IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA
MISCELLANEOUS LAND APPEAL NO. 39 OF 2022
(Arising from the District Land and Housing Tribunal for Kondoa in Land Appeal No. 21 of 2022)

ANNA MALIMA.....APPELLANT
Versus
MAPINDUZI GISU .....RESPONDENT

JUDGMENT

Date of Last Order: 10th August 2023.
Date of Ruling: 25th August 2023.

MASABO, J:-

This is a second appeal. It originates from Gwandi Ward Tribunal, Kondoa District in Dodoma Region where the appellant, Anna Malima successfully sued the respondent who allegedly trespassed her land. Agrieved, the respondent appealed to the District Land and Housing Tribunal for Kondoa (the appellate tribunal) which reversed the decision of trial tribunal and declared him the owner of the suit land. The respondent is enraged by the reversal. She has filed this appeal on the following grounds: -

1. That, the land tribunal erred in law and in fact to declare the respondent as owner of the disputed land without considering that the appellant herein was never served with the grounds of appeal and never had the opportunity to reply or be given the right to be heard in the trial.
2. That, the tribunal erred in law and in fact by stating that the respondent acquired the land in quo through purchasing without taking into consideration the fact that the respondent

had never tendered the sale agreement to prove the alleged purchase.

3. That, the land tribunal erred in law and fact to declare respondent as owner of disputed land basing on the purported agreement without considering the fact that appellant and her husband never sold a land rather leased the same thus there are elements of forgery.
4. That, the tribunal erred in law and in fact by entertaining the appeal against the law which is the written laws (Misc. Amendments) (No. 3) Act of 2021.
5. That, the two tribunals below failed to address themselves on the authenticity of the purported agreement.

The brief facts of the case as discernible from the record are that, the appellant sued the respondent in the trial tribunal for taking her land measuring sixteen acres. The respondent on his part stated that he bought the suit land from the appellant in 2011 at a consideration of Tshs. 220,000/=. His evidence was corroborated by his witness one Samwel Ndeko who said he witnessed the sale. This witness told the trial tribunal that he only saw the respondent paying Tshs. 50,000/= and he was told that Tshs. 170,000/= had already been paid. Before delivering its judgment, the trial tribunal called its witness one Yohana Machewa who was a local government leader. This witness testified that he mediated the dispute between the parties and that he found out that only Tshs. 85,000/= was paid by the respondent. Thereafter, the respondent was advised to pay the outstanding amount if he wanted to take the suit land but he was not ready. As a result, the appellant and her children sold the

suit land to another person. After hearing both parties, the trial tribunal found the appellant's case stronger than the respondent's case henceforth declared the appellant the lawful owner of the suit land a decision which was overturned by the appellate tribunal.

On 10th August 2023 the appeal came for a *viva voce* hearing. All parties the appeared before me in person and unrepresented. Submitting in support of the appeal the appellant stated that the appellate tribunal did not hear her. It was just giving dates and later on she was told that the respondent has won the case. She aired her resentment that it was not just for the judgment to be entered affording her and her witness the right to be heard. On the second ground, she stated that, the respondent did neither produced the sale agreement nor called the witness who witnessed the sale. Thus, there is no reason why he emerged successful. On the third ground she simply stated that her husband did not sale the suit land rather he leased it.

In reply, the respondent submitted that he bought the suit land when the appellant's husband was sick and he have documents. He occupied the same uninterrupted for eleven years. On the 12th year the appellant sold it to someone else without consulting him. Vindicating his right, he complained to the village council successfully. The appellant appealed to the ward tribunal where she won and because he was disgruntled, he appealed to the District Land and Housing Tribunal where he won the appeal.

In rejoinder, the appellant reiterated her submission in chief and added that she has document showing that he sold the land to someone else not the respondent.

I have carefully considered the grounds of appeal in the light of the records of the two tribunals which I have thoroughly read. I have as well considered the submissions by the lay parties which did not sufficiently cover each and every ground of appeal. I will now determine the appeal starting with the first and the fourth ground of appeal.

In the first ground, the appellant has complained that her right to be heard in the first appellate tribunal was violated. She was never served with the grounds of appeal and never had the opportunity to reply or to be given right to be heard in a hearing before the trial. It is trite in our jurisdiction that the right to be heard is paramount. The Court of Appeal has emphasized time and again that a denial of the right to be heard in any proceedings is fatal irregularity pregnant with a risk of vitiating the proceedings as it amounts to an abrogation of the constitutional right enshrined under article 13 (6) (a) of the Constitutional of United Republic of Tanzania, 1977. There is a plenty of authorities in this regard. I need not cite all of them. The following three shall suffice. In the case of **Mbeya-Rukwa Autoparts and Transport Limited vs. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2001 TZCA 14(9th August 2001)(TANZLII), 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) includes the right

to be heard among the attribute 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....

In a subsequent decision in the case of **Abbas Sherally & Another vs. Abdul S.H.M Fazalboy,** Civil Application No. 33 of 2002(unreported) the Court of Appeal held that:-

> The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the Court 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 a breach of natural justice.

Cementing the above position in a recent decision in **Salhina Mfaume and Seven Others vs. Tanzania Breweries Co. Ltd,** Civil Appeal No. 11 of 2017 [2021]TZCA 209 (19th May 2021) (TANZLII). The Court of Appeal held that:-

> The right to be heard is a cardinal principle of natural justice which entrenched as a fundamental right and it includes the right to be heard among the attributes of equality before the law in terms of article 13(6) (a) of the Constitution of United Republic of Tanzania, 1977 (the Constitution). In this regard, the courts are enjoined not to decide on a matter affecting the rights of the parties without giving them an opportunity to express their views or else that would be a

> contravention of the Constitution and the decision would be rendered void and of no effect.

With this guidance I will revert to the facts of the present appeal. The overriding question to be answered in this ground of appeal is whether there was any abrogation of the right to be heard and if so, whether the appellate tribunal's record was rendered a nullity. In my scrutiny of the proceedings of the appellate tribunal, I have found out that on 1st March 2022 the appellate tribunal issued a summons for the appellant to appear before it for mention on 18th March 2022 and on 18th March 2022, it issued another summons for mention on 11th April 2022. Further revelation from the record is that on 11th April 2022, both parties appeared before the appellate tribunal and they all subsequently entered appearance on 11th May 2022, 25th May 2022 a date when the appeal was heard. Both parties had the opportunity of addressing the court starting with the appellant. Thereafter, the respondent addressed the tribunal in reply whereby, among other things, she submitted that the appellant should not be disgruntled by the ward tribunal's record as she did not sell him the farm but she leased the same to him and having submitted so she prayed that the appeal be dismissed. The appellant rejoined thereafter. With this record at hand, I do not see how the appellant's right to a hearing was abrogated as from the record she was not only afforded the same but she exercised her right.

Before I wind up the determination of this ground of appeal, it is not irrelevant, in my view to share my observation that since the appellant's story sharply contradicts the appellate tribunal's record, it would appear that through this ground of appeal, she is seeking to impeach the record.

It is a trite law in our jurisdiction that a court record should not be easily impeached as it is always presumed to accurately represent what actually transpired in court (see **Halfan Sudi vs. Abieza Chichili** [1998] T.L.R 527, **Shabiri F. A Jessa vs. Rajku mar Deogra**, Civil Reference No. 12 of 1994 (unreported) and **Alex Ndendya vs. R** [2020] 2 T.L.R 79. A litigant seeking to impeach such record must substantiate his assertion as it is not sufficient to just lament that the record is incorrect. All we have in the present appeal is a mere lamentation which attracts no weight. The first ground of appeal is thus with no merit.

In the fourth ground of appeal to which I now turn, the appellant has asserted that the tribunal erred in law by entertaining an appeal which emanated from proceedings which offended the Written Laws (Misc. Amendments) (No. 3) Act of 2021. Much as she did not specifically mention the offended provision, having examined the provision of the law and considering that the appeal emanated from a ward tribunal, it would appear that, the appellant's contention is with regard to the jurisdiction of the ward tribunal in land matters, whose provision was amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2021, GN No. 112 of 2021. This law ushered in amendments to the provision of section 13 of the Land Disputes Court Act, Cap. 216 R.E 2019 which initially clothed ward tribunal with jurisdiction to inquire into and determine dispute arising under Land Act and Village Land Act. The said provision read:

> 13(1) subject to the provisions of sub section (1) of section 8 of the Ward Tribunal Act, the primary function of each tribunal shall be to secure peace and harmony in the area for which it is established, by mediating

between and assisting the parties to arrive at a maturely acceptable solution on any matter concerning and within its jurisdiction.

(2) Without prejudice to the generality of subsection (1), the tribunal shall have jurisdiction to inquire into and determine disputes arising under the Land Act and Village Land Act. (Cap. 113, Cap. 114)

The amendment deleted subsection 2 of section 13 of the Land Dispute Courts Act and consequently took away the jurisdiction to enquire into and determine disputes arising under the Land Act and the Village Land Act which the ward tribunals used to enjoy under the old law. This law became effective on 11th October, 2021 and in consequences, the ward tribunal ceased to have such powers.

In understand that, this being a second appeal I am barred from entertaining an issue which, as the present one was not raised in the two tribunals below. However, the issue raised being a jurisdictional is exempted from this rule and can therefore be raised at any stage. Therefore, it is incumbent that it be entertained and resolved although it has been belatedly raised. Dealing with an issue as to what stage can an issue on jurisdiction be raised, the Court of Appeal in **R.S.A Limited vs. Hanspaul Automechs Limited Govinderajan Senthil Kumal,** Civil Appeal No. 179 of 2016 [2020] TZCA 282 (8 June 2020) (TANZLII) held that:

> The jurisdiction to adjudicate any matter is a creature of the statute, an objection in that regard is a point of law and it can be raised at any stage.

Further, in **Tanzania Revenue Authority vs. Tango Company Ltd,** Civil Appeal No. 84 of 2009 [2016] TZCA 84 (Tanzlii) it held that, jurisdiction is the bedrock on which court's authority and competence to entertain and decide matters rest. Hence, an issue questioning or addressing the jurisdiction of the court is paramount and can be raised at any time even at the stage of appeal (see also the case of **Tanzania-China Friendship Textile Company Ltd vs. Our Lady of the Usambara sisters** [2006] TLR 70. Being properly guided by these authorities, I will entertain and determine the issue of jurisdiction although it has been belatedly raised at the second appeal stage.

Going into the merit of the appellants contention, as stated above, the amendment stripping the ward tribunal the jurisdiction to inquire into and determine dispute arising from the Land Act and Village Land Act came into force on 11th October, 2021 and from that time, the ward tribunal ceased to have such powers. Thus, from this time on, they could no longer entertain land matters. To the contrary, the record in the present appeal show that the complaint landed at the ward tribunal on 13th January 2022 long after the tribunal ceased to have jurisdiction over inquiry and determination of land matters. All what the tribunal could have done was to reconcile the parties but it surpassed its jurisdiction by conducting an enquiry and determining the dispute. Therefore, it is crystal clear that its proceedings and decision are a nullity for want of jurisdiction. Considering that the appeal has been basically dissolved by this point, I see no reasons to determine the remaining grounds.

Accordingly, and to the extent stated above, the appeal is found with merit. Since the first appellate tribunal's proceedings and judgment

emanated from nullity proceedings and decision, they have no legal standing as they are correspondingly a nullity. They are consequently quashed and set aside for being based on nullity proceedings and decision of Gwadi ward tribunal which are also quashed and set aside. The parties are at liberty if they wish to institute their case before the competent tribunal. Considering that the ground of jurisdiction upon which this appeal has been resolved is not solely the making of the parties, I will order no costs so that, each of the parties can bear its respective costs.

DATED at **DODOMA** this 25th day of August, 2023.

J. L. MASABO

JUDGE