

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(BUKOBA SUB- REGISTRY)**

**AT BUKOBA**

**LAND APPEAL NO. 80 OF 2022**

*(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Application No.59 of 2019)*

**YUSTINA MUJUNGU ..... 1<sup>ST</sup> APPELLANT**  
**MERDA MUJUNGU ..... 2<sup>ND</sup> APPELLANT**  
**BERENA MUJUNGU ..... 3<sup>RD</sup> APPELLANT**

**VERSUS**

**JEREMIAH NDYANABO ..... 1<sup>ST</sup> RESPONDENT**  
**FEDELESIA MBEHOMA ..... 2<sup>ND</sup> RESPONDENT**  
**PHILIMINA MBEHOMA ..... 3<sup>RD</sup> RESPONDENT**  
**ZEHE ATHANAZI ..... 4<sup>TH</sup> RESPONDENT**  
**BERUHAN MZEE KAKA ..... 5<sup>th</sup> RESPONDENT**

**JUDGMENT**

5<sup>th</sup> March & 8<sup>th</sup> March 2024

**A.Y. Mwenda J.**

This appeal arises from the order of the District Land and Housing Tribunal in Application No. 80 of 2022. Before the tribunal, the Hon. Chairman dismissed the application with costs for want of merit under Regulation 13(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation G.N No. 174 of 2003. Aggrieved by the said order the appellant filed the present appeal with three (3) grounds which read as follows;

- 1) That the trial tribunal erred in law and facts as parties were deprived of their right to be heard which is the principle of natural justice
- 2) That the District land and Housing Tribunal chairman grossly erred in law to dismiss the application which had overwhelming merits to be granted.
- 3) That, the District Land and Housing Tribunal chairman erred in law again to dismiss the application basing on the words "ikizingatiwa shauri hili ni la muda mrefu, baraza hili halina namna nyingine" without putting into consideration that an end to litigation should be exercised when justice is being done.

At the hearing of this appeal the appellants appeared in person without legal representation while the 1<sup>st</sup> respondent hired the legal services from Mr. Frank Karoli John learned counsel and the 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents appeared in person without legal representation.

When invited to submit in support of appeal the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants prayed this court to adopt the ground of appeal to form part of their submission and they added in that they were denied the right to be heard.

On his part Mr. Frank Karoli, the learned counsel for the 1<sup>st</sup> respondent submitted that having gone through the records in Misc. Land Application No.

59 of 2019, he supports this appeal on the ground that the Hon. Chairman wrongly applied regulation 13(2) of the Land Disputes Courts (The District land and Housing Tribunal) Regulation G.N No. 174 of 2003 in dismissing the application. He further submitted that the appellants were denied their right to be heard and for the interest of justice the Hon. Chairman ought to have adjourned the matter to another hearing date for them to prepare themselves. On that basis he prayed this appeal to be allowed without costs.

On their part the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents supported this appeal in that it should be allowed to enable the appellants their right to be heard.

Having gone through the submissions from both parties the issue for determination is whether this appeal is meritorious.

From the records of the District Land and Housing Tribunal, it is evident that on 2<sup>nd</sup> November 2022 when the said matter was fixed for hearing the Hon. Chairman recorded as follows and I quote;

"Baraza: shauri limepangwa kusikilizwa, hakuna taarifa ya mawakili walipo. Hii ni mara ya pili wakili wa waleta maombi hajahudhuria na hakuna taarifa ya kutokuhudhuria kwake kama yupo mahakama kuu au vinginevyo. Baraza limewataka waleta maombi wenyewe waendeleo bila wakili wao."

Thereafter the appellant replied as follows and I quote;

"Waleta Maombi: Hatupo tayari kutoa Ushahidi bila ya wakili wetu."

Then the order by the Hon. Chairman was as follows;

"AMRI: Maombi haya yalipagwa leo yaanze kusikilizwa kama airisho la mwisho, wakili wa waleta maombi (Reinhold Mjuni) hajahudhuria kwa zaidi ya tarehe mbili na hakuna Ushahidi kuwa amehudhuria mahakama kuu. Aidha baraza hili limewataka waleta maombii waendeleo wao wenyewe watoe Ushahidi bila ya wakili wao, lakini wamekataa kwa sababu kwamba hadi wakili wao awepo.

Kwa mazingira hayo ikizingatiwa kwamba shauri hili ni la muda mrefu, Baraza hili halina namna nyingine, maombi haya yanatupiliwa mbali kwa gharama (dismissed with cost for want of merit) chini ya kanuni ya 13(2) ya Tangazo la serikali Na. 174 of 2003."

This court went through Regulation 13(2) of the Land Disputes Court (The District Land and Housing) GN No. 174 of 2003. The said regulation reads as follows;

"Where a party's advocate is absent for two consecutive dates without good cause and there is no proof that such advocate is in the High Court or Court of Appeal, the

tribunal may require the party to proceed himself and if he refuses without good cause, to lead the evidence to establish his case, the tribunal may make an order as may be appropriate.

From the above quote one might argue that the Hon. Chairman's ruling was justified. However, from the records, it is uncertain if at all the appellants were addressed in terms of Regulation 13(2) of the Land Disputes Courts (The District Land and Housing) Regulation G.N No. 174 of 2003. By looking on the manner the appellants are alleged to refuse to proceed, one can conclude that none of them was ever addressed to proceed with hearing by themselves. The word used to wit; **"waleta maombi: hatupo tayari kutoa ushahidi bila ya wakili wetu"** is tainted with doubt because there is no way all of the appellants would respond once and collectively in that manner. Each appellant's response ought to be recorded separately.

That being said this court is of the view that, for the interest of justice and fair hearing, the Hon. Chairman was required to adjourn the matter to give the applicants an opportunity to prepare themselves for hearing. That being the case, this court is of the view that the right to be heard was not fully afforded to the appellants. Since this right is so basic, any decision arrived in violation of it is a nullity, this appeal is hereby allowed, the order by the Hon. Chairman in Application No. 59 of 2019 is hereby nullified. The file is remitted before the

District Land and Housing Tribunal for Muleba at Muleba to proceed with the hearing from where it ended. Otherwise there is no order as to costs.

It is so ordered.



**A.Y. Mwenda**

**Judge**

**08.03.2024**

Judgment delivered in chamber under the seal of this court in the presence of the Appellants and in the presence the Respondents.



**A.Y. Mwenda**

**Judge**

**08.03.2024**