

IN THE HIGH COURT OF TANZANIA
SHINYANGA DISTRICT REGISTRY
AT SHINYANGA

LAND APPEAL NO. 10 OF 2021

DEBORA MASSABA.....APPELLANT

VERSUS

PAULO LUCAS MASSABA.....RESPONDENT

[Appeal from the decision of the District Land and Housing Tribunal for
Shinyanga.]

(Hon. P.L.S. Lekamoi-Chairman)

dated the 28th day of July, 2021
in

Misc. Land Application No. 135 of 2020

JUDGMENT

17th October, 2022 & 25th April, 2023.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal for Shinyanga. The story behind this appeal in a nut shell is that, the appellant had instituted a Land dispute No. 3/2/SHY/KND/BK/2019 at Ndembezi Ward Tribunal against the Respondent herein over the 2(two) acres piece of land situated at Butengwa Bubalaji within Ndembezi Ward in Shinyanga

Municipality. In that dispute, decision was for the appellant. That was on 25th June, 2019.

The record provides that, the respondent appealed to the District Land and Housing Tribunal for Shinyanga through Land Appeal No. 40 of 2019. Due to non-appearance of the Respondent herein, on 23rd September, 2019 the appellate tribunal dismissed the appeal for want of prosecution.

The Respondent tried to restore the said appeal in the District Land and Housing Tribunal through Misc. Land Application No. 434 of 2019. However, the said application was finally attacked with the preliminary objection raised by the appellant herein. The same was struck out on 26th February, 2020.

Following failure of the respondent to appeal, the appellant instituted an Application for Execution before the District Land and Housing Tribunal, to wit Misc. Land Application No. 135 of 2020. In the said application, the appellant sought to execute the award granted to her by the Ward Tribunal of Ndembezi.

When the said application was called on for hearing, the respondent alleged that the appellant had tendered forged documents that had given him victory in the Ward Tribunal. In his two paged ruling, the Tribunal's Chairman reasoned that, as the appellant did not state whether she had

locus standi to institute the said land dispute, and, as the appellant never stated the quantity/size of the disputed land at the trial tribunal, the trial tribunal's proceedings and decision were nullity. On those premises, the Chairman for the District Land and Housing Tribunal proceeded to nullify the proceedings, ruling and orders of the land dispute No. 3/2/SHY/KND/BK/2019 of Ndembezi Ward Tribunal.

That decision aggrieved the appellant, hence this appeal with one ground, that the tribunal's Chairman improperly moved himself to revise the dispute No. 3/2/SHY/KND/BK/2019 of the Ward Tribunal while she was not called on for it.

On the 13th day of June, 2023 this court scheduled the appeal at hand for hearing. Both parties appeared in person, they were unrepresented.

Submitting in support of her appeal, the appellant condemned the Tribunal's Chairman for raising *suo motto* the point of illegality that he alleged to have noticed in the trial tribunal's proceedings, without giving her a chance to address on it.

In reply to that, the respondent was of the views that, as the ward tribunal's proceedings had illegalities, it was proper for the executing tribunal to do what it had done.

I have earnestly gone through the parties' submission as well as the available records. The issue to be determined is whether the appellant's appeal is meritorious.

Upon going through the proceedings of the impugned decision of the Executing Tribunal (District Land and Housing Tribunal), I have noted that, the parties therein never submitted on the issues of appellant's *locus standi* to institute the land dispute at the Ward Tribunal. They also never submitted on the issue of the quantity (size) of the disputable land. Those two issues are the grounds that the Chairman at the Executing Tribunal relied on in nullifying the trial tribunal's proceedings and the orders that had arisen therefrom. The record transpire that Chairman raised those issues *suo motto* while the matter was before him for execution proceeding whereby he decided on those issues without giving the parties chances to address on them.

That being the case, what is the legal consequence of failure of the court to afford hearing of the parties before making decision that affect their rights? It is commonly settled law as per the case of **I.P.T.L. Versus STANDARD CHARTERED BANK (HONG KONG) LTD, Civil Revision No. 1 of 2009, CAT at DSM** (unreported) that;

"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 interests of any person without first giving him a hearing according to the principles of natural justice"

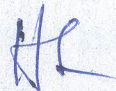
What then are the consequences of a breach of this principle? It is settled law that, unless expressly or impliedly authorized by law, breach or violation of right to be heard renders the proceedings and decisions and/or orders made therefrom a nullity, even if the same decision would have been reached had the party been heard: See **ABBAS SHERALLY & ANOTHER v. RABDUL SULTAN H.M. FAZALBOY, Civil Application No. 33 of 2002** (unreported) and **I.P.T.L. Versus STANDARD CHARTERED** (supra).

On account of the afore cited excerpts of the law, as long as the appellant was not afforded right to be heard on the issues that led to overturn of the decision of Ndembezi Ward Tribunal, it is hereby ordered that, the executing tribunal's proceedings in Misc. Application No. 135 of 2020 entered from 9th February, 2021 to 28th July, 2021, as well as its decision and orders made thereon are declared a nullity, hence quashed.

On that note, the proceedings, orders and decision of Ndembezi Ward Tribunal in the dispute No. 3/2/SHY/KND/BK/2019 revives.

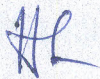
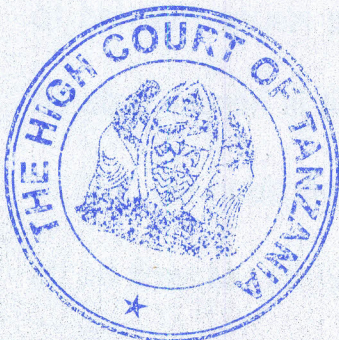
It is hereby ordered that the case file for the Misc. Land Application No. 135 of 2020 be remitted back to the District Land and Housing Tribunal for Shinyanga for hearing of the Application for Execution. This should be done immediately, before another Chairman with a new set of Assessors.

In upshot the appeal is meritorious and I hereby allow it. Each party to bear its own costs.



S.M. KULITA
JUDGE
25/04/2023

DATED at Shinyanga this 25th day of April, 2023.



S.M. KULITA
JUDGE
25/04/2023