

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MWANZA
AT MWANZA**

LAND APPEAL NO. 30 OF 2023

(Arising from the decision of the Assistant Registrar of Titles of Mwanza issued on 4th day of May, 2023)

SALAUDIN MOHAMED MUSA APPELLANT

VERSUS

REGISTRAR OF TITLES 1st RESPONDENT

THE HON. ATTORNEY GENERAL 2nd RESPONDENT

RULING

2nd & 28th of August, 2023

ITEMBA, J.

On 5th May 2023, the appellant lodged this appeal alleging that the Registrar of Titles has erred in law by unjustifiably intending to rectify the Land Register by deleting the appellant's name from the Certificate of Title with number 28280 LR Mwanza in respect of Plot no. 154 Block 'D' Nyegezi, Mwanza registered in the names of SALAUDIN MOHAMED MUSA. That, the Registrar erred by not giving reasons for such rectification.

When the appeal was scheduled for hearing, it was faced with an objection that it was prematurely brought before the court without



complying with 90 days' notice to the 1st and 2nd respondents contrary to section 6(2) of the Government Proceedings Act (CAP 5 R.E 20190 as amended by the Written Law (Miscellaneous Amendments) Act. No. 1 of 2020.]

At the hearing of the said preliminary objection the appellant was represented by Mr. Anton Nasimire learned counsel while the respondents had Messr. Alen Mbuya and Felician Mseti, learned State Attorneys. Mr. Mbuya learned state attorney submitted that this appeal was prematurely brought because as long as this appeal is considered as a suit the appellant was supposed to serve the defendants with a 90 days' notice in terms of section 6(2) of the Government Proceedings Act. He cited the High Court cases of **Hassan Abdalah Kitigi and others vs. Temeke Municipal Council**, Misc. Civil Application No. 432 of 2020 which states that an appeal is similar to a suit and that of **Goodhope Hance Mkaro v. Assistance Registrar of Titles & 2 Others**, Land appeal No. 37 of 2021, which acknowledges the need for 90 days' notice when the Attorney General is made a party. He finally prayed for the appeal to be struck out with costs.



In reply, Mr. Nasimire submitted that they do not dispute the state attorney's observation that an appeal against the decision of the Registrar of Titles is a suit. However, he contended that this appeal is rendered under Section 99(1)(d) and (2), of the Land Registration Act and it does not require a prior notice of 90 days against Registrar of Titles and the Attorney General. That, in this case, the law is very specific of what an aggrieved party has to do, he has to file a notice vide section 102(1) of the Land Regulation Act, indicating his intention to appeal against Registrar decision. He insisted that the appellant did serve the court and the respondent the said notice and that is all what he had to do under particular circumstances. He added that, the Legislature was not short of words to amend Land Registration Act to introduce the requirement of 90 days' notice before an appeal against the Registrar can be filed.

He finalized by stating that the case of **Hassan Abdalah Kitigi & Others vs. Temeke Municipal Council** is distinguishable and that of **Goodhope Hance Mkoro** was decided per incuriam and they are only persuasive. Hence the preliminary objection has no basis it should be overruled with costs.



In his brief rejoinder, Mr. Mallya insisted that they do not oppose the requirement under Section 102 of the Land Registration Act but that does not mean the appellant is exempted from complying with 90 days' notice as stipulated under section (6)(2) of the Government Proceedings Act.

In the course of determining this objection, I wanted to satisfy myself on **whether the appeal is proper before the court by joining the Attorney General as a respondent.** I thus invited parties to address on the matter.

Submitting for the appellant, Mr. Nasimire stated that under section 102 (1)(a) of The Land Registration Act, this appeal is initiated by a notice of appeal and there is a requirement for the appellant to serve the notice to a person whose an appeal is lodged against. That, in his case the respondent is the Register of Tittles and the Attorney General, apparently does not feature. He added that joining the Attorney General is a matter of practice a civil litigation where a case is against a government official. He added that although in the enabling law, the Attorney General is not mentioned, joining the Attorney General does not render this appeal incompetent. Should the court find that the impleading of Attorney



General was unnecessary, the law is clear that misjoinder or non-joinder of a party does not defeat a case and; anyhow, the misjoinder if any, does not prejudice the Registrar of Titles.

On the other side, Mr. Mbuya learned State Attorney submitted that he is emphasizing that the appeal is defective because section 102 of the Land Registration Act does not make a requirement for the Attorney General as a party. He referred the court to the case of **Registered Trustees of Agricultural Society Vs. Registrar of Titles commissioner for Lads & Attorney General** Land Appeal No. 4/2022, High Court Dodoma, which holds the same position. He cited Order XXXIX Rule 3 of CPC and stated that it allows the court to reject the memorandum of appeal. Therefore, the petition should be struck out with costs.

Mr. Nasimire briefly rejoined that the cited case of **Registered Trustee of Agricultural Society** (supra) is distinguishable because it talks about appeals under Order XXXIX of the CPC. That, in the said case there were two options mentioned if the appeal is found defective; either to reject the memorandum or to return it for amendments. That, there are



no reasons given by the State Attorney on why the appeal should be rejected and not amended. He prayed that if the appeal is at fault, he should be allowed to amend it.

The issue is whether the appellant ought to have served the respondents with a 90 days' notice in terms of section 6 of the Government Proceedings Act.

Section 102 (1) of the Land Registration Act states that:

'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) In the case of a decision allowing or dismissing an application for first registration-

(i) No such appeal shall lie except on a matter of law or on a matter of mixed law and fact; and

(ii) No such appeal shall lie except at the instance of the applicant or a person who has given notice of objection to such application under the provisions of section 13: 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.' (emphasis supplied).

Section 6(2) of the Government Proceedings Act provides that;

(2) Where the Attorney General intervenes in any matter in pursuance of subsection (1), the provisions of this Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the ministries, local government authorities, independent departments and other government institutions: Provided that, the requirement of ninety days notice of intention to sue the Government as stipulated under this Act shall not apply where the Attorney General intervenes under this section.

Based on these provisions, I would agree with the appellant's counsel to some extent that this is the type of appeal which do not require service of 90 days' notice to the respondent because section 102(1)(a) of the Land Registration Act which is the enabling Act, does make it a mandatory requirement. The only notice mentioned is that under section 102(1)(a) which is 30 days. However, the same section 102 (1)(a) clearly does not require the Attorney General to be a party as well. So, it was wrong for the appellant to include the Attorney General as a party in this appeal. In the



case of **Registered Trustees of Tanzania Agricultural Society (TASO) vs The Registrar of Tittles and 2 others** Land Appeal No. 4 of 2022, High Court Dodoma; which is also cited by the respondent's counsel, the High Court was faced with a similar situation and decided that the Attorney General should not have been joined in the relevant appeal, as correctly argued by Mr. Mbuya state attorney. However, in terms of the appropriate remedy, what led the High Court to struck out the appeal was because the prayers in the said appeal were made against all three respondents including the Commissioner for Lands and the Attorney General who were the 2nd and 3rd respondents respectively. Looking at the Petition of Appeal at hand, there is no prayer which directly involves the 2nd respondent; the situation which makes the said case slightly distinguishable. Having said that, I am of the firm view that, the appellant's petition of appeal is bad for misjoinder of parties as the Attorney General was not supposed to be one of the respondents. On the way forward, Order I rule 9 of the Civil Procedure Code empowers this court to deal with the matter of misjoinder of parties in regards to the rights and interests of the parties actually before it, and that a suit shall not be defeated by reason of the misjoinder. Therefore, under Order I rule



10(2) of the Civil Procedure Code, I hereby order the name of the 2nd respondent be struck out from the petition of appeal and the petition be amended accordingly within 14 days from the date of this ruling. By doing away with the Attorney General as a party, *ipso facto*, the requirement for a 90 days' notice becomes immaterial.

In the end, the Preliminary Objection is dismissed, with no orders as to costs because the determination is done largely by the court's efforts.

It is so ordered.

DATED at Mwanza this 28th day of August 2023.




L. J. ITEMBA
JUDGE
28.08.2023