

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 83 OF 2018

FAIZI IDDI FAIZI and PATRICK

MARCUS PUNDA (*as administrators of the Estate
of the late Marcus Punda*)

APPLICANTS

VS

ESTHER LUBANGA REUBEN.....**1ST RESPONDENT**

REUBEN LUBANGA.....**2ND RESPONDENT**

RULING

S. M. MAGHIMBI, J:

The application at hand was lodged under the provisions of section 43 (1) (b) and (2) of the Land Disputes Courts Act No. 2 of 2002. The applicant is moving the Court for orders that;

- 1) This Hon Court be pleased to inspect the legality and correctness of the decision of Temeke District Land and Housing Tribunal dated 2nd July, 2010 in Application No. 214 of 2007 and be pleased to quash it for illegality.*
- 2) Cost of the Application be provided for.*
- 3) Any other order as the Hon. Court shall deem fit to grant.*

The Chamber Summons is supported by an affidavit of the applicants. The 1st respondents opposed the application by filing their counter affidavit. The application proceeded ex-parte of the second respondent.

Brief background of the matter is that the applicants herein were the applicants in Application No. 24 of 2007 whereas, the respondent herein were the respondents. The applicants were aggrieved by the ruling of the Tribunal by Hon. Mlyambina, Chairman dated 2nd July 2010 which dismissed the application on grounds of fraud in filing the application. On dismissal, the Tribunal ordered the applicants to pay the respondents general damages to the tune of Tshs. 10,000,000/=. Aggrieved by the dismissal, the applicants have lodged this application for revision. The application was heard by way of written submission and both sides adhered to the scheduling order. The applicants' submissions were drawn and filed by Mr. Samson Mbamba, learned advocate, while the 1st respondent's submissions were drawn and filed by Mr. Roman Lamwai.

Submitting in support of the application, Mr. Mbamba pointed out the impropriety, illegality and irregularity of the proceedings of the Tribunal as expounded on paragraph 4 and 5 of the affidavit, where the applicant states that the Chairman of the tribunal himself searched for extraneous evidence in relation to the application from the Director of Criminal

investigations while the same had no nexus to the dispute and hence used such evidence to dismiss the application. From the Chairman's act, he argued, they were not given the right to be heard.

He further submitted that the Chairman turned into an investigator and wrote to the Director of Criminal Investigation to inquire on a report after it was mentioned by the respondents and reference made to it. That the Tribunal ought to have been an impartial body, it should not have taken upon its self to search for evidence. The decision of the Tribunal offended the principle that a judicial officer is to determine matters as presented by parties by their pleadings and not by extraneous matters or grounds investigated but the Court or in case of this circumstance the Tribunal. It is from the above that Mr. Mbamba prayed that the proceedings of the Tribunal and the consequent order be nullified, quashed and set-aside.

In reply, Mr. Lamwai initially pointed out that the 1st respondent herein has never admitted to be the administratix and administrator of the estate of Esther Lubanga respectively, nor have they been appointed as such. Further that the applicants have not deponed to have ever known Esther Lubanga neither have they addressed the difference of names or if they refer to the same person who was not addressed in the body of the affidavit. He hence argued that there is no enough information to link the

1st respondent and the decision sought to be revised. He cited the book of **Mulla the Code of Civil Procedure, 16th Edition Ed. Vol.2** Page 234 and 2342;

"The essential ingredients of an affidavit are the statement or declaration made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statement made in the presence of a person who in law is authorised either to administer oath or accept the affirmation".

It was Mr. Lamwai's argued that from the book of Mulla, the relevant part of affidavit is where the declaration was made, starting just after the title "Affidavit in support of the amended Chamber summons". He then submitted that nothing links the two names that is Esther Lubanga and Esther John Mkeu to mean one person. They invited the Court to rule out that the application does not involve the estate of the late Esther John Mkeu whereas the respondents are administratrix and administrator.

Having addressed the above, Mr. Lamwai reply started by not disputing that the Order dated 2nd July, 2010 contains serious errors and irregularities committed to the effect that the parties were deprived of their right to be heard. He however posed an issue whether when a party's right to be heard has been deprived, the Court has jurisdiction to invoke its revisional jurisdiction? His answer was in the negative arguing that the

parties ought to have appealed against the decision and not seek for revision. The case of **Registered Trustees of Social Action Trust Fund and Another vs Happy Sausage Ltd and Ten Others [2002] T. L. R 285** was cited to support the above submission.

Mr. Lamwai emphasized that the applicants herein were to appeal against the decision of the District Land and Housing Tribunal and that the principle to entertain the application for revision while the party has the right to appeal is the same as an appeal in disguise. He prayed for the dismissal of the application.

In rejoinder, Mr. Mbamba replied on the purported objection arguing that the objection was not formerly raised. He then urged the court not to waste time on the issue raised because the same was not disputed in the counter affidavit of the 1st Respondent. He then reiterated his submission that the application herein is to challenge the correctness, legality and irregularity of the proceedings of the lower Court and the same can be done by a revision which is more proper than an appeal.

I have gone through the records of this application and the submissions of the parties herein. It is apparent that the applicant was aggrieved by the decision of the Tribunal which finally determined the rights of the parties herein. The applicants claim that after filing their

application, they were not accorded the right to be heard but the application was dismissed following evidence obtained by the Tribunals own efforts of searching or requesting for evidence. It is obvious that the applicants were not heard to finality. The illegality can therefore be rectified by way of revision since the decision of the tribunal did not involve the parties herein, it was rather like having a court sitting on an inquiry calling for its own evidence.

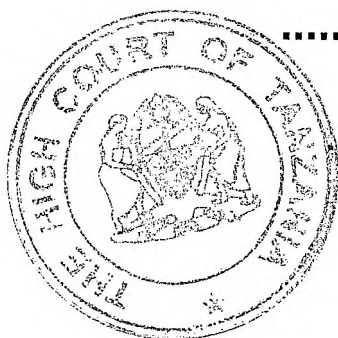
Reading through the said decision at pages 3 and going through the proceedings it is revealed that the 1st respondent was the one that informed the Court of a Criminal Investigation report that were conducted in respect of the matter at hand. It is from such circumstance that the Chairperson made efforts of obtaining the said reports. A letter from the Tribunal was addressed to the police authority for the same to furnish the tribunal with the report. It was until when the report was received that the contents of the report caused the applicants matter to have been dismissed without affording parties an opportunity to be heard.

It is the duty of any judicial or quasi-judicial body, when sitting to determine rights of parties, to hear both parties on the matter filed before it. **Article 13 (6)(a) of the Constitution of the United Republic 1977**, as amended from time to time comes in place which provided for

the right to be heard as one of the fundamental principles of natural justice. The records show that the applicants were never given the chance to see the report, nor cross examine on it. Neither did the respondent who had introduced the existence of the said report. After receiving the said report, the Chairman used it to dismiss the application before the Court without giving the parties the chance to ponder on it which was an act against the principles of natural justice rendering the whole decision illegal.

On those observations and right to be heard being fundamental, this application is hereby allowed. The ruling of the tribunal is revised, quashed and set aside. The application is remitted back to the District Land and Housing Tribunal to be heard on merits so as to afford all parties an opportunity to be heard based on the principles of natural justice. Given the nature of the decision, I make no order as to costs.

Dated at Dar es Salaam this 11th day of September, 2023.



A handwritten signature in black ink, appearing to be "S. M. Maghimbi", is written over a dotted line.

S. M. MAGHIMBI
JUDGE