

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPEAL NO. 22 OF 2023

(Originating from the decision of Registrar of Titles dated 19/12/2015)

MAKATA HELA JUMBE.....APPELLANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

**COMMISSIONER FOR LANDS, MINISTRY OF LANDS,
HOUSING AND HUMAN SETTLEMENTS DEVELOPMENT.....2ND RESPONDENT**

**REGISTRAR OF TITLES, MINISTRY OF LANDS,
HOUSING AND HUMAN SETTLEMENTS DEVELOPMENT.....3RD RESPONDENT**

**ADMINISTRATOR GENERAL, REGISTERED
INSOLVENCY TRUSTEESHIP AGENCY4TH RESPONDENT**

JUDGMENT

14/09/2023 to 19/09/2023

E.B. LUVANDA, J

The Appellant named above, is aggrieved by the act or order of the Third Respondent above named rectifying Land Register and revoking (sic) certificate of title No. 28579, Plot No. 596 Block "A" Sinza, Kinondoni Municipality, Dar es Salaam registered in the name of Asha Ally Ismail.

The Respondents on the other hand contended that no title passed to Asha Ally Ismail who sold the suit title to the Appellant, on account that the sale

and transfer of title to Asha Ally Ismail was effected under fraudulent and forgery after the vendor one Hawa Bakari Nyasebwa impersonated and passed as the heirs of the late Francis Kally Chimbenje.

In the petition of appeal, the Appellant raised four grounds of appeal:

1. That, the 3rd Respondent grossly erred in law and fact by the impugned act of improperly rectifying the land register on 19th December, 2015 and revoking the ownership of Asha Ally Ismail over the Title number 28579, L.O No. 65620, L.D. No. 85703 to Plot No. 596, Block A, Sinza, Kinondoni Municipality, Dar es Salaam ("the suit property") without affording the Appellant the right to be heard who, on 13th November, 2006, bought the suit property from the said Asha Ally Ismail ("the vendor") the registered owner.
2. That, the 3rd Respondent grossly erred in law and fact by the impugned act of improperly rectifying the records of the subject Title to suit property in favour of the 4th Respondent for the account of late Francis Kally Chimbenje in willful disregard of the obligation to transfer the same to the name of the Appellant upon expiry of the 30 days Caveat Notice dated 25th July, 2007, unless directed otherwise by the Hon. High Court and to which there was neither objection to the said Caveat Notice by anyone nor any intervention by the Hon. High Court of Tanzania and upon repeated follow ups by the Appellant, he was kept at ease by being assured by the 3rd Respondent that the transfer process was underway.

3. That, the 3rd Respondent grossly erred in law and fact by the willful failure to notify the Appellant of the impugned act and the reasons thereof for transfer of the subject Title of the suit property to the 4th Respondent, given that it was the Appellant who, in the first place, tendered the original subject Title Deed to the 3rd Respondent when he applied for transfer of the same to his name following purchase of the suit property from the said vendor and thereby further denied the Appellant the right to be heard by timely appealing against the impugned act.
4. That, following the perchance discovery, on 20th May, 2020, by the Appellant of the impugned secretive act of transfer of the subject Title of the suit property to the 4th Respondent, the 3rd Respondent willfully failed and/or refused to own-up the impugned act and the reasons thereof upon the Appellant's application, vide his Advocates' letter dated 14th January, 2021 which was in continuing denial of the Appellant's right to be heard.

Mr. Bernard Mbakileki learned Counsel for Appellant combined ground number one and four, and submitted that the impugne improper act of the Third Respondent of rectifying the Land Register on 19/12/2015 and revoking the land ownership of Asha Ally Ismail (the vendor) without the consent from either the vendor or the Appellant (the purchaser) who bought the suit property on 13/11/2006 (both of them interested persons) was in utter violation of the fundamental principles of natural justice. He cited the

case of **National Insurance Corporation (T) Ltd vs. Shengena Limited**, Civil Application No. 230/2015 C.A.T; **Ikindilwa Wigae vs. The Republic**, Criminal Appeal No. 60/2000 CAT. He submitted that since there was no consent from the interested persons the suit property of which the act of rectifying the Land Register by the Third Respondent affected the rights of the interested persons without giving them hearing in order to obtain their consent, arguing it was a serious violation of the fundamental principle of natural justice, which act is a nullity in the eyes of the law. He cited the case of **Rajabu Mkidadi Mwilima vs. Registrar of Titles**, Misc. Land Appeal No. 67/2018 H.C; **African Terminal Limited vs. The Registrar of Titles & Others**, Misc. Land Appeal No. 58/2018. He submitted that even if the transfer of the subject title of the suit property was for other good cause, argued the Third Respondent was duty bound to give reasons in writing and heed to the Appellant's Advocate letter dated 14/01/2021. He cited sections 99 (1)(f) and 101 of the Land Registration Act, Cap 334 R.E. 2002; the case of **Mabibo Beer Wines and Spirits Ltd vs. Lucas Mallya @ Baraka Stores and Another**, Civil Application No. 160/2008 CAT.

In reply, Ms. Hosana Mgeni learned State Attorney, for the First, Second, Third and Forth Respondents submitted that the Third Respondent has

exercised the powers vested to him under section 99(1) (d) and (f) and (2)(a) of Cap 334 (supra) and not section 99 (1)(c) or (f) as cited by the Appellant. She submitted that the Third Respondent issued a notice of rectification of the land register to the original owner Francis Kally Chimbenje despite a fact that the said notice was mistakenly indicated the rectification of the land register in favour of Mary Dainess Chimbenje instead of the Administrator General who stepped into the shoes of the deceased. She submitted that the rectification of register in ordinary transfer between vendor and purchaser should be differentiated from that exercised under section 99(1)(d) and (f) and (2)(a) of Cap 334 that seek to prevent fraudulent conduct like that of Mary Dainess Chimbenje and her allies. She submitted that the same should not be equaled to the principles of natural justice as addressed by the Appellant including cases cited, argued that rectification and transfer of title in this case does not fall under conventional transfer of title between vendor and purchaser. She submitted that the Third Respondent worked out on the proven facts and decision of the court which were presented before him, where even if there was need for the principle of right to be heard the same has to be exercised to the original owner the prerequisite which was met by the Third Respondent through a caveat notice dated 14/05/2015. She submitted that the Appellant should draw a clear line

that there is rectification which need notice, consent or discussion among the interested parties but does not fall within the rectification exercised under section 99(1)(d) and (f) and (2) (a) of Cap 334 (supra). She submitted that neither in his petition nor submission where the Appellant proved that he requested to be availed with the decision or order of the Third Respondent and reasons thereof, other than citing the letter dated 14/01/2021, without annexing it. She submitted that the first and second (sic, fourth) ground of appeal are misplaced, abuse of court process and geared to prolong the matter.

On rejoinder, the learned Counsel for Appellant submitted that, the Appellant is the one who tendered the original title deed to the Third Respondent for the sole purpose of transfer of the Title from Asha Ally Ismail to the Appellant's name, but the Third Respondent prayed foul. Arguing in a nutshell, that the Appellant was condemned un heard under the law.

Essentially, the learned State Attorney by implication conceded a fact that a suit title was transferred from Francis Kally Chimbenje to Mary Dainess Chimbenje and later to Asha Ally Ismail who in turn disposed it to the Appellant. The Appellant content that he submitted and handed over the original title deed to the Third Respondent for the later to effect transfer

from the last owner registered in the Land Register to wit Asha Ally Ismail to the Appellant, which application it appears bounced, dishonoured presumably for reasons stated in the declaration in support of a rectification in the Land Register dated 25/11/2014, which form part of bundle of documentations from the office of the Third Respondents certified to this Court. Suffices to say the said reasons were not shared to the Appellant.

According to the records of the Third Respondent, in the declaration in support of the rectification in the land register dated 25/11/2014 aforesaid, the declarant requested the Third Respondent to rectify an anomaly in the Land Register in respect of Plot No. 596 Block "A" Sinza, title No. 28579, by deleting the name of Asha Ally Ismail appearing in the Land Register and replace thereof with the name of Francis Kally Chimbenje (deceased) (sic, Administrator General). Surprisingly the impugned notice of rectification of the Land Register dated 14/05/2015 was addressed and posted to Francis Kally Chimbenje (deceased) of P.O. Box 18032 Dar es Salaam. There is no evidence vindicating that a notice of intended rectification was issued to Asha Ally Ismail who was automatically affected by the rectification and who had disposed a suit property to the Appellant (interested party) and whose application for transfer were alleged pending at the office of the Third Respondent. There is no evidence showing that the decision and reasons for

rectification was shared to Asha Ally Ismail incumbent registered owner who disposed the suit property to the Appellant (interested party).

In her submission in reply, the learned State Attorney in essence was of the view that rectification by the Third Respondent made under the provisions of section 99(1)(d) and (f) and (2)(a) Cap 334 there is no requirement of notice to be issued and argued that it was upon the Appellant to make an application including following up to be availed by the decision or order, with reasons thereof.

Certainly, but one may out of curiosity ask that if there is no requirement of serving notice of rectification to the affected person or interested party, why the Third Respondent issued a notice of rectification of Land Register to the deceased who was the first proprietor, in informing him that the rectification will be effected within thirty days from the date of postage of a notice. Contextually, the Registrar of Title cannot effect any rectification in the Land Register without prior notice to the owner or all persons interested in the intended rectification in the Land Register. That is the import of section 110 of Cap 334 (supra), which provide, I quote,

- (1) *A notice under this Act shall be deemed to have been served or given to any person*
- (a) *if served to him personally; or*
 - (b) *if left for him at his last known address; or*
 - (c) *if sent by registered post addressed to him at his last known address*
- (2) *No person shall be entitled as of right to any notice which the Registrar is required to give under the provisions of this Act unless he has furnished to the Registrar a postal address for service in Tanzania.*

Herein, the Third Respondent served a notice to the deceased and refrained to serve a notice to Asha Ally Ismail to whom rectification was made against, including the Appellant (purchaser) who asserted to have made an application of transfer and handed over original title deed to the Third Respondent for that purpose. There is no explanation forthcoming from the Third Respondent if the alleged Asha Ally Ismail or Appellant, did not furnish their respective address interims of subsection (2) of section 110 above.

To my view, it was imperative for the Third Respondent to serve notice to the duo as well. To my view, the act of the Third Respondent to abstain

issuing and serving notice of intended rectification to Asha Ismail who was an incumbent registered owner at the time of rectification, like wise to the Appellant (interested by virtue of a fact that his application for transfer was alleged pending at the office of the Third Respondent, to my view it amounted to the breach of the fundamental principles of natural justice of the right to be informed of the intended rectification, and eventually denied them the right to be heard if they had any concern or reservation to the impugned rectification of the Land Register. In the case of **Shengena Limited** (supra), at page 10 the apex Court had this to say regarding the right to be heard, I quote,

"...no decision must be made by any court of justice/body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice..."

At page 11 the Court of Appeal went further, I quote,

"It is trite law that a decision reached in breach or violation of this principle, unless expressly or impliedly authorized by law, renders the proceedings and decisions and/or orders made therein a nullity

even if the same decision would have been reached had the party been heard”.

Herein, the Third Respondent is a quasi judicial body with enormous powers and mandate to make decision which eventually affects rights of people in the torrens Land Register maintained by the Third Respondent. No wonder the law imposes obligation on the Third Respondents for whatever act done or decision or order made by him onto the Land Register to give it in writing and assign reasons for the act, decision or order and invariably communicate to the owner or person affected by his decision.

For bravity, I quote the provision of section 101, Cap 334 (supra),

*"When under this Act the Registrar makes any act he shall, on the application of any person affected thereby, give that decision or order in writing and state his reasons thereof or, **as the case may be, give his reasons in writing for that act”***

The learned Counsel for Appellant faulted the rectification of the Land Register by the Third Respondent on account that no consent was obtained from interested persons prior rectification. The learned State Attorney termed this argument as a misconception of law, arguing that a line should be drawn between rectification of Register in ordinary transfer between

vendor and purchaser which require consent differentiated it from that which is exercised under section 99(1)(d) and (f) and (2) (a) of Cap 334 (supra) that seek to prevent fraudulent conduct. I entirely agree with the argument of the learned State Attorney. In law there are two types of rectification of Land Register done by the Third Respondent. The First category is a normal transfer between the vendor and purchaser which invariably need consent of the owner for the transfer and rectification to be carried out and for it to be valid. This rectification is saved under the provision of paragraph (c) of subsection (1) to section 99 Cap 334 (supra). The first category fall under disposition and transfers under Part VI of the Act. The Second category is rectification conducted under the auspices of paragraphs (a), (b), (d), (e) and (f) of subsection (1) to section 99 of cap 334 (supra), which are initiated by the High Court or at the fiat of the Registrar of Title. These are called transmission as opposed to normal transfer on the first category. In other words they are called rectification by operation of law, falling under Part VII of the Act. To my opinion, rectification of Land Register by operation of law do not require prior consent of the so called owner, interested party or person who will be affected. These are only entitled to a notification by way of notice of intention to rectify the Land Register as I have explained above. Apart from issuing notices to the owner

or parties affected of intention to effect rectification of Land Register, the Third Respondent is under obligation to comply with the dictate of subsection (2) of section 99 Cap 334 (supra). My undertaking above, will form a departure to the earlier position of this Court in **Rajabu Mkidadi Mwilima** (supra) and **African Terminal Limited** (supra) and therefore distinguishable in that respect.

As much ground number one and four suffices to terminate this matter albeit on technical ground, I will not venture deliberating on the rest grounds which hinges on the merit of the appeal or subject matter.

I therefore quash the decision of the Registrar of Title dated 19/12/2015 rectifying the land Register by deleting the name of Asha Ally Ismail, in lieu thereof I direct the Third Respondent to comply with the above procedure of issuing and serving notices to the owner and or affected person, in line with what is provided undersection 110 (1) and (2) Cap 334.

Again, as hinted by the learned State Attorney, the declaration in support of rectification in the Land Register dated 25/11/2014 is somehow defective as it tend to suggest that the rectification in the Land Register was to be done by deleting the name of Asha Ally Ismail and replacing with the name of Francis Kally Chimbenje (deceased) instead of the Administrator General,

who was appointed and granted letters of administration to administer the estate of the late Francis Ally Chimbenje.

The appeal is allowed to the extent demonstrated above. However I make no order for costs.



E.B. LUVANDA
JUDGE
21/09/2023

Judgment delivered through video conferencing attended by Mr. Salehe Njoma learned State Attorney for the Respondents and in the absence of the Appellant.



E.B. LUVANDA
JUDGE
21/09/2023