

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

LAND APPEAL NO. 28270 OF 2023

(Originating from the Decision of the Registrar of Titles Dated 2/10/2023)

MUHIDIN SALUMU FARAHANI.....APPELLANT

VERSUS

REGISTRAR OF TITLES.....RESPONDENT

JUDGMENT

24/03/2024 to 17/04/2024

E.B. LUVANDA, J

The Appellant named above is challenging the decision of the Registrar of Titles which disallowed application for registration lodged by the Appellant on account that: One, the number of conditions listed and signature on the attached agreement differs with that on the land register; Two, the contract or sale agreement which was submitted is forged and therefore not suitable for registration.

In the petition of appeal, the Appellant grounded that: One, the Registrar of Titles erred in law and fact by refusing to grant the Appellant's application made for issuance of new certificate of title in respect of Plot No. 190 Block "D" located at Tabata Area, within Ilala Municipality in Dar es Salaam registered with CT

No. 37600; Two, the Registrar of Titles erred in law and fact in holding that the conditions and signature contained in the sale agreement attached in the application for issuance of new title differ with that on the land register without justification; Three, the Registrar of Titles erred in law and fact in refusing to issue the Appellant with a new certificate of title by holding that the sale agreement submitted by the Appellant is forged without particular of the alleged forgery and who forged it hence reached in a wrong decision.

Mr. Rajabu Mrindoko learned Counsel for Appellant prefaced his submission by a concise factual background of this matter to the effect that on 12/01/2015 the Appellant acquired Plot No.190 Block "D" located at Tabata Area with Certificate of Titles No. 37600 by way of purchase from Alex Mapalala at the consideration of Tshs. 65,000,000/=. He submitted that on- August 2022 the Appellant lodged application for transfer of ownership from Alex Mapalala to the Appellant's name in Dar es Salaam City Council, however the Appellant lost the Certificate of Title before the property was conveyed to his name. He submitted that on 16/22023, the Appellant applied to the Registrar of Title for a duplicate title under Section 38 of the Land Registration Act Cap 334 R.E 2019. He submitted that on 2/10/2023, the Registrar of Titles refused to grant the Appellant's application for issuance of duplicate title for the reasons stated above. The learned Counsel combined the three grounds and argued the same together because the three grounds are related to each other. The learned

Counsel faulted the findings of the Registrar of Titles in refusing to register the Appellant's application for duplicate title including the reasons created by the Registrar of Titles related to the validity of the supporting sale agreement. He submitted that the Registrar of Titles findings that number of conditions and signature in that sale agreement differ with that of the land register is entirely a dispute of the Registrar of Titles own making and no one else's. The learned Counsel opined that the determination of authenticity, of signature on the sale agreement in question is a specialized task for forensic document examiners in the-forensic science field. He cited the case of **Costancia Chaila and Another vs Evarist Maembe and Another**, Civil Application No. 227/17 of 2021 CAT. He submitted that the Registrar of Titles does not profess to be a forensic scientist to make such findings, arguing that her findings are not supported with evidence. Basing on the cited authority, the learned Counsel was of the view that the Registrar of Titles after found that the sale agreement submitted by the Appellant is forged, was supposed to report the said fraud to the police for investigation and obtains forensic signature examiner report to support her findings. He argued therefore that the findings of the Registrar of Titles have no basis in law and in fact, hence be set aside and the Appellant's application found to be well supported by the sale agreement.

Regarding ground number two, the learned Counsel submitted that the issue of the validity of the sale agreement was raised *suo motu* by the Registrar of Titles

in her decision. He submitted that having found that the application for issuance of duplicate title is supported by doubtful sale agreement, the Registrar of Title was required to invite the Appellant to address her on that issue instead of raising it *suo motu* and making verdict on it without availing the Appellant right to be heard. He submitted that it is cardinal principle of justice for judicial and quasi-judicial boards before giving a decision in any dispute, to accord the parties a right to be heard unless the law provide otherwise, citing Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977. The learned Counsel was a view that the decision which is made without observing the basic right to be heard ought to be nullified, citing the case of **The Director of Public Prosecutions vs Sabini Inyasi Tesha and Another** [1993] TLR 237. The learned Counsel made a prayer for the decision of the Registrar of Titles to be nullified and or be set aside and the Registrar of Titles be ordered to register the Appellant's application in compliance with the law.

The learned State Attorney for Respondent supported the appeal.

It is the law that where the Registrar of Titles make any decision, she is presupposed to state her reasons thereof, see section 101 of the Land Registration Act, Cap 334 R.E. 2019. Herein the Registrar of Titles indeed furnished reasons for refusal to register the application by the Appellant. But to my respective view the reasons prefaced in the decision that signatures differ materially with the one on the land register and accusation of forgery on the

sale agreement, ought to have been supported by factual findings as to how and why the Registrar reached to that conclusion. A mere fact that signatures differ materially and a sale agreement is forged without further exposition, is legally unjustifiable. Importantly the Appellant was not accorded a chance to respond to those accusation or give clarification. Nowhere it is stated if the Registrar of Titles did any inquiry or investigation into those accusation upon whose his decision was hinged.

My undertaking is premised on a fact that the Registrar Title is permitted to require attendance of any witness and examine him/her under oath, including to inspect and take copies of all materials documents in the possession. For brevity, I reproduce the provisions of section 105 Cap 334 (supra),

'Where any question arises as to whether any registration or entry should or should not be made, or whether any memorial inscribed in the land register should or should not be corrected or cancelled or where by this Act or any rule made thereunder the Registrar is expressly or impliedly authorized or required to inquire into, investigate, give any decision on or exercise any discretion as to any matter, he may order any person-

- (a) to attend before him at such time and place as he appoint and examined on oath, which he is hereby authorized to administer;*
- (b) to produce to and allow him to inspect and take copies of all material documents in the possession, power or control of such person'*

To my view, the reasons adduced by the Registrar of Titles ought to be supported by factual details which formed the basis of the decision or conclusion that indeed signatures materially differ and sale agreement is forged.

Therefore, the decision of the Registrar of Titles cannot sail through, the same is quashed and set aside. The Registrar of Titles is directed to either re-consider the application by the Appellant or embark on the procedure above and affording the Appellant a chance to be heard before entering a verdict for refusal.

I decline to impose costs which was stressed by the Counsel for Appellant, for reason that there are no facts depicting the appeal was occasioned by his willful misconduct as provided under the proviso to subsection (9) of section 102 Cap 334 (supra).

The appeal is allowed to the extent demonstrated above. No order as to costs



E.B. LUVANDA
JUDGE
17/04/2024

Judgment delivered in the presence of the Appellant and in the absence of the Respondent.



E.B. LUVANDA
JUDGE
17/04/2024