

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

MISC. LAND APPEAL NO. 76 OF 2021

(Originating from Land Case No. 26 of 2017 at Kyerwa Ward Tribunal and arising from Appeal No. 89 of 2018 at the District Land and Housing Tribunal for Karagwe at Kayanga)

TUMSIME THOMPSON FELICIAN-----APPELLANT

VERSUS

MBARIGU ZACHARIA-----RESPONDENT

JUDGMENT

Date of Last Order: 11/07/2022

Date of Judgment: 22/07/2022

A. E. Mwipopo, J.

Tumsime Thompson Felician, the appellant herein, successfully sued Mbarigu Zacharia, the respondent herein, in Civil Case No. 26 of 2017 at Kyerwa Ward Tribunal for trespassing in the suit land. The Ward Tribunal declared the appellant to be the rightful owner of the suit land. The respondent was not satisfied and he filled Appeal No. 89 of 2018 at the District Land and Housing Tribunal for Karagwe at Kayanga. While the appeal was pending hearing, the applicant filed application for execution of the decision of the trial Ward Tribunal and the respondent filed application for stay of execution. All these applications were included in the Appeal No. 89 of 2018 at Karagwe District Land and Housing

Tribunal. On 15.03.2019 the District Land and Housing Tribunal quashed proceedings and set aside orders and judgment issued in Civil Case No. 26 of 2017 in Kyerwa Ward Tribunal for the reason that there are multiplicity of suits arising from the same suit land and the matter was wrongly instituted and tried. The District Land and Housing Tribunal ordered status quo to be maintained.

The applicant was aggrieved and he filled the present application which contains 4 grounds of appeal in his petition of appeal. The said grounds of appeal are as follows:

- 1. That the trial Tribunal erred in law to dismiss its previous order which was reached to allow execution of judgment and ordered in Land Case No. 26 of 2007.*
- 2. That the trial erred in law to quash original records original records and proceedings of Land Case No. 02 of 2027.*
- 3. That the trial Tribunal erred in law to give the right of audience to respondent's representative who was a conman bush lawyer.*
- 4. That the trial Tribunal erred in law to give an order thus the original Land Case No. 26 of 2017 should be tried de novo.*

Mr. Samuel Angelo, advocate who represented the applicant, submitted on 1st, 2nd and 3rd grounds of appeal together and abandoned 2nd ground of appeal. He said that the District Land and Housing Tribunal raised suo motto the issue of jurisdiction of the Kyerwa Ward Tribunal jurisdiction to hear and determine the Civil Case No. 26 of 2017. It was wrong for the Chairman to raise the issue suo motto without affording parties right to be heard on the issue. The said issue was

raised while the matter was in execution stage. The act denied parties right to be heard which is recognized by our Constitution. He cited the case of **Charles Christopher Humphrey Komba vs. Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), where at page 5 and 6 of the judgment the Court held that upon raising a new or additional issue the Court has to afford parties right to address the it on that new or additional issue.

In response, Mr. Mbaraka Mchwapaka whom was appointed by the respondent through special power of attorney to be his attorney for the purpose of representing respondent in this appeal submitted that the appellant instituted in the Ward Tribunal a land dispute which its subject matter has value of more than 3 Million. The Ward Tribunal decided in appellants favour and the respondent appealed to District Land and Housing Tribunal. The District Land and Housing Tribunal allowed the appeal and quashed the Ward Tribunal decision. As the subject matter in the Ward Tribunal was more than the Pecuniary Jurisdiction of the trial Ward Tribunal, the District Land and Housing Tribunal properly dismissed the matter. He said that he is objecting the prayer for the cost of the suit as it was the respondent who won the case before the District Land and Housing Tribunal.

From the submission of the counsel for the appellant, the only issue for determination is whether the chairman of District Land and Housing Tribunal raised suo motto the issue of jurisdiction of the Kyerwa Ward Tribunal to hear and

determine the Civil Case No. 26 of 2017 and proceeded to deliver ruling without affording parties right to be heard on the issue. The counsel said that the issue was raised by the Chairman while the matter was in execution stage. That the act of raising the issue of jurisdiction suo motto and determined it without affording parties opportunity to address the Tribunal denied parties right to be heard which is recognized by our Constitution. The respondent being a layman did not reply on the issue, instead he said that the chairman of the Tribunal rightly allowed the appeal and dismissed the decision of the trial Ward Tribunal because the said Ward Tribunal determined the dispute before it without pecuniary jurisdiction.

I have perused the record and proceedings of the District Land and Housing Tribunal. In the said record, the respondent filed Appeal No. 89 of 2018 in the District Land and Housing Tribunal against decision of the trial Ward Tribunal. Thereafter, the appellant filed application for execution which was incorporated in the appeal and the said application was allowed. But, the respondent filed application for stay of execution which was granted on 03.10.2018. The proceedings shows that on 15.03.2019 the District Land and Housing Tribunal delivered a ruling quashing the proceedings and judgment issued by the trial Ward Tribunal and ordered status quo be maintained without affording parties opportunity to address the Court on appeal or the issue that the case was wrongly filed in the trial Ward Tribunal.

It was material irregularity for the appellate Tribunal to raise jurisdictional issues *suo motto* and proceeded to quash proceedings of the trial Ward Tribunal without affording the parties in the appeal an opportunity to be heard on the issue. This is denying the parties right to be heard on the issue of jurisdiction. The Court of Appeal was of similar position in the case of **Mbeya Rukwa Autoparts and Transport Ltd vs. Jestina George Mwakyoma [2003] T.L.R. 251**, where the Court held that, I quote:-

"....natural justice is not merely a principle of the 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."

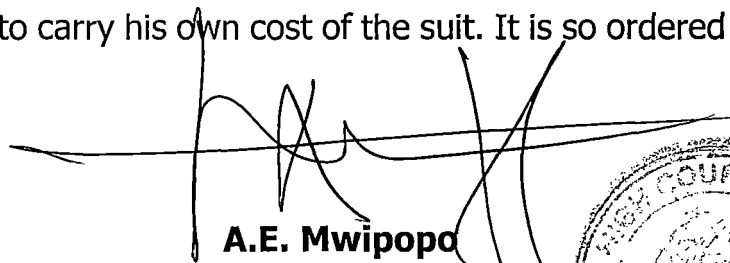
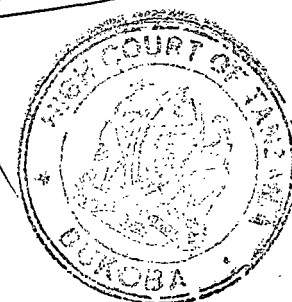
The Court of Appeal took similar position in the case of **Wegesa Joseph M. Nyamaisa vs. Chacha Muhogo, Civi Appeal No 161 of 2016, Court of Appeal of Tanzania, at Mwanza, (Unreported)**, where it was held that:-

"In the instant appeal we are minded to re-assert the centrality of the right to be heard guaranteed to the parties where courts, while composing their decision, discover new issues with jurisdictional implications. The way the first appellate court raised two jurisdictional matters suo motu and determined them without affording the parties an opportunity to be heard, has made the entire proceedings and the judgment of the High Court a nullity, and we hereby declare so."

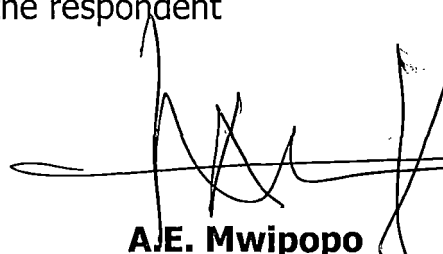
From above cited decisions, it is settled that where the Court or Tribunal raises jurisdictional issue *suo motto* and proceed to determined it without affording the parties an opportunity to be heard, the entire proceedings and the decision of

the Court becomes a nullity. See. **Charles Christopher Humprey Kombe vs. Kinondoni Municipal Council, (supra).**

Therefore, I find that all the proceedings and the Judgment of the District Land and Housing Tribunal to be a nullity and I hereby quash it together with its ruling and orders. I order the matter to be remitted back to the District Land and Housing Tribunal for Karagwe at Kayanga where Appeal No. 89 of 2018 has to start afresh before another Chairman according to the law. If the Chairman finds that it is relevant to determine the issue of jurisdiction of the trial Ward Tribunal first, then, the parties should be afforded right to address the Tribunal on the issue. Each party has to carry his own cost of the suit. It is so ordered accordingly.


A.E. Mwipopo
Judge
22/07/2022


Court: Judgment was delivered today in the presence of the counsel for the appellant and the agent of the respondent


A.E. Mwipopo
Judge
22/07/2022
