

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 189 OF 2021

(Originating from Land Application No. 48 of 2019 at Mkuranga District Land
and Housing Tribunal at Mkuranga)

**ISHAKA SWALEHE DUNDA (as administrator
of the late Direshi Mkoshi) APPELLANT**

VERSUS

**BROWN S. LUGOMA (Administrator of the estate
Of the late AMINA ALL LUGOMA) RESPONDENT**

JUDGMENT

Date of the last order: 15.06.2022

Date of Judgment: 23.06.2022

A.Z.MGEYEKWA, J

The appellant appealed to this court following her dissatisfaction with the decision of the District Land and Housing Tribunal for Mkuranga in Land Application No.48 of 2019 which was decided in favour of the respondent. A brief background of the case relevant to this appeal is that

the appellant filed an application before the District and Housing Tribunal for Mkuranga and before hearing the matter on merit, the respondent raised a preliminary objection claiming that the application is *Res judicata*. The District Land that the trial Tribunal overruled the objection and suo motu determined the matter that the Ward Tribunal order was executed through Misc. Application No. 08 of 2018 and decided that the best remedy was for the appellant to file an appeal not lodge a new application. The Chairman dismissed the application.

Dissatisfied the appellant knocked on the gates of this court with three grounds of appeal. The grounds of appeal can be crystallized as follows:-

1. *That, the Honourable trial Tribunal erred in law and facts by dismissing the Appellant's case, that is, Application No. 48 of 2019 without hearing the Appellant.*
2. *That, the Honourable trial Tribunal erred in law and facts by its failure to consider that the issue of ownership of the land in dispute between Appellant and Respondent had never been determined.*
3. *That the Honourable trial Tribunal erred in law and facts by ruling that execution had already been complete while actually the Appellant and his fellow heirs of the estate of their deceased father are in full occupation of the land in dispute todate.*

The hearing proceeded through audio conferencing, and the appellant and the respondent appeared in person.

The appellant opted to combine the three grounds of appeal because they are intertwined. He argued that the Chairman stated that the appellant has not adduced good reasons to move the tribunal to restore the application. He asserted that he was showing appearance at the tribunal while the respondent did not show appearance later they were informed that Amina Lugoma has passed away. He claimed that while the matter was ongoing the Chairman dismissed the application on the ground of non-appearance then he decided to lodge an appeal before this court. He claimed that the trial tribunal decided the matter in favour of the late Amina and she lodged an application for execution and the District Land and Housing Tribunal held that the execution was effected via Misc. Land Application No. 08 of 2018.

In his reply, the respondent was brief. He submitted that the main case was decided to its finality and the trial tribunal decided the matter in favour of the late Amina. The respondent went on to submit that insisting he submitted that the Village Council also declared the late Amina the winner. He stated that he is appointed to administer the estate of the late Amina who is the lawful owner of the suit land. The respondent prayed

for this court to go through the tribunal proceeding and find that they are the lawful owners of the suit land. Ending. He urged this court to do justice.

In his rejoinder, the appellant maintained his submission in chief.

After a careful perusal of the record of the case, and the testimonies adduced by the parties I now proceed to determine the first ground that the tribunal erred in law and facts by dismissing the appellant's case that the Application No. 48 of 2019 without hearing the appellant.

It is in the records of the District Land and Housing Tribunal that the respondent raised a preliminary objection that the matter is *res judicata*. The Chairman overruled the preliminary objection and on his own motion determine a point of law *suo motu*. The legal issue which the Chairman raised *suo motu* contended that the application was overtaken by the event without inviting the parties to address him. Failure to afford the parties to submit on the matter which was raised *suo motu* by the Chairman means the parties were condemned unheard. It is trite law that a party must be afforded the right to be heard failure to afford a hearing before any decision affecting the rights of any person.

The inappropriateness of courts or tribunals raising matters *suo motu* and determining them without hearing the parties 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 to 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."

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 first ground of appeal merited and it is sufficient to dispose of the appeal and as such, I shall not belabour on other grounds raised by the appellant.

In the upshot, I quash the decision and order of the District Land and Housing Tribunal for Mkuranga in Land Appeal No. 48 of 2019. I direct that this matter be remitted back to the District Land and Housing Tribunal for Mkuranga to be heard afresh by another Chairman of the Tribunal.

Order accordingly.

DATED at Dar es Salaam this 23rd June, 2022.



A.Z.MGEYEKWA

JUDGE

23.06.2022

Judgment delivered on 23rd June, 2022 via audio conference whereas both parties were remotely present.



A.Z.MGEYEKWA

JUDGE

23.06.2022