

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MWANZA  
AT MWANZA**

**LAND REVISION NO. 9 OF 2021**

**MAYUYA'S ENTERPRISES LIMITED.....APPLICANT**

versus

**KASCCO MINING LIMITED.....RESPONDENT**

**EXPARTE RULING**

**15<sup>th</sup> & 25<sup>th</sup> November, 2021**

**RUMANYIKA, J:.**

On 1/11/2021, as judge in charge in ordinary course of business therefore administratively having had received a letter of complaints of Mayuya's Enterprises Ltd in this context (the applicant) dated 1/11/2021, with the court's view to satisfying itself on correctness, legality and propriety of it all, with respect to Land Application No. 52 of 2021 and Misc. Land Application No. 143 of 2021 of Geita District Land and Housing Tribunal for Geita at Geita (the DLHT), I called for the records hence the instant suo motu proceedings. When the matter was called on 15/11/2021 for hearing, Mr. Mwita Emmanuel learned counsel appeared for the applicant. Although duly served through mobile number 0788 972 672 Kascco Mining Ltd (the respondents) did not appear it is for that reason

that pursuant to my order of 15.11.2021 their appearance was dispensed with hence the ex parte ruling. I heard the applicant's counsel through mobile number 0719 211 549.

In a nutshell, Mr. Mwita Emmanuel learned counsel submitted; **(a)** that just in the applicant's back the two matters having had been filed, decided on the same 13/10/2021 but the applicant improperly/prematurely evicted from the disputed premises, this was a fit case for the court to nullify the proceedings and set aside the decision **(b)** that the filing fees were paid after the date the matters were decided given the dates of the impugned orders because a filing date was the date the filling fees were paid (case of **John Chuwa v. Anthon Siza** (1992) TLR 233 (CA)) **(c)** that contrary to the principles of natural justice the applicant was condemned unheard much as ex parte orders needed be issued sparingly much as the parties worked for gains/resided almost in the same locality but no attempts to serve the applicant were ever made **(d)** that the provisions of S.103(1) of the Land Act applied only where a tenant defaulted and was notified but that fact wasn't even pleaded before because with respect to renewal or termination (Clause 10.2) according to

the principle of sanctity of contract the parties were bound by their contract. The learned counsel further contended.

The central issue is whether with respect to Land Application No. 52 of 2021 the eviction order of 13/10/2021 was properly made. At least the records of the DLHT speak louder and clear that upon filing of the matter on 13/10/2021, it appears for necessary orders it was called on 25/10/2021 but this time only Advocate Leonard Slylivanus appeared for the respondent then again only for necessary orders the application was adjourned to 21/11/2022 that one was the last order on record. That is it.

Also from the records, along with it, but as main land application stood pending in the DLHT, filed under a certificate of urgency Misc. Land Application No. 143 of 2021 in favor of the respondent it was in the interim ex parte heard and granted such that for the reason of refusal to pay rent or something (para 5 -10 of the affidavit) pending interpartes hearing the present applicant was evicted. The applicant may have had defaulted and if heard by no stretch of the imagination not justified his refusal/failure to pay rent granted, but for the violation of the principles of natural justice given the strict trite law that where the right to be heard was proven breached it is immaterial that had the parties been heard the

decision would remain the same (case of **Abbas Sherally and Another v. Abdul S.H.M Fazalbay**, Civil Application No.33 of 2002 (CA)) unreported.

Like, precisely so in my view argued by Mr. Mwita Emmanuel learned counsel, not only exparte orders needed be sparingly made but also the impugned orders were improper and uncalled for under the circumstances leave alone the DLHT's supersonic speed given the cause of action stated by the respondent. It follows therefore that except where the subject matter was perishable by nature or the applicant was likely to suffer irreparable loss, if anything in the present case rent arrears were not perishable, the DLHT should not have entertained the exparte proceedings in the first place leave alone a certificate of urgency much as the purported "interim" exparte order preempted and actually it suffocated the pending main application suffices the point to dispose of the matter. It is very unfortunate that as court officer the respondent's counsel did not accordingly advise the chair. It is for the herein above stated reasons that I nullify the impugned proceedings and set aside the exparte orders. With immediate dispatch therefore, I remit the records to the DLHT with the direction that the two matters shall, as soon as practicable be heard by

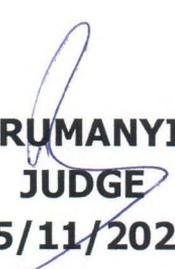
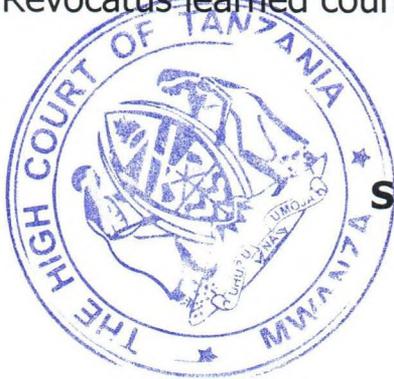
another chair with competent jurisdiction with a new set of assessors. The respondent is condemned for costs. It is so ordered.

Right of appeal explained.



**S.M. RUMANYIKA**  
**JUDGE**  
**24/11/2021**

The ruling delivered under my hand and seal of the court in chambers this 25/11/2021 in the presence of Mr. Raphael Lukindi and Mr. Sijaona Revocatus learned counsel.



**S.M. RUMANYIKA**  
**JUDGE**  
**25/11/2021**