

**IN THE HIGH COURT OF THE UNITED OF THE REPUBLIC OF
TANZANIA
IN THE SUBREGISTRY OF KIGOMA
AT KIGOMA**

MISC. LAND APPEAL NO.38 OF 2022

(ARISING FROM LAND APPEAL NO.123 OF 2021 IN THE DISTRICT LAND AND HOUSING TRIBUNAL FOR
KIBONDO AND ORIGINATING FROM LAND CASE NO.04 OF 2021 OF THE KAKONKO WARD TRIBUNAL)

SAVERA EVARIST KALOBAGWA 1ST APPELLANT

JUSTINA EVARIST KALOBAGWA 2ND APPELLANT

VERSUS

TRIFOSA MANJERY EMMANUEL RESPONDENT

Date of Last Order:21/02/2023

Date of Judgement: 17/03/2023

EX-PARTE JUDGEMENT IN APPEAL

MAGOIGA, J.

This is an appeal against the ruling/order of the Chairman, District Land and Housing Tribunal for Kibondo dated 19/05/2022 (Mwinyi) in Land appeal No. 123 of 2021.

In the Land Case No.04 of 2021 before the Kakonko Ward Tribunal, the respondent successfully secured judgement against the appellants. The appellants appealed to the District Land and Housing Tribunal for Kibondo, but their appeal was suo motto struck out for failure to apply to set aside first the ex-parte judgement of the trial Ward Tribunal.

The appellants, **SAVERA EVARIST KALOBAGWA** and **JUSTINA EVARIST KALOBAGWA** being aggrieved by the order/ruling of the



chairman, striking out the appeal preferred this appeal to this court on the following grounds, namely:-

1. That the District Land and Housing Tribunal grossly misdirected itself when it raised the issue concerning propriety of the appeal before it suo motto and decided the same against the appellants without according them an opportunity of submitting on the same;
2. That the District Land and Housing Tribunal grossly misdirected itself for striking the appellants' appeal out while the same was properly before it and all ground raised in the petition of appeal on record were legally meritorious for determination by the same;
3. That the District Land and Housing tribunal misdirected itself when it held that the appellants had to apply in the trial Ward Tribunal to set aside ex-parte judgement against them rather than appealing of the same.

On the above grounds, the appellants prayed that this Court allow the appeal with costs by reversing the decision of the District Land and Housing Tribunal and order hearing of the appeal before another chairman competent to hear the appeal.

When this appeal was called on for hearing on 21/02/2023, Mr. Method R.G. Kabuguzi, learned advocate for the appellants informed the court that by the order of this court dated 09/08/2022 this court ordered the



respondent be served by publication. Mr. Kabuguzi went on telling the court that they complied with the order of the Court by serving the respondent in Nipashe newspaper dated 19/08/2022 but the respondent has not shown up. In the circumstances, he prayed that the appeal be heard ex-parte. I granted the order.

Mr. Kabuguzi in the course of arguing the appeal prayed to drop ground number three in the list and went on with the rest of the grounds.

Arguing ground number one of the appeal, Mr. Kabuguzi argued that the DLHT erred in law by raising the propriety of the appeal suo motto without affording parties right to hearing on the point. According to Mr. Kabuguzi, the appellants were condemned unheard and it was improper and invited this Court to find so and consequently overturn the decision of the Tribunal. In support of the point, cited the case of **Darsh Industries Limited Vs. Mount Meru Millers, Civil Appeal No. 144 of 2005 CAT (ARUSHA) (UNREPORTED)** to underscore the point and need to be heard when a decision against one's rights are at issue.

On the second ground, it was the brief and focused submissions of Mr. Kabuguzi that, the chairman erred for striking out the appeal on account of not being proper while the suit was not ex parte. The problem was the parties were put in a way that was confusing and disturbing. To support the second ground, the learned advocate cited the case of **Issa Nyoka**



@Abeid Issa Nyoka t/a Issa Nyoka General Supply Vs. Uvinza District Council, Civil Case No. 3 of 2017.

In the totality of the above grounds, the learned advocate for the appellants prayed and urged this court to allow the appeal with costs and consequently quash the order of the appellate Tribunal and order the file be return to proceed before another chairman with competent jurisdiction to try the appeal.

Having heard the one-sided arguments and having revisited the records of the trial and appellate lower Tribunals, without much ado, I find merits in the first ground of appeal. I will explain. **One**, the first appellate Tribunal after hearing the appellants' advocate and in the course of composing judgement had this to say, I beg to quote him:

"Baada ya kupitia nyaraka zote za shauri hili pamoja na hoja za warufani, Baraza kwa mlengo wake wenyewe(suo motto) limeibua hoja ambayo ni ya msingi kwa kufikia uamuzi wa shauri hili, ambapo Baraza limejiuliza swali lifuatalo:

1. Je ni sahihi kwa warufani kuleta shauri (rufaa) mbele ya Baraza hili."

It is clear from the above statement that, from that misdirection as correctly argued by the learned counsel for the appellants, and rightly so in my own opinion, the first appellate Tribunal took off road and went on



to struck out the appellants' appeal without affording them right to be heard. More so, as right held in the case of **Darsh Industries Limited Vs. Mount Meru Millers Limited(supra)** a right to be heard in our jurisdiction is fundamental, constitutional, and 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 breach of natural justice.

In this appeal, without much ado, is plainly clear that no such right was extended to the appellants, the effect of which is that, this court hereby nullify and quash the proceedings and resultant order of the first appellate Tribunal, as I hereby do. It should be noted that, it is not every ex-parte decision that will require to be set aside first the trial judgement because it depends on facts of each particular case. There are cases, where ex-parte judgement can be appealed without necessarily having to set aside them. This is in accordance to the section 70(2) of the Civil Procedure Code, [Cap 33 R.E 2019) which provides as follows:

(2) An appeal may lie from an original decree passed ex parte.

Much as this ground suffices to dispose of this appeal, I find no reason to discuss the other ground because the appellate Chairman did not make a finding on the confusion of parties.



Having nullified the appellate proceedings and orders emanating therefrom, I order that this case file be returned to the Kibondo, District Land and Housing Tribunal for its determination before another chairman with competent jurisdiction to try the appeal. Much as the anomaly was caused by the Tribunal suo motto, I declined to grant costs.

It is so ordered.

Dated at Kigoma this 17th day of March, 2023.



A handwritten signature in blue ink, consisting of a series of vertical lines followed by a horizontal line and a flourish.

S. M. MAGOIGA
JUDGE
17/03/2023