

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB – REGISTRY OF MWANZA

AT MWANZA

MISC. CIVIL APPLICATION NO. 36 OF 2022.

(Originating from Misc. Civ. Application No. 12 of 2022 in the Court of the Resident Magistrates of Mwanza at Mwanza)

TERRAM GEO-ENGINEERING COMPANY LTD..... APPELLANT

Versus

DR. KENETH LUPOGO RESPONDENT

RULING

6th July, 2022

Kahyoza, J.:

Terram Geo-Engineering Company Ltd, (the Company) applied to this Court to call and examine the propriety of the ruling and orders of the trial court. **DR. Keneth Lupogo** is the respondent. The pivot of the application is whether the trial court’s order staying the suit pending reference to arbitration was properly issued.

A brief background is that the Company instituted a suit against **DR. Keneth Lupogo** claiming payment of the contractual sum and for general damages. Before hearing took off, **DR. Keneth Lupogo** filed an application seeking an order for stay of the suit to refer the dispute to the arbitration to comply with terms of their contract. The Company raised a preliminary objection, which the trial court determined. Subsequently, the trial court

stayed the suit without hearing the parties regarding the application for stay of proceedings.

The Company's advocate raised four grounds of complaint one of them that, his client was condemned unheard.

DR. Keneth Lupogo's did not oppose the application. He submitted that the trial magistrate erred to order stay without first hearing them. He supported the applicant's prayer and beseeched the Court to order each party to bear its own costs.

It is beyond dispute that the trial court ordered stay of proceedings without hearing parties. It violated the parties' right to be heard. It is trite law that right to be heard is one of the fundamental rights, breach of which vitiates the proceedings. See the case of **Abbas Sherally and Another v. Abdul Fazalboy**, Civil Application No. 33 of 2002 (unreported) the Court emphasized the importance of the right to be heard as follows-

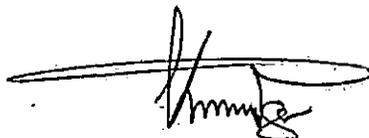
*"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. **That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice.**"*

Given the position of the law demonstrated above, the trial court's order staying the suit, issued on 31st day of March, 2022 without hearing the parties, is a nullity. As a result, I quash it and order another resident

magistrate to hear the application or petition for stay of the suit according to law. Each party shall bear its own costs as there is no one to blame.

It is ordered accordingly.

Dated at Mwanza this 6th day of July, 2022.

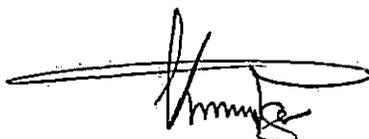
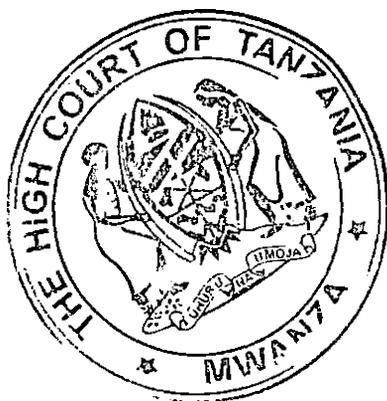


J.R. Kahyoza

JUDGE

06/07/2022

Court:-Ruling delivered in the virtual presence of Mr. Maligisa advocate for the applicant and the absence of Mr. Innocent Michael Majura, the respondent's advocate duly notified. B/C Ms. Jackline (RMA) present.



J.R. Kahyoza

JUDGE

06/07/2022