

TANZANIA / JUDGMENT

JOSEPH MBILINYI SCANNED

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15 November 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND APPEAL NO 27709 OF 2024 (Arising from the Rectification decision of the
Registrar of Titles dated the 22nd of May 2022) JOSEPH OSMUND
MBILINYI..... APPELLANT VERSUS REGISTRAR OF
TITLES..... 1ST RESPONDENT COMMISSIONER FOR LANDS.....
2ND RESPONDENT THE HON. ATTORNEY GENERAL..... 3RD RESPONDENT

JUDGMENT

Date of last Order:5/2/2025 Date of Judgment: 24/02/2025 LA LTAI KA, J, The Appellant herein JOSEPH OSMUND MBILINYI is dissatisfied with the decision of the Registrar of Titles, which rectified the land register by removing the Appellant's name from Certificate of Title No. 139210, Plot No. 333, Block 16, Kibada Area, Temeke Municipality, and placing the property under Her Excellency, the President of the United Republic of Tanzania. Page 1 of 17 He has appealed to this Court by way of a Petition of Appeal containing the following grounds:

1. The Registrar of Titles erred in law and facts for rectifying the land register of Plot No: 333, Block 16, with Certificate of Title Number 139210, at Kibada Area, Kigamboni, Temeke Municipality for reasons assigned by the Assistant Commissioner for Lands without according to the Appellant with a fundamental right to be heard.
2. The Registrar of Titles erred in law and fact for rectifying the register of Plot No: 333, Block 16, with Certificate of Title Number 139210, at Kibada Area, Temeke Municipality relying on the reasons assigned by the Assistant Commissioner for lands that OMARY SAID MSWAKI had never been paid Compensation is not among the reasons for rectification 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), 99(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 of 2019 When the appeal was called for hearing on the 15th day of November 2024, representation by Counsel was as follows: For the Respondents: Ms. Selina Kapange, Senior State Attorney. For the Appellant: Mr. Haji Mlosi, learned Advocate. Parties chose written submissions as a form of hearing. With a nod of approval from this Court, the following schedule was agreed upon:
- (i) Appellant's written submission in chief: 29th November 2024 (ii) Respondent's Reply 13/12/2024 (Hi) Appellant's Rejoinder (if any): 20/12/2024 (iv) Mention for necessary orders to schedule the date of Judgment 5/2/2024 at 10:00 Page 2 of 17 I take this earliest opportunity to register my appreciation to Counsel for their spot on compliance with the scheduled order. This time management trait is essential to enable this Court to fulfil its constitutional mandate of timely dispensation of justice. The next part of this judgment is, in that order, a summary of submissions by both parties, my reasoning/analysis of the law and the verdict. Mr. Mlosi, Counsel for the Appellant, submitted that it was important to provide a brief factual narrative of the material facts of the appeal, as they were fundamental to its determination. At the outset, he asserted that the Appellant had been the lawful and registered owner of the landed property identified as Certificate of Title No. 139210 of Plot No. 333, Block 16, at Kibada Area, Temeke Municipality, prior to the rectification decision made by the 1st and 2nd Respondents. He proceeded to state that on June 10, 2022, the 1st Respondent, acting in her capacity, had issued a notice of rectification to the Appellant, though there was no proof that the notice had been duly served upon him. This notice, Mr. Mlosi averred, expressed an intention to rectify and cancel the said Certificate of Title, remove the Appellants name from the Land Register, and register the name of His Excellency the President of the United Republic of Tanzania. Page 3 of 17 He emphasized that there was no evidence indicating that the Appellant had been duly served with the notice, which in turn affected his right to challenge the rectification decision. He further submitted that after issuing the said notice, the 1st and 2nd Respondents had failed to comply with the requirements of the law. The removal of the Appellant from the Land Register had been effected by these Respondents, and the rectification was illustrated in the decision attached to the Petition of Appeal, titled "Declaration in Support of an Application for Rectification of an Error in the Land Register under Section 99(1) and (2) of the Land Registration Act (Cap. 334)." This decision, Counsel asserted, had provided the grounds for rectification, including that the Certificate of Title for Plot No. 333, Block 16, Kibada had been duly registered in the name of Joseph Osmund Mbilinyi, that the said Plot had previously belonged to Omary Said Mswaki under customary tenure, that Mswaki had never been compensated by the Commissioner for Lands, and that the grant of the Plot to Mbilinyi had been made by mistake, thereby denying the rights of the existing farm owner and contradicting the 20,000 Project Policy and its principles. Page 4 of 17 Mr. Mlosi contended that the rectification decision dated May 12, 2022, was purportedly made by the 1st and 2nd Respondents as a "Declaration in Support of an Application for Rectification of an Error in the Land Register," but that the reasons provided therein did not legally justify the

rectification. He humbly prayed that the Court would pay close attention to the reasons advanced in that decision. Learned Counsel further submitted that the purported reasons given by the 1st Respondent, as deposed by one Idrisa Juma Kayera, the Assistant Commissioner for Lands, did not legally qualify as sufficient justification for rectification. He pointed out that the reasons merely admitted that the landed property in issue had been registered in the Appellant's name, followed by a narrative suggesting that it had previously belonged to one Omary Said Mswaki, who had not been compensated by the 2nd Respondent, and that the grant of Right of Occupancy to the Appellant had been an error. He continued to argue that the Right of Occupancy had been granted to the Appellant in 2014, as indicated on the first page of the Title, and that the alleged error had been discovered in 2022—eight years later. He expressed surprise that when this error was discovered by the 2nd Respondent, the Appellant had not been given an opportunity to be heard by the 1st and 2nd Respondents. He submitted that this denial of the right to be heard constituted a breach of fundamental justice. In relation to the 1st ground of appeal, he emphasized that the purported reasons for rectification—namely that Omary Said Mswaki had not been compensated and that there was an error in the grant of Right of Occupancy—did not justify the rectification without first granting the Appellant an opportunity to be heard. He submitted that the 1st and 2nd Respondents were estopped from denying that they had deprived the Appellant of his right to be heard before making an adverse decision. In support of his arguments, he cited *Mbeya Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma* [2000] TLR 251, where the Court of Appeal stated that it was a cardinal principle of natural justice that a person should not be condemned unheard and that fair procedure demanded both sides be heard. He further noted that the Court had emphasized that denying a hearing before taking away a person's rights was not a fair and judicious exercise of power but rather a negation of justice. Additionally, Counsel highlighted that in Tanzania, natural justice was not merely a principle of common law but a fundamental constitutional right under Article 13(6)(a) of the Constitution. Mr. Mlosi Page 6 of 17 also referred to *Independent Power Tanzania Limited v. Standard Chartered Bank (Hong Kong) Limited*, Civil Revision No. 1 of 2009 (Unreported). He quoted a substantial part of that judgment of this Court to emphasize that failure to afford a party a fair hearing vitiated proceedings and rendered the resulting decision null and void. He further cited *Tanga Gas Distributors Limited v. Mohamed Salim Said & 2 Others* [2014] 3 EA 448, where it was reaffirmed that a breach of the right to be heard, unless expressly authorized by law, nullified the entire proceedings and decision. Additionally, he referred to *Tanelec Ltd v. The Commissioner General Tanzania Revenue Authority*, Civil Appeal No. 20 of 2018 (Unreported), where the Court reiterated that the right to be heard was a basic constitutional duty, and its violation nullified the entire proceedings. He concluded that the decision and purported declaration by the Registrar of Titles was a nullity and should be set aside by the Court. Turning to the 2nd ground of appeal, Mr. Mlosi submitted that the reason that Omary Said Mswaki had never been paid compensation was not among the valid grounds for rectification under Sections 99(1), 99(2), and 100 of the Land Registration Act, Cap. 334, R.E. 2019. He asserted that rectification of a Right of Occupancy was a statutory Page 7 of 17

matter, governed by Section 99 of the Land Registration Act, Cap. 334, R.E. 2019, which conferred power to rectify the register on the High Court and the Registrar of Titles, but only under specified conditions. He emphasized that the power of the Registrar of Titles to rectify the Land Register under Section 99(l)(f) was limited by three conditions: whether the person in possession of the land had contributed to the fraud, mistake, or omission; whether the disposition to that person was void; and whether it would be unjust not to rectify the Register against them. He argued that none of these conditions had been satisfied in the present case. In respect of the 3rd ground of appeal, Mr. Mlosi submitted that the rectification decision had been made without adhering to the statutory procedures provided by the Land Registration Act, Cap. 334, R.E. 2019. He argued that before rectifying a title, the Registrar of Titles was required to inquire into whether the person in possession of the title had contributed to the fraud, mistake, or omission in consequence of which the rectification was sought, and whether the affected person had been indemnified. He contended that the Registrar had not conducted this inquiry and had instead acted based on mere allegations. Page 8 of 17 He concluded by inviting the Court to consider the weight of his submissions and to set aside the decision of the Registrar of Titles, thereby restoring the Appellant's ownership of Plot No. 333, Block 16, with Certificate of Title No. 139210 at Kibada Area, Temeke Municipality. Ms. Selina Kapange, learned State Attorney submitted in response to the Appellant's arguments that, prior to the rectification, the land in question had been registered in the name of the Appellant. However, she averred, following the rectification process, ownership of the property was placed under His Excellency, the President of the United Republic of Tanzania. Ms. Kapange emphasized that the Appellant had been duly notified of this rectification through a Notice of Rectification bearing Reference No. LR/T/139210/16 dated 10th June 2022. Addressing the first ground of appeal, the learned State Attorney argued that the rectification had been carried out in compliance with the law, specifically under Section 99(l)(f) of the Land Registration Act. She further explained that, as the authority responsible for determining rightful ownership of land and acting as its custodian, the Commissioner for Lands had discovered that Mr. Omary Said Mswaki, the previous customary owner of the property in dispute, had not been compensated before the plot was surveyed. Page 9 of 17 Upon realizing this oversight, Ms. Kapange averred, the rectification process had been initiated, and the Appellant had been duly informed of the matter. Ms. Kapange asserted further that the Appellant had also been requested to sign a deed of surrender for the title, which had been issued under a mistake. However, she noted that the Appellant had refused to cooperate with the relevant authorities to date. Ms. Kapange emphasized that the notice of rectification had been communicated to the Appellant through the address recorded in the files of the 1st and 2nd Respondents. She also asserted that the reasons for the rectification had been explicitly stated in the declaration made by the Assistant Commissioner for Lands in support of the application for rectification and in the notice itself. On that basis, she contended that the Appellant had not been condemned unheard. Furthermore, Ms. Kapange reasoned, as outlined in the declaration supporting the rectification, the primary reason for the rectification was the fact that the original owner of the plot had never been compensated before the land was surveyed.

Consequently, she maintained that the grant of the plot to the Appellant by the 2nd Respondent had been made in error, as it deprived the original owner of Page 10 of 17 his rights. She asserted that the 2nd Respondent was merely rectifying the records to correct this mistake. Ms. Kapange also pointed out that, although the rectification was necessary to protect the rights of the original owner, it also sought to address the Appellant's interests. In this regard, she stated that the 2nd Respondent had proposed an alternative plot, identified as Plot No. 414, Block 4, Pemba Mnazi, to the Appellant. She further argued that both the notice of rectification and the declaration in support of it were clear, and the reasons for rectification had been properly stated. However, she contended that the Appellant had refused to surrender the title, preventing the 1st and 2nd Respondents from correcting the records in favour of the original owner. Ms. Kapange insisted that the procedures for land rectification had been properly followed in accordance with Sections 99(1), 99(2), and 100 of the Land Registration Act, Cap. 334 R.E 2019. She reiterated that the Appellant had been served with a notice of intention to rectify the records, thereby allowing the 2nd Respondent to correct the mistake. Additionally, she noted that the Appellant had been offered an alternative plot but had instead chosen to rush to court in an attempt to block the Respondents from rectifying the records. In support of her argument, she Page 11 of 17 cited the case of AFRICAN TERMINAL LIMITED VS. THE REGISTRAR OF TITLES & OTHERS, Mise. Land Case Appeal No. 58/2018 In conclusion, the learned Senior State Attorney submitted that the appeal lacked merit, both factually and legally. Accordingly, she prayed for its dismissal with costs and urged the court to uphold the decision of the Registrar of Titles, referring to the records of proceedings from the Commissioner for Lands and the Registrar of Titles, which were attached for ease of reference. Mr. Mlosi, in his rejoinder submission quickly pointed out that the Respondents' replying submissions contained admissions in the second-to-last paragraph on page 2, acknowledging that the suit land had been registered in the name of the Appellant before the rectification. Secondly, he contended that the rectification decision and the reasons given by the 1st and 2nd Respondents violated the provisions of Sections 99(1), 99(2), and 100 of the Land Registration Act, Cap. 334 R.E. 2019. Thirdly, he submitted that the alleged mistake attributed to the 1st and 2nd Respondents regarding the non-compensation of the previous customary owner had supposedly been discovered almost nine years later. Page 12 of 17 He found it surprising that the declaration or rectification decision did not indicate that Omary Said, the alleged original owner, had ever complained about not being compensated before the land was surveyed. He maintained that the grant of the right of occupancy by the 2nd Respondent had followed due diligence based on the records, rendering the rectification decision unjustified. The learned Advocate concluded by emphasizing the prayer for the decision of the Registrar of Titles to be set aside and for ownership of Plot No. 333, Block 16, with Certificate of Title No. 139210 at Kibada Area, Temeke Municipality, to be restored by reinstating the Appellant's name in the land register. I have dispassionately considered the grounds of appeal in the light of the records. The following issues arise for determination:

1. Whether the rectification of the land register was conducted in compliance with the law, particularly under Sections 99 and 100 of the Land Registration Act, Cap. 334 R.E. 2019.
2. Whether the Appellant was accorded a fair hearing before the rectification was effected.
3. Whether the rectification was justified in light of the alleged mistake regarding non-compensation of the previous customary owner.
4. Whether the Appellant is entitled to the reliefs sought. Page 13 of 17 On the first issue, the Respondents submitted that the rectification was done in accordance with Section 99(1)(f) of the Land Registration Act (Supra) which empowers the Registrar of Titles to rectify the land register where an entry has been made under a mistake. They argue that the mistake in this case arose from the fact that Mr. Omary Said Mswaki, the previous customary owner, was not compensated before the plot was surveyed and allocated to the Appellant. On the other hand, the Appellant contends that the rectification was unlawful as it violated Sections 99(1), 99(2), and 100 of the Land Registration Act. He argues that the grant of right of occupancy to him had been done after due diligence, and the alleged mistake was only "discovered" nine years later, without any prior complaint from the former customary owner. Upon review of the record and the law, I find that Section 99(1)(f) of the Land Registration Act (Supra) indeed grants the Registrar of Titles the power to rectify the land register in case of an error. However, such rectification must be conducted in strict compliance with procedural safeguards, including proper notification to the affected party, as provided under Section 99(2)(c). Page 14 of 17 In AFRICAN TERMINAL LIMITED VS. THE REGISTRAR OF TITLES & OTHERS, Mise. Land Case Appeal No. 58 of 2018, the Court emphasized that rectification requires notification and the consent of the affected party where their interests are directly impacted. In the present case, the Respondents claim that the Appellant was duly notified via a Notice of Rectification (Ref. No. LR/T/139210/16 dated 10th June 2022). However, the Appellant disputes proper service, arguing that there is no record of his acknowledgment and that the notice was merely sent via address records without ensuring actual receipt. Considering the importance of such a notice, the Respondents had a duty to ensure that it was duly served and acknowledged. The mere act of sending the notice without confirmation of receipt creates doubt as to whether the Appellant was given a fair opportunity to respond. On the second issue, the right to be heard is a fundamental principle of natural justice, as affirmed in numerous cases cited by Mr. Mlosi. In the present case, the record does not show that the Appellant was given an opportunity to make representations before his title was revoked. Even if the rectification was based on an alleged mistake, procedural fairness required that the Appellant be properly engaged in the process. Failure to do so renders the decision procedurally defective. Page 15 of 17 Moving on to the 3rd issue, the Respondents argue that rectification was necessary to correct an injustice caused by the non-compensation of Mr. Omary Said Mswaki. However, the Appellant contends that this issue should have been addressed before the grant of his right of occupancy and that the responsibility to compensate the former owner lay with the Respondents, not him. I find merit in the Appellant's argument. If indeed Mr. Omary Said

Mswaki was not compensated, the proper course of action would have been for the government to rectify that issue without unlawfully revoking an already existing right of occupancy. The Respondents' decision to offer the Appellant an alternative plot raises questions as to whether the new allocation was a mere attempt to cover up an improper rectification. It should be emphasized that rectification of a land title should not be used to arbitrarily dispossess a registered owner, especially where the alleged mistake is attributable to government authorities. This is inline with the saying of the wise, two mistakes do not make a right. As a matter of fact, the failure to compensate the previous owner was an administrative lapse on the part of the 1st and 2nd Respondents, and such an omission should not prejudice the Appellant. Page 16 of 17 Let me say albeit in passing that given the sensitivity of land issues in this country and land being such an important economic resource, I cannot help but seriously doubt the attempt to link up the decision to the so called "complainant". I think the Mr. Omary Said Mswaki should have complained much earlier, and his paper trail properly documented. Coming to the fourth and last issue, having found that the rectification was procedurally flawed and unjustified, I proceed to make the following orders:

1. The appeal is allowed.
2. The decision of the Registrar of Titles rectifying Certificate of Title No. 139210 is set aside.
3. The name of the Appellant is restored in the land register as the rightful owner of Plot No. 333, Block 16, Kibada Area, Temeke Municipality.
4. Each party to bear their own cost. It is so ordered E. I. LALTAIKA JUDGE 24.02.2025 Court: Judgment delivered in Court Chambers this 24th day of February 2025 at 14:45 in the presence of Mr. Tumainieli Paul, learned State Attorney for the Respondents and Mr. Haji Mlosi, learned Advocate, Counsel for the Appellant. Page 17 of 17

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Prepared on 12 October 2026 · Esheria