

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB-REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL REVISION NO. 31 OF 2022**

*(Arising from the Resident Magistrates' Court of Kinondoni in Misc. Civil Application  
No. 17 of 2022)*

**SURAFU SOSPITA ..... APPLICANT**

**VERSUS**

**YAHYA MUSSA IBUMA.....1<sup>ST</sup> RESPONDENT**

**FATUMA IDD IBUMA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*15<sup>th</sup> December, 2023 & 05<sup>th</sup> March, 2024*

**BWEGOGGE, J.**

This is an application lodged by the applicant herein above-named for revision of the decision and orders entered by the Resident Magistrates' Court of Kinondoni in Misc. Civil Application No. 17 of 2022 which granted the respondents herein power to administer the estates of the applicant's husbands who is suffering from defect of reason and general body infirmity. In substance, the applicant herein prayed for orders hereunder mentioned:

- 1. That this court be pleased to call for record and investigate the correctness of the decision of Hon. Rwehumbiza - PRM in Misc. Civil Application No. 17 of 2022 delivered on 21/07/2022.*
- 2. That this court be pleased to quash the decision of the trial court granting power to the respondents to administer the estates of one Sudi Idd Ibuma and grant the same power to the applicant.*
- 3. That in alternative, having vacated the decision and order of the of the trial court, this court be pleased to issue an order that the assets of the applicant and her husband Sudi Idd Ibuma be left under the applicant's administration and the shop at Kinondoni and Dodoma be left under the respondent's administration.*

The application herein was brought under section 74(1) (b) (c) and 95 of the Civil Procedure Code [Cap. 33 R.E 2022] and supported by the affidavit of the applicant.

The factual background of this matter is as follows: The applicant herein and one Sudi Idd Ibuma are spouses. The same were married in 2019 through Islamic rites having cohabited for several years. The duo had possessed business enterprises (shops) at Kinondoni and Sinza, among others, whereas the applicant was in charge of the shop at Sinza. It seems, the applicant has bad blood with her in-laws. In 2022, the applicant's spouse contracted debilitating disease. He was diagnosed to have been suffering from mental disorder, severe hypertension, right

hemiparesis and acute kidney injury which left the parietal lobe large intracerebral and mid brain edema.

Thereafter, the respondents herein instituted an ex parte application in the Resident Magistrates' Court of Kinondoni, under the certificate of urgency, praying for an order for management and administration of the estate of one Idd Sudi Ibuma (applicant's spouse) on ground that the same was suffering from defect of reason and general body infirmity which incapacitated him to run and oversee his business. The trial court, purporting to Act under the Mental Act (No. 21) of 2008, granted the order sought. Hence, the trial court ordered that the respondents herein would manage and administer the estate of the diseased person, including assets and liabilities, until such time the same would recover and be of sound mind/body.

Consequent to this order, the respondents had taken control of the properties of the applicant's spouse and sought to evict the applicant from the matrimonial shop she managed and take control of the same in exercising the right vested to them by the court. The exercise failed, but the premise remains closed to date whereas the applicant herein complained that the trial court had made an order which in substance

striped her of means to maintain herself and children without affording her right to be heard. Hence, this application.

The applicant herein fended for herself whereas Mr. Eliya Mwingira, learned advocate, represented the respondents herein. The application was argued by written submissions.

It is the depositions and submission of the applicant herein that, before the impugned order was entered, the respondents herein deliberately refrained to disclose the fact that she was lawful wife of the diseased person capable to run and manage matrimonial properties and businesses; hence, she was denied right to be heard when the order which affected her capacity to run the family was entered. Thus, the applicant alleged that the respondents have failed to meet the education expenses of the children who have dropped from private school they were attending and she is left without means to sustain herself following the respondents' taking over the management and administration of her husband's businesses and assets. On above accounts, the applicant prayed the court to nullify the decision and orders entered by the trial court in the interest of justice.

Contrarywise, Mr. Mwingira, the respondent's counsel, vehemently contested this application. The counsel contended that the applicant herein had abandoned her so called "husband" necessitating the respondents to take action in obtaining the order of the court for management of the business and assets of the same which were at risk. The counsel alleged the applicant for plundering the victim's properties, including goods which were available for sale in shops and living an extravagant life. Likewise, the counsel alleged that the applicant had not acquired any properties with her so called "husband" hence, there is no matrimonial properties which she may validly claim any right.

Otherwise, the respondents submitted that they are responsible for the welfare of the applicant's children, by providing basic needs, including meeting their education expenses and prevented the sale of the property (house) to recover loan previously sought and obtained from the bank.

The counsel concluded by asserting that the applicant has failed to demonstrate good grounds to move this court to nullify the decision and orders entered by the trial court and prayed the application herein to be dismissed with costs. In rejoinder, the applicant replicated her earlier stance which I find needless to reiterate herein.

The issue for determination is whether the application herein is merited.

It is uncontroverted fact that the applicant is legal wife of one Sudi Idd Ibuma, having contracted marriage on 04/04/2019 under Islamic rites. Likewise, it is uncontroverted fact that the applicant's husband is suffering mental disorder, severe hypertension, right hemiparesis and acute kidney injury which left the parietal lobe large intracerebral and mid brain edema. In the same vein, it is uncontroverted fact that the respondents herein lodged an ex parte petition in the trial court praying for an order for management and administration of the estate of the applicant's husband who is now suffering from mental disorder and general body infirmity. The sought order was accordingly granted without notice to the respondent. In granting the order sought by the respondents herein, the trial court invoked the provision of 26 of the Mental Health Act (No. 14) of 2008 which enjoins the court with power, on application made by way of petition concerning any matter relating to the estate of a mentally disordered person, to make an order as circumstances may require. Acting under the order granted by the trial court, the respondents had attempted to take possession of the businesses which were being run by the applicant, among others; hence, causing dispute which driven the applicant to lodge this application.

Therefore, it goes without saying that the trial court had entertained an ex parte application which didn't afford the applicant, the legal wife of one Sudi Idd Ibuma, an opportunity to be heard before the order which affected her was entered. It was found by this court in granting extension to file an application herein (in Misc. Civil Application No. 419 of 2022) that the respondents deliberately refrained to disclose the fact that the person whom they sought to manage his estate was legally married, to the extent of pretending that they were not aware of the existence of marriage between the applicant and owner of the properties they sought to manage his estates. Eventually, this court found that the decision in question was tainted with illegality which was sufficient ground for extension of time to file the application herein.

Moreso, I am of the considered view that the respondents' non-disclosure of the fact that the applicant was a legal wife to one Sudi Idd Ibuma, whose properties they sought to manage; hence, an interested person in the matter, denied her the constitutional right to be heard before the impugned order was entered. Hence, she was prejudiced. In this respect, I am constrained to borrow a leaf from the apex Court decision in the case of **Attorney General vs Raksha Gadhvi & Others (Civil Application 147 of 2022) [2024] TZCA 10** whereas it was aptly reaffirmed:

*"In the instant application, the applicant averred that she was not a party to the proceedings of the High Court .....in which a dismissal order granted right of ownership to the 1st and 2nd respondents without proof which denied the applicant the right to be heard on the ownership of the property. **The right to be heard is a fundamental principle of natural justice which should always be observed; a party's right to be heard be guaranteed.** The Court has emphasized this in a number of its decisions, including Mbeya - Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma [2003] T.L.R. 251 that the right to be heard is both fundamental and constitutional right enshrined in Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977." [Emphasis added].*

In view of the above, I find that the trial court strayed into an error in granting power to the respondents to manage the estates of the applicant's spouse without affording the applicant the right to be heard before the order which affected her was entered.

Based on the above ground, I find the application herein with merit. Consequent to this finding, the decision and order entered by the trial court are hereby quashed and set aside. The applicant's power to manage the estates of her husband is hereby restored. If the respondents still apprehend that the applicant is unsuitable person to manage the estates of her husband, they are at liberty to take legal action without preempting



the applicant's right to be heard before the decision in the matter is made.

Order accordingly.

**DATED at DAR ES SALAAM** this 05<sup>th</sup> March, 2024.



O. F. BWEGOG  
**JUDGE**