

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 4 OF 2022

(Originating from the decision, Order and act of the Registrar of Titles to rectify the register in respect of Plot No. 29 L.O.NO. 61325 Title No. 21403 DLR Nzuguni area, Dodoma Municipality, decision, order and ac purported to be done in December, 2021)

THE REGISTERED TRUSTEES OF TANZANIA

AGRICULTURAL SOCIETY (TASO)..... APPELLANT

VERSUS

1. THE REGISTRAR OF TITLES
2. COMMISSIONER FOR LANDS
3. ATTORNEY GENERAL } **RESPONDENTS**

29/7/2022 & 1/8/2022

JUDGMENT

MASAJU, J

The 1st Respondent, the Registrar of Titles in the exercise of his powers under section 99 (1) (f) of the Land Registration Act, [Cap 334 RE 2019] did rectify the Land Register in respect of Plot No. 29 Nzuguni area, within Dodoma City (Certificate of Title No. 214039 – DLR) by entering therein the name of “Her Excellence the President of the United Republic of Tanzania” in lieu of the name “The Registered Trustees of Tanzania

Agricultural Society (TASO)" thereof. Hence the appeal by the Registered Trustees of Tanzania Agricultural Society to the Court against the Respondents, The Registrar of Titles, The Commissioner for Lands and the Attorney General (the 1st, 2nd and 3rd Respondents respectively).

The appeal is made under section 102 (1) (3) (9) of the Land Registration Act [Cap. 334 RE 2019] on the three (3) grounds thereof thus;

- "1. That, the Registrar of Titles seriously erred in law to rectify the register against the Appellant's interest without according her legally recognized and mandatory right to be heard.*
- 2. That, the Registrar of Titles erred in law and facts by rectifying the register against the Appellants interest without adhering to the legal and procedural requirements for doing the same.*
- 3. That the 2nd Respondent seriously erred in law and facts by requiring the Registrar of Titles to rectify the register against the Appellants interest over the above mentioned piece of land and entering the name of **HER EXCELLENCE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA** without adhering to the legal requirements and procedures"*

The Appellant wherefore prayed the Court for judgment and decree thus;

- "(a) That, this appeal be allowed and the above decision, act and Order of the Registrar of Titles to rectify the register against the Appellant's interest over the above mentioned piece of land be set aside.*

- (b) *That, this Honorable court to issue permanent and perpetual injunction to the Respondents their agents assignees, workers, transferees and any other person acting under their authority from transferring, letting disposing and doing anything with the above named property of the Appellant.*
- (c) *That, this Honorable Court to grant order as to costs of the suit against the 3^d Respondent herein.*
- (d) *That, this Honorable Court to grant the Appellant general damage as it will be determined.*
- (e) *That, this Honorable Court to grant any other orders (s) as it deems fit and just to grant considering circumstances of the case"*

The Respondents contest the appeal, hence their Reply to the Petition of Appeal thus;

"1. That, the contents of paragraph 1 and 2 of the petition of Appeal are disputed. The Respondents state that, there is no serious error in Law in rectifying the register since the Registration of Titles followed all legal procedure and accorded the appellant right to be heard.

2. That, the contents of paragraph 3 of the petition of Appeal are disputed and the Respondents aver that, the appellants assertion are his own creation and that the decision which is appealed against is not from the commission for land but the Registrar of Titles".

The Respondents prayed the Court to dismiss with costs the appeal in its entirety for want of merit.

The appeal was heard in the Court on the 31st day of May 2022 in the presence of the Appellant and her learned counsel, Mr. Paul Mwashitete and Mr. Camilius Ruhinda, the learned Senior State Attorney for the Respondents. The parties argued for, and against the appeal in the Court in the course of which, *inter alia*, the Appellant prayed the Court to allow the appeal with costs and the remedies named in paragraphs (a) (c) and (e) of the Petition of Appeal. That the said prayer were against the 1st Respondent only and that the appeal was competently before the Court.

Respondent *inter alia* argued that the 2nd and 3rd Respondents had been wrongly joined in the appeal because according to the law, the appeal, if any, was to be preferred against the 1st Respondent only. That the appeal was therefore incompetent before the Court. The Respondents prayed that the incompetent appeal be struck out of the Court accordingly.

Since the matter (point) of law on the competence of the appeal in the Court so raised by the Respondents on the day the appeal was heard was not well articulated by the parties then pursuant to Order XXXIX Rule 2 of the Civil Procedure Code [Cap. 33 RE 2019] the Court on the 14th day of July, 2022 advised the parties to address it on the propriety, if any, of the appeal against the 2nd and 3rd Respondents.

The parties addressed the Court on that particular point of law on the 29th day of July 2022. The learned counsel, Mr. Paul Mwashitete, for the Appellant in the presence of the Appellant readily conceded that according to section 102 (1) of the Land Registration Act, [Cap. 334 RE 2019] the appeal should have been against the 1st Respondent only. That, it was therefore wrong to include/join the 2nd and 3rd Respondents in the appeal.

But he added that the joining of the said Respondents in the appeal did not make the appeal incompetent before the Court because section 76 (2) of the Civil Procedure Code [Cap. 33 RE 2019] empowers this appellate court to step into the shoes of the trial court and enforce Order I Rule 9 and 10 (2) of the Civil Procedure Code [Cap. 33 RE 2019] thereby striking out the parties wrongly joined in the suit.

The Appellants prayed the Court to strike the 2nd and 3rd Respondents from the liability of the pleadings and that such an action can be taken even at this stage of the proceedings and retain the 1st Respondent only who is liable for his own impugned decision.

The Appellant cited **Tanzania Railways Corporation V GBP (T) Ltd** (CAT) Civil Appeal No. 218 of 2020 Tabora Registry in support of that argument. That order XXXIX Rule 3 of the Civil Procedure Code [Cap. 33 RE 2019] does not apply because the appeal had already been admitted and duly heard accordingly in the Court. That, if the Court grants her the prayers for striking out prayers (b) and (d) from the Petition Appeal the remaining remedies thereof would be against the 1st Respondent only and that the remedy in prayer (e) will not be against the 2nd and 3rd Respondents .

The learned Senior State Attorney, Mr. Camilius Ruhinda, who appeared for the Respondents submitted that since the Appellant had conceded that the 2nd and 3rd Respondents were wrongly joined in the appeal and that they be struck out of the appeal, the appeal could not still survive in the Court. That, since the Petition of Appeal was defective, Order XXXIX Rule 3 of the Civil Procedure Code, [Cap 33] guides that the appeal can either be rejected or returned to the Appellant for amendment.

That the appeal should be rejected because it does not conform to the rules of appeal. That, in the Petition of Appeal the 2nd ground of appeal is about the 2nd Respondent whom the Appellant had prayed to be struck out of the appeal. That, all the prayers by the Appellant, save the prayer (a) are against all Respondents. That, since the Appellant has also prayed that the 2nd and 3rd Respondents be struck out of the appeal, then the appeal becomes defective because the prayers thereof are against all Respondents, hence the appeal should be struck out of the Court registry for its such defects.

That said, there is no dispute that section 102 of the Land Registration Act [Cap. 334 RE 2019] provides that any person aggrieved by the decision, order, or act of the Registrar of Titles may appeal to the Court within three months from the date of such decision, order or act. The procedure for preferring such appeal has been well stated in the said section of the law. So, it was wrong as so rightly advised by the parties, the Appellant to include the 2nd and 3rd Respondents in the appeal and seeking remedies from them as well. Once the Appellant learned of such errors on her part, she could on her own have prayed to amend the petition of Appeal in terms of Order XXXIX Rule 3 of the Civil Procedure Code, [Cap. 33 RE 2019] lest the Petition/Memorandum of Appeal thereof is rejected by the Court. It was inadvisable on the part of the Appellant to be passive of such remedy until when Respondents in the Court raised red flag on the impugned Petition of Appeal during hearing of the appeal for her to pray the Court to strike out of the appeal parties who have been otherwise wrongly joined in the appeal. Striking the said parties, say the 2nd Respondent from the Petition of Appeal but retaining the 3rd ground of appeal in the Petition of Appeal was contradictory to the prayer for striking

the said party from the appeal. It was therefore the duty of the Appellant to file in the Court the Petition of Appeal drawn up in the manner that conforms to the law in terms of parties and substance (pleadings and prayers) thereof.


The parties to cases in courts of law should always be proactively responsible and accountable to take action that further and defend their respective interests in accordance with procedural law thereof.

This was an appeal in the Court pursuant to section 102 of the Land Registration Act [Cap. 33 RE 2019], not a suit on trial so as to invoke Order I Rule 9 and 10 (2) up Civil Procedure Code, [Cap. 33 RE 2019] allegedly under section 76 (2) of the Civil Procedure Code [Cap. 33 RE 2019].

Appeals are governed by order XXXIX of the Civil Procedure Code, [Cap 33 RE 2019], hence Order XXXIX Rule 3 thereof on how defective Memorandum/ Petition of Appeal is dealt with. So, Order XXXIX Rule 3 regulates the propriety of appeal admitted in Court under Order XXXIX Rule 9 of the Civil Procedure Code, [Cap 33 RE 2019]. Hence the difference between the admission and propriety of the appeal in Court. It is therefore the appeal which passes the propriety test under Order XXXIX Rule 3 of the Civil Procedure Code, [Cap 33 RE 2019] that qualifies for hearing and decision on merit thereon. The Appellant's Memorandum/Petition of Appeal falls short of the qualification thereof in terms of Order XXXIX Rule 3 of the [CPC, Cap 33 RE 2019], hence the Court's refraining from considering the grounds of appeal on its merit, if any, pending an appeal, if any, against the 1st Respondent in accordance with the Land Registration Act, [Cap 334 RE 2019] and the Civil Procedure Code, [Cap 33 RE 2019].

Thus, the Petition of Appeal which does not conform to law in terms of parties and substance thereof falls short of a competent appeal before the Court. The incompetent appeal is hereby struck out of Court. The parties shall bear their own costs accordingly.




GEORGE M. MASAJU

JUDGE

1/8/2022