

TANZANIA / JUDGMENT

LAND APPEAL NO

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6 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND APPEAL NO. 12030 OF 2024 (Arising from Application No. 47 of 2023 of the District
Land and Housing Tribunal of Kinondoni at Mwananyamai) JOHN SILVESTER
AMOS..... APPELLANT VERSUS BENEDICT BENEZET
LUTAHINDULWA..... RESPONDENT

JUDGMENT

7/8/2024 & 28/08/2024 GWAE, J Before the District Land Housing Tribunal of Kinondoni (herein DLHT), the appellant instituted the dispute against the respondent over a land located at Nyakasangwe Street, Wazo Ward in Kinondoni Municipality alleging that the respondent has trespassed his land. On 6th November 2023, the appellant informed the tribunal that his advocate was bereaved the hearing was adjourned until 23rd January 2024. On 23rd January 2024 when the Application was called for hearing, the appellant's advocate was not present, the appellant sought and obtained an order of an adjournment of two weeks so that he could secure another advocate. i On 27th February 2024 when the matter was called on for hearing, the appellant informed the court again that, he was yet to secure an advocate to represent him. He thus prayed for another adjournment. On 9th April 2024 when the matter was called on the hearing, the appellant exhibited his declination to proceed with the hearing set on that date. Following such exhibition, the respondent's counsel one George reacted by stating that, the appellant had no intention to prosecute his Application. Finally, DLHT's Chairperson did strike out the appellant's the suit with costs for failure to prosecute. He used the words ("Maombi haya yamefutwa"). Hence, the present appeal. The appellant before the court is now challenging the order of the District Land and Housing Tribunal advancing the following reasons.

1. That, the Tribunal erred in law and fact by dismissing the application without affording the appellant the right to be heard which is the constitutional right
2. That, the Tribunal erred in law and fact by dismissing the application after holding that the appellant has unjustifiably refused to proceed with his case to which is not true nor correct 2
3. That, the Tribunal erred in law and fact by denying the appellant's constitutional right of representation by ignoring his request to grant him time to obtain another advocate When this appeal was called on for hearing before me, the parties' advocates namely; Mr. Andrew

Miraa and George Masudi, appeared representing the appellant and respondent respectively. It was agreed that the appeal be disposed of by way of written submission. Subsequent to the filing schedule, the parties' advocates filed their respective written submission, I shall consider while determining the ground of appeal herein above. Examining the grounds of appeal given by the appellant, I am of the view that all three grounds revolve into one grounds. This is on, whether the appellant was unjustifiably denied the fundamental right to be heard as required by the principles of natural justice, which is enshrined in our Constitution. The appellant had submitted that if this appeal is not granted that will amount to renunciation of the fundamental right to be heard and therefore contravention of our Constitution. He further argued that, since the respondent had a legal representation, it was therefore impracticable for the appellant, a layperson to proceed in person against a person acquainted with laws. According to him, it was in the interest of justice that, he be given opportunity for legal representation. He then invited the Court to refer to the case of *Lucas Gisland vs. Republic*, Criminal Appeal No. 89 of 2021 unreported-CAT) where it was stated;- "The right to legal representation is a human rights issue. It is of prime importance for an accused person to have a fair trial. Access to counsel is therefore very important". On other hand, it is the submission of the respondent's counsel that, the appellant personally declined to exercise the right to be heard as he failed to prosecute his application for more than four consecutive DLHT's sessions that is on 6th November, 2023, 23rd January, 2024, 27th February, 2024, and 9th April, 2024. He added that, the appellant's advocate one Dickson Matata never wrote any letter to withdraw his representation or instruction to the appellant to the tribunal and even the Appellant never told the tribunal to that effect. The respondent went on arguing that Article 30 (1) (2) and (4) of the Constitution makes it clear that, the rights and freedoms provided therein shall not be exercised in a manner that will cause interference with the rights and freedoms of other persons or of the public interest. He made reference to *Julius I shengoma Ndyanabo vs. Attorney General* [2004] TLR 14 where the right to be heard was said not to be an absolute. In his brief rejoinder, the appellant stated that, he duly informed the tribunal of the withdrawal of instruction of his former advocate and that, the leave was granted. He also added that, he was not negligent as he used to enter appearance in all sessions. Having briefly outlined the parties' rival written submissions, the issue for determination is on whether the appellant was unreasonably denied the right to be heard or not. I wholly agree that the right to be heard is the fundamental right exercisable by any person before any adverse action is taken against him or her. The right to be heard is one of the principles of natural justice as correctly submitted by both advocates for the parties. (See Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. In the case of *Ridge vs. Baldwin* [1963] 2 All ER 66, it was insisted that the consequences of failure to observe the rules of natural justice is to render a decision void and not voidable. The same legal position, was stressed by the Court of Appeal in *Edwin William Shetto vs Managing Director of Arusha International Conference Centre*

[1999] TLR 130. In our instant dispute, the appellant informed the tribunal of his intention to secure another advocate on 23rd January 2023 after he lost faith to him. The hearing was adjourned to 27th February 2024 following the appellant's request. When the matter was called on for hearing on 27/2/2024, the appellant notified the tribunal that he had not secured an advocate; the hearing was further postponed until on 9th April 2024. Surprisingly, the appellant merely stated that, he was not ready for the scheduled hearing of his application. His declination to proceed faced a reaction from the defence counsel, Mr. George Masudi who argued that, the appellant had no intention to prosecute his application save annoyance to the respondent. After the reaction by the defence, it is plainly noted that, the appellant conceded to have his case struck out (kesi ifutwe) and the tribunal finally did what was sought to be done. The appellant's act of approaching this court by way of an appeal, in my view is an abuse of the court process since he is the one who conceded to the prayer of the respondent's counsel that, the application be struck out. 6 More so, the appellant's expression that, he was not ready to proceed with the hearing without further explanation or qualification exhibited that he was not ready to prosecute his case. While I am aware that the right to be heard is fundamental one but the same is subject to certain obligations such as looking for legal representation as rightly demonstrated in *Lucas Gisland (supra)*. However, in our instant case, the appellant initially sought to engage another advocate but in the subsequent session, he did not even seek an extension of time to look for an advocate and above all, he personally sought to have his application struck out as was the case in his application No. 85 of 2023 on 27th February 2024. The right to be heard is not therefore an absolute, it has its limitations as such failure or refusal to exercise when summoned to appear to answer a charge or a civil suit before a court of law or tribunal. I am also of the view that, our courts should have firm control over proceedings including prohibitions of unnecessary adjournments. Hence, courts should not be made impotent by a party's inaction like in the present dispute where the appellant plainly demonstrated that, he was not ready to proceed with the hearing without furnishing any reasons. (See *Tanzania Breweries Ltd vs. 7 Edson Dhobe & 19 Others*, Miscellaneous Civil Application No. 96 of 2000 (unreported). I have also noted that the appellant's concern that if this appeal is not allowed, he will be condemned unheard, this type of assertion is unfounded since he conceded to the sought order striking out the application. More so, the order made by the learned chairperson of DLHL for his failure to prosecute did not bar him to re-institute the dispute. I therefore respectfully share the same view with the appellant's counsel on the fundamental right to be heard and the case cited of *Gisland vs. Republic*, (supra). However, I do not buy his argument that, the said case of *Gisland* is applicable in this case where he was availed an opportunity to engage another advocate but failed to do so and he conceded to the complaints by the respondent's counsel that, he was unreasonably wasting time. I fortify my finding with the case of *Mpungu and Sons Transporters Limited v Attorney General* and another [2006] 1 EA 212, where it was stated "The rule that one must be heard was fundamental. However, one had to prove a right to be heard before the right could be breached." 8 In the present parties' dispute, the appellant personally declined to exercise the constitutional right to be heard

when he prayed the same be struck out. Before I type off, I think it is perhaps apposite to have note that, the order of the DLHT striking out the appellant's suit for want of prosecution did not warrant him to appeal except to apply for revision or re-file the same as required under Order XVII Rule 17 of the Civil Procedure Code, Cap 33, Revised Edition, 2019 Having demonstrated as herein, this appeal is devoid of merit, I thus proceed dismissing it with costs. It is so ordered. dated and delivered at dar es salaam this 28th August 2024 9

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Prepared on 14 October 2026 · Esheria