

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL NO. 24 OF 2021

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 38 of 2014)

VICFISH LIMITED.....APPELLANT

VERSUS

PIUS FRANCIS BAJWALA.....RESPONDENT

JUDGMENT

Date of last order: 02/08/2021

Date of judgment: 23/08/2021

Mwenda, J.

This is an appeal originating from the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Application No 38 of 2014. The appellant Vicfish Limited being aggrieved by the decision of the Tribunal preferred this Land Case Appeal No. 24 of 2021 with two ground of appeal which reads as follows and as I quote:

*1) That the trial Chairman grossly erred in law and facts
to dismiss the application without giving the parties*

right to be heard on the matter which was raised Suo motto by the trial tribunal,

2) That in totality the proceedings of the trial District land and housing tribunal are nullity and tainted with illegalities.

When this appeal was called for hearing, both parties had representation. Ms Pilly Hussein learned advocate appeared for the appellant whereas the Respondent enjoyed the legal service of Ms. Johanitha Jonathan.

Arguing in support of this appeal, Miss Pilly decided to argue both grounds of appeal collectively. She was of the view that, it was improper for District Land and Housing Tribunal to dismiss the application without affording parties right to be heard on the issue which was raised by the Tribunal Suo moto. She went further by submitting that on the judgment which was delivered on 5/8/2020 the chairman at page 5 of the judgment raised a new issue of jurisdiction, and used it in determining the case.

The learned counsel for the appellant also submitted that, this matter ought to be addressed to the parties and failure to do so it makes the whole trial proceedings nullity. According to her under ***Article 13(6)(a) of the Constitution of the United Republic of Tanzania [CAP 2 R.E 2002]***

provides for the right to be heard. To cement her argument, she cited the case of ***Mbeya Rukwa Auto Parts and Transport Ltd vs Jestina George Mwakyoma Civil Appeal No. 45 of 2002***. So according to her the decision of the District Land and Housing tribunal violates ***article 13(6) (a) of the Constitution*** therefore the proceedings and orders from the Trial tribunal should be declared nullity. Therefore, she prays for this appeal to be allowed, proceedings be quashed and the judgment be set aside. She also prays for costs and any other reliefs as this court deem just fit to grant.

Ms. Johanitha learned counsel for the Respondent opposed the appeal on the grounds that on 24/2/2014 the appellant (then the applicant) filed Land Application No. 38/2014 for breach of contract. On 09/5/2014 the respondents filed Written Statement of Defence with preliminary points of objections and one of which was on the issue of jurisdiction. The learned counsel went further by submitting that, the said preliminary objections were argued by the way of written submissions and both parties complied with the scheduling order and later ruling to that effect was delivered. According to her, there were no breach of right to be heard.

The learned counsel for the respondent concluded by submitting that, there is no any illegality as this matter was resolved through a normal court process which led the District Land and Housing Tribunal to determine the issue

of jurisdiction. She therefore concluded by prayers for this court to dismiss this appeal with costs.

In brief rejoinder, Ms Pilly, the learned counsel for the appellant submitted that, if there were any preliminary objections raised, that means they were heard and determined (concluded) and later the hearing proceeded. According to her the issue of jurisdiction raised by the Tribunal was not among the issues raised and argued by the parties. She concluded by submitting that the issue of jurisdiction was raised by the tribunal *Suo motto* and parties were not re-summoned to address the tribunal and therefore the judgment, proceedings and orders of the trial tribunal are tainted with illegalities and irregularities.

Having heard submissions by both parties and trial tribunal's records I have noted that there is one major issue for determination. This issue is whether the Hon. Chairman erred in law and fact when he determined the application solely basing on the new issue of jurisdiction which was raised *Suo motto* and without hearing the parties.

In answering this issue, this court noted that before hearing of the suit, the respondent raised preliminary objections on point of law and one of them was on trial tribunal's pecuniary jurisdiction. On 26/01/2015 the trial tribunal delivered the ruling in respect of said preliminary objections and the same was

dismissed with costs. Thereafter the trial tribunal proceeded with the hearing of the application by framing the issues which read as follows and I quote:

"1) Whether or not the applicant is competent at law to grant loan.

2) Whether or not the applicant granted the loan

3) Relief if any".

After a full hearing of the application the trial Chairman fixed the date for judgment and the same was delivered on 05/08/2020. From that judgment the Chairman raised a new issue of jurisdiction *Suo motto* that is "*whether the tribunal has jurisdiction to determine the instant suit at hand*" and at page 6 of the typed judgment the application was dismissed on the ground that the tribunal has no jurisdiction to entertain a suit arising from breach of loan agreement. From the issue raised and the decision made the tribunal, this court has asked itself if failure to re-summon the parties to address it in that regard prejudiced the appellant.

From the copy of trial tribunal's judgment, the Hon. Chairman's reasoning was that the tribunal has no jurisdiction to entertain matters arising from breach of loan agreement which is not a Land dispute. Looking on the issue raised *suo moto* and the complexity in drawing the line between land disputes and

contractual/commercial disputes, one may see the importance of the parties to be afforded opportunity to address the tribunal to that effect.

The trial tribunal's act of raising a new issue *Suo motto* and determining the suit basing on the said issue without affording the parties the right to be heard is the serious irregularity. In the case of ***Patrobet D. Ishengoma vs Kahama Mining Corporation & 2 others Civil Application No. 172 of 2016 Court of Appeal of Tanzania at Mwanza (unreported)*** and ***John Morris Mpaki vs The NBC Ltd and Ngalagila Ngonyani Civil Appeal No. 95 of 2013 Court of Appeal of Tanzania (unreported)*** the position underlined is that a decision likely to affect the rights of parties shall not be made without affording the parties a right to be heard.

A decision or order made in contravention of the above principle lead to nullification of the whole proceedings as it was stated in the case of ***EX-B.8356 S/SGT Sylvester S Nyanda vs The Inspector General of Police & the Attorney General Civil Appeal No. 64 of 2014 (unreported)*** where the court held interlia that:

"The way the first appellate court raised two jurisdictional matter Suo motto and determine them without affording the parties opportunity to be heard

has made the entire proceedings and judgment of the high court a nullity and we hereby declared so”.


In the instant appeal as stated earlier, there is no dispute that the application was decided on the issue raised Suo motto by the tribunal and the record reveals that the parties were not accorded with right to be heard and it therefore renders the decision of the trial tribunal a nullity.

This appeal is therefore allowed and the trial tribunal's proceedings and judgments are hereby quashed and set aside.

For any party interested to pursue this matter shall institute a fresh suit and the same shall be heard by another chairman and a new set of assessors. Since the anomaly leading to quashing of the Land application No. 38 of 2014 was occasioned by the tribunal, each party shall therefore bear their own costs.

It is so ordered.

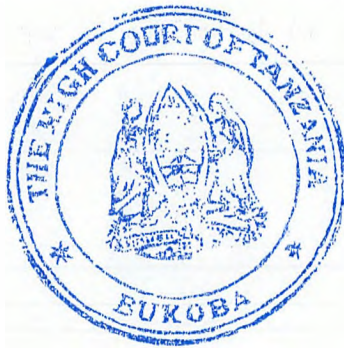



A.Y. Mwenda

Judge

23.08.2021

This judgment is delivered in chamber under the seal of this court in the presence of the appellant's learned counsel Miss Pilly Hussein and in the presence of the respondent Mr. Pius Francis Bajwala.




A.Y. Mwenda

Judge

23.08.2021