

TANZANIA / JUDGMENT

faraji said nyambi vs abdul mkaleka njanike 2021 tzhc 6748 29 october 2021

COURT
TZHCDECIDED
29 October 2021

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (MTWARA DISTRICT REGISTRY) AT MTWARA LAND APPEAL NO 09 OF 2020 {Originated from the decision of the District Land and Housing Tribunal for Mtwara at Mtwara in Land Appeal No. 174 of 2019) FARAJI SAID NYAMBL.....APPELLANT VERSUS ABDUL MKALEKA NJANIKE.....RESPONDENT Date of Last Order: 22/10/2021 Date of Ruling: 29/10/2021

JUDGMENT

Muruke, J. Faraji Said Nyambi, filed land dispute number 4/2019 at Kitangari. Ward tribunal claiming piece of land he bought from the respondent. Trial Tribunal upon hearing both parties decided in favour of the respondent. Being dissatisfied the filed Appeal number 174/2019 at District Land and housing tribunal of Mtwara. Again the lost the appeal, thus preferred present appeal number raising four grounds listed in the petition of appeal. On the date set for hearing both parties were in person, thus argued their case orally. By way of preliminary remarks, appellant told this court that i “ There is serious problem of trial tribunal failure to receive copy of agreement between myself and respondent. There is also document that proves dispute was reported police by my mother Saidia Ismail Nandalula. All these are important document to be used to resolve the dispute at hand. This is error that goes to the root of the dispute” On the other hand respondent Abdul Mkaleka Njanike joined hand with appellant and said, “It is true that documents from the appellant were not received. And they were important to the case, like sell agreement and complain by appellant mother at police against Abdallah Lamani on 04th October 2009. On my side also my document was not received when I had dispute with Abdallah Hamisi over the plot in dispute” From complaint by both appellant and respondent, there is serious a normally and failure by trial tribunal to receive the necessary document. This is serious issue that goes to root of right to be heard. Right to be heard is fundamental rights. Failure to observe the same vitiates proceedings. Right to be heard is one of the fundamental principles of natural justice that cannot be easily ignored. Right to be heard was insisted in the case of “EZEKIAH T.OLUOCH V/S THE PERMANENT SECRETARY,PRESIDENT’S OFFICE,PUBLIC 2 SERVICE MANAGEMENT AND 4 OTHERS, Civil Appeal No. 140/2018, Dar es Salaam Registry (unreported) ”The right to be heard has been emphasized by the Court in various decisions, some of which are

national housing corporation v/s Tanzania shoes and others [1995] T.L.R 251, Mbeya "Rukwa auto parts & Transport Limited (supra), Margwe error and Two others v. Moshi bahalulu, Civil Appela No.11 Of 2014 (unreported) to mention but a few. In Margwe Erro and two others (supra), the Court quoted the decision in Abbas sherally and Another

- v. Abdul S.H.M. Fazal boy, Civil application No.33 of 2002 (unreported), where it was held that; "the right of a party to be heard before the adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That the right is so basic that a decision which is arrived at 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." The right to be heard is also safeguarded in the constitution. Article 13(6)(a) of the constitution provides in the official version thus; - (6) kwa madhumuni ya kuhakikisha usawa mbele ya sharia, mamlaka ya nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba- (a) wakati wa haki na wajibu wa rritu yeyote vinahitaji kufanyiwa uamuzi wa Mahakam au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kw ukamilifu, na pia haki ya kukat rufaa au kupata nafuu nyingine ya kisheria kutokana na maaumi ya mahakama au chombo hicho kinginecho kinachohusika. 3 From the concerns of both appellant and respondent, on the right to be heard it is a normally that vitiate proceedings. Accordingly trial tribunal records are quashed and set aside. Judgment and decree are set aside. Equally so, Appeal No. 174/2019 of District Land and housing tribunal is quashed and set aside. Appellant to institute fresh land dispute at Kitangari Ward tribunal attaching necessary documents within 60 days from 1st of November 2021. Judge 29/10/2021 Judgment Delivered today in the presence of appellant and respondent. Z. G. Muruke Judge 29/10/2021 4

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