

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

GEITA SUB REGISTRY

AT GEITA

LAND APPEAL NO. 11923 OF 2024

(From Land Appeal No. 44 of 2019 of the District Land and Housing Tribunal for Geita, Originating from Land Case No. 02 of 2019 from Bung'wangoko Ward Tribunal)

- 1. GEORGE LUFULWALUNJA**
- 2. SAAKUMI BUSWELU**
- 3. NGWAKAMI KASOBI**
- 4. LUCAS ABEL** *(Administrator of the estate of Chongo Ndomo)*
- 5. SUZANA ABEL** *(Administratrix of the estate of Sayi Ndomo)*
- 6. DOTTO KASOBI**
- 7. MAGESA LUFULWALUNJA.....APPELLANTS**

VERSUS

AMOS LUZARI *(Administrator of the estate of Luzari Kasoso)***RESPONDENT**

JUDGMENT

Date of last order: 31/05/2024

Date of Judgment 21/06/2024

MWAKAPEJE, J.:

In this second appeal, the Appellants, **GEORGE LUFULWALUNJA, SAAKUMI BUSWELU, NGWAKAMI KASOBI, LUCAS ABEL** *(Administrator of the estate of Chongo Ndomo)*, **SUZANA ABEL** *(Administratrix of the estate of Sayi Ndomo)*, **DOTTO KASOBI**, and **MAGESA LUFULWALUNJA**, are aggrieved by the decision rendered by the District Land and Housing Tribunal for Geita

in Land Appeal No. 44 of 2019, which originated from the Bung'wangoko Ward Tribunal.

The pertinent facts underlying this appeal are straightforward and unfold as follows: both the Appellants and the Respondent assert ownership over the disputed parcel of land, each claiming to have acquired it through their respective deceased parents in 1964 in exchange for seven heads of cattle. Before his demise in 2019, the Respondent, who was succeeded by his son Amos Luzali, the administrator herein, contended that upon his return from medical treatment in 2019, he discovered that his land had been apportioned among the Appellants. This situation prompted him to initiate proceedings in the Bung'wangoko Ward Tribunal, registered as Land Application No. 02 of 2019.

The Ward Tribunal's decision was unfavourable to the Respondent, as it declared the Appellants to be the lawful owners of the land. Subsequently, the Respondent appealed to the District Land and Housing Tribunal for Geita, which overturned the Ward Tribunal's decision and ruled in his favour.

Convinced that the District Land and Housing Tribunal for Geita's decision was erroneous, the Appellants have filed a petition of appeal in this Court, delineating five grounds of appeal as follows:

- 1. That the District Land and Housing Tribunal for Geita misdirected itself legally and factually by failing to agree with the Appellants' argument that six (6) out of the seven (7) Appellants were not given the right to be heard in the Bung'wangoko Ward Tribunal during the hearing of land case number 02/2019.*
- 2. That the District Land and Housing Tribunal for Geita misdirected itself legally by deciding that the second appellant was the legitimate representative of the Appellants without considering that the disputed property belonged to the deceased Lufulwalunja Ndoma and the Appellants had no legal standing (locus standi) to sue or be sued in that case.*
- 3. That the District Land and Housing Tribunal for Geita misdirected itself legally by nullifying the proceedings of the Bung'wangoko Ward Tribunal and, at the same time, using the evidence from the nullified proceedings to rule in favour of the Respondent.*
- 4. That the District Land and Housing Tribunal for Geita misdirected itself legally and factually by rejecting the Appellants' argument and that of the ward tribunal's decision that the Respondent filed a land claim case beyond the limitation period, considering that the deceased Lufulwalunja Ndoma had lived on and used the disputed land for 55 years without any disturbance.*
- 5. That the District Land and Housing Tribunal for Geita misdirected itself legally by failing to apply its revisional jurisdiction and ordering the case to be heard anew, considering that the proceedings in the ward tribunal were flawed, including the absence of a valid quorum of members during the hearing of the case in the Bung'wangoko Ward Tribunal.*

This appeal was subjected to oral argumentation. On the date scheduled for the hearing of the appeal, Mr. Shija Jeremiah, a learned advocate, appeared on behalf of the Appellants, whereas Mr. John Paul

Hombo, an equally learned advocate, appeared on behalf of the Respondent.

Mr. Shija Jeremiah commenced the proceedings by addressing the Court. During his submission, he abandoned the fourth ground of appeal while persisting with the first, second, third, and fifth grounds of appeal. He contended that with respect to the first ground of appeal, the proceedings before the Ward Tribunal erroneously identified all seven Appellants as Respondents, with only the second Respondent, Saa Kumi Buswelo, permitted to present a defence on behalf of the other Appellants, despite the absence of a power of attorney or any documentary evidence demonstrating his appointment as their legal representative.

He further averred that there exists no statutory provision permitting a spokesperson to represent other parties in the presentation of evidence before a court of law. Despite the Appellants raising this issue before the District Land and Housing Tribunal of Geita, it was summarily dismissed. Mr. Jeremiah asserted that such dismissal constituted a breach of the fundamental constitutional right to a fair hearing, as enshrined in Article 13(6)(a) of the Constitution. In support of this contention, he cited the cases of **Margwe Error & Others vs Moshi Bahalulu** - Civil Appeal 111 of 2014) [2015] TZCA 282 (25 February 2015) on page 4, which referred to the case of **Abbas Sherally & Another vs Abdul S. H.**

M. Fazalboy - Civil Application No 33 of 2002 (unreported) and the case of **David Mushi vs Abdallah Msham Kitwanga** (Civil Appeal 286 of 2016) [2022] TZCA 535 (2 August 2022) that decisions made without affording parties the right to be heard are null and void.

Concerning the second ground of appeal, Mr Jeremiah contended that it pertains to a legal issue which, according to established precedents, can be raised at any stage of the proceedings, as delineated by the Court of Appeal in the case of **Adelina Koku Anifa & Another v. Byarugaba Alex**, Civil Appeal No. 46 of 2019, [2019] TZCA 416. He argued that the dispute over land ownership was between Luzali Kasoso and Lufulwalunja Ndoma, asserting that only the duly appointed administrator of the estate possesses the legal authority to manage the estate's affairs. Consequently, he contended that the Appellants lacked the requisite locus standi to defend the deceased's property, thereby rendering the Tribunal's decisions and proceedings null and void. To substantiate his argument, he cited the cases of **Swalehe Juma Sangawe & Another v. Halima Swalehe Sangawe**, Civil Appeal No. 82 of 2021, [2022] TZCA 595, and **Underson Kagisa Mutembei v. Flora Kagisa Mutembei**, Misc. Land Application No. 55 of 2022, [2022] TZHCLandD 488, which referenced the case of **Felix Constantine v. Jofrey Modest**, Misc. Land Case Appeal No. 9 of 2010, HC-Bukoba.

Regarding the third ground of appeal, Mr Jeremiah contended that the District Land and Housing Tribunal (DLHT) for Geita erred in law by relying on inadequate and insufficient evidence adduced before the Ward Tribunal and that it ought to have rectified the proceedings instead of rendering a decision in favour of the Respondent. He argued that records devoid of substantive merit cannot be sustained. In support of his assertion, he cited the case of **Asia Juma Nkondo v. Jarafi Juma Nkondo**, Misc. Land Application No. 21 of 2020, [2021] TZHC 3686 (28 April 2021).

For the fifth ground of appeal, Mr Jeremiah asserted that the Tribunal erred in its failure to revise the Ward Tribunal's decision due to the improper constitution of its membership. He specifically identified inconsistencies in the composition of the members present during the proceedings on the dates of 13th June 2019, 18th June 2019, 25th June 2019, and 2nd July 2019, which he argued were indicative of procedural irregularities. Furthermore, he contended that, notwithstanding the fact that this issue was not explicitly raised during the appeal at the District Land and Housing Tribunal (DLHT), it was the duty of the DLHT to examine the records of the Ward Tribunal in accordance with section 36(1) of the Land Dispute Courts Act, Cap 216.

In rebuttal, Mr. Hombo contended that the Appellants were accorded the opportunity to present their case, with Saa Kumi Buswelo serving as their representative, and were afforded legal representation before the District Land and Housing Tribunal (DLHT). He posited that the cases cited by the Appellants' counsel were inapplicable to the present matter. He further asserted that should the Appellants have perceived a lack of due consideration, their proper recourse would have been to appeal to a higher judicial forum.

Mr. Hombo summarily dismissed the second ground of appeal, asserting that the Appellants had been trespassers on land legally owned by Luzali Kasoso since 1964. He argued that the Appellants' status as administrators was immaterial, given their position as trespassers, and emphasised that the Respondent had successfully substantiated his claim before the DLHT.

Addressing the third ground, Mr Hombo contended that the DLHT possessed jurisdiction to correct procedural errors but not to adjudicate on matters of evidentiary substance. He urged the court to disregard this ground of appeal, along with the cases cited therein.

On the fifth ground, Mr Hombo argued that the DLHT's power to revise records was discretionary and that the Appellants should have

appealed if dissatisfied. He cited cases of **Wamoja Moshi Mustafa & Another vs Athumani Hamis** (Civil Revision 2 of 2021) [2022] TZHC 3116 (29 March 2022), which referred the case of **Mansoor Dya Chemicals Ltd vs National Bank of Commerce** (Civil Application 464 of 2014) [2020] TZCA 183 (15 April 2020) and **Halais Pro-Chemie vs Wella A.G** 1999 TLR 269 to support his position that the appeal should be dismissed and that the Respondent should retain ownership of the property.

In rejoinder, Mr Jeremiah reiterated that the six Appellants failed to mount a defence before the Ward Tribunal, highlighting that only Saa Kumi Buswelo testified without requisite evidence of the appointment. He contended that the Appellants lacked the necessary *locus standi* to assert claims over the deceased's property and criticised the District Land and Housing Tribunal (DLHT) for deciding in favour of the Respondent subsequent to the nullification of proceedings owing to deficiencies in the records. He, therefore, prayed for the appeal to be allowed and for the nullification of the proceedings in Appeal No. 44/2022 and Application No. 02/2019 before both the DLHT for Geita and the Ward Tribunal, respectively.

Having heard and considered rival submissions of the parties in the present appeal, I will determine the grounds of appeal accordingly. I will

start with the first ground of appeal, which is that the Appellants were not afforded a right to be heard in the Ward Tribunal.

I should point out from the onset that the right to be heard is a fundamental legal principle that ensures that individuals have the opportunity to present their cases and have a fair and impartial hearing. Without the right to be heard, justice cannot be served, and fairness becomes compromised. This principle guarantees that decisions are made based on all available information and that individuals are not unfairly disadvantaged in legal proceedings.

In our jurisdiction, there is a plethora of authorities that have nullified decisions made by subordinate courts without affording a party their right to be heard. In the case of **VIP Engineering and Marketing Ltd and 2 Others vs CitiBank Tanzania Ltd** (Consolidated Civil Reference 6 of 2006) [2007] TZCA 165, it was stated that:

*"Equally established is the law to **the effect that a decision arrived at in breach of the rules of natural justice is null because it is tainted with illegality.**" [Emphasis supplied].*

Further, in the English case of **EARL VS SLATTER AND WHEELER (AERLYNE) LTD** [1973] 1 WLR 51, which was referenced in the case of **VIP Engineering and Marketing Ltd and 2 others** (*supra*), it was held that;

"Where natural justice is violated, it is no justification that the decision was in fact correct".

Similarly, in the previous decision of **Abbas Sherally & Another V Abdul Sultan Haji Mohamed Fazalboy** (*supra*), the Court of Appeal explicitly stated that:

*"The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasised 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.**"*
[Emphasis supplied]

Additionally, in the case of the **Bank of Tanzania vs Said A. Marinda and Others**, Civil Application No. 74 of 1998, which was referred to in the case of **VIP Engineering and Marketing Ltd and two others** (*supra*), it was stated that:

*"failure to afford an opportunity of being heard to a necessary party **vitiates the proceedings.**"* [Emphasis supplied].

In my meticulous examination of the records from the Ward Tribunal regarding the appeal in question, all the Appellants were referred to as Respondents; nevertheless, there was a noticeable absence of their testimonies and defence being recorded. Notably, on page 9 of the Ward Tribunal's proceedings, it states:

"Upande wa wadaiwa msemaji aliteuliwa Saa Kumi Buswelu naye alisema....." [Emphasis supplied]

Based on the verbiage delineated herein, it is evident that Saa Kumi Buswelu assumed the role of a spokesperson rather than a legal representative in the litigation in the Ward Tribunal. Nowhere is it indicated that he was designated to act as their legal proxy. Had he been appointed as such, it would likely have been explicitly stated at the onset of the Ward Tribunal's proceedings. Consequently, it is discernible that the Appellants were not accorded an audience in the Ward Tribunal.

Therefore, I dissent from Mr. Hombo's assertion that the Applicants were afforded a fair trial as they were represented by the 2nd Appellant at the trial Tribunal. To appreciate his proposition, there is a need to find out the circumstances under which the representative is allowed to appear on behalf of others in the Tribunals. Section 18(2) of the Land Disputes Courts Act, Cap 216, provides as follows;

*"18- (2) Subject to the provisions of subsections (1) and (3) of this section, a Ward Tribunal **may permit any relative or any member of the household of any part to any proceeding, upon request of such party, to appear and act for such party**". [Emphasis added].*

Based on the provision above, the representative can only be appointed upon the specific request of the concerned party. It is evident

from the proceedings of the present appeal that neither party sought the representation of the 2nd Appellant before the trial Tribunal. Since there are no records of the Appellants appointing the 2nd Appellant as their Representative, it simply implies that the same was appointed by the Ward Tribunal. Therefore, the trial tribunal's decision to appoint a representative lacks legal basis, as it is not within its jurisdiction to choose a representative for the parties involved in the case. Consequently, the appointment resulted in the denial of the six Appellants' right to be heard, as correctly highlighted by Mr Jeremiah. Therefore, this constitutes a breach of the fundamental principle of natural justice, thereby invalidating the proceedings, even if the outcome was in their favour, as seen in the case of **Abbas Sherally & Another V Abdul Sultan Haji Mohamed Fazalboy** (*supra*).

Given this observation, it is unnecessary to dwell extensively on this matter, as the right to be heard is a cornerstone of justice that should not be disregarded. Consequently, the oversight rendered the decisions of both lower tribunals null and void. Considering that this issue alone is sufficient to resolve the appeal, there is no need to address other grounds of appeal.

Ultimately, I invoke the revisional powers vested onto this Court pursuant to section 43 (1) (b) of the Land Disputes Courts Act, Cap 216

R.E 2019, and hereby nullify the proceedings and decisions of both the Bung'wangoko Ward Tribunal and the District Land and Housing Tribunal for Geita. The original state of affairs preceding the initiation of Land Case No. 02 of 2019 before the Bung'wangoko Ward Tribunal is maintained. Any party desiring to pursue the issue further may file a suit before a competent judicial forum. In the circumstances, I make no order as to costs.

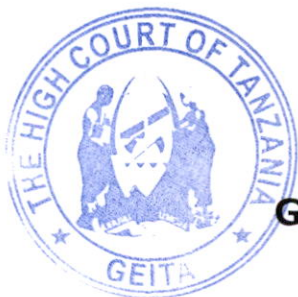
It is so ordered.

DELIVERED at **GEITA** this 21st day of June 2024.



G.V. MWAKAPEJE
JUDGE

The Judgment was delivered on 21st June 2024 in the presence of Mr Shija Jeremiah, learned advocate for the Appellants who were also present, and the Respondent in person.



G.V. MWAKAPEJE
JUDGE