

TANZANIA / JUDGMENT

MASANJA MUSSA Final

COURT
TANZLII

DECIDED
31 December 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT
GEITA PC CIVIL APPEAL No. 1398 OF 2025 (Arising from Civil Appeal No. 741 of 2024 of the
District Court of Geita, Originating from Civil Case No. 81 of 2023 of Bugando Primary Court)
MASANJA MUSSA.....APPELLANT VERSUS FELIX
PASCHAL.....RESPONDENT

JUDGEMENT

Date of Last Order: 11/02/2025 Date of Judgement: 21/02/2025 MWAKAPEJE, J.: The appellant herein appeals against the decision of the Geita District Court in Civil Appeal No. 741 of /2024, which originated from Civil Case No. 81/2023, delivered on 31 December 2024 at the Geita District Court. The crux of the appeal stems from the fact that on 30 August 2022, the appellant leased musical equipment from the respondent for temporary use, with the obligation to return the equipment upon completion of its intended purpose. The leased items included four Page 1 of 8 speakers, one power mixer, one microphone, and three flower pins, with a total value of Tshs. 2,500,000. Following the appellant's failure to return the equipment, the respondent initiated legal proceedings before the Bugando Primary Court, seeking compensation of Tshs. 2,500,000 for the unreturned items. The Primary Court ruled in favour of the respondent, ordering the appellant to pay the stated amount. Dissatisfied with the decision, the appellant appealed to the District Court, which upheld the ruling of the Primary Court. Still aggrieved by the decision of the District Court, the appellant filed a further appeal to this Court, raising five grounds of appeal, as outlined below:

1. That the District Court erred in law by believing and concluding that the evidence presented by the respondent was true and had been taken under oath through the court's case file without affording the appellant the right to be heard.
2. That the judgment and decree of the District Court were issued and signed by Hon. Kasebele, RM. However, in the section for signing the decree, the name of Hon. Samwel Maweda, PRM, appears, yet he did not sign it himself.

3. That the lower courts erred in law and fact by concluding that the respondent's evidence was credible in proving his claims. The courts failed to analyse and establish how the respondent had proved his claims, as it is evident that the Primary Court rendered its decision in the absence of Page 2 of 8 evidence, and the respondent did not present any documentary proof to support his claims.
4. That the lower courts misdirected themselves in law and fact by concluding that the respondent had proved his claims on the balance of probabilities without specifying how the sum of Tsh. 2,500,000/= (Two Million Five Hundred Thousand Shillings) had been proven.
5. That the District Court erred in law by rendering its decision without affording both the appellant and the respondent the right to be heard or to present their case. Furthermore, the appeal was neither heard orally nor in writing. The scheduled hearing date was postponed until the decision was issued without any hearing taking place. When the appeal was called for hearing, both parties appeared pro se, without legal representation. The appellant submitted first, merely restating the grounds of appeal as set out in the petition of appeal. In response, the respondent addressed the first ground of appeal, arguing that both parties had been duly heard by Hon. Maweda, PRM. He stated that on 31 December 2024, the appellant was absent when the decision was delivered. He further emphasised that both parties had been heard at the Primary Court level, and, therefore, the appellant's claim that the lower courts had denied him the right to be heard was unfounded. Regarding the third ground of appeal, the respondent asserted that the appellant had admitted, before the lower courts, to being indebted to Page 3 of 8 him. As such, he contended that the appellant could not now dispute this fact and should be required to settle the outstanding amount. On the fourth ground of appeal, the respondent submitted that it had been established that the appellant was found in possession of his property and had yet to return it. As for the fifth ground of appeal, the respondent maintained that the matter had been heard on both sides and that the appellant was present during the proceedings. He further argued that the appellant had taken his musical system, which had been proven to belong to him. He concluded his submissions and prayed for the appeal to be dismissed with costs. In rejoinder, the appellant submitted that the disputed musical instruments had already been collected by the respondent in April 2024. Having considered the rival arguments of the parties, the issue before me for determination is whether the appeal is meritorious. I will commence with the first and fifth grounds as they are alike, considering they pertain to the complaints that the parties were not afforded the right to be heard. Page 4 of 8 The right to be heard is a cornerstone of justice and is firmly enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977, which provides that every person is entitled to a fair hearing before any authority exercising judicial or quasi-judicial functions. This principle has been reiterated in numerous judicial precedents, including the case of Mbeya-Rukwa Auto Parts & Transport Limited

- v. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000, where the Court of Appeal held that: "In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13(6) (a) includes the right to be heard amongst the attributes of the equality before the law" Similarly, in *Abbas Sheraly & Another v. Abdul S. H. M. Fazalboy*, Civil Application No. 33 of 2002, the Court of Appeal observed that the right to be heard is so fundamental that it cannot be dispensed with even when the case appears clear-cut. Any proceedings conducted without observing this right are void and liable to be set aside. The Court, in particular, stated that: "The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasised 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 Page 5 of 8 party been heard because the violation is considered to be a breach of natural justice". [Emphasis supplied] In this appeal, to determine the merit of the first and the fifth grounds of appeal, I conducted a thorough examination of the records from the first appellate court. My review covered the entire period from when the appeal was lodged on 23 January 2024 to the final proceedings before the judgement was delivered on 31 December 2024. Upon careful scrutiny of the record, this Court found no evidence that the appellant and the respondent were given a chance to present their arguments before the first appellate court. The records show that pleadings were completed on 6 August 2024, and the parties requested a hearing date. The proceedings reflect the following: "Mrufaniwa:Nimeshajibu sababu za rufaa. Mrufani: Naomba tupangiwe tarehe ya kusikiliza rufaa yetu. Mahakama: Kusikiliza tarehe 26/8/2024." However, when the matter came up for hearing on 26 August 2024, it was adjourned to 20 September 2024 for judgement. Despite this, the judgment was not delivered until 31 December 2024. There is no indication that the parties were heard before the case was set for judgement. The absence of summons, hearing notices or any hearing modalities to dispose of the matter in the record strongly suggests that Page 6 of 8 no hearing took place. In these circumstances, it is evident that the parties were denied their constitutional and procedural right to be heard. It is settled law that any proceedings conducted in violation of the right to be heard cannot be sustained. In *Director of Public Prosecutions vs Yassin Hassan @ Mrope* (Criminal Appeal No. 202 of 2019) [2020] TZCA 1733 (19 August 2020), the Court of Appeal stated that: ""Where a judicial decision is reached in violation of that right as happened in the instant case, the decision concerned is a nullity and cannot stand." It follows, therefore, that non-compliance with principles of natural justice renders a decision invalid. Thus, failure to grant a party an opportunity to be heard constitutes a fatal irregularity warranting nullification of the decision. See the case of *VIP Engineering and Marketing Ltd and 2 Others vs CitiBank Tanzania Ltd* (Consolidated Civil Reference No. 6 of 2006) [2007] TZCA 165 (26 September 2007) In light of the foregoing, this Court finds that the first appellate court failed to uphold the principles of natural justice by denying the parties their fundamental right to be heard. This procedural irregularity constitutes a serious violation of due process and renders the appellate proceedings defective. Accordingly, I find merit in the first and fifth Page 7 of 8

grounds of appeal. Given that this ground alone is sufficient to dispose of the appeal, I find it unnecessary to examine the remaining grounds. Consequently, in these circumstances, I nullify the impugned decision and remit the matter to the District Court for a proper hearing of the appeal in compliance with the principles of fair rehearing by a different magistrate. Furthermore, in view of the procedural irregularities arising from the first appellate court's failure to observe due process, I make no order as to costs. It is so ordered. DATED at GEITA this 21st day of February 2025. G.V. MWAKAPEJE JUDGE Page 8 of 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/326488/source_file/d7bc17e35fd841c7/MASANJA_MUSSA_-_Final.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/masanja-mussa-v-felix-paschal-righttobeheard-tanzlii-2024--6a3ea5243b1caa912981a000

Prepared on 14 October 2026 · Esheria