

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

LAND APPEAL NO. 33 OF 2022

**(Originating from Land Case No. 55 of 2018 District Land and Housing
Tribunal for Morogoro, at Morogoro)**

**UFUNUO ISRAEL 1ST APPELLANT
IDRISA ABDUL MBONDE 2ND APPELLANT
MOHAMMED IBRAHIM 3RD APPELLANT
MATESO SIAGA 4TH APPELLANT**

VERSUS

**ISDORY TAVE.....1ST RESPONDENT
ATHUMANI SAID BAKARI 2ND RESPONDENT**

JUDGMENT

19th Dec, 2022

CHABA, J.

The appellants herein were a losing party in Land Application No. 55 of 2018 instituted before the District Land and Housing Tribunal for Morogoro, at Morogoro (the trial Tribunal) delivered on 11/02/2020. Aggrieved, they have now appealed to this Court based on the following five (5) grounds of appeal:

1. That, the trial Tribunal erred in law on the fact when it decided that the appellant cannot sue the suit property jointly.
2. That, the trial Tribunal erred in law and on the fact for failure to make a decision on ownership and wilfully dismissed the case without giving a reason or determination.



3. That, the trial Tribunal erred in law and on fact by raising issue Suo motto and denied parties right to be heard on the issue rose
4. That, the trial Tribunal erred in law and on fact by concluding that the property was not properly described.
5. That, the trial Tribunal erred in law and on fact when it failed to properly evaluate the evidence on record thereby reaching at erroneous conclusion.

In summary, the matter arises this way: The appellants herein instituted Application No. 55 of 2018 against the respondents seeking before the trial Tribunal, One; an order declaring them to be the lawful owners of the disputed parcel of land having lawfully purchased the same from the 2nd respondent, Two; an order that the 1st respondent is a mere trespasser and he is not entitled thereto, Three; an order for perpetual injunction on the 1st respondent from any further disturbing or annoying the applicants in their quiet enjoyment of their respective lands, Four; costs of the appeal and Five; any other relief(s) the tribunal finds appropriate to grant.

After a full trial, the trial, Hon. Chairman dismissed the application with costs. Disgruntled, the appellants preferred the present appeal armed with five grounds of appeal as shown above.

At hearing, the appellants were represented by Ms. Alpha Sikalumba, learned counsel while the 1st respondent was represented by Mr. Christopher



Mgalla, learned counsel. On the other hand, the 2nd respondent fended for himself. With the leave of the Court, the appeal was heard and disposed of by way of written submissions.

For convenience purpose, I will not reproduce the substance of the parties' rival submissions as it appears in the Court record, but I appreciate their arguments for and against this application. It suffices to note that the same have been considered in the composition of this judgment. I will be referring to them in the course of determining the merits of the appeal, if need arises.

I have gone through the rival submissions advanced by both parties, and upon perusing the entire records, I will now determine first, the third ground of appeal as the remaining four ground's, its fate depends much on the outcome of the third ground.

In the third ground, it is the appellant's assertion that, the trial Tribunal erred in law and on fact by raising issue suo motu and denied parties rights to be heard on the issue arisen.

I have painstakingly gone through the rival submissions of both sides in respect of the third ground and the records of the trial Tribunal. In my considered view, it suffices to say that, this Court is satisfied with the submission advanced by the appellant's counsel that, the trial Tribunal erred in law and fact when it raised the issue suo motu without affording the parties with the rights to be heard.



My reasoning is laid and supported with the evidence of the proceedings of the trial Tribunal, where it is shown that on 31/08/2021 when the matter came up for hearing, the issues agreed and framed as controlling questions for determination of the matter were as listed hereunder: -

- i. Whether the suit land is the property of applicants herein.
- ii. Whether there was a legal sale between the applicants and the second respondents.
- iii. Whether the 1st respondent has trespassed the suit, land
- iv. Reliefs the parties are entitled with.

After a full hearing of the application, the trial Chairman fixed the date for judgment and the same was delivered on 11/02/2022. From that judgment the Chairman amended the second issue and substitute it with the new issue suo motu that is ***"whether it was right for the applicants to sue the suit property jointly"*** and at page 6 of the typed judgment, the application was dismissed on the ground that the applicants at the trial Tribunal had separate cause of action, hence it was wrong for them to sue jointly. For the purpose of clarity, I wish to reproduce the wording of the Hon. Chairman at page 6 hereunder: -

"..... Kwa asili ya maombi haya, na baada ya kupitia hati ya madai na hati za utetezi, pamoja na ushahidi uliotolewa, nimeona kuwa kuna hitaji la kufanya marekebisho ya swali la pili (second issue),



ili kuweka swali litakaloakisi madai na ushahidi uliotolewa. Ni Imani yangu kwamba, katika shauri hili suala la kama kulikuwa na mauzo kisheria sio hoja ya kutatua mgogoro huu. Swali la pili baada ya marekebisho litakuwa, Je, ni sahihi kuunganishwa kwa waombaji na kuunganisha sababu za kushtaki?.....”.

From the foregoing, it is undisputed fact that the trial Chairman raised an issue suo motu without notifying and involving the parties to the case and finally made its analysis, evaluated the evidence and made the final decision. In this regard, the question that arises is this, whether failure to re-summon the parties to address the trial Tribunal prejudiced the appellants.

It was the argument of the appellant's counsel that, failure to afford the parties with the rights to be heard on the issue raised by the trial Chairman himself, is fatal. To support and strengthen her contention, she referred this Court to the case of **Oysterbay Villas Limited Vs. Kinondoni District Council & The Attorney General**, Civil Appeal No. 110 of 2019, wherein the Court Appeal of Tanzania, sitting at Dar es Salaam, page 12, held: -

“... thus, consistent with the constitutional right to be heard as well as settled law, in the matter under scrutiny, the adverse decision of the trial judge to dismiss the suit on account that the expired certificate of approval of disposition vitiated the agreement without hearing the parties is the violation of the

basic and fundamental constitutional right to be heard and is a nullity....."

Basing on the above authority, in my considered opinion, no doubt that, the trial Tribunal's act of raising a new issue suo motu and determining the suit in its entirety basing on the said issue without accorded the parties the right to be heard on that point. In the circumstance, he ought to have accorded them with an opportunity to be heard. Failure of which, that was a serious irregularity.

In another case of **Charles Christopher Humprey Kombe Vs. Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017 (unreported), the CAT made corresponding remarks in **John Morris Mpaki v. NBC Ltd and Ngalagila Ngonyani**, Civil Appeal No. 95 of 2013 (unreported) regarding the rights to be heard. In that case, the CAT made reference to its previous decision in **Deo Shirima and Two Others Vs. Scandinavian Express Services Limited**, Civil Application No. 34 of 2008 (unreported) and observed that:

"The law that no person shall be condemned unheard is now legendary. It is trite law that any decision affecting the rights or interests of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard. This principle of law of respectable antiquity needs no authority to prop it up. It is common knowledge."



From the above position of the law, it goes without saying that, a decision or order made in contravention of the above principle, lead to nullification of the whole proceedings as it was held in the case of **EX-B.8356 S/SGT Sylvester S. Nyanda Vs. The Inspector General of Police & Another** (Civil Appeal 64 of 2014) [2014] TZCA 215 (28 October 2014); (tanzlii.org.tz) (unreported).

In nutshell, the CAT held *inter-lia* that: -

"The way the first appellate court raised two jurisdictional matter suo motto and determined them without affording the parties opportunity to be heard has made the entire proceedings and judgment of the high court a nullity and we hereby declared so".

Having highlighted the guiding principles, as hinted above, in the instant appeal, it is undisputed that the application was conclusively determined on the issue raised suo motu by the trial Tribunal and the records reveals that the parties were not accorded with right to be heard. As indicated above, such fatality renders the decision of the trial Tribunal a nullity.

For the reasons I have endeavoured to demonstrate above, I am constrained to allow this appeal on the strength of the third ground of appeal as the same is capable of disposing of the entire appeal to its finality. Having so hold, I see no reasons to deal with the remaining grounds of appeal, as by so doing, that will be purely an academic exercise. I thus, quash the



proceedings of the trial Tribunal and Judgments and set aside the Decree and any order that emanates therefrom.

Whoever, interested to pursue this matter shall institute a fresh suit and the same shall be heard by another Chairperson with competent jurisdiction to handle the matter, with a new set of assessors. Each party shall bear its own costs in this appeal. **I so order.**



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

M. J. CHABA

JUDGE

19/12/2022