

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

LAND CASE NO. 276 OF 2022

ABEID SAIDI ABEID-----1ST PLAINTIFF

JOSEPH OSMUND MBILINYI-----2ND PLAINTIFF

VERSUS

REGISTRAR OF TITLES-----1ST DEFENDANT

COMMISSIONER FOR LANDS-----2ND DEFENDANT

ATTORNEY GENERAL-----3RD DEFENDANT

RULING

9th February 2023 & 3rd March 2023

L.HEMED, J.

The plaintiffs herein **Abeid Saidi Abeidi** and **Joseph Osmund Mbilinyi** lodged the present suit on 20th October 2022 against the defendants herein, the **Registrar of Titles, Commissioner for Lands** and **Attorney General**, claiming for the following orders:-

"a) A declaration that the 1st Plaintiff is the Lawful and Bonafide purchaser of the suit plot of Land comprised under certificate of Title No:139210, Plot No:333, Block 16, at Kibada Area, Temeke Municipality, Dar es Salaam.

- b) *A declaration that the said landed property was lawfully sold by the 2nd Plaintiff to the 1st Plaintiff vide an Agreement dated 2nd September 2021.*
- c) *A permanent injunction restraining the 1st and 2nd Defendants and their agents, workers and assignees from rectifying of a certificate of title No. 139210, Plot No.333, Block 16, at Kibada Area, Temeke Municipality, Dar es Salaam.*
- d) *An Order for payment of Tshs; 200,000,000/=as General damages and to be assessed by this Honourable Court.*
- e) *Costs of the Suit and any other reliefs be granted as the Honourable Court deems fit and just to grant.”*

The defendants in their joint written statement of defence filed on 23rd November 2022 disputed all the claims raised by the plaintiffs. The defendants also raised a preliminary objection on point of law to the effect that:-

"The Court has no Jurisdiction to hear and determine this matter as this suit has been filed in contravention of section 102(1)of the Land Registration Act, Cap.334 RE 2002'

The plaintiffs have been represented by Mr. Ahmed Mwitta learned advocate while the respondents have been enjoying the service of Mr. Salehe Manolo learned State Attorney. The preliminary objection was argued by way of written submissions. It was directed by this Court that, submissions in chief be filed by 15th December 2022, reply submissions on or before 29th December 2022 and rejoinder submissions if any, was to be lodged by 5th January 2022. Parties complied with the order of this Court as they filed their submissions as to the scheduling order.

It was submitted by the counsel for the defendants that in paragraph 7(e) of the Plaintiff, the plaintiffs are challenging the Notice of rectification of Certificate of Title No.139210, Plot No.333 Block 16 at Kibada Area Temeke Municipality. It was asserted in view of section 102(2) of the Land Registration Act [Cap.334 R.E 2019] that the decisions, orders or acts of the Registrar of Title are challengeable in the High Court by way of an Appeal and not filing a fresh suit. Mr. Manolo cited the decision of this

Court in **Hans Aingay Macha vs Registrar of Titles & 2 others**, Land Case No.334 of 2013 to cement his arguments. He prayed for the Court to dismiss the matter.

In reply thereto, the counsel for the plaintiffs invited this Court while disposing off the preliminary objection to consider with substantive jurisprudential and weight on substantive justice other than deciding cases on statutory technicalities. He cited the case of **Yakobo Magoiga Gichere vs Peninah Yusuf**, Civil Appeal No.55/2017 in which the Court of Appeal insisted on the application of the overriding objective principle.

It was asserted by the counsel for the plaintiffs that the avenues under the provisions of section 102(1) of the Land Registration Act, R.E.2019, would protect the interests of the 2nd Plaintiff and not the interests of the 1st Plaintiff. He stated further that it is on record that the registrar of title apart from the notice of rectification has never issued the decision itself in compliance with the provisions of section 101 and 102 of the Land Registration Act, [Cap 334 RE 2019].

The plaintiffs also argued that, the preliminary objection is based on the purported notice and not the decision which ought to be appealed against by the plaintiffs. In the absence of the said decision, a suit would

protect the interest of the 1st Plaintiff. The counsel of the plaintiffs was of the opinion that, in the absence of a decision of the Registrar as provided for under the scope of section 102 of the Land Registration Act, the objection raised is misplaced and misconceived.

In their rejoinder submissions, the defendants stated that the overriding objectives cannot be applied blindly to circumvent matter, which goes to the roots of the case. To fortify their point, they cited the case of **Mondorosi Village Council & 2 others vs Tanzania Breweries Ltd & 4 others**, Civil Appeal No.66 of 2017 (CAT).

Regarding the absence of the decision of the Registrar, the counsel for the defendants asserted that the submissions of the plaintiffs is misconceived, misplaced and devoid of merits. He stated that the decision, order or act of the registrar is challengeable by way of Appeal to the High Court of Tanzania regardless as to whether the Notice of rectification was served only to the 2nd plaintiff.

Having gone through the submissions made by both parties, it is my turn now to determine whether the preliminary objection has merits. In **Lyamuya Construction Company Ltd vs Board of Registered**

Trustees of Young Women Christians Association of Tanzania, Civil

Appeal No. 2 of 2010 (Unreported) postulated what a point of law is;

"...a point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process".

I have gone through the Plaint lodged jointly in this Court by the plaintiffs, on 20th day of October, 2022. While perusing it, I found that the plaintiffs are complaining against the act of the Registrar of Titles, issuing a Notice of rectification of the Certificate of Tittles No. 139210 on Plot No.333 Block 16 at Kibada Area, Temeke Municipality, Dar es Salaam. The question is whether the said act of the Registrar of Titles is challenged to the High Court of Tanzania by way of appeal pursuant to section 102 of the Land Registration Act, Cap 344. Section 102 of the Act provides thus:-

*"Any person aggrieved by a decision, order or **act of the Registrar** may appeal to the High Court within three months from the date of such decision, order or act: Provided that-*

(a)no such appeal shall lie unless the appellant or his advocate shall, within one month from the date of such decision, order or act, have given to the Registrar and to the High Court notice of intention of appeals; and

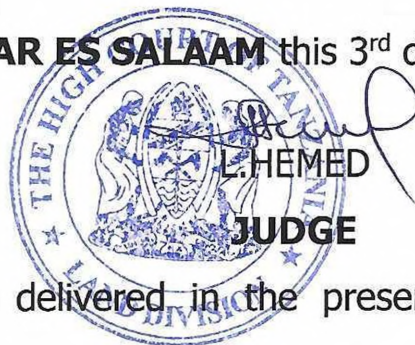
(b)...” (Emphasis added).

From the provisions here in above, a person aggrieved by a decision, order or act of the Registrar of Titles has to come to the High Court of Tanzania by way of Appeal. From the pleadings of this suit, the plaintiff seems to have been aggrieved by the act of the Registrar of Titles to issue Notice of rectification and the intended rectification. It is my firm view that, the complained act falls squarely under section 102 of the Land Registration Act, Cap 334 RE 2019. This Court cannot assume jurisdiction to determine matters arising from complaints against decision, order or acts of the Registrar of Titles unless moved by way of appeal. In that regard, I do subscribe to what this Court held in Hans Aingaya Macha vs Registrar of Titles & 2 others, Land Case No. 334 of 2013, (Kente J as he then was), that:

"Section 102 of the Land Registration Act pungently state that, any person who is aggrieved by the decision of the Registrar's act or decision may appeal (and not file a suit) to the High Court. It follows therefore that,... the Plaintiff was wrong to proceed by way of normal suit against the defendants."

From the foregoing, I find that the entire suit is not proper before this Court. I thus proceed to strike it out with no order as to costs.

DATED at **DAR ES SALAAM** this 3rd day of March 2023.



COURT: Ruling is delivered in the presence of **Mr. Ahmed Mwita**, Advocate for the Plaintiff and in the presence of **Mr. Salehe Manolo** and **Mr. Francis Wisdom**, learned State Attorneys for the defendants, this 3rd March 2023. Right of appeal explained.

