

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND REVISION NO. 44 OF 2020

SALUMU MALKI.....APPLICANT

VERSUS

PHILEONA OUKOLANGA.....RESPONDENT

RULING

24/11/2021 & 03/12/2021

Masoud, J.

With chamber summons supported by an affidavit of the applicant herein, the present application was brought by the applicant under section 43(1)(b) of the Land Disputes Courts Act, cap. 216 R.E 2019; and section 95 of the Civil Procedure Code, Cap. 33 R.E 2019. The preoccupation of the applicant in the application was to seek revision of the proceeding and ruling of the executing Chairman of the District Land and Housing Tribunal of Ilala as per Hon. Mgulambwain Misc Application No.313 of 2020.

The application before this court proceeded ex parte against the respondent and was argued by Mr Henry Mwangwala, learned Advocate for the applicant. The ex-parte hearing was a result of the refusal by the

respondent to be served in this court with the chamber summons supported by affidavit of the applicant, having complained to the court that she was only served with the summons to appear.

As was in the affidavit supporting the application, the submissions by the counsel for the applicant had it that the executing Chairman in Misc Application No. 313 of 2020, raised some points *suo moto* and proceeded to determine the application on those points against the applicant without giving the applicant right to be heard on the points prior to determining the application on those very points.

Expounding on the above error, the counsel for the applicant mentioned the points raised *suo moto* and determined by the executing Chairman of the tribunal without hearing the applicant. The first point was on the issue that the applicant's locus standi was questionable if one were to consider the original record of the trial Ward Tribunal of Kipunguni. The second point was that it was not clear whether the matter before the Ward Tribunal of Kipunguni which led to the award sought to be executed was a land matter.

Inviting this court to quash the proceeding in Misc. Application No. 313 of 2020, and set aside the ruling, the learned counsel urged the court to

answer the issue, whether the Chairman was correct to pass such decision based on the points that he raised *suo moto* without hearing the applicant, in the negative. Upon answering the issue in the negative, the applicant's counsel wanted this court to proceed in finding in the favour of the applicant in respect of the present application. Reliance was made on **Rashid Salimu (on behalf of Dr Pilli) v Sabina Sumari**, Misc. Land Case Appeal No. 51 of 2019, which cited the decision of the Court of Appeal in **Austrill Tanzania Ltd v Joseph Kumili and Another**, Civil Appeal No. 78 of 2014 in which the Court of Appeal stated:

"When a Judge observes a defect in the course of composing a judgment/ruling, he should stop composing the judgment and re-summon the parties with a view to requiring them to address him on the point. Only then that he can properly continue writing the judgment.

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Right to be heard...is a fundamental principle which the courts of law jealously guard against. In this country natural justice is not merely a principle of common law: It has become a fundamental constitutional right. (article 13(6)(a).

As will become apparent subsequently, I have hearily been guided by the restatement of the position of the law as reflected in the above decision of the Court of Appeal.

I considered the affidavit of the applicant and the submissions of the learned counsel in the light of the ruling of the executing Chairman in Misc Application No. 313 of 2020, and the proceedings thereof. Clearly, the learned Chairman raised the above-mentioned points suo moto and proceeded to determine the application based on the points against the applicant.

The question is whether having raised such points in the first place, the learned Chairman invited the applicant and the respondent to be heard prior to determining the matter before him on the points. The record of the proceedings tells it all. There is nothing on the record showing that the learned Chairman drew the attention of the parties on the points and invited them to address the tribunal on the points before determining the matter.

I am of the above finding because of what I found on the record. On 5/8/2020 when the matter came before the executing chairman, the

respondent was absent. The learned counsel for the applicant who was present invited the learned Chairman to grant the application by eviction of the respondent and payment by the respondent of decretal sum. Then, the matter was set for ruling on 25/08/2020 at 2.30 PM. There was no record that the point raised *suo moto* by the Chairman was brought to the attention of the learned counsel for the applicant, and there is no record that the learned counsel was subsequently heard on the points before the ruling was delivered.

When all is said and done, I find merits in the application regard being had to the above authority relied on by the counsel for the applicant. I am thus inclined to grant the application. On the strength of the authority cited.

In the end, the application is meritorious and is accordingly granted. Consequently, the proceedings, and ruling of the learned Chairman, in relation to Misc Application No. 313 of 2020 are hereby quashed and set aside for the errors herein above found. In the circumstances, I direct Misc Application No. 313 of 2020 to be heard and determined by another Chairperson of the tribunal competent to hear and determine the application. I make no order as to costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 3rd Day of December 2021


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B. S. Masoud
Judge

