

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 47 OF 2023

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
CERTIORARI AND MANDAMUS AGAINST THE DECEISION OF THE
REGISTRAR OF TITLE TO TRANSFER OWNERSHIP RIGHTS OVER
LAND HELD UNDER CERTIFICATE OF OCCUPANCY NO. 44512**

AND

**IN THE MATTER OF THE LAND REGISTRATION ACT, CAP 334
SECTION 71**

BETWEEN

SWEETBERT MATHIAS KUTAGA

(As duly Constituted Attorney of

Aliraza Kassamali Rajani).....APPLICANT

AND

THE REGISTRAR OF TITLES.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

EUGINIA RUTATORA.....3RD RESPONDENT

WILSON MUJWAHUZI RUTATORA.....4TH RESPONDENT



RULING

16th November & 5th December, 2023

KAGOMBA, J

This is a ruling on two sets of preliminary objections raised by the respondents herein against the applicant's application. The applicant came to the court to challenge, by way of judicial review, the decision of the 1st respondent to transfer ownership of right of occupancy over Plot No. 105, Mbezi Industrial Area, Kinondoni Municipality in Dar es Salaam comprised under Certificate of Title No. 44512 (the "suit property") to Euginia Rutatora and Wilson Mujwahuzi Rutatora who are, respectively, the 3rd and 4th respondents herein. The impugned decision of the 1st respondent came about after rectification of the Land Register that saw the name of Aliraza Kassamali Rajani, who was previously the registered owner, de-registered on account of fraud.

Being aggrieved, the applicant filed his chamber summons supported by his own affidavit seeking for orders of *certiorari* and *mandamus* to quash the impugned decision of the 1st respondent and an order of *mandamus* to command and compel the said 1st respondent to re-register the names of Aliraza Kassamali Rajani as the registered lawful owner thereof. However, as

intimated above, there lies before the court preliminary objections determination of which becomes the immediate focus of this court.

In two different notices of preliminary objection, the respondents raised the following four grounds, *in toto*:

1. *This application is not maintainable in law as the same has been filed in contravention of Section 102 of the Land Registration Act, [Cap 334 R.E 2019];*
2. *The applicant has no locus standi to institute this application over the suit land as per the ruling and order of the High Court of Tanzania in Land Case No. 72 of 2020 between the applicant herein versus Euginia Rutatora & 4 Others.*
3. *The application is incurably defective and incompetent for non-compliance with the provisions of section 102(1) of the Land Registration Act, [Cap 334 R.E 2019] on a proper remedy a person has against any decision of the Registrar of Titles.*
4. *The application is incompetent for being res subjudice as there is a pending appeal at the Court of Appeal of Tanzania, Civil Appeal No. 565 of 2023 between the same parties herein touching on ownership over the disputed piece of land.*

While the first point of law above was raised in the notice of preliminary objection filed by the 1st and 2nd respondents, the rest of the preliminary points of law were raised by the 3rd respondent according to her notice.

On the date of hearing, Mr. Stanley Mahenge, learned State Attorney, appeared for the 1st and 2nd respondents, whereas Mr. Emmanuel Nkoma,

learned Advocate represented the 3rd and 4th respondents. The applicant was represented by Mr. Elisa Abel Msuya, Ms. Zakiya Ally and Ms. Neema Makunga, also learned Advocates.

Submitting on the first limb of the objection, Mr. Mahenge argued that the applicant was supposed to appeal to the High Court upon being aggrieved by the decision of the 1st Respondent, as prescribed under sub-section (1) of section 102 of the Land Registration Act, [Cap 334 R.E 2019] (Henceforth "**LRA**"), and not to apply for judicial review. To back up his contention, learned State Attorney referred the court to the decision of the Court of Appeal in **M.E Business Ltd. vs Amos David Kassanda & 2 Others**, Civil Application No. 429/17 of 2019 and the decision of High Court, Land Division, in **Abel Said Abel & Joseph Emmanuel Mbilinyi vs. Registrar of Titles & 2 Others**, Land Case No. 276 of 2022.

Mr. Mahenge argued further that the applicant could have remedies, other than appealing to this court, if the law was silent as to what is the appropriate remedy for challenging the decision of the 1st respondent. In this connection, he cited the decision of the Court of Appeal in **Michael David Nungu vs. Institute of Finance Management**, Civil Appeal No. 170 of 2020, for the position that where the law clearly provides for a procedure to be followed to pursue a right, such procedure has to be observed. And, that

the Court of Appeal was emphatic that available remedies be pursued before embarking on judicial review. For all these reasons, the learned State Attorney prayed the court to dismiss the application with costs.

Moving on to the second set of preliminary objections, Mr. Nkoma started off by dropping the fourth point of objection concerning *res subjudice*. He submitted on the second and third points only.

On the second point of objection, Mr. Nkoma submitted that the applicant had no interest in this matter, and therefore lacked *locus standi* to file this application. The contention here is that when the Land Division of this court at Dar es Salaam in was invited to determine a preliminary objection in Land Case No. 72 of 2020, which involved the same parties, and which has been referred to in Land Case No. 117 of 2022, the applicant was declared to have no *locus standi* to bring up a suit concerning the suit property. He clarified that as the applicant has appealed to the Court of Appeal to contest his lack of *locus standi*, a matter which is yet to be determined otherwise, the position of this court remains unchanged.

Citing the decision of the Court of Appeal in ***Chama cha Wafanyakazi wa Mahoteli na Mikahawa vs. Kaimu Mrajisi wa Vyama Vya Wafanyakazi na Waajiri Zanzibar***, Civil Appeal No. 300 of

2019, the learned counsel submitted that the applicant also lacked locus standi to file for judicial review and prayed the court to hold so.

On the third limb of objection, learned counsel joined hands with Mr. Mahenge, emphasizing that the application has been filed in contravention of section 102 (1) of **LRA**. He added that judicial review becomes meaningful where the applicant has no other remedy, which is not the case with the applicant herein who has other remedy under the cited provision of the Land Registration Act. He prayed the application be dismissed for being improperly filed before this court.

Having submitted as above, the learned counsel withdrew the fourth point of preliminary objection and rested his case.

In his reply, Mr. Msuya started with the first limb of objection raised by the 1st and 2nd respondents thereby simultaneously replying to the third point of objection raised by the 3rd and 4th respondents on contravention of section 102(1) of **LRA**.

It is his contention that while it was correctly submitted by his counterparts that section 102(1) of **LRA** provides for an appeal to the High Court as a recourse for a person aggrieved by the decision of the Registrar of Titles, that remedy applies only to persons who were invited as parties to the matter that was before the Registrar. According to him, his client was

not a party to the proceedings before the Registrar of Titles which led to the impugned decision, hence he reserves the right to file for judicial review, as he did. Learned Counsel added that only parties to a dispute can enjoy a right of appeal. He cited in this regard the case of **Attorney General vs. Maalim Kadau & 16 Others** [1997] T.L.R 69 to bolster his contention. He added that the parties to the proceedings before the Registrar are named in Annexure A9 to the applicant's affidavit, and distinguished the cases of **M.E Business Ltd. vs Amos David Kassanda & 2 Others** (supra) as well as the case of **Abel Said Abel & Joseph Emmanuel Mbilinyi vs. Registrar of Titles & 2 Others** (supra) arguing that their facts show that all the parties were before the Registrar of Titles. He argued that in the instant case, the applicant was illegally left out.

On the objection that the applicant lacked *locus standi*, raised by the 3rd and 4th respondents, Mr. Msuya contended that any person whose interest has been affected by the decision of a quasi-judicial body reserves the right to apply for judicial review. According to him, a fact that the applicant's right over the suit property was adversely affected is not to be disputed. He emphatically contended that all what the applicant seeks is to have the registration process quashed and for an order of *mandamus* to re-register the applicant.

As regards the case No. 117 of 2022 before Hon. Makani, J, learned counsel contends that while her Ladyship dealt with the issue of land ownership, in the instant application the court is invited to deal with re-registration of the applicant in the Land Register. After this submission, he rested his case praying the court to overrule the preliminary objections.

In his rejoinder, Mr. Mahenge mainly reiterated his submission in chief, emphasizing that section 102(1) of **LRA** requires “any person” aggrieved by the decision of the Registrar of Titles, whether present before him or not, to appeal to the High Court. He added that according to annexure A9 to the applicant’s affidavit, Aliraza Kassamali Rajani was part of the proceedings before the Registrar, hence the contention that an appeal is only available to the parties to the proceedings is, for this reason, misplaced. He prayed that the application be dismissed with costs.

On his part, Mr. Nkoma rejoined by joining hands with Mr. Mahenge on the position of the law under section 102(1) of **LRA**. He distinguished the case of **Maalim Kadau** arguing that it was concerned with an appeal from the High Court to the Court of Appeal as per Court of Appeal Rules, while the instant application is about an appeal to this court against the decision, order or an act of the Registrar of Title, whereby section 102(1) of **LRA** explicitly provides for an appeal as a remedy to any aggrieved person.

As regards applicant's lacking *locus standi*, Mr. Nkoma found no distinction between the issue of land ownership and the prayers for re-registration of the applicant as both have the same effect.

He was emphatic that the applicant herein had already been declared to have no interest over the suit property by this Court and no contrary decision has been made by the Court of Appeal to which the applicant has appealed costing his lack of *locus standi*. He is, therefore, of the view that, as it stands, the applicant has no *locus standi*.

Having considered the above rival submissions, the general issue for determination is whether the preliminary objections raised by the respondents have merits. Specific issues are; **firstly**, whether application is not maintainable in law for being filed in contravention of the provision of section 102(1) of the **LRA**; and **secondly**, whether the applicant has no *locus standi* to institute this application as per the Ruling and Order of this Court in Land Case No. 72 of 2020.

The first issue has to be determined by considering the imports of the provision of section 102(1) of the **LRA**. Its relevant part provides 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...**"*

[Emphasis added]

From the wording of the above-cited provision, it is clear that once a decision or an order is made by the Registrar, any person dissatisfied with it can access this court by way of an appeal. Under section 2(1) of **LRA** the word "Registrar" refers to the Registrar of Titles, his Deputy and Assistant.

In this matter, the applicant's averments particularly under paragraphs 14, 15, 17 and 18 of his affidavit are to the effect that he is aggrieved by the illegal decision of the Registrar of Titles to transfer his property to the 3rd and 4th respondents. This being the case, Mr. Mahenge and Mr. Nkoma for the respondents are absolutely right in their contention that the applicant ought to file an appeal to this court instead of opting for judicial review. This is what section 102(1) of **LRA** unambiguously provides.

The argument by Mr. Msuya that the applicant could not appeal because he was not a party to the proceedings before the Registrar of Titles does not hold. Section 102(1) of **LRA** does not restrict **any person** to appeal provided he is aggrieved by the decision of the Registrar. With this specific provision in the statute, the orders of *certiorari* and *mandamus* cannot lie against the decision of the Registrar where an aggrieved person has not pursued an appeal route under section 102(1) of **LRA**. Consequently, the first issue is answered in the affirmative, for it is true that the filing of this application has contravened the provision of section 102(1) of **LRA**. *Ipsa*

facto, the first point of preliminary objection is meritorious, and is accordingly sustained.

As regards the second specific issue, the applicant is being challenged for lacking *locus standi*. The concept of *locus standi* is very basic in litigation, and it is lucidly explained by Samatta, J (as he then was) in **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] T.L.R 203, thus;

*“Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that **his right or interest has been breached or interfered with**”. [Emphasis added]*

In **Halbury’s Law of England 4th Edition** paragraph 49 at page 52 *locus standi* is explained in the following words;

*“a party must not only show that the court has power to determine the issues but also that **the party is entitled to bring the matter before the court.**” [emphasis added]*

It is, therefore, that entitlement to task the court to hear one’s matter that is what *locus standi* simply refers to.

In **Mukisa Biscuit Manufacturing Tanzania Ltd v. Westend Distributors Ltd** (1969) 1 EA 669 the position of the law is well-laid that a preliminary objection has to consist a pure point of law on matters pleaded

or those arising from clear implication in the pleadings. In the same vein, the Court of Appeal in **Ali Shabani and 48 Others V. Tanzania National Road Agency (TANROADS) and Another**, Civil Appeal No. 261 of 2020, CAT, Tanga, also held to the effect that while a preliminary objection has to be based on pure point of law, the same will not be taken in abstract but is to be determined with reference to some plain facts stated in the pleadings without examining any other evidence.

Therefore, reference to the pleadings in determining preliminary objections is something the law blesses.

It is Mr. Nkoma's contention that the applicant's lack of *locus standi* was already declared by this court in its Land Division vide Land Case No 177 of 2022 before Hon. Makani, J and an appeal is lying before the Court of Appeal where the applicant herein is contesting the decision made in the Land Case No.72 of 2020. The affidavit in support of the application reveals that in Land Case No. 117 of 2022 (**Annexure A-10**) a preliminary objection was raised against the plaintiff therein, who is the applicant in the instant matter, on a point of law, among others, thus;

"1. The plaintiff has no locus standi to prosecute this matter as per judgements of this court Hon. P.M. Kente, J and Opiyo, J in Land Case No. 95 of 2014 and Land Case No.72 of 2020 respectively".

In sustaining the above objection, Hon. Makani, J referred to the decision in Land Case No.72 of 2020 between **Sweetbert Mataga (as the Attorney of Aliraza Kassamali) vs. Euginia Rutatora & Others** (HC-Land Division) (unreported), where it was stated categorically that Sweetbert Kutaga had no *locus standi*. Her Ladyship went on to observe as follows:

*“.....It is not in dispute that the plaintiff SWEETBERT MATHIAS KUTAGA, the appointed Attorney of Aliraza Kassamali Rajani was also the plaintiff in the same capacity in Land Case No. 72 of 2020. The 3^d and 4th defendants in the present case were also defendants in that case. The subject matter in these cases is undoubtedly the claim of ownership of the property with CT No. 44512, Plot No. 105 Mbezi Industrial Area, Kinondoni Dar es Salaam (the suit property) **Now, in Land Case No. 72 of 2020, the plaintiff was declared by this court that he did not have locus standi. This decision is still valid, until there is a decision contrary, from the superior court, that is the Court of Appeal. And as a matter of fact, the plaintiff herein has filed a Notice of Appeal to the Court of Appeal to challenge this decision. Now, considering that there is a decision declaring that the plaintiff has no locus standi then this court becomes fanctus officio. Proceeding with this suit while the plaintiff has already been declared by this very court as having no locus standi***

may create conflicting decisions and it is an absurdity in the court process”.

[Emphasis added].

I fully subscribe to the above position. I should only add that the said position does not change merely because the instant matter is an application for judicial review. What we have are different battles of the very same war as the subject matter and parties are substantially the same.

In his reply, the counsel for the applicant attempted to rely on the fact that the impugned transfer of the suit property to the 3rd and 4th respondents occurred after the decision in Land Case No. 117 of 2022 and that re-registration of Aliraza Kassamali Rajani, which is a relief being sought in this application, is different from land ownership issue which confronted Hon. Makani, J.

In my considered view, the fact that the transfer was made after the decision in Land Case No. 117 of 2022 doesn't invalidate the reasons made by the court for holding that the applicant lacks *locus standi*. The reason, which stem from the judgment in Land Case No. 72 of 2020, is that the same plaintiff (now applicant) who had already sold the suit property turns back to claim declaration of ownership and seeks vacant possession of the



property he had already sold, even after being paid in respect of the same, and having a court decree for payment of the balance of the sale price.

Remarkably, the position that the applicant lacks *locus standi* has neither been vacated nor overruled. It follows that the same reason on which the applicant was found to lack locus standi applies in the instant matter for as long as the dispute is substantially the same.

As for the contention that re-registration of Aliraza Kassamali Rajani is different from land ownership, I find these to be mere semantics. To re-register the applicant in the Land Registry is tantamount to acknowledging his ownership of the suit property.

Therefore, the second specific issue on applicant's lack of *locus standi* to institute this application is also answered in the affirmative. Thus, the third objection raised by the 3rd and 4th respondents is also full of merit.

In the end, both points of the preliminary objection argued before this court are meritorious and are accordingly sustained. The application is consequently struck out with costs.

Dated at Dodoma this 5th day of December, 2023.




ABDI S. KAGOMBA

JUDGE