

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM SUB-REGISTRY)  
AT DAR ES SALAAM**

**CIVIL APPEAL NO 143 OF 2023**

(Arising from the Ruling and order of the District Court of Kinondoni at Kinondoni in  
Civil Application no 50/2023 before Hon. R. S MUSHI- PRM)

**ABDULRAHMAN MALICK MUGALA..... APPELLANT**

**VERSUS**

**TINA KASSIM MOHAMED ..... RESPONDENT**

**JUDGMENT**

**30<sup>th</sup> Jan & 12<sup>th</sup> Feb 2024**

**KIREKIANO, J.**

The appellant herein did wish to appeal against the decision of the primary court of Kinondoni at Magomeni in civil case no 23 of 2022 having noted that he was out of time, he then made an application Civil Application no 50 of 2023 before the District Court seeking the court to extend the time to allow him to file his appeal. The District Court on 13 July 2023, dismissed the application holding that the same lacked merit and was a delaying tactic to delay execution of the primary court decision.

The appellant is thus aggrieved with this decision. He has preferred this appeal setting forth two grounds of appeal which in substance is one

complaint that, the District Court erred in law by rendering a decision without hearing the parties.

This appeal was heard by way of written submissions. The appellant obtained legal aid from the Legal Aid Committee University of Dar es Salaam while the respondent as such was assisted by legal aid and the Human Rights Centre.

The appellant's submission was brief and focused, when the parties filed their affidavit in the District Court, the District Court made an order requiring the parties to appear for judgment. The appellant submitted that neither the applicant nor the respondent in that application was allowed to address the court either by oral or written submissions on the grounds advanced in the application.

He submitted this was a clear denial of the party's fair hearing. In support of this he cited decisions in **Transport Equipment Ltd vs Dervan P. Walambia, [1998] 89** and **Mbeya-Rukwa Autoparts & Transport Ltd. vs Jestina George Mwakyoma (Civil Appeal 45 of 2001) [2001] TZCA 14 (9 August 2001)** but also **Severo Mutegeki & Another vs Mamlaka Ya Maji Safi Na Usafi Wa Mazingira Mjini Dodoma (Civil Appeal 343 of 2019) [2020] TZCA 310 (19 June 2020)** to the effect that a person should not be condemned unheard.

He submitted the party's affidavit alone could not be the basis of the decision thus the decision by the district court which was reached without affording the parties the right to be heard effectively was bad in law and had no legal justification.

On his part, the respondent submitted that the district court exercised its discretion in refusing the application after it considered the facts stated in the affidavits. According to her, the reasoning of the district court while dismissing the application was clear that the same was delaying tactics for execution of the primary court decision.

In support of this argument, she cited the decision **in Ngao Godwin Losero vs Julius Mwarabu (Civil Application 10 of 2015) [2016] TZCA 302 Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019)** to the effect that whether to grant or refuse an application it was in the discretion of the court.

The respondent counsel went on to support the decision of the district court taking a stance that the court properly considered the necessary factors in refusing the extension of time and cited the decision in support of the District Court's.

There was no rejoinder submission by the appellant.

On my part, I have scrutinized the record of the district court but also considered the parties contending submissions.

It is a common ground and a rule of practice and procedure that affidavits in support of applications and for use in court, being a substitute for oral evidence, contain statements of facts and circumstances upon which the applicant relies. They do not contain matters of law or arguments. It follows that in an application like the one at issue after the parties have filed their affidavits, they reserve the right to be heard where matters of law in support of the facts deposed in the affidavits can be tabled for court consideration.

As such the right to fair hearing is fundamental in administration of justice as enunciated in the cited decision in the **Mbeya-Rukwa Auto Parts & Transport Limited** that,

*"In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law and declares in part:*

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

It follows that after the parties have filed their respective affidavits, they must be afforded an opportunity to submit their arguments in support or in opposing the application. If a party does not wish to submit or has nothing to submit, having been afforded this right that should be indicated in the proceedings.

The applicant complaint is that when the appellant filed his application for extension of time, he made his case by stating the reasons for delay in the affidavit. The respondent while contesting the application filed a counter affidavit. However, the district court made an order reserving its decision without hearing the parties. I have revisited the proceedings of the district court. Part of the excerpt from the record shows;

***11/05/2023***

*Coram Hon R Mushi- PRM*

*For applicant Both—Present.*

*For Respondent Both present*

*CC Chacha*

*Court Case for Hearing*

*Applicants (sic)*

***I have nothing to add rather than what I have submitted in my affidavit***

*Respondent: The same to me*

*Order: Judgement on 07/08/2023.*

*Parties to appear.*

I have reflected on the above what this means is that, when a party is afforded opportunity to be heard, right to be heard will be exhibited even if a party has nothing to say or opt to remain mum.

What the appellant was complaining is not supported by the record. Court record should be left to reflect what really happened. In a sound system of administration of justice, court record cannot be lightly be impeached without solid grounds. Basing on the principle of sanctity of court record and there being no complaint against the authenticity of the record of the district Court, I hold that the complaint that the parties were not heard is misplaced and accordingly rejected.

In upshot this appeal is devoid of merit the same is dismissed. Considering the parties had legal aid, I shall make no order as to cost.



**Sgd: A.J. KIREKIANO**

**JUDGE**

**12/02/2024**

**COURT:** Judgment delivered in absence of the applicant and in presence of the respondent.



**Sgd: A.J. KIREKIANO**

**JUDGE**

**12/02/2024**

