

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

CIVIL REVISION NO. 04 OF 2020

*(Originating from matrimonial Revision No. 20 of 2019 of District Court of Dodoma;
Arising from Matrimonial Case No. 22 of 2015 of Chamwino Primary Court)*

ABDALLAH CHUGA APPLICANT

VERSUS

HALIMA ISMAIL.....RESPONDENT

RULING

12/05/2022 & 18/05/2022

KAGOMBA, J

The applicant, ABDALLAH CHUGA has filed before this Court an application for revision inviting this Court to revise the decision of the District Court of Dodoma on Matrimonial Revision No. 20 of 2019. The applicant alleges that the impugned decision has errors material to the merits of the case, involving injustice, thus he prays this Court to make orders nullifying the same. The applicant also prays for costs of the application and any other incidental orders as this Court shall deem fit and just to make.

The application is made under section 30 (1) of the Magistrate's Court Act, [Cap 11 R.E 2002] and is supported by the affidavit sworn by the applicant's advocate. Briefly, it is averred in the affidavit that the applicant filed an application for revision in the District Court of Dodoma challenging the injustice in the decision of Chamwino Urban Primary Court of Dodoma which had ordered the sale of the applicant's house without giving him the right to be heard. That, the advocate representing the applicant in the said

application, without prior information to the applicant, withdrew from representing the applicant before the District Court. As a result, the applicant's application was dismissed without him being afforded right to be heard.

The respondent, HALIMA ISMAIL, filed a counter affidavit to oppose the application, stating that the applicant was given his right to be heard but failed to exercise it without justifiable reasons.

However, before hearing of the application, the respondent filed a notice of preliminary objection challenging the application before the Court to the effect that "*the applicant's application is brought under wrong provision and under the dead law and that applicant's application is defective for abusing due process of the law*". The respondent's objections were overruled by this Court and therefore the parties were welcomed to continue with the hearing of the application.

On the date of hearing, the applicant was represented by Mr. Matimbwi Joseph, learned advocate while the respondent presented her case personally.

In his submission, Mr. Joseph adopted the supporting affidavit and briefly argued that the orders made by the District Court of Dodoma of expunging the submission of the advocate who was representing the applicant and striking out the application for revision at the instance of applicant's advocate were bad in law.

In explaining his above contention, Mr. Joseph demonstrated why the decision was bad in law by narrating as follows: Firstly, that the Court did not consider the procedures for withdrawal of an advocate in representation, which requires an advocate to bring a letter to the Court. Secondly, that the Court misdirected itself in dismissing the application upon withdrawal of the advocate without considering that the applicant's advocate was not a party to the case but was merely acting under instructions of the applicant.

Hence, the applicant was not afforded his right to be heard. Therefore Mr. Joseph prayed this Court to order restoration of the application for its determination.

The respondent on her side opposed the application. She argued that the applicant having instructed an advocate to represent him, he trusted him. She also submitted that the former applicant's advocate was appearing in all proceedings from the beginning of the case. Therefore, she argued, the advocate decided to withdraw himself because the applicant was giving him false information, hence it cannot be said that the applicant was not afforded right to be heard.

Having evaluated the affidavit and counter affidavit as well as submissions made by the parties, I have marked one issue to be determined by this Court. The issue is whether the application has merit.

The Court's records are clear that on 27/3/2020 when the application for revision before the District Court was scheduled for ruling, Mr. Conrad Theonest, being an advocate for the applicant, addressed the Court that he

had realized that what he submitted to the Court was wrong as he was misled by his client. He therefore prayed the Court to withdraw all what he had submitted. Acting on that prayer, on 30/03/2020 the District Court granted the prayer of the applicant's advocate and dismissed the application. For clarity, the relevant part of the Ruling reads;

*"Therefore, it is my stand view that **if the Advocate for the applicant withdraws his submission it is as good as there is no application lodged before this Court** it lose status. That since the applicant never appear this Court, and the advocate on behalf withdraws his submission. I **dismissed this application accordingly**". [Emphasis added]*

I think the learned District Court Magistrate grossly misdirected himself on the consequences of withdrawal of an advocate from representing the applicant. Since the applicant was not present, and in view of the fact that the application does not belong to the advocate but to the applicant, by ruling the way he did, obviously he denied the applicant the right to be heard.

I therefore concur with the applicant's advocate that the applicant was not accorded his right to be heard since the applicant is the party who was seeking Court's redress over the matter which is affecting his right or interest before the Court. The applicant was supposed to be summoned to state his position on the application after his advocate's withdrawal of submission. Under the circumstances, the advocate who withdrew, was piling accusations on his client that he told him lies. Without there being an opportunity for the applicant to respond to those accusations, the District Court made a decision adverse to the applicant.

Basically, the right to be heard is constitutional, therefore it has to be strictly observed in line with Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977 (as amended).

In the case of **Kumbwandumi Ndemfoo Ndossi V. Mtei Bus Services Limited**, Civil Appeal No. 257 of 2018, the Court of Appeal of Tanzania at Arusha clearly stated that; failure to accord a party a right to be heard vitiates the entire proceeding. The Court of Appeal in making this finding, referred to the case of **Abbas Sherally and Another V. Abdul S. H. M. Fazal Boy**, Civil Application No. 33 of 2002 (unreported) to propound the meaning of the right to be heard, in which the Court observed that;

*"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by 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 had the party been heard, because the violation is considered to be a breach of natural justice. "[Emphasis added].*

Therefore, the District Court before dismissing the applicant's application was expected to ensure that the applicant is aware/informed of his advocate's withdrawal of submission either by issuing summons for his appearance to Court personally or through another advocate.

With the above reasoning, I see the argument by the respondent that the applicant was afforded right to be heard lacks limbs to stand on. Since it is rightly observed that the applicant's application was dismissed in his absence without him being given an opportunity to defend the same, the

consequence as per the cited decision of the Court of Appeal in **Abbas Sherally** (Supra), is to nullify the decision so erroneously reached by the District Court.

That being the case, I find merit in this application. Therefore, I hereby quash the proceedings of the District Court as well as setting aside its ruling. I order restoration of the Matrimonial Revision No. 20 of 2019 before the District Court of Dodoma to proceed with hearing. No order as to costs.

Ordered accordingly.

Dated at Dodoma this 18th day of May, 2022




ABDI S. KAGOMBA
JUDGE