

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 17 OF 2021

*(Arising from Appeal No. 93 of 2012 at the District Land and Housing for
Ilala at Mwalimu House)*

SHEKHE SALEHE APPLICANT

VERSUS

ROSE KILUVYA 1ST RESPONDENT

IDD SALEHE 2ND RESPONDENT

RULING

Date of last Order: 10.10.2022

Date of Ruling: 13.10.2022

A.Z. MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Ilala. The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216. The application is supported by an affidavit sworn by Idd Salehe, the applicant. The 2nd respondent has filed a counter affidavit deponed by Rose Kiluvya, the 1st respondent. The dispute pits the applicant against the respondents, and

the applicant's prayer is for this court to call for and examine the record in Appeal No.93 of 2012 at the Land and Housing Tribunal for Ilala to satisfy itself with the propriety of the decision thereon.

When the application was placed before me for hearing on 10th October, 2022, the applicant and respondents appeared in person, unrepresented.

The applicant was the first one to kick the ball rolling, he submitted that he is the lawful owner of a ½ acre plot located at Viwenge, Chanika, He contended that the respondents had a case at the Ward Tribunal and the tribunal visited locus in quo and he was among the neighbours who validated the measurement of the suit land. He contended that astonishingly, the 1st respondent started to harvest cassava on his land while he was not part of the dispute. He decided to lodge a criminal trespass case at the Primary Court without success then he filed an appeal at the District Court but still he did not win the matter.

The applicant went on to submit that he was advised to lodge a land case at the District Land and Housing Tribunal. He testified that the District Land and Housing Tribunal directed him to file a case before this court. Hence he lodged the instant application before this Court.

In reply, the 1st respondent contended that the matter before this court originates from the District Land and Housing Tribunal before Hon.

Mgulambwa, Chairperson in 2012. Thereafter, the 2nd respondent filed an application for Revision before Hon. Ndika, J (as he then was) whereas this court dismissed the said application. The 1st respondent claimed that this court revised the Land Appeal No. 93 of 2012 thus, in her view the matter before this court is *res judicata*. She valiantly argued that execution took place therefore the matter is taken by the event.

In reply, the 2nd respondent had not much to say, he argued that the matter at the Ward Tribunal was between the 1st and 2nd respondents in exclusion of the applicant. The 2nd respondent supported the applicant's application by stating that the applicant had genuine claims before the District Land and Housing Tribunal.

In his rejoinder, the applicant reiterated his submission in chief. He added that he had an application for extension of time before Hon. Makani, J and his application was granted.

Having heard the submissions of the applicant and respondents in and against the application, the issue for determination is the *whether the application is meritorious*.

I had to scrutinize the records of the District Land and Housing Tribunal for Ilala and this court to find out what transpired. The 1st respondent submitted in length on the previous matter in Misc. Land Application No.

497 of 2015 which were before Hon. Ndika, J (as he then was). However, the said matter was between the 1st respondent and 2nd respondent the same was not related to Land Appeal No. 93 of 2012. Again, in the Misc. Land Appeal No. 159 of 2017 before Hon. Mgonya, J, the 2nd respondent was the appellant against the 1st respondent, this court dismissed the appeal for being short of merit.

The applicant's complaints are related to Land Application No. 93 of 2012 which was decided by the Hon. Mgulambwa, Chairperson and the applicant was not a party to the said case. The records show clearly that the applicant knowing that he was not heard filed an application before the District Land and Housing Tribunal in Land Application No. 421 of 2018 seeking to be declared that he was the rightful owner of the suit farm, declaration that the Rose Kiluvya, the 1st respondent is a trespasser, eviction order against the Rose Kiluvya and to pay compensation to a tune of Tshs. 12, 226, 900/= for destroying crops and other properties.

In the case at hand, it is no gainsaying that, the District Land and Housing Tribunal for Ilala did not determine the matter to its finality. Hon. Rugarabamu, Chairman found himself *functus officio*. In that regard the matter the applicant had no opportunity to be heard on merit.

I have scrutinized the Land Appeal No. 93 of 2012, I found that the tribunal declared the 1st respondent a lawful owner of the suit land one acre at Majohe Chanika and the applicant is claiming ownership over the same plot. Therefore, I am in accord with the applicant that he was condemned unheard as stated in paragraph 7 of his affidavit because part of his alleged land was included in the 1st respondent's land. Leaving the matter as it is will prejudice the applicant since he has not been given the right to be heard. It is trite law that a party must be afforded a right to be heard failure to afford a hearing before any decision affecting the rights of any person.

The inappropriateness of courts or tribunals determining a matter without affording all parties the right to be heard was deplored in the case of **Tan Gas Distributor Ltd v Mohamed Salim Said** Civil Application for Revision No. 68 of 2011, the Court of Appeal held that:-

" 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."

Similarly, in the Court of Appeal of Tanzania in the case of **Danny Shasha v Samson Masoro and Others**, Civil Appeal No. 298 of 2020 [TANZALII

5th November, 2021] cited with approval the case of **Abbas Sherally & Another v Abdul S. H. M. Fazalboy**, Civil Application No. 33 of 2002 (both unreported), the Court of Appeal of Tanzania held that: -

" The right of a party to be heard before adverse action 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 party been heard, because the violation is considered to be a breach of natural justice."

Based on the above authorities, it is clear that a decision likely to adversely affect the rights of parties shall not be made without affording the parties a right to be heard.

In view of the aforesaid, I find the ground of revision merited and it is sufficient to dispose of the appeal. Therefore, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing for Ilala in Land Appeal No.93 of 2012 in the following manner:-

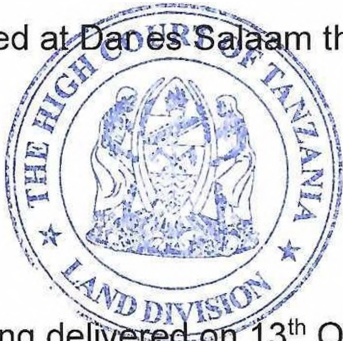
1. The Judgment, Decree, and proceedings of the District Land and Housing Tribunal for Ilala in Land Appeal No.93 of 2012 are quashed

and set aside.

2. I remit the case file to the District Land and Housing Tribunal for Ilala for retrial before another Chairman.
3. I order the amendment of pleadings in the Land Appeal No. 93 of 2012 to include the name of Shekhe Salehe, to accord him the right to be heard.
4. Mindful of the long time the matter has taken in court, I direct, the case scheduling be expedited within six months from the date of this Ruling.

Order accordingly.

Dated at Dar es Salaam this date 13th October, 2022.




A.Z.MGEYEKWA

JUDGE

13.10.2022

Ruling delivered on 13th October, 2022 in the presence of all parties.




A.Z.MGEYEKWA

JUDGE

13.10.2022