

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB - REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 15 OF 2020**

**IN THE MATTER OF THE LAND REGISTRATION ACT, CAP 334 R.E. 2002**

**AND**

**IN THE MATTER OF AN ACT BY THE REGISTRAR OF TITLES RECTIFYING AND  
REVOKING THE CERTIFICATE OF TITLE NO. 37566 WITH L.O NO. 127141 OF  
PLOT NO. 3, BLOCK 19, UHURU STREET, KARIAKOO AREA, DAR ES SALAAM  
REGISTERED IN THE NAME OF RAFIKAHAWA MAHOMED SADIKI**

***BETWEEN***

**RAFIKAHAWA MOHAMED SADIKI ..... APPELLANT**

***AND***

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

**THE COMMISSIONER FOR LANDS ..... 2<sup>ND</sup> RESPONDENT**

**AHMED MABROUK ..... 3<sup>RD</sup> RESPONDENT**

**NAJMA HASSANALI KANJI ..... 4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

12<sup>th</sup> and 27<sup>th</sup> April, 2022

**KISANYA, J.:**

This is an appeal against the decision of the Registrar of Titles dated 15<sup>th</sup> August, 1994. The impugned decision is in relation to deed of

rectification of Certificate of Title No. 37566 on Plot No. 3, Block 19, Uhuru Street, Kariakoo Area, Ilala Municipality, Dar es Salaam. One of the documents appended to the petition of appeal is the ruling of this Court (Mgonya, J) in Misc. Civil Application No. 655 of 2017 in which the time within which to appeal against the impugned decision was extended under section 102 of the Land Registration Act, Cap. 334, R.E. 2019 (henceforth "the LRA").

Subsequent to the said ruling, the appellant filed a petition preferred under section 102 of LRA. Her appeal was registered as Land Appeal No. 8 of 2020. When the parties appeared before my brother Hon. Kakolaki, J., the appellant's counsel prayed to withdraw the matter with leave to refile. His prayer was granted. It was ordered a petition of appeal be filed within 14 days from 11<sup>th</sup> November, 2020.

On 23<sup>rd</sup> November, 2020, the appellant filed the petition of appeal fronting the following grounds of appeal:-

- 1. That the Registrar of Title, erred in law and facts by issuing the Deed of Rectification dated 15<sup>th</sup> August, 1994 revoking the ownership of the Appellant herein over the title number 37566 located on the Plot No. 3, Block 19, Uhuru, Kariakoo Area, Ilala Municipality, Dar es Salaam without affording her the right to be heard.*

2. *That the 1<sup>st</sup> Respondent erred in law by revoking the title of the Petitioner (sic) without considering the genuine on how the property become into possession and ownership of the disputed landed property.*
3. *That the 1<sup>st</sup> Respondent erred in law and facts by giving decision of revoking the title deed in disputes without considering the pending civil case No. 95 of 1994 against the 3<sup>rd</sup> and 4<sup>th</sup> respondents, seeking declaration that the Appellant was the lawful owner of the property.*
4. *That the 1<sup>st</sup> Respondent erred in law and fact by rectifying the Register while a caveat was pending and by relying on the decision of the High Court which had been already collected (sic) by the Court of Appeal.*
5. *That 1<sup>st</sup> Respondent erred in law and facts by rectifying the title in favour (sic) of the 4<sup>th</sup> Respondent, Najma Hassanal Kanji without considering that Ahmed Mabrouk had no good title to pass to the 4<sup>th</sup> Respondent.*

When this appeal came up for hearing on 31<sup>st</sup> March, 2022, the appellant was represented by Mr. Francis Makota, learned advocate. On the other hand, Mr. Urso Luoga, learned State Attorney appeared for the 1<sup>st</sup>, 2<sup>nd</sup>, and 5<sup>th</sup> respondents while the 3<sup>rd</sup> and 4<sup>th</sup> respondents had the legal services of Mr. Samson Mbamba, learned advocate.

After a short dialogue with the bench, it was agreed that the following issues be resolved before hearing the appeal on merit:-

1. Whether the Registrar of Titles was required to be served with a notice of intention to appeal.
2. Whether the appeal instituted by way of petition of appeal is competent before the Court.
3. Whether this Court has jurisdiction to determine the appeal while matter subject to this appeal is pending in the Court of Appeal vide Civil Revision No. 250 of 2019.

With leave of the Court, the hearing was adjourned and the learned counsels for the parties given time to prepare themselves for the above issues.

When the hearing resumed on 12<sup>th</sup> April, 2022, parties were represented by the above named counsels.

Submitting on the first issue, Mr. Makota conceded that section 102 of the LRA requires a party who intends to appeal against the Registrar of Titles to serve the latter with a notice of intention to appeal. He argued further that the notice of intention to appeal is required when the appeal is lodged within three months from the date of impugned

decision. Referring the Court to the proviso of section 102(1) of the LRA, Mr. Makota went on to argue that the requirement for notice of intention to appeal is not applicable in the case at hand. His argument was based on the fact that this Court had extended the time to lodge the appeal.

On the second issue, Mr. Makota argued that there is no prescribed format of lodging appeal against the decision of the Registrar of Titles. Although the learned counsel admitted that section 102 (3) of the LRA is to the effect that the appeal is made by way of petition, he contended that it was proper for the appellant to file the petition of appeal.

As regards the third issue, Mr. Makota submitted that he had been informed that the appellant had filed an application (Civil Application No. 250 of 2019) for revision of the decision of this Court in Civil Case No. 95 of 1994. He submitted that the decision being challenged in the Court of Appeal was to the effect that the appellant ought to have appealed against the decision of the Registrar of Titles. In that regard, he prayed that this application be adjourned *sine die*, pending determination of the case pending in the Court of Appeal.

In his reply submission, Mr. Luoga submitted that the appellant had not complied with the mandatory requirement set out under section 102 of the LRA. He contended that apart from praying for extension of time to lodge to the appeal, the appellant ought to have moved this Court to waive the requirement of issuing the notice of intention to appeal.

As regards the second issue, Mr. Luoga submitted that section 102(3) of the LRA makes it clear that the appeal is made by way of petition and not petition of appeal.

Reacting on the third issue, Mr. Luoga was of the view that the present appeal was premature because the Court of Appeal has not determined whether the proper recourse against the decision of the Registrar of Title is to institute a suit or appeal.

On his part, Mr. Mbamba adopted the submissions made by the learned State Attorney. Expounding the third issue, he submitted that the revision filed before the Court of Appeal raises the issue whether the decision of the Registrar of Title is challenged by instituting a civil case or lodging an appeal. The learned counsel submitted further that the matter pending in the Court of Appeal arose from Civil Case No. 95 of

1995 which involved the parties at hand. Therefore, he was of the firm view that this Court has no mandate to determine the matter and that the Court cannot stay a matter which it has no jurisdiction. That being the case, Mr. Mbamba moved me to strike out this appeal with costs.

Rejoining, Mr. Makota reiterated his prayer that the appeal be adjourned *sine dine*. He was of the view that such recourse will not cause injustice to either party. On the issue of notice of intention to appeal, the learned counsel argued that the Court is enjoined to extend the time to appeal and that issuance of the said notice would have contravened the Court's order which required the appellant to lodge her appeal within 14 days.

I have carefully considered the contending submissions of the learned counsel for the parties. At this juncture, I am called upon to determine the foresaid issues.

It is common ground this appeal stems from the decision of the Registrar of Titles. Starting with the second issue, parties are one that in terms of section 102(3) of the LRA, such appeal is made in form of a petition in writing lodged to the High Court. The section reads:-

*"Every appeal shall be made in the form of a petition in writing presented to the High Court by the appellant or his advocate and every such petition shall be accompanied by a copy of the decision, order or act appealed against."*

As rightly observed by the parties, the appellant presented a "petition of appeal" instead of "petition." As far as appeal against the decision of the Registrar of Title is concerned, I see no substantive distinction between the words "petition of appeal" and "petition". While it is necessary for the appellant to use the words stated in the law, I am of the view that the use of words "petition of appeal" in lieu of "petition" in relation to appeal against the decision of the Registrar of Title cannot render the appeal incompetent.

In addition to the foregoing, I have noted that vide the order dated 11<sup>th</sup> November, 2020, this Court (Hon. Kakolaki, J) had ordered the appellant to refile "petition of appeal" within 14 days from the date thereof. That being the case, this Court cannot hold that the appeal is incompetent for being made way of petition of appeal.

Reverting back to the first issue, I have noticed that parties are in agreement that the first step to be taken by a person aggrieved by the



decision of Registrar of Title is to give the notice of intention to appeal within one month from the date of impugned decision or order. This is pursuant to section 102 (1) of the LRA which is quoted hereunder:

*"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:*

*Provided that-*

*(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 of appeals; and*

*(b) N/A*

*And provided further that, the High Court may, for good cause, admit an appeal notwithstanding that the periods of limitation prescribed in this subsection have elapsed.*

The above provisions explicitly sets the time to give notice of intention to appeal and time to appeal against the decision or order of the Registrar. While the notice of intention of appeal is required to be given within one month from the date of impugned decision or order, the appeal must be lodged within three months from the date of impugned decision or order.

In the case at hand, the appellant did not give the notice of intention of appeal. Mr. Makota urged me to consider that the notice of intention to appeal was not required because the appellant was granted leave to appeal out of time. I agree with him that the proviso of section 102(1) of the LRA empowers this Court to admit appeal even if the time limitations have expired. However, it is my considered view that such appeal can only be admitted if the applicant has prayed for extension of time to give the notice of intention of appeal or lodging the appeal or both, as the case may be.

As rightly observed by the Mr. Luoga, the appellant did not pray for extension of time to give the notice of intention to appeal. That is why this Court did not grant the order to give the notice of intention to appeal. It is my humble opinion that, failure to give the notice of intention to appeal renders the present application incompetent.

Last on consideration is the prayer by the appellant's counsel that this appeal be adjourned *sine die* pending determination of application for revision filed in the Court of Appeal to challenge the decision of this Court in Civil Case No. 95 of 1994. Having gone through the record of this Court and submissions made the parties' counsel, I have noticed that Civil Case No.95 of 1994 was instituted by the appellant (the then

plaintiff) against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents (the then defendants) praying for judgment and decree as follows:

- (a) *a declaration that the plaintiff is the lawful and rightful owner of the property (i.e Plot No. 3, Block 19, Uhuru Street, Dar es Salaam and Title No. 37566 L.O. NO. 127141).*
- (b) *a declaration that the first and second defendants are not the owners of the property or Title No. 37566.*
- (c) *The Commissioner of Lands be restrained from applying to Registrar of Titles for rectification and/or revocation of the Right title and interest of the plaintiff in the foresaid Title Deed.*

The record reveals further that the third respondent raised a preliminary objection on the following point of law:-

*"In terms of section 99(1) and section 102 of the Land Registration Act, Cap. 334, R.E. 2002 the suit is not legally maintainable."*

In his ruling dated 14<sup>th</sup> July, 2015, His Lordship Mzuna, J sustained the objection. He held that the suit was improperly filed before this Court because the recourse available to the appellant was to appeal

against the decision of the Registrar of Titles. The relevant part of the ruling reads:-

*“The two decision above agree that one has to file appeal against the High Court within three months from the date of such decision if he/she is not satisfied with the decision of the Registrar of Titles. I agree fully with their finding and that I would say is the correct position of the law as it stands.”*

It turned out that the above decision is being challenged through the revision filed by the appellant in the Court of Appeal (Civil Revision No. 250/01 of 2021). Pursuant to the copy of notice of appeal supplied to this Court by the parties, one of the grounds for revision reads as follows:

*“The decision of the High Court is illegal as the Honorable trial judge wrongly held that the said suit was not maintainable in terms of Section 99(1) and Section 102 of the Land Registration Act [Cap. 33 R.E. 2002] while the appellant in the suit was not challenging the decision of the Registrar of Titles who was not even a party to the said suit.”*

Considering that the issue whether this Court erred by holding that the appellant ought to have appealed against the decision of the

Registrar of Titles, I am at one with the respondents' counsels that this appeal is premature. The appellant is trying to ride two horses at the same. This is so when it considered that, while this appeal is in compliance with the ruling of this Court in Civil Case No. 95 of 1994, her revision pending in the Court of Appeal is against the same which required him to lodge the said appeal. That being the case, I find no reason of adjourning this appeal *sine dine*. There is a plethora of authorities to the effect that an incompetent matter cannot be adjourned.

The upshot of the matter is that this appeal is struck out. Given the circumstances of this case, I make no order as to costs.

DATED at DAR ES SALAAM this 27<sup>th</sup> day of April, 2022.



S.E. Kisanya  
JUDGE  
27/04/2022

Court: Ruling delivered this 27<sup>th</sup> day of April, 2022 in the presence of the Mr. Urso Luoga, learned State Attorney for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents and in the absence of the appellant, 3<sup>rd</sup> and 4<sup>th</sup> respondents.



S.E. Kisanya  
JUDGE  
27/04/2022