

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 13 OF 2023

(Appeal from the judgment and decree in Land Application No. 4 of 2021 before District

Land and Housing Tribunal for Mbulu at Dongobesh)

ANANIA MOGITI MATAY.....1ST APPELLANT
MARCO MOGITI MATAY.....2ND APPELLANT
YAROT MOGITI MATAY.....3RD APPELLANT
SAMWELI ANANIA MOGITI.....4TH APPELLANT

VERSUS

LOHAY MOGITI MATAY.....RESPONDENT

RULING

Date: 19/5/2023 & 6/6/2023

BARTHY, J.

This appeal was brought at the instance of the appellants seeking to challenge the decision of District Land and Housing Tribunal for Mbulu District (the trial tribunal), over the piece of land measuring about 27 acres situated at Semunyandi village Hayderer ward in Mbulu District (hereinafter referred as the suit land).

The trial tribunal declared the respondent herein the lawful owner of the suit land. The appellants aggrieved with the decision they lodged the instant appeal.

The brief background of this matter as gathered from the records of the trial court are such that, appellants and the respondent are relatives, whereby the first, second and third appellants and the respondent are siblings while the fourth appellant is the grandson.

It is on record that while the appellants claimed that each of the relative was allocated a piece of land by their deceased father/ grandson on the suit, on the other hand the respondent claimed that he was given the whole suit land by their deceased father sometimes in 2019.

The trial tribunal decided in favour of the respondent which prompted the appellants to prefer the instant appeal with grounds of appeal which I will not reproduce them here.

At the hearing, the court ordered the appeal to be disposed of by way of written submissions, the order which was fully complied with by the parties. However, in the course of composing the judgment I noted some

pertinent issues which necessitated the opening up of the proceedings so that parties would address the court on the following issues;

- i. Whether the trial chairperson was proper to proceed with the case without the aid of interpreter as requested by the 2nd and 3rd respondents [appellants] on 11/7/2022.*
- ii. Legality on admission of exhibit M1.*

At the hearing appellants enjoyed the services of Mr. Simon Shirima learned advocate while the respondent appeared in person. There was also an interpreter namely Mathayo Sule who was sworn in to interpret from Kiswahili to Iraqw language and vice versa.

Addressing to the above issues, Mr. Shirima addressed the court that during the hearing of the matter, the records show that on 11/7/2022 some of the appellants requested the services of an interpreter.

He further submitted that under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 (the Constitution), it provides for the right to be heard; which was violated by the trial tribunal as the appellants were not properly heard.

To buttress his arguments, he referred to the decision of this court in the case of **Lwanganila Village Council & 21 others v. Joseph Rwakasheni**, Land Appeal No. 74 of 2018 (unreported) in which the court referred to the decisions in the cases of **Kenya Commercial Bank v. Albert Odongo** Civil Appeal No. 32 of 2017 and **MRAPATA v. Jestina George Mwakyona** [2003] TLR 251, where this court stated that right to be heard is fundamental right.

The learned advocate contended that as the second and third appellants were not conversant with Kiswahili language and their request for service of an interpreter was not heeded by the trial tribunal therefore their right to be heard was violated. He thus prayed the decision of the trial tribunal be quashed.

Responding to the second issue, it was the submission of Mr. Shirima that since the second and third appellants did not understand the proceedings, then admission of exhibit "M1" was not proper since the appellants could not exercise their right to inquire into the said exhibit.

He contended that the second and third appellants were not given right to address on the admission of the said exhibit, hence the procedures for

admission of the exhibit were not followed. Mr. Shirima therefore invited the court to quash and set aside the decision of the trial tribunal and order retrial before another chairperson.

The respondent on her arguments he contended that on 11/7/2022, before the trial tribunal two of the appellants did not understand Kiswahili language. The matter was therefore adjourned and an interpreter was brought and the case proceeded with the hearing.

He maintained that the trial chairperson followed the procedure and the case was properly determined.

Having gone through the parties' arguments on the issues raised, it is on record that on 11/7/2022, during the hearing of the matter when PW1 wanted to tender exhibit of the case, the second and third appellants informed the trial tribunal that they did not understand Kiswahili language.

Hence the trial tribunal adjourned the matter and ordered that the second and third appellants should find their interpreter. When hearing resumed on 27/7/2022, the record is silent as to whether the second and third appellants had their interpreter: As the matter proceeded as usual.

However, during the defence hearing, the second appellant before he testified, he requested for an interpreter to assist in interpretation from Iraqw language to Kiswahili and vice-versa. Therefore, one Adela Bernado Lori was sworn in to aid with interpretation.

A similar situation applied to the third appellant who also requested the service of an interpreter from Iraqw language to Kiswahili. The record reveals that there was an interpreter for when third appellant make his defence.

The records reveal that the interpreter appeared to aid with the interpretation at the defence stage. Hence it can be said without flicker of doubt that during the hearing of PW1 to PW6, the second and third appellants were left out.

The trial tribunal had a duty to make sure that the second and third appellants were accorded a fair trial and the record should have reflected the presence of the interpreter to aid with interpretation on behalf of the second and third to allow them fair trial.

This was necessary since the second and third appellants had no legal representation.

Proceeding with the hearing of the case without the aid of the interpreter for second and third appellants was clearly denying them the right to be heard. The court has emphasized in number of times that a denial of the right to be heard in any proceedings would vitiate the proceedings.

As rightly pointed out by Mr. Shirima, that the denial is an abrogation of the constitutional right guaranteed as the basic right to be heard, which is enshrined under Article 13(6)(a) of the Constitution. In the case cited by Mr. Shirima of **Mbeya - Rukwa Auto Parts & Transport Limited (MRAPATA) v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 (unreported), the Court of Appeal emphasized that: -

"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 amongst the attributes of equality before the law and declares in part:

(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho

kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamiifu."

Furthermore, the Court of Appeal in the case of **Abbas Sherali & another v. Abdul S. H. M. Fazalboy**, Civil Application No. 33 of 2002 (unreported) the court held that;

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."

It is clear in the present matter that, the second and the third appellants were not afforded the right to be heard which was in violation of the principles of natural justice, as they were not afforded fair hearing on the reason that they could not understand the trial without the aid of an interpreter.

With regard to admission of exhibit "M1" which was admitted by the trial tribunal during the trial, it was admitted without the fair trial. As the

second and third appellants were not afforded the right to address it, as they could not understand what transpired during the trial tribunal.

The said exhibit was considered by the trial tribunal in deciding over the matter. Worse still after it was admitted the said exhibit was never read out to the parties as required.

It is a trite principle that when a document needs to be tendered as the evidence before the tribunal or court there are three important functions to be performed by the court; clearing the document for admission, actual admission and finally, to ensure that the same is read out in court. The principle was aptly stated in the case of **Robinson Mwanjisi and three others v. Republic** [2003] T.L.R 218. In that case, the Court of Appeal held as follows:

"Whenever it is intended to introduce any document in evidence, it should first be cleared for admission, and be actually admitted before it can be read out, otherwise it is difficult for the Court to be seen not to have been influenced by the same."

In the instant matter the requirements expounded in the above authority were not complied with. The glaring omissions pointed out above are fatal and goes to the root of the matter for being nullity. Consequently, the proceedings, judgment and decree of the trial tribunal are quashed and set aside.

As to the way forward, the remedy in the circumstance of this matter is to order as retrial before another chairperson with new set of assessors, needs to be expedited considering the matter has been initiated before the tribunal in the year 2021.

As the omissions leading to the nullification of the judgment, decree and proceedings of the trial tribunal were pointed out by the court *suo motu*, I make no order as to costs.

It is so ordered.

Dated at Babati this 6th June 2023



**G. N. BARTHY,
JUDGE**

Delivered in the presence of the first and fourth appellants, Mr. Simon Shirima for the appellant and the respondent in person.