

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

AT DAR ES SALAAM

LAND APPEAL NO. 03 OF 2021

FRED HABIBU KATAWA.....1st APPELLANT

HILDA DAVID MWATUJOBE.....2nd APPELLANT

VERSUS

THE REGISTRAR OF TITLES.....1st RESPONDENT

THE COMMISSIONER FOR LANDS.....2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

JERICO JAIROS MNUNGA.....4th RESPONDENT

JUDGMENT ON APPEAL

S.M. MAGHIMBI,J:

This is an appeal against the order of the 1st respondent who is the Registrar of Titles dated 4th March, 2021 with Ref. No. LT/T166680/20. In the said decision, the 1st respondent issued a notice of rectification of the Land Register in respect of Plot No. 20, Block '3' Kwembe area, within Kinondoni Municipality, Dar es Salaam with Certificate of Title (CT) 166680 ("the suit property"), registered in the name of Fred Habibu Katawa and Hilda David Mwatujobe ("the Appellants". The rectification was by deleting the names of the applicants and replace them with His Excellency, the President of United Republic of Tanzania. The rectification was effected under Section 99(1) of

the Land Registration Act, Cap 334 R.E. 2019 ("the Act") and was prompted by an application lodged by the Assistant Commissioner for Lands on 29th January, 2021.

The aggrieved appellants have lodged this appeal raising 5 grounds of appeal that:

1. The Registrar of titles erred in law and fact by deleting the names of the Appellants from the land registry without availing the Appellants his / her fundamental right to be heard.
2. The Registrar of titles erred in law and fact by changing the entries in the land register without satisfying itself as to whether the 4th respondent was the lawful owner of the plot in dispute.
3. The Registrar of titles erred in law and fact by changing the entries and inserting the name of her Excellency the President of the United Republic of Tanzania without any evidence of the ownership of the plot.
4. The Registrar of titles erred in law and fact by changing the entries and inserting the name of her Excellency the President of the United Republic of Tanzania without regarding the Appellant was a bonafide purchaser bought the said plot in dispute to the 4th Respondent.

5. The Registrar of titles in law and in fact by changing entries and inserting the name of her Excellency the President of the United Republic of Tanzania without regarding the fact the Appellants has incurred costs for purchasing in dispute, capital gain tax on transferring, registration fee and the same Registrar of titles transferred the ownership from 4th Respondent to Appellants.

On those grounds, it was the appellants' prayers that :

1. The Appeal be allowed
2. The Registrar of Titles be ordered to reinstate the names of the applicant in the Land Registry.
3. The court be please to make an order that the Appellants are the rightful owners of the Plot No. 220, Block '3' Kwembe area, within Kinondoni Municipality, Dar es Salaam.
4. Costs be provided for.

Before this court, the appellants were represented by Mr. Simba Kipengele, learned Advocate while the 1st, 2nd and 3rd respondent were represented by Mr. Usro Luoga, learned State Attorney. The 4th respondent was represented

by Mr. Makola, learned advocate. The appeal was disposed by written submissions.

In his submissions to support the appeal, Mr. Simba submitted that on 29th January, 2021 the Appellants received a notice of rectification under S. 99(1) (f) from the Assistant Registrar of Titles dated 29th January, 2021 with reference number LT/T/166680/19. The Appellants replied the notice by a letter dated 08th February, 2021 with reference number SISA/FHK/26/2021. In the said letter, the appellant stated how they acquired the said plot. On 4th March, 2021 the Appellants' advocate received a letter with reference number LT/T/166680/20 stating that if they will not receive objection from the Court the Assistant will continue cancelling the names of Appellants. That through the service of Sisa Attorneys, the Appellants wrote a letter to Assistant Registrar of titles of the intention to appeal against the decision of the Registrar a latter dated 29/03/2021 with reference number SISA/FHK/32/2021.

Thereafter, he submitted, the appellants wrote a letter to Registrar of the High Court expressing their intention to appeal against the decision of the Registrar of Titles, a letter dated 29/03/2021 with reference number SISA/

FHK/31/2021. Hence the Appellants filed this appeal before this Court for hearing and determination.

On the first ground of appeal, Mr. Simba submitted that the Appellants were totally denied the right to be heard as Constitutional rights enshrined under Article 13 of the Constitution of the United Republic of Tanzania. That once they received notice of rectification, the Appellants answered through a letter and that the reasons stated in that letter were not regarded at all. He argued that audi alterum partem, one of the principle of natural justice, literally means to hear the other side. This is necessary for providing fair hearing and no doubt the rule against bias would also be a part of the procedure. He went on submitting that a corollary has been deduced from the above two rules and particularly the audi alteram partem rule, *namely qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit:* that is, he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right or in other words, as it is now expressed, justice should not only be done but should manifestly be seen to be done. He further cited the decision of the Court of Appeal in the case of **Hussein Khan Bhai Versus Kodi Ralph Siara, Revision Number of 24 of 2014** wherein the right of the

party to be heard was emphasized by citing the case of **Abbas Sherally & Another Versus Abdul S.H. Fazalbay Civil Application No. 33 of 2022**

(un reported) where the court held:

"the right of the party to be heard before adverse action or decision is taken against such part has been stated and emphasis by the courts in numerous decisions. That right is so basic that the decision which is arrived at in violation of it all nullified, even if the same decision would have been reached had the party been heard, because the violations is considered to be a breach of natural justice".

He also cited the case of **Mbeya – Rukwa Auto Ports & Transport Limited Vs. Jestina Mwakyoma, Civil Revision No. 45 of 2000**

(Unreported) whereby the position was emphasized. He concluded the first ground by submitting that the Appellants in this Appeal were not given the right to be heard as required by the law.

With regards to the second ground of appeal, Mr. Simba submitted that the registrar of titles erred in law and fact by changing the entire registry. He

argued that the via letter dated 08/02/2021 the appellants, through their advocate, replied the latter to the Registrar of Title informing him on the ownership of the Plot No. 220 Block 3 Kwembe Ubungo Municipality. That the registrar was informed that Fred Habibu Katawa and Hilda David Mwatujobe were the bonafide purchasers of the said plot from the 4th Respondent Jerico Jairos Mnunga. He referred this the court to an attached Land Form (Fomu ya ardhi 69) titled "*Taarifa kwa Mkazi wa Aridhi Kudai Fidia*" attached to his petition of appeal marked as annexure FHK2 which show that the 4th Respondent was a natural resident before survey of the plot in dispute.

Mr. Simba then argued the 3rd and 4th grounds together. The grounds were to the effect that the Registrar of titles erred in law and fact by changing the register and inserting the name of her Excellency the President of the United Republic of Tanzania. He submitted that the Appellants are bonafide purchasers of suit property from Jerico Jairo Mnunga, referring to the copy of sale agreement and certificate of the attached in the petition of appeal.

The last ground of appeal was that the Registrar of titles erred in law and in fact by changing enteries and inserting the name of her Excellency the President of the United Republic of Tanzania without regarding the fact the

Appellants has incurred costs for purchasing in dispute, capital gain tax on transferring, registration fee and the same Registrar of titles transferred the ownership from 4th Respondent to Appellants. It was Mr. Simba's submissions that the Appellants bought the plot in dispute from Jerico Jairos Mnunga. Thereafter they have paid the stamp duty, registration fees and capital gain tax. Tanzania Revenue Authority issued tax clearance certificate, there after document filed to Registrar of titles. He pointed out that it was the Registrar of the titles effect the transfer from Jericl Jairos Mnunga to Fred Habibu Katawa and Hilda David Mwatujobe. He then posed a question that the same Registrar of Tiles who made transfer to Appellant is same who made changes in the register from the names of Appellants to the name of her Excellency President of the United Republic of Tanzania.

Mr. Simba went on submitting that it should be born in mind the Appellants incurred costs for buying the said plot in dispute, stamp duty payment, payment of registration fee and payment of capital gain tax to Tanzania Revenue Authority but the Registrar of titles did consider all the costs incurred by the Appellant. Further that the Appellants fees humiliated and the plot in dispute has been taken by force. Pointing to the Section that

empowers the Registrar of titles to take the decision basing on Section 99(1), he reproduced the provisions of the section which provide that:

"in any other case, by reason of any error or omission in the land register or by reason of any memorial made under mistake, or for other sufficient cause it may be deemed just to rectify the land register."

He the argued that no any reason or any error or sufficient cause were disclosed to Appellants which is unjust.

I have noted that it was only the 1st, 2nd and 3rd respondents who filed their reply submissions. The 4th respondent abandoned his right to be heard by omitting to file any written submissions in reply.

In his reply submission, Mr. Urso also addressed the grounds as submitted by the appellant. He started with the first ground. His reply was that the 1st respondents issued a notice dated 29th January, 2021 notifying the applicant of the rectification of the title and requiring the appellants that within 14 days they should bring a court order restraining the rectification, the appellants replied to the noticed instead of presenting a counter order. He argued that the registrar could only stop if there was a court order to that

effect hence the complaint at this stage is unfounded. He distinguished the cited cases to our situation at hand because the appellants were issued with notice which is a right to be heard.

He then argued the 2nd to 5th grounds of appeal together. He submitted that most of the facts argued therein are known to the applicant himself and that the respondents can not be held accountable hence the appellants contributed to the negligence for failure to comply with the notice. Further to the above, he argued that the applicants did not bring any sufficient evidence to show that the name was changed. He argued that the applicant had to prove that the cancellation was made. Further that the remedy available to the applicants was to file an application for extension of time to procure a restraining order so that the matter can be heard by the 1st respondent. His prayer was that the application be dismissed.

Having heard the submissions of the parties for and against the appeal, I find that despite the five grounds tabled for determination by the appellants, the issue for determination before me is whether before the 1st respondent rectified the Land Registrar under Section 99(1) (f) of the Act, the register afforded the appellants a right to be heard. The second issue raised by the appellants is on the ownership of the suit property.

Starting with the right to be heard, Mr. Simba alleged that the appellants were denied right to be heard before rectification of the land register. It is undisputed by both parties that the rectification in dispute was effected under the provisions of Section 99(1) (f) of the Act which provides:

"99,- Subject to any express provisions of this Act, the land register may be rectified pursuant to an order of the High Court or by the Registrar subject to an appeal to the High Court, in any of the following cases:-

(f) if any other cases, where by reason of any error or omission in the land register or by reason of any memorial made under a mistake, or for other sufficient cause it may be deemed just to rectify the land register."

However, the law is clear that before any decision is made that will adversely affect the right of parties, they must be afforded an opportunity to be heard. In this case, the appellants alleged that they were not afforded a right to be heard. For reason that will soon be apparent, I find the allegation by the appellants to be unfounded.

It is on records and undisputed by the parties that on the 29th day of January 2021, the appellants were issued a notice from the 1st respondent that the register was to be rectified with regard to the title of the suit property. The notice was admittedly received by the appellants but instead of registering their concerns in the High Court by moving the court to issue a restraining order, they instead wrote a mere letter to the Registrar of the High Court. The question is whether that is the procedure to be taken. The answer is in the notice of rectification where the Assistant Registrar informed the applicant that the rectification will be within 30 days unless the High Court orders otherwise. This is a clear indication that the remedy available to the appellants at that material time was to obtain an order of the High Court against the intended rectification. The Applicants seems to have waived this right.

Further to the above, in a bid to ensure that the appellants are well informed of the intended rectification, on the 4th day of March, 2021, the 1st respondent wrote a reminder letter addressed to the appellants advocate informing them that the 30 days' notice had expired on the 3rd March, 2021 and that since no restraining order was issued by the court, they were still

accorded another 14 days before the 1st respondent will execute the rectification.

All the chronology of events above are sufficient to show that within the requirement of the Act, the appellants were afforded a right to be heard by the 1st respondent before the decision to rectify the register was effected. That being the case, the first ground of appeal crumbles as it is not supported by the records contained the appeal.

The second issue raised by the appellants is on the ownership of the suit property. On this issue, Mr. Simba submitted that the Appellant are bonafide purchasers of suit property from Jerico Jairo Mnunga, referring to the copy of sale agreement and certificate of title attached in the petition of appeal. Thereafter they have paid the stamp duty, registration fee and capital gain tax. Tanzania Revenue Authority issued tax clearance certificate, there after document filed a Registrar of titles. He pointed out that it was Registrar of titles effect the transfer from Jerico Jairos Mnunga to Fred Habibu Katawaa and hilda David Mwatujobe. Mr. Simba went on submitting that it should be born in mind that the Appellants incurred costs for buying the said plot in dispute, stamp duty payment of registration fee and payment of capital gain tax to Tanzania Revenue Authority but the Registrar of tiles did consider all

the costs incurred by the Appellants. Further that the Appellants fee humiliated and the plot in dispute has been taken by force.

In reply, Mr. Urso submitted that most of the fact argued therein are known to the applicant himself that the respondents can not be held accountable. He argued that the applicants did not bring any sufficient evidence to show that the name was changed.

My concern at this point is whether the court can determine the issue of who is the bonafide owner of the suit property at this point. The issue of ownership of the disputed land is covered under the Land Act while the issue at hand is in connection of rectification of land register in relation to a Title Deed under the Land Registration Act. Further to that, section 100(1) of the Act gives a right to a person suffering loss by reason of any rectification of the land register to be indemnified by the Government under the Act. The issue of ownership to land requires a long-established chain of evidence to prove the ownership and it cannot be determined by an appeal under this Act. That being the case, the issue of ownership is misplaced and cannot be determined as an appeal.

Having made the above findings, this appeal is found to be without merits and it is hereby dismissed in its entirety.

Date at Dar es Salaam this 08th day of May 2023



S.M.MAGHIMBI

JUDGE

