

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

**LAND APPEAL NO. 30 OF 2022**

**VUMILIA PRODUCERS AND**

**SHOPPING CENTRE LIMITED. ....APPELANT**

**VERSUS**

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

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

**MUNICIPAL DIRECTOR OF KAHAMA**

**MUNICIPAL COUNCIL.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

*27<sup>th</sup> July & 5<sup>th</sup> December, 2023.*

**S.M. KULITA, J.**

This is an appeal against the decision of the Registrar of Titles for Shinyanga, delivered on 20<sup>th</sup> August, 2020. The story behind this appeal is that, in 2014 the Appellant was allocated Plot No. 234 Block "A" situated at Kahama Urban area. It appears that, the said allocation was then revoked. That said revocation, aggrieved the appellant, specifically

on the aspects of procedures taken, hence, this appeal. Reacting on it, the respondents raised preliminary objections on the following points; **one**, the appeal is not accompanied with the copy of decision appealed against, **two**, the appeal is against wrong parties, that they were not parties before the Registrar of Titles and **three**, the appeal is incompetent for being omnibus.

As the law requires the preliminary objections to be determined first, on 29<sup>th</sup> May, 2023, the said Preliminary came for hearing. Mr. George Kalenda, State Attorney, appeared for respondents whereas Mr. Paul Kaunda, Advocate, appeared for the appellant.

Submitting in support of the first point of Preliminary Objection, Mr. Kalenda stated that, petition of appeal was filed under section 102(2) of the Land Registration Act. He added that, under subsection (3) the appellant was required to attach a copy of decision complained about. Mr. Kalenda submitted that this condition was not met by the appellant. He said that, what the appellant had attached is an internal memo (Folio 6) written by the Registrar of Titles to the Assistant Registrar. He added that, the appellant had to seek and obtain copy of said decision before.

As for the second point Mr. Kalenda stated that, the appeal was brought under section 102(1) and (2) of the Land Registration Act. He averred that under this section, the aggrieved person is allowed to appeal against decision of the Registrar of Titles. He added that, the Registrar of Titles is an office under the Ministry of Land and Human Settlement, he thus contended that, the Solicitor General was a must to be incorporated. He again contended that, Commissioner for Lands and the Municipal Director for Kahama have been wrongly sued. To him, the one aggrieved with the decision of Registrar of Titles is allowed to appeal only against the Solicitor General.

On the last point of Preliminary Objection Mr. Kalenda stated that, the appellant's petition contains a prayer for injunction against the third respondent from collecting rent on the suit premises and reimbursement. To him, this prayer comes from the Civil Procedure Code. He argued that, as this is a land case, hence, the matter falls on omnibus. He insisted that, for the omnibus to go together, they should not oppose to each other and should not be made from different laws. To him, the prayers in the petition are diametrically opposing and made under different laws.

In reply Mr. Kaunda stated that, on the issue of attaching copy of decision to the appeal, he wanted this court to make judicial notice on the entire proceedings arising from the Land Appeal No. 37 of 2020 between the same parties, under section 58 and 59(1)(a) and (d) of the Evidence Act. He said that in that case the Attorney General (AG) filed folio 6 on behalf of the respondent, claiming it being a record of proceedings, written by the Registrar of Titles while rectifying the Land Registrar to the detriment of the appellant. He added that in that case the AG moved the court that, folio 6 was the decision of the Registrar of Titles to revoke the title deed. To buttress his assertion Mr. Kaunda referred this court to page 12 of Vumilia Producers Case before Mkwizu, J. (Land Appeal No. 37 of 2020) where Folio 6 was said to be a decision of the Registrar of Titles. He added that, folio 6 is what he was supplied when he had sought for the decision of the Registrar of Titles. Mr. Kaunda made a considered opinion that, as the respondent made this court to believe that, folio 6 was a decision to him under section 123 of the Evidence Act the respondents are estopped from denying the same. Further Mr. Kaunda was of the views that, as this same point of objection was also determined by Mkwizu J, he thus stated that, it is *res judicata*.



As for the second point of Preliminary Objection, Mr. Kaunda wanted again this court to take judicial notes on the Appeal No. 37 of 2020. He said that, on it, all parties save for the Attorney General played role in the revocation of Plot 234 Block "A". He added that, the 2<sup>nd</sup> respondent is the one who swore affidavit that, the appellant got the said land fraudulently. As both, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had a role on the revocation of the land in question, to him, these are the proper and necessary parties for this matter, otherwise they will be regarded to have been condemned unheard. Mr. Kaunda further stated that, however, under Order 9, Rule 1 of the Civil Procedure Code, it is a requirement of the law that, suit shall not be defeated by the reason of Misjoinder or Non joinder of a party. He thus, prayed for the court to proceed with dealing with the matter regarding the rights and interest of parties. For the part of Municipal Director, Mr. Kaunda stated that, the Commissioner swore an affidavit and commented to the Municipal Director (3<sup>rd</sup> respondent) that, he should proceed with execution. Mr. Kaunda stated that, with this role that person cannot be excluded from the case at hand.

On the third point of Preliminary Objection Mr. Kaunda stated that, objection on omnibus is not meritorious. He argued that, in our

jurisprudence there is no law which strictly prohibits omnibus prayers. He cited the case of **TZ KNIT WARE LTD V. SHAMSHUDIN ISMAIL [1989] TLR 48**. Mr. Kaunda added that, his prayers in the appeal do not diametrically oppose each other, but interrelated.

On the same point, Mr. Kaunda stated that, it is obvious that, once the decision of the Registrar of Titles is declared illegal, it then follows that, the appellant should be declared lawful owner of the suit premise. To him, that is the exclusive ownership right over the premise, hence gets exclusive enjoyment over it. The counsel added that the one who used to receive rent wrongfully from the tenant, should compensate the victim after being declared the lawful owner.

In alternative, Mr. Kaunda stated that, even if the court finds one among the prayers is inconsequential, the defect does not defeat the suit, the remedy is to ignore it like ignoring the offending paragraphs in the affidavit. In general, he said that, the prayers are interrelated. To justify his assertion, the Counsel cited the case of **Ally Salum Said (administrator for the estates of late Antal Said Kleb) V. Iddi Athuman Ndaki, Civil Application No. 450 of 2021, CAT at DSM, page 16**.

In rejoinder Mr. Kalenda stated that, folio 6 is an internal memo which was not a correspondence between the Registrar of Titles and the appellant. As for the point of Preliminary Objection being regarded *res judicata*, Mr. Kalenda stated that, it is not our legal practice.

On the second ground of the Preliminary Objection, Mr. Kalenda rejoined that, section 14(1)(b) of the Local Government Act provides for the persons who are capable to sue and being sued. To him, the 2<sup>nd</sup> and 3<sup>rd</sup> respondent were to be made as witnesses not parties to the suit. As for the cited Order 1, Rule 9 of the Civil Procedure Code which is concerned with joinder and misjoinder of the parties to the case, Mr. Kalenda left the matter for the court to decide.

Concerning the third point, Mr. Kalenda admitted that, there is no statute governing omnibus, but the case laws. He maintained that, the prayer for injunction and reimbursement of rent alleged to be collected by the 3<sup>rd</sup> respondent are interrelated prayers which cannot be sought together. He said the same touches different authorities and arise from different laws.

I have earnestly gone through both parties' submissions, the supplied authorities and taken full consideration of the rival issues



between them. In my analysis I am going to determine the above raised points of Preliminary Objection one after the other in a random mode.

Starting with the second point of Preliminary Objection which is about misjoinder and non-joinder of parties to the suit, Mr. Kalenda, State Attorney, alleges that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have been wrongly sued. To him they were just to be made as witnesses. He then added that, as the Registrar of Titles is an office under the Ministry of Land and Human Settlement, only the Solicitor General was to be the respondent.

To the contrary Mr. Kaunda stated that, in the said that in the impugned decision, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents played a role in reaching into it. He said that, if they are not made parties to the case, they will likely be condemned unheard. He said that the 2<sup>nd</sup> respondent swore the affidavit stating that the appellant was allocated the suit premise and thus told the 3<sup>rd</sup> respondent to proceed with execution, the act which was actually done. With this involvement, he said that these two are proper and necessary parties to the case at hand. These facts were not objected by Mr. Kalenda.

I am alive with the **order 1, Rule 9 of the Civil Procedure Code** which I hereunder quote;



*"9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it"*

This position of the law has been followed by courts in different cases like that of **NBC Holding Corporation V. Shirika la Uchumi na Kilimo Ltd (SUKITA), Commercial Case No. 24 of 2001**. With this position of the law, I am not going to strike out this appeal for the reason that some parties have been wrongly sued or some are not made as parties to it.

Concerning the third point of Preliminary Objection which is concerned with omnibus prayers, Mr. Kalenda contended that, the prayer made by the appellant on injunction to collect rent and reimbursement of the rent that has been collected by the third respondent, being the prayers supported by the Civil Procedure Code, while this is a land matter, this appeal should be struck out for containing omnibus prayers. To the contrary, Mr. Kaunda was of the views that, the prayers are not omnibus. He gave the reason that, when the decision of the Registrar of Titles is declared illegal, it therefore follows that, the appellant shall be declared lawful owner of it, thus he

should be left uninterrupted with the enjoyment of the suit land in question. To him, the prayers sought are interrelated.

On the issue of omnibus prayers, as the parties themselves admit, I also agree that, there is no statutory law that governs it, but case laws which are actually not strict on it. The case of **MIC Tanzania Ltd V. Minister for Labour and Youth Development and Another, Civil Appeal No. 103 of 2004** is to the effect that;

*"Unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reason. We wish to emphasize all the same that, each case must be decided on the basis of its own peculiar facts"*

In the case of **Rutunda Masole V. Makufuli Motors Limited, Misc. Labour Application No. 79 of 2019, HC at Mwanza** it was held;

*"The condition precedent for applicability of this rule is that, the application should not be diametrically opposed to each other or preferred under different*

*laws, complete with different timelines and distinct considerations in their determination”*

The first cited case encourages omnibus prayers so long as there is no law prohibiting that. The same aspect is left for each court to decide according to the facts before it. The last cited case does not prohibit omnibus prayers, only that, they should not oppose to each other.

The records provide that, the appellant prayed **firstly** for the decision of the Registrar for Titles to be quashed, thereby, the appellant be declared lawful owner of the suit land. **Secondly**, as the third respondent receives rent from the premises, he should be restrained from going on collecting the same and she be ordered for reimbursement of the rent it had collected.

The question is, have the two prayers diametrically opposed to each other? The answer is, not. The two prayers sought by the appellant do not oppose each other. As I can see, these prayers do not oppose each other but they depend to one another. If the appellant is declared lawful owner of the suit premise, then, the third respondent who appears to collect rent on the suit premise, must thus be restrained from going on collecting the same, so that the owner, cannot be denied his

rights. Thus, the prayers do not oppose each other. On that account, this point of preliminary objection too fails.

Lastly, the issue of attaching copy of decision of the Registrar of Titles in the present appeal. In the Respondents' submissions, Mr. Kalenda submitted that, Folio 6 which has been attached by the appellant is not decision of the Registrar of Titles but an internal memo. On the other hand, Mr. Kaunda, Advocate for the appellant, wanted this court to take judicial notice on the Land Appeal No. 37 of 2020 where in the same saga on what was the decision of the Registrar of Titles, counsel for the respondents stated that, folio 6 is that decision of Registrar of Titles. From this, Mr. Kaunda argued that, under that situation, respondents are estopped from denying that, folio 6 is a decision of Registrar of Titles.

Under the dictates of section 59 of the Evidence Act, I had to earnestly pass through that former Land Appeal No. 37 of 2020 between these same parties herein where both parties appeared before Mkwizu J. Actually, the proceedings in that former case, Land Appeal No. 37 of 2020 show that, the appellant when sought to be supplied with copy of decision of Registrar of Titles, through a letter dated 20<sup>th</sup> August, 2020, the Assistant Registrar of Titles, replied to Mr. Kaunda it being the one.



He also notified him with the procedures on how he should get that said copy of decision.

The records show further that, Mr. Kaunda followed the instructed procedures and got an instrument which was termed as, a copy of Registrar's decision. So, in that former suit Land Appeal No. 37 of 2020, when Mr. Kaunda attached that instrument, he was ambushed with preliminary objection, that, the appellant did not attach a copy of decision from the Registrar of Titles.

Proceedings in that said Land Appeal No. 37 of 2020 provides further that, when parties were arguing that said preliminary objection, as per page 8 of the typed proceedings, Mr. Solomon Lwenge, Senior State Attorney who was the Counsel for the respondents submitted that, the attached instrument by the appellant, was not the decision of Registrar of Titles, but, Folio 6 is that decision of Registrar of Titles, which approved rectification of the appellant's Title. On the strength of those submissions by Mr. Solomon Lwenge, Senior State Attorney, the appellant's appeal on Land Appeal No. 37 of 2020 got struck out for being filed without attaching copy of decision of the Registrar of Titles.

Believing on the submissions by Mr. Solomon Lwenge in Land Appeal No. 37 of 2020, the appellant after being granted extension of

time, has now filed this present appeal, Land Appeal No. 30 of 2022, attaching the said Folio 6 as a copy of decision of the Registrar of Titles. Even with this move of attaching a copy of decision that was admitted by Mr. Lwenge, yet the appellant has been ambushed again with the same preliminary objection from the same chamber counsels, that the appellant has not attached a copy of decision of the Registrar of Titles.

I am alive with the principle of ***estoppel*** found in section 123 of the Evidence Act of which I reproduce hereunder for easy of reference;

*"123. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing"*

The cited letter dated 20<sup>th</sup> August, 2020 authored by the Assistant Registrar of Titles, which was signed by someone Hadija Milulu, proves the appellant's struggles on getting a copy of decision of the Registrar of Titles. From the proceedings of Land Appeal No. 37 of 2020 between the same parties at High Court Shinyanga Zone, the 4<sup>th</sup> respondent, on behalf of other respondents made the appellant to believe, as per page

8 of the typed proceedings that, folio 6 is the copy of decision of the Registrar of Titles. On the strength of the same submissions, the court was made to believe it and so struck out the appellant's appeal.

On the dictates of section 123 of the Evidence Act, all respondents are estopped from denying that, folio 6 is the copy of decision of the Registrar of Titles and that, under normal circumstances, the appellant would not have risked to file his appeal for the second time without attaching a copy of decision of Registrar of Titles, as failure to do so would lead to her appeal to be re-struck out.

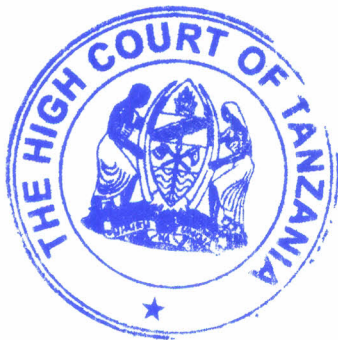
If the appellant sought and was supplied with what he firstly believed to be copy of Registrar's decision but his appeal was struck out for being filed without attaching copy of Register's decision, this act alone was problematic. Further, the previous act of the respondent's counsel inviting the court and the appellant to believe that folio 6 was that copy of the Registrar's decision and denying it at this stage, is a big problematic as well. Under such scenario, what I can simply say is that, the court's precious time should not be wasted but be seriously used for those in need of settling disputes. On that account, this ground of appeal is marked to have failed as well.

As long as all points of preliminary objections have failed as discussed above, I hereby proceed to overrule the same for being unmeritorious. Each party to bear its own costs.



**S. M. KULITA**  
**JUDGE**  
**05/12/2023**

**DATED** at **SHINYANGA** this 5<sup>th</sup> day of December, 2023.



**S. M. KULITA**  
**JUDGE**  
**05/12/2023**