

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

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 81 OF 2019**

*(Appeal from Judgement of Morogoro District Court in Civil Appeal No. 6 of 2018 dated  
30<sup>th</sup> January, 2019 by Nyembele, SRM)*

**MWANIA HASSAN.....APPELLANT**

**VERSUS**

**MWAJUMA RAMADHANI.....RESPONDENT**

**JUDGEMENT**

**Date of last Order:** 04/08/2020

**Date of Judgement:** 23/10/2020

**MLYAMBINA, J.**

This appeal traces its genesis before the Kingolwira Primary Court in Morogoro Town as *Shauri la Madai No. 22 of 2017*. The Respondent herein one Mwajuma Ramadhani Sued Amina Kondo, Rucy Antony, Mwanias Hassani And Elizabeth Sanga claiming TZs. 18, 639,000/= the basis of the claim was failure of the Respondent to account for the money collected through Upendo group which was formed on 3<sup>rd</sup> October, 2014 and which was to be dissolved on 7<sup>th</sup> October, 2016. The claim read:

*Tangu tarehe 3/10/2014 tulianzisha kikundi kijulikanacho  
Upendo tukiwa Wanachama 82 tulichangishana kama*

*michango ya pesa tangu tarehe hiyo. Tulianza kupeana pesa za faida ya Kikundi tarehe 21/12/2014 na pia kuendelea kuchangishana kama kawaida tarehe 7/10/2016 tulipotaka kuvunja Kikundi ndipo tulipogundua kuwa Wadaiwa hawana pesa.*

After hearing, on 17<sup>th</sup> November, 2017 the Primary Court pronounced its Judgement by ordering *inter alia* Mwania Hassani to pay Mwajuma Ramadhani the sum of TZs 18,000/= so that she distributes to those whom the Upendo Group owed them.

On 12<sup>th</sup> December, 2017 Mwania Hassan lodged her petition of appeal but in Swahili Language. On 19<sup>th</sup> December, 2017 Mwania Hassan filed his proper Petition of Appeal before the District Court of Morogoro at Morogoro on three grounds, namely:

1. That, the Primary Court entertained a matter in respect of which it had no pecuniary jurisdiction.
2. That, the Primary Court failed to realize that the Appellant could not be held liable for the contributions and disbursements of the cash under consideration in this matter, as this was a local pyramid scheme which had its own rules.
3. That, the learned Primary Court Magistrate failed to properly evaluate the evidence before her, and in so doing arrived at

the decision that was completely wrong in the circumstances of this case.

**WHEREFORE;** The Appellant prayed that the decision of the Primary Court be quashed and the consequential orders set aside and any other orders as the Court may deem fit to grant in the circumstances of this case.

The records show that the appeal was assigned before Honorable R. R. Futakamba. Following his transfer and after the file was mentioned before other two Magistrates, the file was re-assigned to Honourable Nyambebe Senior Resident Magistrate. The original proceedings dated 18/7/2018 before Honorable Nyambebe Senior Resident Magistrate read:

**Court:** This case has been re-assigned to me following the transfer of the Learned Magistrate. The records reveal out that the proceedings are complete.

**Court:** Parties are asked as to whether they wish to proceed with hearing of this appeal and they state:

**Appellant:** I don't have intention to file a rejoinder.

**Respondent:** No objection.

**Appellant:** I have nothing to add, I pray the Court to proceed  
with the Judgement using the documents I filed.

**Respondent:** I have nothing to say.

**Court:** Since the parties have nothing to say orally this case is  
hereby scheduled for Judgement.

Signed 18/08/2018

**Order:** Judgement on 16/08/2018 at 12:00 hours. Parties to  
appear.

It was unfortunate the Judgement could not be pronounced till on  
30<sup>th</sup> January, 2019. Through that Judgement, the appeal was found  
incompetent for being preferred out of time for contravening  
*Section 20 (3) of the Magistrates Courts Act Cap 11 (R.E. 2002).*

Being aggrieved with the above decision, the Appellant filed this  
appeal before this Court on three grounds:

1. That, the learned Senior Resident Magistrate violated the  
cardinal principles of natural justice by failing to give the  
Appellant or her Advocate an opportunity of being heard.
2. That, the Learned Senior Resident Magistrate failed to satisfy  
herself that the Primary Court had no jurisdiction to entertain

the matter and so its decision, for reasons of want of jurisdiction, was null and void, and so was not capable of being upheld on appeal.

3. That, the Learned Senior Resident Magistrate erred in law in failing to consider a preliminary objection raised by refusing the parties, especially the Appellant from being heard on it.
4. That, the Learned Senior Resident Magistrate erred in dismissing the appeal instead of striking it out.

The appeal has been argued by way of written submissions. The Appellant filed through representation of J.R. Kambamwene, Advocate. The reply submission was filed by Hassan Saidi Nchimbi, Advocate.

Having gone through the submission, it appears the Appellant opted to argue the first ground only. According to the Appellant, the Senior Resident Magistrate did not afford any opportunity for the preliminary objection to be heard. It is captured in the proceedings of the District Court at page 7 thus:

Date: 18/7/2018

Coram: Hon. E. J. Nyembele, SRM

Appellant: Absent

Respondent: Absent

CC: Victor

**Court:** Parties are asked as to whether they wish to proceed with the hearing of this appeal and they states (sic):

**Appellant:** I don't have intention to file a rejoinder.

**Respondent:** No objection.

**Appellant:** I have nothing to add. I pray the Court to proceed with the Judgement using the documents I filed.

**Respondent:** I have nothing to add. I pray the Court to proceed with the Judgement using the documents I filed.

**Respondent:** I have nothing to say.

**Court:** Since the parties have nothing to say orally this case is hereby scheduled for Judgement...

The Appellant was of submission that, the parties being marked "absent" and in the absence of Counsel for the Appellant, the origin of the above conversation is a mystery known only to the Magistrate. In that respect, according to the Appellant, the parties were not afforded opportunity to present their views on their respective positions of the appeal.

As for the failure give parties opportunity to argue the preliminary objection but yet the Judgement based entirely on it, the Appellant was of submission that there is no gainsaying that this was illegal. The Appellant was fortified in this position by cases cited by Sameji, J. (as she then was) in the case of **Muro Investments Co. Ltd v. Alice Andrew Mlela**, High Court of Tanzania at Dar es Salaam, Civil Appeal No. 72 of 2015.

In the abovementioned case, Madam Justice Sameji cited, at page 6 of her Judgement the case of **Sadiki Athuman v. Republic** [1986] TLR 235 in which it was held that:

*The requirement that a party to the proceeding must be given the opportunity to lay his views is a fundamental principle of natural justice...*

Again, In **Mbeya Rukwa Auto parts and Transport Ltd v. Jestina George Mwakyoma**, Court of Appeal of Tanzania, Civil Appeal No. 45 of 2000, cited by Sameji, J. (*supra*) at page 17, it was held by the Court of Appeal that:

*In this country natural justice is not merely a principle of common law: it has become a fundamental constitutional right. Article 13 (6) (a) include the right to be heard amongst the attributes of equality 'before the law.*

In **Abbas Sheally and Another v. Abdul Fazalboy**, Court of Appeal of Tanzania, Civil Application No. 33 of 2002, also cited by Sameji (*supra*), the Court of Appeal of Tanzania emphasized that:

*The right of a party to be heard before adverse action 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 which is arrived at in violation of it will be nullified even if the same decision would have been reached has the party been heard, because the violation is considered to be a breach of natural justice. [Emphasis added].*

The Appellant was of view that, in the light of what has transpired in Court reportedly on 18/07/2018, the proceeding was in gross violation of natural justice and based on the Court of Appeal decisions above-cited, the proceedings was illegal and the decision null and void.

In reply, the Respondent was of *inter alia* submission that, both parties on the impugned date signified that they had nothing more than the pleadings submitted. As such, it is absurd to suggest that the Court was negligent enough to fake the appearance of both parties and record the same.



With due respect to both parties, I have noted the quorum indicating absence of the parties on 18/7/2018 has been concocted by the Appellant herself. The original records do not suggest the word absence of the parties. The quorum is left empty on the part of the parties. However, upon being probed by the Court, the Appellant and the Respondent made response to the Court of which was recorded. That means, both parties were given the right to be heard.

The Appellant cannot turn at this stage and fault the Court basing on a mere slip of the pen. Most important, the Appellant has not disputed to had said what was recorded by the Court. As such, the ground of appeal based on not being afforded the right to be heard is an afterthought and the cited decisions for that reason are irrelevant to this appeal.

In the end, the appeal is dismissed with costs for lack of merits.



**Y. J. MLYAMBINA**

**JUDGE**

**23/10/2020**

Judgement pronounced and dated 23<sup>rd</sup> October, 2020 in the absence of the Appellant and in the presence of the Respondent in person.



**Y. J. MLYAMBINA**

**JUDGE**

**23/10/2020**

10/10/2020