

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MTWARA)**  
**AT MTWARA**  
**PC. CIVIL APPEAL NO. 3 OF 2022**

*(Originating from Civil Appeal No. 24 of 2020 from Masasi District Court and Civil case No. 7 of 2019 from Chiungutwa Primary Court)*

**MASUDI ARABI SAAMBILI..... APPELLANT**

**VERSUS**

**NANJOTA AMCOS.....APPELLANT**

**JUDGMENT**

**Muruke, J.**

Masudi Arabi Saambili, being aggrieved by the decision of Masasi District court in Civil Appeal No. 24 of 2020, preferred present appeal raising two grounds, articulated in the Petition of Appeal. On the date for hearing, respondent was represented by Kida Mwangesi Advocate, while appellant appeared in person. Ground one is on jurisdiction, appellant submitted that, case started with Hon. Kashusha, then proceeded with Hon. R. Yunus without any reason for assignment. He argued court to quash decision by Hon. Yunus for lack of jurisdiction.

In reply, respondent submitted that, it is true that once a magistrate is assigned a case it is principle that case be heard to finality by the same Magistrate unless there is reason for re- assignment, which must be put on records. Failure to abide to the procedure is fatal. Case before Hon. Kashusha was just mentioned and it was an appeal. Hearing of appeal was before Hon. R. Yunus. There is no any negative impact on the part of appellant in terms of records.



In rejoinder, appellant submitted that, respondent advocate is the one who delayed to file submission. He was not satisfied with what transpired at the district court by Hon. Yunus Magistrate who set on appeal, she kept adjoining the case at his detriment.

Having considered the rival submissions advanced by both parties, together with the evidence on the records, I will start one ground after another. On ground one, appellant complained that, the appellate magistrate grossly erred in law and facts by hearing and determining the case without having jurisdiction as there was the change of Magistrate from Hon. B.K Kashusha to the successor Hon. R. Yunus without assigning reasons. It is a requirement of the law that, where it appears, the case was assigned to a certain Magistrate, and for any reason such magistrate failed to complete the hearing, and the case assigned to another magistrate, the successor magistrate should give reasons as to why she is presided over the case. Failure to give reasons to the appellant it is noncompliance of the law and it is fatal. This requirement of the law was provided under Order XVIII, Rule 10(1) of the Civil Procedure Code, Cap. 33 R.E 2022.

The rationale for giving reasons for taking over a case from another judge, magistrate or chairman has been stated in a number of cases including the case of **MS Georges Centre Ltd Vs. The Attorney General and Another, Civil Appeal No. 29 of 2016**, where the Court of Appeal of Tanzania stated that: -

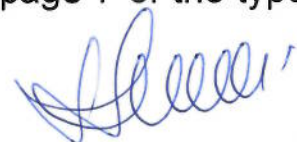
*“The general premise that can be gathered from the above provision is that once the trial of a case has begun before one judicial officer that judicial officer has to bring it to completion unless for some reason he/she is unable to do that. The provision cited above imposes upon a successor judge or magistrate an obligation to put on record why he/she has to take up a case that is partly heard by another.*

*There are a number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it not practicable to do so. For one thing, as suggested by Mr. Maro, the one who sees and hears the witness is in the best position to assess the witness credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any case be a court of law. furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised.”*

Failure to state reasons for such transfer, suggest that the case file has never been re-assigned to any other chairman and that other chairman has no jurisdiction to adjudicate the case for want of proper assignment. This makes all proceedings that continued without proper reassignment to be nullity.

I have careful rewed the first appellate court proceedings. The record speaks louder, when case registered at Masasi District court was assigned to Hon. Rehema- RM on 21/12/2019. Then it was mentioned two times on 06/01/2020 and 30/01/2020 before Hon. Kashusha, thereafter appeal proceeded before Hon. Yunus until on 06/04/2020 when it was ordered to proceed by way of written submission. So, this appeal was not assigned to another magistrate or heard by another magistrate from the first date when was assigned to Hon. Yunus. Thus, ground one lucks merits, it is dismissed.

Coming to the second ground that, the appellate magistrate Hon. Yunus grossly erred in law and facts by striking out of the appeal filed by the appellant without considering the strong reasons from the appellant on his failure to file his written submission. Reasons stated by appellant for the failure to file his written submission was recorded at page 7 of the typed proceeding of the first appellate court as follows: -





**APPELLANT:** I have failed to file my written submission because the court failed to provide me with a copy of proceedings. I applied for a copy of proceedings on 17/12/2019 and I was supplied with it on 22/04/2020. So, I pray before this court to extend time to file my written submission.

I have also perused the first appellate court file, the records show that, when appellant filed his petition of appeal on 23/12/2019 did not attach copy proceedings. However, there is a letter dated 17/12/2019 written by appellant requesting the trial primary court to supply him with copy of the proceedings for his further action to the District Court, while order for written submission was delivered on 06/04/2020 four months later after the appellant supplied with copy of proceedings. Thus, at the time court ordered dispose the appeal by way of written submission, appellant was already supplied with copy of proceedings. Indeed, at the time when this appeal came for mention to see if parties adhered to the order of the court, appellant requested court to extend time for him to file his written submission. But court proceeded striking out appeal for want of prosecution.

To my opinion appellant struggle is to be head on merits. Appellant is knocking the door of this court to be given right to be heard on merits. Right to be heard was insisted in the case of **Ezekiah T. Oluoch Vs. The Permanent Secretary, President's Office, Public Service Management and 4 others, Civil Appeal No. 140 of 2018**(unreported) at Dar es salaam, where it held that: -

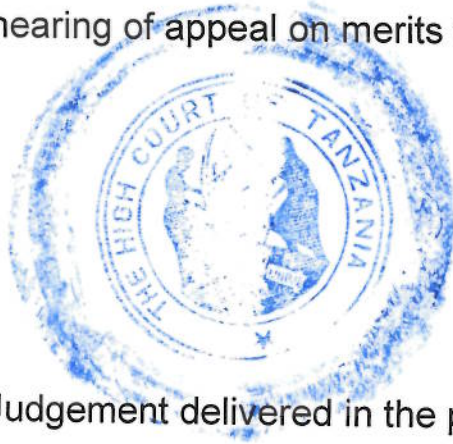
*"The right of a party to be heard before the adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That the right is so basic that a decision which is arrived at violation of it will be nullified, even if the same decision would have been reached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



The right to be heard is safeguarded in the constitution of our country. Article 13(6)(a) of the Constitution provides in the Swahili version thus: -  
“(6) kwa madhumuni ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba-

(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”

Failure by the first appellate court to give extension of time for appellant to file submission is to cattail appellant his right to be heard which is against the rule of natural justice. Accordingly, appeal allowed ruling of the first appellate court dismissing appeal is quashed. Appellant is granted 30 days within which to file submission in support of the appeal from first November 2022. Lower court records to be returned for continuation of hearing of appeal on merits within fourteen (14) days from today.



**Z.G. Muruke**

**Judge**

**27/10/2022**

Judgement delivered in the presence of Happiness Sabato holding brief of Kida Mwangesi for the respondent and appellant in person.



**Z.G. Muruke**

**Judge**

**27/10/2022**