

IN THE HIGH COURT OF TANZANIA

AT SHINYANGA

CIVIL REVISION NO.03OF 2018

(Arising from the Court Order in the Probate Revision No. 1 of 2018 of Kishapu District Court)

NYANHENDE SAKWA.....APPLICANT

VERSUS

KAMUGA NYASANIRESPONDENT

RULING

Ebrahim, J.

The applicant herein lodged an application for revision before this Court praying that the Court should call for the proceedings of Probate Revision No. 1 of 2018 of Kishapu District Court and accordingly quash the Court Order dated 10th August 2018. The application is supported by the Affidavit of Frank Samwel, the advocate for the applicant. The application has been preferred under **Section 31(1) of the Magistrate's Courts Act, Cap 11, RE 2002.**

The genesis of the present application arises from Probate Revision No. 1 of 2018 filed by the applicant at Kishapu District Court. As it could be gathered from the applicant's affidavit, the respondent here in filed probate

proceedings for the administration of the Estate of the late Sapu Nyasani vide Probate Case No. 22/2017 at Mwadui Primary Court. In the course of hearing the Probate Case, the applicant was not contented with the order of the trial court and filed Revisional Proceedings, Probate Revision No. 1/2018 at the District Court of Kishapu.

Before the District Court could hear and determine the matter, the District Court Magistrate on 10.08.2018 issued a temporary injunction ex parte order against the applicant, his agents, servants or any other person pending determination of Probate Revision No. 1/2018.

It is such order that has disgruntled the applicant hence the present application.

At the hearing of the application, the applicant was represented by Mr. Frank Samwel, learned advocate while the respondent appeared in person.

Submitting for the applicant, Mr. Frank adopted his affidavit and prayed for the same to form part of his submission. He urged the court to revise an order of the District Court that restrained the development of the 300 acres of land on the basis that it has no jurisdiction over land matter in

terms of **Section 4 (1) of Land District Act, No 2/2002 Cap 216** read together with **Section 3** of the same Act. Referring to the affidavit, he said that the Magistrate issued a summons which had a different date from the date of hearing. He prayed for the revision to be allowed.

In response, the respondent contended that he applied for that order because the case is still pending and the land is used. Therefore, the owner should be identified first.

In brief rejoinder, Mr. Frank insisted that the matter is a land matter which the Magistrate had no jurisdiction.

I have keenly perused the records in Court and considered the submissions by both parties and made the following observations.

As it appears from the records, the applicant herein had filed Probate Revision at the District Court while the matter at the Primary Court is still subjudice. Again after the order of the District Court, he has filed this revision while the matter is pending at the District Court. My initial observations is therefore that the applicant has actually put a halt to cases that if the same were left to be decided in their finality; it would save court's and parties time. More importantly, it would serve substantive

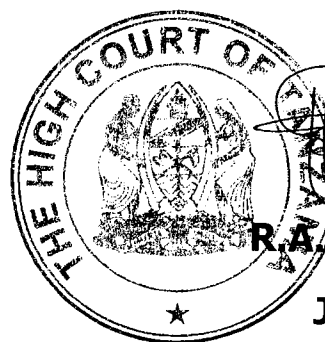
justice as either party would be in a position to either appeal against the decision or adhere to the court order.

Coming to the matter before me, the applicant is complaining that the Magistrate has issued an injunction whilst the same is a land matter. I must say right away that this application has been filed before this court prematurely. I am saying so because, as submitted by the Counsel for the Applicant and averred in the affidavit, the oral application made by the respondent was heard and determined *ex parte*. That being the case, the applicant had an opportunity to appear before the Magistrate and pray to set aside the order and the application be heard *inter-parte* before rushing to High Court.

However, going through the order, the same is an interlocutory order which did not determine rights to term it as a land matter. As in many other Probate cases, a court can issue temporary preventive measure to maintain *status quo*. For example, depositing *mesne profit* of the deceased's property in court's account pending the appointment of the administrator. The order of the District Magistrate has the effect of restraining any person who claims right over the said estate of the

deceased to do construction pending the determination of the revisional proceedings before it. The determination that shall eventually go into determining the administrator of the estate. Clearly the process is hindered by unwarranted and unmeritorious applications by the applicant.

That being said, I find that the application for revision has been prematurely brought before this court and lacks merits as there is no apparent error. I therefore dismiss the application with costs.



R.A. Ebrahim
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Judge

Shinyanga

28.12.2018

Date: 28/12/2018

Coram: Hon. C. S. Uiso, Ag DR

Appellant: Present

Respondent: Present

B/C: Grace, RMA

Court: Matter coming for judgment, the same is hereby delivered in the presence of both parties in person.

Court: Right of Appeal explained.

