

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISCELLANEOUS LAND APPEAL NO.26 OF 2022**

*(C/f Appeal No.38 of 2020 in the District Land and Housing Tribunal of Babati at Babati, Originating from Land Complaint No.2 of 2020 in the Ward Tribunal of Babati)*

**COSMAS KIMARIO..... APPELLANT**

**Vs**

**SHUFAA KISUMO MSANGI.....RESPONDENT**

**JUDGMENT**

*Date of last order:16-2-2023*

*Date of judgment:16-3-2023*

**B.K.PHILLIP,J**

This is a second appeal arising from the judgment of the District Land and Housing Tribunal of Babati at Babati (Henceforth "The Land Tribunal"). The grounds of appeal are reproduced verbatim hereunder;

- (i) That, the Appellate District Land and Housing Tribunal erred in law and fact by deciding suo motto on the issue that the said appeal had already been out of time without inviting the parties to address the same while the records show the land appeal no.38 of 2020 was filed on time.*
- (ii) That, the Appellate District Land and Housing Tribunal erred in law and facts by failure to decide the appeal on merit*

A brief background to this appeal is as follows; That the appellant was the respondent before Ward Tribunal of Babati Ward where he was

sued by respondent herein for trespassing into his land ( hereinafter to be referred to as "the disputed land"). After receiving evidence from both sides, the Ward Tribunal declared the respondent herein as the lawful owner of the disputed land. Aggrieved by the of the War Tribunal, the appellant decided to appeal to the Land Tribunal on the following grounds;

- (i) *That, the Ward Tribunal erred both in law and fact by involving the secretary of the Tribunal in decision making.*
- (ii) *That, the Ward Tribunal had no pecuniary jurisdiction to hear and determine the matter.*
- (iii) *That, the Ward Tribunal erred in law and fact for failure to evaluate properly the evidence before it and hence giving erroneous decision.*
- (iv) *That, the Ward Tribunal erred in fact and law by declaring that the respondent is the lawful owner of the land in dispute without receiving any proof of whatsoever or any document to proof his ownership before the tribunal.*
- (v) *That, the Ward Tribunal erred in law and fact for failure to observe the law.*

The appeal was heard on merit. In the course of composing his judgment, the chairman of the Tribunal raised a legal issue *suo motto*, to wit ; whether or not the appellant's appeal was filed within the time prescribed by the law. He dealt with that issue and finally made a finding that the appeal was filed out of time. Consequently, he did not

deal with the grounds of appeal raised by the appellant in the appeal and proceeded to dismiss the appeal for being time barred.

Undaunted, the appellant lodged this appeal before this Court to challenge the decision of the Land Tribunal. This appeal was disposed of viva voce. The appellant was represented Mr. Festo Simon Jackson, learned advocate while the respondent appeared in person, unrepresented.

Mr. Jackson argued the two grounds of appeal conjointly. His submission was to the effect that at the 1<sup>st</sup> appellate court, the appellant raised five grounds of appeal and upon being served with the petition of appeal the respondent filed her response there to. In his response he did not raise any point of preliminary objection. He contended that on 23<sup>rd</sup> day of June 2021 the Land Tribunal ordered the appeal to be heard by way of written submission. Both parties filed their submission as ordered and submitted on the grounds of appeal only. None of the parties raised any argument that the appeal was filed out of time.

Moreover, he submitted that on 25/5/2022 the Land Tribunal delivered its judgment in which the chairman of the Land Tribunal raised *suo motto* an issue on whether or not the appeal was filed out of time. He proceeded to determine it without giving the parties the right to be heard on the same and did not deal with the grounds of appeal raised by the appellant at all. Finally, he made a finding that the appeal was filed out of time and dismissed it.

It was Mr. Jackson's assertion that parties were denied their fundamental rights to be heard as provided in the Constitution of the United Republic of Tanzania of 1977 in Article 13 (6) (a). He invited me

to be guided by the judgment in the case of **Said Mohamed Said vs Muhusin Amiri and Muharami Juma, Civil Appeal No.110 of 2020** (Unreported), in which the court held as follows;

*“settled law is to the effect that any breach or violation of that principle renders the proceedings and orders made therein a nullity even if the same decision would have been reached had the party been heard”.*

He insisted that the Land Tribunal erred to determine the appeal based on an issue raised by the court *suo motto* without inviting the parties to address him on the same.

In rebuttal, the respondent argued that in the impugned decision the chairman of the Land Tribunal explained very well how he arrived to a conclusion that the appeal was filed out of time. She was in agreement with the chairman of the Land Tribunal that the effective date of filing an appeal is the date of payment of the court fees. She maintained that the impugned judgment is correct because the appeal was filed out of time as explained by the chairman of the Land Tribunal in the impugned decision.

In rejoinder, Mr. Jackson reiterated his submission in chief and insisted that the decision of Land Tribunal was not correct since the parties were supposed to be accorded the right to be heard on the issue raised by the court *suo motto* before composing the impugned judgment.

Now, coming to the determination of the merit of this appeal, it is a common ground that the impugned judgment is solely hinged on the issue raised by the chairman of the Land tribunal *suo motto* that the appellant’s appeal was time barred. Likewise, there is no dispute that the parties were not according the opportunity to address the Land

Tribunal on whether or not the appeal was filed out of time. At this juncture, I find it crucial to point out that the right to be heard is fundamental. I am inclined to agree with Mr. Jackson that the chairman of the Land Tribunal erred in law for failure to invite the parties to address him on the issue he raised *suo motto* before composing his judgment. The omission is fatal, bearing in mind the sensitivity of the right to be heard which enshrined in Article 13 (6) (a) of the Constitution of United Republic of Tanzania of 1977. The case of **Said Mohamed Said**.(Supra) cited by Mr. Jackson is relevant in this appeal. In the case of **I.P.T.L Vs Standard Chartered Bank (Hong Kong) LTD, Civil Revision No.1 of 2009** (unreported) which was cited with approval in the case **Said Mohamed Said** (Supra), the Court of Appeal had this to say on the importance of the right to be heard;

*"..no decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties **so as to adversely affect the interest of any person without first giving him a hearing according to the principle of natural justice....**"*

(Emphasis added).

On how to handle issues raised by the court *suo motto* the Court of Appeal in the case of and **Wegesa M. Nyamaisa Vs Chacha Muhogo, Civil Appeal No.161** , ( unreported), gave the following guidance;

*" ..In the instant appeal we are minded to re-assert the centrality of the right to be heard guaranteed to the parties where Courts while composing their decision , discover new issues with jurisdictional implications. The way the first appellate Court raised two jurisdictional matters suo motu and determined them without affording the parties an opportunity to be heard had made the entire*

*proceedings and judgment of the High Court a nullity , and we hereby declare so"*

From the foregoing, the mistake committed by the chairman of the Land Tribunal aforesaid is fatal and under the circumstances of this case, I am of a settled opinion that the remedy available is not to nullify the proceedings of the Land Tribunal because the Chairman did not deal with the written submissions filed by the parties at all. So, the same are intact. The problem is the decision and findings made by the Chairman of the Land and Housing Tribunal in the impugned judgment which are not based on the submissions made by the parties in respect of the grounds of appeal. Therefore, I hereby set aside the judgment of the Land Tribunal and order that the case file be remitted to the Land Tribunal. The chairman of the Land Tribunal has to compose a afresh judgment after according the parties the right to be heard on the legal issue he raised *suo motto* on whether or not the appeal was time barred.

Having said the above, I do not see any plausible reason to make the determination of the 2<sup>nd</sup> ground of appeal. The appeal is allowed. Each party will bear his/her own costs since none of the parties herein attributed to the mistake committed by the Chairman of the Land Tribunal.

Dated this 16<sup>th</sup> Day of March 2023



**B.K.PHILLIP**  
**JUDGE**