

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

LAND APPEAL NO. 24 OF 2021

(Arising From the District Land and Housing Tribunal for Mbeya, at Mbeya in Land Application No. 238 of 2020)

THE REGISTERED TRUSTEES OF.....APPELLANT

INTERNATIONAL GOSPEL OF GOD

VERSUS

1. JOHN MASEBO.....1ST RESPONDENT

2. ELYUDI MBUVILA FUNGO.....2ND RESPONDENT

JUDGEMENT

Date of last Order: 10.11.2021

Date of Judgment: 11.02.2022

Ebrahim, J.

The appellant herein filed the instant appeal challenging the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya in Land Application No. 238 of 2020. Briefly stated, the appellant was the applicant before the Trial Tribunal (DLHT) and the respondents maintain their status. After the parties completed to file their respective pleadings, the respondents filed a preliminary objection claiming that the Appellant has not

provided the particulars of boundaries of the disputed land. The tribunal overruled the objection and ordered the applicant/appellant to amend the application so as to include boundary description of the premise in dispute. The trial Tribunal also scheduled the matter for mention to be on 31/3/2021. When the matter was called for mention on the scheduled date, the Tribunal dismissed the matter on the reason that the applicant/appellant failed to comply with the Tribunal's order. The dismissal order is styled in *Kiswahili* as follows:

“Baraza: Shauri limekuja kwa ajili ya kutajwa. Mdai ameleta marekebisho yake. Hata hivyo hajatekeleza amri ya baraza ya kulibainisha eneo husika ili kujulikana kwa kubainisha mipaka yake kama baraza hili lilivyoamuru. Kwa kuwa hajatekeleza amri hiyo naitupilia mbali kesi hii kwa gharama.”

The foregoing, can be lightly translated as follows:

Tribunal: The matter is coming for mention. The applicant has brought her amendments. However, she has not complied with the

Tribunal's order of specifying the boundaries of the disputed premises. As she has not complied with that order, I dismiss the suit with costs.

The appellant was not amused by the order of the trial Tribunal. She filed the instant appeal raising 5 grounds of appeal. I will not reproduce all of them here, but I will determine the first ground of appeal which states as follows;

“That the trial Tribunal did erred(sic) both in facts and the law when denied the appellant his legal right to be heard by posing unreasonable interruptions in the course of proceedings.”

During the hearing of the appeal, parties appeared in person, unrepresented. The appeal was heard by way of written submissions upon the parties' agreement and order of this court.

Submitting in support of the appeal about the first ground of appeal, the appellant complained that the Tribunal's order of dismissing his application with costs denied her right to be heard. He contended that, he complied with the Tribunal's order by giving the description of the suit land through the amended

application dated at 15/03/2021. She referred this court at paragraphs 3 and 6 of the amended application.

In reply submissions, the respondents argued the first ground of appeal that the Tribunal's order dismissing the application was legal since the applicant did not abide to the order which required him to give the description of the suit land. According to him the applicant failed to explain why he did not observe to the Tribunal's order while it is a trite law that court's orders are supposed to be respected. To support their contention, they cited the case of **The Registered Trustees of Baraza Kuu la Waislam Tanzania (BAKWATA) v. Ramadhani Msuya and Others**, Misc. Reference No. 01 of 2020, High Court of Tanzania at Moshi (unreported). The respondents argued further that the appellant was given the right to be heard when they filed their respective written submissions arguing the preliminary objection.

Having gone through the records and the submissions by the parties relating to the 1st ground of appeal, the issue is whether or not the DLHT availed the appellant with her right to be heard. The answer is not far-fetched. This is because the record/proceeding of the DLHT is clear that the Tribubunal made its order dismissing

the application without affording an opportunity to the appellant to be heard on if/why she did not comply to the Tribunal's order. The proceedings just indicate that on the material date (31/03/2021), after recording the coram the Chairman proceeded to issue the impugned order. It is my view therefore, that the decision violated the Principle of Natural Justice. These principles require, among other things that parties should be afforded their entitlement for an effective hearing before their rights are determined. The appellant was thus, denied of his fundamental right. There was thus, an injustice against the appellant for want of a fair trial/hearing on his part. The right to a fair trial is well enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002 (the Constitution). This right is very significant for administration of justice in both civil and criminal proceedings. The Court of Appeal of Tanzania described the right to a fair trial as one of the cornerstones of any just society. It is also an important aspect of the right which enables effective functioning of the administration of justice; see the case of **Kabula d/o Luhende v. Republic**, Criminal Appeal No. 281 of 2014, CAT, at Tabora (unreported). That, right cannot thus,

be easily violated by any court or institution charged with judicial duties like the DLHT.

Moreover, it is trite law that a decision of a court reached through violation of the Principles of Natural Justice (mentioned above) or the right to a fair trial is a nullity; see decisions in **Agro Industries Ltd v. Attorney General [1994] TLR 43**, **Raza Somji v. Amina Salum [1993] TLR 208** and **Kabula d/o Luhende** (supra). The law further guides that, it is immaterial whether the same decision would have been arrived at in the absence of the violation; see **General Medical Council v. Spackman [1943] AC 627** followed in **De Souza v. Tanga Town Council [1961] EA. 377 (at p. 388)**, and **Abbas Sherally and another v. Abdul Sultan Haji Mohamed Fazalboy**, CAT Civil Application No. 133 of 2002, at Dar es Salaam (unreported).

It is also my observation that, had the learned Chairman of the DLHT extended an opportunity to the appellant to state if she complied with its order, the appellant would have stated the facts indicated under paragraphs 3 and 6 of the amended application.

Having observed as above, I answer the issue posed above negatively. I therefore, nullify the proceeding of the DLHT made on 31/03/2021. Consequently, I set aside the impugned

order/decision. It is further ordered that; the matter be heard on merits considering the amended application filed by the appellant on 15/03/2021. For the interest of justice, the matter be heard by another chairman with different set of assessors. Each party shall bear its own costs.

Ordered according.

A handwritten signature in black ink, appearing to read 'R.A. Ebrahim', written over a horizontal line.

R.A. Ebrahim

JUDGE.

Mbeya

11.12.2022

Date: 11.02.2022.

Coram: Hon. A.E. Temu -DR.

Applicant:

1st Respondent:

2nd Respondent:

} All present.

B/C: Gaudensia.

Court: Hon. presiding judge is on official safari. The appeal is coming for judgement.

The Judgment delivered in open Chamber in the presence of both parties.



A.E. Temu

Deputy Registrar

11/02/2022