

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
MISCELLANEOUS LAND REVISION NO 9 OF 2020

BETWEEN

NYANGASI MONGU _____ APPLICANT

VERSUS

1. LUKE BWIKIYA RUTTAGAH _____ 1st RESPONDENT

2. PASCAL MAGANGA _____ 2nd RESPONDENT

(Arising from the Decision and Orders from District Land and Housing Tribunal for Mara at Musoma, Hon. Kaare, Chairman in Land Application no 144 of 2015 dated 20.02.2020)

RULING

12th & 20th November 2020

GALEBA, J.

This is an application for revision of the decision made by the District Land and Housing Tribunal for Mara (the DLHT) sitting at Musoma in Land Application no 144 of 2015. In that matter **MR. LUKE BWIKIYA RUTTAGAH** the 1st respondent was suing 13 respondents including **MR. PASCAL MAGANGA** and **MR. NYANGASI MONGU** as the 1st and 9th respondents respectively. In that land application, the subject matter of the suit was a piece of land measuring 97.5 or 97.25 acres located at Kamuguruki village within Nyakatende ward in Musoma District. Amongst the orders sought was a declaration that the applicant is the lawful owner of the said land and an eviction of all the 13 respondents therefrom. Issues were framed as usual and the

prosecution evidence was recorded up to closure. On 06.06.2018 Ms. Marina Mashimba counsel for the applicant prayed to close the prosecution case but before the tribunal was to make any order in that respect, Mr. Dutu Chebwa learned advocate for the respondents sought directions on whether all respondents were to testify in defending themselves because the applicant had indicated clearly that he had a case against **MR. PASCAL MAGANGA** only. Ms. Mashimba submitted that Mr. Chebwa was right that the case ought to proceed against only **MR. PASCAL MAGANGA**. After those brief submissions of parties, the tribunal made the following order;

*"Order; Hg defence
27/7/18
Sgd
6/6/18"*

That means there was no formal order made by the court marking the case against the 12 respondents as withdrawn. However, on assumption that the case ceased to exist against all the 13 respondents upon those submissions by counsel, the defence called only **MR. PASCAL MAGANGA** and closed the case, leaving all the 12 respondents without testifying and the tribunal went ahead to deliver the judgment.

On 12.11.2020 when this application came up for hearing, after a thorough brainstorming session with Mr. Baraka Makowe, Mr. Kurwa Sanya and Mr. Dutu Chebwa all learned counsel for the applicant, the 1st and 2nd respondents respectively, I directed each of them to

address the court formally on the legality of the judgment which was a result of such proceedings.

Mr. Makowe submitted that as there was no order made by the tribunal relating to the withdrawal of the application against the 12 respondents, failure to hear evidence of the respondents except the 1st was illegal as the other respondents were not afforded a right to be heard. He prayed that in the circumstances, all proceedings immediately next **MR. PASCAL MAGANGA's** evidence in the DLHT including the judgment and all subsequent orders of the DLHT are illegal and they ought to be quashed and nullified and remit the original record to the DLHT with directions that the evidence of the other 12 respondents be received first before composing the judgment.

Both Mr. Kurwa Sanya and Mr. Dutu Chebwa counsel for the 1st and 2nd respondents respectively conceded to the submissions and the prayers by Mr. Makowe.

In this application I have perused the records of the DLHT as indicated earlier. It is true that there is no order that permitted the withdrawal of the matter against any respondent. It is the position of this court that where a court of law does not grant or refuse a prayer made by an advocate it is risky to assume that it was granted. It is safer to assume that the prayer was turned down and refused. In this case we cannot assume that because the court did not grant the order prayed by Mr. Chebwa on 06.06.2020 that the same was

granted even in circumstances where Ms. Marina Mashimba for the other party did not object. In the circumstances I am at one with learned counsel for the parties on their common position, that the 12 respondents who were not called to testify had their rights to be heard violated.

The right to be heard is not only one of the principles of natural justices but it is an assurance of equality before the law. The supremacy of that principle was highlighted in **Mbeya Rukwa Autoparts and Transport Ltd v Jestina George Mwakyoma [2003] TLR 25** where the Court of Appeal held that in Tanzania:

"....natural justice is not merely a principle of the common law, it has become a fundamental constitutional right, Article 13(6) (a) includes the right to be heard among the attributes of equality before the law."

The right to be heard is so fundamental that even where there are all assurances that the party to the matter has nothing to say, but being a party he has to be heard first then a conclusion may come later. That can be gathered from the astounding statement of the Court of Appeal in **Halima Hassan Marealle v the Parastatal Sector Reform Commission**, Civil Application no 84 of 1999 (unreported) where it held that;

"The applicant must be afforded such opportunity even if it appears that he or she would have nothing to say, or that what he or she might say would have no substance."

Where the right to be heard is violated, the judicial body giving the decision in offensive of it delivers no valid judgment, see **Tanga Gas Distributors Limited v Mohamed Salim Said and two others**, Civil

Application no 68 of 2011, at pages 21 to 22 of the typed judgment, where the Court of Appeal stated that;

"No decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interest of any person without giving him a hearing according to the principles of natural justice."

I am satisfied that in Land Application no 144 of 2015, from the 2nd to the 13th respondents were not fully heard in the DLHT, although they filed the written statement of defence but they were not called to give their evidence. It is not also on record how the case against them ended, if it ever did.

Based on what happened in the DLHT, the submissions of parties, the above authorities and this court's considerations of the parties arguments, under the provisions of **section 43(1)(b) of the Land Disputes Courts Act [Cap 216 RE 2019]** this court orders that;

1. Except the evidence of **MR. PASCAL MAGANGA** and leaving it intact, but all proceedings recorded on 03.12.2019 from the point that Mr. Chebwa prayed to close his defence onwards including all orders and judgment of the DLHT in land application no 144 of 2015 are hereby quashed and nullified.
2. The original record is hereby remitted to the District Land Tribunal for it to set a date for orders following completion of the evidence of the 1st respondent.

3. This application succeeds to the above extent with no orders as to costs.

DATED at MUSOMA this 20th November 2020




Z. N. Galeba
JUDGE
20.11.2020