

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 34 OF 2022

*(Originating from Land Application No.33 of 2011 of the District Land and
Housing for Kinondoni at Mwananyamala)*

JACKSON ERNEST MBWILLE (as an administrator of the

Estate of the late Judith Jackson Mbville) **APPLICANT**

VERSUS

FELIX KESSY **1ST RESPONDENT**

MWAMVITA AYUB **2ND RESPONDENT**

RULING

Date of last Order: 01.11.2022

Date of Ruling: 07.11.2022

A.Z. MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Kinondoni at Mwananyamala. The application is brought under sections 41 (1) & (2) 43 (1),(b) of the Land Disputes Courts Act, Cap 216 [R.E 2019]. The application is supported by

an affidavit sworn by Jovin Tibenda, learned counsel. The 1st respondent has filed a counter affidavit deposed by Mohamed Tibanyendera, learned counsel.

When the revision was placed before me for hearing on 10th October, 2022, the applicant had the legal service of Mr. Mshituma, counsel and the 1st respondent enjoyed the legal service of Mr. Mohamed Tibanyendera. The 2nd respondent was served through substitution of service on 27th October, 2022 and the matter was set for hearing on 1st November, 2022. However, the 2nd respondent did not show appearance. Therefore this court granted the applicant's Advocate prayer to proceed *ex parte* against him.

The applicant was the first one to kick the ball rolling, Mr. Mshituma urged this Court to examine the *ex parte* Judgment and Decree arising from Land Application No.33 of 2011. He submitted that the applicant is the administrator of the estate of the late Judith Jackson Mbwire who is the lawful owner of the suit land. Supporting his submission he referred this Court to annexure IM-1. Mr. Mshituma went on to submit that in the previous case the 1st respondent lodged a case against the 2nd respondent and claimed land ownership and the Chairman declared him the lawful owner of the suit land. He added that the applicant was not party to the

case and was not heard. The learned counsel for the applicant contended that the applicant become aware that there was an *ex parte* Judgment thus she filed an objection proceeding which was struck out in 2019. The counsel urged this Court to examine and revise the tribunal decision in Land Application No.33 of 2011 based on the fact that the applicant was not heard. Fortifying his submission he cited the case of **Haji Miraji v Linda Sadiki**, Civil Appeal No. 24 of 2016.

In conclusion, the learned counsel for the applicant beckoned upon this Court to set aside the whole proceedings and nullify the *ex parte* judgment and Decree dated 21st November, 201, allow the appeal, and order the applicant be heard.

In reply, Mr. Mohamed contended that the in the counter affidavit they stated that the 1st respondent is the lawful owner of the suit land and the 1st respondent in his counter affidavit stated that the Certificate of Title attached in the affidavit does not contain the name of the applicant, the name is Jueed Willy while the applicant's name is Judith Jackson. The learned counsel argued that the applicant in his affidavit has not stated that he is the administrator of the estate of the late Judeed Willy. He went on to differentiate the name appearing in the application for extension of time from the name appearing in the Certificate of Title.

Mr. Mohamed did not end there he argued that there is nowhere stated that the applicant's name is Judith Jackson Mbville. In his view, the applicant has no *locus standi* before this Court. He stressed that the 1st respondent has proved his ownership by tendering documents which prove his ownership. He stated that the power of revision applies only when there is an error material whereas this Court can rectify the errors. To support his submission he referred this Court to the case of **Abdallah Hassan Juma Kiboko**, Land Revision No.2 of 2019. It was his submission that in the circumstances at hand the parties were heard.

On the strength of the above submission, he urged this Court to dismiss the application.

In his rejoinder, the learned counsel for the applicant reiterated his submission in chief. He submitted that Mr. Mohamed's submission in regard to the applicant's name is from the bar. He submitted that the circumstances of the case at hand and in the case of **Haji** (*supra*) are similar as the party was not given an opportunity to be heard. He added that the names of Judith Jackson Mbville are stated in the letter of administration of the estate. Ending, he urged this Court to nullify the proceedings in Land Application No. 33 of 2019.

Having heard the submissions of the applicant and respondents in and against the application, the issue for consideration is whether or not the applicant was denied the right to be heard.

I had to scrutinize the records of the Land Application No.33 of 2019 to find out what transpired. There is no dispute that the applicant was not a party to the Land Application No. 33 of 2011. The parties were the first and second respondents. In the said case the 1st respondent was declared the lawful owner of the suit land. The applicant is claiming that he is the lawful owner of the suit land while the counsel for the 1st respondent in paragraphs 4 and 7 of his counter-affidavit and his submission valiantly contended that the 1st respondent is the legal owner of the suit land thus, the applicant is put to strict proof.

The learned counsel for the 1st respondent has submitted in length on the evidences on record while at this juncture, this court is not in position to analyse whether Judith Jackson Mbville has no locus standi to raise her claims because her name is not stated in the Certificate of Title. At this juncture, this Court is tasked to examine whether the applicant has shown interest in the suit property. The applicant in paragraph 2 of his

affidavit alleges that she is the owner of the suit and that her piece of land was included in the 1st respondent's land.

The right to a fair hearing of a subject, *audi alteram partem* rule is one of the aspects of the principles of natural justice as stipulated under Article 13 (6) (a) of the Constitution which reads thus: -

(6) To ensure equality before the law, the state authority shall make procedures that are appropriate or which take into account the following principles, namely: (a) when the right and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and the right of appeal or another legal remedy against the decision of the Court or of the other agency concerned. [Emphasis added].

From the above-quoted text, the available record, and the learned attorneys' submissions, it is clear to me that upon concluding the case to which the applicant was not a party, the trial court extinguished the alleged applicant's title on the suit land without affording him the right to be heard, leave alone a fair hearing. I am in accord with the applicant that he was condemned unheard. 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 the right to be heard failure to afford a hearing before any decision affects the rights of any person.

As herein above stated, more so on the legal effects of such a serious denial of the individual's right to be heard, this is not the first time this Court and the Court of Appeal of Tanzania have confronted the situation. See- **Eco Tech (Zanzibar) Limited v Government of Zanzibar**, ZNZ Civil Application No. 1 of 2007 and, **DPP v. Sabina Tesha & 2 Others** [1992] T.L.R 237, from an unbroken chain of authorities. For instance, in **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 adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice."

Similarly, in the case of **Patrobert D Ishengoma v Kahama Mining Corporation Ltd and 2 others** Civil Application No. 172 of 2016 which was delivered on the 2nd day of October 2018 the Court of Appeal of Tanzania held that:-

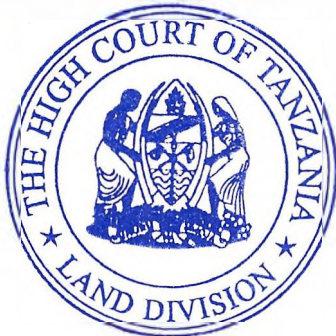
" It is settled law that no person shall be condemned without being heard is now legendary. Moreover, it is trite law that any decision

affecting the rights or interest of any person arrived at without hearing the affected party is a nullity even if the same decision would have arrived at had the affected party been heard."

As said above, as the applicant's claims of right in the suit land was determined in the proceedings where she was not a party, 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 proceeds to revise the proceedings of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 33 of 2011. I nullify the proceedings of the trial tribunal, quash its decision and set aside the orders attached thereto. I direct that this matter be remitted to the District Land and Housing Tribunal for Kinondoni at Mwananyamala to include the name of the appellant in the case and be heard afresh. Mindful of the long time the matter has taken in court, I direct, the case scheduling be expedited within one year from the date of this Ruling.

Order accordingly.

Dated at Dar es Salaam this date 7th November, 2022.




A.Z.MGEYEKWA

JUDGE

07.11.2022

Ruling delivered on 7th November, 2022 in the presence of Mr. Jovin Tibenda, counsel for the applicant, and Mr. Hassan, counsel holding brief for Mr. Mohamed Tibanyendera, counsel for the 1st respondent.




A.Z.MGEYEKWA

JUDGE

07.11.2022