

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM.

CIVIL APPEAL No. 104 OF 2019

(Arising from Election Petition No. 1 of 2018 of the District Court of
Morogoro, Hon. A. Mwankejela RM dated 28.3.2019)

RETURNING OFFICER MVOMERO

DISTRICT COUNCIL & 4 OTHERS.....APPELLANTS

Versus

PIUS ALLY MHEHE & 7 OTHERS.....RESPONDENTS

JUDGMENT

24.12.2019 - 11.02- 21.02.2020

J. A. DE-MELLO J;

Following an Election Petition in Mvomero constituency in the year 2015 the **Trial District Court** decided in favour of the Respondents. Aggrieved by the said decision, the Appellants filed this Appeal with two grounds;

- 1. The Trial Magistrate erred in law and, in facts by failing to consider the reasons as to why the Respondents were not qualified to be candidates in the election.**
- 2. That, the Trial Magistrate erred in law and, in facts after failure to adequately and evaluated the evidence on records.**

Cotrida Komba, a District Solicitor appeared for Appellant, whereas; **Counsel Tarimo** for the Respondents.

Submitting on the first ground of Appeal, Solicitor Cotrida observes failure on the part of the Trial Magistrate to take into account that the Respondents were disqualified from leadership and hence incompetent to be candidates for election. Reason given was that of misappropriation of Government funds in which objection was raised against them. In the event this was considered the Trial Magistrate would have properly analyzed and evaluated evidence and hence arrive to a different finding.

Opposing the Appeal, the Respondents the allegation for misappropriation of Government funds was bare and speculative allegation supposed if true to be tested before the Court of the law. While the Respondent were removed from leadership, automatically disqualified them from contesting elections. A person is presumed to be innocent unless otherwise proved guilt by the court of law is the principle which ought to be respected he stated. The voting of no confidence by the villagers in itself is not proof good enough to conclude guilt of a person, he further noted. Nothing from the record reveals to prove any legal action in any Court of law with regard to and or relating any crime let alone misappropriation, against the presumption of innocence guaranteed by the Constitution via **Article 13 (6) (b)** and, form one of the pillars of the rule of law. Exhibit P2 which is the ruling given by DW4 on 13.3.2018 to disqualify Respondents as candidates violated the Constitutional Rights of Respondents. While this was the case even the right to be heard was not afforded to the Respondents disputing the Appellants allegation that the said right was through the District Administrative Secretary. This the Respondent

challenges for not being right to be heard as enumerated in the case of **Mbowe vs. Eliufoo (1967) E.A. 240** made a statement as follows;

Any allegation made in an election petition have to be proved to the **'satisfaction of the Court'**

Unless and, until the Court is engaged and made a finding, the District Administrative Secretary in not an appropriate forum. (DW4) had to find significant lawful avenue to afford such right to the Respondents before making his decision. The case of **Mbeya – Rukwa Auto Parts and Transport Ltd vs. Justina George Mwakyoma Civil Application No. 7 of 2007** the court emphasized,

"In this country natural justice is not merely principle of common law; it has become a fundamental Constitutional right under Article 13 (b) (a) includes the right to be heard amongst the attributes of the equality before the law."

As a matter of procedure, the Respondents were to be given time to respond the objection raised, but in turn they received letters of disqualification even before lapse of time to respond.

There is also and from the Appellants the issue waiver for costs of this suits. It's a general principle of the law that a party who is substantially successful in litigation is entitled to costs, as the Appellants finds to improper for this Court to order costs to all villagers. The law under **section 30 of CPC Cap. 33** gives power to the Court to order costs upon its discretion. In the case, of **Husein Janmohamed & Sons vs. Twentische Overseas Trading Co. Ltd (1967)1 E.A 287** which was

approved in **Novoneca Construction Co. Ltd and Another vs. National Bank of Commerce Tukuyu Branch and National Bank of Commerce Ltd, commercial case No. 8 of 2015**, Biron J. said

'The general rule is that costs should follow the event and the successful party should not be deprived of them except for good cause'

Also the court in **DB Shapriya and Company Ltd vs. Regional Manager TANROADS Lindi, Civil Reference No. 1 of 2018**, stated,

"The Court may withhold costs to a successful party on any justifiable ground, which may include that party's misconduct".

In the instant case it is undisputed that no sufficient cause put forward by the Appellant which could warrant this Court to waive costs. It's obvious that Respondents spent their precious time and incurred necessary costs including hiring advocate in seeking legal redress before the Court. These costs are to be shouldered by the Appellants themselves.

In the event, I the Appeal is unmeritorious and is dismissed. order of no cost whatsoever as it was made by the Trial Court. I thus find this Appeal with no merit, it hence fails as I hereby uphold the decision and order of District Court of Morogoro.

It is so ordered.


J. A. DE-MELLO

JUDGE

21/2/2020