

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

**AT MWANZA**

**CIVIL REVISION NO. 11 OF 2022**

*(Arising from the Ruling of the Resident Magistrate's Court of Geita in Misc. Civil  
Application No. 12 of 2022 dated 2.9.2022)*

**LI CHENG.....1<sup>ST</sup> APPLICANT**

**LIN GUANG QUING.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**AMOS JIJI.....1<sup>ST</sup> RESPONDENT**

**TAICHANGXIN TANZANIA GROUP CO. LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

**17<sup>th</sup> March & 5<sup>th</sup> April, 2023**

**DYANSOBERA, J:**

The 1<sup>st</sup> respondent one Amos Jiji applied before the Resident Magistrate's Court of Geita for an order of arrest before judgment of the 1<sup>st</sup> and 2<sup>nd</sup> applicants who are the 2<sup>nd</sup> respondent's Directors. He also applied for an order of attachment of the respondent's properties pending the determination of the main case that is Civil Case No. 10 of 2021. He carried the day.

The two applicants were aggrieved by that ruling hence this application for revision. The application has been preferred by way of a

chamber summons supported by an affidavit affirmed by George Philemon Pesha, the learned Advocate.

On 14<sup>th</sup> March, 2023, upon the request by Mr. Godfrey Goyagi who was representing the applicant, this court directed the hearing of the application to be by way of written submissions. Only the written submission in chief was filed in support of the application as the respondents who were duly served neither appeared in court nor filed a counter affidavit to oppose the application.

According to the applicant's affidavit, paragraph 5 in particular, and the written submission, the reason for this application for revision is that That, the Applicants herein were never the part to the said Misc. Application No. 12 of 2022 nor the main suit No. 10 of 2021 which the parties involved therein are AMOS JIJI VERSUS TAICHANGXIN TANZANIA GROUP COMPANY LTD and that the applicants were never afforded right to fair trial and hearing by the trial court. In support of this argument, the following case laws were cited, that is Buraq Logistics Limited v. Prime Cement Limited, Misc. Commercial Application No. 171 of 2021, **Pili Ernest v. Moshi Musani**, Civil Appeal No. 39 of 2019 on the violation of fundamental constitutional

right of being heard and **Hamud Mohamed Sumry v. Mussa Shaibu Msaingi and 2 others**, Civil Application No. 257 of 2015.

In granting the application, the learned Resident Magistrate observed:-

*'In this application it is sufficient to confine my argument and findings, as I have done on issue as to whether had established the condition having examined the application and arguments as I have hereinabove. I find the applicant has managed to establish the conditions sufficient to entitle him the grant of arrest before judgment, attachment before judgment and the respondent shall deposit total sum of TZS 299, 500, 000/=.*

*The application is therefore succeeded'.*

Having considered the application, the affidavit and written submission in support thereof, I am inclined to agree that this application has merit.

In the first place, the applicants were parties to either Civil Case No. 10 of 2021 nor Misc. Civil Application No. 12 of 2022 which is the subject of these revisional proceedings.

Second, the applicants were not afforded the right of being heard before the adverse decision against them was made. This contravened the

principle of naturel justice enshrined under Article 13 (6) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. Paragraph (a) of Clause (6) of Article 13 of the said Constitution provides in Kiswahili as follows:

*'(a). Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa maamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu.'*

Putting emphasis on this fundamental right, the Court of Appeal in the case of **Mbeya-Rukwa Autoparts and Transport Ltd v. Vestina George Mwakyoma** [2003] TLR 251 quoted in the case of **Pili Ernest** (supra) cited to me by learned Counsel for the applicant, observed that:

*'In the above case, the Court stressed that a party does not only have the right to be heard but to be fully heard.'*

Further, in **Abbas Sherally and Another v. Abdul 'Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002, the Court of Appeal observed, *inter alia*, as follows:

*'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'.*

Third, the making the Directors of the Company liable could not be legally tenable unless the veil of incorporation was lifted. This is the gist of O. XXI rule 10 of the Civil Procedure Code [Cap. 33 R.E.2019] as stressed in Pili Ernest v. Moshi Musani (supra). The trial court acted against the law.

Fourth, as stated above, the respondents neither filed a counter affidavit to oppose the application nor appeared in court. It should, therefore, be taken that this application is unopposed.

For the stated reasons, this application has merit and I so find. The proceedings of the trial court in Misc. Civil Application No. 12 of 2022 are revised by quashing and setting aside the orders of arrest before the judgment, attachment before judgment and the deposit of TZS 299, 500, 000/=.

It is so ordered.

**W. P. Dyansobera**  
**Judge**  
**5. 4.2023**

This ruling is delivered under my hand and the seal of this Court on this 5<sup>th</sup> day of April, 2023 in the presence of Godfrey Gogayi, Advocate, learned Advocate for the applicants and in the absence of the respondents.



  
**W.P. Dyansobera**  
**Judge**