IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 63 OF 2019

(Arising from Application No. 176 of 2018 in the District Land and Housing Tribunal for Dodoma at Dodoma, Originating from Ipala Ward Tribunal)

ZEBEDAYO CHITONGO AND 42 OTHERS

(KIKUNDI CHA WAKULIMA WA MIHOGO IPALA).....**APPELLANTS**

VERSUS

NGALYA MYEJI.....**RESPONDENT**

JUDGMENT

Date of Last Order: 12/11/2021

Date of Judgment: 30/11/2021

Mambi, J

In the District Land and Housing Tribunal (DLHT) of Dodoma at Dodoma the appellant unsuccessfully appealed against the decision of the Ward Tribunal of Ipala in Land Appeal No.176 of 2018. The District Land and Housing Tribunal dismissed his application.

Aggrieved, the appellant lodged this appeal basing on three grounds of appeal as follows;

1. *That, the trial Tribunal erred in law and in fact for dismissing the appeal without considering the prayers of appellants to argue the appeal by way of written submission.*
2. *That, the trial Tribunal erred in law and in fact for dismissing the appeal without considering the laws.*
3. *That, the trial Tribunal erred in law and in fact by denying the appellants the right to be heard.*

In his submission, the appellant through his learned Counsel Mr Lubyana briefly submitted that the appellants were denied the right to be heard by the DLHT by dismissing the case while the appellants prayed to argue through the written submissions. The counsel further submitted that the proceedings of the DLHT was very short and the prayer by the appellants were not recorded before the DLHT dismissed the case without considering the provision of the law. Mr. Lubyana referred this Court to Article 13(6) of Constitution the United Republic of Tanzania. He also referred the decision of the court in ***Ausdr Tz Ltd vs Mussa and Another, Civil Appeal No. 8 of 2014***.

In response, the respondent Counsel Mr Maga briefly submitted that, the matter at the District Land and Housing Tribunal was properly determined and all parties were availed with right to be heard. Maga conteded that the records of the DLHT are clear as there is nowhere in the records to show the appellants praying to argue by way of written submissions.

Having summarized the submissions made by both parties let me now at this juncture addresses the issues arising from the grounds of appeal. I have considerably gone through the trial records and observed that the tribunal did not avail the appellants with right to be heard from the beginning. The records reveals that the appellants prayed the matter to be determined by way of written submission since they had legal representative. However, the trial tribunal proceeded to determine the matter without giving the appellants right to address the tribunal and the tribunal dismissed the application without reasons. My perusal from the judgment of the DLHT reveals that the Chairman made the decision without reasons contrary to the principles of the law. It is also the settled principle of law that the judgment or decision must show the **reasons for the decision**. Failure to do so left a lot of questions to be desired. The laws it is clear that the judge or magistrate or tribunal chairman must show the reasons for the decision in his/her judgment. This is found under Order XXXIX rule 31 of the Civil Procedure Code, Cap 33 [R.E2019] which provides for the

Contents, date and signature of judgment. The provision states that:

> *"The judgment of the Court shall be in writing and shall state–*
>
> *(a) the points for determination;*
>
> *(b) the decision thereon;*
>
> *(c)* ***the reasons*** *for the decisions; and*
>
> *(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein".*

The word "**shall" on the above provision** implies mandatory and not option **under** the law of Interpretation Act, Cap1 [R.E.2019]. This means that any judgment must contain point or points for determination, the decision thereon and the **reasons** for the decision. See also the decision of the court in ***Jeremiah Shemweta versus Republic [1985] TLR 228.*** Going through the decsion of the tribunal, I did not come across any reason made by the chairman for his decision.

As I observed that the tribunal denied the appellants right to be heard when it proceeded without giving the appellants right to be heard. The records of DLHT do not show if the prayer by the appellants to argue by way of written submission was considered and recorded. This implies that the right to be heard was not fully availed to the appellants. The consequences for the failure to avail a party fair opportunity to be heard was underscored by the Court of

Appeal in ***DPP VS.SABINIS INYASI TESHA AND RAPHAEL J.TESHA [1993] T.L.R 237*** where the court held that such denial would definitely vitiate the proceedings. See also ***EMANUEL NAISIKE VS. LOITUS NANGOONYA, MISC.LAND CASE APPEAL NO.22 OF 2011*** High Court at Arusha.

The position of the law with regard to the importance of right to be heard was also underscored in the case of ***MEYYA-RUKWA AUTO PARTS & TRANSPORT LIMITED vs. JESTINA GEORGE MWAKYOMA Civil Appeal No.45 of 2000*** where the court held that:

> *"In this country, natural justice is not merely 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 the equality before the law, and declares in part"*
>
> *"Wakati haki na Wajibu wa mtu yeyote vinahitaji kufanyiwa*
>
> *uamuzi wa mahakama au chombo kingine kinachohusika, basi mtu huyo atakuwa na* ***haki ya kupewa fursa ya kusikilizwa***
>
> ***kwa ukamilifu".***

As the right to be heard is the fundamental constitutional right this court finds the importance of referring more cases in this issue. As there are so many authorities that have addressed similar issues, suffices to refer the case of ***ABBAS SHERALLY & ANOTHER VS. ABDUL S.H.FAZALBOY Civil Application No.33 of 2002*** which was also referred in ***EMANUEL NAISIKE VS. LOITUS NANGOONYA, MISC. LAND CASE APPEAL NO.22 Of 2011 (supra).*** The Court of

Appeal in ***ABBAS SHERALLY & ANOTHER VS. ABDUL (supra)*** reiterated that:

> *"....**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 concerned to be a breach of natural justice."*

From the above authorities, I have no reason for not subscribing and being satisfied that a right to be heard in our case was tempered and denied. In the circumstances, the DLHT was not justified to dismiss the case without giving reasons. See also ***EMANUEL NAISIKE VS. LOITUS NANGOONYA, MISC. LAND CASE APPEAL NO.22 Of 2011 (supra)*** at page 6. Now, since the appellants were not accorded with right to be heard, the Tribunal had no any justification to refuse prayer by the appellants.

Due to irregularities found under the Tribunal, this court is justified to intervene and reverse all proceedings and dismissal order of the appellate Tribunal. Indeed this court is empowered under the provisions of the laws to exercise its powers under sections 42 and 43 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] to revise the proceedings of the District Land and Housing Tribunals and even the Ward Tribunal if it appears that there has been an error material to the merits. More specifically, section 43 (1) (b) the Land Disputes Courts Act provides that;

"In addition to any other powers in that behalf conferred upon Supervisory and the High Court, the High Court (Land Division) (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit".

The underlying object of the above provisions of the law are to prevent subordinate courts or tribunals from acting arbitrarily, capriciously and illegally or irregularity in the exercise of their jurisdiction. See ***Major S.S Khanna v. Vrig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 409; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406.*** The provisions cloth the High court with the powers to see that the proceedings of the subordinate courts are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *suo mottu*. The court can also do if it is moved by any party as done in this matter at hand.

Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality,

irregularity, correctness and propriety of the decision made by the appellate Tribunal.

Having established that in this case the Chairperson has failed to follow the legal principles, the question is, has such omission or irregularity occasioned into injustice to any party?. In my considered view the omission occasioned into miscarriage of justice to the appellant. The best way and for the interest of justice is to order the matter to be remitted back for the chairman Tribunal to determine the matter afresh.

In my considered view, there is no any likelihood of causing an injustice to any party if this court orders the remittal of the file for the Tribunal to determine the matter de novo. The Tribunal should consider this matter as priority on and deal with it immediately within a reasonable time to avoid any injustice to the appellant or any party resulting from any delay.

It should be noted that all matters that are remitted back for any order need to be dealt expeditiously within a reasonable time. Having observed that the decision of the Tribunal was tainted by irregularities, I find no need of addressing other grounds of appeal.

For the reasons given above, I set nullify the decision and proceedings made by the DLHT. In the interest of Justice I order the matter to be dealt by a different Chairman.

Where it appears the Tribunal had only one chairman, the matter should be dealt by another Chairman from the other nearest Tribunal within Dodoma Region. No order as to the costs.

Order accordingly

A.J. MAMBI, J

JUDGE

31/11/2021

Judgment delivered this 31st day of November 2021 in presence of both parties.

A.J. MAMBI, J

JUDGE

31/11/2021

Right of appeal explained.

A.J. MAMBI, J

JUDGE

31/11/2021