IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND CASE APPEAL No. 70 OF 2020

(Arising from the District Land and Housing Tribunal for Tarime at Tarime in Land Appeal No. 102 of 2020 and Original Land Case No. 14 of 2018 at Koryo Ward Tribunal)

PRISCAH MATHIAS ..... **APPELLANT**

Versus

RUSALINA ON'WEN ..... **RESPONDENT**

JUDGMENT

15.02.2022 & 15.02.2022

F.H. Mtulya, J.:

An appeal was registered in this court as Miscellaneous **Land Appeal No. 70 of 2021** (the appeal) by Priscah Mathias (the appellant) attached with three (3) grounds of appeal protesting decision of the **District Land and Housing Tribunal for Tarime at Tarime** (the District Tribunal) in **Land Appeal No. 102 of 2020** (the application) originated from **Koryo Ward Tribunal** (the Ward Tribunal) in **Land Case No. 14 of 2018** (the case).

The glance of the three (3) registered reasons at their outset show that the appellant is complaining on the right to be heard which was abridged by the Ward Tribunal during the hearing of the case and received blessings of the District Tribunal in the application. When the appeal was scheduled for hearing today

afternoon, the appellant claimed that she had good reasons to justify her absence in the Ward Tribunal and was supposed to be given opportunity to enjoy the right to be heard in the case, but the Ward Tribunal declined to cherish the right without plausible explanations. In submitting the reasons for the absence during the hearing of the case in the Ward Tribunal, the appellant stated that she was sick and unable to appear for the proceedings save for the first day when she appeared in the Ward Tribunal. To her opinion, if the District Tribunal had evaluated the evidence of sickness properly and considered the reasons of absence, it could have reached a different decision.

However, the submission of the appellant was protested by the respondent who invited learned counsel Mr. Emmanuel Werema to oppose the submission. In his brief reply, Mr. Werema contented that the appellant declined to exercise her right to be heard as she was sick but failed to invite the application of the law in section 18 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act), which is flexible and allows relatives or any other person to enter appearance on behalf of any party in the proceedings of the Ward Tribunal.

With regard to the second and third reasons of appeal, Mr. Werema joined and argued them together contending that the documents which were registered at the Ward Tribunal by the appellant to justify sickness differ in terms of names from Priscah Mathias to Priscah Gerald and in any case the hearing at the Ward Tribunal started on 2nd October 2018 whereas the documents tendered show sickness on part of the appellant started in November 2018. To Mr. Werema's opinions, even the documents themselves show that the appellant was outpatient meaning that she was able to walk and attend the proceedings in the Ward Tribunal.

In a brief rejoinder, the appellant stated that he had fallen into serious sickness and that at one point in time, she sent her son to check for the proceedings in the Tribunal and that the difference in names as no merit as they depict the same person from her father's name and husband's name. To the appellant's opinion, the respondent intends to curtail he rights to hide the reality in the dispute.

On my part, I have read the proceeding in the Ward Tribunal conducted on 22nd September 2019 which shows that the appellant claimed that she was sick and unable to walk, and tendered evidence on the subject. I have also glanced the decision of the

Ward Tribunal delivered on 6th October 2020 which decided against the appellant. However, the reasoning of the tribunal is quietly inviting. The Tribunal reasoned that: *katika kesi hii Mdai amedhiirisha kwamba alitumiwa samanzi mara tatu na alifika barazani mara moja tu. Na wakati Baraza linaendelea aliamua kuondoka moja kwa moja Barazani bila ruhusa. Hii inaonyesha kwamba alidharau baraza hili...hivyo baraza limetupilia mbali maombi yake.*

This reasoning shows that the Tribunal was mainly based on conduct of the appellant instead of the reasons and evidence placed before them. The appellant claimed before the Tribunal during application for restoration on 15th September 2020 that: *ndugu mwenyekiti tangia nimejenga hiyo nyumba sijawahi kuwa mzima, hata hapa natembea ninaumwa...Kumbukumbu zangu nimeagiza watu wawili. Mara ya kwanza kijana wangu. Mara ya pili niliagiza kijana wa mjomba wangu anaitwa Baraka. Mara ya Tatu nilikuja mimi mwenyewe nikawaomba ruhusa maana nilikuwa nasikia vibaya kama nguvu zinaisha, nikaondoka ndo nikakaa kitandani mpaka kesi inaisha.*

This piece of evidence was not either considered or given the weigh it deserves. The reasoning in the decision of both tribunals

below declined to consider these facts registered by the appellant during application for restoration in the Ward Tribunal. Decisions which ignore consideration of important materials registered in their jurisdiction cannot be allowed to remain on record for want of proper application of the laws by the courts below. Superior courts have additional duty to address vivid decline of consideration of important facts and evidences (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). This court cannot justifiably close its eyes in the present appeal and will take appropriate measures.

I understand Mr. Werema cited the authority in section 8 (2) of the Act on flexibility of representation of the parties in disputes filed in the Ward Tribunal. However, in my opinion, the application of the section depends on the circumstances of each case, and in any case the appellant alleged to have sent his child in one occasion and child of her uncle on the other to report her absence. At any rate, the right to be heard in fundamental that there must be good reasons to deny it. It cannot be easily ignored by the lower tribunals.

There is a large bundle of precedents prohibiting restrictions on the right to be heard to the parties who are in disputes (see: **DPP**

v. Sabinis Inyasi Tesha & Another [1993] TLR 237, **Mbeya-Rukwa Auto Parts & Transport v. Jestine George Mwakyoma** [2003] TLR 251 and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44. In the decision of **Mbeya-Rukwa Auto Parts & Transport v. Jestine George Mwakyoma** (supra), the Court of Appeal stated that:

> *It is a cardinal principle of natural justice that a person should not be condemned unheard, but fair procedure demands that both sides should be hard. It is not a fair and judicious exercise of powers, where a party is denied a hearing before its rights are taken away... natural justice is but fairness writ large and juridically.*

The right to be heard is now moved from just a mere natural right to human right and well enshrined in the **Constitution of the United Republic of Tanzania** [Cap. 2 R. E. 2002] (the Constitution) under article 13 (6) (a), and this court must cherish the provisions of our Constitution without any reservations.

Having said so, I have decided to allow the appeal and quash the decisions and set aside proceedings of both tribunals below in the Ward and District in favour of the appellant's right to be heard. I

therefore order the appellant to enjoy her right to be in the dispute in accordance to the laws regulating land matters.

It is so ordered.

Right of appeal explained.

F.H. Mtulya

Judge

15.02.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Priscah Mathias and in the presence of the Respondent's learned counsel, Mr. Emmanuel Werema.

F.H. Mtulya

Judge

15.02.2022