

IN THE HIGH COURT OF TANZANIA

(IN THE MWANZA SUB-REGISTRY)

AT MWANZA

LAND APPEAL NO. 04 OF 2022

**DAUDI PETRO KASAMBULA (Administrator of the
Estate of the late Petro Michael Kalago).....APPELLANT**

VERSUS

**VASTA ANDREA (Administrator of the Estate of the
Late Joash Mpende).....1ST RESPONDENT**

VASTA ANDREA.....2ND RESPONDENT

JUDGMENT

Date of Last Order: 23/03/2023

Date of Judgment: 09/06/2023

Kamana, J:

This is an ex parte judgment following the respondents' failure to enter an appearance when the appeal was called on for hearing. Briefly, the appellant Daud Petro Kasambula in the capacity of the administrator of the estate of his late father Petro Michael Kalago sued Joash Mpende and Vasta Andrea for trespassing on the land previously owned by his late father. In the course of the trial, Joash Mpende joined his ancestors. Following that tragedy, Vasta Andrea, the second respondent was duly appointed as an administrator of the late Mpende.

Facts from the records had it that the appellant's grandfather was an owner of the disputed land which is along Msalala Road, Kalangalala Ward within Geita District and Region. Upon his demise, the land became the property of his son now the late Kalago who fathered the appellant. In 1984, the late Kalago fled from the disputed land to Tabora to dodge criminal responsibility. He did not leave his family behind as he took his wife and children. A year later, Kalago breathed his last breath. Thereafter, another tragedy befallen the family as its four sons including the appellant found themselves behind bars. The imprisonment of the four brothers left the land left behind in Geita unattended.

After serving almost a quarter of a century, the appellant was released from prison in 2014 and soon thereafter he made a follow-up in respect of the disputed land. Surprisingly, when he paid a visit to their once-family land, he found a house and a church on it. That being the case, he decided to sue the church leader who happened to be Joash Mpende and his wife Vasta Andrea.

During the trial, both parties fended for themselves. In his evidence, the appellant (PW1) testified what I have already stated as part of the prologue. Salima Mohamed (PW2) testified that the disputed land was once owned by Kalago and his brothers after being given by their father. He reiterated the story of Kalago running away with his

family to Tabora. She further evidenced that later on the land was allocated to the respondent Joash Mpende. Marijan Mohamed Marijan (PW3) repeated the testimony of PW2 but he added that upon returning from National Service in 1984, he found the land once owned by Kalago had been sold. He testified that after the death of the appellant's uncle, the land became unattended.

Joash Mpende (DW1) testified that the piece of land where the church now stood was shown to him by the land officer. He told the trial tribunal that he built a temporary building and the church foundation. Mpende evidenced further that the building permit was issued and the construction of the church was completed in 2002. It was his testimony that until recent years, no one claimed ownership of the disputed land. Unfortunately, Mpende died before being cross-examined.

Vasta Andrea after being appointed as an administrator of the estate of the late Mpende was subjected to cross-examination. She testified that the disputed land was owned by the Government after being surveyed. She told the trial tribunal that Mpende did not purchase the land in question but the same was allocated by the Government to construct a church. To bolster her contention, she tendered the building permit which was issued in the name of Pentecostal Evangelist Church (Exh.DE1).

Adducing evidence in her capacity, the second respondent evidenced that the land in dispute is owned by the church. She buttressed his evidence by tendering the letter written on 24th September, 2000 (Exh.DE2) that requested the land office to survey Plot No. 71 Block P which according to that letter was allocated in August, 1999 to Christian Life Church. She further tendered the letter dated 13th September, 2002 (Exh.DE3) which in effect was an agreement between the Christian Life Church and Hassan Nasoro whereby the latter was selling his house to the former at the tune of Tshs.160,000/-.

Suffice it to say that after considering the evidence, the trial tribunal entered judgment in favour of the Respondents on the ground that the application was instituted against the wrong persons as the evidence shows that the disputed land is owned by the Pentecostal Evangelist Church. Further, the trial tribunal held that the application was instituted beyond the time limitation and the certificate for extension of time did not relate to the application in question.

Aggrieved, the appellant preferred an appeal against the decision of the trial tribunal. His grounds of appeal were:

1. That the trial tribunal erred in law and fact to decide in favour of the respondents without proof of how they obtained the land in dispute.

2. That the trial tribunal erred in law and fact to raise *suo moto* the issue of time limitation during the composition of judgment and proceeded to determine without inviting the parties to address the tribunal on that issue.
3. That the trial tribunal erred both in law and fact to decide in favour of the respondents while the respondents failed to show how, when and from whom the land was obtained.
4. That the trial tribunal erred in law and fact for relying on exhibits provided by the respondents whereby the exhibits do not show where the respondents got the right of possession of the land in dispute.
5. That the trial tribunal erred in law and fact to decide the issue of time limitation in favour of the respondents while they failed to establish the year in which they entered into possession of the land in dispute.
6. That the trial tribunal erred in law for not abiding by the law while there was a letter for extending the time from the Minister responsible for legal affairs.

For this judgment, the Court will focus on the second ground of the appeal as it determines the fate of the appeal. in his written

submission, the appellant did not address the Court on the issue of time limitation which was raised *suo moto* by the trial tribunal and was the decisive factor. However, the Court prompted the appellant to address the Court on that issue. As a lay person, he had no useful submission in that regard though he contended that the trial tribunal did invite him to address the issue.

As a matter of principle, the right to be heard is a cardinal one. This right has been in place from time immemorial. It has been always insisted that no one should be condemned unheard. In this jurisdiction, courts have been abiding by this principle to ensure that parties to a dispute undergo a fair trial. In that case, it is trite law that when the court raises issues *suo moto* which in effect determines the rights of the parties, such court is under the obligation to afford the parties an opportunity to be heard on the issues. When the court inadvertently or otherwise fails to heed that principle, the whole proceedings turn into a nullity. In the case of **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] TLR 251, the Court of Appeal held that:

'The judge's decision to revoke the rights of M/s Kagera and the appellant, without giving them opportunity to be heard, was not only a violation of the Rules of natural

justice, but also a contravention of the Constitution, hence void and of no effect.'

See: M/S Darsh Industries Limited v. M/S Mount Meru Millers Limited, Civil Appeal No. 144 of 2015; **Scan-Tan Tours Limited v. The Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012; **Deo Shirima and Two Others v. Scandinavian Express Services Limited**, Civil Application No. 34 of 2008; and **Charles Christopher Humphrey Kombe v. Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017.

My careful perusal of the proceedings and the judgment convinces me that the trial tribunal arrived at the latter on a matter which was never part of the proceedings. From page 1 to page 35 of the proceedings, there is no any issue recorded about time limitation which formed factors that led the tribunal to determine the rights of the parties. In that case, it is my conclusion that the parties were not afforded the right to be heard on a fundamental matter that formed the basis of the judgment of the trial tribunal.

Given that, I invoke the revisional powers of this Court by quashing the proceedings and judgment of the trial tribunal and

remitting the matter to the trial tribunal for a trial *de novo* before another Chairman.

It is so ordered.

Right To Appeal Explained.

DATED at **MWANZA** this 9th day of June, 2023.



A handwritten signature in blue ink, appearing to read "KS Kamana", written in a cursive style.

KS KAMANA

JUDGE