THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

MISC. LAND APPLICATION NO. 11 OF 2021

(From The Misc. Land Application No.39/2019 , High Court of Tanzania at Dodoma and in Misc. Land Appeal No. 97 of 2016, Misc. Land Appeal No.92/2009 and Appeal No.51/2014 all from District Land and Housing Tribunal for Dodoma,)

IMELDA LAURENT .....**APPLICANT**

VERSUS

HASHIM JUMA IDEBE .....**1ST RESPONDENT**

PATRICE MUSHI.....**2ND RESPONDENT**

JUDGMENT

Date of Judgment: 15/12/2021

A.J. Mambi,J.

The applicant herein referred as **IMELDA LAURENT** filed her application for revision under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 [R.E 2002]. The applicant filed her chamber application supported by an affidavit. The applicant has prayed this

court to make revision orders alleging that there has been an error material to the merits of the case involving injustice.

During hearing the applicant who was represented by the learned counsel Mr Pascal Msafiri briefly submitted that the applicant has brought an application to this court to exercise its powers to grant an order for the applicant to be given right to be heard.

The learned counsel further prayed the matter be heard de novo and the main case No.51 of 2009 be determined afresh.

In response, the respondent Counsel contended that the application has no merit as the matter was dismissed on the negligence of the applicant.

I have thoroughly gone through the records of District Land and Housing Tribunal. In my considered view, the main issue to be first asked is whether the court has been properly moved. In other words, the first question to be determined is whether the applicant was right in filling the matter as revision or not.

Before addressing the issues are raised above, it is pertinent briefly highlight the power of this court. I am aware that the law enshrines the High Court has power to exercise its revisional jurisdiction

either *suo motu* or on application to grant a revision orders. The High Court has the power to review and revise the proceedings of the lower courts or Tribunals if it appears that there has been an error material to the merits. Indeed, the powers of the inherent revisionary powers of the High Court are stipulated under both sections 42 and 43 of the Land Disputes Courts Act, Cap. 216 [R.E. 2002] respectively.

In this regard, 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. 2002] to revise the proceedings of the District Land and Housing Tribunals to satisfy itself on any error material or irregularity 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 above provision of the Law enshrines the high court with discretionary power to make any order as it may deem fit underlying object of the above provisions of the law are to prevent subordinate courts or tribunals from acting arbitrarily, capriciously and illegally or irregularly 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.*** In other words, the provisions of the law cloth the High court with the powers to over see that the proceedings of the subordinate courts or tribunals are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enable. The powers under the Law allows the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts or tribunal. The court is thus empowered to provide the means to an aggrieved party to obtain rectification of non-appealable order. Looking at our law there it is clear that this court has power to entail a revision as properly moved by the applicant.

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 District Land and Housing Tribunal. My perusal from the records reveal that the applicant at the Tribunal was not given right to be heard as there is no evidence to show if the summons were duly served to her. In my view the Tribunal was required to at last give the applicant the last chance to appear but she was not availed with that opportunity and the tribunal went on dismissing the matter. In my considered view failure to give the appellant to defend his case without justification meant that she was denied her right to be heard. Reference can be made to crucial observation made by **Lord Denning L.J**. (as he then was) who pointed out in the case (persuasive decision) of ***Kanda v. Government of Malaya [1962]2 WLR 1153*** on page 1162 which has similar scenario to our case in hand. **Lord Denning L.J** observed and stated that:

> *"If the right to be heard is to be a real right which is worth anything it must carry with it a right in the accused man to know the case which is made against him.* ***He must know what evidence has been given and what***

***statements have been made affecting him**; and then he must be given a fair opportunity to correct or contradict them". (emphasis supplied with).*

Reference can also be made to the decision made Appeal by the Court of Appeal in ***MEYYA-RUKWA AUTO PARTS & TRANSPORT LIMITED vs. JESTINA GEORGE MWAKYOMA Civil Appeal No.45 of 2000*** where it was 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".***

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."*

Basing on my observation and reasoning supported by the authorities I have, cited, I am highly convinced that the applicant was not given right to be heard. Having established that in this case the Chairperson has failed to follow the legal principles by denying the appellant right to be heard, 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 applicant. The best way and for the interest of justice is to order the matter to be remitted back to be re-determined by the trial Tribunal (DLHT). In my considered view since the appellant was denied the right to be heard, the best way and for the interest of justice is consider the matter be tried *denovo* or not. It is trait law that before any appellate court makes an order for retrial or trial de novo, the court must find out as to whether the original trial order was illegal or defective and whether making such order (retrial or trial de novo) and will create more injustice to the accused person (if it is criminal) or any party (if civil matter like the matter at our hand). I wish to refer the land make in East Africa in ***Fatehali Manji*** *V.R, [1966] EA 343,* cited by the case of ***Kanguza s/o Machemba v. R Criminal Appeal NO. 157B OF 2013.*** The former

Court of Appeal of East Africa by then restated the principles upon which court should order retrial or trial de novo. The court in that case observed that:-

> *"...in general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its particular facts and circumstances and an order for retrial should only be made where* ***the interests of justice require it and should not be ordered where it is likely to cause an injustice to the accused person****..."*

Given the circumstances of the matter at hand, I subscribe the above position by the court which stated that an order for retrial should only be made where the interests of justice require it. 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 trial

tribunal to properly deal with the matter immediately. I thus in the interest of justice order for remittal of the file back to the trial tribunal to proper order. The Tribunal should consider this matter as priority and deal with it immediately within a reasonable time to avoid any injustice to the applicant or any party resulting from any delay.

It should be noted that all appeals that are remitted back for retrial or trial de novo need to be dealt expeditiously within a reasonable time.

For the reasons given above, I nullify the proceedings and order of the Trial tribunal and any order made thereto. This matter is remitted to the Trial tribunal to be freshly determined by the different chairperson. Given the circumstances of this case, this court orders the mater be heard *de novo* by the same court but chaired by a different chairperson. Where the tribunal has no any other chairperson apart from the one who previously determined the matter, the matter will be determined by another chairperson from the nearest tribunal. If the parties are interested to proceed

prosecuting their case, they should all be summoned to appear within reasonable time. No orders as to costs.

Order accordingly.

A. J. MAMBI

JUDGE

15/12/2021

Judgment delivered in Chambers this **15th** of **December, 2021** in presence of both parties.

A. J. MAMBI

JUDGE

15/12/2021

Right of appeal explained.

A. J. MAMBI

JUDGE

15/12/2021