

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 136 OF 2021**

*(Arising from Land Appeal No. 120 of 2020)*

**OMARI MOHAMED WAGE** *(The administrator of*

*The Estate of the late Mnayenu Kidato)*.....**APPLICANT**

**VERSUS**

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

**THE HONOURABLE ATTORNEY GENERAL**.....**2<sup>ND</sup> RESPONDENT**

**RULING**

*Last Order: 23/06/2021*

*Date of ruling: 02/07/2021*

**B.E.K. MGANGA, J**

On 18<sup>th</sup> March, 2021, Omari Mohamed Wage (the administrator of the estate of the late Mnayenu Kidato) the herein Applicant filed this application seeking leave to appeal to the Court of Appeal against the judgment of this court (Maige, J as he then was) delivered on 19<sup>th</sup> February, 2021 in Land Appeal No. 121 of 2020 between Omar Mohamed Wage (the applicant) and The Registrar of Titles and the Attorney General (the 1<sup>st</sup> and 2<sup>nd</sup> Respondents).

The application was brought under Section 5(1)(c) of the Appellate Jurisdiction Act supported by the Affidavit of Omar Mohamed Wage (the applicant). The same was resisted to by the Respondents in the joint counter affidavit sworn by Brenda Kuringe, the Principal officer of the 1<sup>st</sup> Respondent. When the Application was called for hearing, Mr. Lugendo advocate for the Applicant appeared and adopted the affidavit of the Applicant to form part of his arguments.

The gist of the Applicant's application is that on 13<sup>th</sup> March 2020, the Primary court for Magomeni delivered a ruling to the effect that the transfer document of property situated at plot No. 7 Block 6, Kariakoo comprised under Certificate of Title 85177 in favour of one Kidato Mwichande were forged. That the said property was owned by Mnayenu Kidato and was the subject of in Administration cause No. 181 of 2016. That, the Applicant wrote a letter to the 1<sup>st</sup> Respondent for transfer of title to his name as the legal representative of the Estate of the late Mnayenu Kidato in terms of section 102 of the Land Registration Act, [Cap.334 R.E. 2019] but the 1<sup>st</sup> Respondent refused. Due to that refusal, the Applicant appealed to this court whereas on 19<sup>th</sup> February 2021 the appeal was dismissed on the ground that the proper cause to challenge the decision of the 1<sup>st</sup> Respondent is to file a fresh suit. The Applicant has filed this Application for certificate on point of law so that he can appeal to the Court of Appeal. It was submitted by the Applicant that the Court of Appeal will be called upon to determine whether it was correct for this court to hold that the Applicant was supposed to sue the 1<sup>st</sup> Respondent instead of appealing in terms of section 102 of Cap. 334 R.E. 2019. The counsel for

the Applicant submitted that the issue raised is a point of law and of general importance as it is not frivolous. He cited the case of ***British Broadcasting Corporation vs. Erik Sikujua Ng'imaryo, Civil Application No. 138 of 2004, CAT (Unreported)*** in support of his arguments and prayed the application be granted.

On the other hand, Mr. Luoga State Attorney who appeared for the Respondents, adopted the counter affidavit of Brenda Kuringe to form part of his submissions. Mr. Luoga submitted that parties in Administration (probate) Cause No. 181 of 2016 at Kinondoni Primary Court were ***Omary Mohamed Wage vs. Naimu Kidato*** and that Kidato Mwichande Kidato who is alleged to have forged the title was not a party. It was submitted by State Attorney that, there was a caveat and that under section 78(4) of the Land Registration Act [Cap.334 R.E 2019], the 1<sup>st</sup> Respondent was bound not to effect changes. The State Attorney submitted that the issue raised by the Applicant is a matter of fact and not law. He cited the case of ***Buiyanhulu Gold Mine Limited and 2 others vs. Petrolube (T) Limited and another, Civil Application No. 364/16 of 2017, CAT (unreported)*** to guide me in making my decision. Submitting on section 102 of Cap. 334 (supra), the State Attorney conceded that the Applicant has raised a point of law to be determined by the Court of Appeal. He was, however, quick to submit that the case was on probate and not land. He submitted that the law is clear that it is only the High Court that can order for change of ownership and not the Primary court.

I am grateful to the counsels for their submissions and authorities they supplied me at the time of hearing this application. Guided by the ***Bulyanhulu's case (supra)***, in application like the one at hand, my duty is not to determine the merit and demerit of the intended appeal, but to see whether they met conditions set in the ***British Broadcasting's case (supra)***.

The respondents were not party to the Administration cause that was determined by the Magomeni Primary Court that issued an order to the 1<sup>st</sup> Respondent to effect change in the Registration of title on the ground that Kidato Mwichande Kidatu forged it. One of the issue that can be a center of controversy is whether the Primary Court had power to issue an order to the 1<sup>st</sup> Respondent and what is supposed to be done by the 1<sup>st</sup> Respondent in circumstances where a caveat is filed.


From submissions of the parties, I am also satisfied that the controversy centers over the applicability of section 102 and 78 both of the Land Registration Act [Cap. 334 R.E. 2019]. It is clear that the 1<sup>st</sup> Respondent refused to effect changes in the registration of titled as there was a caveat and informed the Applicant. The Applicant was aggrieved and appealed to this court to this court. Having read section 102 and 78 both of Cap. 334 (*supra*), I am therefore of the view that the Applicant has given good reasons for this court to grant the application.

In concluding, I find merit in the application and hereby grant it.  
Each party to bear its costs.

Order accordingly.

Dated at Dar es Salaam this 1st day of July 2021.



  
**B.E.K. Mganga**  
**JUDGE**  
**1/7/2021**