

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 57 OF 2004

MAHMUD SHAMTE.....APPLICANT

VERSUS

MARY SHAMTERESPONDENT

R U L I N G

A. Shangwa,J.

On 14th May, 2004, learned counsel for the applicant Ms Magdalena Rwebangira filed an application for extension of time within which to file an application for revision of the judgment and decree of Kisutu Resident Magistrate (Hon. Magere, RM) dated 2nd June, 2000 in Matrimonial Cause No.66 of 1996. On 12th December, 2005, I ordered that this application should be argued by way of written submissions.

Learned counsel for the applicant Ms Magdalena Rwebangira raised two main grounds for this application. One, that the applicant's appeal having been struck out (and not heard on merit), the applicant is not barred to prefer revisionary powers of the High Court. Two, that there were several irregularities in the proceedings of the lower Court which were raised in the Memorandum of Appeal and unless this Court intervenes, the applicant will be condemned unheard and he stands to lose every thing he has worked for all his life.

In her written submissions in support of this application Ms Magdalena Rwebangira contended that as the appellate door has been blocked, the applicant is entitled to have a remedy by way of revision. She said that the delay to file the application for revision to this Court was not a real or actual delay but a technical one. She pointed out that there are

several irregularities in the proceedings of the lower Court as contained in the memorandum of appeal.

In reply, learned counsel for the respondent Mrs Mulebya submitted among other things that an application for revision of the judgment and decree of the Court of the Resident Magistrate ought to have been made immediately after pronouncing the judgment and issuing the decree. She contended that after striking out the applicant's appeal in the High Court, the applicant cannot go around the law and apply for extension of time within which to file an application for revision of the lower Court's judgment and decree.

It is quite plain in this case that the applicant decided to make this application for extension of time within which to file an application for revision of the judgment and decree of the Court of the Resident Magistrate after his appeal to this Court against the said judgment and decree in Matrimonial

Cause No.66 of 1996 at Kisutu had been struck out by Massati, J on grounds that this Court has no jurisdiction to hear appeals originating from the Resident Magistrate's Court in Matrimonial proceedings pursuant to the amendments to the Law of Marriage Act, 1971 introduced by Act No. 23 of 1973 and 15 of 1980 respectively.

It appears that the applicant did not deem it fit to apply for revision of the judgment and decree of the Court of the Resident Magistrate in Matrimonial Cause No. 66 of 1996 at Kisutu immediately after delivering and issuing the same because, he had no grounds to do so. The grounds he had are grounds of appeal and not grounds of revision. That is why he chose to appeal against the judgment and decree of the lower Court instead of applying for revising the same. In my opinion, the grounds of appeal cannot be used interchangeably with the grounds of revision as the applicant seems to believe.

At page 6 of her written submissions, counsel for the applicant Ms Magdalena Rwebangira correctly states that it has been the practice of this Court to admit and hear appeals originating from Courts of the Resident Magistrate in Matrimonial Cases even after the amendment of the Law of Marriage Act, 1971 through Act No. 15 of 1980.

As far as I know, it is still the practice of this Court to do so even after the decision of this Court by my learned brother Massati, J delivered on 16th April, 2004 in Civil Appeal No. 197 of 2001 wherein he held that this Court has no jurisdiction to hear appeals originating from the Court of the Resident Magistrate in Matrimonial Proceedings as per Act, No.23 of 1973 and 15 of 1980 respectively and proceeded to strike it out.

Right now the applicant stands dissatisfied with the decision of the lower Court which gave rise to Civil Appeal

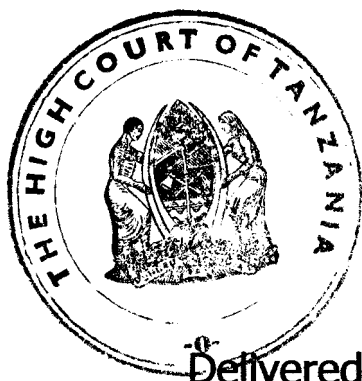
No.197 of 2001 which was struck out. As the said appeal was not heard and determined on merit by this Court, no appeal can lie against Massati, J's decision .

In my view, as it is still the practice of this Court to admit and hear appeals originating from Courts of the Resident Magistrate in Matrimonial Cases, the applicant has to apply for extension of time within which to apply for review of this Court's decision by Massati, J. so that Civil Appeal No. 197 of 2001 which was struck out by him may receive the same treatment like similar other cases which are being admitted and heard on merit by this Court.

In my view, the application for extension of time within which to review this Court's decision by Massati, J has an overwhelming chance of success. In the event the application for review of this Court's judgment is refused then the applicant will have a right to appeal to the Court of

Appeal of Tanzania which will consider and conclusively determine the question as to whether or not this Court has jurisdiction to hear appeals originating from the decision of the Court of the Resident Magistrate in Matrimonial matters.

At any rate, a revision of the lower Court's decision should not be used as a substitute to an appeal which has been struck out . For this reason, I do not find it of any use to grant this application. I hereby reject it but I make no order as to costs.




A. Shangwa, J.

24/5/2006.

Delivered in open Court this 24th day of May, 2006.


A. Shangwa,

JUDGE

24/5/2006.