of the Registrar of Titles, the appellant challenged the right and power of the Registrar to make such an investigation purportedly under Section 105 of the Land Registration Ordinance. The High Court appears to have agreed with the Registrar's exercise or such powers and dismissed the appeal on the basis that the Registrar's decision that the property belonged to the appellant's father was fully supported by the evidence before him.

However, we are satisfied that if the High Court judge on first appeal had not assumed that the Registrar had such powers of investigation and had specifically addressed his mind to the above provisions of Section 105, he would most certainly have found that that section gives no such powers to the Registrar of Titles. That section as quoted above, only empowers the Registrar of Titles to determine questions regarding whether his register should be corrected or an entry therein cancelled. Any other inquiry or investigation to be undertaken by him, must be either expressly or impliedly authorised or required by the ordinance or any rule made thereunder. The present proceedings did not involve a dispute over entries in the Land Register requiring the Registrar of Titles to determine whether any registration or entry should or should not be made in the Land Register or that what is in the register should be corrected or cancelled. It involved

the question whether the land in dispute registered in the appellant's name was the appellant's property or his late father's. The dispute therefore involved the ownership of registered land. There is no provision both in the Land Registration Ordinance and in the Rules, which authorize or requires the Registrar of Titles to make investigations and determine such substantial issues as land ownership. The investigation and proceedings by the Registrar were therefore undertaken without jurisdiction, they were thus null and void. The purported appeal to the High Court was equally null and void because the appeal was grounded on incompetent proceedings.

Accordingly, we allow the appeal, quash the proceedings both before the Registrar and those in the High Court. An order for costs in favour of the appellant against the second respondent is made both in this Court and in the High Court.

If either the appellant or the second respondent feels the other is threatening their interests in plot No. 766 United Nations Road Upanga area in Dar es Salaam, they can file an appropriate claim in Court.

DATED AT DAR ES SALAAM THIS 22ND DAY OF AUGUST, 1995.

A. M. A. OMAR
JUSTICE OF APPEAL

N. S. MNZAVAS
JUSTICE OF APPEAL

L. M. MFALILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(M.S. SHANGALI)
DEPUTY REGISTRAR