

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

(PC) CIVIL APPEAL NO. 05 OF 2022

(Arising from Civil Appeal No. 03 of 2021 from Muleba District Court, Originating from Probate and Administration Cause No. 13 of 2020 from Kamachumu Primary Court)

PRUDENCE JEREMIA.....APPELLANT

VERSUS

MODESTI KAMAKALWE.....RESPONDENT

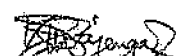
JUDGEMENT

04th July & 22nd July 2022

Kilekamajenga, J.

In 2020, the appellant petitioned to be appointed the administrator of the estate of the late Jeremia Rwehangila who died in 2003. His application was objected by the respondent on the reason that, the deceased distributed the estate to the heirs before his death. After hearing the objection, the Primary Court of Kamachumu finally appointed the appellant and Mickdadi Mulalika to administer the estate. The appellant was not happy with the decision to add another person in the administration of estate, hence he appealed to the District Court where his appeal was dismissed and the decision of the Primary Court was quashed. Thereafter, he approached this Court for the second appeal and coined five grounds of appeal to challenge the decision of the District Court. In his appeal to this Court, he coached the following grounds:

- 1. The appellate District Court improperly exercised its jurisdiction in wrongly alleging that there were rejoinder submissions whereas in fact the court*



- disposed of the appeal without affording the parties the right to argue the appeal orally or by way of written submissions.*
2. *The appellate District Court violated the cardinal principle of **audi alteram partem** in not affording the parties the right to argue the appeal orally or by way of written submissions.*
 3. *The appellate District Court improperly exercised its jurisdiction and infringed the natural justice principle of **audi alteram partem** when it unilaterally raised and determined the appeal on the sole issue of time limitation, which was not raised in the petition of appeal without affording the parties the opportunity to address it on that issue.*
 4. *The appellate District Court erred in law and in fact for being inclined to the wrong view that allowing the Appellant to petition for letters of administration would be to disturb (sic) the peace of the relatives of the deceased whereas the same relatives of the deceased are the ones who had appointed the appellant to petition for letters of administration.*
 5. *The decision of the appellate District Court is otherwise wrong and faulty at law.*

The hearing of this appeal was attended by both the parties whereas the appellant was also represented by the learned advocate, Mr. James Njerwa. The counsel for the appellant prayed to argue all the grounds of appeal that, the parties were not given the right to be heard by the District Court because the appellant just adopted the grounds of appeal but the judgment shows that the parties were heard. Therefore, the judgment of District Court does not reflect its proceedings hence the parties were denied the right to be heard something which is contrary to **Order XXXIX, Rule 16(1)(2) of the Civil Procedure Code, Cap. 33 RE 2019** and **Article 13(6)(a) of the Constitution of the**

United Republic of Tanzania. In building up his argument, he invited the Court to consider the case of **Danny Shasha v. Samson Masoro and 11 others, Civil Appeal No. 298 of 2020.**

The counsel argued further that, the District Court, *suo motu*, raised the issue of time limitation without inviting the parties to argue it and proceeded to determine the appeal and therefore went contrary to **Order XXXIX, Rule 2 of the Civil Procedure Code.** The Court of Appeal of Tanzania insisted on the need to invite the parties to address the issue raised by the court in the case of **Pili Ernest v. Moshi Musani, Civil Appeal No. 39 of 2019,** CAT at Mwanza.

When addressing the fourth ground, the counsel argued that, the District Court erred in believing that allowing the application for administration of estate would breach peace within the deceased's family. In this case, the deceased's family proposed the appellant to administer the estates of the deceased. On the fifth, ground, the counsel argued that the judgment of the District Court is faulty and not understood because the magistrate quashed the proceedings of the trial court but at the same time allowed the appeal. The counsel finally urged the Court to allow the appeal and grant an appropriate direction.

On his side, the respondent who was unrepresented insisted that, they were afforded the right to be heard by the District Court. He further insisted that the

appellant's case was time-barred and therefore the instant appeal is devoid of merit.

In this case, the careful consideration of the submissions from the parties and the record of the case clearly portray one major point in the instant appeal. As argued by the counsel for the appellant, when the appeal was scheduled for hearing before the District Court, both the appellant and respondent simply prayed to adopt their pleadings i.e. the grounds of appeal and reply to the grounds of appeal. Thereafter, there was no crucial rejoinder from the appellant. When composing the judgment, the magistrate raised an issue on whether the case was time-barred or not. The magistrate discussed at length the same issue and finally concluded that, the appellant failed to advance sufficient reasons for the delay in filing the application for administration of estate.

However, it is unfortunate that, the first appellate court, after raising the issue on its own motion, did not invite the parties to address on it. It is already a settled principle of the law which has been stressed by the Court of Appeal of Tanzania that, whenever the court finds a pertinent issue which was not among the points argued by the parties, the court must invite and afford the parties the right to address the raised issue before proceeding to determine the case based on the same issue. For instance, in the case of **Pili Ernest** (*supra*), the Court of Appeal of Tanzania insisted that:

As hinted earlier on, the learned magistrate on the first appeal, in the course of composing his judgment posed a question suo motu on whether it was reasonable to entertain an appeal which to him was out of time. He did not invite the parties as he ought to have done, in order to address him on this crucial point which he found necessary in the determination of the appeal before him. Instead he went ahead and dismissed the appeal on the strength of that point he raised suo motu... Thus, in view of what we have endeavoured to discuss, we are satisfied that the parties were denied the right to be heard on the crucial question that the first learned appellate magistrate had raised and we are further satisfied that the denial was in violation of the fundamental constitutional right to be heard and the parties were prejudiced. This renders the judgment of the District Court a nullity.'

Also, in the case of **Danny Shasha** (*supra*), the Court of Appeal of Tanzania stressed that:

'The Court has emphasized time and again that a denial of the right to be heard in any proceedings would vitiate the proceedings. Further, it is also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania.'

Similarly, the District Court in this case denied the parties the right to be heard when it raised an issue and disposed of the case based on the raised issue without inviting the parties to argue on it. Based on principle of the law stated above and emphasized by the Court of Appeal, the proceedings and decision of the District Court become a nullity. On the merit of this vital ground of appeal

which was raised by the appellant, I allow the appeal and quash the proceedings and decision of the District Court. I further uphold the decision of the Primary Court and emphasize that, the appellant and Mickdadi Mulalika should administer the estate of the deceased, if any. I find no reason to consider the other grounds of appeal. I now remit the file to the Primary Court for the administrators to administer the estate. No order as to costs. It is so ordered.

Dated at Bukoba this 22nd Day of July 2022.



Ntemi N. Kilekamajenga.
JUDGE
22/07/2022

Court:

Judgement delivered this 22nd July 2022 in the presence of the appellant and respondent all present in person. Right of appeal explained to the parties.



Ntemi N. Kilekamajenga.
JUDGE
22/07/2022

