

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

MISC LAND APPEAL NO. 39 OF 2022

*(Arising from Land Application No. 19/2020 of the District Land and Housing Tribunal at Muleba and
Originating from Civil Case No. 1/2020 of Karambi Ward Tribunal)*

DESDERY NESTORY.....APPELLANT

VERSUS

SYPLIAN ELIZEUS.....RESPONDENT

JUDGMENT

18th August & 18th August 2022

Kilekamajenga, J.

The appellant and respondent are battling over ownership of a piece of land located at Murungu hamlet in Karambi village within Muleba District. In 2020, the respondent sued the appellant in Karambi Ward Tribunal vide civil case No. 1/2020. The Ward Tribunal decided in favour of the respondent prompting the appellant to seek justice in the District Land and Housing Tribunal at Muleba. In the judgement of the appellate tribunal, the chairman, after failing to grasp the nature of the appeal, noticed that the decision of the Ward Tribunal was delivered on 10th March 2020 but the appellant appealed to the District Land and Housing Tribunal on 27th April 2020, i.e. after the expiry of forty seven (47) days. Based on that point, the District Land and Housing Tribunal dismissed the appeal for being incompetent and for being brought out of time.



The appellant appeared before this court challenging the decision of the District Land and Housing Tribunal of Muleba. He moved this court with a petition of appeal containing two grounds of appeal coached thus:

- 1. That, the appellate tribunal erred in law and facts for dismissing the appellant's appeal on the reason that his appeal was out of time without first hearing the parties on that issue which was raised by the tribunal suo-moto.*
- 2. That, had the appellate tribunal considered the appellant's submission, it could have found that this appeal was concerning with one main ground which is ownership of the suitland and thus, it ought to determine the appeal on that ground basing on parties' submissions and evidence on record rather than holding that the appellant had failed to substantiate it.*

Before this court, the respondent received the summons but decided not to sign it. Hence, the court ordered the hearing to proceed in his absence. On the date fixed for hearing of this appeal, the appellant was absent but enjoyed the legal services of the learned advocate, Mr. Gildon Mambo. In expounding the grounds of appeal, the counsel for the appellant dropped the second ground and confined the discussion on the first ground arguing that the District Land and Housing Tribunal dismissed the appellant's appeal on the reason that the appeal was brought out of time. However, in deciding whether the appeal was brought out of time or not, the point was raised by the tribunal *suo moto* without affording the appellant the right to be heard. Therefore, the appellant was denied the right to be heard on the point raised by the tribunal something which vitiated the proceedings of the appellate tribunal and decision thereof. To bolster his

argument, he referred the court to the case of **Evodius Petro Majura v. Victor Gervas, Probate and Administration Appeal No. 10 of 2018**, HC at Bukoba. He urged the court to allow the appeal and set aside the decision of the District Land and Housing Tribunal and remit back the file to the tribunal for the appellant to be heard before another chairman.

In this appeal, I am moved again to reiterate what I have stated in several decisions on the constitutional right to be heard. The right to be heard is not only a natural right but also a constitutional right under **Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977**. This constitutional right provides that:

'3 (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.'

Therefore, under our law, every person appearing before the court must be given fair hearing which includes the right to be heard on every aspect or point which may determine his rights. The right to be heard must be given to the party regardless whether his/her submission may not change anything in the decision of the court or tribunal. The principle of fair hearing demands the right for the

person to know the points or issues which may affect his rights and he/she should also address them. The court or tribunal determining the rights of a party cannot assume that a party will be happy with the decision which is given based on a point which such a party did not come to his knowledge nor address it. Courts have insisted on this principle in a number of cases. For instance, in the case of **Halima Hassan Marealle v. Parastatal Sector Reform Commission**, Civil Application No. 84 of 1999, the court stated that:

'The concern is whether the applicant whose rights and interests are affected is afforded the opportunity of being heard before the order is made. The applicant must be afforded such opportunity even if it appears that he/she would have nothing to say, or that what he/she might say would have no substance.'

The legal jurisprudence on the right to be heard was expounded further in the case of **IPTL v. Standard Chartered Bank (Hong Kong) LTD**, Civil Revision No.1 of 2009 (unreported) where the Court stated that:

'No decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interest of any person without first giving him a hearing according to the principles of natural justice.'

In this case, as earlier stated, the point used to determine the appeal before the District Land and Housing Tribunal was raised *suo moto*. The appellate tribunal went further discussing the point of time limit without affording the parties the right to be heard. The appellate tribunal, therefore, violated the appellant's right

to be heard by not affording the appellant the right to be heard. The appellate tribunal, after noticing that the appeal was brought out of time, was supposed to invite the parties to submit on that issue and thereafter continue composing the judgment. Failure to invite the parties on the issue raised suo moto by the appellate tribunal not only violated the right to be heard but also acted against the principle of natural justice. The error committed by the appellate tribunal vitiated the proceedings and decision thereof. I allow the appeal and order the return of the file to the District Land and Housing Tribunal for hearing of the appeal. The tribunal will invite the parties to address on the point of time limit if it still finds it pertinent and proceed to compose the judgment. No order as to costs. Order accordingly.

Dated at Bukoba this 18th Day of August 2022.



Court:

Ntemi N. Kilekamajenga.
JUDGE
18/08/2022

Judgment delivered this 18th August 2022 in the presence of the counsel for the appellant, Mr. Gildon Mambo. The appellant and respondent were absent. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
18/08/2022