IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 60 OF 1993

SINANI AMIRI JUMA ..... APPELLANT

versus

HAMDANI MASUDI KITUKA ..... RESPONDENT

JUDGMENT

MAINA, J.

The Appellant Sinani Amiri Juma, objected to the appointment of the Respondent, Hamdani Masudi Kituka, as administrator of the estate of the deceased Kahasu Kituka.

After the Appellant had filed an objection to the Respondent's application as administrator of the estate, the Court fixed a hearing date. The Appellant gave evidence, and on a subsequent date his witness Jumbe Amiri Jumbe also gave evidence. The hearing was the adjourned. It is on record that on 25 March 1992 the hearing was again adjourned to another date because the Appellant wanted to call two more witnesses. There were several adjournments, and on 4/9/92 an order was made in the Appellant's absence, that he be notified of the fresh hearing date which was fixed for 28 September 1992. But the Appellant was not notified of the fresh hearing date. The trial court proceeded to order that judgment would be, and it was, delivered on 13 October 1992 dismissing the Appellan's objection. The Respondent was appointed administrator of the estate.

It is clear from the above summary of the proceedings that the decision was made before the appellant completed his case. In other words, the Appellant was not given an opportunity to call his witnesses. His complaint in the first ground of appeal is justified. There is also an irregularity in that Respondent did not adduce evidence at all. That, however, it is not necessary to consider in view of the decision I have reached that the trial court did not give an opportunity to the Appellant to call his witnesses, and that he was not notified of the hearing date.

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The decision of the trial court is set aside and the proceedings are quashed. It is ordered that the application be heard de novo before another magistrate of competent jurisdiction.

The appeal is allowed.

W. J. MAINA
JUDGE

Delivered in the presence of the Appellant and Mr. Maftah for the Respondent, this 8th day of September, 1994.

W. J. MAINA
JUDGE
8/9/94