

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

PC. CIVIL APPEAL NO.05 OF 2019

(Arising from the decision of the District Court of Bariadi in Civil Revision No. 14 of 2018 originating from PC. Civil Case No 40 of 2018 in Nkololo Primary Court)

TUMO MAJABA.....APPELLANT

VERSUS

MASUNGA SAYI.....RESPONDENT

JUDGMENT

Date: 15.06.2020 & 14/8/2020

MKWIZU, J.:

Appellant Tumo Majaba filed a civil case at Nkololo Primary Court claiming a total sum of 3, 140, 000/= from the respondent Masunga Sayi. The claim was for the demand of money respondent took as a loan from the appellant. Trial magistrate found for the appellant. Respondent was ordered to pay the appellant the claimed sum or surrender the house located at Nkololo which was pledged as security of the said loan.

Respondent, Masunga Sayi, complained via a letter to the District Court Magistrate who revised the proceedings of the trial court. The District Court quashed the proceedings and set aside the decision of the Primary Court on

the ground that the case was conducted in the absence of assessors contrary to section 7 of the MCA, Cap 11 R.E 2002 and that, the loan agreement was not tended before the court as exhibit. The District Court was of the opinion that, the claim being a specific damage ought to have been specifically proved. It thus concluded that the claim was not proved. Aggrieved, appellant filed the present appeal with 10 grounds of appeal which can be summarized as follows: *The revision was done without sufficient reasons, appellant was denied a right to be heard in the revision and that District Court failed to evaluate evidence on the record*

When the matter came for hearing, Appellant appeared in person while the respondent had the services of Mr. Robert Neophitus Advocate. Arguing the appeal, appellant was brief, he requested the court to consider his grounds of appeal and order the respondent to pay his money.

Responding to the appeal, Mr. Neophitus opposed the appeal. He said, the revision proceedings were rightly done under section 22 (1) of the Magistrate Court Act.

Making reference to the trial court's records, the counsel for the respondent argued that, the District court was justified to nullify the trial court's proceedings having found that the trial was without the aid of assessors. On being prompted by the Court on the status of the trial court proceedings in respect to the participation of assessors, Mr. Neophitus changed his mind. He submitted in turn that, assessors did participate and therefore second ground of appeal has merit. He, again conceded to the fact that revision was determined without parties afforded an opportunity to be heard contrary to section 22 (3) of the Magistrates Court Act. He prayed the appeal to be allowed, district Court's proceedings be quashed and set aside and further that the file be remitted back to the district court for the hearing of the revision *de novo*.

I have passionately considered the grounds of appeal, parties submissions and the records of the two courts below. I am of the position that the issue whether parties were afforded right to be heard is of essence and if resolved may determine this appeal.

Revisional jurisdiction of the district Court is provide for under section 22 of the Magistrates' Court Act which states:

"22.-(1) A district court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings

(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction including the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of paragraph (b) of subsection (1) of section 21 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

*(3) In addition to the provisions of subsection (2) of this section, **no order shall be made in the exercise of the court's revisional jurisdiction in any proceeding of a civil nature***

increasing any sum awarded, or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary to make it conform thereto) unless such party has been given an opportunity of being heard"
(*Emphasis added*).

The above section particularly subsection 3 is couched in a mandatory way, that where the revision tends to affect parties' rights, then the parties concerned must be afforded an opportunity to be heard. In the case of **I.P.T.L. v. Standard Chartered Bank (Hong Kong) Ltd**, Civil Revision No. 1 of 2009 (unreported), the court stated that:

"...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 giving him a hearing according to the principles of natural justice."

Again, in **Halima Hassan Marealle v. Parasistatal Sector Reform Commission**, Civil Application No. 84 of 1999 the court held:

"The concern is whether the applicant whose rights and interests are affected is afforded the opportunity of being heard before the order is made. The applicant must be afforded such opportunity even if it appears that he/she would have nothing to say, or that what he/she might say would have no substance"

The above takes its root on the rules of natural justice as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977.

In the instant case, prompted by the respondent's complaint letter, the District Court ***suo moto*** called for and revised the proceedings and decision in two cases, criminal case No.54 of 2018 and Civil case No. 40 of 2018 of Nkololo primary Court. The said revision was done without affording the parties an opportunity to be heard. This would have been correct if the rights of parties remained intact , undisturbed. However, the district Court went ahead to nullifying the entire trial courts record and declaring the claim which was found by the trial court proved, unproved. This, in my view, was contrary to section 22 (3) of the MCA quoted above. The District Court ought to have invited the parties to address the respondent's complaint; before the revision order is given.

As correctly submitted by the parties herein, the District Court condemned the parties unheard. The law is clear and as it has been said many times that any decision that is made without affording the parties a right to be heard is a nullity. It is a nullity even if the same decision would have been reached had the parties been given an opportunity to be heard. This is because the right to be heard is a core foundation of a proper administration of justice and it is not something that can be overlooked. In the case of **Fabian Munraha Vs. Rukaya Munraha** (1996) TLR 150 it was held *inter alia* that:

"The Appellant was effectively and wrongfully denied the right to be heard and clearly condemned unheard, Such violation of the Appellant's right to be heard constituted a contravention of one of the basic principles of natural justice"

The decision of the District Court is therefore a complete nullity for the reasons explained above. This ground alone suffices to dispose of the appeal. I find no need to determine the rest of the grounds.

Consequently, I allow the appeal. I quash the proceedings and the revision order by the District Court as the parties were not afforded the right to be heard. File in respect of Revision No.14 of 2018 is remitted back to the

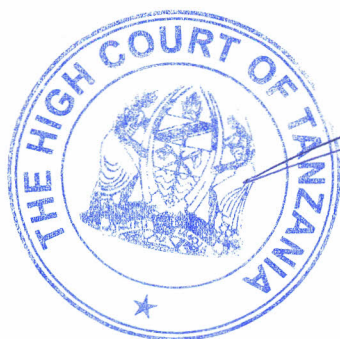
District Court for a fresh revision before another Magistrate with a competent jurisdiction. In determining the respondent's presented complaints, the District Court is directed to observe the whole provisions of section 22 of the Magistrate court Act.


The appellant shall have his costs for this appeal. Order accordingly.

DATED at **SHINYANGA** this 14th day of August, 2020.


E.Y. Mkwizu
Judge
14/8/2020

Court: Right of Appeal explained.




E.Y. Mkwizu
Judge
14/8/2020