

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

AT DAR ES SALAAM

LAND CASE NO. 341 OF 2022

ARBOGAST CECILIAN CHIWEMBO..... PLAINTIFF

VERSUS

HASSAN MAWA.....1ST DEFENDANT

CRDB BANK PLC.....2ND DEFENDANT

**MEM AUCTION MART AND
GENERAL BROCKERS LTD.....3RD DEFENDANT**

RIVA OIL (T) LTD.....4TH DEFENDANT

THE REGISTRAR OF TITLES.....5TH DEFENDANT

ATTORNEY GENERAL.....6TH DEFENDANT

R U L I N G

Date of Last Order: 21.06.2023

Date of Ruling: 19.07.2023

T. N. MWENEGOHA, J.

The 5th and 6th defendants herein above, being against the suit at hand, raised a preliminary objection on point of law that, the suit is incompetent and untenable in law, for failure to comply with **Sections 101 and 102 of Land Registration Act, Cap 334 R. E. 2019.**

In his written submissions, the learned State Attorney for the 5th and 6th defendant, Mr. Elias Evelius Mwendwa, was of the view that, the subject matter of this suit is centered on the transfer of ownership to the 1st defendant (Hassan Wawa). The said transfer was made by the Registrar of Titles. That, in his prayer, especially prayer number (iii) and (iv), the plaintiff stated clearly that, this court should declare that, the act of the 5th defendant (Registrar of Titles) to transfer the ownership of the suit land to the 1st defendant is null and void. Hence, the same be rectified by order of this Court. By virtue of these prayers, it is clear that the plaintiff is challenging the powers of the Registrar of Titles in respect of the transfer of ownership of the property in question, as given under **Section 101 of the Land Registration Act, Cap 334, R. E. 2019**. The plaintiff ought to have invoked the remedies given under **Section 102(i) of the Land Registration Act, Cap 334, R. E. 2019** and reach this Court by way of appeal, instead of this fresh suit. Therefore, this objection has merit as stated in **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd, (1969)**.

In reply, Advocate Benard Seleman Maguha for the plaintiff, contended that, the learned State Attorney for the 5th and 6th defendants, misinterpreted the provisions of **Sections 101 and 102 of the Land Registration Act, Cap 334, R. E. 2019** with regard to the case at hand. He insisted that, in this case, the plaintiff is against the illegal auction of the suit property, conducted by the 1st to 3rd defendants. The said auction followed an illegal mortgage created by the 2nd defendant, in favour of the 4th defendant. The house was purchased by the 1st defendant, thereafter, the 5th defendant caused it to be registered in the name of the 2nd defendant. Therefore, the plaintiff is not challenging the powers of the

registrar, rather he has prayed incase he wins his case, this court should also order the Registrar to deregister the name of the 1st defendant and substitute it with that of the plaintiff.

I have considered the submissions of the counsel for the parties, for and against the objection in question. The center of contention is on the competence of this case. That, according to the objectors (5th and 6th defendants), the suit has been improperly filed. **As per sections 101 and 102 of the Land Registration Act, Cap 334, R. E. 2019**, the plaintiff was supposed to file an appeal to challenge the actions of the Registrar of Titles, as stated in his 3rd and 4th prayers. For easy reference, I will reproduce the provisions of sections 101 and 102 of the Land Registration Act, Cap 334, R. E. 2019, as follows; -

101- *"Where under this Act the Registrar makes any decision or order or does any act he shall, on the application of any person affected thereby, give that decision or order in writing and state his reasons therefor or, as the case may be, give his reasons in writing for that act".*

102.-(1) *"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".*

I agree with the learned State Attorney, that under prayer (iii) and (iv) of the plaint, this Court has been requested to order the Registrar of Titles in case the plaintiff's case succeeds, to rectify the register by removing the name of the 1st defendant and substitute it with that of the plaintiff. It is on this basis, the counsel for the 5th and 6th defendants, claims that, the case at hand is premature or incompetent, as per the provisions above

quoted. That, the actions of the Registrar of Title, falls within the powers conferred to him under **Section 101** (supra), and his decision should be challenged as stated under **Section 102(1)** (supra).

However, I disagree with the learned State Attorney, on the position of the Registrar of Titles in this case. In fact, the 5th defendant is just a necessary party. I find so, based on cause of action of this case, the same is not against the Registrar of Title, rather the 1st to 4th defendants.

They are the ones, who effected the sale of the suit land on the reasons already stated in the plaint. The plaintiff therefore, is against that sale or auction of the suit property. He is further, against what led to the auction of the suit land(mortgage). Both the mortgage and the auction involves the 1st to 4th defendants. They are the proper parties in this case. The 5th and 6th defendants came as necessary parties. Hence, one can argued that, their liabilities depend on what will befall on the 1st to 4th defendant as far as the suit at hand is concerned. To that point, the **Mukisa Biscuits** (supra), rules are defeated, at the objection itself is arguable. For the reasons above explained, I find this objection to be devoid of merits.

The case has been properly filed and this Court has the requisite jurisdiction to entertain it accordingly. This objection is overruled and the main suit shall proceed to its finality. No order as to costs

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
17/07/2023