

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISCELLANEOUS LAND CASE APPEAL NO. 6 OF 2021

(C/F From the Decision of the District Land and Housing Tribunal of Moshi District at Moshi in Land Case Appeal No. 41 of 2019 and Original Ward Tribunal of Kitirima Kingachi Ward in Application No. 39 of 2019)

ANGELISTA PAUL SILAYO.....APPELLANT

Versus

SABAS GERALD MOSHA..... RESPONDENT

Last Order: 03RD November, 2021

Date of Judgment: 25th November, 2021

JUDGMENT

MWENEMPAZI, J.

This is a second appeal arising from the order made by Hon. J. Silas the chairman of the District Land and Housing Tribunal of Moshi in Land Application No. 41 of 2019. The background to this appeal originated from the Ward Tribunal of Kitirima where the Respondent herein Sabas Gerald Mosha sued the Appellant Angelista Paul Silayo for trespassing on the suitland which he claimed to have purchased from Mr. Paul Silayo who is the appellant's deceased husband. After hearing the trial tribunal decided



that the respondent herein was the rightful owner of the suitland. The appellant herein was aggrieved by the decision of the trial tribunal and lodged an appeal at the District Land and Housing Tribunal of Moshi which was registered as Land Appeal No. 41 of 2019. During hearing of the appeal at the District Land and Housing Tribunal the appellant Angelista Silayo was represented By Mr. Gideon Mushi a learned advocate while the respondent though not present in person was represented by Mrs. Emma Sabas Mosha his wife. She was doing so under power of attorney. Mr. Gideon informed the tribunal that he had received the appeal from B.S and that he was not given the proceedings. From that point the tribunal chairman gave an order striking out the application for the reason that the appellant appeared not ready for the appeal as was not well prepared to challenge the decision of the trial tribunal without a copy of proceedings from the ward tribunal. The appellant was therefore ordered to make proper preparations for the appeal.

The appellant was aggrieved by the order of the chairman of the District Land and Housing Tribunal and decided to appeal to this court against that order based on the following grounds:

1. That the Appellate tribunal erred both in law and in fact when failed to afford parties with opportunity to be heard on merit of the Appellant's appeal.
2. That the Appellate Tribunal erred both in law and fact when struck out the Appellant's appeal despite irregularities which are incurably defective underlies the trial tribunal's decision.



3. That the Trial Ward Tribunal composed the decision without proper examination and evaluation of evidence contrary to the law.
4. That the Trial Ward Tribunal concluded decision without proceeding.
5. That the Appellate Tribunal erred in law when struck out Appellant's appeal without knowing that two tribunal secretaries involved in the coram of the trial tribunal contrary to the law.
6. That the Trial Tribunal's decision is tantamount for failure to visit locus in quo despite anomalies underlies measurements and boundaries of the suit land.

On 22nd September, 2021 when the matter came for mentioning, parties were granted leave to proceed with hearing by way of written submissions as scheduled by the court.

I have thoroughly read the record of appeal and submissions from both parties with respect to the grounds of appeal. I will not reproduce the submissions word by word though I will be making reference to the same in the course of determining this appeal.

On the first ground of appeal the appellant criticized the first appellate court for failure to give parties an opportunity to be heard on merit. Submitting in support of this ground appellant's counsel stated that a right to be heard is a principle of natural justice which prohibits anyone to be condemned unheard. He argued that failure by the appellate tribunal to hear the appeal rendered the entire proceeding with no legal effect because it contravened Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977. Expounding on this ground the learned counsel

submitted that on 14th June 2021 the appellant's advocate addressed the tribunal that he was ready for hearing of the appeal but the chairman ruled that the appellant's advocate was not well prepared without giving him a chance to argue the grounds of appeal. He was of the view that the chairman was wrong to preempt that he was not well prepared without hearing him. The respondent on the other hand was of the view that it was upon the tribunal to decide whether to hear the parties on merit or not since there was no record of proceedings from the trial tribunal and it was the duty of the appellant's advocate to cause the trial tribunal's proceedings to be availed to the appellate tribunal. Thus, it was his submission that since the appellant failed to avail the record of proceedings to the appellate tribunal, he cannot claim to have been denied an opportunity to be heard.

In order to appreciate what transpired at the appellate tribunal I found it necessary to quote its decision which is subject of this appeal. The Ward Tribunal ordered that:

"Nimepitia jalada la Kata na kugundua kwamba hakuna mwenendo. Wakili alisema kwamba yuko tayari kusikilizwa na nilipomuuliza sababu za rufaa alizipata wapi kama hawajawahi kupata mwenendo na hata leo hana mwenendo ili aweze kupinga maamuzi alinijibu alipewa jalada hili na ofisi ya B.S. Advoate. Nilichokiona ni kwamba hawajajiandaa vema kupinga maamuzi haya ndio maana ninaondoa rufaa hii ili waandae vyema. Ndivyo ilivyo amriwa".



Based on the above order, it is apparent that the appeal was not heard on merit, the chairman simply struck out the appeal for the reason that there was no record of proceedings from the trial tribunal. At this juncture I do agree with the appellant that the Chairman did hasten to make a decision without affording parties a right of audience concerning the matter before him which was the appeal. Section 34(1) of the **Land Disputes Courts Act**, [Cap 216 R.E.2019] provides for the procedure governing the hearing of appeals by the District Land and Housing Tribunal. The law provides;

34.-(I) The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors, and shall-

(a) consider the records relevant to the decision;

(b) receive such additional evidence if any; and

(c) make such inquiries, as it may deem necessary. (Emphasis added)

According to the above quoted provision of the law, it is the duty of the tribunal when hearing an appeal to consider the records relevant to the decision, to receive additional evidence if any and also make such inquiries as it may deem necessary. In the present scenario the chairman did none of the requirements above stated but proceeded to give an order striking out the appeal. This was absolutely wrong taking into consideration that he had the record from the trial tribunal but failed to even consider what was on the record or hear what the parties had to say regarding the appeal



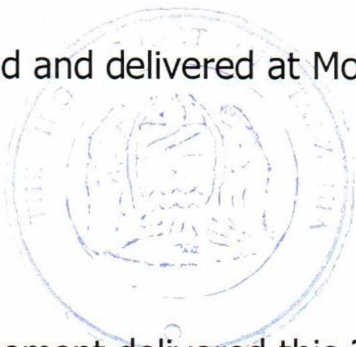
before him. The chairman failed to adhere to the law as provided in the above cited provision therefore the order he gave was unlawful.

The reason given for striking out the appeal without hearing the parties was so absurd considering the fact that there was record from the lower tribunal. Based on what the chairman said in his order it seems he never even took trouble to check what was contained in the record of the Ward Tribunal. Even if there was something missing on the record as he said, being an appellate tribunal the chairman had powers to call for records instead of throwing a blame to the appellant's advocate. As rightly argued by the appellant, the decision of the appellate tribunal was unfair as it contravened the principle of natural justice of a right to be heard which is also a fundamental constitutional right enshrined under Article 13(6)(a) of the **Constitution of the United Republic of Tanzania, 1977** as amended from time to time.

Based on the above findings, the first ground of appeal is therefore meritorious. For that reason, I see no need to discuss the other grounds of appeal as this one ground is enough to dispose the entire appeal. Based on the first ground of Appeal, the order of the appellate tribunal in Land Appeal No. 6 of 2021 is hereby found to be invalid and since the order was given without hearing parties on merit that decision is equally a nullity. Consequently, the order of the District Land and Housing Tribunal is hereby quashed and set aside. The file is sent back to the District Land and Housing tribunal of Moshi for hearing before another chairman. Each party to bear his own costs. It is so ordered.



Dated and delivered at Moshi this 25th day of November, 2021.



A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

T. M. MWENEMPAZI
JUDGE

Judgement delivered this 25th day of November, 2021 in the presence of the appellant her advocate Mr. Gideon Mushi and Mrs Emma Sabas Mosha.



A handwritten signature in black ink, appearing to read "T. M. Mwenempazi".

T. M. MWENEMPAZI
JUDGE