

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

LAND APPEAL NO. 30 OF 2021

Appeal from the Judgment and Decree of the District Land and Housing Tribunal for Kigoma at Kigoma and Land Application No. 6 of 2016. Before: Hon. F. Chinuku, Chairperson)

MWAMVUA NDILAHONCHA-----APPELLANT

VERSUS

BELITHA BILAKALA-----RESPONDENT

JUDGMENT

14/3/2022 & 31/5/2022

F.K. MANYANDA, J

The Appellant, Mwamvua Ndilahoncha, is distressed by the judgment and decree of the District Land and Housing Tribunal (DLHT) for Kigoma District dated 26/10/2021 by Hon. F. Chinuku, Chairperson in Land Application No. 6 of 2016.

She has raised three grounds of appeal namely;

1. That the learned chairperson erred in law and facts in allowing the application in favour of the respondent herein.

2. That the learned chairperson erred in law and fact in finding that the evidence of ownership of the disputed land by the appellant as not properly adduced
3. That the learned chairperson erred in law and fact in finding that the site visit was not properly conducted

The background of this matter is that the respondent is a second wife of the appellant's father, she is a step mother of the appellant for that matter. When the appellant's father passed away in 2003 was survived by two widows who were the appellant's mother and the respondent. The family appointed the appellant to administer the estate of his father. Then, the appellant contended that the respondent trespassed in a shamba of his demised father. That the suit land is among the estates of the appellant's father, Late Mzee Ndilahoncha. The respondent contends that the deceased divided his land to each of his two families, that the suit land was given to her by her late husband before he died. The DLHT decided in favour of the respondent, hence this appeal.

At the oral hearing the appellant argued the appeal in person unrepresented while the respondent enjoyed the legal services of Ms. Joyce Godfrey, learned Advocate.

Arguing in support of her appeal, the Appellant submitted that the trial DLHT did not do justice for failures to consider her documents. That the

on the hearing date she had forgotten them, when she prayed to tender the same on close of hearing of the respondents' case the chairman denied.

Moreover, the Appellant argued that, on the **locus in quo** visit the chairperson tricked her because it didn't fix the time. She went to the locus in quo and stayed there from 0900 am to 1100 am without seeing the DLHT and the respondent opted to cross check with the chairperson by going at the DLHT building. On arriving she learnt that the chairman had just left for the locus in quo. She quickly rushed to the locus in quo. However due to the distance from Kasulu to Kigoma and been using public transport she missed the event. Her complaint is that the chairperson denied her right of been heard as far as the **locus in quo is** concerned.

Lastly, she prayed to tender the documents which were denied by the DLHT as additional evidence. The prayer was objected to by the Counsel for the respondent.

This court admitted the documents tentatively as exhibit P1 collectively subject to scrutiny of the submissions of both sides during composing of the judgment I will come to this issue later on in this judgment.

Responding MS Joyce submitted in opposition to the appeal arguing that the chairperson decided the case basing on the evidence adduced by Late husband during his life time.

The counsel also argued that the appellant had no witness to support her and her documents were properly rejected because she did not seek adjournment.

As regard to **locus in quo** visit the counsel conceded that the DLHT did not fix time of **locus in quo** visit, hence, when it visited there was only a respondent. She prayed the appeal to be dismissed.

As it can be seen from the parties submissions, there two areas of complaints.

The first involve non-admission of documentary exhibits and the second one concern visit at **locus in quo**.

In the first area, the Appellant's complaint is that the chairperson unlawfully denied her of opportunity to tender her documents.

The Counsel for the Respondent concedes that the Appellant was denied her right to tender her documents, but the denial was rightful because she did not seek for adjournment so that she could bring her documents and tender the same on the next hearing date.

stage as requested by the Appellant. However, I don't need to determine this issue now for reasons I will give in this judgment later.

In the second area of complaint is on visit to **locus in quo**. It is conceded by the Counsel for the Respondent that according to the record, the appellant was absent at the **locus in quo** upon visit by the chairperson. The complaint by the appellant is that the DLHT did not fix time of **locus in quo** visit.

I have visited the proceedings and noted that the DLHT chairperson when fixing the date for **locus in quo** visit recorded as follows;

"Baraza litatembelea eneo la mgogoro 10/9/2021"

Literally means the tribunal would visit locus in quo on 10/9/2021.

As it can be seen, the DLHT order did not specify not only leaving time, but also departure point and meeting point at the **locus in quo**. Which means each party was left to think and act according to his or her mind.

The appellant went to the locus early in the morning, it is not known when the respondent went. More, it is not known who led the chairperson to the **locus in quo**.

Upon visit at the **locus in quo**, the chairperson did not record its findings thereat other than a coram and consequential orders it stated as follows;

"Date: 10/9/2021

Coram: F. Chinuku – Mwenyekiti

For Applicant: Hayupo

For Respondent: Yupo

T/C: Ali

Assessors 1. Kasongo

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Baraza: Shauri ni kwa ajili ya kutembela eneo la mgogoro. Baraza limefika kwenye eneo hilo Mwilavya Kasulu na kumkuta mjibu maombi pekee mleta maombi hayupo.

Amri 1. Mjumbe aandike maoni

2. Maoni kusomwa 26/10/2021

3. Hukumu 26/10/2021"

Literally meaning that the tribunal visited **locus in quo** where the respondent was present but the applicant absents. The assessors to write her opinion the same to be read on 26/10/2021 and judgment on the same day.

There are no explanations as to who led the tribunal chairperson to the locus, what was time when it reached there and what were its findings if any from the respondent's views.

The Appellant stated that she reported at the locus in quo, from 0900 to 1100 hours without seeing any person. Then she decided to cross check

chairperson had just left to Kasulu, she started again returning to Kasulu where she found the business was over.

From the above facts I find that the dilemma was caused by the incomplete and unguided order of the trial tribunal. The order ought to have specified the date, departure time, departure point, meeting time and meeting point at the **locus in quo**. In such an order, it is expected that the appellant who was the complainant in the original case would lead the team to the destination in dispute. Without such an organization, it is doubt whether it was destined at the right **locus in quo**.

It is my considered opinion that once the trial tribunal chose and ordered to visit the **locus in quo**, in order to complete it's the hearing proceedings, it was supposed to visit with both parties. It was also required to record the proceedings at the **locus in quo** from both sides and make a finding on it.

In this matter as it is, the appellant was denied her right to be heard at the **locus in quo**; right to be heard is fundamental right deeply enshrined in our constitution and it has been so emphasized in a range of cases including **Mbeya – Rukwa Auto parts and Transport Ltd vs Jestina Mwakyoma**, [2003] TLR 251 and **Selcom Gaming Limited vs Gaming Management (T) and Gaming Board of Tanzania**, [2006]



TLR 2000 and **Mire Artan Ismail and Another vs Sofia Njati**, Civil Appeal No. 75 of 2008 (unreported) to mention a few.

In **Mbeya Rukwa Auto parts and Transport Ltd's case (supra)**, the Court of Appeal considered an English case of **Ridge vs Baldwin** [1964] AC 40 and observed as follows;

"In this country, natural justice is not merely a principle of 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 and declares in part.

13 (6) (a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachotoa haki, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu".

In view of the settled law on the right to be heard, we are of a serious considered view that, it will be absurd of this court to make any order against the Registrar of Tittles as prayed by the appellant without availing her opportunity to be heard.

Other cases on the point include the cases of **Director of Public Prosecutions vs Sabini Inyansi Tesha and Another** [1993] TLR 237, **National Housing Corporation vs Tanzania Shoe Company Ltd and Others** [1995] TLR 251, **Abbas Sherally and Another vs Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002 and

Appeal No. 132 of 2004 (both unreported).

In Abbas **Sherally's case (supra)** for example the court of Appeal said as follows;

"The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the courts in numerous decisions. 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 considered to a breach of natural justice".
(emphasis added).

It follows therefore, that a right to be heard is not only a cardinal principle of natural justice but also a fundamental right constitutionally guaranteed such that no decision should be left to stand in contravention of it even if the decision would be reached had the party was heard.

In the instant case, even if the chairperson had already made a decision, since she had made an order, she ought to have heard the appellant. This fact when coupled by the fact that the order was incomplete and ambiguous for want of departing point and time or meeting point and time this court finds that there is merit in the appeal.



Going by the authority in **Abbas Sherally's case (supra)**, the decision and the proceedings cannot be left to stand.

It is on this finding that I need not to make any finding on the complaint by the Appellant about non-admissibility of documents.

In the result I do hereby quash both the proceedings, judgment of the DLHT dated 26/10/2021 and set aside the decree thereof.

In lieu thereof, I order the case be heard afresh before a different chairperson and set of assessors.

Since the fault was occasioned by the tribunal I make no order as to costs, each party will bear its costs. Order accordingly.




F. K. Manyanda

Judge

31/5/2022