

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MWAMBEGELE, J.A., LEVIRA, J.A., And RUMANYIKA, J.A.)

CIVIL REVISION NO. 555/17 OF 2019

MUFINDI PAPER MILLS LIMITED APPLICANT

VERSUS

IBATU VILLAGE COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE PERMANENT SECRETARY

THE MINISTRY OF REGIONAL ADMINISTRATION.....3RD RESPONDENT

AND LOCAL GOVERNMENT

THE DISTRICT COMMISSIONER

NJOMBE DISTRICT.....4TH RESPONDENT

**(Revision Arising from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Mjemmas, J.)

dated 30th day of October, 2015

in

Civil Application No. 532/17 of 2017

.....

RULING OF THE COURT

18th & 29, September, 2022

RUMANYIKA, J.A.:

This is an application for revision of the proceedings and decision of the High Court of Tanzania (Mjemmas, J.) dated 30/10/2015. It has been brought by way of a notice of motion taken under section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 RE 2002, (the Act). The application is supported by an affidavit of Saride Venkata Satyanarayana, Principal Officer (Business Manager) of the applicant. The respondents

contested it by way of an affidavit in reply deposed by Hangi M. Chang'a, the respondents' representative filed on 23/03/2020.

At the hearing of the application, Mr. Charles Rwechungura, learned counsel appeared for the applicant, whereas the respondents had the services of Mr. Hangi Chang'a and Ms. Stella Machoke both learned Principal State Attorneys.

Briefly, before the High Court of Tanzania (Land Division), the trial court, there was Land Case No. 201 of 2009 (the suit) where, the 1st respondent successfully sued the 2nd, 3rd and 4th respondents for recovery of a parcel of land known as Farm No. 929 located at Ibatu Village in the district and region of Njombe (the suit land). In that decision, on account of what it termed improper allocation of the title, the trial court nullified the applicant's Certificate of Title No. 12054-MBYLR, LO No. 332643, LD No. 277003 just in the latter's back among other orders, which decision, the applicant knew after lapse of one and a half years in April, 2017 when the Ministry of Industry and Investment drew it to its attention. As the applicant was aggrieved by that decision and was time barred to file a revision to challenge its correctness, it sought and was granted extension of time on 21/10/2019. Thereafter, it filed the present application on one ground, namely; that it lawfully owned the suit land but was condemned unheard, as it was not made a party to the proceedings. Nonetheless, the trial court extinguished its

title. This ground, we are settled in our mind is capable of disposing of the entire application.

At the outset of the hearing of this application, Mr. Chang'a before adopting the 2nd, 3rd and 4th respondents' written submissions, he readily rose to support the application and tell the Court that, indeed the trial court nullified the applicant's Certificate of Title irregularly hence denied her the right to be heard and for that reason the trial court's proceedings are flawed, thus, liable to be nullified. He asked us to nullify those proceedings and make any other appropriate orders. To bolster his argument, he cited Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended (the Constitution). Additionally, he submitted that an adverse decision made against any person without that person being heard is a nullity however righteous that decision may be. On this point, he cited our decision in **Patrobert D. Ishengoma v. Kahama Mining Cooperation Ltd and 2 Others**, Civil Application No. 172 of 2016 (unreported).

Mr. Changá further submitted that although at the trial the applicant's right or interest on the suit plot was drawn to the trial judge's attention, the Judge did not exercise his discretion properly to order joining of the applicant to the suit as envisaged under Order 1 Rule 10(2) of the Civil Procedure Code, Cap. 33 R.E 2019. Instead, he argued, the trial court proceeded to determine the parties' rights in the absence

of the applicant. That the said fundamental breach of the applicant's right to be heard rendered the entire proceedings and the subsequent decision a nullity. To amplify his argument, he cited our decision in **Tang Gas Distributors Ltd v. Mohamed Salim Said and 2 Others**, Civil Revision No. 68 of 2011 (unreported).

Mindful of Mr. Chang'a's concession to the application, Mr. Rwechungura adopted the contents of the Notice of Motion, the supporting affidavit and the written submissions, pursuant to rule 106 of the Rules filed on 18/02/2020. Briefly he argued, that Mjemmas, J in his decision of 30/10/2015 nullified the applicant's ownership over the suit land in its back as it was neither a party to the suit nor was it notified of that decision until late in the day on 05/04/2017. Mr. Rwechungura, further submitted that the applicant's denial of the fundamental right to be heard abrogated the provisions of Article 13(6)(a) of the Constitution and resulted to an irregular decision which is liable to be nullified, as we pronounced several times including in **Mbeya – Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] TLR 251 much as, he argued, the trial court was made aware of the applicant's claim of title on the suit land but nonetheless it did not order joining of the applicant to the suit as the necessary party. Winding up, Mr. Rwechungura submitted that as the applicant was denied the fundamental right to be heard, the proceedings of the High Court are

improper, irregular, flawed, and are liable to be nullified with an order of retrial, among other orders.

Having heard the learned Counsel's concession and submissions, on our part the issue for consideration is no longer whether or not the applicant was denied the right to be heard. It is whether, on account of breach of the right to be heard the trial court's proceedings are improper and tainted.

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 which are appropriate or which take into account of 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 to the right of appeal or other 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 us that upon concluding the case to which the applicant was not a party, the trial court extinguished the applicant's title on the suit land without affording him the right to be heard, leave alone a fair hearing.

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 we are confronted with 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 unbroken chain of authorities. For instance, in **Mbeya Rukwa** (supra) we held as follows;

In this country, natural justice is not merely a principle of common law; it has become a fundamental Constitutional right. Article 13(6) (a) includes the right to be heard among the attributes of equality before the law... (Emphasis added).

We followed the above said stance in a number of the subsequent cases including **Patrobert D. Ishengoma** (supra) where we held as follows;

"It is settled that, the 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 been arrived at had the affected party been heard". (Emphasis added).

We are, in this case settled in our mind that whereas the applicant was not made a party to the proceedings, nevertheless the title that she claimed in the suit land was extinguished without her being heard. On account of that breach of fundamental right to be heard, in exercise of the revisional powers conferred on us under section 4 (3) of the AJA, we are inclined to accede to the uncontested prayer of Mr. Rwechungura and hereby grant the application with costs. Consequently, we nullify the proceedings of the trial court, quash its decision and set aside the orders attached thereto. 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, the 1st respondent may wish to join her and institute a suit all over again as soon as practicable. Order accordingly.

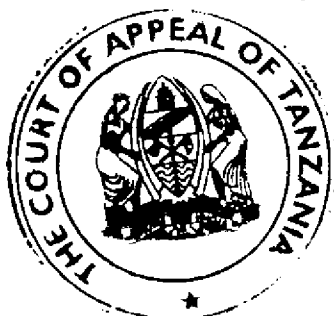
DATED at DAR ES SALAAM this 19th day of September, 2022.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The ruling delivered this 29th day of September, 2022 in the presence of Mr. Albert Lema, learned counsel for the applicant and Holding brief for Mathew Fuko, learned State Attorney for the respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL