

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

CIVIL REFERENCE NO. 02 OF 2023

(Arising from Taxation Cause No. 04 of 2022 and original Civil Case No. 22 of 2020 of the Resident Magistrates' Court of Bukoba)

MBARAKA MUSSA MAYYA..... APPLICANT

VERSUS

BASHIRU ABDALLA KABYEMELA..... RESPONDENT

RULING

5th October, 2023

BANZI, J.:

The applicant herein has lodged this application for reference in respect of decision ^{of} the Resident Magistrate's Court of Bukoba in Taxation Cause No. 4 of 2022. The gist of complaint is found at paragraph 5 of the affidavit that, he has never been served with any summons relating to the said taxation cause and thus, he was denied his right to be heard.

Mr. Frank John, learned counsel who appeared for respondent at the hearing of this application, did not oppose the application. Basically, he stated that, upon perusing the proceedings of the trial court, they have realised that, the service made to the applicant in that taxation cause was not proper. Thus,

he urged this Court to grant the application without costs. On his side, Mr. Projestus Mulokozi, learned counsel for the applicant prayed for application to be granted without costs.

I have carefully considered the affidavit and submissions of learned counsel for both sides. A close look at the proceedings of the trial court in Taxation Cause No. 4 of 2022 reveals that, the applicant who was the judgment debtor was served through process server Ivetha N. Nicolaus of Ivenico Auction Mart. The notice to show cause was received by Bettyseba, J. Mgane who is not the judgment debtor. In that regard, it cannot be said that, the applicant/judgment debtor was properly been served for taxation cause to proceed in his absence. Under these circumstances, it goes without saying that, he was condemned unheard which is not only against fundamental principle of natural justice but also, it contravenes constitutional right enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

In that regard, since the applicant was denied with a right to be heard, whatever transpired in Taxation Cause No. 04 of 2022 is a nullity. Thus, I find the application with merit and I hereby grant it by nullifying the entire proceedings in Taxation Cause No. 04 of 2022 and quashing its ruling dated

26/05/2022. I hereby order a fresh hearing and each party shall bear its own costs.

It is so ordered.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

I. K. Banzi
JUDGE
05/10/2023