

TANZANIA / JUDGMENT

ardhi plan ltd vs town planners registration board 2020 tzhc 352 16 march 2020

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TZHCDECIDED
16 March 2020

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IN THE HIGH COURT OF TANZANIA (MAIN REGISTRY) AT PAR ES SALAAM MISC. CIVIL
APPEAL NO. 1 OF 2019 ARDHI PLAN LIMITED..... APPLICANT VERSUS
TOWN PLANNERS REGISTRATION BOARD..... RESPONDENT

JUDGMENT

18/02/2020 & 16/03/2020 Masoud. J. There was before me an appeal by the appellant herein against the decision of the respondent which was given on 26/09/2018. The decision suspended the registration of the appellant with the respondent. The appeal was filed under section 20 of the Town Planners (Registration) Act, Act No. 7 of 2007. The provision of section 20 of the said Act provides as follow: Any person who is aggrieved by a decision of the Board to refuse to register his name, or to delete his name from the register or to refuse to restore his name or to suspend the effect of registration may appeal to the High Court. (Emphasis supplied). The appeal was filed on 22/05/2019 after the appellant had obtained leave of this court (as per Hon. Feleshi JK) to appeal out of time against the above mentioned decision of the respondent. The appeal was preferred under four grounds. They were as follow. The first ground was that the decision was a nullity as it was made without following the statutory procedure requiring the applicant to be served with an effective notice of not less than 21 days notifying the appellant of the inquiry to be conducted against her. According to this ground, the failure caused miscarriage of justice to the appellant as the appellant was only given a notice on 20/08/2018 ordering the appellant to appear before the respondent on 31/08/2018 for a disciplinary inquiry. Consequently, the appellant's right to sufficient and effective notice under section 18(5) of the Town Planners (Registration) Act (supra). The second ground was that the decision was a nullity because it was made without first giving the appellant a notice of not less than 21 days requiring her to show cause why an inquiry should not be conducted against her on allegations of violation of the Town Planners (Registration) Act (supra). The failure was, according to this ground, in violation of regulation 14(2) of the Town Planners (Registration) Regulations, 2018 (GN No. 174 of 2018). The third ground of appeal was that the decision and orders of the respondent dated 26/09/2018 against the appellant were a nullity because the respondent failed to follow due process of law. She so failed

when she arbitrarily stopped and suspended the appellant from taking any work or assignment concerning town planning and stopped the appellant from entering into any new contracts concerning town planning. The failure, according to this ground, affected the appellant's right to receive just remuneration from work and new clients. The fourth ground of appeal was that the respondent erred both in law and facts when she erroneously held that the appellant had terminated contracts with Tanzania Women Bank Ltd, Mkuranga District Council and Arumeru District Council while there had never been such termination, but notice of intention to terminate the contract with Mkuranga District Council. The four grounds of appeal stated above boiled down to three main complaints. The first complaint was on the failure of natural justice on the part of the appellant which was a result of the way the respondent dealt with the allegations levelled against the appellant. The second complaint was on the failure of the respondent to comply with 3 procedural requirements relating to the appellant's right to be heard before the inquiry was held and the decision was made against the appellant. And the third complaint was on the erroneous finding of the respondent that the appellant terminated her contracts with Tanzania Women Bank, Mkuranga District Council, and Arumeru District Council. The hearing of the appeal was by written submissions. The appellant filed her written submissions in chief through one, Gombo Samandito Gombe, the Principal Officer of the appellant. On the other hand, the respondent filed her replying written submissions through Mr Daniel Nyakiha, learned State Attorney. A holistic view of the brief and focused submissions of the appellant were entirely based on the above grounds of appeal. The exception was the fourth ground which for no apparent reason was not argued and hence in my view abandoned. Of significance is the import of section 18(5) of the Town Planners (Registration) Act (supra) and regulation 14(2) of the Town Planners (Registration) Regulations (supra) which were reproduced thus: Section 18(5): The board shall in not less than twenty- one days prior to the date o f the inquiry notify the person against whom inquiry is to be held. Regulation 14(2): The board shall serve a twenty one days written notice to a person or firm suspected to violate any provision o f the Act, to show cause why the board should not hold an inquiry on to that person or firm. The submissions insisted that the above provisions were not complied with. The appellant was only served with a seven (7) days' notice prior to the holding of the inquiry having been served with a purported notice on 24/08/2018 whilst the inquiry was held on 31/08/2018. The notice was contrary to section 18(5) of the Town Planners (Registration) Act (supra). It was likewise argued that there was no notice issued and served to the appellant pursuant to regulation 14(2) of the Town Planners (Registration) Regulations (supra) requiring the appellant to show cause why the inquiry should not be conducted. As the respondent failed to comply with the above mentioned provisions of law, there was clearly a violation by the respondent of a due process of law. The violation of due process resulted in the decision which suspended the appellant for unknown period and went on to prohibit the appellant from working. 5 The respondent's replying submissions focused only on the first and second ground. Since the two grounds linked with the third, it was clear that the intention of the respondent was also to attack the third ground. I so find because there was a mention of the allegation of lack of due process of the law in the replying submissions. The key points of the replying submissions were as follow. One, the appellant was served with the statutory notice under section 18(5) of the Town Planners (Registration) Act (supra) on

24/05/2018. Such notice required the appellant to submit her projects report in relation to the complaints against the appellant which had been lodged. Two, the appellant submitted her response dated 14/06/2018. Three, the appellant was afforded the right to be heard, as on 31/08/2018 she appeared for the hearing of the matter before the respondent. And four, the appellant submitted her evidence prior to the hearing and testified in relation to the allegations levelled against her. Since this is an appeal, I am entitled to scrutinize the record and the evidence in particular before coming to my own conclusion on the issues raised by the grounds of appeal. I had earlier on made an order for call of the record of the proceedings which were conducted by the respondent against the appellant. What was brought to me was not a case file consisting of the proceedings undertaken by the respondent against the appellant. Rather, it was a huge bundle of minute-sheets files in which various matters including those relating to the respondent were internally transacted and communicated amongst officers of the respondent and a small plastic folder consisting minutes of the meeting held on 31/08/2018 duly signed by the Chairman and Secretary of the Meeting. The minutes in the above mentioned plastic folder were entitled "Muhtasari wa Kikao Maalum cha Tano cha Kamati ya Kusimamia Sheria ya Bodi ya Usaji/ i wa Wataaiaam wa Mipangomiji KiHchofanyika katika Ukumbi wa Mikutano wa Bodi jingo ia Matasalamat Barabara ya Samora Tarehe 31/8/2018 " The items of agenda were; "(1) Kufungua Kikao; (2) Kuthibitisha agenda; (3)(i) Kufanya Unchunguzi wa Suaia iinaiohusu utendaji kazi wa Kampuni ya Ardhi Plan Ltd, (ii) Kufanya uchunguzi wa TP Gombo Samandito aiivyoshiriki kuandaa michoro ya Mbinga; (4) Kujadii suaia ia Joseph Kayombo; (5) Mengineyo; (6) Kufunga Kikao." Having considered the rival submissions in relation to holistic view of the bundle of files brought to my attention as the record of the proceedings of the lower tribunal, I was of a general view that there were no proceedings that the court could rely upon in adjudicating the appeal. Consistent with such finding and conclusion was the fact that there was no reference made either by the appellant or the respondent to the bundle of files brought to me in response to the call of the record issued. This was in itself sufficient to dispose of the matter in the favour of the appellant as it points to irregularities as to the manner in which the impugned decision was arrived at against the appellant. However, since there were undisputed bundle comprising unsigned report and minutes of the respondent dated 31/008/2018 accompanying the appellant's memorandum of appeal as was the letter dated 26/09/2018 which communicated the decision of the respondent to the appellant, I find it safe to confine myself to such documents as forming important part of the disputed proceedings as a result of which the impugned decision was made against the appellant and communicated to the appellant. I say so because such record and in particular the minutes correspond with the minutes in the plastic folder mentioned above. There was no dispute on the law governing service of the appellant with the requisite notices referred to herein above. There was also no dispute that the respective provisions of law stipulating for service of such notices to a person who is a subject of an inquiry are couched in mandatory terms. The dispute is on whether the appellant was duly served with the 21 days statutory notices relating the date of holding of the inquiry prior to the intended inquiry and relating to showing cause why the intended inquiry should not be conducted against her. In other words, the issue is whether the respondent complied with the procedural requirements of serving the appellant with the statutory notices on the allegations levelled. And more importantly, whether the

appellant was indeed afforded the right to be heard on the allegations levelled against her and whether due process of law were followed. The latter issues are informed by the fact that the notices relate to rules of natural justices. A quick perusal of the said bundle comprising the report and minutes left me in no doubt that there were nothing showing that the requirements as to issuance of the notices were complied with prior to conducting the inquiry against the appellant. This means that the appellant was denied 9 her right to be heard and in particular to prepare for the hearing on 31/08/2018. At best the documents indicate that the appellant was questioned through her Principal Officer, one, Gombo Samandito, on matters relating to allegations levelled against her. There was not any witness who testified in support of the allegations prior to the questioning. The appellant could not therefore cross-examine on matters that informed the questions that were put to him and as a result of which the decision was made. It is on the minutes that the appellant was not allowed to call witnesses in a bid to adduce her evidence in addition to the answers she put to the questions asked. My examinations of all questions which were put to the appellant left me in no doubt that they reflected the allegations levelled against the appellant and the evidence seemingly in possession of the respondent which evidence was not received in the course of the proceedings. However, complainants in relation to whom the allegations against the appellant were levelled and witnesses whose evidence seemingly formed the basis of the questions did not testify in the proceedings if I go by the minutes. Worse still, the appellant was not afforded time to prepare for 10 her defence and cross-examine on the evidence in the possession of the respondent. All the above supports the complaint by the appellant that the notices were not issued and hence the appellant was not accorded opportunity to prepare his defence and to be adequately heard on the allegations levelled against her. Consequently, there was no due process of the law in the entire proceedings that formed the basis of the present appeal. There is yet another thing which needs to be pointed out regarding confusion as to whether the purported proceedings were truly against the appellant or her principal officer. The documents depicted a clear confusion. I am prepared in view of the cumulative effect of the foregoing to allow all the grounds of appeal raised by the appellant against the decision. They are all in my view meritorious. In the upshot, the appeal is found to be meritorious. It is accordingly allowed with costs. Ordered accordingly. Dated at Dar es Salaam this 16th day of March 2020. B. S. Masoud Judge 11 Court Judgment delivered in the presence of Mr Y. Marco, learned State Attorney for the respondent and Mr. B. Masimba, Advocate, for Dr C. Murungu, Advocate for the applicant this 16th day of March 2020. ^ -- B. S. Masoud Judge 12

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