

IN THE HIGH COURT OF TANZANIA

AT TANGA

DC. CIVIL APPEAL NO.25 OF 2007

(Originating from Civil Case No.30/2007 RM's Court Tanga)

TANZANIA REVENUE AUTHORITY.....APPELLANT

VERSUS

MNYUKU BROTHERS ENTERPRISES.....RESPONDENT

Date of last order: 5/3/2010

Date of judgment 12/3/2010

JUDGMENT

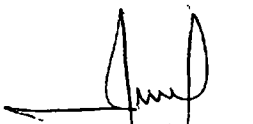
Mussa, J;

This appeal originates from civil case No.30 of 2007 instituted in the court of Resident Magistrate, Tanga. The respondent herein was the original plaintiff, whereas, the appellants, a Government Agency, were defendants. The suit was over a seizure and subsequent sale by auctioning; as is were, effected by the appellants with respect to certain motor vehicles, allegedly, owned by the respondent. Accordingly, the trial court was approached for an order that the sale was illegal and; accordingly, null and void. On the premises, it was a further prayer by the respondent that the auctioned property be restituted unto him.

At some stage whilst the suit was still pending and; it was November 6th 2007, the trial court entered judgment in favour the respondent, on account that despite time having been extended; the appellants had neglected and/or refused to file a written statement of defence. Although the presiding officer did not go so far as to clearly express the rule on which the order was founded; given the explanation, his was clearly an exparte judgment. It is in regard to the order that the

appellants are all arms against in a petition comprised of two points of grievance. The issue is, foremost, whether or not I need consider the substantive merits of the petition at all.

It seems to me that, over the years, the parity of reasoning has been that the proper way to go about an ex parte Judgment is by having it set aside by the same court that issued it. Such was, indeed, the position of this court as expressed in **Mtondo Vs Janmohamed (1970)GCD 326; Mandia s/o Mtaturu Vs Mtinangi (1972) HCD 150**. As it turns out, the rules prescribe a remedy for setting aside an ex parte decree; just as, there is, by way of an appeal, a special remedy against an order refusing to set aside such decree. To an aggrieved judgment debtor, these remedies alone, and none other, can be taken resort to. Having remarked so much by way of a prelude; needless to have to glean over the substantive merits of the appeal. The appeal of which is prematurely resorted to, is struck out with costs. Order accordingly.


K.M. MUSSA, J.
10/03/2010


12/3/2010

Coram: Mussa, J;

Appellants: absent

Respondent: present

Order: Judgment delivered.


K.M. MUSSA, J.
12/3/2010

