

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**LAND APPEAL NO. 66 OF 2021**

**(Arising from the Decision of Assistant Registrar of Titles given on 25<sup>th</sup> day  
of November, 2021 at Geita.)**

**ERNEST NDUTA NYORORO.....APPELLANT**

**VERSUS**

**ASSISTANT REGISTRAR OF TITLES.....1<sup>ST</sup> RESPONDENT**

**SME IMPACT FUND TANZANIA LIMITED.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**28<sup>th</sup> & 30<sup>th</sup> Sept., 2022**

**DYANSOBERA, J:**

This appeal is directed against the decision of the Registrar of Titles for Geita given on 25<sup>th</sup> November, 2021 notifying the appellant of the intention of transferring of ownership of title No. 19347 in respect of Plot No. 215 Block E, Geita Urban area in Geita Township. The appeal, according to the petition of appeal, contains five grounds, namely:

1. That, the Assistant Registrar of Titles erred in both law and fact by issuing 30 days' notice to the appellant with the intent to register the transfer of the right of occupancy under power of sale, to the 2<sup>nd</sup> respondent without observing the availability of CAVIET (sic) entered by the appellant in the Land Registry.

2. That, the Assistant Registrar of Titles erred in both law and fact by accepting the application for changing ownership under power of sale to the second respondent while there is a pending suit between the appellant and 2<sup>nd</sup> respondent at the District Land and Housing Tribunal for Geita, which is Land Application No. 41 of 2021.
3. That, the Assistant Registrar of Titles erred in both law and fact by accepting the application for changing ownership under power of sale, to the 2<sup>nd</sup> respondent while there is interim order granted by the District Land and Housing Tribunal for Geita against the said SME IMPACT FUND TANZANIA LIMITED,
4. That, the Assistant Registrar of Titles erred in both law and fact for failure to observe the principle of natural justice by not affording right to be heard to the appellant.
5. That, the Assistant Registrar of Titles erred in both law and fact for failure to discover fraud and misrepresentation done by the 2<sup>nd</sup> respondent.

With these grounds, the appellant is praying for an order to quash and nullify the decision of the Assistant Registrar of Titles and order the transfer of title to the 2<sup>nd</sup> respondent to be stayed pending determination

of the suit, an order for costs and any other order or reliefs the court deems fit to grant.

At the time of the hearing of the appeal, Mr. Yuda Kavugushi, learned Advocate, who had been given instructions to proceed, held brief for Mr. Beatus Malecha, learned Counsel for the appellant while for the 2<sup>nd</sup> respondent, stood Mr. Davis Muzahula, learned Advocate. The 1<sup>st</sup> respondent absented himself despite being duly served with the notice to appear.

Before Counsel for the appellant took the floor to argue the grounds of appeal, Mr. Davis Muzahula raised an issue questioning the competence of this appeal. He contended that this is an appeal against the move of the Assistant Registrar of Titles, the 1<sup>st</sup> respondent in this appeal, to give notice to the appellant that he intends to make transfer of ownership from the appellant to another person. In other words, Counsel for the respondent is afraid if at all giving notice amounts to a decision capable of being appealed against.

Elaborating on his argument, Mr. Davis Muzahula contended that Section 101 of the Land Registration Act [Cap.] states that the decision of the Registrar has to be in writing and explains what recourse the affected party has to take. According to him, the appellant ought to have inquired from the 1<sup>st</sup> respondent on the reasons for him leading to his effecting the

transfer and the response would have been in writing bearing reasons hence the basis of being challenged by way of appeal, otherwise, the appeal has been filed pre-maturely.

Responding and submitting in support of the grounds of appeal, Counsel for the appellant argued that the decision appealed against was made by the 1<sup>st</sup> respondent by way of notification on 5. 11. 2022 expressing his intention to effect transfer of ownership in respect of Plot No. 215 Block E located at Geita Urban area in Geita Township with Title No. 19347, the property of Ernest Nyororo, the appellant, of which transfer is intended to go to the 2<sup>nd</sup> respondent, of P.O. Box 12257, Arusha. It is argued on part of the appellant that the notice was issued shortly after the appellant had registered his caveat in the Land Registry Office and registered on 20.10.2021, that is a month after the registration of the caveat. In the caveat, the appellant had averred that he had interest in that land and he had filed Land Application No. 41 of 2021 and Misc. Application No. 122 of 2021 whereby the application sought a restraining order in respect of the mentioned property till the dispute on that piece of land was determined. Counsel for the appellant further argued that the interim injunction order was given by Hon. Masao, Chairperson of the District Land and Housing Tribunal restraining the 2<sup>nd</sup> respondent, Nduta Nyororo Co. Ltd and Mangwembe Court Brokers Auction Mart dated 14<sup>th</sup>

September, 2021. After all this, the 1<sup>st</sup> respondent, notwithstanding of what the appellant had done, notified the latter that he intended to change the transfer of ownership unless restrained by the High Court.

It was strongly argued for the appellant that according to the Land Registration Act, there is no any mode of challenging the decision, order or any act of the Registrar other than by way of appealing. According to learned Counsel for the appellant, Section 101 of the Act directs the Registrar to reduce in writing his decision, order or any act while under Section 102, an aggrieved party may challenge such decision, order or act by way of appeal to the High Court and that is what he, the appellant, has done.

Admitting that the notice of the Registrar is an incomplete decision, Counsel for the appellant, however, explained that the completion takes effect after the expiry of thirty days and that upon the expiry of that period, the decision is complete and the change of ownership may be affected. Counsel for the appellant takes the notice by the 1<sup>st</sup> defendant to be 'an act' envisaged under the law and the appeal is properly before the court and thence intervention of the High Court is proper so as to prevent the 1<sup>st</sup> respondent circumvent the Land Application No. 41 of 2021 and the interim order. Further that the caveat lodged in the land office on 20.10.2021 which is recognized under Section 78 (1) and (3) of the Act is

challenging the transfer of Plot No. 215 Block E, Geita Urban with title No. 19347.

Counsel for the appellant lamented that if the transfer is allowed to proceed, it will render nugatory the proceedings before the District Land and Housing Tribunal.

Submitting in opposition of the appeal, Mr. Muzahula, learned Counsel for the 2<sup>nd</sup> respondent, noted that the appeal falls under Part XVI of the Land Registration Act under which Sections 101 and 102 are covered and that the law tells all. According to him, Section 102 cannot be invoked until a person has complied with Section 101 which makes a condition precedent which seemingly needs to be fulfilled in that any person affected has to make an application so that the Registrar gives his decision in writing with reasons thereof.

Admitting that giving a notice is an act contemplated under the law, Counsel for the 2<sup>nd</sup> respondent is of the view that such act must be in writing and accompanied by reasons which should be part of the record and that since the notice appealed against has not reasons, then section 101 has not been complied with and the appeal is pre-mature. Counsel for the 2<sup>nd</sup> respondent rested his submission. As said earlier, the 1<sup>st</sup> respondent has defaulted appearance despite being duly served.

I have considered the grounds of appeal, the submissions by learned Advocates for, respectively, the appellant and 2<sup>nd</sup> respondent. I have also taken into account the material on provisions of Sections 101 and 102 of the Land Registration Act.

Before embarking on the determination of the merits or otherwise of the appeal, let me first answer the preliminary concern raised by learned Counsel for the 2<sup>nd</sup> respondent on whether or not the appeal has been prematurely filed. The basis for this argument is that Section 102 could not be brought into play before complying first with the provisions of Section 101 which required the appellant, after he was notified by the 1<sup>st</sup> respondent, to make an application seeking reasons of the 1<sup>st</sup> respondent's intention of transfer of ownership of the property in question. Counsel for the appellant believes that the interpretation of the provisions of Section 101 by Counsel for the 2<sup>nd</sup> respondent is but, a misconception.

I think Mr. Yuda Kavugushi is right. 101. Decision to be in writing  
Where under this Act the Registrar makes any decision or order or does any act he shall, on the application of any person affected thereby, give that decision or order in writing and state his reasons therefore or, as the case may be, give his reasons in writing for that act.

102.

(1) Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act.

As the provision of section 101 enacts, the Registrar is only required to give that decision or order in writing and state his reasons therefore or, as the case may be, give his reasons in writing for that act, only on the application of any person affected thereby. Otherwise, the decision, order or an act made, is appealable under Section 102. The omission of the word '**written**' decision, order or act of the Registrar, explains the *raison d'être* of my finding.

As rightly argued by Counsel for the appellant, this appeal is properly before this court.

Now on merits or otherwise of the appeal. There is no dispute that appellant has filed before the District Land and Housing Tribunal for Geita Land Application No. 41 of 2021 on the ownership of the property in dispute. Likewise, it has not been disputed that the same appellant filed at the same District Land and Housing Tribunal Misc. Application No. 122 of 2021 seeking temporary injunctive order and the appellant has proved, and neither the 1<sup>st</sup> respondent nor the 2<sup>nd</sup> respondent has disputed, that

an interim restraining order has already been against the respondents. This means that the property in issue, that is the land with title No. 19347 in respect of Plot No. 215 Block E, Geita Urban area in Geita Township, is also a subject of a pending court proceedings at the District Land and Housing Tribunal for Geita as amply demonstrated by the appellant and not denied by the respondent.

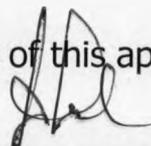
Besides, the appellant has filed a caveat with the land registry. It has been established on part of the appellant that the caveat has been filed in accordance with the law. Caveat simply means, let him beware. It is likened to an injunction aimed at keeping the disputed property in *status quo ante*. In other words, it is a general process to suspend the process of registration or transfer until the conflicting claims have been settled. The caveat is covered under Section 78 (1) and the Registrar has to comply with sub-section (3) of Section 78 of the Act.

This appeal has not been substantially resisted by the 1<sup>st</sup> respondent who defaulted appearance.

With the foregoing, I am satisfied that the grounds 1, 2, 3 and 4 of appeal are meritorious. I am, however, not satisfied that the alleged fraud and misrepresentation on part of the 2<sup>nd</sup> respondent has been established. This ground falls away.

The upshot of this is that the appeal is allowed and the act of the 1<sup>st</sup> respondent notifying the appellant of his intention to effect transfer of ownership of the property in issue which is also a subject of a pending court proceedings at the District Land and Housing Tribunal for Geita in Land Application No. 41 of 2021 and in respect of which a caveat has been filed, is quashed and set aside.

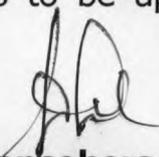
The appellant is awarded costs of this appeal.

  
**W.P. Dyansobera**  
**Judge**  
**30.9.2021**

This judgment is delivered at Mwanza under my hand and the seal of this Court on this 30<sup>th</sup> day of September, 2022 at 1400 hrs. in the absence of the parties.

The parties and/or their advocates to be apprised by the DR of the decision of this court.



  
**W.P. Dyansobera**  
**20.09.2022**