

TANZANIA / JUDGMENT

# alexander kalua wahyungi vs eqba ebrahim 2021 tzhclandd 760 29 october 2021

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29 October 2021

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IN THE HIGH COURT OF TANZANIA LAND DIVISION AT DAR ES SALAAM MISC. APPLICATION  
NO. 322 OF 2020 ALEXANDER KALUA WAHYUNGI..... Ist APPLICANT VERSUS  
EQBAL EBRAHIM..... RESPONDENT

## RULING

Date of last Order: 5/10/2021 Date of Ruling: 29/10/2021 T. N. MWENEGOHA, J: The applicant is approaching this Court seeking:

- i. This Honourable Court be pleased to order the Respondent to show cause as to why his CAVEAT lodged to encumber Plot No. 504 EX- DAYA ESTATE DATE ES SALAAM CITY with certificate No. 100578 should not be removed. ii. This Honourable Court be pleased to declare that the reason for lodging the CAVEAT is no longer in existence so that the lodged CAVEAT must be removed. iii. Other Orders as this honourable Court may be pleased to grant, iv. The costs of this Application to be borne by the respondent. i In support of this application the applicant filed an affidavit sworn by himself and countered by the Counter affidavit of the respondent. The applicant was represented by Advocate Isaac Nassor Tasinga while the respondent was represented by captain Ibrahim Bendera, Advocate. Application was argued by Written submissions where in his submission Counsel Tasinga informed this Court, that respondent filed Caveat against Misc. Land Case Appl. No. 916 of 2016 and the fact that the application is dismissed, the Caveat is no longer valid and prayed for this Court to remove it with order to costs. In reply, Advocate Captain Bendera submitted that after Misc. Appl. 726/2016 being dismissed the respondents on 25/6/2020. They filed notice of motion to Court of Appeal of Tanzania for enlargement of time for a revision where the Court of Appeal could revise the High Court ruling notice of motion Civil Appl. No. 235 of 2017. He submitted further that the Caveat that the applicant wants this honourable Court to remove has already been withdrawn and in its place a new Caveat has been registered pending application Court Appeal of Tanzania Civil Appl. No. 235/2017. They attached the new Caveat for judicial notice. The respondent prayed for the application to be marked overtaken by event with no order as to costs. In his rejoinder, Mr. Tasinga challenged

respondent's Caveat by arguing that it is an afterthought because this application was filed in 18/6/2020 and the new Caveat was 2020 after lodgement of current application. Therefore, it 2 shows that the respondent has withdrawn leave of the Court which is unusual practice. This Court is noting that the respondent has conceded and declaring in his submission that he has removed the Caveat, albeit under unusual circumstances as pointed out by the applicants. It is noted further that the applicant is praying for the Court to declare that the reason for the lodging of the Caveat no longer exist and that the Caveat be removed. As the respondent has confirmed that this is the position; then this Court doth hereby declare that Caveat for Misc. Land Case Appl. No. 916 of 2016 does no longer exists. Costs for this application to be borne by the respondents. It is so ordered. Dated at Dar es salaam this 29th day of October, 2021. 3

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Prepared on 14 October 2026 · Esheria