

TANZANIA / JUDGMENT

## KANYASU

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20 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB-REGISTRY OF MWANZA AT  
MWANZA LAND APPEAL NO. 24889 OF 2024 CONSTANTINE  
KANYASU..... APPELLANT VERSUS REGISTRAR OF  
TITLES..... 1st RESPONDENT ATTORNEY  
GENERAL.....2ND RESPONDENT

## RULING

21 January & 20 February 2025 st th CHUMA, J. This appeal was filed as a result of the 1st respondent's intention to rectify the Land register by deleting the appellant's name as the owner of Plot No. 1141 Block 'A' Luchebele, Mwanza City in Certificate of Title No. 19560 LR Mwanza. The appeal encountered two points of preliminary objection;

1. That, this appeal is prematurely brought before this Honorable Court without complying with the requirement of one-month notice to the 1st Respondent and High Court contrary to section 102(1), (a) of the Land Registration Act [CAP. 334 R.E. 2019]
2. That, this appeal was filed not as a land appeal but as a mere land case hence this Court has no jurisdiction to entertain it. 1 The raised two points of preliminary objection were argued by way of written submissions. The scheduling order was complied with by both parties by filing their respective submissions timely through legal representation of Mr. Vedastus Laurean advocate and Felician Daniel State Attorney for the appellant and respondents respectively. Arguing on the first point of preliminary objection, Mr. Daniel submitted that this appeal is prematurely brought before this Honorable Court because Section 102(1), (a) of the Land Registration Act (supra) requires a party who intends to appeal against the intention of the Registrar of Titles to serve notice of intention to appeal within one month from the date of the impugned decision, order or act. That, in the instant matter a notice with reference No. LR/MZ/T/19560 is dated 5th September 2024 while the appeal was filed on 04th October 2024. In the case of Amson Industries (T) Ltd V the Registrar of Titles & Another, Land Appeal No. 7732 of 2024, on pages 13 and 14 this court cited with approval the case of Valence Matunda V Assistant Registrar of Titles, Misc. Land Appeal No. 43 of 2023 where it was held inter alia that; "...The Land Registration Act only requires a person aggrieved by the decision, order, or act of the Registrar of 2 Titles to issue notice of intention to appeal to the Registrar of Titles and the Court within a period of 30 days and thereafter

lodge the Appeal within 90 days...” He submitted further that failure to issue a notice of intention to appeal renders the appeal to be incompetent as stated in the case of Rafikahawa Mohamed Sadiki V Registrar of Titles & Others, Land Appeal No.15 of 2020 (unreported). In reply, it was submitted that the appeal is not premature because the Appellant while filing the petition of appeal complied with the requirement of law by filing a notice of intention to appeal together with the petition of appeal on 4th October 2024, in court and on 18th October 2024 both were served and received by the Registrar. Section 102 (1) of the Land Registration Act (supra) mandates any person aggrieved by a decision order or act of the Registrar to appeal to this court within three months. That, counting from the date when the Appellant received a notice of rectification on 23rd September, 2024 to the time of filing of notice and service to the registrar of title was within time. That the cases cited by the respondent’s counsel are distinguishable. 3 In rejoinder, the submissions in chief were reiterated with an addition that, the Appellant in his submissions admits that his appeal was not preceded by a Notice of intention to appeal to the registrar and High Court as required by the laws. Having considered the submissions of parties for and against, I will now determine whether this appeal was prematurely filed before this court. According to the appellant, the notice of intention to appeal was filed in court on 4th October 2024 alongside the petition of Appeal. The same was served to and received by the registrar of titles on 18th October 2024. Now the question arises, was the Notice correctly served in line with the law? section 102 (a) of the Land Registration Act (supra) reads; 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: Provided that-

- (a) No such appeal shall lie unless the appellant or his advocate shall, within one month from the date of such decision, order, or act, have given to the Registrar and to the High Court notice of intention of appeals; (emphasis added) 4 The wording of this provision is clear and unambiguous that no appeal shall lie to the High Court until a notice of intention to appeal has been given to the registrar of title and the High Court. It is the rule of statutory interpretation that, when the words used in a statute are unambiguous, no further step is needed to identify the intention of parliament. See the case of Game Discount World Tanzania vs the Commissioner General Tanzania Revenue Authority, Civil Appeal No. 22 of 2022 (unreported). As I have stated herein the appellant filed this appeal alongside the Notice thereof. According to the appellant’s submission, the Registrar of Title was served with that notice with the petition of appeal on 18th October 2024. In other words, the appeal was filed before the notice to the Registrar contrary to section 102 (1) (a) of the Land Registration Act (supra). The essence of serving the Registrar and the High Court is not mere compliance, it intends to give the Registrar of Title a chance to investigate and review his decision if the need arises. Section 105 clearly states that;

105. 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 canceled or 5 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 may appoint and be examined on oath which he is hereby authorized to administer; and
  - (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. That being the case, therefore, this appeal was prematurely filed before this court. The Registrar was denied a chance to reconsider his decision to rectify the Land Register in respect of Certificate of Title No. 19560 LR Mwanza. The first point of preliminary objection is sustained and suffices to dispose of this appeal without venturing to the second limb of objection. I proceed to struck out the appeal for being incompetent. Cost follows the event. DATED at MWANZA this 20th day of February 2025. W. M. CHUMA JUDGE 6 Ruling delivered in court in attendance of Ms. Jackline Kadashi advocate holding brief for Mr. Laurian advocate for the appellant and Mr. Allen Mbuya State Attorney for the respondents this 20th day of February 2025. W.M. CHUMA JUDGE 7

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