

**IN THE HIGH COURT OF TANZANIA**  
**[DAR ES SALAAM DISTRICT REGISTRY]**  
**AT DAR ES SALAAM**

**CIVIL REVISION NO. 39 OF 2020**

*(Arising from the District Court of Ilala at Samora in Civil Case  
No. 95 of 2018)*

**RADHIA R. RAMADHANI** *(the wife and personal representative  
of the late **ABDI RAMADHANI MARIJANI**)* ----- **APPLICANT**  
  
VERSUS  
  
**AZIMAR INVESTMENT COMPANY LIMITED** ----- **RESPONDENT**

**Date of Last Order:** 18/09/2020

**Date of Ruling:** 15/10/2020

**RULING**

**L. M. MLACHA, J.**

This is a revision which was opened suo mottu following some complaints by RADHIA R. RAMADHANI, the wife and personal representative of the late Abdi Ramadhani Marijani (hereinafter to be referred to as the applicant). It is in respect of Civil Case No. 95 of 2018 of the District Court of Ilala at Kinyerezi. The applicant was the plaintiff in the lower court

while a company by the name of AZIMAR INVESTMENT COMPANY LTD stood as the defendant (now respondent).

It was the complaint of the applicant that her case had been dismissed contrary to the procedure at the great disadvantage of the interests of her late husband in the company. She accused the magistrate of being biased. Following the complaints. I directed the record to be called for inspection. I noted that that the proceedings were a bit funny. Not clear confusing. I direct the opening of a revision to examine the propriatness of the proceedings.

Both Mr. Thomas Raphael for the applicant and Mr. Dickson Mtogesewa for the respondent had a chance to address the court before the revision was done. Counsel were in agreement that the proceedings are irregular. That, the magistrate dismissed the case but proceeded to hear it. She then dismissed it in a second time.

I have examined the record closely. They read in part as under: -

**5/8/2019**

**Coram:** *Hon. M.B. Mpaze, RM*

**Plaintiff:**

**Defendant:**

**CC:** Emma

**Thomas Raphael for Plaintiff.**

**Dickson Mtogeseewa for Defendant.**

**Mr. Thomas:** The matter is for final PTC.

**Mr. Thomas:** I will call two witness in this matter.

**Mr. Dickson:** I will also call two witnesses in defence.

**AGREED ISSUES:**

1. Whether the defendant has duty of care against the plaintiff.

**Mr. Dickson:** Your honour before proceeding with the issues I have discovered this court has no jurisdiction to entertain this matter. This is as per para 17 of the plaint.

**Mr. Thomas:**

I went through the plaint I have discovered the court really have no jurisdiction. I pray to withdraw the plaint with leave to refile after amendment.

**Mr. Dickson:**

Since the court has no jurisdiction the matter is to be struck out and the matter be filed in the court with jurisdiction court. Following the issue raised is concerning the jurisdiction of this court of which Mr. Thomas had no objection on it, I find the proper cause is to struck out the same, and if the plaintiff so wish he might file a fresh suit to the court with competent jurisdiction.

Sgd: M. B. Mpaze

PRM

5/8/2019

**15/10/2019**

**Coram:** Hon. F. Luvunga, RM

**Plaintiff:**

**Defendant:** } Present

**CC:** Emma

**Court:** The trial Magistrate is on other official duties. This case is adjourned.

**Order:** - Mention on 04/11/2019.

Parties to appear.

Sgd: F. Luvunga

RM

15/10/2019

**4/11/2019**

**Coram:** Hon. C. Mrema, RM

**Plaintiff:** Present in person

**Defendant:**

**CC:** Emma

**Advocate Daniel:** Holding brief for Advocate Dickson for defendant also holding brief for the plaintiff Advocate.

**Advocate Daniel:**

- The matter was coming for mention for amend plaint to be filed.
- I pray for date to file WSD.

**Court:** Prayer granted.

**Order:** (1) Mention be on 20/11/2019.

(2) The defendant to file amend WSD in  
14 days.

Sgd: C. Mrema

RM

4/11/2019

**20/11/2019**

**Coram:** Hon. M.B. Mpaze, RM

**Plaintiff:**

**Defendant:**

**CC:** Emma

**Mtogesewa Dickson for Defendant:** The matter is  
for mention, we have filed our WSD. We  
pray for mention date so that we can save  
the plaintiff.

**Order:** Mention on 16/12/2019.

Parties to appear.

Sgd: M. B. Mpaze

PRM

20/11/2019

**16/12/2019**

**Coram:** Hon. M.B. Mpaze, RM

**Plaintiff:**

**Defendant:**

**CC:** Emma

**Plaintiff:** I pray to change the Advocate who was representing me as he told me he won't be able to appear in court. I pray for one month adjournment.

**Court:** Prayer granted.

**Order:** Mention on 22/1/2020. Parties to appear.

Sgd: M. B. Mpaze

PRM

16/12/2019

**22/1/2020**

**Coram:** Hon.

**Plaintiff:**

**Defendant:**

**CC:** Emma

**Mr. Thomas Raphael for Plaintiff** as the pleadings are complete I pray for 1<sup>st</sup> PTC.

**Court:** Prayer granted.

**Order:** 1<sup>st</sup> PTC on 27/02/2020

PRM

22/1/2020

**27/2/2020**

**Coram:** Hon. Nyamkerya, RM

**Plaintiff:** Absent

**Defendant:** Advocate Dickson Mtogese

**CC:** Kisamba

**Order:** 1<sup>st</sup> PTC on 31/03/2020 the trial Magistrate has on emergency.

Sgd: M. B. Mpaze

PRM

27/02/2020

**31/03/2020**

**Coram:** Hon. M.B. Mpaze, RM

**Plaintiff:**

**Defendant:** Absent

**CC:** Emma

**Court:** Due to corona virus pandemic let the matter be adjourned and parties be notified.



**Order:** Mention on 25/6/2020.

Parties be notified as today they failed to appear.

Sgd: M. B. Mpaze

PRM

31/3/2020

**25/6/2020**

**Coram:** Hon. M.B. Mpaze, RM

**Plaintiff:**

**Defendant:**

**CC:** Emma

**Court:** As parties are absent, let the same be adjourned.

**Order:** Mention on 30/7/2020.

Parties be notified as they failed to appear today.

Sgd: M. B. Mpaze

PRM

25/6/2020

**30/7/2020**

**Coram:** Hon. M.B. Mpaze, RM

**Plaintiff:** Present in person

**Defendant:**

**CC:** Emma

**Mr. Mtogesewa for J/D:** Your honour, I am surprized on how this case is going on, as the same was struck out since on 5/8/2019.

**Plaintiff:** We were given chances to bring fresh plaint which we did.

**Court:** I went through the records in which I noted it is true this matter was struck out on 5/8/2019 the plaintiff was ordered to file a fresh suit in the court of competent jurisdiction.

However, I have discovered that on 4/11/2019 when the matter came before Hon. Mrema, C. he was informed the matter came for filing amended plaint, I find the trial Magistrate was misdirected.

Nevertheless, it was not in the knowledge of this court that the matter was proceeding in the case file which was struck out since 5/8/2019 up today when

*Mr. Mtogesewa reminded the court that this matter was once struck out. Therefore, being notified and as the records clear shows, I find it is not proper this matter to proceed in this case file which was once struck out, the same is again struck out for being improper and misplaced.*

*The plaintiff is advised to file her documents afresh.*

*Sgd: M. B. Mpaze*

*PRM*

*30/7/2020*

As it is apparent from the record, both Mr. Thomas Raphael and Mr. Dickson Mtogesewa were present in court on 5/8/2019 when the case was coming for final Pre-trial Conference. While in the course of framing issues and after framing the first issue, Mr. Dickson addressed the court doubting its jurisdiction to try the case. He never gave details. Mr. Thomas agreed with him and prayed to withdraw the plaint with leave to refile after amendment. Mr. Dickson had the view that the proper course was to struck out the matter

and allow the applicant to file her case in the court of competent jurisdiction. The court agreed with him that the proper course was to struck out the matter, a move which could allow her to file it afresh in a court of competent jurisdiction. No specific order was made to struck out the matter.

The record shows that the parties proceeded to appear. They appeared on 15/10/2020, 4/11/2019, 20/11/2019, 16/12/2019, 22/1/2020, 27/2/2020, 31/3/2020. 26,6/2020 and 30/7/2020. When the case came before the court on 30/7/2020, Mr. Dickson Mtogeseewa expressed his views saying he wondered why the case was still proceeding despite the fact that it was struck out on 5/8/2020. The Magistrate agreed saying it was not proper to proceed with the case. She struck it out using the words "*the same is again struck out for being improper and misplaced*". The applicant was advised to file her documents afresh. It is clear that the proceedings were misconceived and illegal.

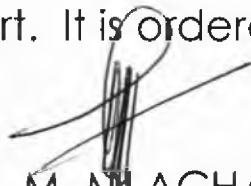
Further, my perusal of the plaint and its annexures has shown me that the applicant who sued as an administratrix of the estate of the deceased, alleged to have 50% shares in the

respondent company. She is suing to recover the shares, dividends, losses and damages. If this is the case, as it is apparent in the pleadings, then this was a case involving the operation and affairs of a company. Issues of this nature has no room in the district court.

Section 2 of the Companies Act, 2002 says that "the court" when used in relation to a company means the court which has jurisdiction to wind up the company. Winding up of companies is governed by Part VIII of the Act and the court having those powers is the High Court. So, the district court had no jurisdiction to try the case. The remedy could be to dismiss the case for want of jurisdiction or advice the plaintiff to withdraw with leave to refile it in a court of competent jurisdiction which is the High Court. The remedy was not to struck it out as it was done.

That said, acting under the revision powers of this court contained under section 44 (1) (b) of the magistrates Courts Acts, Cap. 11 R.E 2019, I revise and vacate the proceedings and decisions of the lower court. The applicant is advised to file his case in the High Court or else as it was apparent when

the parties appeared before me, seek a peaceful settlement of the matter out of court. It is ordered so.



L. M. MLACHA

**JUDGE**

**15/10/2020**

**Court:** Ruling delivered in the presence of the applicant and absence of the respondent. Right of appeal explained



L. M. MLACHA

**JUDGE**

**15/10/2020**