IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J.A., KOROSSO, J.A., And MAKUNGU, J.A.)

CIVIL APPEAL NO. 145 OF 2020

MIC TANZANIA LIMITED ..... APPELLANT

VERSUS

MAYUNGA SADUKA..... 1ST RESPONDENT
MARGEGRET SADUKA..... 2ND RESPONDENT
MARY SADUKA..... 3RD RESPONDENT
MICHAEL SADUKA..... 4TH RESPONDENT
STEPHANIA JOHN ..... 5TH RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania at Dar es Salaam

(Mzuna, J.)

Dated the 21st day of September, 2018

In

Consolidated Land Appeal Nos. 25 & 36 of 2016

.....

JUDGMENT OF THE COURT

17th March & 11th April, 2023

MAKUNGU, J.A.:

In the High Court of Tanzania (Land Division) sitting at Dar es Salaam the appellant MIC Tanzania Limited unsuccessfully challenged the decision of the District Land and Housing Tribunal at Morogoro in Land Application No. 31 of 2009 which decided in favour of the respondents. The appellant being aggrieved by the decision of the High Court (Mzuna,J) dated 21st September, 2018 in Consolidated Land Appeals No.

25 and 30 of 2016 has lodged this appeal against the whole of the said decision on the following grounds namely:

1. *The trial Judge erred in law and facts in holding that the matter before him (Land Appeal No. 25 of 2016 between the parties herein was time barred; and*
2. *That the trial Judge erred in law for failure to give an opportunity to the appellant to address the trial court on the issue of limitation prior its decision.*

When eventually, the matter was placed before us for hearing on 17th March, 2023, the appellant was represented by Mr. Sinare Zaharani, learned advocate, whereas the 1st, 2nd, 3rd, and 4th respondents were represented by Ms. Diana Wamunza, learned advocate. Ms. Patricia Pius Mbosa, learned advocate appeared for the 5th respondent who did not feature in Court.

At the outset Ms. Mbosa sought leave of the Court to withdraw her service from the 5th respondent on account that she had no instructions concerning this appeal and prayed the 5th respondent to be served personally. Accordingly, the prayer was granted and the Court discharged Ms. Mbosa from representing the 5th respondent.

Before we could discuss the fate of the 5th respondent after that withdrawal, Mr. Zaharani rose and prayed for leave of the Court to

withdraw the appeal against the 5th respondent so as to proceed with the hearing of appeal against the four remaining respondents. We granted the prayer sought. The appellant's counsel had filed written submissions in support of his position which he asked us to adopt. He, confidently, said that the submissions sufficiently clarified the grounds of appeal. He prayed the grounds of appeal to be allowed.

Ms. Wamunza did not oppose the appeal and did not submit the written submissions. She opined that the High Court judgment should be nullified.

Having gone through the grounds of appeal raised we are satisfied that, the 2nd ground of appeal if decided is capable of disposing the appeal before us. It concerns the fundamental right of being heard. Thus, we shall not concern ourselves with the 1st ground of appeal.

The matter needs not detain us. It is clear from the record of appeal at page 136 that the appeal before the High Court was heard by way of written submissions. When the filing of the written submissions had been completed the learned Judge set down a date for judgment. In the course of composing the judgment, the learned Judge based on the preliminary objection raised in the written submissions of the respondents found that the appeal before him was barred by period of limitation and for this

reason he dismissed it. The appeal was therefore not heard on merit. For the sake of clarity, we wish to let the record of appeal at pages 143 – 144 speak for itself:

> *"Before dealing with the above ground of appeal, there was raised a preliminary point of law by Wamunza, learned counsel that the appeal was filed after 58 days and therefore far beyond the prescribed 45 days from the date of the decision. According to the learned counsel, it is therefore time barred ..... That being the case the same stands dismissed with costs."*

The appellant has faulted the learned Judge for dismissing the appeal following the preliminary point of objection by the respondents' counsel and did not give the appellant opportunity to respond to the same since a prayer for extension of time to file rejoinder submissions on behalf of the appellant was rejected by the Judge on 25th June, 2018. In her written submissions the appellant submitted that it is trite law that no party shall be condemned unheard. Failure to give the appellant's counsel an opportunity to respond to the respondents' advocate submissions on the issue of limitation was in violation of the principle of natural justice as enshrined for under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977. She referred the Court to our decisions in

the case of **Mbeya – Rukwa Auto parts and Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, **Abbas Sherally and Another v. Abdul Fazalboy,** Civil Application No. 33 of 2002 and **Margwe Erro & 2 Others v. Moshi Bahalulu,** Civil Appeal No. 111 of 2014 (both unreported).

Having carefully considered the record before us and the written submissions of the appellant's counsel, it is obvious that the appellant was not afforded an opportunity to address the learned Judge on the issue of limitation contrary to the appellants' constitutional right to be heard.

This Court has held time and again that a denial of the right to be heard in any proceeding would vitiate the proceedings. See for example, **ECO – TECH (Zanzibar) Limited v. Government of Zanzibar,** ZNZ Civil Application No. 1 of 2017 (unreported), **Mbeya – Rukwa case** (supra), **DPP V. Sabina Tesha & Others** [1992] TLR 237 to mention just a few.

Referring to the right to be heard as enshrined in the Constitution the Court in the **Mbeya – Rukwa case** (supra) held:

> *"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 yeyote vlnahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu."

In another case, **Abbas Sherally & Another** (supra) the Court held:

"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."

As indicated earlier, the learned judge in the present appeal, in the course of composing his judgment dealt with the preliminary point of law that the appeal was filed beyond the prescribed 45 days from the date of the decision. He did not invite the appellant as he ought to have done, to address him on this point which in the light of things he found to have

been necessary in the determination of the appeal before him. Instead he went ahead to deal with the point and ruled that "That being the case the same stands dismissed with costs."

The appellant was denied the right to be heard on the preliminary point raised and we are satisfied that in the circumstances of this case the denial of the right to be heard on the question of time bar vitiated the whole judgment and decree of the High Court.

Consequently, we find there is merit in this appeal which we accordingly allow. We find the judgment of the High Court a nullity for violation of the right to be heard. In the event the judgment and decree of the High Court dated 21st September, 2018 is declared to be null and void. We accordingly, in the exercise of powers conferred upon us under section 4(2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 quash and set aside both the said judgment and decree that emanated there from. We order that the case be remitted to the High Court and be assigned to another judge who will proceed from the proceedings of 25/06/2018 when the matter was set down for judgment. Should the assigned judge consider that there is need to look into the question of period of limitation then he/she should invite the appellant to address the court on that question.

Considering the circumstances of the case and the fact that the respondents' counsel did not resist the appeal we make no order as to costs.

Order accordingly.

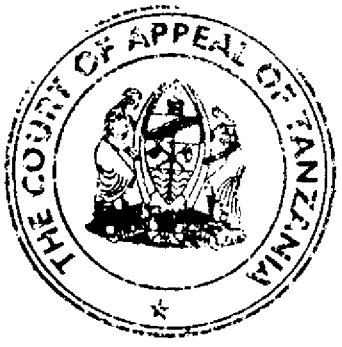
DATED at **DAR ES SALAAM** this 6th day of April, 2023.

S.A. LILA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 11th day of April, 2023 in the presence of Mr. Obedi Mwandambo, learned advocate for the Appellant, and Ms. Diana Wamunza, learned advocate for the 1st – 4th Respondents is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL