

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

CIVIL REVISION NO.44 OF 2019

(Arising from the decision of Ilala District Court in Civil Revision No. 19
of 2019 by Hon. Obasi RM dated 25th October, 2019)

Lugano Alfred Mwakasangula ----- **APPLICANT**

VERSUS

Stephania Roeleme Rami
Fortunata Method
Kishe Auction Mart } ----- **RESPONDENTS**

RULING

Date of Last order: 30.09.2020

Date of Ruling: 13.10.2020

EBRAHIM, J.:

The applicants have presented the instant application praying for the court to call and examine the records or proceedings of Ilala District Court in respect of **Civil Revision No. 19 of 2019** and satisfy itself as to its correctness, legality and propriety which issued order relating to certificate of title for Plot No. 127 and 128 Block 'D' Part III Tabata Area

in the names of the Applicant as lawful owner whilst he was not a party to the application and without being afforded right to be heard.

The application is supported by the sworn affidavit of Lugano Alfred Mwakasangula, the applicant. The application has been made under the provisions of **Section 79(1)(c), Section 95 and Order XLIII Rule 2 of the Civil Procedure Code, Cap 33 RE 2002.**

In this application the Applicant was represented by Mr. Musa Mwapongo, learned advocate. The 1st Respondent was represented by advocate Dedi Mabondo whilst the 2nd and 3rd Respondents appeared in person.

When the matter was called for hearing, the 2nd and 3rd Respondents informed the court that they do not contest the application. The court therefore, ruled out that the matter shall only proceed against the 1st Respondent only.

Counsel for the 1st Respondent prayed for the leave of the court to be allowed to raise a point of preliminary objection on point of law that the court has not been moved to adjudicate the matter before it.

Counsel for the Applicant despite the short notice agreed to proceed with the hearing of the raised point of objection.

Submitting in support of the point of preliminary objection, Mr. Mabondo argued that the cited provisions of the law cited by the Applicant i.e. **section 79(1)(c), section 95 and Order 43 Rule 2 of the Civil Procedure Code, Cap 33 RE 2019** do not move this court to determine the instant application. He argued further that the Applicant was supposed to move the Court under **section 31(1) of the Magistrate's Court Act, Cap 11 RE 2019**. To cement his argument, he cited the case of **Rajabu A. Mchuma V Amina Hussein Kabesela**, Miscellaneous Land Application No. 740/2016 (HC) where this court insisted on citing the relevant law which the court derives powers to determine the application. In pre-empting the justification for invoking the overriding principle, Mr. Mabondo referred to the case of **Alliance One Tobacco(T) Limited and Hamisi Shoni Vs Mwajuma Hamisi and another**, Miscellaneous Civil Application No. 803 of 2018 in submitting that the application cannot be served by overriding principle if it has been brought under the wrong law. Counsel for the 1st Respondent also referred to the case of **Mary Emmanuel Mmari V James Christian**

and Another, Miscellaneous Land Application No. 64 of 2017 in bringing the point that inherent powers of the court under **section 95 of the Code** are exercisable where there is no provision governing the matter at hand. He thus prayed for the application to be struck out with costs.

Responding to the argument advanced by the Counsel for the 1st Respondent, Mr. Mwapongo vigorously challenged the point of objection that the submission by the Mr. Mabondo is misplaced. He contended that the application for revision has been brought by a party who has never been a party in a District Court but condemned unheard. He explained to the court that parties in the District Court were **Sephania Roelemi Rami Vs Fortunata Method and Kishe Auction Mart**. He contended further that there has never been a dispute between the applicant and the respondents at the Primary Court. He contended further that **Section 79(1) of the Civil Procedure Code** provides for revision on any case decided by any subordinate court; on that basis the application is properly before the court. He argued that since the Applicant was not a party he could not appeal, his only remedy was to file revision or write a letter so that a court could

exercise its supervisory powers under **Section 30(1) of the Magistrate Court Act**. He urged the court to overrule the point of preliminary objection and proceed to hear the application for revision on merits. Rejoining, advocate Mabondo stated that there is no dispute that the remedy available to the Applicant was to file revision. However, the High Court exercises its powers on matters originating from the Primary Court from The Magistrates Court Act only. He stated further that **Section 31(1) of the Law of Magistrates' Court Act, Cap 11** does not stipulate restrictiveness to only those who were party to the proceedings. He reiterated their prayers.

Indisputably is the fact that the Applicant was not a party in Civil Revision No. 19 of 2019 at the District Court of Ilala at Kinyerezi the decision of which nullified the sale of which the Applicant herein purchased the disputed property. Indisputably also is the fact that since the Applicant was not a party to the proceedings leading to the nullification of the said sale, the available remedy to him was to file revision as a person who is not a party to a proceeding cannot appeal. Another indisputable fact is that the genesis of this application originates from the Primary Court.

As it could be gathered from the records, this matter originates from Probate Cause No. 136 of 2017 at Buguruni Primary Court. The trial magistrate issued an order for sale of a disputed property located at Plot No. 127 and 128 Tabata Dar Es Salaam with Certificate of Title No. 27711 so that the proceeds could be distributed to the beneficiaries of the Estate of the late Roeleme Rami.

The District Court did not determine the suit but rather the revision which originates from the Primary Court. In essence in so far as the instant matter is concerned, the District Court was not the court of first instance.

The law i.e. **Part III (c) of the Magistrates' Court Act, Cap 11 RE** conspicuously caters for Appellate and Revisional Jurisdiction of the High Court in Relation to Matters Originating in Primary Courts. Furthermore, **Section 30 (1) (b) (i) of Cap 11 RE 2019** reads:

"30. -(1) The High Court shall exercise general powers of supervision over all courts in the exercise of their jurisdiction under this Part, and may at any time—

(b) direct any district court to call for and inspect the records of any proceedings of the primary court established in its district and to

examine the records and registers thereof, in order to satisfy itself, or to ensure that such district court shall satisfy itself, as to the correctness, legality and propriety of any decision or

order and as to the regularity of any proceedings therein; and

may-

(i) itself revise any such proceedings in a district court; ...

and all such courts shall comply with such directions without undue delay". (emphasis added).

From the above provisions of the law, it is obvious that unless otherwise provided by any other written law, the powers of revision by the High Court on matters originated from the Primary Court are derived from **Magistrates' Court Act**. The said principle of the law is well interpreted in **Section 2 of the Civil Procedure Code, Cap 33 RE 2019** where it is stated that "**Subject to the express provisions of any written law, the provisions of this Code shall apply to all proceedings in the High Court**".

Again **Section 3 of the Cap 33** defines "**court**" to mean "**the High Court of the United Republic, a court of a resident magistrate or a district court** presided over by a civil magistrate and references to a district

court are references to a district court presided over by a civil magistrate." (emphasis added).

It follows therefore that, the **Civil Procedure Code, Cap 33 RE 2019** is not applicable on matters originating from the Primary Court as there are specific laws governing its functions.

Thus, the assertion by Mr. Mwapongo that since **section 79(1) of Cap 33** states that the High Court may call for the record of any case which has been decided **by any court subordinate to it** includes Primary Court; is a grave misconception. **Section 79(1) of Cap 33** serves for the suits decided by the Resident Magistrate's Court or District Court sitting in its original jurisdiction but not on appeal or revision.

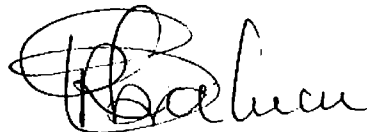
That being said, I join hands with the Counsel for the Respondent and accordingly associate myself with the holding of the cited case of this court in the case of **Rajabu A. Mchuma (supra)** that "*...the applicant must cite the relevant provision from which the court derives the power to hear and determine the application...*"

Again being that this is a mandatory requirement of the law that confers powers to the court to adjudicate the matter before it, I am

also of the firm stance that this application cannot be saved by overriding principles as the same cannot be used wholesale to succumb the mandatory provisions of the law.

All in all, I sustain the point of objection and accordingly struck out the application with costs for being brought under the wrong provision of the law which does not confer powers to the court to perform its judicial function.

Accordingly ordered.

A handwritten signature in black ink, appearing to read 'R.A. Ebrahim', written in a cursive style.

R.A. Ebrahim
Judge

Dar Es Salaam
13.10.2020