

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL REVISION NO. 27 OF 2016
(*Arising from Civil Case No. 39 of 2012 of the Resident
Magistrate's Court of Dar es Salaam, at Kisutu, Mchauru, SRM.*)

ACCESS BANK TANZANIA LIMITED.....APPLICANT

VERSUS

SHANILA MWENDA RAMADHANI.....RESPONDENT

RULING

7 June & 20 July, 2018

DYANSOBERA, J.:

This ruling is on a preliminary objection raised by the respondent through the legal services of Mr. Simon Shundi Mrutu, learned counsel. The preliminary objection has six points but for the reasons which will be apparent in this ruling, I will confine myself to point no. (e).

The preliminary objection is against the application for revision filed by the applicant in these revisional proceedings No. 27 of 2016.

The brief history of the facts leading to the revision are that the respondent was awarded general

damages of Tshs. 80,000,000/= with costs by the trial court in a defamation civil suit No. 39 of 2012. The respondent's appeal to this court (Civil Appeal No.142 of 2015) was struck out with costs on 19th day of July, 2016 upon a preliminary objection fronted by the respondent. The applicant then filed three matters. The first is Misc. Civil Application No.473 of 2016 in which the applicant is praying for extension of time within which to file an appeal. The second is Misc. Civil Application No. 509 of 2016 in which the applicant is seeking extension of time to apply for stay of execution and the third action is this Civil Revision No.27 of 2016.

Apparently, this revision was before His Lordship I. Arufani, J. who determined Civil Appeal No. 142 of 2015. The matter was then re-assigned to me on 1st September, 2016 after the presiding judge returned the record to the Judge in charge for re-assignment on account that the matter having been brought under a certificate of extreme

urgency, he could not speedily dispatch it as he was proceeding on a criminal session.

On 7th day of June, 2018 when the matter came up for hearing of the preliminary objection, counsel for the respondent, Mr. Simon Mrutu impliedly opted to argue the preliminary objection on point (e).

He submitted that the present application is purely on the prayer to revise the execution proceedings in Civil Case No.39 of 2012 and the order sought to be revised is dated 16.8.2016 which allowed the execution to proceed and the mode to be used was by attachment of the judgment debtor's account so as to satisfy the decretal amount. Mr. Mrutu informed this court that the decretal amount has been satisfied and the decree holder has been duly paid which means that the court's decree has been satisfied the ordered amount. Counsel for the respondent pointed out that in that respect, since the present application is seeking to revise an order to proceed with execution, the application has been overtaken by event and proceeding to hear the application

would be more academic than legal and therefore this application has no leg to stand.

Mr. Sylvatus Sylvanus Mayenga, counsel for the applicant looks at the contention by counsel for the respondent from a different angle. He argued that first, the order sought to be challenged is dated 16.8.2016 and that there is proof that there are other orders of the lower court ordering the execution to proceed which is not a good practice. Second, that he is not made aware by his client on the deduction of such decretal amount. He therefore, asked to be given time within which to verify what counsel for the respondent stated. Further, that there is an appeal (Civil Appeal No.78 of 2018) before, Lady Justice, Muruke, J. which is set for hearing on 4.7.2018. Counsel for the applicant prayed to be given time to verify the truth of what Mr. Mrutu was stating.


Upon the submissions and prayer for adjournment, the matter was put off to 12th July, 2018. To date, that is 20th July, 2018, the court has not received any information controverting what Mr. Mrutu had submitted.

In that case, this court notes that the decree of the court has been satisfied and the decree holder has been paid her decretal amount. The application for revision of the order of execution is, in the circumstances, overtaken by events and proceeding with this application will be an exercise in futility and a wastage of precious time of the court and parties. After all, there are other points of preliminary objection which the applicant has to tackle before his application can be heard. I am not sure if they are capable of being surmounted by the applicant in the circumstances of the case.

The fifth point that is (e) of the preliminary objection is upheld and the application for execution is struck out with costs to the respondent.

Order accordingly.



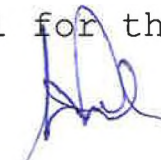

W.P. Dyansobera

JUDGE

20.7.2018

Delivered this 20th day of July, 2018 in the presence of Mr. Mussa Mbagha, learned counsel for the applicant and Mr. Simon Mrutu, learned counsel for the respondent.




W.P. Dyansobera

JUDGE