IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 245 OF 2020

BETWEEN

SHIRIKA LA USAFIRI DAR ES SALAAM LIMITED..... APPLICANT

VERSUS

ABBAS KINGWABA & 54 OTHERS..... RESPONDENTS

RULING

Date of last Order: 02/06/2021
Date of Ruling: 28/06/2021

Z.G.Muruke, J.

Applicant filed, application for restoration of dismissed Revision number 355/2018 on 15th June, 2020. Application is supported with an affidavit sworn by Sechelela Charles Chitinka an advocate and in house lawyer of the applicant. Counter affidavit of Mr. Gaudine Rwekaza Mrugaruga was sworn in opposition.

On the date set for hearing, Sechelela Charled Chitinka represented applicant, while respondents were in persons. After discussion amongst respondents, they requested court to adopt counter affidavit as their submission in support of the application. Equally, applicant counsel prayed for the same.

This court having gone through both affidavits for and against the application, and court records, issue for determination is whether, there are sufficient cause for restoration. Reason started at paragraph 10,11,12 13,15,16 and 17 of affidavit in support of application all explained in details, how applicant counsel was handling two cases before Judge and Deputy Registrar. She was strungling to attend both cases at a time. While at Deputy Registrar chamber, revision sought to be restored was then called and finally dismissed for want of prosecution. Such facts has not been disputed by respondents. What applicant want is right to be heard on merits in dismissed revision against respondent.

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. Magistrate who

does not hear a party before him or party's advocate offends that fundamental principle and it then, becomes the duty of the (appellate) court to tell him so as people come to court as the last resort. More so, judges and magistrate 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.

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. Where court held that,

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

I have considered, respondent's prejudice if any, much as case will be delayed, but, respondent will have the right to be heard. Thus application for restoration is granted. Rev. No. 355/2018 is restored, same to come for mention on 26th July, 2021.

Z.G. Muruke

JUDGE

25/06/2021