

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LAND APPLICATION No. 03 OF 2020

(Arising from the Ruling of the High Court of Tanzania at Shinyanga in Misc. Land Application No.12 of 2017 dated the 30th January 2020, the Ruling of Consolidated Misc. Land Application No. 175 & 184 of 2015 of Shinyanga District land and Housing Tribunal dated the 6th day of January, 2016)

FELISTER MAZIKU.....APPLICANT

VERSUS

PAUL MATIKU.....RESPONDENT

RULING

Date of the last Order: 4th September, 2020

Date of the Ruling: 5th October, 2020

MKWIZU, J.:

Applicant, Felister Maziku, filed a land dispute No. 50 of 2014 against the respondent at Kahama Urban Ward Tribunal. She was declared a winner via decision rendered on 26/6/2014. No one preferred an appeal against this decision. In the year, 2015, respondent approached the Mhongolo Ward Tribunal at Kahama with a land dispute over the same plot of land against the applicant. This time, Respondent, Paulo Matiku was declared lawful owner of the suit land. Instantaneously, Felister Maziku and Paul Matiku filed

execution applications at the District Land and Housing tribunal, each, a decree holder over the same land but from different proceedings.

The District Land and Housing Tribunal consolidated the two applications to Consolidated Misc. Application No. 175 and 184 of 2015 and went a heard to declare the proceedings and decision by Kahama Urban Ward Tribunal a nullity, set it aside and upheld the decision by the Mhongolo Ward Tribunal and the respondent herein was declared a winner. The ruling partly reads:

"It is undisputed facts that the suit land is at mhongolo Ward hence the Kahama Urban Ward Tribunal had no jurisdiction to entertain the suit according to law as the suit land is outside its territorial jurisdiction. That being the fact this tribunal nullifies the proceedings, judgement and decree of the Kahama urban ward tribunal for being nullity. As the land in dispute is at Mhongolo this tribunal finds that it is the judgement and decree of Mhongolo Ward tribunal which has to be in force...."

The applicant, Felister Maziku, is now before this court with these revision proceedings challenging the above decision. The application was brought

under the provision of 43 (1) (b) of the Land Disputes Court Act Cap 216 R:E
2002 for the following orders:

a) That may the Honourable Court be pleased to call for the records and Ruling of the Consolidated Misc Land Application No 175 and 184 of Shinyanga District Land and Housing Tribunal dated on 6th day of January, 2016 revise and set aside the said ruling.

b)** That may the Honourable court in the cause of revising ruling of Consolidated Misc Land application No. 175 and 184 of Shinyanga District Land and Housing Tribunal dated 6th January, 2016 declared the Judgment of Mhongolo Ward Tribunal in Land Case No 26/2015 **res judicata

c) That may the Honourable Court in cause of revising ruling of Consolidated Misc. Land Application No. 175 and 184 of Shinyanga District Land and Housing Tribunal dated the 6th day of January, 2016 order the execution of the judgment of Mjini Ward Tribunal in Land Case No 50/2014 to proceed

d) Costs.

e) Any other further relief (s) as the Honourable Court may deem just to grant

The Chamber Summons was supported by an affidavit by FELISTER MAZIKU, the applicant sworn on 18/2/2020. The respondent opposed the application by a counter affidavit sworn by PAULO MATIKU on 26/3/2020.

By the leave of the court, the application was heard by written submissions. Applicant filed her written submissions on 26/5/2020 through her counsel, Mr. Frank Samwel while reply submissions were filed on 12/6/2020 by Mr. Siraji Musa Kwikima also learned advocate.

I have passionately gone through the application, affidavits for and against the application and the party's submissions. I commend both counsels detailed submissions which took me to light on the positions of the parties as well as the nature of the dispute at hand. I think without going into each statement of the party's submission, I should state here that, major and serious complaint by the applicant is that DLHT reached its decision dated

10/12/2015. Having being filed, the summons was issued to the opposite part and the matter was adjourned to 21/12/2015. On 21/12/2015 both parties were recorded to be in attendance. However, nothing was recorded apart from their attendance at the Tribunal. What followed thereafter as per the tribunals records is the original ruling dated 6/1/2016 plus its drawn order subject of this revision.

I perused also the proceedings in Misc. Land Application No. 184 of 2015. This second application was filed by the respondent herein Paul Matiku on 17/12/2015, seven days after the application by the applicant, the records shows that, on the same day, the tribunal as usual issued an order for service of summons to the opposite party and the matter was adjourned to 28/12/2015 for mention. Nothing proceeded on that file thereafter.

In both files, the records are silent as to whether parties were heard on either validity of their applications, decisions of the respective Ward tribunals or the execution applications they had brought for consideration. It is not clear as to how the tribunal reached its decision.

It is therefore without doubt that, the tribunal reached its decision without affording parties rights to be heard. If it were otherwise, the records would have so displayed. This was a serious error on the part of the tribunal. It contravened the fundamental principles of natural justice- Rights to be heard. In the case of **Abbas Sherally and other V. Abdul S.H.M. Fazalboy** Civil Application No. 33 of 2002 (Unreported) the court held that:

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions that the 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 "

In **Dishon John Mtaita v The DPP**, Criminal Appeal No. 132 of 2004, (unreported) the Court stated :-

"In the circumstances of this case there was no justification at all for the High Court to hear and determine the appellant's appeal without

affording him an opportunity to be heard. Consistent with the settled law, we are of the firm view that the decision of the High Court reached at was in violation of the appellant's constitutional right to be heard and cannot be allowed to stand It was a nullity."

Again in **Mbeya - Rukwa Auto Parts & Transport Limited v. Jestina Mwakyoma**, Civil Appeal No. 45 of 2000 (unreported), in considering the principles of natural justice, court of Appeal had this to say :-

"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. "

It is evident from the record that the parties were not heard. The ruling dated 6/1/2016 was a nullity. As this ground alone is sufficient to vitiate the proceedings, I shall not determine the remaining grounds of complaint.

Consequently, I invoke my revisional powers under section 43 (1) (b) of the Land Disputes Court Act Cap 216 R:E 2019, and set aside the order of

the DLHT dated 6/1/2016. The files is remitted back to the tribunal with the directives that the tribunal should determine Misc. Land Application No. 175 & 184 of 2015 in accordance with the requirements of the law. I make no order as to costs.

It so ordered.

DATE at SHINYANGA this 5th day of **October**, 2020




E.Y. MKWIZU
JUDGE
5/10/2020

Court: Right of appeal explained to the parties.




E.Y. MKWIZU
JUDGE
5/10/2020