

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB – REGISTRY

AT MBEYA

LAND APPEAL NO. 3648 OF 2024

(Originating from Land Application No. 72 of 2023 and Misc. Application No. 72B of 2023 of the District Land and Housing Tribunal for Mbeya.)

BENEDICT MAULUSI MBILINYI APPELLANT

VERSUS

PEE PEE TANZANIA LIMITED RESPONDENT

JUDGMENT

Date of hearing: 20/4/2024

Date of judgment: 29/5/2024

NONGWA, J.

In the District Land and Housing Tribunal for Mbeya vide Application No. 72 of 2023 the appellant sued the respondent in respect of residential house located in plot 1251 Block "Q" Mwanjelwa area with Title No. 21031-MBYLR. The appellant also filed application for temporary injunction which was christened as Misc. Application No. 72B of 2023.

Briefly, parties herein entered into an agreement whereby the appellant was supplied goods on credit at the tune of Tsh. 130,000,000/=.

The agreement was secured by deposit of certificate of title No. 21031-MBYLR. It was alleged that the appellant managed to repay the loan as agreed, but was surprised in August 2023 to be served with notice from the broker of the intention to auction the house on allegation that he was indebted to the respondent Tsh. 127,600,000/= . The appellant rushed to the ward tribunal for mediation but the respondent did not appear and the tribunal issued certificate of failure to mediate.

The respondent disputed both applications. In Application No. 72 of 2023 disputed the whole claim save that the appellant failed to service the loan as agreed and was about to sale the house to recover the loan. In Misc. Application No. 72B of 2023 the respondent filed counter affidavit together with notice of preliminary objections consisting four points, of importance is that the tribunal has no jurisdiction in law in hearing the application and the application was prematurely brought in the tribunal contrary the law.

On 14/11/2023 parties appeared for hearing preliminary objections, it appears that counsel for the applicant did not comprehend the objection, thus prayed the same to be argued by filing written submission. Record is silence if the prayer was grated however parties filed their respective submissions.

In the ruling the chairman found that certificate of settlement from the ward tribunal was defective because it was signed by the chairman and secretary only. Preliminary objections were sustained Misc. Application No. 72B of 2023 and the Application No. 72 of 2023 were struck out. This decision aggrieved the appellant who filed memorandum of appeal consisting of three grounds, however it will not be reproduced here for a reason to be apparent soon.

When the appeal was called for hearing parties enjoyed legal representation of Mr. Ibrahim Athuman and Baraka Mbwilo, both learned counsels for the appellant and respondent respectively.

Before counsel for the appellant took the floor to argue the appeal, Mr. Baraka informed the court that he was supporting the appeal. He submitted that the appellant at the tribunal filed two cases Land Application No. 72/2023 as main suit, and also filed Misc. Application No 72B/2023, in later application the respondent raised preliminary objections, upon hearing parties, the chairman delivered ruling and struck out both applications. That, since in the main application parties were not heard, the chairman was supposed to hear the parties before he struck out Application No. 72/2023.

When counsel for the appellant was given chance to reply, had nothing to add and he did not submit anything on grounds of appeal.

Having considered the record of appeal and submission of the respondent's counsel. Record speaks louder that the appellant filed Application No. 72 of 2023 and Misc. Application No. 72B of 2023. The respondent filed written statement of defence and count affidavit in Misc. Application No. 72B of 2023 accompanied it with preliminary objections. The tribunal ordered objections to be argued by way of written submissions, parties complied with the scheduling order.

I have perused record and indeed the chairman was composing ruling on preliminary objections raised in Misc. Application No. 72B of 2023 after sustaining objection, instead of confining himself to the matter which was before him on which parties were given chance to be heard and giving the deserving order, he found that the objections apply even to the main application. Thus, striking both applications.

The argument of Mr. Mbwilo is that the chairman struck out Application No. 72 of 2023 without parties being heard while hearing was in respect of objection raised in Misc. Application No. 72B of 2023.

Right to be heard is one of the tenets of the rules of natural justice which has constitutional recognition under Article 13(6)(a) of the

Constitution of the United Republic of Tanzania, 1977 as amended from time to time which directs that, when rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to among others, a fair and full hearing. The law is settled that any decision arrived at without a party getting an adequate opportunity to be heard is a nullity even if the same decision would have been arrived at had the affected party been heard.

The legal consequence of failure to afford a hearing before any decision affecting the rights of any person is given is now settled. In **Independent Power Tanzania Ltd vs Standard Chartered Bank (hong Kong) Ltd**, Civil Revision No. 1 of 2009 [2009] TZCA 17 (9 April 2009; TanzLII) the court stated;

'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.'

It is equally trite law that a decision reached in breach or violation of this principle, unless expressly or impliedly authorized by law, renders the proceedings and decisions and/or orders made

therein a nullity even if the same decision would have been reached had the party been heard.

In the present appeal, pleadings as filed in the tribunal are clear that the respondent did not raise any objections in Application No. 72 of 2023, that is to say there was no issue of competence with respect to that case which was raised by the respondent through the pleadings or in any other form. The hearing on which parties were given opportunity and filed their submission was objections in Misc. Application No. 72B of 2024.

In his ruling the charman held that '*Matokeo ya uamuzi wangu katika hoja namba 1 na 2 ya pingamizi la awali ni kufanya shauri hili kuwa halijakomaa (incompetent) na matokeo yake (remedy) ni kuondolewa. Hivyo maombi madogo (wito wa chumba) nayo yanapaswa kuondolewa Pamoja na maombi ya msingi*'. Literally means the result of my ruling in argument number 1 and 2 in preliminary objection is to render this suit to be incompetent and the remedy is to strike out. Therefore, Miscellaneous application (chamber summons) also has to be struck together with main application.

The above speaks itself that Application No. 72 of 2023 was also struck out without affording the parties the opportunity of being heard before he decided to strike out Application. So long as the chairman heard and determined the preliminary objections and sustained in Misc. Application No. 72B of 2023 it was wrong for him to include in the ruling order striking out Application No. 72 of 2023 in which no preliminary objection was raised and parties given opportunity of being heard. Akin situation happened in the case of **National Insurance Corporation (T) Ltd vs Shengena Limited** Civil Application No. 230 of 2015 [2020] TZCA 261 (27 May 2020; TanzLII) and the court held;

'Since that was not the case and the parties filed submissions in respect of the points of preliminary objection only, the learned judge was not justified to determine the substantive application. There were no material facts from the parties in support and in opposition to the application upon which to adjudicate upon. In other words, the judge in the application under focus took it by himself without hearing the parties to determine the application.'

The above applies to the present appeal, when the chairman struck out Application No. 72 of 2023 there was no preliminary objection raised to question its competence. The chairman was only required to strike out Misc. Application No 72B of 2023 in which parties were heard.

In the end, I invoke revisionary powers under section 43(2) of the Land Disputes Courts Act [Cap 216 R: E 2029] quash and set aside part of the ruling which struck out Application No. 72 of 2023. The effect is that Application No. 72 of 2023 reverts to the stage it was before it was struck out. No order to costs because the error was caused by the tribunal.



A handwritten signature in blue ink, appearing to read "V.M. Nongwa".

V.M. NONGWA

JUDGE

29/5/2024

Dated and Delivered this 29th May 2024 in presence of Mr. Ibrahim Athuman Advocate for the appellant and Mr. Ipyana Mwantoto advocate for the Respondent.

A handwritten signature in blue ink, appearing to read "V.M. Nongwa".

V.M. NONGWA

JUDGE

29/5/2024