

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CIVIL REVISION No.42 OF 2002

SALVADOR KIPENGELE - APPLICANT

VERSUS

JOHN PAJERO & OTHERS - RESPONDENT

R U L I N G

LUANDA, J.

This is an application for revision. The application has been made under S.79 and S.95 of the Civil Procedure Code, 1966 and S.44 of the Magistrate Courts Act, 1984.

The applicant through his advocate one Mr. Ukwonga raised three grounds in his application. And among the three grounds raised is the question of jurisdiction in that the presiding Senior District Magistrate had no jurisdiction.

However, before hearing the application Mr. Mfungamtama who advocated for the Respondent raised two preliminary points "as points of law" namely:-

- 1) that is court has been improperly moved: as neither Section 79(1) of the CPC 1966 nor Section 44 of the MCA, 1984 apply : and
- 2) if the Honourable court has been properly moved, the application could not be preferred in lieu of an appeal the right of which did exist.

I have gone through the written submission of the parties. The objections, to say the least, were raised prematurely. The points raised in my considered view ought to be raised during hearing of the application. Then one would be in a position to agree or not to

agree as to whether the court was not properly moved.

In view of that, the objection are dismissed with costs.

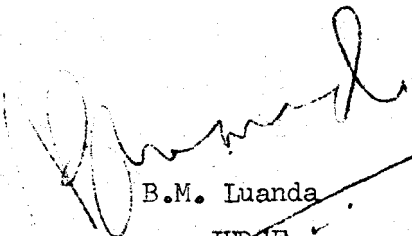
Earlier I said one of the ground of the application is that the presiding Senior District Magistrate had no jurisdiction. Indeed the record support that - the applicant filed this matter in the court of Dar es Salaam Resident Magistrate Court at Kisutu vide ERV. 251666 dated 25/10/1990. So this probate has been filed in the Dar es Salaam Resident Magistrate Court notwithstanding some endorsement at a later stage indicating it was filed in the District Court of Ilala.

Since that is the position, then Mr. Kissetto, Senior District Magistrate had no jurisdiction to adjudicate the case filed in that court (See S. 6 (1) (c) of the Magistrate Courts Acts 1984). But the big question is: at what time can one raise the issue of jurisdiction can be raised?. The issue of jurisdiction can be raised at any time and at stage as it.

goes to the root of Justice (See Michael Leseni Kweka v John Elafe Civil Appeal No.51/1997 CAT Unreported)

In sum the application has merits. The same is allowed with costs. The proceeding recorded by Mr. Kissetto is quashed and expunged from the record. The application be heard by a resident Magistrate.

It is so ordered.


B.M. Luanda

JUDGE

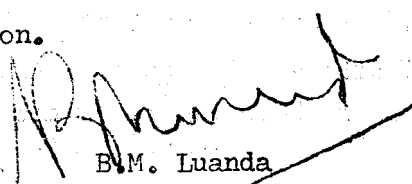
22/4/2003

Ruling delivered

Mr. Rwabutaza for

Mr. Fungamtama for the Respondent

Applicant - present in person.


B.M. Luanda

JUDGE

30/05/2003