

**IN THE HIGH COURT OF TANZANIA
(IN THE SUBREGISTRY OF MWANZA)**

AT MWANZA

CIVIL APPEAL NO.64 OF 2022

(Originating from Misc. Civil Application No. 75 of 2020 at Nyamagana District Court)

MATRIDA S. MADENGE (ADMINISTRATOR

OF THE ESTATE OF THE LATE MARTIN J. MADENGE).....APPELLANT

VERSUS

BEATUS MARTIN MADENGE.....RESPONDENT

JUDGMENT

Date of Last Order: 24/02/2023

Date of Judgment: 03/03/2023

Kamana, J:

Aggrieved by the decision of Nyamagana District Court in Miscellaneous Civil Application No.75 of 2020 which dismissed the application for being incompetent, the Appellant Matrida S. Madenge acting in the capacity of the administrator of the estate of the late Martin J. Madenge preferred this appeal against Beatus Martin Madenge, the Respondent. The appeal is built on four grounds of appeal.

For the purpose of this appeal, I will delve only into the second ground of appeal as it determines the fate of the appeal at hand. The ground states as follows:

That the District Court erred in law and fact by suo motto raising issues and determining the same without affording the parties an opportunity to be heard on the raised issues which amount to infringement of their right to be heard.

At the hearing of this appeal, the Appellant was advocated by Mr. Akram Adam, learned Counsel. The Respondent was not represented. At the instance of both parties and order of this Court, the appeal was argued for and against through written submission.

Arguing in support of the second ground, Mr. Adam submitted that the District Court erred in law and fact for raising new issues and determining the same without affording the parties an opportunity to be heard on those issues. In substantiating his arguments, the learned Counsel drew the attention of this Court on pages 2, 3 and 4 of the impugned Ruling where the Court raised issues relating to registration of the application, limitation of time and the Applicant's names.

It was his submission that those issues were never addressed by his client. In that regard, he was of view that such anomaly amounts to violation of the right to be heard. To bolster his position, the learned Counsel cited the case of **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] TLR 251. He beseeched

this Court to nullify the whole proceedings of the District Court in Miscellaneous Civil Application No. 75 of 2020.

In his reply, the Respondent contended that the proceedings of the District Court clearly shows that the Appellant was afforded her right to be heard on the issues raised *suo motto* by the said Court. He further submitted that the Miscellaneous Civil Application No.75 of 2020 had some irregularities which renders the same to be incompetent before the Court and hence precipitated its dismissal.

It was the submission of the Respondent that Miscellaneous Civil Application No.75 of 2020 did neither bear court seal nor endorsed by the registry officer. In that case, he was of the firm view that the Court was justified to dismiss the application. With regard to **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma (Supra)**, the Respondent contended that the case is distinguishable as the parties to this appeal were afforded the right to be heard.

Having gone through the rival parties' submission and perused the proceedings and Ruling of the District Court, the issue for my determination is whether the parties were not afforded the right to be heard on the issues raised *suo motto* by the Court.

As a matter of principle, the right to be heard is a cardinal one. This right has been in place from time immemorial. It has been always

insisted that no one should be condemned unheard. In this jurisdiction, courts have been abiding by this principle with a view to ensuring that parties to a dispute undergo fair trial. In that case, it is trite law that when the court raises issues *suo motto* which in effect determines the rights of the parties, such court is under the obligation to afford the parties an opportunity to be heard on the issues. When the court inadvertently or otherwise fails to heed to that principle, the whole proceedings turn into a nullity.

In the case of **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma (Supra)**, the Court of Appeal held that:

'The judge's decision to revoke the rights of M/s Kagera and the appellant, without giving them opportunity to be heard, was not only a violation of the Rules of natural justice, but also a contravention of the Constitution, hence void and of no effect.'

See: M/S Darsh Industries Limited versus M/S Mount Meru Millers Limited, Civil Appeal No. 144 of 2015; **Scan-Tan Tours Limited versus The Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012; **Deo Shirima and Two Others v. Scandinavian Express Services**

Limited, Civil Application No. 34 of 2008; and **Charles Christopher Humphrey Kombe v. Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017.

Save for the issue on the Applicant's name which parties were afforded the right to be heard, my careful perusal of the proceedings and the Ruling convinces me that the District Court arrived at the latter on matters which were never part of the proceedings. From page 1 to page 44 of the proceedings, there is no any issue recorded pertaining to court seal, registration of the application and time limitation which formed factors which led that Court to determine the rights of the parties. In that case, it is my conclusion that the parties were not afforded the right to be heard on fundamental matters that formed the basis of the Ruling of the District Court.

In view of that, the appeal is allowed. That being the case, I quash the proceedings and Ruling of the District Court. Consequently, I invoke the revisional powers of this Court by ordering that the application be tried *de novo* before another Magistrate.

I order no costs as this matter originates from probate issues. It is so ordered.

Right to Appeal Explained.

DATED MWANZA this 3rd March, 2023.



KS KAMANA

JUDGE