

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB REGISTRY**

**CIVIL REVISION NO. 10806 OF 2024**

(Originating from Execution No. 000003902 of 2024 before Resident Magistrate  
Court of Dar es Salaam at Kisutu)

**CHELU MFALILA ..... APPLICANT**

**VERSUS**

**LENNA MFALILA ..... RESPONDENT**

**RULING**

Date of last order: 29/05/2024

Date of ruling: 07/06/2024.

**NGUNYALE, J.**

The applicant CHELU MFALILA wrote a complaint later dated 06<sup>th</sup> June 2024 to Judge In charge of the High Court of Tanzania Sub Registry of Dar es Salaam bearing a heading 'Complaint Concerning an Order for the Arrest of Lameck Mukava Samson Mfalila RTD Justice of Appeal Delivered by the Resident Magistrate Court of Dar es Salaam at Kisutu (Honourable Franco Kiswaga, PRM Incharge) on 15<sup>th</sup> March, 2024 in Execution No. 3902 of 2024.



Upon receiving the complaint, the court Suo Mottu lodged the present Civil Revision No. 10806 OF 2024 in order to be satisfied on the appropriateness, legality and correctness of the order of the trial court in Execution No. 000003902 of 2024 between LENNA MFALILA and LAMECK SAMSON MFALILA pending at the Resident Magistrate Court of Dar es Salaam at Kisutu. The parties were invited to address the court on the impugned order dated 15<sup>th</sup> March 2024.

The applicant appeared represented by MR. Innocent Mwelelwa assisted by Mr. Novatus Michael Muhangwa both learned Counsels whilst the respondent was ably represented by Ms. Nakzael Rukio Tenga assisted by Glayson Ngaiza learned Counsels.

Mr. Muhangwa addressed the court that the order dated 15<sup>th</sup> March 2024 was given without the other side being availed an opportunity to be heard. The court was not satisfied as to whether the respondent in the execution proceedings was dully served to appear in court. The court gave the order involving the police without good cause. He cited the case of **Attorney General & Another versus Dhirajilal Walji Ladwa & 4 Others** in which the court said that the right to be heard is fundamental, any decision without a right to be heard attract nullification of the proceedings and orders. He prayed the court to invoke revision powers under Section



44 (1) (a) (b) of the **Magistrates' Court Act** Cap 11 R. E 2019 to revise the said proceedings by quashing them and set aside the orders.

The respondent Counsel Ms. Tenga addressed the court that in the proceedings before the trial court Lameck Mfalila was a necessary party, it was not practical to serve him, to say that he was not served is a mere academic exercise. The respondent Madam Lenna Mfalila was appointed as an administrator to manage her husbands' (Mzee Lameck Samson Mfalila) affairs because of illness. As a wife deserves to take care of her husband. She was of the view that the prayers of the applicant were merely academic exercises.

In rejoinder Mr. Muhangwa insisted that there were irregularities for the court to proceed with the orders without availing the other party a right to be heard.

Having heard the rival submission of the parties, I wish to reproduce the proceedings which are the subject of the complaints in this revision; -

*"Coram date: Fri Mar 15 2024.*

*Case Stage: Mention.*

*Court Room: Court Room No. 1*

*Case Status: Decided*



*Coram: Adv. Nakzael Lukio Tenga for the applicant and Adv. Mfinanga.*

.....

*PROCEEDING*

*Adv. Nakzael Lukio Tenga: - Your hon. The matter is for mention. The respondent was served with the respondent but has not appeared today. Your hon. We pray your hon court o make an order to direct Police Officers to take the patient wherever he is and deliver him to the applicant.*

*Court: The prayer is granted. Police are ordered to take the patient Lameck Samson Mfalila (retired judge) wherever he is and deliver him to the applicant.*

*Sgd*

*Mr. Franco Kiswaga."*

The above script of the proceedings speak louder that the respondent in the execution proceedings one Lameck Samson Mfalila or his representative was not present when the court pronounced such order which involved the police. There are no records which suggests justification for his absence in the proceedings concerning his interests. The argument of the respondents that to serve him was not practical are unfounded because even in their submission they submitted that the



respondent was served but no proof of service was stated. Even the court did not scrutinize to get proof of service.

From the above position, I agree with the applicants' Counsel that the respondent in the execution proceedings was denied a right to be heard without good cause. I further agree that, failure to give a party the right to be heard in the proceedings attracts grave consequences. This was the position in the case of **Gapco Tanzania Limited versus Rungwe District Council & Others**, Civil Revision No. 06 of 2018 Court of Appeal of Tanzania sitting at Mbeya where it was observed that the right to be heard is enshrined under Article 13 (6) of the **Constitution of the United Republic of Tanzania**, failure to avail such right to a party undermines the entire decision.

In the present case, the applicant father was denied a right to be heard without justification. Such a denial was fatal as far as the administration of justice is concerned. The respondent Counsel submitted that it was not practical to serve him, but the executing court did not establish a clear foundation if there was justification for such denial.

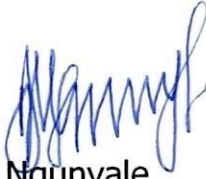
I therefore exercise revision jurisdiction under Section 44 (1) (a) (b) of the **Magistrates Court Act** Cap 11 R. E 2019 to quash the proceedings and set aside orders dated 15<sup>th</sup> March 2024 in Execution No. 000003902



of 2024 in the Resident Magistrate Court of Dar es Salaam at Kisutu. The executing court is directed to comply with the rules of natural justice unless there is a legal justification for non-compliance. Order accordingly.

Dated at Dar es Salaam this **07<sup>th</sup>** day of **June, 2024**.




  
D. P. Ngunyale

**JUDGE**

Ruling delivered this **07<sup>th</sup>** day of **June, 2024** in presence of Novatus Michael Muhangwa assisted with Gaston Mwageni for the applicant and the respondent represented by Mr. Hamis Mfinanga all learned Counsels.



  
D. P. Ngunyale

**JUDGE**