

**IN THE COURT OF APPEAL OF TANZANIA  
AT MUSOMA**

**(CORAM: WAMBALI, J.A., KITUSI, J.A. And MASHAKA, J.A.)**

**CIVIL APPEAL NO. 298 OF 2020**

**DANNY SHASHA ..... APPELLANT**

**VERSUS**

**SAMSON MASORO ..... 1<sup>ST</sup> RESPONDENT**  
**WIVA ROBERT ..... 2<sup>ND</sup> RESPONDENT**  
**SELEMAN NYABANGE ..... 3<sup>RD</sup> RESPONDENT**  
**TATU MASINDE ..... 4<sup>TH</sup> RESPONDENT**  
**DAUDI WARIOBA ..... 5<sup>TH</sup> RESPONDENT**  
**KIGI KENGETA ..... 6<sup>TH</sup> RESPONDENT**  
**JOEL MKEREBE ..... 7<sup>TH</sup> RESPONDENT**  
**EMMANUEL SAGI ..... 8<sup>TH</sup> RESPONDENT**  
**CHACHA KISIRI ..... 9<sup>TH</sup> RESPONDENT**  
**MWL FABIAN ..... 10<sup>TH</sup> RESPONDENT**  
**MARWA PETER ..... 11<sup>TH</sup> RESPONDENT**  
**CHRISTINA NYAKWESI PETER ..... 12<sup>TH</sup> RESPONDENT**

**[Appeal from the Judgment and Decree of the High Court of  
Tanzania at Musoma]**

**(Galeba, J.)**

**dated the 17<sup>th</sup> day of April, 2020**

**in**

**Land Appeal No. 30 of 2019**

-----

**JUDGMENT OF THE COURT**

**29<sup>th</sup> October & 5<sup>th</sup> November, 2021**

**MASHAKA, J.A.:**

The appellant Danny Shasha was aggrieved with the decision of the High Court of Tanzania at Musoma in Land Appeal No. 30 of 2019 delivered on the 17<sup>th</sup>

April, 2020. Though the High Court allowed his appeal to a certain extent, it further held that the appellant failed to prove the ownership of the disputed land, hence this appeal.

The facts which have led to the appeal are as follows. Way back in 1992, the appellant claimed that he was orally allocated a piece of land by the Nyabange Village Authorities. In 1996, he instituted a land dispute at the Urban Primary Court of Musoma against one Juma Itonyi who allegedly trespassed on the said land, but it was not successful. Still aggrieved, he lodged an appeal to the District Court of Musoma, which was allowed and found that the respondent was a trespasser, as he was not allocated the disputed land and it ordered him to vacate it. Juma Itonyi was dissatisfied and filed a second appeal to the High Court at Mwanza. The High Court in Civil Appeal No. 93 of 1998 held that the appellant is the owner of the disputed land; Juma Itonyi was again found to be a trespasser and the appeal was dismissed. Fast forward to 2013, it is alleged that the respondents trespassed on the same suit land which compelled the appellant to institute Land Application No. 214 of 2016 before the District Land and Housing Tribunal (the DLHT) for Mara at Musoma against 15 respondents, namely Samson Masoro, Wiva Robert, Seleman Nyambwe, Tatu Masinde, Daudi Warioba, Kigi Kengeta, Joel Mkerebe, Emmanuel Sagi, Mwl. Tatu George, Ashimu Magesa,

Chacha Kisiri, Mwl. Fabiani, Marwa Peter, Emmanuel Misumi and Ongezeko Lucas Jumanne. The Tribunal heard the application and having taken judicial notice of the judgments of the DLHT and High Courts, granted the suit land to the appellant.

Only twelve of the respondents were aggrieved and appealed to the High Court, in Land Appeal No. 30 of 2019 raising nine grounds of appeal as gathered from the petition of appeal. In this appeal, from prayers made by the respondent before the High Court, it marked and deleted the names of Tatu George, Ashimu Magesa and Ongezeka Lucas Jumanne. It is important to note that the 12<sup>th</sup> appellant Christina Nyakwesi Kagere, was the administratrix of the estate of the late Emmanuel Misumi. The High Court held that the appellant failed to prove a better title to the respondents having expunged the copies of judgments delivered by the District and High Courts exhibit P.E. 1 for the reason that the other party were not asked if they object or not before the admission and the same were not read out after admission. The appeal was in favour of the respondents; hence the appellant preferred this appeal by the Memorandum of Appeal which contained three grounds of appeal.

The three grounds of appeal are recapitulated as follows: -

- 1. That the first appellate court erred in law and fact by quashing proceedings and judgment of the trial court without ordering retrial.*

2. *That the first appellate court erred in law and fact for punishing the appellant for the mistake done by the trial court for the reasons that the respondents were condemned unheard and for unprocedural admission of exhibits.*
3. *That the first appellate court erred in law and fact by holding that appellant failed to prove his case, while the same was proved through evidence adduced during trial.*

At the hearing of the appeal, the appellant was present in person and unrepresented, while learned advocate Mr. Cosmas Tuthuru, appeared for the respondents. Both the appellant and learned counsel for the respondents filed written submissions in support of their respective positions which they asked us to adopt.

Primarily, the appellant preferred the three grounds of appeal as stated above. The second ground states that the first appellate court erred in law and fact for punishing the appellant for the mistake done by the trial court for the reasons that respondents were condemned unheard and the unprocedural admission of exhibits. We find this ground is sufficient to dispose of this appeal, therefore we shall not concern ourselves with the other grounds in the memorandum of appeal.

In his written submission, the appellant did not address the second ground and his complaint is that he should not be held responsible for the failure of the DLHT to accord the right to be heard to the respondents. He concluded that the Court be pleased to allow his appeal with costs.

Mr. Tuthuru for the respondents argued ground two that it was his view the court cannot punish anybody when it carries its duty of administering justice and it cannot relax the rules of procedure to favour any party. Mr. Tuthuru invited the Court to dismiss the appeal in favour of the respondents with costs.

From ground two of appeal, the appellant complains that he should not be punished for the failure by the trial court which condemned the respondents unheard. This has raised our interest, as we noted that this was among the grounds of petition before the first appellate court raised by the respondents. The complaint was that the DLHT erred in law and fact that during trial some of the parties were not granted the right to be heard, hence condemned unheard, a violation of the fundamental principle of natural justice.

The Court has emphasized time and again that a denial of the right to be heard in any proceedings would vitiate the proceedings. Further, it is also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of

Tanzania, 1977. In **Mbeya – Rukwa Auto Parts & Transport Limited vs Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 (unreported), the Court emphasized that: -

*"In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law and declares in part:*

- (a) *Wakati haki na wajibu wa mtu ye yote vinahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu".*

We also had this to say in **Abbas Sherally & Another vs Abdul S. H. M. Fazalboy**, Civil Application No. 33 of 2002 (unreported) that: -

*"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."*

The parties to the land dispute ought to be heard before the trial tribunal so as to uphold one of the attributes of equality before the law. Some of the parties

to the land dispute were denied the right to be heard, which renders the proceedings a nullity. See **Margwe Erro and Two Others and Moshi Bahalulu**, Civil Appeal No. 111 of 2014 (unreported). As discussed above, even if the trial tribunal and the first appellate court reached at a correct decision, still the first appellate court ought to have considered and direct that there was a violation of the right to be heard at the trial tribunal and therefore accord an opportunity to the parties to argue the issue before the same. The first appellate court ought to have ordered a retrial after considering that the parties were denied the right to be heard. This being an infraction which violated the rules of natural justice requiring the tribunal to adjudicate over a matter by according the parties full hearing before deciding the dispute. See **Abbas Sherally & Another vs Abdul S. H. M. Fazalboy** (supra).

Therefore, we find merit in the second ground of appeal, which we accordingly allow. We find the judgment of the first appellate court to have been based on the proceedings of the DLHT which violated the right to be heard and occasioned a failure of justice to the parties who were condemned without being heard. In the event, we find the proceedings of the first appellate court and the DLHT to be a nullity. In the exercise of our revisional powers conferred under section 4 (2) of the Appellate Jurisdiction Act, [CAP 141 R.E. 2019], we nullify and

quash the proceedings of the DLHT and first appellate court and set aside both the judgments and decrees that emanated from them.

In the circumstances of this appeal, it calls for a retrial before the land tribunal and to accord parties the right to be heard. We order that the land dispute to be heard de novo before the DLHT at Musoma before another Chairman as soon as possible.

We make no order as to costs.

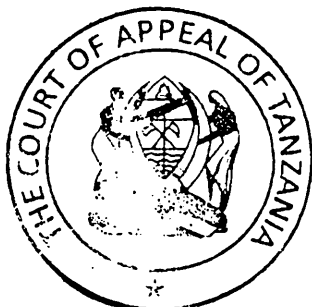
**DATED** at **MUSOMA** this 4<sup>th</sup> day of November, 2021.

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 5<sup>th</sup> day of November, 2021 in the presence of Appellant in person and Mr. Cosmas Tuthuru, learned Counsel for the Respondent, is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**