

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 372 OF 2023

(Arose from the rectification decision of the Registrar of Titles made on the 30th November, 2021)

MADANIO IBRAHIM SAIDI (As Administrator

of the estates of the late Halima Othman Sadan APPELLANT

VERSUS

REGISTRAR OF TITLES 1ST RESPONDENT

ASSISTANT COMMISSIONER FOR LANDS,

DAR ES SALAAM ZONE 2ND RESPONDENT


HON. ATTORNEY GENERAL 3RD RESPONDENT

Date of Judgment: 27/02/2024

Date of the last order: 15/02/2024

JUDGMENT

A. MSAFIRI, J

This is an appeal following the rectification from the register, the Title of ownership of the appellant one Madanio Ibrahim Saidi who own the said Title in his capacity as an administrator of the estate of the late Halima Othman Sadan. The appellant claims that the rectification decision was made by the Registrar of Titles (the 1st respondent) and the Assistant Commissioner for Lands (the 2nd respondent) on 30th November 2021. 

The appellant herein was aggrieved by the said decision by which the name of Halima Othman Sadan was removed from ownership of Plot No. 58 Block "N" at Goba, and was replaced with the name of Her Excellency, the President of the United Republic of Tanzania. In the appeal, the appellant has advanced three (3) grounds as follows;

- 1. The Registrar of Titles erred in law and facts for rectifying the land register of Plot No. 58 Block 'N' for reasons assigned by the Assistant Commissioner for Lands without according to the Appellant right to be heard.*
- 2. The Registrar of Titles erred in law and fact for rectifying the register of Plot No. 58 Block 'N' relying on the reasons assigned by the Assistant Commissioner for lands that Kuruthumu Ibrahim Salum Salum was not compensated by Halima Othman Sadan before the land being surveyed which is not among the reasons for rectification of land register as covered by the provisions of Section 99(1)(2) and 100 of the Land Registration Act, Cap 334 [R.E. 2019].*
- 3. That, rectification decision was made without adhering to the statutory procedures provided for by the Land Registration Act, Cap 334 [R.E. 2019]*

The appellant prayed that the Registrar of Titles' decision rectifying the Land Register of Plot No. 58 Block N at Goba be varied and set aside and that he be restored in the Land Register as the owner of the disputed property.


The disposal of this appeal was by way of written submissions whereas, the Appellant was represented by Mr. Mashaka Ngole, learned

Alles.

Advocate while the Respondents were represented by Ms. Narindwa Sekimanga, learned State Attorney.

Mr. Ngole submitted seriatim on the grounds of appeal. On the first ground, he was of the view that the rectification done by the 1st and 2nd respondents by removing the name of Halima Othman Sadan from the register as the owner of the suit property and replacing it with the name of her Excellency President of the United Republic of Tanzania, contravened the principle of natural justice which is protected in the Constitution of the United Republic of Tanzania under Article 13, which is the right to be heard.

He further stated that the rectification was done without compensation and that Halima Othman Sadan was unaware of the same and was never heard before such decision of rectification was done as required by the law. In addition, the counsel pointed that there is no evidence proving that Halima Othman Sadan was ever notified and received the notice.

Mr. Ngole cited good number of cases regarding the right to be heard including among others, the case of **Mbeya Rukwa Autoparts and Transport Ltd vs Jestina George Mwakyoma** [2000] TLR 251 where the Court of Appeal stated that; .

"It is cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard" (at page 264)

"It is not a fair and judicious exercise of power, but a negation of justice, where a party is denied a hearing before its rights are taken away" (at page 265)

"In this country, a natural justice is not merely a principle of the common law; it has become a fundamental constitutional right. Article 13(6)(a) includes the right to be heard among the attributes of equality before the law" (at page 265).

He averred that the legal consequences of failure to afford a person his right to be heard before any decision is made is to render such decision a nullity. To support this point, he cited the case of **Tang Gas Distributors Limited vs Mohamed Salim Said and 2 others** [2014]3 E.A at page 457.

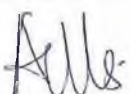
On the second ground Mr. Ngole argued that the rectification did not follow the required procedures under Section 99 of the Land Registration Act, Cap 334 [R.E. 2019]. That the conditions for rectification are provided under Section 99(1)(a),(b),(c),(d),(e) and (f). He said further that, by the conditions set under the above said provisions, the reason used in rectifying the Title which was advanced by the Registrar of Titles that the previous owner one Kuruthum was not compensated was not one

Alles.

of the law requirements for rectification. He added that in fact, the question whether Kuruthumu was compensated or not was a matter of evidence and determination of such evidence by the High Court and not mere conclusion by the 1st respondent.

On the third ground, Mr. Ngole contended that the rectification process was made without adhering to the statutory procedures set under Section 99 of the Land Registration Act. He further insisted that before the rectification is done the Registrar of Titles is bound to afford the person likely to be affected with his decision, a right to be heard. He prayed for the appeal to be allowed.

On reply, besides filing their reply submissions, the respondents through Ms. Narindwa Sekimanga, learned State Attorney, filed a preliminary objection on point of law. However, the respondents never appeared in court on the date set to prosecute or address the court on their objection, hence this court dismissed the raised preliminary objection and went on to determine the appeal on merit.

In their reply submission, the respondents represented by Ms Sekimanga argued on the first ground that the rectification was done in compliance with the law under Section 99(1)(f) of the Land Registration Act. 

She argued that Halima Othman Sadan was notified on the intended rectification by the 1st respondent before the rectification decision was reached and that the notice of rectification was issued to the said Halima as per Section 99 of the Land Registration Act. That the said notice was communicated to Halima Othman Sadan on 30th December, 2021 via her P.O Box 2659 Dare es Salaam but the said Halima opted to waive her right to be heard despite the fact that she was notified to exercise her constitutional right to be heard.

To bolster her point, she cited the case of **MT.59505 SGT. Aziz Athuman Yusuf vs The Republic**, Criminal Appeal No. 324 of 2019 at page 12 where it was held thus;

"As we observed in Abdallah Makongoro & 4 Others vs Hon. Attorney General, Civil Appeal No. 8 of 1961 (unreported), it is one thing to be afforded a right to be heard and a different thing to the party concerned to exercise it. That means, a party who squanders that right cannot be heard to complain as the appellant does. The record shows plainly after the ruling on a case to answer, the trial court addressed the appellant his right to present his case and call witnesses as required by Section 231(1) of the CPA"


She maintained that the appellant herein was not condemned unheard but she opted not to exercise the right to be heard by not responding to the notice.

Alle.

On the second ground of appeal, Ms. Sekimanga was of the view that since the Commissioner for Land is the custodian of the Land Register, he is in position to know as to who is the rightful owner of the land. She said that Halima Othman Sadan had not compensated the previous customary owner of the suit property before it was surveyed.

She argued further that the rectification process complied to the law requirement under Sections 99(1) and (2)(c) of the Land Registration Act and that the Registrar of Titles was exercising what was within his power under Section 99(1)(c) and (f) of the Land Registration Act. She contended that the appeal has no merit whether factual or legal, therefore thus it should be dismissed with costs.


On rejoinder, the appellant reiterated what was submitted in chief and further added that no notice was communicated and reached to Halima Othman Sadan.

Having gone through the submission of the parties, it is undisputed that the suit property, that is Plot No. 58 Block 'N' at Goba with Certificate No. 84159 was in the name of Halima Othman Sadan as per Annexure MK1 attached with the petition of appeal dated 30th November 2021 named as DECLARATION IN SUPORT OF RECTIFICATION IN THE LAND REGISTER UNDER SECTION 99(1). 

By that Declaration of the Assistant Commissioner for Land, the name of Halima was deleted from the Land Register and was replaced by the name of her Excellency the President of the United of the United Republic of Tanzania.

It is the arguments of the appellant through his counsel that Halima Othman Sadan was an interested part to the rectified land/property but was never served a notice or informed of the intention of rectification. Meanwhile, the respondents through their counsel averred that the notice was sent and addressed to Halima Othman Sadan on 30th December 2021, informing her on the intention to rectify the register by removing her name from ownership, and replacing it with the name of His Excellence President of the United Republic of Tanzania.

However, there is no proof of the respondents claims on whether such Notice reached Halima Othman Sadan for her to give her consent as per Section 99(1)(c) of the Land Registration Act, and therefore exercise her right to be heard.

By the facts and evidence on record, the rectification was done on 30th November, 2021 but the Notice to Halima Othman Sadan was dated on 30th December, 2021 this being 30 days after the rectification by the Registrar of Titles. In their reply submission, the respondents have .

admitted the fact that Halima Othman Sadan was served on 30th December, 2021. This proves beyond any imagination that Halima was never accorded the fundamental right to be heard because even if she might have received the purported notice, the decision for rectification was already done 30 days before.

In that regard it is my finding that the appellant was not afforded the right to be heard and such omission by the respondents is fatal and has the consequences of nullifying the whole procedure of rectification which was done by the respondents.

Having so observed, I see no reason for determining other grounds of appeal which appear to have similar arguments and conclusion surrounding the major issue of the appellant's being denied the right to be heard as the owner of the suit property as per the requirement of Section 99(1)(c) of the Land Registration Act.

Exercising the power of this Court under Section 102(9) of the Land Registration Act, I allow this appeal and order as follows;-

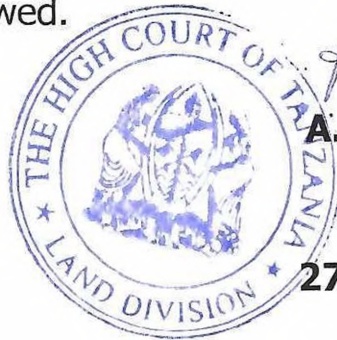
- a) The Registrar of Titles' decision rectifying the Land Register of Plot No. 58 Block N at Goba is hereby varied and set aside.
- b) The Appellant be restored in the Land Register as the owner of the Plot No. 58 Block N at Goba until her right to be heard

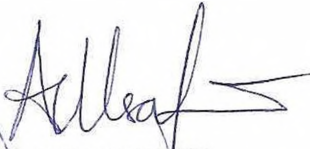
AMS

is exercised if at all the respondents shall still be interested to rectify the said Title on suit property.

- c) The respondents to observe the required procedures provided by the law in rectifying the Land Register.
- d) Each party shall bear its own costs.

Appeal allowed.




A. MSAFIRI
JUDGE
27/02/2024