

**IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY**

AT MWANZA

LAND APPEAL No. 04/2021

(Arising from the decision of the Registrar of Title dated 05/01/2021)

ROBERT MAZIBA.....APPELLANT

VERSUS

REGISTRAR OF TITLES.....RESPONDENT

JUDGMENT

07th – 28th May, 2021

TIGANGA, J

This matter has, under the certificate of urgency, been preferred by the appellant raising a complaint that since there is a pending matter in court of law in respect to Plot No. 67 Block Q Uhuru Street – Mwanza, it is improper to register the said Assent to the Bequest of a right of occupancy.

The applicant was represented by Mr. Emmanuel John, Advocate while the respondent, the Registrar of Titles was represented by Miss



Subira Mwandambo Learned State Attorney from the office of solicitor General.

At the hearing Mr. Emmanuel John, learned Advocate submitted that, the appellant was not satisfied by the decision of the Registrar of Titles dated on 05th day of February 2021, which notified him (appellant) of the intended removal of caveat of Robert Maziba on Plot No. 67 Block 2 along Uhuru Street Mwanza.

He submitted that the appeal was premised on two grounds and he started to argue the 1st ground of appeal. He submitted that the appellant had first time filed a land dispute in 2016 which was decided against his favour. The decision aggrieved him, consequently, he on 11/05/2016, asked for copies of judgment and proceeding, but they were not supplied to him. According to him, the appellant once again wrote reminder letters on 06/03/2017 and 24/07/2018 but was not supplied with the documents.

Following that state of affairs, on 24/02/2020 wrote another letter but yet, he was not supplied with the said documents and even the letters were not replied to by the District Land and Housing Tribunal.

Following that refusal and failure to answer the letters the appellant decided to file the application for judicial review, but having realized that the applicant was out of time, he first filed an application for extension of time to file an application for judicial review, that is Miscellaneous Civil Application No. 134/2020 which is before the High Court Hon. Rumanyika, J and is still pending.

He submitted that the appellant has not been idle, they were making follow up since when they lodged the caveat, therefore removing the caveat is illegal as the house for which a caveat was lodged has incumbrances as the owner of the house is not yet known following the pending cases seeking to determine the ownership of the house.

He prayed the decision of the Registrar of Titles to be reversed, and to wait pending the determination of the disputed ownership between the parties.

Replying, Miss. Subira Mwandambo, learned State Attorney, submitted that she opposed the appeal because it is unmeritorious. She submitted that the counsel for the appellant has cited no law which requires him to attach the copy of judgment and proceedings.



The fact that they asked the copy and were not supplied with the said copies shows that, their intention to appeal has been blocked.

He submitted that Order XXXIX requires that the copies of the judgment and decree must be attached.

He submitted the prayers that, to minimize the possibility of the multiplicity of the dispute, therefore it is always important to wait for copies of judgment to be supplied so that the appellant can appeal to the High Court and be declared the lawful owner or otherwise before the Registrar invokes his such powers.

That being the summary of the grounds of appeal and the arguments in support and opposition of appeal, I entirely agree with Miss. Subira Mwandambo, learned State Attorney, for the respondent that under section 99 of the Land Registration Act [Cap 334 R.E 2019] the Registrar of Titles has powers to rectify land register either upon the order of the High Court or himself.

However, where the Registrar makes such rectification on his own motion without there being the order of the High Court, that decision may

be challenged by any person aggrieved by it to the High Court under section 102 of the same Act by way of appeal.

Under this provision the court has not been given criteria to be considered in granting or refusing the appeal. However, as a matter of procedure, the appeal at hand needs in most cases to maintain status quo, pending any other legal process.

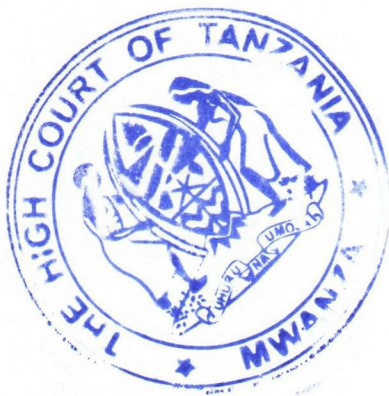
The base of this appeal is the rectification in the register following the removal of caveat lodged by the appellant. The ground is that the case between the appellant and one Kumaliya Sayi, that Application No. 123 of 2008 before Mwanza District Land and Housing Tribunal, is still in the appeal process as the appellant in this appeal was not satisfied by the decision, therefore he decided to appeal before the High Court, but before appealing, as a matter of law he was required to be supplied with the copy of the judgment and proceedings for him to attach with the appeal as required by law.

It is his claim that failure of the trial tribunal to issue him or supply him the documents resulted into the filing of an application for extension of

For that reason, I find the appeal to be meritorious, the decision by the Registrar of Titles in respect of Plot No. 67 Block Q Uhuru Street in Mwanza City is reversed and stopped, the lodged caveat in respect of that plot continue to be in force pending the conclusion of the judicial processes impending before the court.

It is so ordered.

DATED at MWANZA this 28th day of May, 2021.




J.C. TIGANGA, J

Judge

28/05/2021

