

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT TANGA**

**LAND APPEAL NO. 15 OF 2019**

**MOA PLANTATIONS AND ACQUACULTURE LTD ..... PETITIONER**

**VERSUS**

**THE REGISTRAR OF TITLES, MINISTRY OF LAND, HOUSING AND HUMAN  
SETTLEMENT DEVELOPMENT .....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**MKASIMONGWA, J.**

It is alleged by **MOA PLANTATIONS AND ACQUACULTURE LIMITED** formerly known as **MKOMAZI PLANTATIONS LIMITED** (Petitioner) that she is the registered owner of lands registered under Certificates of Title numbers 4268, 9780 and 9781, Tanga District, Tanga, respectively. In an Official search conducted at the Office of the Registered of Tittles, Northern Zone at Moshi Office on 13<sup>th</sup> December, 2018 the Petitioner discovered that the name of the owner of the said pieces of registered land under the above titles now reads "His Excellency the President of the United Republic of Tanzania instead of that of the Petitioner."



It is alleged further that the Registrar of **TITLES, MINISTRY OF LANDS AND HUMAN SETTLEMENT DEVELOPMENT** (First Respondent) did not give the petitioner the notice of intention to rectify the Land Register prior to rectifying it in respect of the mentioned lands. Upon request by the Petitioner the first Respondent did vide his later dated 28<sup>th</sup> February, 2019 and received on 25<sup>th</sup> March, 2019 communicate his decision to the Petitioner. The letter mentioned but without attaching, copies of application for revocation, deeds of revocation and notification which were availed to him later on 9<sup>th</sup> May, 2019 when he received the 1<sup>st</sup> Respondent's letter dated 2<sup>nd</sup> April, 2019. The First Respondent, but did not state reasons for rectification of the Register.

The Petitioner contended that the first Respondent did violate the principles of natural justice of the Petitioner for the later was not heard and be given reasons in certification of the Land Register and thereby defeating his interest over the lands under Certificates of Title No. 4268, 9780 and 9781 Tanga District and Tanga respectively hence this appeal in which the petitioner prays for judgment and decree as follows:

1. The Appeal be allowed.

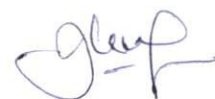


2. An order declaring that the first Respondents' act of rectification of the Land Register complained of a null and void.
3. An order that the original names of the Appellant be restored in the Land Register in respect of lands registered under Certificates of Titles No 4280, 9780 and 9781.
4. Costs of and incidental to this Appeal.
5. Any other Order (s) this Court may deem fit and just to grant.

The appeal was contested by the Respondents. To that effect, the Respondents filed a reply to the Petition of Appeal. Along with the Reply, they filed a Notice of Preliminary Objection asserting that;

1. The Appeal is time barred.
2. The Appeal was preferred in contravention to Section 102 (1) (a) of the Land Registration Act, Cap 334.

On the date the matter came for hearing, Ms. Celina Kapange (SA) and Dr. Chacha Murungu (Adv) appeared before the Court representing the Respondents and Appellant, respectively. When she was invited to argue the Preliminary Objection, Ms. Kapange submitted that this Appeal is incompetent for the same was filed out of the limitation period prescribed by the law. She said, in the Appeal the Appellant has annexed a letter with





Ref. No. LR/MS/T/4268/64 dated 28/02/2019 which he said it constitutes the decision by the first respondent rectifying the Land Register in respect of lands registered under Certificate of Title Numbers 4268, 9780 and 9781. The letter was registered on 17/10/2018 and was communicated to the Appellant on 28/02/2019 duly received by Murungu Law Chambers on 25/03/2019. Later, on 07/06/2019 the Appellant issued a Notice of Intention to Appeal against the decision. Ms. Kapange stated further that Section 102 (1) (a) of the Land Registration Act [Cap 334 RE 2019] requires that an appeal against the decision of the Registrar should be filed within three months and that within a month the Appellant should have filed a Notice of Intention to Appeal. In this appeal the Appellant issued a Notice of Appeal on 07/06/2019 and filed the Petition of Appeal on 06/08/2019 contrary to the provisions of the law above. Ms. Kapange submitted that on the above facts, the appeal is incompetent for it was filed out of the prescribed limitation period and that it was so filed without first seeking for extension of time as it ought to be in terms of the decision in the case of **Ms. Airport Properties Ltd v. The Attorney General and Registrar of Titles**: Misc. Civil Case No. 38 of 2011 and **Juma Mtungerehi v. The Board of Trustees of Tanganyika National**



**Parks;** Civil Appeal No. 66 of 2011 CAT (Unreported) and **Stephano Kiame v. Registrar of Titles** (1998) TLR.127. As the appeal was not timely filed, Ms. Kapange prayed the Court that it sustains the objection and the Appeal be struck out.

On the other hand, Dr. Murungu submitted that in the matter the Appellant was availed with a complete copy of the contested decision on 09/05/2019. As such when this Appeal was filed, the requirements of Section 102 (1) (a) of the Land Registration Act were fully complied with. Dr. Murungu stated that in terms of Section 101 of the Act, the Registrar's decision must be in writing and a copy should be given to the affected person. The Registrar must give reason(s) for such a decision. He said on 13/12/2018 the Appellant made an official search of his plots and on 17/12/2018, the Registrar of Titles at Moshi issued a search report which indicated that the lands at issue were owned by the President of the United Republic of Tanzania as from 17/09/2018. Dr. Murungu submitted that in terms of Section 101 of the Land Registration Act, the report did not constitute a decision by the Registrar. As such on 13/02/2019 the Appellant wrote to the Registrar requesting for the copy of the decision made by him and the Registrar, vide a letter dated 28/02/2019 and communicated to the



Appellant's advocate on 25/03/2019 did communicate the decision. The letter however missed the attachments mentioned thereon which were upon request by the Appellants availed to them later on 09/05/2019. Although the Appellant requested for reasons for decision, he was not given. Dr. Murungu submitted that the decision of the Registrar was made on 09/05/2019 and in terms of Section 102 (1) (a) of the Land Registration Act, Cap 334 R.E 2019] on 07/06/2019 the Appellant handed over to the Registrar of Titles, Dar es Salaam Office a Notice of Intention to Appeal against the decision, a copy of which was filed to this Court registry.

Based on the decision of the Court in the case of **Francis Mbakileki v. Tanzania Harbours Cooperation:** Civil Reference No. 14 of 2004 CAT, (Unreported) Dr. Murungu submitted that this appeal was timely filed for time of appeal starts running against the Appellant from when he obtains a copy of the contested decision and he prayed the Court that it finds no merit in the Preliminary Objection. The same should therefore be overruled and the Court orders for hearing of the appeal.

In a brief rejoinder, Ms. Kapange, reiterated that this appeal is time barred and that all what was submitted by the learned counsel for the Appellant ought to have been submitted in an application for extension of





time in which to file an appeal where he is obliged to show reasons as to why he could not timely file the appeal. She distinguished the case of **Francis Mbakileki** (Supra) from this one stating that in the case what was at issue was the judgment of the court and not the decision of the Registrar of Tittles as it is in this case. She reiterated the prayer to have this appeal been struck out.

I have considered the submission made by the learned counsels, respectively, representing the Respondents and the Applicants. The issue is whether or not this appeal was filed out of the period of time prescribed by the law. I find, from the record and submissions by the parties, that it is not disputed that following an official search conducted by the Appellant in respect of lands with Certificate of Tittles No. 4268, 9780 and 9781 on 17/12/2018 the Appellant discovered that the Land Register had been rectified to the effect that the name of the owner of the lands reads "His Excellency the President of the United Republic of Tanzania" instead of that of the Appellant. It was not evidenced if the decision rectifying the Land Register was communicated before 23/02/2019 when the First Respondent wrote a letter to the Appellant informing her of revocation of the Titles and later on 02/04/2019 when the first Respondent wrote to the Appellant

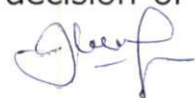


furnishing her a copy of Application for Revocation, Deed of Revocation and Notification for Revocation. These, according to Dr. Murungu, were received by the Appellant on 09/05/2019 which date he termed as the date of the decision of the first Respondent. As such, the provisions of Section 102 of the Land Registration Act [Cap 334 R.E 2002] were complied with. I have considered this. Section 102 (1) (a) of the Land Registration Act reads as follows;

*"102 (1) Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act:*

*(a) no such appeal shall lie unless the appellant or his advocate shall, within one month from the date of such decision, order or act, have given to the Registrar and to the High Court notice of intention to appeal."*

The Section clearly provides for as to when from the date of decision one may file a appeal to the High Court and/or a notice of intention of Appeal against the Decision, Order or Act of the Registrar. It is evident, following the official search she conducted in respect of the lands, that by the search report of 17/12/2018, the Appellant became aware of the decision of the





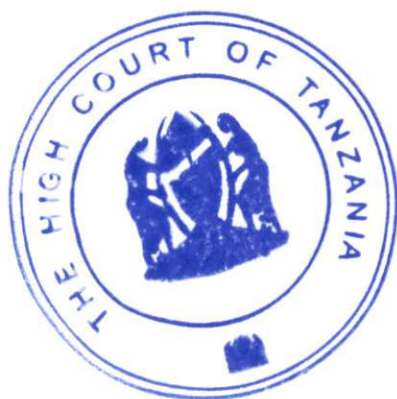
Registrar revoking Tittles over the lands in issue and placing the lands under the ownership of the President of the United Republic of Tanzania as from that date. This Dr. Murungu had admitted to be the date of the decision. As such, he could not be heard stating that the date of the decision is when he was properly served with the necessary documents. Indeed, a copy of decision, order or act appealed against must be accompanied to the Petition of Appeal filed in the High Court. However, delay in obtaining such documents from the Registrar could not change the date of the decision, order or act from when it was actually made to be that when a copy is delivered to the Appellant. The delay in being availed with the copies justifies delay in appealing against the decision, order or act of the Registrar. So in my view, the Appellant ought to have sought for extension of time. Such my views differ from the findings of the CAT in the case of Francisca Mbakileki (supra) and Juma Mtungirehi (Supra) where the CAT stressed that the time of limitation starts from when the Appellant is availed with the necessary copies to enable him/her to file appeal. I so differ from my observation that although the Appellant was aware of the contested decision by 17/12/2018, it took him 58 days to apply for the necessary copies. Secondly it was very possible for the Appellant to lodge a

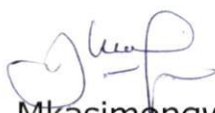


Notice of Intention to Appeal which stage necessitated not for acquisition of the copies of the decision contested of. She did not but timely lodge the Notice of Appeal. I will therefore join hands with the decision in the **Ms. Airport Properties Ltd** case (Supra) that the Appellant ought to have first obtained leave of the Court to have the appeal been filed out of time.

As this appeal was filed out of time without leave of the court to do the same was not properly instituted and it is consequently dismissed. No order as to cost is made.

**DATED** at **TANGA** this 16<sup>th</sup> of August, 2021.



  
E. J. Mkasimongwa

**JUDGE**

**16/08/2021**

Date: 16/08/2021

Coram: E. J. Mkasimongwa, J

For Appellant: Mr. Rashid Mohamed (SA) h.b of Dr. Murungu (Adv)

For Respondent: Mr. Rashid Mohamed (SA)

C/C: Mohamed

**Court:** Ruling delivered in Chambers in the presence of Mr. Rashid Mohamed (SA) who also holds a Brief of Dr. Chacha Murungu (Adv) for the Appellant this 16<sup>th</sup> day of August, 2021.

Right of appeal is explained.



  
E. J. Mkasimongwa,

**JUDGE**

**16/08/2021**



