

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

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 179 OF 2020

**HIGHER EDUCATION STUDENT'S
LOANS BOARD (HESLB)..... APPLICANT**

VERSUS

GABRIEL ROBI.....RESPONDENT

RULING

Date of Last order: 19/10/2020

Date of Ruling: 14/12/2020

Z.G.Muruke,J

Applicant filed review to challenge decision of this court on 21st May, 2020. Respondent filed concise statement of response to the applicant's memorandum of Review. After conclusion of pleadings, application was argued by way of written submissions, on the following schedule:-

- (i) Applicant submission to be filed on or before 18th August, 2020 and serve respondent counsel on the same day before 3.30 PM.
- (ii) Respondent submission to be filed on or before 08th September, 2020 and serve applicant counsel on the same day before 3.30 PM.
- (iii) Rejoinder submission if any by applicant to be filed on 15th September, 2020 and serve respondent counsel on the same day before 3.30 PM.
- (iv) Mention on 21st September, 2020 to ensure compliance.

However, on the date set for filing submission, applicant filed submission together with additional grounds for review. Applicant submission, contained the issues raised in additional ground. Equally, respondent counsel submitted on the same, by challenging the way applicant acted in filing additional ground of review. Without going to the merits of the application, I must admit that, applicant wrongly filed additional grounds of review without leave of the court. By filing additional ground of review without leave of the court and introducing issues not agreed, has rendered the application incompetent.

Applicant main complain is right to be heard on review, basing on ground of illegality, of decision sought to be reviewed, thus, there is a need to give parties right to do so. What applicant is seeking is right to be heard on employment rights. Right to be heard was insisted in **the case of Ridge Vs. Baldwin** [1963] 2 All ER 66, where it was held that the consequence of the failure to observe the rules of natural justice is to render the decision void. Official of the court must comply with the rules of natural justice when exercising judicial functions. Right to be heard was also insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174. Where court held that,

The district court erred in law by not giving to the appellant the right to be heard.

On the same principle of right to be heard, Mroso, J in the case of **Edwin William Shetto Vs. Managing Director of Arusha International conference Centre** [1999] TLR 130, held that since the plaintiff could only

be terminated for good cause the plaintiff should have **been** heard before the decision to terminate him could be taken,

It is elementary principle of the law that, Natural justice demand, parties to the case to be notified before an order can be made to the prejudice of their rights. It is principal of the law that where a court has been moved, to hear the parties, the magistrate is duty bound to hear the applicants and the respondent in reply. Failure to hear a party is an error which goes to the root of the matter and is fatal. 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 valued right and it would offend all notions of justice if the rights of a part were to be prejudiced or affected without the party being afforded an opportunity to be heard.

The very foundation upon which our judicial system rests is that, a party who comes to court shall be heard fairly and fully and a magistrate who does not hear a party before him or party's advocate offends that fundamental principle of natural justice and it then, becomes the duty of the (appellate) court to tell so as people come to court as the last resort and judges are employed to hear them and determine their cases.

To the best of my understandings, **the principle** 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 courts save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgement 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.

It is now an established position of the law that in exercise of their duty of administration **of Justice**, courts of law are required to give substantive justice priority to legal technicalities. The parliament of the United Republic of Tanzania the constitution of the United Republic of Tanzania, 1977 by introducing the provision of **article 107A(2) (e)**, **which in essence directs judicial officers that in discharging their adjudication duty, have to give substantive justice priority to legal technicalities.**

There are many authorities supporting that position. The Court of Appeal of Tanzania as per Munuo, J.A., in the case of China Henan International Co. – operation Group Co. Ltd Vs. Salvand K.A. Rwegasira, Civil Application No. 43 of 2006, for instance, took the view that procedural

rules are there to guide for an orderly and systematic presentation of a cause so as to help the substantive law and not to enslave the same. In particular the justice of Appeal had the following to say and I quote.

" It is a well-established principal that the object of courts is to decide the rights of the parties and not to punish them for mistakes they make in conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistakes which if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the indiscipline but for the sake of deciding matters in controversy."

To be able to determine parties rights in the interest of justice, and terms of Rule 55(1) and 2 of the Labour Court Rules GN 106/2007, application is struck out with leave of thirty (30) days from today to file competent review application. Ordered, accordingly.


Z.G. Muruke

JUDGE

14/12/2020

Ruling delivered today in the presence of Evelius Mwendwa, Learned State Attorney for the applicant and Walter Shayo, Learned Counsel for the respondent.


Z.G. Muruke

JUDGE

14/12/2020