

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCLNEOUS LAND APPLICATION NO.488 OF 2022

RAFIKIHAWA MOHAMED SADIKI.....APPLICANT

VERSUS

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

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

23rd & 28th November, 2022

L. HEMED, J.

The applicant herein, **RAFIKIHAWA MOHAMED SADIKI** instituted this application under section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019], section 102(1) of the Land Registration Act, [Cap 334 RE.2019] and section 95 of the Civil Procedure Code, [Cap 33 RE 2019] seeking for among others, extension of time to give to the respondents and the Court the notice of intention to appeal against the decision of the Registrar of Titles dated 15th August, 1994 in relation to rectification of Certificate of Title No.37566, Plot No.3, Block 19 Uhuru

Street, Kariakoo Area, Ilala Municipality, DAR ES SALAAM. The respondents countered the application by filing the counter affidavit deponed by one **JOANTHA FABIAN KAZINJA**. Along with the counter affidavit, they raised preliminary objection on point of law that "*the suit is bad in law for abusing court process.*" The Preliminary objection was argued orally by Mr. Uiso Luoga, leaned State Attorney who stood for the respondents, while Mr. Jerome Msemwa and Ms. Salha Mlilima learned advocates represented the applicant.

Arguing in support of the preliminary objection, Mr. Luoga asserted that the application is an abuse of Court process because there is a pending Revision No.250/01 of 2021 in the Court of Appeal challenging the decision of this Court striking out Civil Case No 95 of 1994 on the reason that filing a fresh suit was not the proper way of challenging the decision of the Registrar of Titles. He submitted further that in the present application the applicant prays for extension of time to give notice of intention to appeal to this Court against the decision of the Registrar of Titles dated 15th August,1994 in relation to deed of rectification of certificate of title No.37566 Plot No.3, Block 19 Uhuru Street, Kariakoo Area, Ilala Municipality. He stated that the application

at hand is similar to the Revision pending in the Court of Appeal. He cited section 8 of the Civil Procedure Code, Cap 33 which prohibits instituting multiple similar cases.

According to Mr. Luoga, the suit property in this case is the same property subject to the Revision which is pending in the Court of Appeal. He invited the Court to the decisions of the Court of Appeal in **Hamis Said Mkuki vs Fatuma Ally**, Civil Appeal No. 147 of 2017; and **East African Development Bank vs Blueline Enterprises**, Civil Appeal No.101 of 2009, where the Court held that forum shopping is an abuse of Court process. The learned state attorney was of the view that since the applicant has not withdrawn the application for Revision, she is barred from proceeding with this application.

In reply, submissions, Mr. Msemwa stated that the present application is for extension of time to lodge Notice of intention to appeal against the decision of the Registrar of Titles made on 15th August 1994. He asserted that the present application is pursuant to the orders of this Court, Hon. Kisanya J, delivered on 27th April, 2022 in respect to Appeal No 15 of 2020 directing issuance of Notice of intention to appeal against the decision of the Registrar of Titles among

others. In his opinion, since Appeal No.15 of 2020 was struck out, it may be refiled. He was of the view that the applicant has totally complied with the decision in Land Appeal No.15 of 2020. He said, if land appeal No.15 of 2020 could be in abuse of Court process it would have been so raised by the Court.

Mr. Msemwa stated further that the matter which is pending in the Court of Appeal involves several parties, Ahmed Mabruk, Najima Hassanal Kanji who are not party to this application because the issue at hand is extension of time to issue notice to the registrar as required by the law.

Regarding the decision in **Hamis Said Mkuki (supra)** and that of **East African Development Bank** the learned advocate for the applicant was of the view that they are distinguishable from the present case. In his opinion, in the case at hand there is no two parties riding two horses at the same time. He was of the view that in the case at hand there are different parties riding two horses at the same time as the matter before the Court of appeal is not the same as the present application.

As to the application of section 8 of the Civil Procedure Code, Mr. Msemwa was of the view that is inapplicable in the case at hand. In his opinion, the said provision concerns suits as opposed to the present application.

He concluded his reply submissions by stating that abuse of court process is not a preliminary objection in law. He cited the decision in **Mukisa Biscuit manufacturing Ltd.** (1969). **CRDB 1996LDR vs BONIFACE CHIMYA** (2003) TLR 413; and **Gerald Sharif and 4 Others vs Chotai** (1960) EA 374 where all these decisions are such that preliminary objection should be purely on point of law. He prayed for the dismissal of the preliminary objection.

In his rejoinder submissions, Mr. Luoga reiterated his submissions in chief and added that the objection on abuse of court process was discussed in the decisions supplied where the Preliminary objection on abuse of Court Process was upheld. As to section 8 of the Civil Procedure Code, he stated that the provision aforesaid covers the circumstance of this case as the subject matter and parties are in this matter and in the Revision pending in the Court of Appeal are the same. Regarding, Land Appeal No.15 of 2020 he stated that among the

grounds for striking out the said appeal was on the pendency of Revision in the Court of Appeal. He prayed the Court to uphold the preliminary objection.

Having heard the submissions from both parties in support and against the preliminary objection it is now my turn to decide as to whether the preliminary objection holds water. In the course of determining the objection at hand, I perused the pleadings and found that the matter at hand has direct relationship with the following cases; **Mrs. Rafikihawa Mohamed Sadik vs Ahmed Mabrouk & 2 Others**, Civil Case No.95 of 1994 (HC- DSM District Registry); **Rafikihawa Mohamed Sadiki vs The Registrar of Titles & 4 Others**, Misc. Civil Application No.655 of 2017 (HC. DSM-District Registry); **Rafikihawa Mohamed Sadiki vs The Registrar of Titles & 4 Others**, Land Appeal No.15 of 2020, (HC- DSM Sub Registry); and Civil Revision No.250/01 of 2021 (Pending in the Court of Appeal of Tanzania).

I have noticed that in Civil Case No.95 of 1994, the applicant herein (the then Plaintiff) was praying for judgment and decree as follows: -

- (a) A declaration that the plaintiff is the lawful and rightful owner of the property (i.e. Plot No.3, Block 19, Uhuru Street, Dar es Salaam and Title No.37566 L.O No.127141).*
- (b) A declaration that the first and second defendants are not the owners of the property or Title No.37566.*
- (c) The Commissioner of lands be restrained from applying to Registrar of Title for rectification and/or revocation of the Right title and interest of the plaintiff in the foresaid Title Deed.*

The said suit was faced with a preliminary objection on point of law that the suit was not legally maintainable in terms of section 99 (1) and 102 of the Land Registration Act, Cap.334. His Lordship Mzuna, J upheld the objection that the suit was improperly filed before this Court as the applicant ought to have appealed against the decision of the Registrar of Title.

The applicant was aggrieved by the said decision and thus challenged it through revision in the Court of Appeal *vide* Civil Revision No.250/01 of 2021 which is still pending. The ground for revision is such that: -

"The decision of the High Court is illegal as the Honourable trial judge wrongly held that the said suit was not maintainable in terms of Section 99(1) and Section 102 of the Land Registration Act [Cap.33 RE.2002] while the plaintiff in the suit was not challenging the decision of the Registrar of Titles who was not even a party to the said suit."

In 2017 the applicant herein lodged in this Court, (Dar es Salaam District Registry), Misc. Civil Application No. 655 of 2017 against the Registrar of Titles, the Commissioner for Lands, Ahmed Mabrouk, Bi Najma Hassanal Kanji and the Hon. Attorney General, seeking for extension of time within which she could appeal out of time to the High Court against the decision of the Registrar of Title *vide* Deed of Rectification of the Land Registrar in respect of Plot No. 3 Block 19 CT No. 37566 Kariakoo Area, Dar es Salaam, dated the 15th day of August,

1994. The said application was granted on 28/07/2020 where the applicant was directed to file her appeal within fourteen days from the date of ruling.

It should be noted that, the Applicant, after being extended time she filed **Land Appeal No.15 of 2020**, challenging the act by the Registrar of Titles rectifying the Certificate of Title No.37566 with L.O No.127141 of Plot No.3, Block 19, Uhuru Street, Kariakoo Area, Dar es Salaam. The said appeal was also faced with objections on point of law. One of the points raised was such that the Court had no jurisdiction to determine the said appeal while the matter subject to the said appeal was pending in the Court of Appeal *vide* Civil Revision. Upholding the said objection, my brother Hon. Kisanya, J found that the appeal before him was premature as there was a pending Revision in the Court of Appeal. He was of the view that the appellant was trying to ride two horses at the same time.

While the said Civil Revision No.250/01 of 2021 is still pending in the Court of Appeal, the Applicant is before this Court again seeking for extension of time to give to the respondents and to the Court, a notice of intention to appeal against the decision of the Registrar of Titles

dated 15th August, 1994 in relation to deed of rectification of Certificate of Title No.37566 Plot No.3, Block 19 Uhuru Street, Kariakoo Area. I am of the firm view that since the Revision which is pending in the Court of Appeal is on whether this Court (Hon. Mzuna, J.) erred by holding that the applicant ought to have appealed against the decision of the Registrar of Titles, this application is premature.

The act of the applicant to lodge the present application while there is a pending application for revision in the Court of appeal of Tanzania, amounts to an abuse of court process. The presence of this application and that one for revision in the Court of Appeal, is a forum sopping. It is like trying to ride two horses at the same time. I hold that the present application is not worth of being entertained at this time because if we entertainer and grant it, the applicant will be able to lodge the appeal against the decision of the Registrar of Titles he made in 1994. Likewise, if the application for Revision No. 250/01 of 2021 pending in the Court of Appeal will succeed, then it will have the effect of bringing back Civil Case No. 95 of 1964 which was also challenging the same decision of the Registrar of Title he made in 1994 regarding the rectification of the certificate of Titles at issue. In the circumstance,

it is premature to entertain and grant the application at hand before the final determination of the application for Revision pending in the Court of Appeal.

From the foregoing, this application is improper before this Court and deserves to be struck out. It is thus struck out without costs. Order accordingly.

DATED at DAR ES SALAAM this 28th day of November, 2022.


**L. HEMED
JUDGE**



CORT: Ruling is delivered this 28th day of November, 2022 in the presence of Ms. Salha Mlilima for the applicant also holding brief of Mr. Urso Luoga, learned state attorney for the respondents. Right of appeal fully explained.


**L. HEMED
JUDGE
28/11/2022**

