

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

LAND CASE APPEAL No. 50 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land
Application No. 85 of 2020)*

CHRISTINA JOHN MWITA APPELLANT

Versus

PASCHAL MAGANGA RESPONDENT

JUDGMENT

28.02.2022 & 28.02.2022

F.H. Mtulya, J.:

Christina John Mwita (the appellant) was dissatisfied with the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 85 of 2020** (the application) in dismissing the application without affording her the right to be heard. In this court, when the appeal was scheduled for hearing today afternoon, the appellant appeared in person whereas the respondent enjoyed legal representation of Mr. Baraka Makowe and Ms. Mabula.

During the hearing of the appeal, Mr. Makowe being aware of section 3A & 3B of the **Civil Procedure Code** [Cap. 33 R. E. 2015] and section 66 of the **Advocates Act** [Cap. 341 R.E. 2019] and noting he is an officer of this court, he conceded the two (2)

grounds of appeal filed by the appellant in her petition of appeal. In his brief submission, Mr. Makowe stated that the reasons of appeal in number two (2) and three (3) of the appeal have merit as they grounds jointly complain on the right to be heard. This submission was received well by the appellant who submitted that he requested the tribunal's chairman to recuse himself from hearing of the matter, but to her surprise the suit was dismissed.

I have perused the record of the appeal and found the following text in the proceedings of tribunal conducted on 8th June 2021 as depicted at page 6:

Mwombaji: Mheshimwa ninaomba ujitoe kwenye kesi hii kwa sababu ulituambia tufanye kesi kwa maandishi.

Baraza: Alichokisema mleta maombi hakina msingi nakataa kujitua.

Mwombaji: Mheshimiwa siko tayari kusikilizwa.

Baraza: Kwa kuwa mwombaji amekataa kutoa ushahidi wake bila sababu ya msingi, shauri hili linafutwa chini ya kifungu 11 Tangazo la Serikali No. 174 ya 2003 na mwombaji ahusike na gharama za kesi.

This dismissal order of the tribunal without consideration of the appellant's reasons against the Chairman or right to be heard before arriving at the order is what is contested in this appeal. In this court the appellant drafted grounds number two (2) and three (3) of appeal, in brief, to display grievances with regard to: failure of the tribunal to consider reasons listed in the complaint letter dated 14th April 2019 and order of the tribunal to grant land in dispute to the appellant without reasons.

I have invited and perused Regulation 11 (1) (a) to (c) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations). However, the provision in the Regulations is silent on recusal of Hon. Chairpersons of the tribunal or anything related to it. The Regulation relates to hearing of applications of land disputes brought before the tribunal and consequences of non-appearance of the parties.

It is unfortunate in the application the tribunal declined to consider prayer and reasons of protest of his sitting in the hearing of the application. It is also unlucky that the tribunal dismissed the application without affording the appellant an opportunity to cherish the right to be heard, as per law in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002]

and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251).

The practice in this court and Court of Appeal shows that the right to be heard is so basic that a decision which is arrived in violation of it will be nullified. There is a large bundle of precedents on the subject (see: **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** (supra), **Darsh Industries Limited v. Mount Meru Millers Limited**, Civil Application No. 144 of 2015, **National Microfinance Bank v. Rose Laizer**, Revision No. 123 of 2014, and **Abbas Sherally & Another v. Abdul S.H.M. Faza Iboy**, Civil Application No. 33 of 2002

Having noted the practice of this court and Court of Appeal, this court cannot depart from its previous decisions or decisions of the Court of Appeal. The proceedings and decision of the tribunal of 8th June 2021 must be nullified for want of fundamental right to be heard. This court is a temple of justice mandated to ensure proper application of laws in lower tribunals.

I have therefore decided to invite section 41 & 42 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] to set aside proceedings of the tribunal of 8th June 2021, and accordingly order the proceedings to continue from where it ended before 8th June

2021. The matter shall be heard and determined by another Chairman. I award no costs to this appeal as the fault was caused by the tribunal, and in any case the disputed was not heard and determined on merit.

Ordered accordingly.



F. H. Mtulya

Judge

28.02.2022

This judgment was delivered in Chambers under the seal of this court in the presence of the appellant Christina John Mwita and in the presence of the Respondent, Mr. Paschal Maganga and his learned counsels Mr. Makowe and Ms. Mabula.

F.H. Mtulya

Judge

28.02.2021