

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

**MISC LAND APPLICATION NO. 450 OF 2023**

**MARTIN NASSON OGWARI.....1<sup>ST</sup> APPLICANT  
LOICE ERASTO NASSON.....2<sup>ND</sup> APPLICANT**

***VERSUS***

**RAMADHANI KANKA.....1<sup>ST</sup> RESPONDENT  
REGISTRAR OF TITLES.....2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

09<sup>th</sup> to 18<sup>th</sup> October, 2023

**E.B. LUVANDA, J**

The First and Second Applicants above mentioned filed the application under section 78(4) of the Land Registration Act, Cap 334 R.E. 2019, asking for orders to summon the First Respondent (Caveator) above, to show cause why the caveats entered against the Applicant's landed properties known as Plot No. 15 Block "D" and Plot No. 16 Block "D" Majohe Area, Ilala Municipality Dar es Salaam registered with certificate of title No. 93606 and 95973, respectively, should not be removed. In the joint affidavit, the deponents asserted that they are owners and occupier of the above mentioned landed properties. That in a search conducted on 03/07/2023 they have learn that the First Respondent has entered caveat

against the above described land properties claiming to have interest on the same, as per annexure TAB-2 to the affidavit. That following invasion and encroachment of their properties, they jointly instituted Land Case No. 88/2017 High Court Dar es Salaam District Registry, which was delivered in their favour, as per annexure TAB-3 and no appeal was preferred. That they preferred an application for Execution No. 29/2020, where they obtained eviction order and demolition on 19/03/2021, as per annexure TAB-4. That the First Respondent (Caveator) and 122 Others, lodged Land Application No. 9/2022 against the execution, but was struck out on 01/07/2022, as per ruling annexure TAB-5. That after conclusion of the matter, Yono Auction Mart, carried out eviction and demolition of houses to its completion, including that of the Applicants (sic, Respondent) including the present Caveator, as per certificate of completion annexure TAB-6. That after handing over the suit properties to the Applicants, one Winfrida Magure purporting to represent 122 Others lodged Misc. Land Application No. 16/2022, which was dismissed on 28/04/2023 as per ruling annexure TAB -7. That fewdays before hearing of Misc. Land Application No. 16/2022, the First Respondent (Caveator) entered a caveat on 27/04/2023 as per annexure TAB-8, claiming existence of Misc. Land Application No. 16/2022, which was dismissed on 28/04/2023. The Applicants further asserted that at the time of purchasing suit plots above, the Caveator had no title to the

encumbered property. That they acquired separate and clean title to the properties and purchased the same.

The grounds up on which application is taken is that: One, the caveat was lodged following existence of Misc. Land Application No. 16 of 2022, adding that following dismissal and determination in favour of the Applicants on 28/04/2023, there is nothing that justifies existence of the caveat; Two, no appeal was lodged against the ruling dated 28/04/2023; Three, the judgment in Land Case No. 88/2017 which declared the Applicants lawful owners stand unchallenged to date and no appeal has ever been lodged at the Court of Appeal.

In the written argument, Mr. Sylvatus Sylvivanus Mayenga learned Counsel for Applicants by large made a replica of the above narration. In view of the fact that the First Respondent (Caveator) is among those who were evicted and their houses demolished completely as per averment on paragraph eight of the joint affidavit, the First Applicant was served by way of publication via Mwananchi TZ ISSN 0856-7573 Na 8411 dated 24/08/2023, for him to appear on 29/08/2023. However, the First Respondent (Caveator) defaulted to appear to show cause why his caveat registered on 27/4/2023 should not be removed.

According to section 78(4) of Cap 334 (supra) provide,

*"The High Court, on the application of the owner of the estate or interest affected, may summon the caveator to attend and show cause why such caveat should not be removed and thereupon the High Court may make such order, either ex parte or otherwise as it thinks fit".*

Herein, the First and Second Applicants claim to be owners and occupier of the suit plot and produced certificate of occupancy title No. 95973 and 93606, along with building permits No. 03440 and 03461, forming part of a bundle annexure B1. The First and Second Applicants vindicated their title by a judgment in Land Case No. 88/2017, where this Court decreed in their favour and declared them lawful owners over the suit plots.

In the impugned caveat, the Caveator grounded existence of Misc. Application No. 66/2022. However, the said cause by way of objection proceeding was dismissed by this Court on 28/04/2023, for being over taken by event.

The Caveator also pleaded that there is an injunction order of this Court in Misc. Application No. 17/2022. The learned Counsel for Applicants said nothing regarding this order of temporary injunction, neither attached its ruling or order for Court appraisal. However, it is common knowledge that the life span of an injunction is six months, subject to extension here and there for an aggregate period of one year, see Order XXVII rule 3 Civil

Procedure Code, Cap 33 R. E. 2019. It is also common knowledge that the question of who is the rightful owners of the suit plot as pleaded in the caveat, cannot be determined through an injunction, unless the court issue a permanent injunction of which it is not the case here. And of course, permanent injunction could not be issued to superceed the decree of the same court.

Suffices to say, the ownership of the Applicants have been well presented and reasons for removal of the caveats have been well grounded and are valid.

Therefore caveats entered by Ramadhani Kanka over Plot No. 15 Block "D" title No. 93606 and Plot No. 16 Block "D" title No. 95973, which caveats were registered by the Second Respondent on 27/04/2023, are accordingly removed.

The application is granted. No order for costs.



E.B. LUVANDA  
**JUDGE**  
18/10/2023

Ruling delivered through video conference attended by Ms. Rosalia Ntiruhungwa learned Counsel for Applicants and in the absence of the First Respondent (Caveator), Second and Third Respondent.



E.B. LUVANDA  
**JUDGE**  
18/10/2023