

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPEAL NO. 4278 OF 2024

(Originating from the decision and order of the Assistant Registrar of Title Babati, Manyara

Made Under sections 99 (1) of the Land Registration Act, Cap 334)

THE REGISTERED TRUSTEES OF MASJID AL-AZHAL.....APPELLANT

VERSUS

ASSISTANT REGISTRAR OF TITLES RESPONDENT

JUDGMENT

8th April and 17th May, 2024

MIRINDO, J.:

The appellant is the Registered Trustees of Masjid Al-Azhal and owns a Certificate of Title No 9717 of Land Registry Moshi over Plot No 24 Block 'H' in Babati Urban Area in Manyara Region. On 8/2/2024, the Assistant Registrar of Titles in Manyara Region issued to the appellant a thirty-days' notice of rectification of the Land Register under section 99 (1) (a) and (b) of the Land Registration Act [Cap 334 RE 2019]. The purpose of rectification is to replace the

name of the appellant with that of Her Excellency the President of the United Republic of Tanzania. The notice directed the appellant to surrender the Certificate of Title No 9717 to the office of the Assistant Registrar of Titles in Manyara in Region for cancellation. The rectification was set to take effect on 9/3/2024 after the expiry of thirty days of the issuance of the notice unless this Court ordered otherwise.

The appellant was dissatisfied with the rectification notice and appealed to this Court under section 102 (1) of the Land Registration Act [Cap 334 RE 2019] before the expiry of the thirty days of the notice of rectification.

Accompanying the appeal was a certificate of extreme urgency in respect of an application for the maintenance of the status quo pending hearing of the appeal. I heard the application on 8/3/2024 and issued the order for maintenance of the status quo.

At the hearing of the appeal, the appellant was represented by Mr Hamisi Mkindi and Mr Nicodemus Mbugha, learned counsel. Mr Hance Mmbando, learned State Attorney appeared for the respondent, the Assistant Registrar of Titles.

The appeal to this Court consisted of three grounds of appeal. The first ground of appeal is on the respondent's failure to accord the appellant the right

to be heard before making the decision to rectify the Land Register. Mr Mkindi, learned counsel, observed that the rectification notice informed the appellant about the respondent's decision rectifying the Land Register. The decision was on changing the ownership of the Plot No 24 Block 'H', Babati Urban Area, registered under Certificate of Title No 9717 in the name of the appellant to read the name of Her Excellency the President of the United Republic of Tanzania. The decision was to take effect within thirty days unless the Court ordered otherwise.

The learned counsel extensively argued that the respondent denied the appellant the right to be heard and condemned it unheard. He pointed out that the respondent never issued any reasons in support of its decision against the appellant. This was a violation of the constitutional right to be heard which is enshrined in Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977. The duty to give reasons, Mr Mkindi argued, is part of the constitutional right to be heard as affirmed and reaffirmed in various judicial decisions. The learned counsel invited this Court to take into account the case of **Rajabu Mikidadi Mwilima v Registrar of Titles**, Miscellaneous Land Case Appeal 67 of 2018 (2020) TZHC Land D 2336 where it was held that the right to be heard is a fundamental right that cannot be violated by the Assistant Registrar of Titles regardless of the lawfulness of its decision. The appellant had

not been issued with any reasons for the decision made by the respondent and therefore the respondent had violated the principles of natural justice. The appellant's counsel argued that the case of **Fred Habibu Katawa and Another v Registrar of Titles and 3 Others** (Land Appeal No. 03 of 2021) [2023] TZHC 18950 was inapplicable to the circumstances of this appeal.

For both reasons, the learned counsel, concluded that the respondent erred in law and in fact for not observing the principles of natural justice decision when it made the decision to rectify the Land Register.

The learned State Attorney observed that the notice issued to the appellant clearly stated the reasons for the intended rectification, namely, the application by the Assistant Commissioner for Lands, Babati for rectification of the Land Register.

In disposing the first ground of appeal, I would like to state that rectification of land register is a critical aspect in land law. The importance of rectification of land register was once underscored in Brickdale, CF and Stewart-Wallace, JS., **Land Registration Act 1925**, 4th edn, London: Steven and Sons Ltd, 1939 at page 637 in relation to British legislation on land registration:

...no provisions in the Land Registration Act are more vital than those relating to rectification of the register and the provision of indemnity for error. The working practicability of the system depends largely upon them.

This means that the rectification provisions are to be interpreted with particular care. The reasons for rectification of land register are spelt out under section 99 (1) of the Land Registration Act [Cap 334 RE 2019] as follows:

- (a) giving effect to a High Court order [section 99 (1) (a) and (b)];
- (b) there is consent of interested persons; [section 99(1) (c)] ;
- (c) the memorial was obtained by fraud; [section 99 (1) (d)];
- (d) updating the register because the memorial has become obsolete; [section 99 (1) (e)] or;
- (e) correcting an error, omission, a mistake in the land register, or for any other sufficient cause it is deemed just to do so; [section 99 (1) (f)]

The third and fifth reasons are subject to restrictions set forth under subsection (2) of section 99 whose discussion are not relevant in determining the present appeal.

It is clear from the body of the notice entitled "NOTICE-RECTIFICATION OF THE LAND REGISTER" that it was issued under section 99 (1) (a) and (b) of the Land Registration Act. It is this notice that was served on the appellant. Apparently, it set forth reasons for rectification namely, in respect of a High Court order. But the sufficiency of those reasons remains to be determined in the

later stage of this judgment including the general complaint that the appellant was denied the right to be heard.

The fact that the rectification notice amounted to a decision was argued in respect of the second and fourth grounds of appeal and it will be dealt with shortly after examining the scope of those grounds of appeal.

The second and fourth grounds of appeal were argued jointly. Both grounds alleged miscarriage of justice. In the second ground of appeal the miscarriage of justice was occasioned because the rectification was unjustified. The fourth ground of appeal attributed miscarriage of justice on non-compliance with the procedure for rectification of the land register.

There are two limbs to these grounds of appeal. The first limb is whether the decision to rectify Certificate of Title No 9717 had actually been undertaken. The appellant's counsel observed that the notice required the appellant to produce its Certificate of Title for cancellation subsequent to an application made by the Assistant Commissioner for Lands Babati. The decision to cancel the appellant's Certificate of Title had the effect of permanently depriving the respondent's right to own that land. That amounted to revocation of that title.

Mr Mkindi, learned counsel, contended that terms "cancellation" and "revocation" may be used interchangeably. He made reference to Garner,

Black's Law Dictionary, 9th edn at page 234 and indicated that the term "cancellation" has been defined to mean "an annulment or termination". At page 1435 of that dictionary, the term "revocation" is defined to mean "an annulment or cancellation".

From these definitions, the learned counsel noted that cancellation or revocation of title is provided for under section 45 (1) of the Land Act [Cap 113 RE 2019] and not in the Land Registration Act. The powers of the Assistant Commissioner for Lands to propose revocation of title to the President are provided for under the Land Act and not in the Land Registration Act. The notice for rectification clearly stated that the Assistant Commissioner for Lands presented an application for rectification of Land Register under section 99 (1) (a) and (b) of the Land Registration Act. The Assistant Commissioner for Lands has no such powers. So, the Assistant Registrar of Titles erred in making the decision to rectify the land register without justification and without following the laid down procedure for revocation of title. He argued that this occasioned miscarriage of justice.

The respondent's counsel, Mr Mmbando, learned State Attorney, argued that no decision had been made, only a thirty-days' notice of rectification had been issued. The notice directed the appellant to approach the High Court within those days, if it so wishes. Mr Mmbando contended that section 99 (1) accords

the respondent the right to be heard by allowing the respondent to approach the High Court for a restraint order. In view of this argument, the learned State Attorney referred this Court to the case of **Fred Habibu Katawa and Another vs Registrar of Titles and 3 Others** (Land Appeal No. 03 of 2021) [2023] TZHC 18950. The learned State Attorney distinguished the case of **Rajabu Mikidadi**. He observed that in the instant appeal only a 30-days' notice had been issued to the appellant while in **Rajabu Mikidadi** several rectifications were made and the main issue was the legality of the first rectification and the rectification that was made *suo motu* by the Assistant Registrar of Titles revising the decision of Magomeni Primary Court. He concluded that the appellant had been afforded the right to be heard by the respondent before the decision to rectify the Land Register was effected.

In this first limb, there are two issues to be decided. The first issue is on being accorded opportunity to be heard. The answer to this issue is to be found in the provisions of section 99 (1) of the Land Registration Act. The section provides in part that:

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-

This first paragraph of section 99 (1) recognises rectification of land register by the Registrar of Titles or in enforcing a High Court order but conditions the rectification of the land register by the Registrar of Titles to an appeal to the High Court.

The application of this provision varies according to the circumstances of the rectification. To begin with, the Registrar of Titles (which includes Assistant Registrar of Titles) may declare its intention to rectify a land register to the affected parties, summon them for hearing and thereupon make its decision to rectify the register. After that decision the aggrieved party has a right to appeal under section 99 (1). In **Rajabu Mikidadi Mwilima v Registrar of Titles**, Miscellaneous Land Case Appeal 67 of 2018 (2020) TZHC Land D 2336, Sahera Abadallah and the appellant were parties in a civil case before a Primary Court. Following the decision of the Primary Court, the Registrar of Titles rectified a land register by deleting the name of Sahera Abadallah and replacing it with the appellant's name. Later on, the Registrar of Titles discovered that the change of the name was not proper because the Primary Court lacked jurisdiction to deal with the property in question. The Registrar of Titles rectified the land register by deleting the appellant's name and restoring the name of Sahera Abadallah. The appellant was aggrieved by that change and appealed to the High Court complaining that he was not accorded opportunity to be heard before the

deletion was made. The High Court upheld the complaint, nullified the rectification and directed the appellant's name be restored in the land register. The Court pointed out that the Registrar of Titles was at liberty to rectify the land register after according parties the right to be heard.

In **Abdallah Thabit Huwei v Registrar of Titles**, Land Case No 56 of 2009, the Registrar of Titles did not accord the appellant the right to be heard and proceeded to rectify the land register at the expense of the appellant. In this case, the Registrar of Titles served the plaintiff with rectification notice of thirty days of its intention to replace the plaintiff's name with the names of the President of the United Republic of Tanzania on account of unnamed error, omission or mistakes under section 99 (1) (f). The notice was dated 15/12/2008 and was served on the plaintiff on 28/1/2009. On 29/1/2009, the plaintiff intimated to the Registrar of Titles his intention to appeal to the High Court. The plaintiff was unable to obtain an injunction because the Registrar of Titles proceeded to rectify the land register. In a suit that was apparently converted into an appeal, the High Court nullified the rectification and declared the plaintiff the lawful owner of the disputed land. The High Court held that there was no justification for the error.

A different situation may arise where the Registrar of Titles intimates its intention to rectify the Land Register and defer its decision pending the

determination of an appeal, if any, by the High Court. In this case, it is in anticipation of the Registrar of Titles that all objections relating to the rectification of the land register will be dealt with on appeal. The right to be heard is deferred to the right to appeal; and it is upon the aggrieved party to exercise such right. This is the essence of the decision in **Fred Habibu Katawa** mentioned above, where the appellants were issued with a notice specifying a period within which the Registrar of Titles intended to rectify a land register by deleting the appellants names and replacing them with the name of His Excellency, the President of the United Republic of Tanzania. The appellants did not utilize the right to appeal against the conditional notice and the Registrar of Titles effected the rectification. It was from this rectification that the appellants appealed to the High Court. In dismissing the appeal, this Court held that the appellants forfeited their right to appeal but if they suffered loss by the reason of rectification, they may seek to be indemnified by the Government in terms of section 100 of the Land Registration Act. This Court rejected the appellants' attempt to establish their ownership because it was not an issue that could be determined at the appellate stage.

For the purposes of this appeal, I am satisfied that the rectification notice was partly an invitation to appeal to the High Court should the appellant feels aggrieved by such notice. Had the appellant not seized the opportunity to

appeal, it might not have been heard to complain that it was denied the right to be heard in light of the decision in **Fred Habibu Katawa** which has been referred to above.

It is not for me in this appeal to decide on the sufficiency of this statutory scheme on the right to be heard nor is it open for me in this appeal to pronounce that a party who does not take up the opportunity to appeal thereby forfeits its right to appeal against the rectification.

It suffices to say that in the present appeal the appellant has been accorded the right to be heard, being the purpose of the present appeal. I would therefore dismiss the first ground of appeal.

The second issue on the first limb of the second and fourth grounds of appeal is: does the "NOTICE-RECTIFICATION OF THE LAND REGISTER" amount to a decision?

It is important to note that at the commencement of the hearing of the appeal, Mr Mmbando, learned State Attorney, unsuccessfully raised a preliminary objection to the competency of this appeal. In dismissing the preliminary objection, I reserved for consideration the question whether the NOTICE-RECTIFICATION OF THE LAND REGISTER" could be subjected to an appeal to

this Court. As demonstrated in the preceding discussion, parties were at loggerheads over its meaning.

Subsection (1) of section 102 of the Land Registration Act [Cap 334 RE 2019] confers a right to appeal to the High Court in relation to “a decision, order or act” of the Registrar of Titles. Under section 2 of the same Act, the expression Registrar of Titles includes the Deputy Registrar of Titles and Assistant Registrar of Titles. Subsection (3) of section 102 directs that the appeal must be “accompanied by a copy of the decision, order or act appealed against.”

An appeal may be in respect of the decision of the Registrar of Titles. The term “decision” is defined neither in the Land Registration Act nor in the Interpretation of Laws Act [Cap 1 RE 2019]. In James, JS, **The Stroud’s Judicial Dictionary of Words and Phrases**, 5th edn, Vol 2: D-H, London: Sweet and Maxwell, 1986 states that the term:

(4) “Decision” is a popular and not a technical, word, and means little more than a concluded opinion. It did not, by itself, amount to judgment, or order....”

In its popular sense, the term decision means a conclusion about a particular question but in its legal sense, it has been defined in American dictionary, Garner, BA, (ed) **Black’s Law Dictionary**, 9th edn, St Paul: West Publishing, 2009 as follows:

A judicial or agency determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case.

One of the definitions of the term "decision" set forth by Greenberg D (ed) in **Jowitt's Dictionary of English Law**, 3rd edn, Vol 1: J-Z, London: Sweet and Maxwell, 2010 is that:

The definite result of examining or considering a question, a court ruling or judgment...

So did the Assistant Registrar of Titles issue a decision in the present appeal? The notice entitled "NOTICE-RECTIFICATION OF THE LAND REGISTER" issued to the appellant was set to expire after thirty days if there was no court order. It is a notice which matures into a cancellation decision. The notice was partly a thirty-days' notice intimating the respondent's intention to rectify the Land Register in Moshi and partly a cancellation decision in the absence of court order after the expiry of the thirty days. I hold that the notice was a conditional cancellation decision.

Again, the notice can amount to an order as well. By directing the appellant to surrender its Certificate of Title No 9717 within thirty days of the postage or dispatch of the notice, the NOTICE-RECTIFICATION OF THE LAND REGISTER" can also be characterized to be an "Order."

On this account, I reject Mr Mbando's argument that the appellant was simply pre-empting the Court's decision on the rectification. In the strict sense, the notice was both a conditional order or decision subject to appeal to the High Court. Where the aggrieved party does not appeal, the order or decision would become final.

For all these reasons, I hold that the notice was appealable as a decision or order under section 102 (1) of the Land Registration Act.

The second limb is whether the Assistant Registrar of Titles, the respondent, duly exercised its powers under section 99 (1) (a) and (b) of the Land Registration Act. The appellant's counsel argued that the Certificate of Title No 9717 was issued to the Appellant on 7th March 1993. Since the grant of the title, the appellant has complied with conditions including payment of the land rent, construction of classroom buildings and offices which are used for Islamic School (Madrasa). In addition, they built a mosque and a teachers' house.

It was Mr Mkindi's submission that under the provisions of section 99 (1) of the Land Registration Act, the Assistant Registrar of Titles has no powers to rectify the land register. These provisions, in particular subsection (1) (a) and (b) of section 99 confer those powers to the High Court. For this reason, the respondent wrongly invoked its powers.

As stated earlier, the appellant's counsel argued that the application by the Assistant Commissioner for Lands for rectification of the land register was illegal. The Assistant Commissioner for Lands has no such powers. So, the Assistant Registrar of Titles erred in making the decision to rectify the land register without justification and without following the laid down procedure for revocation of title. This occasioned miscarriage of justice.

In disagreement, Mr Mmbando, learned State Attorney, argued that the respondent followed the laid down procedures for rectification of a land register. He outlined that upon receiving the application for rectification from the Assistant Commissioner for Lands, the respondent issued a 30-days' notice to the appellant. The purpose of the notice is to enable the appellant to raise an objection, if any, to be determined by restraining order from the High Court on the intended rectification. In the absence of a High Court's order, the respondent would proceed to issue the notice of rectification as required.

On the third ground of appeal, Mr Mkindi, learned counsel argued that the respondent wrongly invoked its powers. I did not consider the complaint on this ground of appeal as being different from the second and fourth grounds of appeal. The learned counsel approach on this ground was simply an elaboration of those two grounds of appeal. He emphasized that as there was no High Court order as required by the provisions of section 99 (1) (a) and (b), the notice of

rectification was defective. No order was attached to the notice. In the opinion of the learned State Attorney, Mr Mmbando, the respondent duly invoked its powers under section 99 (1).

As the second, third, and fourth grounds of appeal raise interlinked points of complaint, I will deal with them generally.

Both parties are agreed that from the NOTICE-RECTIFICATION OF THE LAND REGISTER" the intended rectification was actuated by the Assistant Commissioner for Lands, Babati in the following terms:

TAKE NOTICE that the Assistant Commissioner for Lands of P.O. Box 621, BABATI, has presented an application for rectification of the Land Register under **Section 99 (1) (a & b)** in respect of Plot No. **24 Block No 'H' in Babati Urban Area, Title No. 9718** Land Registry Moshi registered in the name of the **THE REGISTERED TRUSTEES OF MASJID AL-AZHAL** of P.O Box 221, BABATI to be registered in the name of **HER EXCELLENCE THE PRESIDENT OF UNITED REPUBLIC OF TANZANIA.**

It should be noted that notice made reference to Certificate of Title No 9718 but in the next paragraph directed the appellant to surrender the Certificate of Title No 9717:

You are hereby directed to produce the Certificate of **Title No. 9717 LAND REGISTRY MOSHI** to the office of Assistant Registrar of Title Manyara Region within specified period for cancellation.

Without deciding the propriety of the application lodged by the Assistant Commissioner for Lands, Babati and who is not a party to this appeal, the question before me is whether there are sufficient reasons for rectification.

The direct rectification powers of the Assistant Registrar of Titles are under section 99 (1) (c), (e), and (f) of the Land Registration Act. The direct rectification powers are confined to cases of parties' consent; updating; errors, omissions, mistakes, or any other sufficient cause deemed to be just.

The rectification powers under section 99 (1) (a) and (b) are conferred to the High Court although under subsection (d), the High Court has concurrent rectification powers with the Assistant Registrar of Titles.

Inasmuch as the rectification powers under section 99 (1) (a) and (b) are directed to the High Court, both subsections envisage rectification pursuant to an order of the High Court. Subsection (a) states in part that: "where the High Court has decided that any person... and makes an order to that effect,".

A similar wording is evident in subsection (b) which provides in part that: "where the High Court, on the application ... makes an order for the rectification of the land register,".

Consequently, the rectification notice must contain an order of the High Court directing rectification of the land register in question. Neither was any

order of the High Court referred to in the rectification notice nor was any order of the High Court tendered or referred to in the present appeal.

In the absence of an order of the High Court, I agree with Mr Mkindi, learned counsel, that the Assistant Registrar of Titles, Babati lacked a mandate to issue the NOTICE-RECTIFICATION OF THE LAND REGISTER and the NOTICE was illegal for want of authority.

Supposing that reference to subsections (a) and (b) was merely an oversight, can the notice be salvaged? I have no doubt that it cannot. There were no grounds in the notice itself nor at the hearing of the appeal that the remaining subsections of section 99 could be applied.

For these reasons, I allow the appeal. I declare the notice entitled NOTICE-RECTIFICATION OF THE LAND REGISTER dated 8/2/2024 null and void *ab initio*. It is hereby ordered that the appellant's name be reinserted into the Land Register with immediate effect in the event the respondent mistakenly acted upon the notice that has now been nullified. As there is no proof of wilful misconduct on the respondent's part as envisaged under section 102 (9) of the Land Registration Act, each party to bear its own costs. It is so ordered.

DATED at BABATI this 15th day of May, 2024.



F.M. MIRINDO

JUDGE

Court: Judgment delivered this 17th day of May, 2024 in the presence of the appellant's representatives Mr Musa Rehani and Twaha Banda, its counsel, Mr Mkindi and in the presence of Mr Mmbando, learned State Attorney, for the respondent.

Right of appeal explained



F.M. MIRINDO

JUDGE

17/5/2024