

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI**

**CIVIL APPLICATION NO. 3 OF 2020**

(C/F Application for Execution No. 2 of 2018 High Court of Tanzania at Moshi)

**FRIDA WARASKAWA ..... APPLICANT**

**VERSUS**

**ODILIA WARASKAWA KIMARO ..... RESPONDENT**

*8<sup>th</sup> July & 28<sup>th</sup> August, 2020*

**RULING**

**MKAPA, J:**

The applicant is seeking this court to call and examine the records relating to Application for Execution No. 2 of 2018 by the Deputy Registrar delivered on 4<sup>th</sup> May, 2020 in order to satisfy as to the legality. The Application is brought under section 79 and Order XLIII Rule 2 of the Civil Procedure Code and supported by sworn affidavit of Mr. Colman Mark Ngalo learned advocate for the applicant. Respondent did not file counter affidavit to object the application.

At the hearing the applicant was represented by Mr. Colman Mark Ngalo, learned advocate while the respondent had the services of Mr. Valentine Nyalu also learned advocate. The court ordered the application to be disposed of by filing



written submissions and counsel for the parties complied with the filing order.

In the course of composing the Ruling I had to satisfy myself whether the applicant had properly moved the court to grant the application sought. Section 79 of the Civil Procedure Code, Cap 33 [R.E. 2019] (*supra*) provides as follows:-

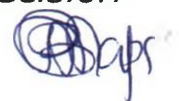
**79.-(1)** *The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-*

*(a) to have exercised jurisdiction not vested in it by law;*

*(b) to have failed to exercise jurisdiction so vested; or*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.*

*(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision*

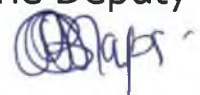


*or order has the effect of finally determining the suit.*

*(3) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act.*

It can be established from the above provision the fact that, although the Deputy Registrar is a Resident Magistrate but in the case at hand he did execute the said application to wit; Land Case No. 16 of 2015 at High Court (Moshi) in his capacity as Deputy Registrar of **the High Court**, hence his decision cannot be revised by this Court for lack of jurisdiction.

The above position is underscored in the case of **Balozi Abubakari Ibrahim and Bibi Sofia Ibrahim V Ms. Benandys Limited and two Others, Civil Revision No. 6 of 2015, CAT at Dar es Salaam** and **Serenity on the Lake Ltd V Dorcus Martin Nyanda, Civil Revision No. 1 of 2019, CAT at Mwanza** (unreported) in which the **Court of Appeal** did revise execution orders by the Deputy Registrars of the High Court.



For the reasons discussed, it is my view that this application is incompetent for lack of jurisdiction.

Consequently, I dismiss the application for want of jurisdiction and I give no orders as to costs.

It is so ordered.

Dated and Delivered at Moshi this 28<sup>th</sup> day of August, 2020



  
**S. B. MKAPA**  
**Judge**  
**28/08/2020**