

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 753 OF 2019**

**JACKSON MWENDI.....APPLICANT**

**VERSUS**

**AGAKHAN EDUCATION SERVICE.....RESPONDENT**

**RULING**

*Date of last Order: 18/11/2020*

*Date of Ruling: 30/11/2020*

**Z.G.Muruke, J.**

Applicant filed present application for extension of time to file revision, reason are explained in paragraph 1.4 and 2.1 of affidavit sworn by Jackson Mwendi (the applicant) in essence his complaint from CMA to this court is right to be heard of his case on merits. Respondent filed counter affidavit sworn by Ms. Glory Ngassa respondent human resource manager to object prayers by applicant.

On the hearing date applicant was in person while respondent was represented by Godfrey Ngasa holding brief of Daniel Ngudungi. Hearing was ordered to be by way of written submission. Both parties submitted along lines the affidavit. In short applicant seriously complained his right to be heard being infringed by arbitrator who dismissed his case for being out of time, wrongly. In essence he insisted right to be heard on an intended revision.

Having heard both parties submission, it is clear that, applicant has been strangled to be heard since Commission for Mediation and Arbitration, Right to be heard is one of the basic principles in administration of justice.

Right to be heard is one of fundamental principals of natural justice, failure of which vitiates proceedings. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without being afforded a chance of being heard.** The right to be heard is a value right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understanding, **the Principles** of natural justice should always be dispensed by the court, that is both parties must be heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the court save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgment against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will**

**not allow a person to be jeopardized in his person or pocket without giving him an opportunity of appearing and putting forward his case.** The issue of denial of the right to a hearing is a point of law which underline the proceedings the effect of which is to render a proceeding a nullity.

**In the case of Ridge Vs. Baldwin** [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Official of the court must comply with the rules of natural justice when exercising judicial functions. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174.

Applicant basic right to be heard will be curtailed if, is not granted extension sought. Respondent will not be prejudiced as his right to be heard will steel be waiting.

Accordingly orders sought in Misc application number 753/2019 for extension of time file revision is granted. Intended Revision to be filed within 30 days from today.

  
Z.G. Muruke

**JUDGE**

30/11/2020

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**MISCELLANEOUS APPLICATION NO. 753 OF 2019**

**JACKSON MWENDI ..... APPLICANT**

**VERSUS**

**AGAKHAN EDUCATION SERVICE ..... RESPONDENT**

**Date: 30/11/2020**

Coram: Hon. S.R. Ding'ohi, DR.

Applicant: Present in person

For Applicant:

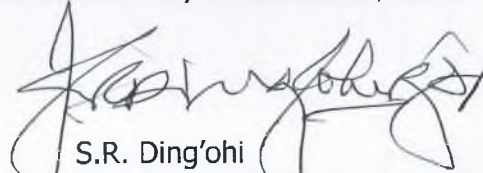
Respondent:

For Respondent:

Mr. Elia Mwingira, Advocate

CC: Halima

**Court:** Ruling delivered this 30<sup>th</sup> day of November, 2020.



S.R. Ding'ohi  
**DEPUTY REGISTRAR**

30/11/2020