IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 40 OF 2022

(Arising from Land Appeal No. 7 of 2019 of the District Land and Housing for Temeke at Dar es Salaam dated 30th December, 2020)

THE ATTORNEY GENERAL ..... APPLICANT

VERSUS

STELLA RUTAGUZA ..... 1ST RESPONDENT

FAUSTINE MANYILLIZU ..... 2ND RESPONDENT

RULING

Date of last Order: 13.02.2023

Date of Ruling: 16.02.2023

A.Z. MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Temeke at Dara es Salaam. The application is brought under section 43 (1) (b) and (2) of the Land Disputes Courts Act, Cap.216, [R.E 2019], sections 79 and 95 of the Civil Procedure Code Cap.33

[R.E 2019] and section 17 (1) (a) of the Office of Attorney General (Discharge of Duties Act, Cap. 268 [R.E 2019]. The application is supported by an affidavit sworn by Mr. Lukelo Samwel, Principal State Attorney.

The dispute pits the applicant against the respondents, and the applicant's prayer is for this court to call and revise the proceedings, judgment, decree, and orders of the District Land and Housing Tribunal for Temeke made by Hon. Chenya R. L Chairman dated 30th December, 2020 in Land Appeal No.7 of 2019 for purpose of satisfying itself on the correctness, legality and propriety of the findings and the orders thereof. The 1st respondent did not oppose the application. The 2nd respondent opposed the application by filing a counter affidavit deponent by Faustine Manyillizu, the 2nd respondent.

When the matter was called for hearing on 19th December, 2022, the applicant was represented by Mr. Lukelo Samwel, learned Principal State Attorney while the 1st respondent appeared in person, unrepresented and the 2nd respondent enjoyed the legal service of Mr. Mnyira Abdallah, learned counsel.

Submitting in support of the application, the learned Principal State Attorney submitted that On the 22nd September 2022, Applicant herein filed the instant application praying for this Honourable Court to call and revise the

proceedings, judgment, decree, and orders of the District Land and Housing Tribunal for Temeke dated 30th December 2020 to satisfy itself on the correctness, legality or propriety of the findings and orders thereof. The grounds of this application as stated as follows:-

1. *The District Land and Housing Tribunal for Temeke erred in giving a decision without ascertaining from the allocating authority on whether the land in dispute is a public pathway or a surveyed plot for residential purposes.*
2. *That the District Land and Housing Tribunal for Temeke wrongly upheld the decision of Makangarawe Ward based on the evidence adduced by the 2nd Respondent at the Ward Tribunal while the said was not a representative of the allocating authority nor government officer to confirm or disprove the same.*
3. *That the District Land and Housing Tribunal for Temeke wrongly decided the case based on the false evidence adduced by the 2nd Respondent to the effect that the said land was reserved for a public pathway and that the construction of the fence by the Respondent is contrary to the town planning which is not the case.*

Mr. Lukelo went on to submit that they have filed the instant application because the District Land and Housing Tribunal decision is tainted with illegalities hence arriving at an erroneous decision. The learned State Attorney urged this Court to adopt the applicant's chamber summons supporting the applicant's State Attorney's affidavit to form part of this submission. Mr. Lukelo stated that it is undisputed fact that this dispute involved private individuals, one claiming ownership of the surveyed Plot 844 Block 'A' located at Yombo Makangarawe and the other one claiming the right of the pathway across the said Plot towards his residential house.

The learned Principal State Attorney continued to argue that the applicant in the instant application is representing the Government and as far as the instant application is concerned it is the Commissioner for Lands who has the mandate and the power to allocate land to the eligible applicant. He contended that the applicant was not a party to the proceeding at the trial tribunal but only came to realize later that the decision of the Tribunal has a direct effect on his mandate as the allocating authority and the applicant has explicitly displayed his interest in the affidavit. To bolster his submission he referred this Court to paragraphs 9, 10, and 11 of the applicant's affidavit.

Mr. Lukelo further submitted that the land in dispute is a surveyed land and was legally allocated to the 1st Respondent by the Government authority as reflected under paragraphs 8 and 13 of the applicant's affidavit. He stated that the applicant's affidavit specifically paragraphs 10 shows that there is no public pathway to the land in dispute. Therefore, it was his view that the District Land and Housing Tribunal, therefore, erred in arriving at its decision without summoning necessary parties from allocating authority that is Commissioner for Lands or Land Officer from Temeke Municipality to prove or disprove the contention of both parties over the land in dispute. Supporting his submission he referred this Court to paragraphs 8 and 12 of the Applicant's affidavit.

The learned Principal State Attorney went on to submit that the 2nd Respondent in his Counter affidavit significantly does not dispute that the land was surveyed but he insists that the Title Deed was obtained after the judgment. It was his view that obtaining a Title Deed is a second step after the survey, therefore obtaining a title deed after the Judgment does not refute the truth that the land in dispute was surveyed. He contended that in such circumstances, the District Land and Housing Tribunal ought to have been keen enough to order the officer from allocating authorities to be summoned

since the evidence from their side was crucial for a complete determination of the matter. To support his contention, Mr. Lukelo placed reliance on the decision of the Court in **Mbeya Rukwa Autoparts and Transports Ltd v Jestina George Mwakyoma** (2003) TLR 251. He stated that principally the holding in the said case requires the state authorities to before giving its decision which may turn to affect other parties, thus in his view affording such other person the opportunity to be heard is one of the fundamental principles of natural justice. To cement his submission, he cited the case of To bolster his stance on the principle of the right to be heard, he sought refuge in the decision of the Court of Appeal of Tanzania in **Tanzania Commercial Bank PLC (Successor in title to TPB Bank PLC) v Rehema Alatunyamadza & 3 others**, Civil Appeal No.155/2021, (unreported) and referred this Court to Article 13 (6), (a) of the United Republic of Tanzania.

On the strength of the above submission, he beckoned upon this Court to grant the applicant's prayers.

Responding, the 2nd respondent argued that the applicant is misleading this court. He submitted that this case is not related to ownership of the land in dispute. He stated that the dispute emanated from the course of the respondent to enclose the public pathway and at that time the said land was

not surveyed and the 2nd Respondent filed Civil Case No. 15/2016 before Makangarawe Tribunal the said land was not yet surveyed. The 2nd respondent argued that the record shows that the Respondent is the one who lodged an appeal to the District Tribunal and then appeal to the High Court. It was his submission that there were no any documents tendered to reflect that the land in dispute was surveyed. The 2nd respondent's counsel contended that the District Land and Housing Tribunal determined the appeal and under that circumstance, there was no any room to rehear again the case by calling lands officers to testify as a witness since the said appeal was res judicata. The learned counsel for the 2nd respondent continued to argue that going through the judgment of Hon. Mgonya, J in Misc. Land Appeal No. 7 of 2017 on page 5 this Court refused to determine the issue of irregularity as raised by the respondent.

In the premises, the 2nd respondent's counsel pressed the Court to find that the instant application is bad in law for violating the principle of *res judicata*.

In his rejoinder, Mr. Lukelo reiterated his submission in chief. Stressing on the point of a party who is not a party to the case, he stated that the impugned decision has affected a person who was not a party to the case and thus, the

only remedy is to afford him/her right to be heard. Ending, the learned Principal State Attorney urged this Court to grant the applicant's application.

Having gone through the submissions of the applicant it appears that the issue for determination is the *whether the application is meritorious*. I had to scrutinize the records of the Land Appeal No. 7 of 2019 and Land Application No. 15 of 2016 to find out what transpired at the said tribunals. I have perused the records and noted that the 2nd respondent is the one who lodged a case at the trial tribunal he wanted the 1st respondent to pave the way in her Plot. The trial tribunal determined the matter *exparte* against the 1st respondent and decided the matter in favour of the 2nd respondent. The 1st respondent unsuccessfully filed an application No. 37 of 2018 to set aside the *exparte* judgment. The 1st respondent also lost her case in Land Appeal No.7 of 2019.

The learned counsel for the respondent in his reply contended that this Court determined the Misc. Land Appeal No. 7 of 2017 which was before Hon. Mgonya, J whereas my learned sister dismissed the appeal. I have read the said Application and noted that the parties to the proceedings were Stella Lutaguza and Dr. Faustine Manyillizu, the Attorney General was not a party to the said proceedings. In Misc. Land Appeal No. 7 of 2017, Stella's claims were in regard to Application No. 229 of 2016, the applicant's prayer for an

extension of time was not granted and this Court refused to set aside the decision of the tribunal. While in the matter at hand, the applicant was not a party to the case and he wants to join as a necessary party to the case. Therefore, I find that the matter before this Court is brought by a proper party who can move this Court to determine the revision.

Back to the applicant's application, there is no dispute that the applicant was not a party to the case, and the 1st respondent in her testimony before the District Land and Housing Tribunal testified to the effect that the suit land is a surveyed land. Therefore, the applicant's claims which are related to surveyed plot conducted by the Commissioner for Land are attracting the attention of this Court. I am saying so because in any surveyed land the Commissioner for Land is a necessary party to the case. But in the matter at hand, the Commissioner for Land was not called to testify at the tribunal or joint as a necessary party on which the District Land and Housing Tribunal was in a position to allow the 1st respondent's appeal by allowing her to lodge a suit which will include all necessary parties.

For the aforesaid findings, I fully subscribe to the submission of Mr. Lukelo that the applicant deserves to be heard. 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 affording the applicant an opportunity to be heard will allow the tribunal to adjudicate the matter related to a surveyed 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 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. In the case of **Tan Gas Distributor Ltd v Mohamed Salim Said**, Civil Application for Revision No. 68 of 2011, the Court of Appeal of Tanzania 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."*

Following the above findings and analysis, 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 Temeke in Land Appeal No.7 of 2019 in the following manner: -

i. I nullify the proceedings of both tribunals, quash and set aside the Judgment, Decree of the District Land and Housing Tribunal in Land Appeal No. 7 of 2019, and the Ward Tribunal in Land Case No. 37 of 2018 and all other orders issued thereto.

ii. I direct that this matter be remitted to the District Land and Housing Tribunal for Temeke to include the applicant as the necessary party to the case and be heard afresh.

iii. 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.

iv. No order as to cost.

Order accordingly.

Dated at Dar es Salaam this date 16th February, 2023.

THE HIGH COURT OF TANZANIA
LAND DIVISION

A.Z.MGEYEKWA
JUDGE
16.02.2023

Ruling delivered on 16th February, 2023 in the presence of the respondent and Mr. Salehe Manoro, learned State Attorney for the applicant.

A.Z.MGEYEKWA

JUDGE

16.02.2023