

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND APPEAL CASE No. 79 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma  
in Land Appeal No. 222 of 2020 originating from Nyambureti Ward of  
Serengeti District in Land Dispute No. 115 of 2020)*

**KATHERINA MAKORE ..... APPELLANT**

***Versus***

**ONJACK SOSPITER ..... RESPONDENT**

**JUDGMENT**

**01.06.2022 & 01.06.2022**

**Mtulya, J.:**

The present appellant, Katherine Makore (the appellant) approached this court and complained on denial of the right to be heard at **Nyambureti Ward Tribunal of Serengeti District** (the ward tribunal) in **Land Dispute No.115 of 2020** (the dispute). In her Petition of Appeal, the appellant drafted the third ground of appeal in the following words, briefly, that:

*...the first appellate tribunal grossly erred in law and fact in failing to exercise its discretionary powers judiciously to see whether the appellant was afforded opportunity to be heard in the ward tribunal.*

Today morning when the appeal was scheduled for hearing, Mr. Naphtari Karebo Naphtari, holding a power of Attorney for the appellant submitted briefly that the ward tribunal had denied the appellant to cherish the right to be heard and prayed this court to order the ward tribunal to hear the appellant for the sake of justice of both parties as all relevant materials in the dispute will be produced by both parties.

This submission was protested by Mr. Onjack Sospeter (the respondent) who briefly stated that the appellant had declined the right as on 7<sup>th</sup> October 2020, both parties were present during visitation of *locus in quo* and the tribunal ordered hearing of the dispute on 13<sup>th</sup> October 2020, but the appellant declined appearance without good cause. According to the respondent, the appellant cannot come afterward to claim enjoyment of the right.

In a brief rejoinder of the submissions registered by the respondent, Mr. Karebo submitted that the respondent had trespassed onto the disputed land and attacked the appellant on 10<sup>th</sup> October 2020 and the appellant was badly injured and ferried to Serengeti District Designated Hospital & Mwanza Military Hospital for admission and treatment which consumed a long period of time. According to Mr. Karebo, following the attacks, the

appellant could not attend the hearing at the tribunal hence she was alleged to have declined the hearing of the dispute.

I have perused the record of this appeal and found that the dispute was filed in the ward tribunal on 30<sup>th</sup> September 2020 and was adjourned for hearing on 16<sup>th</sup> October 2020. However, on this day, 16<sup>th</sup> October 2020, the record shows that the dispute was called and appellant was absent and no proof of service was registered or facts showing absence of the appellant. On the filing day of the dispute, 30<sup>th</sup> September 2020, the ward tribunal is recorded to state that the appellant cannot be found, but remained silent on where exactly the appellant was not found. However, on the same day ordered for decision to be delivered on 16<sup>th</sup> October 2020, and accordingly delivered the decision, without calling the appellant or proof of service.

The appellant was not satisfied by the decision hence preferred **Land Appeal No. 222 of 2020** (the appeal) before **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal). After a full hearing of the appeal, the district tribunal, at page 3 of the judgment, dismissed the appeal and at page 2 of the judgment produced reasons for dismissal order that:

*Wajumbe wa Baraza hili wameshauri kwamba rufaa hii iruhusiwe na iamriwe kuanza upya kwa shauri. Kwa*

*heshima nyingi napingana na maoni yao. Hii ni kwa sababu kumbukumbu za Baraza la Kata ziko wazi kwamba mrufani Katherina Makore alitumiwa wito wa kuitwa shaurini, lakini aligoma kuhudhuria kwenye Baraza hilo.*

However, the district tribunal was silent on proof of service and the wording of the ward tribunal itself at page 3 of the proceedings conducted on 30<sup>th</sup> September 2020, the day of filing of the dispute, and notice to the appellant. In any case, even if she was informed of the right to be heard and declined appearance, it is impossible to be summoned to reply a dispute on 16<sup>th</sup> October 2020 and appear for hearing on 16<sup>th</sup> October 2020. That, at any rate, will not be coined as a reasonable time for the appellant to enjoy the right to be record.

The record also shows unfortunate speed of hearing and determination of the dispute. The dispute was called and determined to the finally on the same day, 16<sup>th</sup> October 2020, without proof of service or any materials from the appellant. The ward tribunal heard and summarized evidences of five (5) witnesses and facts of five (5) members of the tribunal, namely: Jonas Manyaki, Regina Simon, Farida Siwa, Matunda Fransisca and Anthony Kehori, the chairman of the tribunal. Apart from bringing doubts in this supersonic speed, there were no good reasons

displayed on record as to why the ward tribunal did not inquire on whereabouts of the appellant hence denied the appellant the right to be heard. Perusing the record of this appeal further, I see no any materials which were attached to display there was visitation of *locus in quo* on 7<sup>th</sup> October 2020 and parties participated in the proceedings. Therefore, the respondent's allegations that on the cited date there was visitation of *locus in quo* cannot be substantiated by evidence.

The right to be heard is fundamental such that it was enacted in mother law, the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] under article 13 (6) (a) of and well celebrated in the precedents of the Court of Appeal in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251; **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44; and **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018. The right holds higher value that no any individual persons or institution may trick with it.

Having said, so and noting this court is custodian of justice and enjoys additional mandate of ensuring proper application of laws, I have decided to quash decisions and set aside proceedings of all lower tribunals in favour of the right to be heard. Any

interested party may wish to file fresh and proper land dispute in an appropriate forum in accordance to current laws regulating land disputes. I award no costs in this appeal as the dispute is still on the course and the wrongs were committed by the lower tribunals.

Ordered accordingly,



F. H. Mtulya

**Judge**

01.06.2022

This judgment was delivered in chambers under the seal of this court in the presence of the respondent, Mr. Onjack Sospeter and in the presence of Mr. Mr. Naphtari Karebo Naphtari appearing for the appellant, Mama Katherina Makore.



F.H. Mtulya

**Judge**

01.06.2022