

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB-REGISTRY OF MWANZA**  
**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 30 OF 2022**

*(Arising from Suo Mottu Revision 3 Of 2022 In the District Court of Nyamagana at Mwanza)*

**RIDHIWANI IDD MACHAMBO .....1<sup>ST</sup> APPLICANT**

**HAFSA RAMADHANI KURIA .....2<sup>ND</sup> APPLICANT**

**Versus**

**ANNA MANFORD INUNU ..... 1<sup>ST</sup> RESPONDENT**

**SWALEHE SADIKI .....2<sup>ND</sup> RESPONDENT**

**RAMADHANI SADIKI (*Necessary Party*) .....3<sup>RD</sup> RESPONDENT**

**RULING**

*1<sup>ST</sup> & 10th May, 2022*

***Kahyoza, J.:***

Following a complaint lodged by the applicants, the district court called and examined the proceedings in Probate Cause No. 72/1999 and Probate cause No. 128/2018. Having found that both Probate causes were instituted to administrate the estate of Sadiki Ally, the district court nullified and quashed the proceedings in Probate Cause No. 128/2018. Aggrieved the applicants filed instant application praying this Court to examine the legality and propriety of the district court's order.

A brief background will put the record proper. Sadiki Ally, died intestate leaving behind the property in dispute. Swalehe Sadiki applied for letters of administration of the deceased's estate. The primary court appointed him the administrator of Sadiki Ally's estate. He sold the suit land to the first respondent's husband. Later, **Ramadhani Sadiki** applied and the primary court appointed him to administrate the estate of the Sadiki Ally vide Probate Cause No. 128/2018. After his appointment, **Ramadhani Sadiki** sold the suit land to the applicants. The land **Ramadhani Sadiki** sold to the applicants is the same land Swalehe Sadiki sold to Anna Manford Inunu's husband (the first respondent's husband). Having considered the facts, the district court annulled the appointment of **Ramadhani Sadiki**.

The impact of annulling the appointment of **Ramadhani Sadiki**, the administrator, nullified the sale of the land between **Ramadhani Sadiki** and the applicants. The applicants averred that given the nature of the matter the district court ought to have heard interested parties before issuance of any order. The applicants deposed that the implication of the district court's order is that, their rights as the *bonafide* purchasers for value have been curtailed because the 3<sup>rd</sup> respondent whom they derive the title have been revoked as administrator of the deceased estate. The

applicants deposed that unless the order was quashed and set aside they stand to lose their joint property.

The first respondent deposed that the applicants were not the lawful owner of the suit premises. When she appeared before the court, she submitted that the district court did not hear her before it passed the order.

Swalehe Sadiki, the second respondent deposed that the district court did not hear him before it issued the order.

It is also apparent that the district court after receiving the complaint it examined the records of the primary court and quashed the proceedings in Probate Cause No. 128/2018. The district court acted under section 22 of the Magistrates' Courts Act, [Cap. 11 R.E. 2019] (the **MCA**) to revise the primary court's order. Subsection (3) of section 22 of the **MCA** requires the court before revising the proceedings to increase the award or to alter the rights of any party to give that party the right to be heard. It provides that-

*(3) In addition to the provisions of subsection (2) of this section, no order shall be made in the exercise of the court's revisional jurisdiction in any proceeding of a civil nature increasing any sum awarded, or altering the rights of any party to his detriment (other than an order quashing*

*proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary to make it conform thereto) **unless such party has been given an opportunity of being heard.** ( Emphasis is added)*

The court's duty to hear parties before it issues an order is so fundamental so much that failure to hear parties vitiates the proceedings. See the holding of the Court of Appeal in **Abbas Sherali and Another v. Abdul Fazalboy**, Civil Application No. 33 of 2002 (unreported) where it emphasized the importance of hearing parties before passing orders as follows-

*"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the 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.**"*

Yet in **Judge In Charge of The High Court at Arusha And Ag v. Nim Munuo Ng'uni** [2004] T.L.R. 52, the Court of Appeal emphasized on the need to hear parties before giving adverse orders. It stated that-

*"It is a fundamental requirement of justice that a person or property 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."*

It is unequivocal that the district court opened revisional proceedings *suo motu* considered issues without inviting the parties and made orders which affected the applicants and the third respondent adversely without hearing them. The applicants averred that they are *bonafide* purchaser for value and the district court's order affected their right to occupy the landed property they procured from the third respondent without hearing them. The district did not hear the first and second respondents. It is very likely the district court's order did not affect the first and second respondents' rights. It is trite law that courts should not raise issues *suo motu* and decide them without inviting parties to address the issues. Such a practice is tantamount to denying parties the right to be heard. 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. 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 **Margwe Erro, Benjamin Margwe & Pater Marwe V. Moshi Bahalulu** (supra), the Court stated-

*"The parties were denied the right to be heard on the question the learned judge had raised and we are satisfied **that in the circumstances of this case the denial of the right to be heard on the question of time bar, vitiated the whole judgement and decree of the High Court.***

*Without much ado, we find there to be merit in this appeal which we accordingly allow. We find the judgment of the High Court to have been a nullity for violation of the right to be heard."*

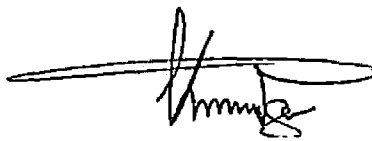
Given the position of the law propounded above, I uphold the applicants' contention that the district court denied them right to be heard before it passed the order. Consequently, I find the proceedings and the order a nullity for failure to accord parties an opportunity to be heard. I quash the proceedings and set aside the order of revision.

In the upshot, I allow the application, quash the proceedings, and set aside the revisional order. I order the district court to call parties to address it regarding the issues raised in the first respondent's complaint

and make a ruling. The district court should do so **with dispatch**. Let me make it clear that it is not necessary for another magistrate to be appointed to hear the parties.

I allow the application and make no order as to costs as no party is to blame.

It is ordered accordingly.

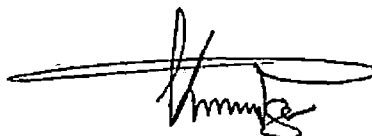


**J. R. Kahyoza**

**JUDGE**

**10/5/2022**

**Court: Court:** Ruling delivered in the presence of Ms. Scolastica Teffe, advocate holding advocate Kibatala's brief for the applicants, the second applicant, and the respondents. The first respondent is absent. B/C Ms. Jackline (RMA) Present.



**J. R. Kahyoza**

**JUDGE**

**10/5/2022**