

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: MUGASHA, J.A., WAMBALI, J.A. And SEHEL, J.A.)

CIVIL APPEAL NO. 40 OF 2019

CHRISTIAN MAKONDORO..... APPELLANT

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

**(Appeal from decision of the High Court of Tanzania
at Mwanza)**

(De-Mello, J.)

Dated the 6th day of April, 2017

in

Civil Case No. 28 of 2011

JUDGMENT OF THE COURT

16th & 22nd February, 2021.

MUGASHA, J.A.:

In the High Court of Tanzania, at Mwanza, the appellant commenced a civil suit against the respondents for unlawful assault, wrongful confinement and malicious prosecution. The reliefs claimed by the appellant were: payment of TZS. 150,000,000/= being damages; interest on the decretal amount from the date of filing the suit till payment in full and any other reliefs the court deemed fit to grant.

After the preliminaries were disposed, and mediation marked to have failed, the trial was conducted hinging upon three issues reflected at page

32 of the record of appeal to wit: **One**, whether or not the plaintiff was wounded prior to his unlawful confinement; **two** whether the plaintiff was maliciously prosecuted and **three**, reliefs, if any. After the witnesses from both sides adduced evidence and learned counsel filed final submissions, at page 56 of the record of appeal, the trial judge made an order intimating that judgment would be delivered on 6/4/2017. The gist of the said judgment as reflected from page 17 to 18 of the record of appeal is as follows: -

*"...The matter is for malicious prosecution and damages to the tune of Tshs. 150,000,000/= as pleaded. I however been troubled as to whether and in the absence of specific claim or not, my Court has jurisdiction to entertain this matter. I am saying so and '**suo motu**', mindful of the issue of jurisdiction, be it Pecuniary, Territorial and or Exclusive being quite fundamental when adjudicating matters on their merits..."*

*Bearing in mind that '**General Damages**' do not determine the pecuniary jurisdiction of the suit and, mindful of the fact that, they are entirely on the Court's*

Considering what will be apparent in due course, with leave of the Court parties argued only the first ground of appeal.

Upon taking the floor, Mr. Elias Hezron, learned counsel for the appellant adopted the written submissions filed with no more. In his submission, he contended that though the question of jurisdiction can be raised at any stage of the proceedings including an appeal, he faulted the trial judge's rejection of the suit on account of lacking pecuniary jurisdiction without re-summoning the parties and according them an opportunity to address the Court on the issue which was raised *suo motu*. To back up the propositions, the learned counsel referred us to a number of court's decisions including **KAPAPA KUMPINDI VS THE PLANT MANAGER, TANZANIA BREWERIES LTD** Civil Appeal no. 32 of 2010, **PETER NG'HOMANGO VS THE ATTORNEY GENERAL**, Civil Appeal No. 114 of 2011 (both unreported). In the said decisions, the Court emphasised on the essence of re-summoning the parties and accord them an opportunity to be heard once the trial judge raises own point of law in the course of composing the judgment. In this regard, it was the learned counsel's submission that since the parties were not heard, the judgment of the trial court is a nullity. Thus, he urged the Court to set aside the judgment and order that the case file be

returned to the High Court so that parties can be heard on the issue of jurisdiction before determination.

On the other hand, the ground of appeal and the respective submission by the appellant's counsel were conceded to by Ms. Subira Mwandambo, learned Senior State Attorney who was accompanied by Ms. Debora Mcharo and Ms. Sabina Yongo, both learned State Attorneys representing the respondents.

Having carefully considered the submission of learned counsel and the record before us, it is not in dispute that, the issue about the trial court lacking pecuniary jurisdiction to adjudicate the matter was raised *suo motu* and determined by the trial Judge in the course of composing her judgment. However, the burning issue and the gist of the appellant's complaint as earlier intimated is that since parties were denied the right to be heard, this is irregular and the respective decision is void.

It is cardinal principle of natural justice that a person should not be condemned without being heard. As such, the Court in a number of decisions has emphasised that the courts should not decide on a matter affecting the rights of the parties without giving them an opportunity to express their

views before a decision is made by the court. **See – TRANSPORT EQUIPMENT VS DEVRAM VALAMBHIA [1998] TLR 89, KAPAPA KUMPINDI VS THE PLANT MANAGER TANZANIA BREWERIES (supra), PETER NG’HOMANGO VS THE ATTORNEY GENERAL (supra)** and **MBEYA RUKWA AUTOPARTS AND TRANSPORT LIMITED VS JESTINA MWAKYOMA [2003] T.L.R 253**. In the latter case the Court said:

"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 wa mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu..."

The Court further held that:

"Judge's decision to revoke rights of M/s Kagera and the appellant without giving them opportunity to be heard, was not only a violation of the rules of natural justice, but also a contravention of the Constitution, hence void and of no effect."

In yet another case of **SHERALLY AND ANOTHER VS ABDUL FAZALBOY**, Civil Application No. 33 of 2002 (unreported) the Court observed:

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

[See also - **VIP ENGINEERING AND MARKETTING LIMITED AND OTHERS VS CITI BANK TANZANIA LIMITED**, Consolidated Civil References No. 5, 6,7 and 8 of 2008 and **SAMSON NGWALIDA VS THE COMMISSIONER GENERAL OF TANZANIA REVENUE AUTHORITY**, Civil Appeal No. 86 of 2008 (both unreported). In the latter case which is almost similar to the matter under scrutiny, one of the grounds of appeal to the Court was that the Tax Revenue Appeals Tribunal had dismissed the appellant's appeal on a ground that it had no jurisdiction which was neither raised by the parties, nor were parties re-summoned to address the Tribunal on that ground which the Tribunal had raised *suo motu*. The Court paid

homage to the case of **VIP ENGINEERING AND MARKETTING LIMITED AND OTHERS VS CITI BANK TANZANIA LIMITED** (*supra*) and held that:

"The Tribunal was required to hear the parties before it made its decision on the question of jurisdiction on the matter, it went against the rules of natural justice to raise the issue suo motu and then gave a decision on it without first giving the parties an opportunity to address the Tribunal on the matter. This ground has merit and it is allowed."

Thus, consistent with the constitutional right to be heard as well as settled law, we are of the firm view that, in the case at hand, the adverse decision of the trial Judge to reject the suit on account of lacking jurisdiction without hearing the parties is a nullity and it was in violation of the basic and fundamental constitutional right to be heard. Thus, the first ground of appeal is merited. Since the first ground of appeal is sufficient to dispose of the appeal we shall not determine the second ground of appeal.

Consequently, the trial court's judgment is set aside and we direct the case file to be returned to the High court, placed before the learned trial judge to determine the point she raised on jurisdiction after hearing the

parties. This should be expedited as soon as practicable as the matter has been pending in courts for about ten years.

We thus, allow the first ground of appeal with no order as to costs as none of the parties is at fault in the circumstances.

DATED at MWANZA this 19th day of February, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

This Judgment delivered this 22nd day of February, 2021 in the presence of Mr. Elias Hezron, learned counsel for the Appellant and Ms. Subira Mwandambo, learned Senior State Attorney assisted by Ms. Debora Mcharo and Ms. Sabina Yongo, both learned State Attorneys for the Respondents, is hereby certified as a true copy of the original.


D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL