

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MWARIJA, J. A., SEHEL, J.A And MAIGE, J.A.)

CIVIL APPEAL NO. 375 OF 2021

LUCKSON RUTAFUBIBWA KIIZA (The administrator
of the estate of the late Angelina Bagenyi)**APPELLANT**

VERSUS

ERASMUS RUHUNGU (The administrator of
the estate of the late Gaudensia Rwakailima).....**RESPONDENT**

(Appeal from the Ruling of the High Court of Tanzania at Bukoba)

(Bongole, J.)

dated the 8th day of June, 2018

in

Revision Application No. 3 of 2017

.....

JUDGMENT OF THE COURT

6th & 13th July, 2022.

MWARIJA, J.A.:

This appeal arises from the ruling of the High Court of Tanzania sitting at Bukoba (Bongole, J) handed down on 8/6/2018 in Application for Revision No. 3 of 2017. The application was instituted by the respondent, Erasmus Ruhungu (as an administrator of the estate of the late Gaudensia Rwakailima) against the appellant, Angelina Bagenyi (now deceased).

The respondent moved the High Court to revise the decision of the Resident Magistrate's Court of Bukoba in Misc. Civil Revision No. 3 of 2012 in which the said Court revised execution proceedings arising from Rukindo Primary Court Civil Case No. 19 of 1996.

In response to the application for revision, the appellant lodged in the High Court, a notice of preliminary objection consisting of the following three grounds; that:

"(i) The court has not been properly moved.

*(ii) [The] court is not clothed with jurisdiction to entertain
the matter.*

(iii) [The] application has been hopelessly filed out of time."

Having heard the learned counsel for the parties on the preliminary objection, the learned High Court Judge found that all the grounds thereof are devoid of merit and therefore, overruled the preliminary objection. After having disposed of the preliminary points of objection, the learned Judge proceeded to determine the application for revision. He acted on the submissions made on the preliminary objection to dismiss the application, holding that the same was lacking in merit.

The appellant was aggrieved by the decision of the High Court hence this appeal which is predicated on the following four grounds of appeal.

- "1. *THAT, the Honourable Judge of the High Court grossly erred in law to proceed determining the revision without hearing the parties after overruling the preliminary objection.*
2. *THAT, the Honourable Judge of the High Court grossly erred in law to hear and determine revision application on the matter which was already dismissed by the High Court for being time barred.*
3. *THAT, the Honourable High Court Judge grossly erred in law for failure to come into conclusion that the revision application before the High Court was time barred and the High Court was not clothed with jurisdiction to entertain it.*
4. *THAT, the Honourable Judge of the High Court erred in law for failure to uphold preliminary [points] of objection raised by the appellant against the revision application."*

At the hearing of the appeal, Mr. Zedy Ally, learned counsel appeared for the appellant while the respondent was represented by Mr. Abraham Lupia, learned counsel. At the outset, Mr. Ally informed the Court

about the demise of the appellant. He pointed out that she passed away on 8/8/2021 and following her death, one Luckson Rutafubibwa Kiiza was appointed by the Primary Court of Kashasha to be the administrator of her estate. The learned counsel supported his submission with the deceased person's certificate of death and the letters of appointment of the said administrator of the deceased's estate. He prayed, in the circumstances, that the administrator be made a party to the appeal in terms of Rule 105 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). The prayer was not objected to by the counsel for the respondent.

Having been established that the appellant has passed away and that the administrator of her estate has been appointed, we granted the prayer and ordered that the name of the deceased person's administrator, Luckson Rutafubibwa Kiiza, be substituted as the appellant in the place of the deceased person.

In his written submission, Mr. Lupia had raised a point of law to the effect that his appeal has been brought against a wrong party because, according to him, the respondent does not have locus standi to either prosecute or oppose it. On reflection however, the learned counsel abandoned that point because the decision which is the subject matter of the appeal, arose from the application for revision filed in the name of the

respondent. With regard to the appeal, Mr. Lupia conceded to the first ground of appeal, that the learned High Court Judge erred in law in proceeding to decide in merit, the application for revision without hearing the parties.

On his part Mr. Ally welcomed the concession by the counsel for the respondent and urged us to allow the 1st ground of appeal. As for the other grounds of appeal, he conceded that the same were intended to challenge the orders which are interlocutory in nature and thus decided to drop those grounds of appeal.

It is indeed evident from the record of appeal that after he had disposed of the preliminary objection, the learned High Court Judge proceeded to determine the application for revision without affording the parties the right to be heard. He based his decision on the submissions made on the preliminary objection. In his decision at page 12 of the ruling appearing at page 169 of the record of appeal, the learned Judge held as follows:

"From the arguments in support of the preliminary objection which expressly admits that the Resident Magistrate's Court of Bukoba in RM Misc. Revision No. 3 of 2012 did revise the order of the Rukindo Primary Court located within Muleba District which

as I tried to demonstrate had no such powers; this automatically give a blessing path to this court to quash and set aside the proceedings and subsequent orders emanating from such illegal proceedings as I hereby do under s. 31(1) (2) of the MCA Cap. 11 R.E. 2002."

[Emphasis added].

As stated above, that decision was arrived at without hearing the parties. With respect, the learned High Court Judge committed a fatal error which renders the decision void. - See for instance, the Court's decisions in the cases of **Transport Equipment Limited v. Devram Valambhia** [1998] T. L. R. 89, **Eco –Tech (Zanzibar) Limited**, Znz Civil Application No. 1 of 2007 (unreported) and **Mbeya – Rukwa Autoparts and Transport Limited v. Jestina George Mwakyoma** [2003] T. L. R. 251. In the latter case, the Court observed as follows on the requirement of affording parties the right of hearing before a decision is made:

*"It is a cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard: **audi alteram partem** In this country, natural justice is not merely a principle of the common law, it has become a fundamental*

constitution right. Article 13(b) (a) includes the right to be heard among the attributes of equality before the law...”

The Court went on to state that, a decision reached without regard to the principles of natural justice is void.

The position applies to the case at hand. Since the parties were not heard before the application for revision was determined, the impugned decision is on that ground, void. In the event, the same is hereby quashed. We consequently order that the application for revision be heard and determined by the High Court in accordance with the law.

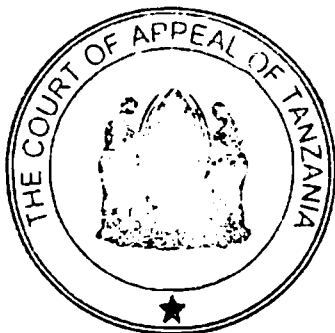
DATED at **BUKOB**A this 12th day of July, 2022.

A. G. MWARIJA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 13th day of July, 2022 in the presence of Mr. Zedy Ally, learned advocate for the appellant and respondent present in person is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL