

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

LAND APPEAL NO. 36 OF 2016

*(From the Decision of the District Land and Housing Tribunal of
Dodoma District at Dodoma in Land Application No. 55 of 2016)*

JACOB LEMANYA	APPELLANT
VERSUS		
1. THE VILLAGE CHAIRMAN HOMBOLO MAKULU VILLAGE	1st RESPONDENT
2. REGISTERED TRUSTEES OF CATHOLIC DIOCESE OF DODOMA.	2nd RESPONDENT

JUDGMENT

10/11/2016 & 06/12/2016

SEHEL, J.

This is a judgment on an appeal filed by the appellant against the ruling of the District Land and Housing Tribunal for Dodoma at Dodoma District in Land Application No. 55 of 2016 that dismissed the appellant's application.

The facts of the case that gave rise to the present appeal can be canvassed that the appellant, an administrator of the estates of his late father, instituted a suit in his own name against the respondents. The respondents through their advocate, Mr. Nyabiri ~~and~~

raised a preliminary objection that the 1st respondent, the village Chairman of Hombolo Makulu village is not a legal entity capable for being sued, so the application is incompetent. The trial Tribunal upheld the objection. Apart from upholding the preliminary objection, the Honourable Chairman also considered two more issues that were not raised by any party. The act of the Honourable Chairman in posing issues in his decision without giving parties right of being heard, caused grievances to the appellant. In one of his five grounds of appeal he complained that they were not given right of being heard. As this ground is sufficient to dispose of this appeal I shall not dwell on other grounds.

Mr. Machibya, learned advocate for the appellant argued that the Honourable Chairman raised the issues of time limitation and locus of the appellant in his ruling without giving parties the opportunity of being heard. On this Ms. Gabriel, learned advocate for the respondents said it was proper since the issues raised have merit.

From the parties' submissions, it is not in dispute that the Honourable Chairman who heard the dispute raised two issues when he was composing the ruling and parties were not given a right of being heard. The Court of Appeal of Tanzania has held time and again that a denial of the right to be heard in any proceeding would vitiate the proceedings. See for example, **ECO-TECH**

(Zanzibar) Limited vs Government of Zanzibar, ZNZ Civil Application No. 1 of 2007 (unreported); **Abbas Sherally & Another vs Abdul S. H. M. Fazalboy** – Civil Application No 33 of 2002 (unreported); and **Mbeya-Rukwa Auto Parts & Transport Limited vs Jestina George Mwakyoma**- Civil Appeal No. 45 of 2000 (unreported) just to mention a few.

Referring to the right to be heard as enshrined in the Constitution the Court of Appeal of Tanzania in the **Mbeya- Rukwa** case (supra) held:

"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 amongst the attributes of equality before the law and declares in part:

(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu."

Further in the case of **Abbas Sherally** (Supra) the Court of Appeal of Tanzania held:

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

As indicated earlier, parties were not invited to address the Honourable Chairman on the issues of time limitation and locus standi. Therefore, the parties were denied the right to be heard on the questions raised and I am satisfied that in the circumstances of this case the denial of the right to be heard on the question of time bar and locus standi vitiated the whole ruling and drawn order of the District Land and Housing Tribunal.

I find merit in this appeal which I accordingly allow by declaring the ruling of the District Land and Housing Tribunal dated 22nd day of March, 2016 and its drawn order as null and void. I proceed to quash and set them aside. I further make an order that the case be remitted to the District Land and Housing Tribunal and be heard by another set of Tribunal members and they shall proceed from the proceedings of 2nd day of March, 2016 when the matter was set down for ruling. Should the new Tribunal members consider that there is need to look into the questions of limitation of time and locus standi then they should invite the parties to address it on the issues.

Since the appeal is allowed on legal technicality, I make no order to costs as the mistake was occasioned by the District Land and Housing Tribunal. It is so ordered.

DATED at Dodoma this 06th day of December, 2016.



B.M.A Sehel

JUDGE

Judgment delivered at Dodoma, under my hand and seal of the court, this 06th day of December, 2016 in the presence of Ms. Gabriel, advocate holding brief for Mr. Machibya , advocate for the appellant and Ms. Gabriel, advocate for the respondents.



B.M.A Sehel

JUDGE

06th December, 2016.

