

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA**

LAND APPEAL NO. 05 OF 2021

(Arising from Misc. Land Application No. 268 of 2020 in the District Land and Housing Tribunal for Mtwara at Mtwara, Hon. H. I, Lukeha (Chairman), Ruling dated 23.12.2020, Originating from Land Case No. 03 of 2016 in the Nambali Ward Tribunal)

RASHIDI MWALIMU CHIPETA..... 1ST APPELLANT
HARUNI SAID KUJOHA CHIHAKO 2ND APPELLANT

VERSUS

SWALEHE ISMAIL MAMU RESPONDENT

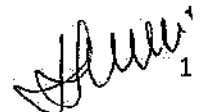
Date of Last Order: 02/11/2021

Date of Judgment : 24/11/2021

JUDGMENT

Muruke, J.

Appellants filed land dispute number 3 of 2016 at Nambali Ward Tribunal, that ended in favour of respondent on November 2016. They filed different kind of cases ranging from criminal to civil in which they were both not successfully. It is until 30th July 2020 when they filed an application for extension of time to file revision of Nambali Ward Tribunal in land case number 3 of 2016. Their application for extension of time was refused for lack of sufficient cause. They have now filed present appeal raising grounds of appeal in terms of memorandum of appeal dully filed. On the hearing date, it was ordered that hearing to be by way of written submission. I have gone through both parties submissions central issue is right be heard, to the appellants. From the records, as articulated by



respondent, they have filed different kind of cases ranging from Civil to Criminal. All these shows that, appellants were fighting for right to be heard. Right to be heard is fundamental rights. Failure to observe the same vitiates proceedings. Right to be heard is one of the fundamental principles of natural justice that cannot be easily ignored.

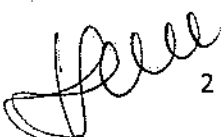
Right to be heard was insisted in the case **Ezekiah T. Oluoch Vs. The Permanent Secretary, President's Office, Public Service Management and 4 others, Civil Appeal No. 140 of 2018** (unreported) at Dar es salaam Registry, where Court of Appeal held.

The right to be heard has been emphasized by the court in various decisions. Some of which are in the case of **Mbeya Rukwa Autoparts and Transport Ltd Vs. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000**, the Court of Appeal held that:-

"In this country natural justice is not merely a principle of common law. It has become a fundamental constitutional right. Article 13 (6) (a) include the right to be heard amongst the attributes of equality before the law..."

Similar position was held in the case of **Abbas Sherally and Another Vs. Abdul S.H.M. Fazal boy, Civil application No. 33 of 2002** (unreported), where it was held that;

"The right of a party to be heard before the adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That the right is so basic that a decision which is arrived at 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."



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The right to be heard is safeguarded in the constitution, Article 13(6)(a) of the constitution, provides in Kiswahili version thus;

(6) kwa madhumuni ya kuhakikisha usawa mbele ya sharia, mamlaka ya nchi itaweka taratibu zinazo faa au zinazo zingatia misingi kwamba-

(a) wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinacho husika.

It is opinion of this court that, appellants be heard on their appeal. Thus ruling of District Land and Housing Tribunal of Mtwara refusing extension of time is quashed and set aside. Appellants are granted 60 days from today within which to take necessary step. This is fairly old dispute, same to be finalized within six months from the date applicants filed their application.

Since execution of the decree in land case number 03/2016 of Nambali Ward Tribunal has taken place, Respondent to continue occupying and using the disputed land until reversed by District Land and Housing Tribunal for Mtwara, upon hearing both parties on merits.



Z. G. Muruke
Z. G. Muruke

Judge

24/11/2021

Judgment Delivered today in the presence of appellants and respondent,
both in person.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

Judge

24/11/2021