THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
PC. CIVIL APPEAL NO. 23 OF 2018
(Originated from Civil Appeal No. 28/2018, Mbeya District Court and Civil Case No. 102/2018 Urban Primary Court)

PATSON SHUNGU.....APPELLANT
VERSUS
MUNYA MBUJA.....RESPONDENT

JUDGMENT

Date of last Order: *07/05/2020*
Date of Judgment: *29/05/2020*

NDUNGURU, J.

This is a second appeal. In this the appellant is appealing against the decision of the District Court of Mbeya at Mbeya in the Civil Appeal No. 28 of 2018 which originated from Civil Case No. 102 of 2018 of Urban Primary Court.

Before the Primary Court the appellant unsuccessfully sued the respondent claiming a total of Tshs. 6,680,000/=. The facts which gave rise to the claim briefly can be summarized that, the appellant and the respondent being friends agreed to cultivate I jointly maize and tomatoes. The farm in which they cultivated was owned by the

respondent but the appellant's role was to supply agricultural inputs, and paying the labours. But when the crops were due there arose a dispute between them which resulted into the respondent to harvest all the crops and deprived the appellant's share whose value was Tshs. 6,680,000/=.

The suit was tried by Urban Primary Court which delivered its decision in favour of the respondent. The appellant dissatisfied with the decision of Urban Primary Court, appealed to the District Court Appeal. At the District Court the grounds of appeal were:

(1) That the trial Magistrate erred in a point of law and in fact when failed to evaluate evidence adduced before him and reached wrongly (sic) decision from his own personal view besides of the appellant's evidence and witnesses' testimony which corroborated the appellant's side.

(2) That the trial Magistrate erred in a point of law and in fact when refused or ignored to record the appellant's documents produced in court as exhibit such as auditor (sic) report to confirm his claim.

(3) That the trial Magistrate erred in a point of law and in fact when ignored to visit the scene as locus in quo as required by the law.

The District Court (Mteite – SRM) having tried the case found the decision of the trial court was right and just thus dismissed the appellant's appeal. Dissatisfied with the dismissal decision of the District Court the appellant made this second attempt. Before this court the grounds of appeal are as hereunder:

1. That both courts below (Magistrate) erred in a point of law and in facts to deliver judgment in favour of the respondent basing on contradictory evidence of the respondents side.
2. That the appellate court (Magistrate) erred in a point of law and in facts to deliver judgment without paying opportunity to the appellant to be heard which is contrary to the law.
3. That the courts below erred in a point of law and in fact to ignore to entertain application for the applicant where he was applying to the court to take additional evidence. Copies of Chamber Summons are attached herewith for reference.

When the appeal was called up for hearing the appellant appeared in person (Unrepresented) and the fact that the respondent upon service denied to receive court summons and the proof to that effect being furnished to the court. The court ordered the appeal to precede ex-parte against him. Thus the appeal proceeded in absentia of the respondent.

Given opportunity to submit on his appeal, the appellant requested the court to adopt his petition of appeal saying the grounds of appeal are self explanatory he has nothing to add.

Being the case, the ball was left to the court to go through the records of the two courts below on the light of the grounds of appeal raised by the appellant. In disposing this appeal, I will first of all deal with 2nd ground of appeal on the legal consequences of failure to afford a hearing before any decision affecting the rights of any person is given. Right to be heard is the cardinal principle of natural justice which cannot be alienated as it is naturally given. In other words it is God given. In **I.P.T.L V. Standard Chartered Bank (Hong Kong) Ltd**, Civil Revision No. 1 of 2009(unreported) the Court of Appeal of Tanzania had this to say:

> *"no decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interest of any person without first given him a hearing according to the principles of natural justice"*

The record of the District court reveals as follows;

Date: 20/9/2018

Coram: M.C. MTEITE- PRM

Appellant: Present in person

Respondent: Absent

C/C: Mfinanga

Appellant: *Your honour, I had followed court to instructions of serving the respondent via court broker, I did it, and the process server Mr. Fagio had served the respondent who refused to accept the court summons on 18th 09.2018 at11.00 hours.*

Sgd.

20.09.2018

Court: *The court broker has filed his affidavit for the proof of service.*

Sgd.

20.09.2018

Order:

1. *Judgment on 27.09.2018.*

Sgd.

20.09.2018

From the above quoted passage it is discernible that the appellant was not afforded an opportunity to argue his appeal. Further, the record does not show that the appellant addressed the court to the effect that his grounds of appeal be adopted by the court as set forth in his memorandum of appeal. It is therefore that the appellant was not given the opportunity to submit on his appeal, thus denied his right to be heard.

As stated above, the right to be heard is a cardinal principle of the natural justice. The question now is what then are the consequences of breach of this principle? Settled law is to the effect that, its breach or violation, unless expressly or impliedly authorized by the law, renders

the proceedings and decision and/or orders made therein a nullity even if the same decision would have been reached had the party been heard. The above was the stance in the case of **Tan Gas Distributors Ltd v. Mohamed Salim Said and 2 Others**, Civil Application for Revision No. 68 of 2011.

That being the position of law, I hereby nullify the proceedings and decision and orders made thereof by the District Court of Mbeya at Mbeya in the Civil Appeal No. 28 of 2018.

I further order the appeal be tried *"de novo"* by another Magistrate with competent jurisdiction so that the appellant can exercise his right to be heard. No order as to costs.

It is so ordered

THE HIGH COURT OF TANZANIA

D .B. NDUNGURU
JUDGE
29/05/2020

Date: 29/05/2020

Coram: D. B. Ndunguru, J

Appellant: Present

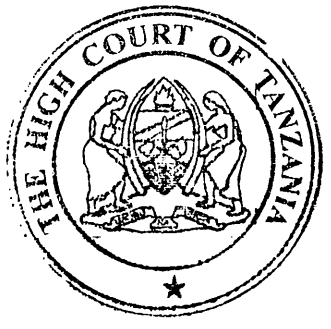
Respondent: Absent

B/C: M. Mihayo

Appellant:

The case is for judgment, I am ready.

Court: Judgment delivered in the presence of the appellant and in the absence of the respondent.



D. B. NDUNGURU
JUDGE
29/05/2020