

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MWANZA
AT MWANZA
LAND APPEAL NO. 3096 OF 2024

*(Arising from the District Land and Housing Tribunal for Mwanza at Mwanza in Application
No.147/2023)*

IBRAHIM SONDO KOME(Administrator of the estate
of the late SARAH. J. MCHUNGA) -----**APPELLANT**

VERSUS

GEORGE NGAGI -----**RESPONDENT**

JUDGEMENT

14th & 21th June 2024

CHUMA, J.

Aggrieved by the decision of the District Land and Housing Tribunal of Mwanza (herein the DLHT), the appellant is seeking the indulgence of this court via appeal with the following grounds; -

1. The tribunal grossly erred in law by holding that it had no jurisdiction to entertain the matter
2. The trial tribunal grossly erred in fact and in law by raising various issues *suo motto* and determining the same without according to the parties right to address the issues before giving its verdict on the matter as the result infringes the appellant's right to be heard

3. The trial tribunal erred both in fact and in law by holding that the certificate of non-settlement from the Lwanhima ward tribunal was defective for not indicating that mediation failed
4. The trial tribunal grossly erred in law and failed to evaluate and make an analysis of evidence presented before it

The appeal was argued by way of written submission whereby the Appellant was represented by Frank Kabula, learned Advocate, and the respondent on the other hand enjoyed the legal representation of Sijaona Revocatus, learned advocate.

Before narrating brief submissions by the parties, I find it pertinent to say a word on this matter, that the trial tribunal's decision appears to be regarded as a judgment and the parties at some points as far as their filed pleadings are concerned followed the same trend. Perhaps this is due to what was written by the trial tribunal's Chairman who termed it as judgment. But in my understanding because it was an application the decision ought to be termed a ruling (Uamuzi mdogo).

Back to the party's submissions, arguing for the appellant Mr. Frank Kabula submitted that as far as the first ground is concerned the trial

chairman misled himself by holding that the tribunal had no jurisdiction to determine the matter on the ground that the appellant was supposed to sue the government while the appellant had no claim against it but rather the respondent who claimed to be the owner of the suit premises who sought compensation from the Tanzania Railway Corporation (herein the TRC). He went on to argue that since the government has not yet made payments it cannot be held as a necessary party. He cited the case of **Raphael Logistics & Another vs. Zanzibar Marineed & Diving Ltd & 2 Others**, Commercial case No. 83 of 2021(unreported), and **Hasnan M. Murji vs. Abdulrahim A. Salum t/a Abdulrahman Enterprises**, Civil Appeal No. 6 of 2012.

He further argued on the 2nd and 3rd grounds that the tribunal raised issues *suo mottu* that the certificate of Lwanhima ward tribunal was not settled and was defective something which he finds needed the parties to be heard on it.

Lastly, on the fourth issue, Mr Frank Kabula submitted that the trial court failed to consider the evidence adduced by the appellant and his witness during the trial that his claims are against the respondent who

trespassed into his land by being the administrator of the estate of one Sarah J. Mchungu and the trial court went to dismiss the entire case basing on the assumption that the government intended to pay compensation over the disputed land while there was no such proof of payment by the government as required by law on the principle of balance of probability as per section 110(1) of the Evidence Act Cap 6 RE. 2019.

On his part, Mr. Sijaona contested all grounds of appeal as follows; -

Firstly, the appellant failed to understand that what was meant by the chairman of the tribunal was that since TRC is involved in paying compensation, and it's a government entity then it was to be joined as a necessary party as the appellant's complaint was that the respondent has been registered as the owner of the piece of land and by being joined would be in a position to know who is entitled to that compensation.

Secondly, Mr. Sijaona addressed the 2nd and 3rd grounds that the chairman of the tribunal correctly raised the issue of defectiveness of the certificate from the Lwanhimma ward due to the reasons that Section 45(4) of the written laws (Miscellaneous Amendments) No.3 Act of 2021 refrains the tribunal from hearing any matter affecting the title or any interest in land

unless it has been certified to have failed to settle it amicably. He invited this court to the case of **Issa Kauzu vs. Ally Abdalla Mkono and Al-Jumaa Mosque**, Land appeal No. 08 of 2022, High Court of Tanzania (unreported)

In addition, Mr. Sijaona submitted that the names of the plaintiffs in the certificate were different from the ones in the institution of proceedings and furthermore, he added that the record was silent as to whether the respondent was served with a summons to attend mediation.

Lastly, on the 4th ground, it was his submission that the evidence on record was properly evaluated to reach the decision made by the tribunal and it was correct for the case to be dismissed.

Upon hearing the parties' submissions, I feel compelled to begin with the second ground of appeal which the appellant claimed that there were issues raised by the tribunal in its own motion without according opportunity for parties to address them. Going through the tribunal records, I realized that the tribunal raised the issue of the government being a necessary party to be joined in the suit and the variance of names that the administrator used in the suit. The court therefore went on to determine the same without inviting parties to address them before the ruling was pronounced.

It is not insignificant to take note that the law is quite clear that under framing of issues is a duty of the trial Magistrate or judge. A duty to frame the issue(s) is provided under Rule 40(1) of Order VIII and Rule 1(5) of Order XIV of the CPC.

Rule 1(5) of Order XIV makes it mandatory for the court to frame the issue at the first hearing after reading the plaint and the Written Statements.

The provision reads:

"(5) At the first hearing of the suit the court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material proposition of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. (Underscoring is mine)"

What comes out to me from the above provisions of law is that issues have to be framed at the first hearing of the case that will bind both parties and the court. In case the court finds it just to frame additional issues in due course then parties have to be invited to address them or rather be informed.

It has been held in a number of cases that a decision reached without giving parties the right to be heard on every matter becomes null and void. This position was stated in the case of **Alisum Properties Ltd vs. Salumu Selenda Msangi** (Administrator of the estate of the late Selenda Ramadhani Msangi, Civil Appeal No. 39 of 2018 (unreported) where it was held that: -

“...cases must be decided on the issues or grounds on records”

Also, another guidance on this point is from the case of **Juma Said V. Republic**, Criminal Appeal No.29/2018 on page 8, the Court of Tanzania cited with approval the case of **Abbas Sherally & Another vs Abdul Fazalboy**, Civil Application No. 3 of 2002 (unreported), by holding that; -

“ The right of a party to be heard before adverse action or decision 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 parties being heard because the violation is considered to be a breach of natural justice”

In the instant matter on pages 3 and 4 of the trial Chairman's' decision, a number of concerns or issues were raised including the issue of jurisdiction contrary to framed issues and recorded in the proceedings before the hearing. And that as rightly pointed out by the appellants' advocate the same was determined in his decision without according the parties the right to be heard.

It is my findings that failure to frame issues at the first hearing and or framing or adding them to a later stage without taking parties into board denied parties an opportunity to a fair trial which makes the entire proceedings and the ruling a nullity. This second ground of appeal suffices to dispose of this appeal without venturing to the remaining grounds of appeal.

In the upshot, I quash the proceedings and set aside the ruling in Application No 147/2023. I remit the case file to the trial tribunal for trial *de novo* before another Chairperson competent to try it. I desist from making an order as to costs as no party is to blame for errors that occasioned the ordered retrial.

Dated at **MWANZA** this 21st Day of June 2024.



W.M. CHUMA

JUDGE

Judgment delivered in court virtually before Mr. Frank Kabula Learned counsel for the appellant who also holds brief of Mr. Sijaona Learned counsel for the respondent this 21st day of June 2024.

W.M. CHUMA

JUDGE