

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

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO 7638 /2024**

**Case Ref Number 202404081000007638**

(Arising from the decision of the District Court of Kinondoni at Kinondoni in Civil Revision No. 47 2023 before Hon. J. Rugemarila- PRM, originating from Kawe Primary Court Civil case no 12/2021.)

**HAMISI MWICHANDE MATOLA..... APPELLANT**

**VERSUS**

**KAMPUNI YA MALMO INVESTMENT.....RESPONDENT**

**JUDGMENT**

**30th May & 10th June 2024.**

**KIREKIANO, J.:**

The appellant filed a case at Kawe Primary Court claiming twelve million Tanzania Shillings (12,000,000/=) from the respondent, a specific amount for the respondent's breach of Contract. Records reveal that the appellant herein entered into a loan car agreement with the respondent, whereby the respondent gave the car to the appellant for tax business purposes, with the terms that the appellant would pay two hundred thousand (200,000/=) per

week within six months and that after the expiration of six months, the appellant would be given another Contract.

He was never given another contract and continued paying them the money. He once told the respondent that he had to pay five hundred thousand (500,000/=) to be given another contract. Later, the respondent gave him another contract, revealing that it was a car rental contract, not a car loan agreement. He was told the car's value was eighteen million Tanzania Shillings (18,000,000/=), which would be paid within thirty months.

Before the contract expiration, the respondent confiscated the car regardless of the amount the appellant had contributed. To recover the said amount, the appellant filed the case before the Primary Court of Kawe, which ruled in favour of the appellant. While the proceedings were at the execution stage at the Primary Court, the Primary Court, by a letter, referred the matter to the District Magistrate in Charge with a view to the appointment of a Court broker to execute the award.

The learned District Magistrate in Charge at Kinondoni scrutinised the decision; according to her, it came to her attention that the judgment of the primary court lacked reasons for the decision. She thus revised the decision of the primary court *Suo moto*. In the end, the District Court ordered the file

to be remitted to another Magistrate to compose a new judgment. The appellant, being dissatisfied with the decision of the District Court, has now preferred this appeal on five grounds thus;

- 1. That the trial Court erred in law for failure to accord the right to be heard to the appellant in favour of the stranger who filed an affidavit in their favour.*
- 2. That the trial Court erred in law for misuse of laws governing revision and hence wrongly reached the wrong decision.*
- 3. That the trial Court erred in law as the Magistrate pretended to call the records of Primary Court Suo moto contrary to the evidence of records that the decision was based on whispering/ of strangers.*
- 4. The district Court erred in law to order the retrial to another Magistrate of the Primary Court to write up a judgment contrary to the laws*
- 5. That the proceedings by the District Court were acted in defeat of justice in favour of the respondent.*

The respondent defaulted appearance to defend this appeal, and the process server's report indicated that they refused the summons. The court proceeded to hear this appeal ex parte against the respondent.

The appellant appeared in person and without representation. His submission was just brief. During the oral submission, the appellant submitted that the District Court, having been placed with the record of the Primary Court, did not execute his decree as requested by the Primary Court. Instead, it purported to conduct revision proceedings at the instance of one Kimika Kamadani and issued its decision in civil revision no 47 of 2021.

He complained that he was not given the alleged affidavit by Kimika and had no opportunity to respond; thus, he was never heard, even during oral submission. He finally argued that the Court should allow this appeal since what was done was an injustice to him.

I have considered the appellant's submission.

This Court is thus called upon to determine one major issue: in the first ground of appeal, whether the appellant was given a right to be heard. As revealed from the records of revision, from pg. 3, where the case was set for hearing on 08/11.2022, up to pg. 9 of the Proceedings, nowhere is it revealed

that parties, let alone the appellant, were heard until the ruling was delivered on 14/09/2023.

On 18.7.2023, the proceedings were Scheduled for mention, the record shows.

*Date 18.7.2023*

*Corum Rugemelila PRM*

*Applicant presents in person*

*Respondent Absent Miss Inviolata Wangoma for Kimika Kanadani*

*CC Winfrida*

**ORDER**

*Ruling on 17/8.2023 at 10hrs*

*Parties to appear*

*Sgd*

*Rugemelila PRM*

*18. 07.2023*

.

The ruling was ultimately delivered on 14.09.2023. The appellant claims he was not aware of these proceedings.

I have read the ruling of the District Court; it indicates that the revision was conducted following a letter by the primary court of Kinondoni at Kawe seeking the appointment of a court broker. On the other hand, on page one,

the ruling shows that the revision proceeding was supported by an affidavit of Kimika Kanadani, a managing director of a company known as FMG Tanzania Inc Ltd.

Significantly, the affidavit stated the relationship of the said Kimika and the respondent herein and said Kimika's complaint that he was sued together with the respondent but he was never heard in the primary court in civil case no 12 of 2021.

The District Court noted this complaint and had the following to say on page 2 of the ruling.

*Well, after having summoned the parties and been addressed about the issue, both parties had nothing to say rather than claim their rights. **It was her averment that the trial was conducted in her absence, which denied her the right to be heard.***

*Responding, the Applicant countered disputing the same, averring that the Respondent's right to be heard was prejudiced only because of Kimika's failure to appear in court and that since they had no interest in entering appearance, the same proceeded with hearing the matter ex parte.*

*This court, after carefully reviewing the said decision, has observed that **it is true that the judgment lacks the reasons for its decision;** rather, the trial magistrate*

*summarised the evidence only and proceeded to award the applicant Tshs 9,075,000/=.*

There is nowhere indicated that the parties were heard on the legality of the decision, that it did not contain the reason for the decision. From the proceeding, more perusal of the district court record suggests it was an affidavit of Kimika that prompted the district court to conduct revision proceedings. As such, it is in the record that there was an affidavit purportedly deposed by the appellant. In his submission, the appellant stated that he never filed an affidavit.

While it is surprising that the appellant would seek execution and revision at the same time, a quick picture of this affidavit shows that it refers to civil revision no. 49 of 2021, which is not the subject of this appeal.

Now it is a cardinal principle of natural justice that a person should not be condemned unheard. The right to be heard is one of the fundamental Constitutional rights, as it was stated in the case of **Mbeya-Rukwa Autoparts and Transport Limited vs. Jestina George Mwakyoma [2003] TLR 251, thus:**

*"In this country, 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 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."*

The right to be heard was similarly discussed in different cases, which include **Pili Ernest vs Moshi Musani, Civil Appeal No. 39 of 2019, CAT at Mwanza, (Tanzlii), D.P.P. vs Sabina Tesha & Others (1992) TLR 237, Transport Equipment vs Devram Valambia (1998) TLR 89** and **Tanelec Limited vs The Commissioner General Tanzania Revenue Authority, Civil Appeal No. 20 of 2018- CAT at Dodoma (Tanzlii).**

In **Pili Ernest (supra)**, the Court of Appeal found that the parties were denied the right to be heard on the crucial question that the first appellate Magistrate had raised. The court was satisfied that the denial violated the fundamental Constitutional right to be heard and prejudiced the parties. The Court of Appeal went on to nullify the judgment of the District Court as well as the impugned judgment of the High Court.

In this proceeding, the district court did not resolve the complaint of the respondent's right to be heard; its decision to nullify the judgement because



it lacked reason ought to be reached after hearing all parties in the respective proceedings. To put it differently, the learned Principal Resident Magistrate misdirected herself on the very complaint of the right to be heard. Failure to observe this right to have the parties view the issue of the reason of the decision was an explicit denial of the right to be heard, which goes to the root of the proceedings' validity.

I wish to say in passing that if the District Court found a defect in the judgement of the primary court but sustained the proceedings. It was not proper to order judgment to be composed by another magistrate; in the usual cause of things, the appropriate order was to order judgment to be composed by the same magistrate unless it was impracticable to do so for compelling reasons, in which case, the same would be composed by another magistrate of competent jurisdiction.

Ultimately, this appeal succeeds on the first ground; as such, this court invokes its revisional powers under section 31 (1) of the Magistrate Court Act cap 11 RE 2022 and quashed the ruling and order in revision no 47 of 2021. It is further ordered that the revision proceedings be conducted according to law, including affording the parties the right to be heard before any order or

decision may be reached. This appeal was heard ex parte, so there will be no order as to cost.



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

**A. J. KIREKIANO**

**JUDGE**

**10.06.2024**

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



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

**A. J. KIREKIANO**

**JUDGE**

**10.06.2024**