

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL APPEAL NO. 107 OF 2022

(Arising from Misc. Civil Application No. 140 of 2021 originating from Civil Case No. 134 of 2018 of the District Court of Kinondoni at Kinondoni)

MASUKE JOSHUA MANGU APPELLANT

VERSUS

PLATNUM CREDIT LIMITED 1st RESPONDENT

KOTI BROTHERS CO. LTD 2nd RESPONDENT

JUDGMENT

Date: 03/04 & 22/05/2023

NKWABI, J.:

The appellant is challenging the decision of the trial court which dismissed his application under the Law of Limitation Act, Cap. 89 R.E. 2019 because it was filed out of time.

The appellant came to this Court with five grounds of appeal. In what appears to be abandoning all the grounds of appeal and arguing another, the appellant's counsel said would argue the 1st, 2nd, 3rd, and 4th grounds together which seemed to have given birth to a new ground of appeal which is that the appellant was condemned unheard on the two issues raised suo motu. The 5th ground of appeal was abandoned.

The appeal was heard by way of written submissions. Mr. Amini M. Mshana, learned counsel advocated for the appellant while Mr. Philip Kitomari, learned counsel, advocated for the respondents.

In arguing the ground of appeal, the counsel for the appellant contended that the Hon. Magistrate raised issues when composing ruling without calling the parties to address the court on them as found at page 2 last paragraph wherein it was stated that:

"This court on suo motu raise two issues to discuss to:

- i) To (sic) whether the applicant herein abused the Court processes.*
- ii) Whether the application is competent in this court"*

The counsel for the appellant submitted that parties were not heard on the above raised issues. It was added that had the magistrate availed the applicant or his counsel the opportunity to be heard on the above raised issues, proper and sufficient explanation ... would have been given ... The counsel for the appellant urged this Court to nullify the proceedings and orders of the district court citing **Said Mohamed Said v. Muhusin Amiri & Another**, Civil Appeal No. 110 of 2020, CAT (unreported) where it was stated that:

"No decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice. ... Settled law is to the effect that any breach or violation of the principles renders the proceedings and orders made therein a nullity even if the same decision would have been reached had the party been heard."

It is prayed that the appeal be upheld with costs.

In reply submission, the counsel for the respondent did not make any reply to the complaint that the district court contravened the principles of natural justice in its failure to accord the parties with the right to a hearing to the suo motu raised issues. He merely justified that the trial court was correct in dismissing the application because it was filed out of time. He cited several decided cases to the effect that court orders must be respected and once disobeyed, the party at fault should be sanctioned. One of the decisions being **Bomani Advocates & Company v. El Nasir Import & Export Company & Another**, Civil Reference No. 11 of 2021 HC (unreported). It

was added that the counsel of the appellant was not diligent. He prayed that the appeal be dismissed with costs.

I will not be detained by this appeal. The respondent did not argue that they were heard on the issues raised suo motu in the ruling. The ruling is very clear to that effect. Consequently, the magistrate who entertained Misc. Civil Application No. 140 of 2021 violated the rules of natural justice as she did not give parties an opportunity to address it on the suo motu raised issues. The proceedings and the ruling cannot be left without being reversed. I follow the decision in **Abbas Sherally and Another v. Abdul S.H.M. Fazalboy**, Civil Application No. 33 of 2002 (unreported) (CAT) where it was stated 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].

In the premises, the appeal is partly allowed. The ruling in Misc. Civil Application No. 140 of 2021 in the District Court of Kinondoni at Kinondoni dated 31st day of March 2022 is quashed. I order that Misc. Civil Application No. 140 of 2021 in the District Court of Kinondoni at Kinondoni be heard de novo before another magistrate of competent jurisdiction. The prayer that civil case No. 134 of 2018 be restored and allowed to proceed to hearing and substantive rights of parties determined is rejected for being prematurely made. I make no orders as to costs as the fault is not on any party to this appeal.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 22nd day of May, 2023.



J. F. Nkwabi
J. F. NKWABI

JUDGE