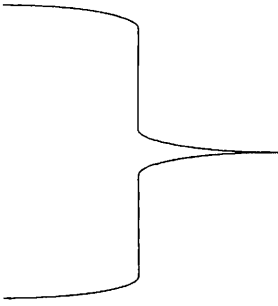


**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL NO.16 OF 2021

*(Arising from the decision of Maswa District Land and Housing Tribunal in Land
Appl. No. 77 of 2015)*

- | | | |
|---|---|-------------------|
| 1. NGODELO MEGELI
2. MASANJA ZENGO
3. DUTU SOSOMA
4. GIMU NG'WITAGULA
5. NGALU BUSHI |  | APPELLANTS |
|---|---|-------------------|

VERSUS

BUKUNDI VILLAGE COUNCIL.....RESPONDENT

JUDGMENT

17th May & 24th June 2022

MKWIZU, J:

Respondent, Bukundi Village Council filed a land application at the trial tribunal seeking for among other things to be declared owner of the suit land measuring 50 acres located at Bukundi Village, in Bukundi Ward within Meatu District designated for environment projects known as HASHI and that appellants be restrained from trespassing into the suit land. All the claims were refuted by the respondents, now appellant who jointly filed their WSD.

It seems the matter was heard and determined. Parties chose to appeal to this court where the entire proceedings were nullified with an order that the matters be tried *de-novo*. Parties were notified of the order

except for the 2nd respondent and a fresh trial was initiated by the tribunal. Parties were heard and judgement was entered against the appellants on 22/2/2021. Aggrieved appellants have now approached this court with a total of four grounds of appeal challenging the said decision.

However, when the matter came for the hearing, the appellant's counsel, Mr. Pharles Malengo, abandoned all the grounds except the 3rd ground of appeal drafted that:

"That, the Honourable Chairman grossly erred in law for pronouncing judgement without issuing notices/summons to the 2nd respondent"

Arguing this ground, the appellants counsel stressed that 2nd respondent was never served with the summons to appear before the tribunal before proceedings expert under regulation 11 sub regulation 1(c) of the Land Disputes Regulations GN No. 174 of 2003. He contended that, the tribunal was required to serve the parties with the hearing notice. He on this point cited the case of **Danny Shasha V Samson Nasoro and others**, Civil Appeal No 298 of 2020(unreported).

The leaned State Attorney, Majura Mafungo on behalf of the respondent readily conceded to the defect and prayed for the nullification of the proceedings with an order for re trial with no order as to costs.

Undeniably, the decision of the trial tribunal cannot be allowed to stand on account of being arrived at in violation for the constitutional right to a fair hearing. The trial proceeded with the second trial without notifying the 2nd respondent of the hearing date hence denying him a right to be heard. The Court of Appeal in the case of **Mbeya - Rukwa Auto Parts**

and Transport Ltd Vs. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000 (Unreported) the Court held that: -

"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 amongst the attributes of the equality before the law."

And in **Abbas Sherally and Another v. Abdul Fazalboy**, Civil Application No. 33 of 2002 (CAT unreported)The Court insisted that:-

"The right of a party to be heard before adverse action or decision is taken against such 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 be a breach of natural justice."

Explaining the consequences of such a violation, the Court of Appeal in **Ramadhani Mlindwa V Republic**, criminal Appeal No 158 of 2015 quoting the decision of **General Medical Council V Spackman** (1943) AC. 627, said:

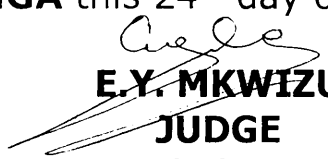
"If principles of natural justice are violated in respect of any decision it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

Thus, guided by the above decisions I am inclined to declare the trial tribunal's proceedings a nullity. The decision and all the resultant orders are hereby quashed and set aside. The file is remitted back to the trial tribunal for a fresh trial before another chairperson and different set of assessors.

And since the errors were committed by the tribunal, then each party is ordered to bear own costs.

Order accordingly.

DATED at **SHINYANGA** this 24th day of June 2022.



E.Y. MKWIZU
JUDGE
24/6/2022

Court: Right of Appeal explained.



E.Y. MKWIZU
JUDGE
24/6/2022