

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL REVISION NO. 20 OF 2022

(Originating from Misc. Civil Application No. 103 of 2022 from resident Magistrate Court of Dar es Salaam at Kisutu, and Misc. Civil Application No. 56 of 2022 from Temeke District Court)

FCL KILIMO MANUNUZI LTD.....1ST APPLICANT
YIHAIKERRY-HYSEAS TRADING LIMITED.....2ND APPLICANT
VERSUS
BURUDIKA DISTRILLERS LIMITED.....RESPONDENT
RULING

Date of Last Order:01/09/2022

Date of Ruling: 30/09/2022

E.E. KAKOLAKI J.

This application has a peculiar history affecting even the manner in which it found its way before this court. In essence the applicants and respondent filed two different applications, for two different orders over the same subject matter, in two different courts with concurrent jurisdiction, which resulted into two different orders/directives. It appears that, during execution of the orders from the Resident Magistrates Court of Dar es Salaam at Kisutu, applicants discovered that there were other conflicting orders from Temeke District whereby, upon notification the Resident Magistrate Court of

Dar es Salaam forwarded the two files to this Court for directives hence this suo motu revision application in which parties were summoned to appear. Upon appearance parties were ordered to file affidavit and counter affidavit respectively in support and against the application ready for hearing.

The background of the dispute as gathered from the applicants' affidavit, respondent's counter affidavit and reply to counter affidavit is not complicated to narrate. It all started with the agency agreement between the 1st applicant and 2nd applicant for the 1st applicant to collect, purchase, transport to Dar es Salaam and preserve sesame seeds for the 2nd applicant from different cooperative unions in Southern Region of Tanzania. It appears that, on 26th June, 2022 to 28th June 2022, the 1st applicant under instruction of the 2nd applicant purchased three thousand one hundred forty (3140) bags of sesame seeds from Chama cha Ushirika Runali, worth Tanzanian Shillings Four Hundred Seventy two Million, six hundred twenty seven, one hundred fifty five only (472,627,155.00), which were stored at the warehouse of Umoja AMCOS limited. On 8th July, 2022, the 1st applicant applied for and was issued with transportation permit by the Liwale Municipal under the name of the 2nd applicant for transportation of 600 bags of sesame seeds from Liwale to EPZ external area in Dar es Salaam. The 1st applicant on behalf of the 2nd

applicant engaged the respondent to transport the said 600 bags of sesame from Liwale to Dar es Salaam on the terms that, the bags should be delivered to EPZ external area, at the consideration of Tshs. 3,300,000 to be paid in two instalment, the first instalment of Tshs. 2,000,000 which was to be paid on the date when the motor vehicle was issued, and the second instalment of Tshs. 1,295,000.00 to be paid upon delivery of the said sesame seeds at EPZA external, Dar es Salaam and offloading the same from the motor vehicle. It was agreed further that, should the applicants fail to offload the 600 bags of sesame consignment upon delivery for three days at the applicants' destined yard, the respondent shall charge the applicant Tshs. 200,000.00, a day and upon lapse of three days the respondent shall take the sesame cargo to its yard and charge the applicant a total Tshs. 300,000.00 per day as storage fees, and further that, the same shall not be released until final payment of the charge. According to the applicants, the respondent transported the goods and arrived in Dar es Salaam on 10th July 2022, but contrary to their agreement, the respondent did not deliver the same at EPZA external Dar es Salaam, but took it to her yard and started to charge the applicant Tsh.300,000.00 a day in contravention of their agreement. The respondent further moved the 600 bags of sesame from his

yard to the warehouse at TPDC Mikocheni Warioba area, and further took the transportation documents and ownership documents from the applicant's escorter of the cargo. In their efforts to recover the 600 bags of sesame, applicants on the 20th July 2022, filed Civil Case No. 173 of 2022 and Misc. Application No. 103 of 2022, at the Resident Magistrates Court of Dar es salaam at Kisutu against the respondent, claiming for breach of contract and the issue or release of the said 600 bags of sesame by the respondent. On the same date the Resident Magistrate Court of Dar es Salaam issued an ex-parte order against the respondent, to release the 600 bags of sesame to the applicants and further ordered the respondent to be served for inter-parties hearing. It is stated that, the respondent refused to heed to the court's order and further refused services of the summons, as per the process server's affidavit, duly sworn on 25th July 2022. Following that alleged none compliance of court's orders by the respondent, on 25th July 2022, the Resident Magistrates Court of Dar es Salaam ordered an attachment of the said 600 bags and appointed court broker named CDJ classic group Ltd to execute its orders, hence on 27th July 2022 the court broker complied with the same by attaching and issued the applicant with the 600 bags of sesame. It appears during execution of the said RMs Court's

order the applicants were notified by the respondent of existence of an order from the District Court of Temeke dated 26th July, 2022 to sell the said 600 bags of sesame. Upon being served with the respondent's order, the applicants noticed that, on 22nd July, 2022 the respondent had filed Civil Case No. 39 of 2022 at Temeke District Court against the 2nd applicant. However, on 29th July, 2022, the respondent filed his WSD in respect of Civil Case No. 173 of 2022 before the resident Magistrate Court of Dar es Salaam at Kisutu, and the counter claim seeking the same orders sought in Civil Case No. 39 of 2022 before Temeke District Court.

To the contrary the respondent claims that, the said transportation agreement between her and the 1st respondent was executed in writing at Temeke and that, it was their term of agreement among others that, the second instalment would be paid to her upon arrival of the cargo in Dar es salaam but before offloading, the term of agreement which the applicants breached, hence decided to offload and keep the cargo at her depot/storage yard Mikocheni area. According to her, since sesame seeds is perishable cash crops and she had very reliable information that, the applicants were intending to dispose of the said cargo to their clients at any time something which would cause delay and inconveniences in execution of the matter in

case she wins the case and further that, since the transportation agreement was executed with Temeke District then, the case was properly instituted within the jurisdiction of the District Court of Temeke whereby an order for attachment before judgment of the said 600 bags was lawfully granted ex-parte.

When the matter was called on for hearing both parties who appeared represented were heard viva voce. The applicants had representation of Mr. Philip Irungu, learned advocate while the respondent enjoyed the services of Mr. Mohamed Majaliwa, learned advocate.

Mr. Irungu staged the floor first by adopting applicants' affidavit and reply to counter affidavit to form part of his submission. He then submitted that, by virtue of the provisions of Magistrate Courts Act,[Cap. 11 R.E 2019], the Resident Magistrates Court and the District Court have concurrent jurisdiction on civil matters. He argued that, in this matter the cause of action arose in Dar es Salaam where the respondent failed to deliver the goods to the applicants ware house situated at Ubungo and stayed with it at her ware house at Buguruni within Ilala municipality, before it was shifted to Mikocheni within Kinondoni municipality. He added that, since the Resident Magistrate Court of Dar es Salaam at Kisutu has jurisdiction within Dar es Salaam region,

the applicants were right to file their suit and application in the said court, whereby the Court on 20th July, 2022, issued interim orders to the effect that, the goods which were in the hands of the respondent be issued to the applicants. He referred the Court to the court's order annexed to the affidavit as annexure KC7. Mr. Irungu went on to submit that, on 22nd July 2022, through the courts process server, the respondent was served with the plaint, Misc. Application No.103 of 2022 and the interim orders (documents), but as per annexure FC 8 of the court process server's affidavit, the respondent refused services. In view thereof he submitted, the respondent knew the existence of the proceedings between her and the applicants before the Resident Magistrate Court of Dar es Salaam at Kisutu though he refused service. He contended further that, upon refusal of service by the respondent on 25th July 2022, the applicants successfully applied to the Resident Magistrates Court of Dar es Salaam at Kisutu and were granted with warrant of attachment of their cargo/goods which was in the hands of the respondent. He said, the respondent on 25th July, 2022 filed Civil Case No. 39 of 2022 in Temeke District Court while aware of existence of the proceedings before the RM's Court, in which 26th July, 2022 a day after warrant of attachment to the applicants was issued by the RMs Court,

respondent was issued with warrant of attachment and sale of the 600 bags of sesame seeds by the District Court of Temeke. In his view, the dates are of essence for this Court to determine which court had jurisdiction over the matter and which order should be executed. He argued that, since the proceedings before the RM's court was filed on 20/07/2022, the suit filed by the respondent at Temeke District Court on 25/07/2022, was res subjudice because it was between the same parties and the same subject matter (sesame seeds). And added that, the same was in contravention of section 8 of the CPC, as the proceedings at Temeke District Court ought to have been stayed. He placed reliance in the case of the **Managing Director, ABSA Bank Tanzania Limited (Formerly known as Barclays Bank (Tanzania) limited Vs. Felician Muhandiki**, Civil application No. 37/01 of 2022 at page 15-16. In view thereof, he contended, the respondent's act of filling another matter in the District Court of Temeke in existence of another matter before the Resident Magistrates Court of Dar es salaam at Kisutu was an abuse of courts process.

Regarding the consequences of the two filed cases in different courts, Mr. Irungu, implored the court to follow the decision in the case of **CRDB bank limited Vs. Tanga Hardware and auto parts limited and others**, Civil

Appeal No. 104 of 2003 (CAT) at page 7, where the Court of Appeal when faced with the situation akin to the present one stated that, the case filed earlier at the High Court registry should have proceeded against the one filed at the High Court, Commercial registry which should have been stayed. He rested his submission by submitting that, the orders of the District Court of Temeke should have been stayed, hence the orders in the miscellaneous application No. 56 of 2022 should not have been issued. He therefore requested the court to quash and set aside the said orders.

In response, Mr. Majaliwa attacked the assertion by Mr. Irungu that, the respondent was served with the applicants' application, submitting that she was not served. In his view, the alleged service was meant to summon the respondent to file her WSD in respect of the suit and not to appear for defending Misc. Application No. 103 of 2022 pending before RMs Court. He further argued, even the assertion that, services was effected to the advocate is also untrue as the same ought to have been made to the respondent herself who was to instruct her advocate to work on it.

Regarding the case of **CRDB Bank Ltd** (supra) relied on by the applicant's counsel, he attacked the same terming it irrelevant to the present case as it refers to parties who were looking for similar reliefs to the courts with parallel

jurisdiction, unlike in this case where parties are looking for different reliefs, in two different courts with concurrent jurisdiction.

Concerning the issue of jurisdiction between the two courts, he said, the governing section is section **40 (2) (b)** of the **MCA**, where the **District Court** has pecuniary jurisdiction to entertain matters on movable properties not exceeding Tshs. 200 million, while for the **Resident Magistrates Court** is section **41 (1)** of **MCA**, and the jurisdiction is conferred by the first schedule of MCA and any other written laws. And for the purpose of geographical jurisdiction he submitted, section 13 of CPC provides that every suit should be filled in the court of the lowest grade competent to try it and section 14 of the CPC provides that, the suit shall be instituted where the subject matter situates. Regarding application for orders of attachment he said, the same should be filed within the local limits where the subject matter situates, and in commercial cases the jurisdiction is vested to the District Court in a subject matter which its value does not exceed Tsh.70 million. He further referred the court to section 18 of CPC which provides that, every suit shall be instituted in court within local limit whose jurisdiction the defendant resides or where the cause of action arose. He argued that, in the present matter the respondent filed the case in the District Court of Temeke

where the agreement was signed and her head offices is located as evidenced by paragraph 4 of the plaint. In his view by filing her case in the District Court of Temeke, the respondent complied with provisions of section 18 of the CPC. In further view of Mr. Majaliwa, the applicants filed the suit without disclosing the respondent's residence or address for the purpose of determination of court's geographical jurisdiction, thus mislead the RMs Court to issue the orders against the properties situated at Kinondoni within the jurisdiction of the Kinondoni District Court.

Mr. Majaliwa further argued that, the applicants' application before the Resident Magistrates Court of Dar es Salaam at Kisutu, was brought under order XXXVIII Rule 8 (1) (a) and (b), and Rule 2 (1) and (2) and section 68 (e) of CPC, seeking for orders mentioned in the chamber summons but surprisingly, the court issued orders for attachment and hand over of the said 600 bags of sesame seeds to the applicants contrary to the reliefs sought in the main application. In winding up his submission, he requested this Court to quash and set aside the RMs Court's orders for want of jurisdiction, uphold and order the suit and proceedings of Temeke and Misc. Application No. 56 of 2022, to proceed as it is the only court with jurisdiction to entertain the matter.

In his rejoinder Mr. Irungu submitted that, paragraph 3 of the affidavit of the process server states that he called the respondent through his mobile number and that fact was never challenged in the counter affidavit, so to him, that fact proves the respondent was aware of existence of the RMs Court proceedings. Regarding the allegations that, parties were seeking for different reliefs Mr. Irungu contended that, annexure FC11 to the affidavit which is the respondents defence filed at the **Resident Magistrates Court** together with the counterclaim, shows that the same reliefs were sought in the suit at the District Court of Temeke, meaning the respondent had two suits in two courts with concurrent jurisdiction. In his view, if at all the respondent believed that the Resident Magistrate Court had no jurisdiction to entertain the matter, she should not have attached her counterclaim in the Written Statement of Defence. He added that, in both suits at the District Court of Temeke and RMs Court at Kisutu, the cause of action was breach of contract.

Mr. Irungu went on stating that, the two cited authorities by the applicants are relevant to this matter. Regarding geographical jurisdiction of Courts in issuing interim orders, Mr. Ilungu said that, the respondent sought reliefs on the matter situated outside Temeke District, thus acted outside the

parameters of section 18 of CPC. Concerning the attachment order by the Resident Magistrates Court, he said, that was consequential order after respondents' failure to adhere to the earlier court order of handing over the cargo to the applicants. He concluded his submission by reiterating her prayer as made earlier on in his submission in chief.

Having reviewed the affidavit, counter affidavit and submissions for and against this Application and the attached documents thereto, the calling issue for determination by this Court is which court between the RMs Court of Dar es salaam at Kisutu and District Court of Temeke had jurisdiction to entertain the matter and which order amongst the orders of said two courts is to be executed.

It is a common ground between parties that, the RM's Court and the District Court have concurrent original jurisdiction in civil matters. See sections 40(2) and 40(1) of the CPC. It is also uncontroverted fact that, the Resident Magistrates Court of Dar es Salaam at Kisutu has jurisdiction over the region of Dar es salaam having dully established by an order of the Chief Justice under section 5(1) of the Magistrates Courts Act, [Cap. 11 R.E 2019]. It is further undisputed fact that, breach of contract of transportation of 600 of sesame seeds from Runali area in Liwale Municipal, Lindi Region to EPZ

external area in Dar es salaam, is the cause of action in both cases filed in two different courts by the parties. Parties part their ways when it comes to issue as which Court had jurisdiction to entertain their dispute.

In this application, applicants accuses the respondent for filing similar case in the District Court of Temeke while aware of existence of another case on the same cause of action in the RMs Court of Dar es salaam Region at Kisutu after refusing to accept service to appear and defend Misc. Civil Application No. 103 of 2022 as exhibited by the process server's affidavit in annexure FC-8 in paragraph 12 of the affidavit. On the other hand Mr. Majaliwa contests that assertion on the ground that, the summons was requiring the respondent to file Written Statement of Defence and not to defend the application, so was not aware of existence of the said suit and orders emanating from the miscellaneous application before filing Civil Case No. 39 of 2022 before the District Court of Temeke. Having perused the said annexure FC-8 whose contents are disputed by the respondent, I am at one with Mr. Majaliwa that the summons was requiring the respondent to file Written Statement of Defence in respect of Civil Case No. 173 of 2022 instituted in the RMs Court and not to defend Misc. Civil Application No. 103 of 2022. It is however uncontested fact by the respondent in her counter

affidavit and as rightly submitted by Mr. Irungu that, vide the said summons served to her by the process server on 22/07/2022, though refused by both the respondent and her advocate who was called through his mobile phone number 0673 966 615 issued by the respondent, the respondent became aware of existence of Civil Case No. 173 of 2022 before the RMs Court filed on 20/07/2022 and I so find.

Now next to be answered is the question as who filed first the case amongst the two parties? It is gathered from annexure FC-10 to the applicants' affidavit that, the Civil Case No. 56 of 2022, was presented for filing before the District Court of Temeke on 22/07/2022, two days after Civil Case No. 173 of 2022, was filed before the RMs Court of Dar es salaam at Kisutu on 20/07/2022, as exhibited in annexure FC-6. I therefore find that, it is the applicants who instituted the suit first. Having so found the follow up quest is what was the Court with competent jurisdiction to entertain the matter?

To answer the above question it is trite law that, all courts in Tanzania are creatures of statutes and their jurisdiction is purely statutory. This position was stated in the case of **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 where the erstwhile East African Court of Appeal held at page 202 thus:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

Jurisdiction of the Court being purely statutory the same is determined either peculiarly or geographically. On pecuniary jurisdiction, I am at one with Mr. Majaliwa that, the law provides under section 13 of CPC that, suit must be instituted in the Court of the lowest grade competent to try it. See also the cases of **Peter Keasi Vs. The Editor; Mawio Newspaper and Another**, Civil Case No. 145 of 2014 (HC-unreported). In this case as alluded to above both RM's Court of Dar es salaam at Kisutu and the District Court of Temeke under section 40(2)(a) and (b) of the MCA, have concurrent pecuniary jurisdiction to try civil suit. As regard to geographical jurisdiction, I also subscribe to Mr. Majaliwa's proposition that, under section 18 of the CPC, a suit is instituted in the Court where the defendant resides or where the cause of action arose. In the present case Mr. Majaliwa submits that, the respondent was right to file the suit in the District Court of Temeke as it is the place where her office is located as stated in paragraph 4 of her plaint and where the breached transportation contract subject of dispute in both cases was signed. To the contrary Mr. Irungu argues, it is the RMs Court

which is seized with the jurisdiction to try the case as the said 600 bags of sesame seeds were supposed to be delivered at EPZ area within Ubungo District where her offices are located but the respondents decided to offload it and later on store the same at Mikocheni, warioba area within Kinondoni District which is not the geographical area of the District Court of Temeke. Thus, it is the RM's Court with regional geographical jurisdiction which was competent to try it under the circumstances, Mr. Irungu submitted.

I had an ample time to peruse paragraph 4 of the respondent's plaint as annexed to the applicant's affidavit annexure FC-10 to satisfy the Court of the respondent's claims that the disputed contract of transportation of goods was signed at Temeke and whether the offices address are located at Tekeme too. With due respect to Mr. Majaliwa, from paragraph 4 of the said plaint, I am unable to come up with any evidence proving the alleged facts as the purported written agreement which is the delivery note/Notice issued on 06/07/2020, does not even indicate the same was executed within Temeke District area. Further to that, neither paragraph 4 of the said plaint nor any other paragraphs therein are disclosing or providing for respondent's office address to be located within Temeke District as alleged so as to justify Mr. Majaliwa's contention on institution of the said suit at the District Court

of Temeke. There is no dispute that, the applicants' office in which the alleged 600 bags of sesame seeds were to be delivered/offloaded is situated within Ubungo District which is within the jurisdiction of the District Court of Kinondoni and that, the said seeds were offloaded and stored at Mikocheni, warioba area within Kinondoni. It is however not clear from both parties pleadings as to what place exact District did the cause of action arise as the plaintiff alleges it was between Ubungo and Kinondoni Districts while the respondent claims to be within Temeke District. In such uncertainty and since there is no dispute that, the cause of action arose within Dar es salaam Region, I find the competent Court with geographical jurisdiction to entertain parties' dispute in terms of section 18 of the MCA, was the Resident Magistrates Courts of Dar es salaam at Kisutu. I so find as the respondent contention that, the reliefs sought in the two cases and the applications thereof were not the same are not only baseless but also misconceived and unfounded, since both cases are revolving over the same cause of action which is breach of transportation agreement/contract for 600 bags of sesame seeds executed between the same parties. With that conclusion the next issue for determination is whether the Civil Case No. 39 of 2022 by the respondent before the District Court of Temeke is res sub-judice?

The rule of sub-judice in our jurisdiction is governed by the provisions of section 8 of CPC, [Cap 33 R.E 2019]. For clarity, the section provides that:

8. No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed.

It is therefore gleaned from the above provision that, the object of the doctrine of res sub-judice is to prevent Court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties either before the same court or another court with jurisdiction to entertain it. This Court in the case of **Rev. Christopher Mtikila Vs. Attorney General** (1995) TLR 31 (HC) had an ample time to discuss the above provision as to when does the matter is considered to be res sub-judice. In that case the Court observed, the observation which I subscribe to that, the suit becomes res sub-judice, when the *issue in dispute* in a pending case before the Court of competent jurisdiction is substantially *the same issue* in dispute in a subsequent case before the Court of competent jurisdiction.

In the present matter it is apparent to me that, the parties and subject matter in both two suits and applications before the RM's Court of Dar es salaam at Kisutu and the District Court of Temeke are the same. Having in mind the principle of res sub-judice as provided for under section 8 of CPC, and the authority cited above, I find the suit before District Court of Temeke was res subjudice to the suit instituted before the RMs Court of Dar es salaam at Kisutu. And further to that, the respondent's act of filling WSD on 29th July 2022, and counterclaim, seeking the same reliefs already sought in Civil Case No. 39 of 2022, connotes nothing than riding two horses at the same time, the act which is forbidden by law, for being forum shopping, the practice which I hold is abhorred by the courts as apart from being unprocedural the same is an abuse of court process. See also the cases of **Managing Director, ABSA Bank Tanzania Limited (Formely known as Baclays Bank (Tanzania) Limited** (supra) and **The Registered Trustess of Kanisa la Pentekoste Mbeya Vs. Lamson Sikazwe & 4 Others**, Civil Appeal No. 210 of 2020 (all CAT-unreported).

Now what is the effect of such respondent's unlawful act? Undoubtedly, when the matter is res sub-judice it has a risk of creating conflicting decision on the same subject matter. Its remedy no doubt is to have the latter

instituted case stayed pending hearing and determination of the formerly preferred suit, and not to dismiss it. This legal stance is cemented by the Court of Appeal decision in the case of **CRDB Bank Limited** (supra), when facing the situation akin to the present one, where the Court voiced that, when the suit is res sub-judice has to be stayed instead of being dismissed. In arriving to that conclusion the Court roared:

"...we are of the settled view that, the High Court erred in issuing a dismissal order instead of stay as clearly provided under section 8 of the Civil Procedure Code."

Before concluding I wish also to consider the submission by Mr. Majaliwa that, the orders for attachment and handing over of 600 bags of sesame seeds granted by the RMs Court to the applicants on 25/07/2022 in respect of Misc. Civil Application No. 103 of 2022 pending inter-parties hearing, contravened the reliefs sought in the chamber summons, the assertion which Mr. Irungu justified in that, the Court had to issue them following the respondent's refusal to execute court's order to appear. It is learnt from annexure FC-6 to the affidavit which is Misc. Civil Application No. 103 of 2022 that, ex-parte orders sought were **one**, for a finding that sufficient grounds exist to dispense with the notice, **two**, issue of an interlocutory orders for inspection, preservation, detention and allow the applicants to enter

respondent's ware house and collect the 600 bags of sesame therefrom. And **three**, temporary injunction against the respondent restraining him or her agents from holding 600 bags of sesame seeds and detaining the suit property pending determination of the application inter-partes, which again is for orders of restraining the respondent from holding the said 600 bags of sesame and for its sale. After ex-parte hearing the Court issued the following orders as per annexure FC-7 to the affidavit:

- (1) The respondent is ordered to give access to the applicant to take those 600 bags of sesame to his custody for storage at his godown and costs pending hearing of this application inter partes.*
- (2) The respondent, his agent, employee or representatives are hereby ordered to comply with court order to release or give those 600 bags of sesame to the custody/safe keep of the applicant without default.*
- (3) Hearing on 25/07/2022 at 11.00 am.*
- (4) Service be effected to the Respondent.*

It is true and I agree with Mr. Irungu that, before grant of interim orders both parties were to be heard and the above quoted orders would have been issued upon refusal of the respondent to obey court orders for appearance to defend the application. I so find as ordering surrender of the said 600 bags of sesame to the applicant, which its transportation agreement is the

cause of action in the main suit in Civil Case No. 173 of 2022 and subject of inter-parte in Misc. Civil Application No. 103 of 2022, is tantamount to determination of both main suit and the application inter-parte prayers. The trial magistrate was therefore in error to issue the said orders without according the respondent of the rights to be heard. The assertion by Mr. Majaliwa that, the respondent denied service as exhibited in annexure FC-8 in the affidavit, in my humble view does not bail out the applicant as the same was issued after the orders were issued. Now what is the consequences of denying the party of the right to be heard in an adverse decision likely to affect him/her? The answer is very clear that, such omission vitiates the proceedings and ruling even if the decision to be reached would have been the same had he/she been accorded with such right. This settled position of the law is restated in a number of Court decisions one of which is the case of **Abbas Sherally & Another vs. Abdul S.H.M Fazalbay**, Civil Appl.No.33/2002 where the Court observed thus:

The right of a party to be heard before adverse action/decision is taken against such a party has been stated and emphasized by the court in numerous decisions. That right is basic that a decision which is arrived at in violation of it all be nullified, even if the same decision would have been the same had the

party been heard because the violation is discovered to be breach of natural justice.

In this matter since the orders issued by the RM's Court in Misc. Civil Application No. 103 of 2022 against the respondent which had the effect of disposing of the said application and the main suit Civil Case No. 173 of 2022, were reached in infraction of her right to be heard, I hold the whole proceedings therein and the orders of 25/07/2022 and other subsequent orders were rendered a nullity. I therefore invoke the revisionary powers bestowed to this Court under the provisions of section 79(1)(c) of the CPC and proceed to quash the proceedings of the RMs Court of Dar es salaam at Kisutu in Misc. Civil application No. 103 of 2022 and Misc. Civil Application No. 56 of 2022 before the District Court of Temeke and all orders thereto set aside. Further to that, I order that the said Misc. Civil Application No. 103 of 2022 and main suit in Civil Case No. 173 of 2022 be heard before another magistrate. Subsequent to that, I order that, Civil Case No. 39 of 2022 before the District Court of Temeke and its Misc. Civil Application No. 56 of 2022, be stayed pending hearing and determination of Civil Case No. 173 of 2022 before the Resident Magistrates Court of Dar es salaam at Kisutu.

The application is allowed to that extent.

I order each party to bear its own costs.

It is so ordered

Dated at Dar es Salaam this 30th September 2022.



E. E. KAKOLAKI

JUDGE

30/09/2022.

The ruling has been delivered at Dar es Salaam today 30th day of September, 2022 in the presence of Mr. Philip Irungu, advocate for the applicant, Mr. Mohamed Majaliwa, advocate for the respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

23/09/2022.

