

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

P.C. CIVIL APPEAL NO.193 OF 2004

*(From the Decision of Mrs. H. Kaiomboia in Civii Appeal No.2
of 2004, Kinondoni District Court, Originating from Probate
and Administration Cause No. 257 of 2002,
Kinondoni Primary Court)*

MOHAMED KITWANAAPPELLANT

VERSUS

MOHAMED MANG'URO.....RESPONDENT

J U D G M E N T

A.Shangwa,J.

This appeal arises from the decision of the District Court of Kinondoni in Misc. Civil Appeal No.2 of 2004 which originated from the decision of the Primary Court of Kinondoni in Probate and Administration cause No.257 of 2002.

There is only one ground of appeal which has been raised by the Appellant in this appeal. It reads as follows:

"That the Appellant was not provided with the right to present his arguments in support of his two grounds of appeal".

Learned counsel for the Appellant **MS Saffari Law Chambers Advocates** submitted that the Appellant's appeal was dismissed by the District Court of Kinondoni without having given him an opportunity to be heard on his grounds of appeal. They contended that doing so, offended one of the cardinal principles of natural justice commonly known in latin as **audi alteram partem** – nobody should be condemned unheard.

This principle of justice requires that every decision maker should ' **hear the other side** '. In this case, it appears from the first appellate Court's record that the learned Principal Resident Magistrate Mrs. H. Kalombola did not only hear the other side to the appeal, namely, the Respondent but she did not also hear the Appellant by giving him an opportunity to present his appeal. She simply embarked on writing the judgment in which she dismissed his appeal. By so doing, she breached the aforesaid principle of natural justice.

From the first Appellate Court's record, it can be seen that the breach of natural justice in this case started on 13/10/2004. On that date, the Appellant was present in Court and the Respondent was absent. The Appellant stated as follows and I quote:

" I have filed this appeal for reason that Mohamed Mang'uro said to have buy the house which was property of deceased Jumanne Makanyaga. I ask for stop order ".

Thereafter, the learned Principal Resident Magistrate recorded as follows and I quote:

Order :- Judgment on 18/10/2004 Sgd".

The judgment itself was not delivered on 18/10/2004. It was delivered two days later on 20/10/2004.

The question to be determined by this Court is whether or not the Appellant was given a fair hearing before his appeal was dismissed by the District Court of Kinondoni.

I wish to state that from the proceedings which I quoted earlier, it is clear that the Appellant was not given a fair opportunity to present his case. The words he uttered in Court on 13/10/2004 are not a submission or an argument for his appeal. They simply relate to the reason why he filed his appeal. In my considered opinion, as the Appellant was not given an opportunity to present his submissions and arguments on his two grounds of appeal, and as his appeal was dismissed by the learned Principal Resident Magistrate without having given him such opportunity, it is quite obvious that he was denied a right to a fair hearing. A denial of a right to a fair hearing renders the decision void in law. **See Ridge V. Baldwin (1963) 1.Q.B.539.** I hold therefore that the learned Principal Resident Magistrate's decision in this case is void for having been given without affording the Appellant a fair opportunity to present his case.

For this reason, I hereby quash it and order that the original record should be sent back to the District Court of Kinondoni for hearing the Appellant's appeal fairly and by another Magistrate with competent jurisdiction.



A. Shangwa

JUDGE

15/12/2005

Delivered in open Court this 15th day of December, 2005.



A. Shangwa

JUDGE

15/12/2005