

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 08 OF 2020

BERNADETA SIMBAULANGA.....APPELLANT

VERSUS

THE REGISTRAR OF TITLES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

Date of the judgment 27/11/2020

Date of the last order 15/09/2020

JUDGEMENT

I. MAIGE, J.

This is an appeal against the decision of the Registrar of Titles refusing to rectify the register by registering the appellant herein as the owner of the property with Certificate of Title No. 132016 by operation of law. The purported decision of the Registrar of Titles is attached in the petition of appeal. It is dated October 2019.

The application for rectification by the appellant before the first respondent emanates from the decision of the **DLHT** dated 5th November 2013 dismissing the application for want of prosecution. In the application, Khadija Mfaume was

the claimant and the appellant herein the respondent. She was seeking to be declared the lawful owner of the suit property.

On 27th August 2019, it would appear, the appellant wrote a letter to the first respondent praying for rectification of the register by operation of the law by inserting her name as the owner of the **suit property**. The first respondent refused the application for two reasons. First, the **suit property** was registered in the name of Mwakuma Abeid Uweje. Two, in the decision dismissing the application, the appellant was not declared the lawful owner of the **suit property**. The appellant is not pleased with the decision and henceforth the instant appeal. She has, in the Petition of Appeal, enumerated the following grounds:-

1. *That the Registrar of Titles erred in law when he made a decision that the Tribunal did not declare the Appellant the legal owner.*
2. *That the Registrar of Titles erred in law when he made a decision that MWAJUMA ABEID UWEJE's interest in the suit premises arose after the suit premises was sold by KHADIJA MOHAMED MFAUME to MWAJUMA ABEID UWEJE 1st January 2014, subsequent to the Tribunals' decision which is dated 5th November 2013.*
3. *That the Registrar of Titles erred in law when he did not take into account that after the dismissal of Land Application No. 24 of 2013, KHADIJA MOHAMED MFAUME had nothing to sell to MWAJUMA ABEID UWEJE and registration of MWAJUMA ABEID UWEJE as the owner of the suit premises was null and void.*

In the conduct of this matter, the appellant was represented by advocate, GODWIN MUGANYIZI while VIVIAN METHOD, learned state attorney, represented the respondents. By direction of the Court, the appeal was argued by way of written submissions. I recommend the counsel for their very useful submissions. They have been duly considered.

In his submissions, Mr. Muganyizi, it would appear to me, addressed the three grounds of appeal concurrently. He submitted that since in the land case number 24 of 2013 Khadija Mohamed Mfaume was suing the appellant for the ownership of the **suit property**, and the suit having been dismissed for want of prosecution, his sale of the suit property to Mwajuma A. Uweje subsequent to the dismissal of the suit was illegal. He submitted therefore that, the first Respondent was wrong in refusing to register the appellant as the owner of the **suit property** on account that he was not so declared. He further faulted the first respond in holding that Mwajuma Abeid Uweje was not in the proceedings. He should have taken into account the fact that she acquired interest on the **suit property** subsequent to the dismissal order. He therefore urged the Court to allow the appeal and rectify the register so that the **suit property** is in the name of the appellant.

On her part, Miss Vivian submitted, with all forces that, the appeal is devoid of any merit. On the first ground, it was her submissions that, as the application against the appellant at the **DLHT** was dismissed for want of prosecution without there being an order declaring the appellant the lawful owner of the **suit property**, the first respondent would have not, by way of rectification, register the appellant the lawful owner of the **suit property**.

In his rejoinder submissions on the first ground, Mr. Muganyizi contends that, since the said Khadija prayed to be declared the lawful owner of the **suit property**, she was constructively not the owner of the **suit property**. Come what may that would have not been the basis of rectification. For, it is common ground that, the suit at the **DLHT** was not initiated by the appellant herein but by Mwajuma Abeid Uweje. It is also not in dispute that, the appellant did not, in the said proceeding, raise a counterclaim to be declared the lawful owner of the **suit property**. More importantly, it is apparent that, the application at the **DLHT** was dismissed for want of prosecution without actually determining the merit of the application. As such Miss Vivian is quite right that, in the said decision, neither of the parties was declared a lawful owner of the **suit property**. The first

respondent was therefore quite right in refusing to rectify the register basing on a decision which did not declare the appellant the owner of the **suit property**.

On the second ground, it was submitted that the first respondent did not commit any error in holding that Mwajuma Abeid Uweje was not party to the proceedings in Land Application No. 24 of 2013. She clarified that, in accordance with the application filed at the **DLHT**, the suit was between Khadija Mohamed Mfaume and the appellant herein. On this, the application form and the decision of the **DLHT** speaks for themselves. The ground of appeal has no merit and it is accordingly overruled.

On the third ground, Miss Vivian reiterated her submissions in respect of the first ground of appeal and submitted that since in the dismissal order of the **DLHT** the appellant was not declared the lawful owner of the **suit property**, the decision cannot be the basis of nullifying the subsequent transfer of the **suit property** between Khadija Mohamed Mfaume and Mwajuma Uweje. The counsel gave a detail account of the history of the **suit property**. From the petition of appeal and the parties submissions, it would appear to me, the submissions raise complicated factual points which cannot be determined by way of appeal. They could have not also, in my humble opinion be disposed of by way of an application

for rectification before the first appellant. Regard being had on the fact that the said purchaser had never been a party to the said proceedings. It is not implicit in the dismissal order that she was aware of the said proceedings too. The third ground of appeal is also without merit.

In the final result, the appeal has no merit and it is accordingly dismissed with costs.

It is so ordered.

Right to appeal is duly explained.

A handwritten signature in black ink, appearing to read 'J. Maige', written in a cursive style.

J. Maige

JUDGE

27/11/2020

Date: 27/11/2020

Coram: Hon. S.H. Simfukwe - DR

For the Appellant: Ms. Felister Msoka, Advocate

For the 1st Respondent]

For the 2nd Respondent]

Mr. Gallus Lupogo State Attorney

RMA: Bukuku

ORDER: Judgment delivered this 27th day of November, 2020.



S.H. Simfukwe

DEPUTY REGISTRAR

27/11/2020