

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

LAND APPEAL NO. 33 OF 2021

**(Originating from District Land and Housing Tribunal in Misc. Land
Application No. 546 of 2021)**

AVOR NGONYANI APPELLANT

VERSUS

MADGALENA THERESIA NGONDO RESPONDENT

Date of Hearing: 23/05/2022

Date of Judgment: 26/05/2022.

JUDGMENT

MURUKE, J

Magdalena Theresia Ngondo, respondent filed an application for extension of time to file bills of costs at District Land and Housing Tribunal of Mtwara at Mtwara on 12/08/2021. Upon hearing both parties applicant was granted thirty days within which to file of costs. Same dissatisfied appellant, thus preferred present appeal raising 5 grounds.

On the date set for hearing both appellant and respondent were in persons, they both argued the appeal orally.

Appellant joined all the grounds and submitted that, respondent delayed for 5 years. District Land and Housing Tribunal erred to grant applicant 30 days extension to file bills of costs, he thus requested this court to quash tribunal ruling granting respondent extension of time to file Bills of costs.

Respondent on the other hand forcefully argued that, court considered her affidavit in support of the application in which she gave reasonable explanation for her to be granted extension. She complained bitterly that, applicant has been troubling her by pushing her in to endless litigations despite being sick and old. Respondent asked this court to dismiss appellant case for lack of merits. What respondent sought at the tribunal was right to be heard on her bills of costs. Same cannot be heard without extension of time. Articles 13(6) of the constitution provides in the Kiswahili version thus;

"(6)Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;:"

"(a) Wakati wa hakina Wajibu wa mtu yeyote vinahitajika kufanyiwa uamuziwa Mahakama au chombo kingine kinachohusika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya Mahakama au chombo hicho kinginecho kinachohusika"

The right for a party to be heard and defend her or his case is a constitutional right and the same cannot be lightly denied. In **MbeyaRukwaAutoparts and Trasport Ltd Vs. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000, [unreported]** the Court of Appeal held that:-

"In this country natural justice is not merely a principle of common law. It has become a fundamental constitutional right. Articles 13(6) (a) include the right to be heard amongst the attributes of equality before the law..." [Emphasis added].

In Abbas Sheally and Another Vs. Abdul Fazalboy, Civil Application No. 33 of 2022 the same Court of Appeal emphasized that:-

"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. That, right is so basic that a decision which is arrived at in violation of it will nullified even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice." [Emphasis added].

It is the principle of law that right to be heard is paramount. Failure to hear party is breach of natural justice. Tribunal considered respondent right to be heard and granted 30 days extension. Upon filling of bills of costs by respondent, appellant has the right to challenge the same as his right to be heard would not be affected.

More so, Appellant has not said how is he going to be effected despite his right to be heard, still waiting for him in the bills of costs. There is nothing said by the appellant to convince this court to differ with tribunal ruling. Thus, appeal is dismissed with costs.


Z.G. Muruke

Judge

26/05/2022

Ruling delivered in the presence of applicant and respondent both in persons.




Z.G. Muruke

Judge

26/05/2022