

TANZANIA / JUDGMENT

VUMILIA PRODUCERS APPEAL

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5 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF SHINYANGA AT SHINYANGA LAND APPEAL NO. 30 OF 2022 VUMILIA PRODUCERS AND SHOPPING CENTRE LIMITED.APPELANT VERSUS REGISTRAR OF TITLES.....1ST RESPONDENT COMMISSIONER FOR LANDS.....2ND RESPONDENT MUNICIPAL DIRECTOR OF KAHAMA MUNICIPAL COUNCIL..... 3RD RESPONDENT THE ATTORNEY GENERAL4TH RESPONDENT

JUDGMENT

8th April & 5th June, 2024. S.M. KULITA, J. This is an appeal against the decision of the Registrar of Titles. The story behind this appeal is that, on 1st July 1997 the Appellant was allocated Plot No. 234 Block “A” situated at Kahama Urban area. It appears that, subsequently thereto the Assistant Commissioner for lands discovered that the appellant’s title was registered before she (Appellant) was duly incorporated. Thus, through a declaration, the 1 Commissioner for Lands, under the claim of fraud, sought for and actually, the appellant’s title was then revoked. That said revocation aggrieved the appellant, specifically on the aspects of procedures taken, hence, this appeal with six grounds as follows; one, that the Registrar did not satisfy herself on the appellant’s involvement on the purported fraud before rectifying the register, two, that the Registrar rectified the register unilaterally contrary to section 37(2) of the Land Registration Act [Cap. 334 RE 2019], three, that the Registrar erred to act on the ultra vires declaration of the Commissioner for Lands, four, that the declaration by the Commissioner for Lands is incurably defective that ought not to be acted upon, five, that the Registrar of Titles erred for failure to observe principles of natural justice. On 8th April, 2024, the case came for hearing. Mr. George Kalenda and Mussa Mpogole, State Attorneys, appeared for the respondents whereas Mr. Paul Kaunda appeared for the appellant. Submitting in support of the third and fourth grounds of appeal Mr. Kaunda was of the views that, the Registrar of Titles erred to act on the declaration made by the Commissioner for Lands. To him, the Commissioner for Lands had no such powers to make declaration, thus, he acted ultra vires. He insisted his position by citing section 106 of the 2 Land Registration Act, contending that such powers are reserved to the Registrar of titles only. Mr. Kaunda went further contending that, however, the said declaration by the Commissioner for Lands is defective. He stated that, the defective part of it is on the Jurat of Attestation. He explained that, the name of the attesting officer is not shown on the declaration. He added that, for the avoidance of conflict of interest, it was improper for the declaration of the Commissioner

of Lands to be witnessed by an officer from the same office. In reply to this Mr. Kalenda stated that, as the provisions for rectification used being sections 91(1)(f) and (2)(a) of the Land Registration Act, then there is no ultra vires declaration. On the issue of conflict of interests in attestation Mr. Kalenda stated that, Regulation 11 of the Land Registration Rules mentions Land Officer as among the persons with powers to attest. On that account Mr. Kalenda stated that, even when the attesting officer's name is not mentioned in the declaration, yet it is not fatal. I have earnestly gone through the entire submissions and both parties' submissions concerning the third and fourth grounds of appeal. I have also taken full consideration of the rival issues between them. 3 As alluded earlier, the Registrar's act of rectifying the appellant's title was initiated by the declaration made by the Commissioner for Lands to the effect that there was fraud on the said title's registration. However, it is not disputed by both parties that the said declaration is as equal as an affidavit. Thus, the rules concerning affidavit must apply. It is further undisputed that the said declaration is made by the Assistant Commissioner for lands and attested before the Land Officer. On that note, the issue is whether the declaration is properly attested in the eyes of law. On this issue Mr. Kaunda is of the views that, for the avoidance of conflict of interest, it was improper for the declaration by the Commissioner for Lands to be witnessed by an officer who works in the same office with him. In rebutting it, Mr. Kalenda stated that, as the Land Registration Rule No. 11 mentions the Land Officer as one of the attesting officers, then he formed an opinion that, what had been done was proper. In my view, Mr. Kalenda did not direct his mind properly into what the issue is all about. The issue here is not whether the land officer is an attesting officer or not, but whether it was proper for the Land Officer to attest a declaration made by another Land Officer from the same office. 4 Section 7 of The Notaries Public and Commissioners for Oaths Act [Cap 12 RE 2019] provides as I hereunder quote; - "No commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties or in which he is interested" The quoted excerpt forbids Commissioner for Oaths to attest a declaration where he/she is an advocate to one of the parties or has an interest in it. In connection to the case at hand, the Assistant Commission for Lands is interested in the cancelation of the appellant's title from the register, obvious this is all the interest of all Land Officers. The reason behind is vivid that, both stem in the same office, thus cannot conflict each other. On that account, I am firm that, the declaration made by the Assistant Commissioner for Lands was improperly attested as per the cited provision of section 7 of The Notaries Public and Commissioners for Oaths Act. This finding makes my mind firm that, the Registrar of Titles erred to act on the defective declaration made by the Commissioner of Lands. This conclusion alone fits to dispose of this appeal in its entirety. 5 For the foregoing reasons, I find the 3rd and 4th grounds of appeal meritorious. Thus, the appeal can be disposed of on these grounds only. In the premises, I refrain from making analysis on the remaining grounds, as the same tantamount to an academic endeavor. In the upshot and on exercising the powers vested to this court under Section 102(9) of the Land Registration Act, I allow this appeal and make the following orders; -

- (a) The Registrar of Titles' decision rectifying the Land Register for Plot No. 234 Block "A" at Kahama Urban area is hereby varied and set aside.

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- (b) The Appellant be restored in the Land Register as the owner of the suit Plot No. 234 Block “A” at Kahama Urban area.
- (c) Each party shall bear its own costs. S. M. KULITA JUDGE 05/6/2024 DATED at SHINYANGA this 5th day of June, 2024. 6 S. M. KULITA JUDGE 05/6/2024 7
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Prepared on 13 October 2026 · Esheria