

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CORAM: MUGASHA, J.A., KWARIKO, J.A. And KENTE, J.A.**

**CIVIL APPEAL NO. 65 OF 2018**

**GEORGE BENJAMIN FERDANDES .....APPELLANT**

**VERSUS**

**REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**

**ANNA KIBIBI MAREALLE.....2<sup>ND</sup> RESPONDENT**

**(Appeal from the judgment of the High Court of Tanzania,  
Dar es Salaam District Registry at Dar es Salaam**

**(Dyansobera, J.)**

**dated 29<sup>th</sup> day of November, 2017**

**in**

**Land Appeal No. 6 of 2010**

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**JUDGMENT OF THE COURT**

28<sup>th</sup> October, & 4<sup>th</sup> November, 2021

**KENTE, J.A.:**

This is an appeal from the decision of the High Court (Dyansobera, J.) sitting at Dar es Salaam in Land Appeal No. 6 of 2010. In that appeal the present appellant George Benjamin Fernandes was challenging the decision of the Registrar of Titles (the first respondent herein) rectifying the Land Register with regard to the certificate of Titles No. 115139 in respect of a piece of land described as Plot No. 4/1 Block 5, Mwongozo area, Temeke Municipality, following the allegations of fraud to which the appellant was accused of being privy. In the appeal before the High Court which was preferred pursuant to section 102 of the Land Registration Act

Cap 334 R.E. 2002 (now R.E. 2019), the second respondent herein one Anna Kibibi Marealle was joined as a necessary party.

The factual background giving rise to the appeal before the High Court and subsequently to the present appeal may be summarized as hereunder. While in the exercise of the powers conferred upon him under section 99(1) (d) of the Land Registration Act (supra), the first respondent made a rectification in the Land Register in respect of the above-mentioned property revoking the appellant's right of occupancy and in lieu therefore bringing in the second respondent as a substitute title-holder. It is worth noting at the outset that, the second respondent is the administratrix of the estate of the late Zuhura Nora Marealle who was the owner of the disputed piece of land.

The decision to revoke the appellant's certificate of occupancy was arrived at after the first respondent realised that there was something repulsively ugly about the appellant's acquisition of the disputed land. For the sake of exactitude, according to the first respondent, the reason for the revocation of the appellant's title was that he had purchased the said piece of land from one Abubakar Abdallah Hassan who, as it turned out, had undebatably forged a grant of letters of administration purporting to

have been appointed the administrator of the estate of the late Zuhura Nora Marealle in a fictitious Probate and Administration Cause No. 40 of 2009 allegedly determined by the Kigamboni Primary Court.

After going through the evidence led by the parties, the learned High Court Judge was satisfied that indeed the appellant was not only kept in loop but he was also privy to the said fraudulent misrepresentation as a result of which he was erroneously allocated the underserved title over the disputed land. On the evidence on the record, the learned Judge of the first appellate court went on to find and hold that, in the circumstances, the first respondent was justified in rectifying the register and revoking the appellant's right of occupancy because the person who had fraudulently sold him the disputed land had no valid title therein which he could pass to him. This according to the learned High Court Judge, translated into the appellant having bought nothing from the said person and, on that account, the transfer of the right of occupancy to him was, in the juridical field, ***void ab initio***. Accordingly, the first appellate court dismissed the appeal preferred by the appellant with costs. As stated earlier, the appeal before us is against the said decision of the first appellate court.

At the hearing of the appeal, while the appellant was represented by Mr. Juvenalis Ngowi learned advocate, Ms. Rehema Mtulya, learned State Attorney teamed up with Mr. Galius Lupogo her fellow State Attorney to resist the appeal on behalf of the first respondent. The second respondent was absent obviously, in defiance of service, but since, pursuant to Rule 106 (7) of the Court Rules she had filed written submissions, we took it in terms of Rule 106 (12) (b) that the appeal had been argued as required by law.

Before this Court, the appellant had fronted five grounds of complaint which essentially boil down to one question. That is whether, the first appellate Judge was justified in holding as he did, that the revocation of the appellant's title was not without justification.

In the course of his oral submissions, after he adopted the written legal arguments which he had filed earlier, Mr. Ngowi strongly contended in the first place that, there was no fraud and if it was there, the appellant was not involved in the said fraud and therefore the first respondent was wrong to rectify the Land Register to his (appellant's) disadvantage. *"The appellant did not buy the disputed plot from Abubakar Abdallah Hassan the alleged fraudster. The plot was directly allocated to my client."* Mr. Ngowi

contended, with unconventional vehemence. Asked to comment on the finding by the learned High Court Judge that initially the disputed piece of land belonged to the late Zuhura Nora Marealle whose estate was being administered by the 2<sup>nd</sup> respondent, the learned counsel for the appellant denied all that. He maintained that the disputed plot did not belong to Zuhura after she had failed to pay Government dues and therefore it could not be re-allocated, as it was, to the administratrix of her estate, upon her demise. On the flipside, Mr. Ngowi submitted gallantly that, if there was sufficient ground to warrant the rectification of the land register, then the appellant ought to have been indemnified by the Government for all reasonable costs of acquiring the disputed plot.

In a vigorous rebuttal, Ms. Mtulya maintained that the reality of the matter is that, the appellant bought the disputed land from Abubakar Abdallah Hassan who had forged the letters of administration of the estate of the late Zuhura Nora Marealle and therefore the revocation of the appellant's right of occupancy by the first respondent was a seemingly inescapable legal consequence.

Dealing with the argument by Mr. Ngowi that the late Zuhura had not paid any state and local dues pertaining to the disputed property and

therefore she could not be said to own it, the learned State Attorney submitted that Zuhura's title could not be vitiated by the omission to pay dues. Ms. Mtulya relied on the case of **Mwalimu Omari and Another v. Omari A. Bilali [1999] TLR 432** in support of the argument that, that was not one of the circumstances which can lead to the title of a holder of a right of occupancy under customary law to be taken away and that failure or omission to pay dues attendant to the acquisition of land does not perforce extinguish one's title on that land. With regards to the alternative prayer by Mr. Ngowi that the appellant ought to have been indemnified if it was found that there was fraud in the process culminating into his acquisition of the disputed land, the learned State Attorney was very brief. She counter -submitted that, that argument was being raised for the first time and that even if it was raised before the first appellate court or the first respondent; there was no sufficient material for the determination of the claim for indemnity. All in all, the learned State Attorney was of the view that the appeal before us had no merit. To that end, she implored us to dismiss it with costs.

For her part, the second respondent, like the learned State Attorney, was relatively brief in her written submissions which, we must appreciate,

were not without the necessary legal savvy. She argued that, while the appellant conceded to have spoken to the relatives of the late Zuhura Marealle in an endeavour to acquire the disputed plot, he never said that he also engaged her bearing in mind that she was the appointed administratrix of Zuhura's estate. It is the case for the second respondent that the appellant acquired the disputed piece of land through fraud in view of the declaration made by the Assistant Commissioner for Lands when the matter was tabled before the 1<sup>st</sup> respondent. For the avoidance of doubt, the Assistant Commissioner for Land is recorded to have declared that he prepared the certificate of occupancy and submitted it for registration in the name of the appellant after the appellant had purportedly purchased the disputed land from Abubakar Abdallah Hassan who, in a deliberate deceitful manner, had pretended to be the administrator of the estate of the late Zuhura Marealle.

Notably and specifically, in his declaration to the 1<sup>st</sup> respondent, the Assistant Commissioner for lands stated *inter alia* that, upon realising that Abubakar Abdallah Hassan had forged the letters of administration of the estate of the lawful owner of the disputed land, what he could deduce from these clues was that the appellant had obtained the Right of

Occupancy as a result of fraudulent tricks. Relying on section 99 (2) (b) and (c) of the Land Registration Act, the second respondent maintained that there was sufficient ground for the rectification of the Land Register to revoke the appellant's title. Assuming as the appellant's counsel would want us to believe that the appellant was directly granted title to the disputed land by the Ministry of Land, the second respondent submitted that, this did not make the appellant's position any better as the title to the said land was still in the name of the late Zuhura Nora Marealle and subsequently in the name of the administratrix of her estate (the 2<sup>nd</sup> respondent's). Like the first respondent, the second respondent pressed for dismissal of the present appeal for want of merit.

In view of the course that we have decided to take in a bid to dispose of this appeal and since there is much comparability than disparity in the grounds of appeal as set out by the appellant, we do not find it necessary to canvass them successionally. Rather, we will deal with only one fundamental question in this appeal which, as stated earlier, is whether the rectification of the land register revoking the appellants' title was justified and in conformity with the applicable law.



In this connection, we wish to reproduce in ***extensor*** the provisions of section 99 (2) (a) (b) and (c) of the Land Registration Act (supra) which in our opinion, is relevant to the instant case. The above cited law provides that: -

*(2) The land register shall not be rectified so as to affect the title of an owner of an estate who is in possession-*

*a) unless such owner is a party or privy or has caused or substantially contributed to the fraud, mistake or omission in consequence of which such rectification is sought;*

*b) unless the immediate disposition to him was void, or the disposition to any person through whom he claims otherwise than for value was void; or*

*c) unless for any other reason, in any particular case, it is considered that it would be unjust not to rectify the register against him.*

Does the impugned decision by the learned Judge of the first appellate court accord with any of the above quoted provisions of the law?

That is the question which we now proceed to determine and, given the evidence on the record, we think the answer is apparent.

Notably, whereas Mr. Ngowi submitted forcefully that the appellant did not buy the disputed plot from Abubakar Abdallah Hassan but rather the said plot was allocated to him by the Ministry of Land, the declaration made by Mr. Joseph Inyasi Shewiyo-Assistant Commissioner for Lands whose evidence we have no reason to doubt, shows that the appellant succeeded to get registered as the holder of the Certificate of Occupancy after he had purchased the disputed property from Abubakar Abdallah Hassan who pretended to be the administrator of the estate of the late Zuhura Nora Marealle who was the lawful owner. This came and it can also be inferred from the document titled "STAKABADHI YA MALIPO" dated 26<sup>th</sup> September, 2009 in which the said Abubakar Abdallah Hassan acknowledged to have received TZS 9,000,000/= from the appellant being advance payment for Plot No. 4/1 Block 5 Mwongozo Kigamboni Dar es Salaam. According to this document, Abubakar Abdallah Hassan was paid that money by virtue of his position as "*msimamizi wa familia ya Zuhura Nora Marealle*". Another disquieting and damning feature in the evidence against the appellant which deserves our attention is the document titled

*"Acknowledgement of receipt of money"* dated 29<sup>th</sup> October, 2009 showing that, on that day, the appellant paid TZS. 22,000,000/= to a person called Richard Githiomi who claimed to be the husband of the late Zuhura Nora Marealle. The said money was allegedly given out of the appellant's goodwill and compassion and it had been fully approved and agreed upon by the whole family representatives who proceeded to sign as having witnessed receipt of the said money by Richard Githiomi. It is in the context of all this evidence that the learned Judge of the first appellate court reached the decision which is now being challenged by the appellant.

For our part, having considered the appellant's actions, we are of the respectful view that, he was all along working in cahoots with the fraudster who purported to represent the family members of the late Zuhura Marealle and subsequently sold him the disputed plot. As it will be noted at once, at first the appellant seems to have been adept at cutting through red tapes but when the inevitable dawned on him, it is interesting but not surprising that the claims that the disputed plot was directly allocated to him by the Ministry of Land were entirely predictable. It is highly probable in this case that, the appellant and the scamster had simply noticed a pattern in the family of the late Zuhura that had loopholes which they

exploited. As it can be seen from the evidence on the record, the first goal in the plot acquisition scam was to cross the hurdle of the late Zuhura's legal representative. That was successfully overcome through two ways. **One**, by getting Abubakar Abdallah Hassan who had to masquerade as administrator of Zuhura's estate, and **two** by paying sh. 22,000,000/= apparently with a view to muzzling a man called Richard Githiomi who posed as Zuhura's husband but whose true identity could not be established at once. Once past that, the last hurdle was to get the disputed land registered in the appellant's name which was easy to achieve after Abubakar Abdallah Hassan posed as administrator of Zuhura's estate and purported to sell the disputed plot to the appellant.

From the foregoing evidence, it is crystal clear that the appellant was aware of the illicit circumstances surrounding the disposition of the land in question and therefore he cannot be heard to wash his hands off the whole scam. The evidence on the record repudiates his claim of having acquired the disputed plot with clean hands. And therein lies the answer to Mr. Ngowi's alternative and belated prayer that the appellant should have been indemnified.

While we are mindful that the claim for indemnity was not raised before the High Court, we say that even if it was raised, it would not be substantiated. Why should the appellant be indemnified by the Government for the money he lost of his own accord in a land acquisition scam? Section 100(4) of the Land Registration Act provides that:

*"No indemnity shall be payable under this Act to any person who has himself caused or substantially contributed to the loss by his fraud or negligence, or derives title (otherwise than under registered disposition for value) from a person who so caused or substantially contributed to the loss".*

In our view, given the marred role played by the appellant in the scam leading to this dispute, an order requiring the Government to indemnify him would flout not only the law but also common sense. And that is the point we seek to make here believing that, in any event, we cannot allow the appellant to benefit from his own wrongs.

The upshot of it all is that, this appeal has absolutely no legal basis. We agree with the first appellate court that indeed, the appellant acquired the disputed plot through fraud. In the circumstances, the decision to revoke his title was, a deserved penalty which was well founded both in

law and in fact. We would therefore uphold the decision of the first appellate court and dismiss the appeal in its entirety with costs.

It is so ordered.

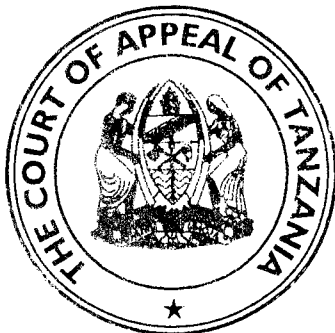
**DATED at DAR ES SALAAM** this 2<sup>nd</sup> day of November, 2021.


S. A. MUGASHA  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

The judgment delivered this 4<sup>th</sup> day of November, 2021 in the presence of Mr. Luka Elingaya, the learned counsel for the appellant and Ms. Rehema Mtulya, the learned State Attorney for the 1<sup>st</sup> the respondent and in the absence of the learned counsel for the 2<sup>nd</sup> respondent is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**