

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

PC. CIVIL APPEAL NO. 2 OF 2023

(Arising from Civil Revision No. 03/2022 Mbui District Court, Originating from Probate and Administration

Cause No. 04/2022)

MOHAMED HUSSEIN MTAGWA APPLICANT

VERSUS

BENARD PAUL TARIMORESPONDENT

JUDGMENT

16th & 30th August, 2023

Kahyoza, J.:

Benard Paul Tarimo instituted revision proceedings in the district court against the decision of the primary court, which granted letters of administration of the late Angela Shoka's estate to **Mohamed Hussein Mtagwa**. The district court revised the primary court decision by setting aside the appointment of **Mohamed Hussein Mtagwa** as the administrator of the estate of the late Angela Shoka and did that in the absence of **Mohamed Hussein Mtagwa**. Aggrieved **Mohamed Hussein Mtagwa** appealed to this Court.

Mohamed Hussein Mtagwa raised three grounds of appeal, which raised three issues-

- 1) was the district court justified to revise the primary court order without investigating if the appellant was duly served?
- 2) was the district court required to notify the appellant the date fixed for delivering the *ex-parte* judgment?
- 3) did the district court erred to revise the decision of the primary court?

Parties appeared in person, they had no representation. The appellant argued that the respondent did not serve him with the notice to appear and defend the application for revision. The respondent argued briefly that he served the appellant and that the appellant refused service. He added that he had witnesses to support his contention.

Was the district court justified to revise the primary court order without investigating if the appellant was duly served?

Indisputably, the district court heard the application for revision *ex-parte*. I had a cursory review of the record of the district court to find out if there was proof of service. I did not find any. I find the appellant complained that he was not served was justified. The respondent alleged without proof that he served the appellant who refused service. Had the respondent's contention been true, I expected that he would have attached

a copy of the summons served upon the appellant or an affidavit of service. The right to be heard is one of the fundamental principles of natural justice, which parties to a suit must enjoy. Its violation renders the proceedings and the subsequent judgment a nullity. The Court of Appeal held in **Mbeya- Rukwa Autoparts And Transport Ltd V. Jestina George Mwakyoma** [2003] T.L.R. 251 that-

"...natural justice is not merely a principle of the common law, it has become a fundamental constitutional right Article 13(6) (a) includes the right to be heard among the attributes of equality before the law."

Yet, the Court of Appeal held in **Danny Shasha v. Samson Masoro and 11 others**, Civil Appeal No. 298 OF 2020 emphasized its position in that **Mbeya- Rukwa Autoparts And Transport Ltd V. Jestina George Mwakyoma** (supra) that-

The Court has emphasized time and again that a denial of the right to be heard in any proceedings would vitiate the proceedings. Further, it is also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977.

Since the appellant was not served or the respondent has not proved that he did serve the appellant, I find that the appellant was denied the right to be heard. Consequently, the proceedings and the judgment of the district court delivered in the absence of hearing the appellant are a nullity.

The Court of Appeal held in **Abbas Sherally & Another vs Abdul S. H. M. Fazalboy**, Civil Application No. 33 of 2002 (unreported) that-

*"The right of a party to be heard before adverse action 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.**" (Emphasis added)*

I uphold the first ground of appeal that the district had no justification to entertain an application for revision without ensuring that the appellant was served. Failure to hear a party before the adverse decision is reached vitiates the proceedings and the subsequent judgment. That being the established position of the law, I find not reason, to determine the remaining grounds of appeal.

In the end, I allow the appeal, quash the proceedings together with the judgment, and set aside the resultant order. I order the application for revision to be heard by another magistrate in the presence of the parties or by according an opportunity to be heard. The appellant is awarded costs, which I tax under order 44 of the **Advocates Remuneration Order**,

2015 GN. No. 263/2015, at Tzs. 100,000/=. The appellant made two appearances and drafted the documents himself.

I order accordingly.

Dated at Babati this 30th day of August, 2023.



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J. R. Kahyoza
JUDGE

Court: Judgment delivered in the absence of the parties. B/C Ombeni Kazyoba (RMA) present.

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J. R. Kahyoza
JUDGE
30.8.2023