IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPEAL NO. 4279 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 TRUSTEE OF MASJID AL-AZHAL AND MADRASAT AL-HAYATIL ISLAMIA.....APPELLANT

VERSUS

ASSISTANT REGISTRAR OF TITLES..... RESPONDENT

JUDGMENT

8th April and 17th May, 2024

MIRINDO, J.:

The Registered Trustees of Masjid Al-Azhal and Madrasat Al-Hayatil Islamia have come to this Court by way of an appeal in opposition of a notice of rectification issued by the Assistant Registrar of Titles regarding their Certificate of Title No 9718 on Plot Nos 25 and 26, Block No "C" in Babati Urban Area of the Land Registry Moshi. On 8/2/2024, the Assistant Registrar of Titles Babati, the respondent in this appeal, issued a notice entitled "NOTICE-RECTIFICATION OF THE LAND REGISTER" in relation to the Certificate of Title No 9718 intimating its

intention to register the Plot in the name of Her Excellency the President of the United Republic of Tanzania. The notice directed the appellant to submit to the Assistant Registrar of Titles in Manyara Region the Certificate of Title for cancellation within thirty days unless the Court orders otherwise.

The appellant was represented by the learned advocates, Mr Hamisi Mkindi and Mr Nicodemus Mbugha while the respondent was represented by Mr Hance Mmbando, learned State Attorney.

The first ground of appeal is that the decision to rectify the Land Register has been made without affording the appellant the right to be heard. Mr Mkindi, learned advocate contended that the appellant was denied the constitutional right to be heard. The learned advocate argued that the constitutional right, enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, has been interpreted in various decisions to be a fundamental right. He made reference to the cases of **Mbeya-Rukwa Autoparts and Transport Ltd v Jestina George Mwakyoma** [2003] TLR 251; **Acropar (OM) SA v Herbet Marwa and Family Investment Ltd and four Others** [2015] TLR 76; **Rajabu Mikidadi Mwilima v Registrar of Titles**, Miscellaneous Land Case Appeal 67 of 2018 (2020) TZHC Land D 2336. He complained that the appellant was not issued with the reasons for the decision made by the Assistant Registrar of Titles. This was a violation of the principles of natural justice. Mr

Mkindi pointed out that in **Tanzania Air Services Ltd v Minister for Labour and 2 Others** [1996] TLR 217, the High Court insisted on the duty of public authorities to give reasons for their decisions.

In conclusion, the learned advocate argued that the respondent acted in violation of the principles of natural justice as it denied the appellant the right to be heard and failed to give the appellant reasons for its decision to rectify the land register by altering the appellant's name and replacing it with the name of Her Excellency the President of the United Republic of Tanzania.

The learned State Attorney, Mr Mmbando, argued that no decision had already been made by the respondent and it is only a thirty-days' notice of the intended rectification that has been issued and served on the appellant. Section 99 (1) of the Land Registration Act [Cap 334 RE 2019] avails the appellant the right to be heard by the High Court to obtain an order restraining the respondent from effecting the intended rectification and this was the position arrived at by the High Court in **Fred Habibu Katawa and Another vs Registrar of Titles and 3 Others** (Land Appeal No. 03 of 2021) [2023] TZHC 18950.

In dealing with the complaint of the right to be heard and lack of reasons, it should be pointed out that a person aggrieved by the rectification decision may appeal to the High Court under section 99 (1) of the Land Registration Act. The first paragraph of section 99 (1) states 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-

Under this provision, rectification of a land register may be done by the Registrar of Titles or pursuant to a High Court order but where the rectification is done by the Registrar of Titles there is a right to appeal to the High Court. I had the occasion to address the application of this part of section 99 (1) of the Land Registration Act in the **Registered Trustees of Masjid Al-Azhal v Assistant Registrar of Titles** (Miscellaneous Land Appeal No. 4278 of 2024) a case that has been decided together with the present appeal where I held that:

> 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.

The purpose of hearing on appeal is not simply to obtain a restraint order as argued by the learned State Attorney. Depending on the nature of the decision made by the Registrar of Titles, an appeal may be the first opportunity in which the appellant accorded an opportunity to be heard.

Where the Registrar of Titles choose to defer its decision pending the determination of an appeal by this Court, the appeal cannot in the strict sense be considered to be an appeal by way of rehearing. Given that the Registrar of Titles has deferred its decision to the appellate process, the appeal provides the first opportunity in which the appellant is heard. Hence the appellant is entitled to a hearing *de novo*. In cases of this nature the appeal is not by way of rehearing but by way of a hearing *de novo.* The distinction between an appeal by way of rehearing and an appeal *denovo* has been set forth in Campbell, E and Lee, HP, *The Australian Judiciary*, 2nd edn, Melbourne: Cambridge University Press, 2012 at page 266:

> The most ample form of appeal from the judgment of one court to a higher court is that known as an appeal by way of a de novo hearing. As its name suggests, this type of appeal requires the court of appeal to decide the case as if it were the initial court of trial. The court of appeal must hear the evidence afresh and then make its own findings. Appeals from court to court are seldom appeals by way of de novo hearing... More commonly they are by way of rehearing. In an appeal of that kind, the court of appeal has to make determinations of fact and law. It re-decides the case, but it does so primarily on the basis of the evidence adduced at the trial... It may have power to allow fresh evidence to be adduced, but in practice this power is sparingly exercised. [References omitted]

This appears to be the intention of the legislature in section 102 (8) of the Land Registration which specifically allows for reception of additional evidence in terms of the provisions of the Civil Procedure Code. Unless where the Registrar of Titles afforded parties a hearing, the parties are entitled as of right to adduce additional evidence given that this would be indeed the first "hearing" or 'trial". Where it is an appeal by hearing *de novo,* the parties' right to call for additional evidence under section 102 (8) should be broadly construed. In particular, the general principles restricting additional evidence in cases of appeals by way of rehearing should be relaxed in appeal by way of a hearing *de novo* so that the appellant's first opportunity to be heard becomes effective.

In the present appeal, the rectification notice issued to the appellant conferred the opportunity to appeal to the High Court within thirty days and since the appellant had utilized that opportunity, the complaint that it had been denied the right to be heard cannot be entertained at this stage. It follows that the first ground of appeal has no merit and it is accordingly dismissed.

The second ground of appeal is that the respondent wrongly invoked its rectification powers in reliance of the provisions of section 99 (1) (a) and (b) of the Land Registration Act [Cap 334 RE 2019]. Mr Mkindi, learned advocate, argued that these provisions confer power to the High Court to order rectification and not the respondent. Thel learned advocate argued that the respondent's

decision was defective on being made on provisions which do not confer the respondent such power. No High Court order was attached to the notice and so the Respondent wrongly assumed its powers.

In opposition, the learned State Attorney, Mr Mmbando, contended that the provisions of section 99 of the Land Registration Act generally confer powers to the respondent to make orders or decisions for rectification of Land Register on different reasons. The respondent upon receiving the application for rectification from the Assistant Commissioner for Lands and issuing the notice to the Appellant was properly and lawfully invoking its powers.

It is clear that the notice entitled "NOTICE-RECTIFICATION OF THE LAND REGISTER" has been issued under section 99 (1) (a) and (b). As correctly argued by the appellant's advocate, these provisions confer the High Court to order rectification. Any rectification under section 99 (1) (a) and (b) must be on the basis of a High Court order. There is no reference to an order of the High Court directing rectification nor was any order cited at the hearing of the appeal. The rectification notice was made without authority.

It was the argument of Mr Mmbando, learned State Attorney, that the order was made in public interest. In my considered opinion this was a catch-all argument which was not elaborated on by the learned State Attorney but it is fortunately clear that public interest is not one of the considerations for

rectification of land register under section 99 of the Land Registration Act. I would therefore reject Mr Mmbando's argument.

In the third and fourth grounds of appeal which were argued together the complaint is that the Respondent unjustifiably rectified the Land Register and violated established procedures and thereby occasioned miscarriage of justice. Mr Mkindi, learned advocate, stated that the Certificate of Title No 9718 registered in the name of the Appellant was issued on 7/3/1993 and since the grant of the Certificate of Title, the appellant has complied with the conditions of the grant including payment of land rent, building an Islamic school (madrassa) and a mosque, the largest in Babati town.

Mr Mkindi argued that cancellation of the title had the effect of permanently depriving the appellant of its right to the plot in question because cancellation amounts to revocation of the title. Mr Mkindi, learned advocate outlined the close relationship between the terms "cancellation" and "revocation" from their definitions in Garner, BA, **Black's Law Dictionary**, 9th edn. He observed that at page 234 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".

He argued that cancellation is governed by the provisions of section 45 (1) of the Land Act [Cap 113 RE 2019] and it is in respect of a breach of the

conditions of a right of occupancy. Under the Land Act revocation powers are conferred to the Commissioner for Lands or Assistant Commissioner for Lands. Mr Mkindi argued that it was unprocedural for the Assistant Commissioner for Lands to apply to the Assistant Registrar of Titles for revocation of Certificate of Title No 9718 while those powers have been conferred to Assistant Commissioner for Lands under the Land Act. He concluded that this was contrary to the procedure.

In disagreement, Mr Mmbando, learned State Attorney, argued that the respondent followed established procedures. He observed that at the earliest stage the respondent is required to issue notice of the intended rectification before the rectification is made. An objection to rectification, the learned State Attorney argued, can be determined by obtaining an order from the High Court by restraining such intended rectification.

Under section 102 (1) of the Land Registration Act, an appeal lies against "a decision, order or act" of the Registrar of Titles and section 102 (2) directs that the appeal be "accompanied by a copy of the decision, order or act appealed against."

As I have held in **Registered Trustees of Masjid Al-Azhal v Assistant Registrar of Titles**, the notice entitled NOTICE-RECTIFICATION OF THE LAND REGISTER" is both a notice and decision. It is a conditional notice of thirty days

subject to an appeal to this Court and a notice that becomes a cancellation decision after the expiry of thirty days if there was an appeal to this Court.

On this account, there was a decision by the respondent that could adversely affect the appellant and hence Mr Mmbando's argument that no decision had been made by respondent has no merit.

Having held that the respondent had no authority to issue the notice of rectification under section 99 (1) (a) and (b) in the absence of a High Court order, the question whether procedure was followed is irrelevant. There was no High Court order upon which the respondent could follow established procedures.

For all these reasons, I am satisfied that NOTICE-RECTIFICATION OF THE LAND REGISTER" issued on 8/2/2024 to the appellant was void *ab initio*. It is hereby ordered that the appellant's name be re-inserted into the land register with immediate effect in the event the respondent mistakenly acted upon the notice that has now been declared void.

As there was no proof of wilful misconduct on the respondent's part in terms of section 102 (9) of the Land Registration Act, I order 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

HIGH COURT OF TANZANIA

F.M. MIRINDO

JUDGE

17/5/2024