IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL NO. 3 OF 2022

(Arising from the Judgment of the District Land and Housing Tribunal for Maswa in Land Appeal no. 37 of 2021, Originating from Nyakabindi Ward Tribunal as Land Case No. 11 of 2021)

ISANA NILA .....APPELLANT

VERSUS

MAKINGO ROKETI .....RESPONDENT

J U D G M E N T

7th March, 2023

A. MATUMA, J.

The appellant herein successfully sued the Respondent in the Ward Tribunal for Nyakabindi for trespass in land in triangle shape measuring 56X60X70. The Respondent herein was aggrieved with the decision of the Ward tribunal decreeing the Appellant as the lawful owner of that dispute land. He thus appealed to the District Land and Housing Tribunal for Maswa at Maswa which quashed the decision of the Ward Tribunal on the ground that the Appellant had no formal claims at the trial Tribunal. Instead, the records starts by showing the coram of the tribunal and a hearing of the parties. The learned Chairman held that the law requires a complaint before the tribunal to be in writing and if it is brought orally then the Secretary of such Tribunal must reduce the complaint into writings. Having observed so, the learned Chairman found out that in the instant matter the law was

violated for the Appellant's complaint was not reduced in writing and served to the opponent party. He thus nullified the proceedings of the trial Tribunal and the decision thereof and directed the parties to start afresh the suit in the Court of competent jurisdiction.

The appellant became aggrieved with such decision hence this appeal with three grounds but for the purposes of disposing this appeal only the first ground suffices which reads as follows;

> *"That, the Appellate Tribunal erred in law and facts by nullifying the decision of the Ward Tribunal and setting aside its orders while the record is clear as to the claim of the ownership of one acre of land by the Appellant against the Respondent."*

At the hearing of this appeal both parties appeared in person and each maintained his stance for and against this appeal respectively.

On my party, I should agree with the Appellant that the Appellate Chairman erred in law to nullify the proceedings of the trial tribunal instead of deciding the appeal on its merits. This is because the parties before the appellate Tribunal had their grounds of contest through the Petition of Appeal and the Reply thereof. The Respondent herein who was the Appellant thereat raised six grounds of appeal and engaged Mr. Kitanda learned advocate to argue them in the tribunal. On 11/11/2021 the learned advocate and the Appellant herein were heard on the grounds of appeal and seriously they contested for and against such grounds. There was citations of authorities to support the arguments.

The learned Chairman after hearing the parties he invited the assessors to give their respective opinions and they complied fully both

opining in favour of the Appellant herein. The learned Chairman then fixed the matter for Judgment.

Unfortunately when the Judgment was read out, the learned Chairman did not address the grounds of appeal before him and the submission made by the parties. He came up with a new issue altogether which was not raised by either party or argued by them. The learned chairman had as well not invited the parties to address them on the issue before deciding it. That was wrong. It was condemning the parties unheard particularly the Appellant herein. The parties should have been given opportunity to be heard on the issue and produce documents if any in support of their relevant arguments. That is the principle of natural justice on the right to be heard which is guaranteed by the constitution of the United Republic of Tanzania, Chapter 2 R.E. 2002 as per article 13 (6) (a). The same reads;

"13 (6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa zinazozingatia misingi kwamba –

> *(a) Wakati haki na wajibu wa mtu unahitaji kufanyiwa uamuzi wa mahakama au chombo kinginecho kinachohusika, basi* ***mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu,*** *na pia haki ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya mahakama au chombo hicho kingine kinachohusika."*

See also the case of ***Rukwa Auto Parts and Transport Ltd Vs. Jestina George Mwakyoma*** (2003) TLR 251.

In the instant case, the Respondent who was the appellant in the lower tribunal did not raise any ground of complaint that he was not served with the formal complaint or that the suit at the trial tribunal was heard without him understanding the nature of the claims against him. Had there been such complaint, the Appellant would have been heard on the manner he presented his claims at the trial tribunal and how the Respondent was served and subsequently the parties heard.

"***Haki ya kupewa fursa ya kusikilizwa kwa ukamilifu***" in the above quoted article of the Constitution implies that an issue adverse to the party should properly be brought against him and be accorded opportunity to be heard accordingly.

In the case of ***Ex B. 8356 S/Sgt Sylivester S. Nyanda V. The Inspector General of Police and the Attorney General,*** **Civil Appeal No.64 of 2014** the Court of Appeal on stressing on the principle of right to be heard held;

> ***". . . the essence of pleadings is to compel the parties to define accurately and precisely the issues upon which the case between them is to be fought to avoid the elements of surprise by either party."***

The court went on;

"It also guides the parties to give evidence within the scope of the pleaded facts."

In the light of the case of *S/Sgt Sylivester Nyanda* supra, the pleadings before the appellate tribunal was the Petition of Appeal and its annexures and the Reply thereof. The appellant was not obliged to establish the

competence of his suit at the trial tribunal because that issue was not brought against him in the Petition of appeal. He cannot be blamed at the stage of composing the Judgement.

Again, in the case of ***Farrel V. Secretary of State*** [1980]1. All E. R 166, the court held that the primary purpose of pleadings is;

> ***". . . to define the issues and thereby to inform the parties in advance of the case they have to meet and so to enable to take steps to deal with it."***

In the instant case, the appellant was denied opportunity to know that the competence of his suit at the trial tribunal was at stake so that he takes the necessary steps to defend the claims. The learned appellate chairman acted on speculations that there was no formal complaints at the trial tribunal. What if the same was there and the appellant was able to prove the same had he been invited to do so!

The learned Appellate chairman in his Judgement stated at page 2 that having heard the parties on the grounds of appeal, he perused the records of the lower tribunal to see what was the claims of the appellant thereof;

> *"Baada ya kuwa nimesikiliza hoja za rufaa hii toka pande zote nilichukua muda kupitia kumbukumbu za baraza la kata ili kupata picha ya malalamiko ya mdai yaliyompelekea kufungua shauri hili katika baraza la kata na pia maelezo ya mashahidi wa pande zote waliyotoa kuunga mkono hoja zao."*

That is not the best practice. The best practice is for the adjudicator to read the records first before hearing the parties so that if there are some

issues to be addressed by the parties out of their pleadings, the parties are invited to address them. Failure of the appellate chairman to follow the best practice rendered him to commit a serious error by breaching the rights of the parties to be heard. As I have said earlier, the Honourable chairman acted on speculations rather than the reality as the parties were not heard on his suspicions. At the same page 2 of the judgement the chairman held;

> *"Jalada la baraza la kata linaonyesha kwamba mnamo tarehe 25 juni 2021 baada ya katibu wa baraza la kata kuorodhesha majina ya wajumbe wa baraza hilo waliohudhuria na pia uwepo wa mlalamikaji na mlalamikiwa, kilichofuata ni maelezo ya ushahidi wa mlalamikaji. Haijulikani maelezo hayo yalikuwa yanatolewa kuunga mkono au kuelezea malalamiko gani mlalamikaji aliyokuwa nayo dhidi ya mlalamikiwa."*

Contrary to such observation, the judgment of the trial Tribunal shows that the complaint before it was lodged on 22/06/2021 and started to be heard on 25/06/2021;

> *"Shauri hili lilifunguliwa tarehe 22/06/2021 na kuanza kusikilizwa tarehe 25/06/2021 katika baraza la ardhi na nyumba kata ya Nyakabindi"*

Under the circumstances the suit was not started at the trial tribunal on 25/06/2021 but on 22/06/2021. The perusal of the chairman of the records and his failure to see a written complaint on record is not a conclusive proof that there was no such complaint. It might be a misplacement of such complaint. The honourable chairman of the appellate tribunal should have invited the parties to address him on the issue and or call upon the trial

tribunal to clarify what complaint did they receive on 22/06/2021 and how. Therefore the learned chairman erred to act on his speculative views which is bad as it was held in the case of ***Materu Leison and J. Foya versus R. Sospiter (1998) TLR 102*** and that of ***Denis Elias Nduhiye versus Lemina Wilbad, Juvenile Civil Appeal no. 1 of 2019*** (HC) at Kigoma that speculative views have no room in civil trials.

Since the Respondent did not complain to have not understood the nature of the claims against him at the trial tribunal, and the fact that the trial tribunal visited the suit land and measured it as herein above stated showing clearly the demarcations, I find that the nature of the claim was not at issue between the parties and was wrongly invoked by the appellate chairman at the judgment writing stage without according the parties opportunity to be heard. I therefore allow this appeal to the extent that the proceedings and judgment of the trial tribunal was wrongly quashed. I quash the judgment of the appellate Tribunal and set aside the orders thereof. In lieu thereof I restore the judgment of the Ward Tribunal and its orders which shall stand valid until when set aside by the competent court.

Since the appellate tribunal heard the parties fully for and against the appeal before it and took the opinions of the assessors but did not compose the judgment on the grounds brought thereat, I direct that the appellate chairman should compose the judgment on merits by considering the grounds of appeal and the submissions of the parties. Whoever shall be aggrieved of the outcome of the appeal in its merits shall have the right to appeal in accordance to the law. I direct that the records of the appellate tribunal and that of the trial tribunal be remitted back to the appellate

tribunal without any undue delay for the appellate chairman to comply with the order and directives of this court. Once the judgment on merit is composed, the parties should be summoned and the same be delivered to them in accordance to the law. No orders as to costs in the circumstances that the error was not committed by either party. It is so ordered.

A. MATUMA
JUDGE
07/03/2023