

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

CIVIL REVISION CASE NO. 49 OF 2022

(Arising from Revision Order No. 1 of 2022 originating from Probate Cause No. 5 OF 2017)

PAMBA FESTUS APPLICANT

VERSUS

PUDENCIANA MKAMI MAJULA RESPONDENT

RULING

14th & 16th September, 2022

Kahyoza, J.:

Pamba Festus (Pamba) instituted an appeal against the decision of the district court emanating from the revisional proceedings. The appeal was found to be lodged out of time and dismissed. After dismissing the appeal, the Court ordered revisional proceedings to be opened. The court ordered opening of *suo motu* revisional proceedings to find out the propriety of the district court's order revising the decision of the primary court without affording parties an opportunity to address it.

The parties' advocates appeared and unanimously submitted that the district court erred to revise the primary court's judgment without hearing parties. **Pamba's** advocate submitted the right of the parties to be heard before a decision is given is fundamental and constitutional right, breach of which renders the decision a nullity. He cited the case of **Mbeya-Rukwa Autoparts and Transport Ltd v Jestina G. Mwakyoma** [2003] TLR 25 to support his contention. He prayed this Court to quash the district court's

order and to refrain from ordering a re-hearing of the application for revision *suo motu*.

Pudenciana Mkami Majula (Pudenciana)'s advocate concurred with the submission of **Pamba**'s advocate that the decision of a court made in violation of the right to be heard is invalid. He prayed this Court to quash the decision of the district court and order the district court to hear parties before it determines the application for revision *suo motu*.

I wish to state at the outset that I am in agreement that it is a cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard. : *audi alteram partem*. In the case of **Thomas Edison Ltd v Bathock** 1912 15 C.L.R 679 held thus:

*"There is a primary precept governing administration of justice that **no man is to be condemned unheard** and therefore, as a general rule, no order should be made to the prejudice of a party unless he has the opportunity being heard in defence, but instance occur where justice could not be done unless the subject matter of the suit is preserved and, if that is in danger of destruction by one party or if irremediable by one party interim orders may issue to give room for the court to determine the dispute on the merits."* (Emphasis is added)

It is evident that the district court did neither heard the respondent who had complained in writing or the applicant before it made its decision. It is on record that after the district court received a complaint from **Pudenciana**, the respondent, opened revisional proceedings *suo motu* and determined it without hearing parties. The Court of Appeal has decided in

many cases that it is inappropriate for courts to raise jurisdictional matters *suo motu* and determining them without hearing the parties or to make decisions without hearing parties. See **Dishon John Mtaita V. The Director of Public Prosecutions**, Criminal Appeal No. 132 Of 2004; **Kluane Drilling (T) Ltd V. Salvatory Kimboka**, Civil Appeal No. 75 Of 2006; And **Margwe Erro, Benjamin Margwe & Pater Marwe V. Moshi Bahalulu**, Civil Appeal No. 111 of 2014. In the case cited by the applicant's advocate of **Mbeya- Rukwa Autoparts and Transport Ltd V. Jestina George Mwakyoma** (supra) the Court of Appeal held that-

"....natural justice is not merely a principle of the common law, it has become a fundamental constitutional right Article 13(6) (a) includes the right to be heard among the attributes of equality before the law."

In another case of **Judge In Charge Of The High Court At Arusha And Ag V.Nim Munuo Ng'uni** [2004] TLR. 52, the Court of Appeal stated that-

*It is a fundamental requirement of justice that a person or property A should not be at risk without the party charged being given adequate opportunity of meeting the claim, as identified, and pursued. If the proceedings derive from statute, then, in the absence of any set or fixed procedures, the relevant authority must create and carry out the necessary procedures; **if the set and fixed procedure is not comprehensive, the authority must supplement it in such a fashion to ensure compliance with constitutional justice.** (Emphasis is added)*

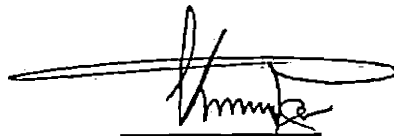
I am alive of the fact that there are not set rules of procedures directing courts to hear parties before determining *suo motu* proceedings. That notwithstanding, courts ***must supplement the procedure of hearing suo motu proceedings in such a fashion to ensure compliance with constitutional justice.*** Since the district court did not afford parties an opportunity to be heard before it determined the matter, its decision is invalid. Thus, parties and especially the applicant was condemned unheard.

In the end, I find the decision of the district court invalid, quash it and set aside subsequent orders. I further order the district court to hear parties and determine the matter afresh. The presiding magistrate is not prohibited to re-hear the application and in his absence his successor may proceed to hear the matter.

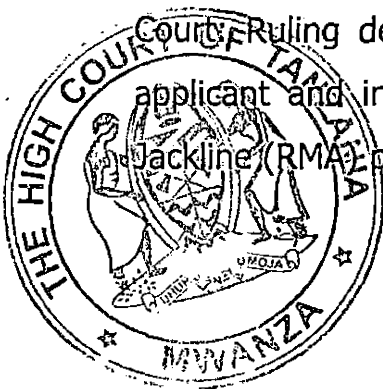
I make no order to costs as no party is to blame for the irregularity.

I order accordingly.

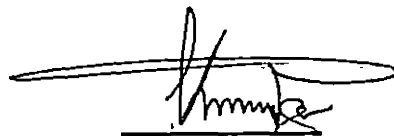
Dated at Mwanza this 16th day of September, 2022.



John.R.Kahyoza.
Judge.



Court Ruling delivered in the presence of Mr. Geneya advocate for the applicant and in the absence of the respondent and his advocate. B/C Jackline (RMA) present virtually.



John.R.Kahyoza.
Judge.

16.9.2022