

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

**DAR ES SALAAM MAIN REGISTRY**

**(AT DAR ES SALAAM)**

**MISCELLANEOUS CAUSE NO. 65 OF 2022**

*In the Matter of an Application for Order of Mandamus and Certiorari  
In the Matter of the decision of the Assistant Commissioner for Lands dated 14<sup>th</sup> day  
of April, 2022;*

***BETWEEN***

**BUILDING, WATER AND EARTH WORKS LTD ----- APPLICANT**

***AND***

**THE ASSISTANT COMMISSIONER**

**FOR LANDS ----- 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ----- 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

***Date of last Order: 06/4/2023***

***Date of Ruling: 24/4/2023***

**MGONYA, J.**

The Applicant before this honourable court is challenging the Assistant Commissioner for Lands decision dated 14<sup>th</sup> April, 2022 of refusing to renew the Applicant's Right of Occupancy by the way Judicial Review; and praying for the following reliefs:

- a) That through the writ of Mandamus and Certiorari, this honourable court be pleased to call upon and quash the decision of the 1st Respondent made 14<sup>th</sup> April, 2022 whereby the Respondent refused to renew the Applicant's right of occupancy in respect of Plot No. 110, Mikocheni, Light Industrial Area, Kinondoni Municipality, in Dar es Salaam on unfounded allegations that the Applicant had not made improvements thereon;***
- b) Costs of the application be borne by the Respondents; and***
- c) Any other relief, as the court may deem just and equitable to grant.***

The Applicant made this Application under **Rule 8(1) (a), (b) and (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014;** duly accompanied by the Applicant's Affidavit in support of the Application and Statement in Support of the Application.

In reply to the above documents, the Respondent argued that the contents of the same are strongly disputed and the Appellant is put into strict proof. Hence the Respondent praying that the Application be dismissed with costs.

When the matter came up for hearing on 2<sup>nd</sup> March, 2023, both Counsel prayed to the Court to dispose the matter by way of oral submissions. Accordingly, the prayer was granted whereas the Applicant was represented by **the learned Counsel Mr. Ashiru Lugwisa**; while the Respondents herein were represented by **Ms. Vivian Method learned Senior State Attorney and Ms. Lilian Mirumbe learned State Attorney** respectively.

Submitting for the Applicant, Mr. Lugwisa introduced the Application as one for Prerogative Orders where the Applicant is seeking for Orders of Certiorari and Mandamus in respect of the decision for the Assistant Commissioner for Lands made on **14<sup>th</sup> April, 2022**; whereas, through that decision, the Assistant Commissioner for Lands the (1<sup>st</sup> Respondent herein) refused to renew the Applicant's Right of Occupancy in respect of **Plot No. 110 located at Mikocheni, Light Industrial Area within Kinondoni Municipality in Dar es Salaam**. The same be supported by Statement and an Affidavit duly sworn by **MR. LAURENT MZEE SECHU**, who is the Managing Director of the Applicant on 6<sup>th</sup> December, 2022.

It is the Applicant's Counsel submission that, the gist of the instant Application is premised on the decision of the 1<sup>st</sup> Respondent through a letter to the Applicant. The court was

referred to the copy of the same of which was marked as **Annexure DWE '5'**. The Applicant's Counsel assertion is that the said decision is based on unformed allegations that the Applicant has made no any improvement to the said land. Worse enough, the Applicant was not summoned to respond to the said allegation.

The Counsel's submission is to the effect that there is no dispute through the Affidavit and the Counter Affidavit that the Applicant has been the owner of the disputed land complying to every conditions attached to the R/O (Right of Occupancy) which includes among other things, payments of Land Rents as evidenced by some receipts attached to the Applicant's Affidavit as **Annexure BWE '2'**. Further, is the Applicant's valuation report which has been referred to para 5 of the Applicant's Affidavit as **Annexure BWE '3'**. It is through the said annexed valuation report, the Counsel is of the opinion that the same is a clear indication that the Applicant has been developing the disputed plot.

It is further submitted by Mr. Lugwisa that, when the Applicant applied for his Right of Occupancy be renewed after the lapse of 33 years; the 1<sup>st</sup> Respondent refused to renew the same on grounds that the Applicant had not developed that land. It is the Counsel's concern that the 1<sup>st</sup> Respondent's letter to the

Applicant itself contravenes the provisions of **Land Act No. 4 of 1999 (herein to be referred as the Land Act)** in terms of procedure and substance. The Counsel submitted that, section **45(4) para (c) of the Land Act**, provides for the procedure to be followed if the Commissioner for Lands is of the view that conditions to Right of Occupancy have been breached.

Further, it is the Applicant's Counsel concern that before any action or rather decision by the Commissioner in respect of the breach, the above section requires the Commissioner to issue a warning letter, to the owner or rather the occupier who is in breach of the terms. However, it has been submitted that in this case, the Commissioner has never issued any letter to the Applicant to notify him about any breach in that respect.

Mr. Lugwisa further informed the court that, in the Applicant's letter from the 1<sup>st</sup> Respondent, it is claimed that the 1<sup>st</sup> Respondent have conducted inquiry and came to the knowledge that there is another person on the land, whose name or rather identity was not disclosed and who is not in the knowledge of the Applicant. It is from the said trend, the Counsel insisted that the said trend offends section **172 of the Land Act**; which provides for an opportunity of being heard before any adverse action is taken against the rights of the occupiers of the land.

It is the Applicant's Counsel assertion that, under the circumstances, the 1<sup>st</sup> Respondent ought to have invited the Applicant for having enquiring to establish whether or not the Applicant has indeed breached the conditions in Right of Occupancy. However, according to the 1<sup>st</sup> Respondent's decision, and upon the procedure which haven't been complied, the Counsel termed the decision to be **UNFAIR, IRRATIONAL** and **UNPROCEDURAR** reached without according the Applicant the right to be heard which violates the Principles of **Natural Justice**. In this respect, the court was referred to the case of ***SADIKI ATHUMANI VS. The Republic 1986 TLR at page 235***, where it was held that:

*"The requirement that a party to proceedings must be given the opportunity to state his views is a fundamental principle of Natural Justice.*

Further, is the case of ***COWASGEE (ADEN) VS. COWASGEE 1963 EALR at page 88***, where Justice Newbold had this to say:

*"In essence in case as these principles of Natural Justice requires 3 things:*

***1<sup>st</sup>***, *that the Tribunal should act in good faith,*

*2<sup>nd</sup>, that a party who may be affected by an enquiry should know the nature and the purpose of the enquiry; and*

*3<sup>rd</sup>, That such a party should have the opportunity of presenting his point of view and of controverting statement which may be prejudicial to him.*

In conclusion, the Applicant's Counsel maintained that the 1<sup>st</sup> Respondent's decision contravenes the principles of Natural Justice as set in the above cases. The Counsel therefore, invited the Court to allow the Application.

Opposing the Application, the Respondent filed the joint Counter Affidavit and reply to the Statement of which was prayed to be adopted and form part of the Respondents' submission.

Ms. Method the learned Senior State Attorney before submitting further, reminded the court on the conditions laid down in the case of ***SANAI MRUMBE & ANOTHER VS. MUHERE CHACHA, CAT TLR 1990 at page 54*** in respect of determining the Judicial Review Applications.

According to the learned State Attorney, it is the Respondents' submission that, the Applicant's claim does not exist in the matter at hand on the ground that, the decision of the 1<sup>st</sup> Respondent as the Assistant Commissioner for Land, was made in accordance to the Law.

It is the Senior State Attorney's assertion that, it is not in dispute that, the term for the Right of Occupancy of the disputed Plot of the Applicant expired in **2020**. Upon expiration of the said term, the Commissioner for Land exercising his mandate vested to him by the law under the provisions of **Sections 32 & 33 of the Land Act, Cap. 113 [R. E. 2019]** refused to renew the Right of Occupancy on the ground that, the Applicant had failed to comply with the terms and conditions under the said Right of Occupancy. Ms. Method submitted that, the said provisions give the Commissioner for Land discretion either to renew or refuse to renew the Right of Occupancy, upon meeting of certain conditions.

Submitting further, the learned Senior State Attorney informed the court that the Applicant has failed to comply with the terms and conditions of the Right of Occupancy. Elaborating further, the Counsel submitted that, the requirement for the payment of **rent** is clear that, the Applicant was supposed to pay rent annually in accordance to section **33 (1) of the Land Act**. However, from the record and particularly in **Annexure BWE "2"** attached by the Applicant, it is a clear proof that the Applicant failed to pay the said land rent within the statutory time as it shows that the land rent from the year 2016 - 2020 when the Right of Occupancy came to an end was not paid accordingly. However, later the said rent was paid in the



lumpsum two years after expiration of the year of the Right of Occupancy, the indication that the Applicant was not complying with the terms and conditions attached to the Right of Occupancy.

The learned Senior State Attorney further submitted that in order for the Applicant to comply with the terms and condition of the Right of Occupancy to the plot in issue, was supposed to erect buildings for the purpose of light industries buildings and was required to submit the said plan to the Kinondoni Municipal Council for approval. However, the Applicant just erected a building including the company's offices contrary to the buildings for the light industry as demanded in the right of occupancy. It was further submitted that, there is nowhere in the Applicant's Affidavit where the Applicant has described the buildings which he alleged as for the light industry purposes.

In that regard, Ms. Method submitted that the Applicant has also attached a Valuation Report to her Affidavit (Annexure BWE) indicating that he has erected the buildings in the disputed land and the value of the said property. However, the said Valuation Report was not approved by the Government Chief Valuer in accordance with **Regulation 65 (1) - (4) GN NO. 136/2018.**

The learned Senior State Attorney submitted that, Regulation 65, imposes a condition to any person or firm to

conduct valuation for any other purposes for possession of land to be particular. However, one has to apply to the Chief Valuer. And upon consent of the Chief Valuer and after the valuation has been conducted, the report be submitted to the Chief Valuer for approval. Despite of the said procedure, the learned Counsel is of the concern that the Valuation Report attached by the Applicant without the approval of the Chief Valuer, be rejected by this Court.

Submitting further on the Valuation Report, it is Ms. Method's assertion that the same does not establish compliance by the Applicant with the terms and conditions attached for the Right of Occupancy.

Refferring to the Respondent's decision through a letter dated **14/2/2022** which the same is attached in the Applicant's Affidavit as **Annexure BWE "5"**, where according to the Applicant, the said decision is said to have contravened **Section 45(1) of the Land Act**. In this stance, it the learned Senior State Attorney's assertion that **Section 45 (1) of the Land Act** is inapplicable in the matter at hand as the same provides for the revocation of the Right of Occupancy and its procedures thereto. While the scenario at hand is on the renewal of the Right of Occupancy which is provided under **Section 32 (3)**,

therefore, citing of **Section 45(1) to (4)** of the Land Act is misconception.

Further it has been submitted that, the Applicant has also faulted the decision of the 1<sup>st</sup> Respondent as the the same contravenes **Section 172 of the Land Act** as the 1<sup>st</sup> Respondent conducted Inquiry without according the Applicant an opportunity to be heard. From the Respondent's Counsel, there was no any inquiry conducted but rather it is their submission that, what was conducted as explained in the letter by the 1<sup>st</sup> Respondent is **sight inspection** of which in the Applicant's letter has been referred as **Ukaguzi (Inspection)** and not **Inquiry** as the Applicant wants this court to belief. The Counsel for the Applicant informed the court that provisions for cite inspection is **Section 170 (1)** which provides different procedures from **Section 172 of the Land Act**, that the Applicants claims to have been contravened.

Referring to the case of ***SADIKI ATHUMANI and KOWASIJE (ADEN)*** (*Supra*), which were related to the decision of the 1<sup>st</sup> Respondent contravention of the principles of Natural Justice as enquiry to the Applicant conducted without been invited; the learned Senior State Attorney submitted that the two cases are distinguishable from the matter at hand

because as what was conducted was not any inquiry rather than inspection.

Respondents' Counsel referred this court to the case of ***JAFARI LAZIMA BINAMU VS. HASSAN CHIONDO, Land Appeal 16/2015***; which is referred to the Appellant who failed to comply with the Land use conditions including the payment of Land Rent; where at page 5 of the same, the court held:

*"Failure to comply would trigger the automatic incoming of the Superior landlord (the president) under Section 4(1) of the Land Act, as a trustee for and on behalf of all the Citizens of Tanzania".*

Concluding, the learned Senior State Attorney was of the view that, the 1<sup>st</sup> Respondent was right to refuse to renew the Applicant's Right of Occupancy based on the documents such as Land Rent receipts and Site Inspection Report. The Counsel thus prayed this matter be dismissed with costs.

Before I endeavour to determine this matter, let me state brief facts on the Applicant's claim as founded both in the Applicant's Affidavit and the Statement in support of the Application and submissions thereto so as to find the issue/(s) for determination.

It has been submitted that the initial owner of **Plot No. 110 Mikocheni Light Industrial Area, Kinondoni Municipality,**

**in Dar es Salaam with a Certificate of Title No. 52021,** hence the disputed Plot was **Lime Products Limited** who was granted a Right of Occupancy for a period of **33 years** commencing from the **1<sup>st</sup> October, 1987.**

The Applicant later bought the said Plot from **Lime Products Limited** on the **27<sup>th</sup> May, 2002** after which it successfully applied for the rectification of the Register of Titles to read the name of the Applicant herein. This was done on the **26<sup>th</sup> January, 2004.**

It has been averred that from the date the Applicant took over the ownership of the Plot, it had been complying with all the conditions attached to the Title Deed, including but not limited to, payment of the annual land rents. Photostat copies of Title Deed and the current Land Rent receipts are collectively attached and marked as annexure "**BWE2**".

That, further, it has been alleged that the Applicant has made substantial development on the plot, as it has erected buildings thereon some of which are used as offices for the company's activities. To protect its boundaries, the Applicant has also erected a large brick wall around the Plot. By November, 2019 the value of the property was worth **TShs. 3,181,309,500 (say Tanzania Shillings Three Billion One Hundred and Eighty-One Million Three Hundred and Nine Thousand and Five Hundred)** according to a Valuation Report which was

prepared by a registered valuer. A copy of the Valuation report in respect of the Property is attached as Annexure **"BWE3"**.

The 33 years tenure on the right of occupancy in respect of the Plot which started to run from the **01<sup>st</sup> October, 1987** expired on the **30<sup>th</sup> September, 2020** by effluxion of time to this end, the Applicant applied for the renewal of its tenure. Being mindful of the above position, the Applicant applied for the renewal of his title to the Plot; where as a matter of procedure, it has been said that the applications of this nature begin at the level of the Municipal Council in a District in which the plot is located.

On the **22<sup>nd</sup> March, 2022**, through a letter with reference number **BWE/KM/01/2022**, the Applicant requested for renewal of its Title at Kinondoni Municipal Council. A Photostat copy of the said letter has been marked as annexure **"BWE-4"**.

Further, on the **08<sup>th</sup> July, 2022**, the 1<sup>st</sup> Respondent, through a letter dated **14<sup>th</sup> April, 2022** with reference number **LD/175339/86**, refused to renew the expired term on allegations that the Applicant had failed to comply with the conditions attached to the Certificate of Title. The 1<sup>st</sup> Respondent further alleged that through its enquiry, it was discovered that the said plot has been developed by "another person" whose identity was not disclosed. At the end of it, the 1<sup>st</sup> Respondent refused to renew the tenure on the title. A

Photostat copy of the said letter has been attached and marked as annexure **"BWE 5"**.

That 1<sup>st</sup> Respondent's decision has been referred as unfair, irrational, unprocedural and was reached unilaterally and arbitrarily without according the Applicant an opportunity to prove that she had, in fact, complied with all the conditions attached to certificate of Title. That the said decision is said to be biased too.

Elaborating on the particulars of the Unfairness, Irrationality, Irregularity and Biasness on the Part of the 1<sup>st</sup> Respondent, the Applicant averred that:

***First,** it was unfair and unprocedural for the 1<sup>st</sup> Respondent's to deny the Applicant with an opportunity to respond to the allegations regarding breach of terms on the Right of Occupancy in respect to the plot through an enquiry which the former conducted without involved the Applicant and came to a conclusion that the Applicant had not developed the said plot, but a third party, whose identity was not disclosed.*

*Second, that it was irrational and biased for the 1<sup>st</sup> Respondent to allege that another person, whose identity wasn't disclosed, has made improvements on the said plot whereas the Applicant has always been in occupation on the said plot and has substantially developed it; and*

*Third, that the 1<sup>st</sup> Respondent's decision is procedurally unfair for its failure to issue a notice to the Applicant to remedy the alleged breach of conditions on the Right of Occupancy as required by the law.*

From the above, as this matter is for Judicial Review, I have to state that I have to warn myself that, in determining the matter at hand, I have to be guided by the conditions provided in the case of the Court of Appeal of Tanzania in ***SANAI MURUMBE VS MHERE CHACHA [1990] TLR 54*** which instructive laid down guiding principles upon which order of certiorari can be issued. The same are:

- i. Taking into account matters which it ought not to have taken into account;***
- ii. Not taking into account matters which it ought to have taken into account;***
- iii. Lack or excess of jurisdiction; Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it;***
- iv. Rules of natural justice have been violated; and***
- v. Illegality of procedure or decision.***

From the above facts, the main Applicant's complaint is on the 1<sup>st</sup> Respondent's decision made through the letter dated **14<sup>th</sup> April, 2022** whereby the Respondent refused to renew the



**Applicant's right of occupancy in respect of Plot No. 110, Mikocheni, Light Industrial Area, Kinondoni Municipality, in Dar es Salaam on unfounded allegations that the Applicant had not made improvements thereon.**

It is from this stance; I will first determine the procedure upon extension of time to renew the Right of Occupancy if it had been adhered to, to the extent of the 1<sup>st</sup> Respondent reaching the decision dated 14<sup>th</sup> April 2022. **Section 32 (3) of the Land Act** provides:

*"Where a right of occupancy comes to an end through affliction of time, the person or organization occupying the land under that right of occupancy shall, if he has complied with the terms and conditions of that right of occupancy in a satisfactory manner and it is practical so to do, be offered a renewal of that right of occupancy on any terms and conditions which the Commissioner may determine before that right of occupancy is offered to any other person or organization."*

Looking at the wording of the letter to the Applicant from the 1<sup>st</sup> Respondent dated 14<sup>th</sup> April 2022, it has been stated that upon expiration of the Applicant's Right of Occupancy, due to non-adherence of the conditions thereto, the extension of the term to the Right of Occupancy will not be granted to the Applicant hence the said Right of Occupancy will be offered to another person.

Since I don't want to miss the wording of the said letter, I have decided to quote the contents of the same as herein below:

**"YAH: KIWANJA NA. 110 MIKOCHE NI LIGHT INDUSTRIAL  
JIJINI DAR ES SALAAM**

Tafadhali husika na somo tajwa hapo juu.

2. Ofisi ya Kamishna wa Ardhi inapenda kukufahamisha kuwa haki ya kumiliki Kiwanja hiki iliyokuwa imetolewa kwako kwa muda wa **miaka 33** kuanzia **1/10/1987** imekoma kwa mujibu wa Sheria tangu tarehe **30/09/2020**.

3. Kwa msingi wa Kifungu cha **32 (3)** cha **Sheria ya Ardhi Na. 4 (1999)** kama ilivyofanyiwa marekebisha mara kwa mara, milki hii ingeweza kuhuishwa kwako endapo ungekuwa umekidhi masharti ya umilki yaliyokuwa yametolewa hapo awali. Ukaguzi uliofanyika umebainisha kuwa kiwanja hiki kimeendelezwa na kinatumiwa na mtu mwingine hivyo umeshindwa kutimiza sharti la uendeshaji kama lilivyotolewa katika hatimiliki iliyokuwa imetolewa kwako.

4. Kwa kuzingatia haya Ofisi inakutaarifu kuwa milki ya Kiwanja hiki haiwezi kuhuishwa kwako na Ofisi inakusudia kuendelea na utoaji wa milki kwa mtu mwingine.

Tunatumaini utazingatia maelezo haya.

**Imesainiwa**

**Ndosi A. S.**

**Kny: KAMISHINA MSAIDIZI WA ARDHI  
MKOA WA DAR ES SALAAM"**

The contents of the letter connote the following:

**1<sup>st</sup>**, that the Applicant's tenure for its Right of Occupancy has expired since **30<sup>th</sup> September 2020**;

**2<sup>nd</sup>**, that the Applicant's Right of Occupancy could have been re issued if the conditions to the Right of Occupancy have been adhered to;

**3<sup>rd</sup>**, that the inspection conducted by the 1<sup>st</sup> Respondent have detected that the Applicant has never developed the said land and that the same has been developed by another unnamed person;

**4<sup>th</sup>**, that from the above the 1<sup>st</sup> Respondent as the Authority concerned with re-issuing or rather extending time to the expired Right of Occupancy has decided not to re issue and decided to give the possession of that land to another person.

At this juncture, I will not go to the extent of seeing as whether there was a breach of condition to the Right of Occupancy by the Applicant which was the base of the 1<sup>st</sup> Respondent's decision and the main issue in this matter. However, at this juncture I will determine or rather see whether the **proper procedure was followed** to reach to the 1<sup>st</sup> Respondent's decision which is the major complaint to this matter.

**Section 45 of the Land Act** provides for Liability to revocation **for breach of condition**.

- (1) ***Upon any breach arising from any condition subject to which any right of occupancy has been granted, the right of occupancy shall become liable to be revoked by the President.***
- (2) *The President shall not revoke a right of occupancy save for the good cause.*
- (2A) *In subsection (2) "good cause" shall include the following—*
- (a) there has been an attempted disposition of a right of occupancy to a non-citizen contrary to this Act and any other law governing dispositions of a right of occupancy to a noncitizen;*
  - (b) the land the subject of the right of been abandon for not less than two years;*
  - (c) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty per centum of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years;*
  - (d) there has been a disposition or an attempt at a disposition which does not comply with the provision of this Act;*
  - (e) there has been a breach of a condition contained or implied in a certificate of occupancy;*

*(f) there has been a breach of any regulation made under this Act;*

*(g) where there is contravention of section 120A or 120B.*

*(3) Notwithstanding subsection (2), the President may revoke a right of occupancy if in his opinion it is in the public interest to do so.*

*(4) Before proceeding to take any action in respect of a **breach of a condition of the right of occupancy**, the Commissioner shall consider:*

*(a) the nature and gravity of the breach and whether it could be waived;*

*(b) the circumstances leading to the breach by the occupier;*

*(c) whether the condition that has been breached could be amended so as to obviate the breach, and shall in all cases where he is minded to proceed to take action on a breach, **first issue a warning letter to the occupier advising him that he is in breach of the conditions of the right of occupancy.***

*(5) The Commissioner may, instead of proceeding to the enforcement of the revocation—*

*(a) impose a fine on the occupier in accordance with section*

*46;(b)serve a notice on the occupier in accordance with section 47 requiring the breach to be remedied.*

- (6) The Commissioner may, at any time, withdraw from taking action under section 46 or withdraw a notice served under section 47 and proceed to the enforcement of the revocation under section 49.*
- (7) A right of occupancy which has become liable to be revoked under this section shall cease to be so liable if the breach is subsequently remedied."*

Further, **Section 46 of the Land Act** provides **Fine for breach of condition** to the Right of Occupancy. The same states:

***" 46 (1)Where any breach of a condition has arisen, the Commissioner may serve a notice in the prescribed form, on the occupier requiring him to show cause as to why a fine should not be imposed upon him in respect of such breach.***

***(2) The occupier shall, within the time specified in the notice, respond to the notice;***

***(3)Where the occupier has not responded to the notice or where he has failed to show cause as to why a fine should not be imposed to the satisfaction of the Commissioner, the Commissioner may serve a notice on the occupier in the prescribed form***

***requiring him to pay a fine as prescribed by the Minister by regulations made under section 179 of this Act and in the case of a continuing breach, the occupier shall be liable to a further notice to pay a further fine for each day during which the breach continues;***

***(4)The Commissioner may, and shall where the occupier has not committed any other breach of a condition of the right of occupancy, suspend the payment of any fine for up to two years and if the occupier does not commit that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be payable;***

***(5)Where the fine is paid in full and no notice has been served under section 48 in respect of the breach, no further action shall be taken by the Commissioner in respect of that breach;***

***(6)Where the Commissioner is satisfied, after due inquiry, that the breach in respect of which a fine has been paid is continuing, or has recommenced, he may take action in respect of that continuing or recommenced breach under section 48 or 49.***

Above is the procedure for the Land Authority to follow where there is **a breach of condition over someone's Right**

**of Occupancy.** From the above provisions, the major issues to be adhered upon the breach and before any action is taken against the owner/ occupier of the concerned land among others are:

**1<sup>st</sup>**, that the occupier has to be notified by a letter or Notice; **2<sup>nd</sup>**, that upon satisfaction, the occupier may be required to show cause, before any further action.

From the above, it is expected the action which will follow thereafter upon failure of the Occupier to respond to the Letter/ Notice advanced, under the circumstances could be Revocation of the Right of Occupancy. However, reading carefully the provisions of **sections 45 and 46** above, up to the time the revocation occurs the occupier must have been given not only the Notice, but reminder for the said person to appear and show cause.

As one can note from the wording of Sections **32 (3), 45 and 46** of the Land Act, the end result of the breach of condition to the Right of Occupancy is to deprive the occupier of the land in issue his right to ownership; of which is same as Revocation to the Right of Occupancy. The above sections ought to have been read together in order to determine the matter at hand.



From the above, and from the pleadings and submissions from the parties, I am satisfied that there was neither any Letter nor Notice issued to the Applicant in this respect for him to appear before the issuing Authority so as to **show cause as to why the refusal of renewal of his Right of Occupancy should not be imposed upon him in respect of such breach**. The fact which is not disputed by the Respondents neither respond anything in that respect in the Respondents' entire pleadings and their respective submissions.

In my view, the statutory requirement to notify the occupier to show cause and if possible for the Authority to pronounce the intention to refuse to renew the Right of occupancy upon **breach of the condition / (s) to the Right of Occupancy** is necessary as it will accord the occupier with an opportunity to be heard as the Rules of **Natural Justice** requires. Otherwise the refusal to renew would be null and void. Relying on the decision in the case of ***DIRECTOR OF LANDS AND MINES VS. SOHAM SINGH [1952] 1 TLR (R) 631, at page 635***, where the very passage by Abernathy, J. was approved in that case, I am of the view that if the Applicant was given the opportunity to show cause why the right of Occupancy should not be refused for renewal, he could have shown to the Land Office that he had done something as shown in the Valuation Report to his pleadings and that, upon satisfaction of the Authority, the Right of Occupancy could not have been refused to be renewed.

At this point, while emphasizing the importance of been accorded an opportunity to be heard on the serious matters that concerns a human rights, particularly on Land matter as it is the issue in his matter, and to the adherence of **Rules of Natural Justice**, I wish to refer to **Article 13(6) (a) of the Constitution of the United Republic of Tanzania (1977)** provides *inter alia* that:

*"13 (6) To ensure equality before the law, the State Authority shall make **procedures** which are appropriate or which take into account the following **procedures**, namely:*

*(a) When the rights and duties of any person are being determined by the court or any other agency, **that person shall be entitled to a fair hearing** and to the right of appeal or any other legal remedy against the decision of the agency concerned."*

In order to persevere the above Article and the point thereto, I see it pertinent to quote the same in Kiswahili as herein below:

*"13 (6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba -*

***(a) wakati haki na wajibu wa mtu yeyote vinahitaji 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 kinginecho kinachohusika.”***

The above quoted Constitutional provision gives the Rules of Natural Justice special status in the Tanzanian Legal System and it is not easy neither allowed to ignore them.

The issue of refusal to renew the Applicant's Right of Occupancy the way it was done by the 1<sup>st</sup> Respondent herein, is not an undemanding task as it was taken. It might be tranquil on Respondents' side, but on the Applicant's side it is something that needs one to be notified before any step is taken for whatever reason. In the letter by the 1<sup>st</sup> Respondent to the Applicant, it is strange that immediate after the decision, there was already another person as well stated in the pleadings that was to be allocated the Applicant's Right of Occupancy following the breach of Right of Occupancy condition (s).

At this juncture it comes the whole issue of the Applicant's decision to attach the Valuation Report to justify the developments he did at the land where he missed an opportunity to show cause and forward

his defence or rather explanation as to why his Right of Occupancy should not be refused to renew. I am aware that, whenever “good cause” arises for the revocation or refusal to renew, the occupier is served with the Notice or warning letter, which is eventually published in the Official Gazette as well provided under **Section 49 of the Land Act**, something which was not the case in this matter.

During the submission by the Respondents’ Counsel, the issue of the validity and legality of the Applicant’s Valuation Report which had no blessing of the Chief Valuer emerged. However, I don’t intent to determine that matter as the essential step of notifying the Applicant was not adhered to. Either, discussing the same will be to underscore the non-adherence of the legal proceeding towards breach as seen in Section 46 above and also determine the merits of the impugned decision. Further, it will be to determine the merits of the 1<sup>st</sup> Respondent’s refusal. Likewise, I will not determine the issue of rent paid or not paid by the Applicant as the same will also touch the merits of the decision in issue.

From the above, and under the circumstances where there was no any Notice advanced to the Applicant to show cause, it is strange that the Respondent did not submit as to what is going to happen to the Applicant’s properties in the landed property of which are the fixtures and immovable properties. It is obvious that the same will fall under the new occupier whom it seems he is ready outside the door awaiting

to be reallocated the plot/ land without hearing the Applicant after his allegation on the breach of the conditions to the Right of Occupancy. All these could have been possible if the procedure indicated above was followed. However, short of that, as it has been observed above, the Applicant was not accorded with the proper procedure for his rights before the 1<sup>st</sup> Respondent's decision of which is the main complaint hereto. Hence his right to be heard was of utmost importance before any decision was met.

Since this court is satisfied that before reaching to the decision, the right and legal procedure was not adhered to of which was against the principles of Natural Justice, then the refusal to renew the Applicant's Right of Occupancy after the expiry of its tenure **is null and void, as the Land Authority through the 1<sup>st</sup> Respondent has nothing to reallocate** the same under the given circumstances.

Consequently, this court proceeds to grant the Applicant with the writs of Certiorari by quashing the decision of the 1<sup>st</sup> Respondent dated 14<sup>th</sup> April 2022 where the latter refused to renew the Applicant's Right of Occupancy in respect of **Plot No. 110 located at Mikocheni, Light Industrial Area within Kinondoni Municipality in Dar es Salaam, and order the 1<sup>st</sup> Respondent if still wants to pursue the matter, then to follow the proper legal procedure as directed in the Land Act.**

The Applicant to have costs from the Respondents accordingly.

Ordered accordingly.



**L. E. MGONYA**

**JUDGE**

**24/04/2023**

**Court:**

Ruling delivered in the presence of Mr. Ashiru Lugwisa Advocate, for the Applicant and Ms. Lilian Method Senior State Attorney, for the Respondent and Magreth Kanyagha RMA on this **24<sup>th</sup> day of April, 2023.**



**L. E. MGONYA**

**JUDGE**

**24/04/2023**

