

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

**SONGEA DISTRICT REGISTRY**

**(LAND DIVISION)**

**AT SONGEA**

**LAND APPEAL NO. 16 OF 2022**

*(Originating from the District Land and Housing Tribunal for Tunduru at Tunduru in  
Land Application No. 05 of 2018)*

**METHEW LEONARD ..... 1<sup>ST</sup> APPELLANT**

**MATOLA ABDALLAH SELEMANI ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**THABIT ABDALLAH THABIT ..... RESPONDENT**

**JUDGMENT**

Date of Last Order: 21/04/2023

Date of Judgment: 05/05/2023

**U. E. Madeha, J.**

It is worth considering that, before the District Land and Housing Tribunal for Tunduru at Tunduru the Respondent filed an application claiming to be declared the lawful owner of ten (10) acres of land which he alleged to have bought from the 2<sup>nd</sup> Appellant who is none other than; Matola Abdallah Selemani. The 1<sup>st</sup> Appellant also claimed to be the lawful owner of the disputed land claiming to have bought from the 2<sup>nd</sup> Appellant.

The disputed land measuring ten acres is located at Masuguru Village in Tunduru District. As a matter of fact, the evidence shows that the Respondent bought the disputed plot of land on 28<sup>th</sup> March, 2016, from the 2<sup>nd</sup> Appellant. In fact, from the 1<sup>st</sup> Appellant's evidence it is clear that he started to enter into a contract for the purchase of the disputed land with the 2<sup>nd</sup> Appellant on 8<sup>th</sup> August, 2016 and he signed the purchase contract on 30<sup>th</sup> May, 2017.

Notably, when the 1<sup>st</sup> Appellant entered into a contract for the purchase of the disputed plot of land with the 2<sup>nd</sup> Appellant on 30<sup>th</sup> May, 2017, it seems to be true that, the Respondent had already bought it, thus he was the first buyer. The Trial Tribunal found the land was legally purchased by the Respondent and the 1<sup>st</sup> Appellant was declared to be the trespasser and he was ordered to vacate the disputed land and pay the costs of the application.

Aggrieved by the decision of the Trial Tribunal the Appellants preferred this appeal on the sole ground that they were not accorded with the right to be heard.

It is important to note that, this appeal was canvassed by way of written submissions. The Appellants had the legal service of advocate

Agrey Ajetu while the Respondent enjoyed the legal service of advocate Kaizilege Prosper.

Basically, the Appellants advocate filed a joint written submission for both Appellants. He submitted that the Respondent filed Land Application No. 05 of 2018 before the District Land and Housing Tribunal for Tunduru at Tunduru and in the due course of hearing the application, the Respondent who was the Applicant before the Trial Tribunal was availed with an opportunity to give his evidence. He added that the Respondent also was given an opportunity to call his witnesses and a total of eight witnesses testified for the Respondent, including the Respondent himself. As much as the 1<sup>st</sup> Appellant who was the 1<sup>st</sup> Respondent in the application before the Trial Tribunal when he was availed with an opportunity to give his evidence he testified. As a matter of fact, he started giving his testimony on 13<sup>th</sup> October, 2020. Being a lay person while continuing giving his testimony he wished to tender a copy of his sale agreement as documentary evidence but the Trial Tribunal rejected it and in alternative, the Tribunal ordered the 1<sup>st</sup> Appellant to produce the original document. As a matter of fact, the matter was adjourned to another date which was followed by other several adjournments thereto. In all those adjournments the 1<sup>st</sup>

Appellant did not stand calm, he appeared in person and on some dates, he was sending his representative as it happened at that particular material time, he was unable to attend before the Trial Tribunal since he was stationed at the Tanzania-Mozambique border for an unspecified period of time for the security services as a Police Officer.

On the same note, the Appellant's advocate submitted that the matter was adjourned for several times not only because of the absence of the 1<sup>st</sup> Respondent but also it occurred for a quite long period of time the Trial Tribunal Chairperson was not present for she was falling sick. He added that the Trial Tribunal without considering the reason for his absence it marked the evidence of the Appellants closed and proceeded to pronounce its judgment in favour of the Respondent.

Notably, the Appellants' advocate further argued that not only the 1<sup>st</sup> Appellant was denied his fundamental right to produce the document but also, he was denied the right to call his witnesses which is against the core principle of natural justice in litigation, the right to be heard. For more emphasis, reference was made in the case of **Pili Ernest v. Moshī Musani**, Civil Appeal No. 39 of 2019 (unreported) in which it was observed that:

*"This Court has in numerous decisions emphasized that courts should not decide matters affecting rights of the parties without according them an opportunity to be heard because it is a cardinal principle of natural justice that a person should not be condemned unheard."*

As much as the 2<sup>nd</sup> Appellant is concerned, the learned advocate submitted that he was the 2<sup>nd</sup> Respondent in Land Application No. 05 of 2018 and from the records of the Trial Tribunal he was not given an opportunity to give his evidence at all. He averred that during the whole time when the matter was adjourned the 2<sup>nd</sup> Appellant was attending before the Trial Tribunal without fail and he could not give his evidence since the 1<sup>st</sup> Appellant has not already closed his evidence. He argued that this was a fatal irregularity since there was no *ex-parte* order against him and the Trial Tribunal didn't assign any reason for denying him a right to give his evidence.

Basically, he contended that the Trial Tribunal instead of giving the 2<sup>nd</sup> Appellant an opportunity of giving his evidence he continued to by pronouncing its judgment and he was condemned unheard. He insisted that this was a fatal irregularity which rendered the whole trial to be unfair and it is against a fundamental principle of fair trial. To cement his arguments, he made reference to the case of **Mbeya – Rukwa Auto**

**Parts and Transport Ltd v. Jestina Mwakyoma** (2003) TLR 251, in

which the Court of Appeal of Tanzania had this to say:

*"In this country, natural justice is not merely a principle of common law, it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law and declares in part.*

*13 (6) (a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachotoa haki, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu."*

Eventually, he submitted that the evidence of the 2<sup>nd</sup> Appellant was of paramount importance since the Respondent and the 1<sup>st</sup> Appellant both claim to have bought the land in dispute from the 2<sup>nd</sup> Appellant. He added that it was very important before the Trial Tribunal pronouncing its judgment it has to give any opportunity to the 2<sup>nd</sup> Respondent to give his evidence in order to be in a better position to know whether the Respondent bought the disputed land from the 2<sup>nd</sup> Appellant.

Principally, he contended that it is clear that the whole judgment of the Trial Tribunal was based only on the Respondent's testimony. Lastly, he prayed for this appeal to be allowed and the proceedings,

judgment and decree of the District Land and Housing Tribunal for Tunduru in Land Application No. 05 of 2018 be nullified.

On the contrary, the Respondent's learned advocate Mr. Kaizilege Prosper argued that this appeal is without merit and he beseeched this Court to dismiss it with costs. He further argued that in reply to the written submissions made by the Appellants' learned advocate in support of this appeal, in the year 2018 the Respondent herein instituted the Land Application No. 5 before the District Land and Housing Tribunal for Tunduru against the 1<sup>st</sup> and 2<sup>nd</sup> Appellants for trespassing in his cashew nut farm located at Mchilingwe area in Masuguru Village within Tunduru District. To crown it all, after trial the application was decided in favour of the Respondent. He further contended that during the hearing of the Land Application No. 5 of 2018 the Tribunal was bound by the legal principle of a fair trial and the Appellants testified before the Trial Tribunal and tendered his exhibits before the Tribunal and witnesses of the Respondent herein testified before the Trial Tribunal on how the Respondent legally owns the said farm. He argued that the Respondent bought the said farm from the 2<sup>nd</sup> Appellant in the year 2016 and in the year 2017 the Respondent herein

became aware that the 2<sup>nd</sup> Appellant had sold the same farm to the 1<sup>st</sup> Appellant and the dispute arose between them.

He further submitted that the Appellants herein were present before the Trial Tribunal and they were given an opportunity or the right to cross-examine the Respondent and the witnesses brought by the Respondent on the testimony and exhibit tendered by the Respondent. He contended that after the closure of the Respondent's the Appellants were given an opportunity to defend their claims on the disputed land. He emphasized that the 1<sup>st</sup> Appellant testified before the Trial Tribunal on how he bought the disputed land from the 2<sup>nd</sup> Appellant and tendered a copy of the sale agreement which was objected by the Respondent's learned counsel as it was not an original document and it was rejected by the Trial Tribunal section 66 of the *Evidence Act* (Cap. 6, R. E. 2019). He added that the 1<sup>st</sup> Appellant asked the Trial Tribunal to tender the original sale agreement but since then he absconded from appearing before the Tribunal. Basically, the Respondent prayed for remainder summons calling the Appellants to appear to proceed with their case but it proved futile and the Trial Tribunal closed the case and pronounced its judgment.



Moreover, he further submitted that the Trial Tribunal issued another summons to the Appellants herein acknowledging them on the date for summing up of the Trial Tribunal assessor's opinion and they appeared and the opinion was read loudly before them.

Furthermore, he further contended that the disappearance of the Appellants herein from attending before the Trial Tribunal to proceed with the hearing cannot be interpreted as having denied the Appellants' right to be heard, but the Appellants themselves deny their right. They have to enjoy the reaps of their own acts and they cannot benefit from their own wrongdoing. Lastly, he prayed for this appeal to be dismissed with costs.

The Appellants' advocate had nothing to re-join from the Respondent's learned counsel submission. Thus, with the foregoing, I will proceed to discuss on the merit or otherwise of this appeal.

From the ground of appeal raised by the Appellants, the submissions made by their learned advocates, the issue is whether the Appellants were accorded with the right to be heard. In fact, I have passed through the original records of the Trial Tribunal and find that the application was ordered for the continuation of hearing of the Appellants' (Respondents') evidence on 13<sup>th</sup> October, 2023. As a matter

of fact, on that date the 1<sup>st</sup> Appellant gave his evidence. After giving his evidence, he prayed to tender a copy of a sale agreement and it was rejected by the Trial Tribunal following the objection raised by the Respondent's advocate. Strange as it may appear the 1<sup>st</sup> Appellant prayed for the adjournment so that he can bring original copy of the sale agreement and the Respondent's advocate conceded for that prayer. The Trial Tribunal adjourned the hearing of the application and ordered to proceed with the hearing on 11<sup>th</sup> November, 2020.

Strange as it may appear, on 11<sup>th</sup> November, 2020 the Appellants failed to appear before the Trial Tribunal as a result, the application was scheduled for hearing on other several subsequent dates in which the Appellants appeared but the Trial Tribunal proceedings are silent as to what transpired on those dates, as they only show the coram and no more. May be the Trial Tribunal Chairperson was sick as stated by the Appellants advocates in his submission.

When the application was scheduled for hearing on 27<sup>th</sup> July, 2021, the Appellants never entered appearance and the 1<sup>st</sup> Appellant send his representative who informed the Trial Tribunal that he was sick and he was receiving treatments at Mafinga hospital. From the records of the Trial Tribunal, it is clear that, on the next two dates in which the

application was scheduled for hearing both parties failed to enter appearance before the Trial Tribunal until 16<sup>th</sup> November, 2021 when the Respondent's learned advocate that is none other than; Mr. Kaizilege Prosper appear but the Appellants failed to appear. Being guided by the appearance tendency, the Trial Tribunal found it was prudent to order the Appellants to be given summons to appear for the hearing and the matter was adjourned for hearing on 17<sup>th</sup> December, 2021.

Again, on 17<sup>th</sup> December, 2021 the proceedings of the Trial Tribunal are silent as to what transpired as it only shows the coram and the Appellants sent their representative. The matter also was called for hearing on 28/02/2022, the Appellant were not present and the Respondents advocate prayed for adjournment and the application was adjourned until 1<sup>st</sup> April, 2022 on which the Appellants were also not present and the Trial Tribunal ordered the matter to be scheduled for hearing on 26<sup>th</sup> July, 2022. The Trial Tribunal also warned the Appellants that if they could fail to appear their case would be closed.

When the application was called for hearing on 26<sup>th</sup> July, 2022, the Respondents' advocate appeared and the Appellants sent their representative who informed the Trial Tribunal that the 1<sup>st</sup> Appellant as a Police Officer was at work at Masuguru Police Station and the 2<sup>nd</sup>

Respondent was sick. Disbelieving the information given by the Appellants' representative, the Trial Tribunal marked the evidence of the Appellants (Respondents before the Trial Tribunal) closed and the matter was adjourned to another date for assessors' opinions. From then, the assessors gave their opinions in the presence of both parties and the Trial Tribunal proceeded to pronounce its judgment. Dissatisfied with the decision reached by the Trial Tribunal, the Appellants knock the doors of this Court on the ground which has been stated early hereinabove.

Having examined the circumstances of this appeal and the complaints raised by the Appellants that they were not accorded with the right to be heard, I find there were no evidences given by the Appellants before the Trial Tribunal. In fact, the first Appellant was availed with an opportunity to give his testimony, however he did not finish giving it. The second Appellant was not given such opportunity at all and the Trial Tribunal never gave an order to proceed *ex-parte* against him. Also, I find the Trial Tribunal erred by ordering the Appellant's evidence was closed while the second Appellant was never given a chance to give his evidence. The best approach was for the Trial Tribunal to grant an order that the application was supposed to proceed

*ex-parte* against the second Appellant. The Appellants' right to be heard were curtailed.

It is worth considering that, the right to be heard is of paramount importance in any proceedings of adjudicative body. As stated by the Appellants' learned advocate and from the records of the Trial Tribunal the Appellants were denied their right to be heard which is among the pillars of natural justice. In **Mbeya- Rukwa Auto Parts and Transport Ltd v. Jestina Mwakyoma** (2003) TLR 251, the Court of Appeal of Tanzania had this to say:

*"In this country, natural justice is not merely a principle of common law, it has become a fundamental constitutional right. Article 13(6) (a) includes the rights to be heard among the attributes of equality before the law ..."*

To the best of my knowledge, I condone the District Land and Housing Tribunal's delay in failing to give a chance to the Appellants to give their testimonies or to make an order to proceed *ex parte* against the second Appellant. In that regard, this appeal is allowed and the judgement of the Trial Tribunal in respect of Land Application No. 5 of 2018 is hereby set aside.

I order that the case records in respect of Land Application No. 05 of 2018 be remitted to the District Land and Housing Tribunal for Tunduru for the continuation of the hearing of the Appellant's evidence in order to accord rules of natural justice. Last but not least I quash the proceedings of the Trial Tribunal which commenced from 26<sup>th</sup> July, 2022 to the date of the impugned decision.

In the event, I find this appeal is with merit. It is allowed and I give no order for costs. It is so ordered.

**DATED** and **DELIVERED** at Songea this 5<sup>th</sup> day of May, 2023.



  
**U.E MADEHA**

**JUDGE**

**05/05/2023**

**COURT:** Judgment delivered on this 5<sup>th</sup> day of May, 2023 in the presence of advocate Zuberi Maulid who is holding brief of Mr. Agrey Ajetu, the Appellants' advocate and Mr. Kaizilege Prosper the Respondent's. Right of appeal is explained.



  
**U. E. MADEHA**

**JUDGE**

**05/05/2023**