IN THE HIGH COURT OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

CIVIL REVISION NO 01 OF 2018

(From Njombe District Court at Njombe in Civil Appeal No. 01/2014 (Rwizile, SRM) and Civil Appeal No. 9/2012 (Kapokolo, RM), from Njombe Urban Primary Court in Probate and Administration of Estates Cause no 38 of 2012)

LUKELO MNG'ONG'O.....APPLICANT

VERSUS

ROY KABEREGE.....RESPONDENT

RULING

KENTE, J:

The applicant one Lukelo Mng'ong'o lost a case in the Njombe urban Primary Court in which Roy Kaberege the respondent herein was claiming for vacant possession of a piece of land which was said to be part of the estate of the late Atusakye Ng'eve who died intestate on 8th February 2011. Dissatisfied with the decision of the said Primary Court, the applicant vainly appealed to the District Court at Njombe in Civil Appeal No. 9 of 2012. In his decision which was handed down on 31st May 2013 the learned Resident Magistrate was of the firm view that the appeal lodged by the present applicant was time barred and that even if it was not so barred

it could not succeed as the applicant's case was wholly or substantially based on documentary evidence which was received and admitted in evidence contrary to **Regulation 11 of The Magistrate's Courts Act (Rules of Evidence in Primary Courts) Regulations.** Upon the above stated shortfalls, the learned Resident Magistrate went ahead dismissing the appeal before him for being meritless.

Apparently, the appellant was aggrieved by the said judgment of the District Court but what is startling is that, instead of appealing to this court with a view to challenging the same, he preferred another appeal (No. 1 of 2014) before the same court which was however dismissed by Rwizile, SRM (as he then was) on account that the same matter had been adjudicated by a competent court and therefore it could not be pursued further by the same parties. Unflinchingly however, the applicant has lodged the present application in which, I should say, he is quite hazy about what he really wants this court to do and the clear provisions of the law under which he could move the court to do whatever he wants.

In a clear state of lack of certainty, the applicant through his learned counsel one Mr. Owegi is saying, in the chamber summons that the application is made under sections 30 (1), 31(1) and 32(2) of the **Magistrates Court Act, 1984 (RE 2002)**; and section 14 of the **Law of**

Limitation Act (Cap 89 R.E 2002). As for the substantive order which is sought, the applicant has prayed thus:-

> *"..... this honourable court be pleased to grant application for supervision and/or revision of the proceedings and judgment of Njombe District Court in the Civil Appeal No. 1 of 2014."*

For my part, with due respect to Mr. Owegi learned counsel for the applicant, I would say that, I do not subscribe to his mode of approach to this matter. As the right of appeal against the decision of the Njombe District Court in Civil Appeal No. 9 of 2012 was open to the applicant, he should not have gone to the same court to prefer another Appeal (No. 1 of 2014) which, as it turned out, was correctly dismissed for being *res judicata*. Moreover, unless there was a very exceptional circumstance to justify the invoking of the revisional powers of this court, I cannot interfere with the decision of the same court in Civil Appeal No. 1 of 2014 which in my respectful view, was correct and quite in order. For one wonders as to what could happen if the second appellate Resident Magistrate would have allowed the appeal and consequently made a decision which would be contrary to the decision of his fellow Resident Magistrate. Moreover, it must be noted that, as far as the present application is concerned, even if I allowed and revised the decision of the District Court in Appeal No. 1 of

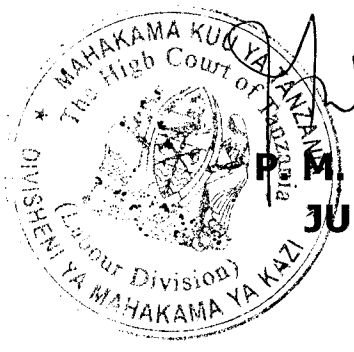
2014, the revisionary decision of this court will have nothing to bear on Civil Appeal No. 9 of 2012 which, as the matters stand, is still a valid decision of the District Court upholding the decision of the Njombe Urban Primary Court in Mirathi Na. 38 of 2012.

Finally, I would say, that in the absence of an appeal or not being in a situation whereby the court is acting on its own cognizance, the High Court, in the exercise of its revisional jurisdiction in relation to matters originating in Primary Courts, would invariably be loath to revise an order made by the District Court. This is so because it is hard to discern any material or procedural irregularity in the proceedings and decision of the District Court which would warrant the intervention of this court by way of revision.

For the foregoing reasons, I find the present application to have been wrongly made, and I accordingly dismiss it with costs.

It is so ordered.

Dated at Iringa this 17th day of November, 2020.



P. M. KENTE
JUDGE