

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

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 76 OF 2019

*(Originating from Civil Revision No. 32 of 2017 at the District Court of Ilala at
Ilala)*

MGAZA SELEMANI MALEKELA APPELLANT

Versus

HADIJA M. BUSHIRI.....RESPONDENT

Date of last order: 24/07/2020

Date of Ruling: 28/07/2020

J U D G M E N T

MGONYA, J.

It lies before this Honorable Court an Appeal arising from the decision of **Civil Revision No. 32 Of 2017**, before Honorable Kiyoja RM where the Appellant before this Court was aggrieved by the said Revision decision.

The Appellant filed before this Court six (6) grounds of Appeal to wit:

- 1. That the trial Magistrate erred in law by saying that the Application is incompetent as the Applicant had filed it out of time and cannot move the revision jurisdiction of the Court;***

- 2. That, the Resident Magistrate grossly erred in law and in counting the time limitation basing on date of main judgment while the Application for Revision was against the executing order;***
- 3. That, the Resident Magistrate grossly erred in law and in fact by holding that the Applicant used Revision as an alternative while the law provides that the Court has to ascertain itself as to the correctness, legality and propriety of the decision;***
- 4. That the Resident Magistrate erred in law and in fact holding that the Applicant has the right to appeal and has not exercised that option;***
- 5. That, the Resident Magistrate grossly erred in law and facts by saying that the Applicant used the Revision jurisdiction of the Court as an alternative while the right to appeal according to ruling given was only seven days; and***
- 6. The Resident Magistrate erred in law and fact by forgetting that the date of the delivery of the judgement is different from the date of receiving the certified copy of the said judgment.***

In consideration of the grounds of appeal above, I take it to consolidate the **1st, 2nd and 6th** grounds due to their similarity,

ground **3rd and 5th** as well in accordance to their nature and the **4th** ground separately.

Having gone through the records of the Court, the grounds of Appeal and the submissions of the parties it is from this juncture I choose the reproduction of the same not to detain me and therefore determine the grounds of appeal straight away.

Firstly, to begin with the **1st, 2nd and 6th** as consolidated. These three grounds as raised by the Appellant are both on the complaint of time limitation since the Learned Magistrate had ordered for a dismissal of the Application for Revision on basis that the application was time barred. The ruling stated that the judgement was delivered on the **13/07/2016** and an Application for Revision was filed on the **30/08/2017**. It was argued by the Respondent that the Application for Revision was against the Ruling in Execution proceedings and not the Original Judgement since it was the Execution Ruling that was contradicting the Judgment in **Matrimonial Cause No. 10 of 2016**.

To determine this matter, I took a glance on the Application for Revision in the Courts Record and found that in the Chamber summons the Applicant sought for Revision of **Matrimonial Cause No. 10 /2016**; and further in the affidavit under **paragraph 4** is where the Applicant had paused his concern which lies on the decision from the **Execution Order dated**

31/07/2017. And in the Applicants Written submission it was the same Execution Order of **31/08/2017** that was argued upon.

Time limitation for filing and Application for revision before the District Court is **12 months** as provided for under **Section 22 (4) of The Magistrates Court Act [Cap. 11 R.E. 2019]**. Therefore, taking note that the decision applied to be revised was a decision made on **31/07/2017** and the Application as per the records was filed on the **30/08/2017** this was still in time as per time for limitation.

I therefore join hands with the Appellant that the Application was not time barred and that the lower Court misdirected itself by relying on the Judgment of the original Matrimonial Cause. Hence from the determination and the said above, **I find these grounds with regards to time limitation meritorious.**

Referring to the **3rd and 5th ground** of Appeal, as it appears in Memorandum, I am of the view that a court is vested with Revisional powers when necessary as it appears under the provisions of **PART III** and from **Section 22 of the Magistrates Court Act (Supra)**. It is the duty of the Court upon application to revise the proceedings and the decision of the lower court to check on its correctness, legality and propriety. Matters of Revision are not matters of choice or an alternative to

a party to choose. This was professed in the land mark case of ***HALAIS PRO- CHEMICAL VS. WELLA A.G (1996) TLR 296***, the same can be applied only when a party sees to have noted an irregularity in the lower court of which needs to be corrected and it is through revision that the same is allowed. Therefore, the Appellant's need was for the **Execution Order to be revised** since it contravened the contents of the original Judgment and thus the Court ought to have checked for the irregularity and rule out upon the same. It is from the above that **I find the Appellant's 3rd and 5th grounds of Appeal holds water.**

In reference to the **4th ground** of Appeal, the Resident Magistrate erred by holding that the Applicant had the right to appeal but did not exercise the same. It is from the records that the Appellant herein had a Matrimonial Cause before the Primary Court of which Judgment was delivered and he (the Appellant) did not appeal against that decision. It is after the deliverance of the Execution order that the Appellant herein noted the contradicting extract of the decision was not in accordance with the Judgment and it is from there the Appellant applied for Revision against the Execution Order.

It is observed from the Court's records that the Court had also misdirected itself on need and requirement of the Applicant (Appellant herein) and his intentions on his Application. **The**

Appellants intention was against the Execution Order and not the judgment of the original case. It is from this view that **I find this ground of Appeal meritorious.**

Having said all the above, **I accordingly allow this Appeal and quash the proceedings and decision of the revisional Court.**

Further, I hereby invoke my Revisional powers upon the Execution Order of the Primary Court by Hon. Mutta dated **31/07/2017**, as it contradicts the contents of the Judgment of the Original **Matrimonial Cause No. 10 of 2016** dated **13/07/2016** where the Execution Order alterates the orders from the Judgment by adding contents not in the judgment and therefore making contradictions upon the two court decisions.

In the event therefore, I proceed to set aside the Execution Order emanating from the **Matrimonial Cause No. 10 of 2016** by Hon. Mutta dated **31/07/2017**; and Order that the Orders from the original Judgment be adhered to by parties herein for execution accordingly.

For avoidance of doubt the original Matrimonial Judgment ordered that:

"Amri: Kuhusu mgao wa mali za Ndoa:

- *Wadaawa wote kwa pamoja kwenye nyumba na eneo ambalo limebaki lifanyiwe tathmini na kila Mdaawa apate ½ kwa ½ ya thamani yake.*
- *Mdai apate saa ya ukutani, Kabati, Sofa ya watu 2.*
- *Madaiwa apate dressing table, Kitanda na Stuli moja.*
- *Matofali yahesabiwa na wagawane sawa.*
- *Watoto wakae kwa Mdaiwa naye Mdai atoe matunzo ya Tshs. 70,000/= kwa kuwa mtoto ni mgonjwa licha ya mavazi na ugonjwa."*

It is so ordered

I make no order as to costs.

Right of Appeal explained.



L. E. MGONYA
JUDGE
28/07/2020



Court: Judgment delivered in my chamber in the presence of the Appellant in person, the Respondent in person and Ms. Janet Bench Clarke in my chamber today 28th July, 2020.



L. E. MGONYA
JUDGE
28/07/2020

