

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SONGEA DISTRICT REGISTRY**

**AT SONGEA.**

**MISC. CIVIL APPLICATION NO. 4 OF 2020**

*(Originating from Matrimonial Revision No. 01 of 2015 of the District  
Court of Songea at Songea)*

**AMIRI ALLY HANYA ..... APPLICANT**

**VERSUS**

**BAHATI MUSTAFA ..... RESPONDENT**

*Date of last Order: 6/10/2020*

*Date of Ruling: 05/11/2020*

**RULING**

**I. ARUFANI, J.**

This is a ruling in respect of the preliminary objection raised by the counsel for the respondent towards the competence of the application filed by the applicant in this court against the decision of the District Court of Songea at Songea made in Matrimonial Revision No. 01 of 2015 and delivered on 27<sup>th</sup> day of July, 2015 before Hon S. S. Kobero, RM.

The application is made under section 25(1) (b) of the Magistrate Courts' Act, Cap 11 R. E. 2002 and is supported by an affidavit of the applicant, Amiri Ally Hanya. The respondent herein opposed the application by filing in the court a counter affidavit accompanied with a notice of preliminary objection which states that, the application is bad

in law for wrong citation of the law. When the matter came for hearing of the aforesaid point of preliminary objection the applicant was represented by Mr. Dickson Ndunguru, learned advocate and the respondent enjoyed the service of Mr. Nestory Nyoni, learned advocate.

The counsel for the respondent argued in support of the point of preliminary objection that, the application is made under section 25 (1) (b) of the Magistrates' Courts Act, Cap 11 RE 2002 as enabling provision for the application, while according to GN No. 140 of 2020 the cited law is no longer in existence. He argued that, the aforementioned subsidiary legislation has a schedule which contains a list of different laws which are now supposed to be cited as revised edition of 2019 and not 2002 as cited in the application of the applicant.

He argued further that, to cite that law in the application as a revised edition of 2002 while there is a revised edition of 2019 amounts to wrong citation of the law and it renders the application incompetent which its remedy is for the application to be struck out with costs. He supported his arguments by referring the court to the cases of **Barclays Bank Tanzania Ltd V. Phylisiah Hussein Mcheni**, Application No. 239 of 2013, HC at Dar Es Salaam and **Elly Peter Sanya v. Ester Nelson**, Civil Application No. 3 of 2015, CAT at Mbeya (Both unreported).

In response the counsel for the applicant agreed to have cited section 25 (1) (b) of the Magistrate Court Act, Cap 11 RE 2002 in his application and stated that, the provision of the law he has cited in the application gives the court power to grant extension of time the applicant is seeking for to appeal out of time. He argued that, the



revised edition of 2019 has changed nothing in the aforementioned provision of the law. He submitted that, citation of the law upon which the application is made as the revised edition of 2002 in the application is correct and there is no any wrong committed in citing that edition in the application.

The counsel for the applicant submitted further that, all laws are interpreted under the Interpretation of Laws Act, Cap 1 R.E 2002. He stated that, Section 20 (1) (a), (b) and (c) of that law provides how laws are supposed to be cited. He said paragraph (a) shows the law can be cited by its short title, paragraph (b) shows the law can be cited by the number and year of being enacted and paragraph (c) shows the law can be cited by its chapter number of any Revised Edition of the law and not necessarily the current edition.

He submitted that, for the applicant to cite Cap 11 as R.E 2002 instead of R.E 2019 is not wrong as the law allows them to cite that revised edition as such. He submitted that, the two cases cited by the counsel for the respondent are distinguishable from the application at hand because the error committed in the said two cases was for the applicants to cite wrong provision of the law and not citation of wrong revised edition of the law. He prayed this court to overrule the preliminary objection with costs and the application to be heard on merit because the purpose of new revised edition is not to repeal the previous laws but to incorporate the amendments in the new revised edition.

In his rejoinder the counsel for the respondent told the court that, the counsel for the applicant has continued to cite wrong revised edition of the law as he has cited the Interpretation of the Laws Act, Cap 1 as

R.E 2002 instead of R.E 2019. He argued that, the counsel for the applicant based his submission on section 20 (1), (a), (b) and (c) of the Interpretation of the Laws Act, which shows how the law can be cited. He however argued that, the applicant has not cited in his application the correct revised edition of the law upon which the application is made as provided in the above cited provision of the law. He submitted that, Section 20 (3) of the Interpretation of the Law Act, states how the laws is supposed to be cited and the cases he has cited in his submission are dealing with wrong citation of the law which to his view are applicable in the case at hand.

The court has carefully considered the rival submissions from the counsel for the parties and after going through the application filed in the court by the applicant it has found it is undeniable that the Magistrates' Courts Act, Cap 11 R.E 2002 upon which the application is made is among the laws which were revised vide GN No. 140 of 2020 published on 28<sup>th</sup> February, 2020 and requires the laws listed in the schedule contained in the mentioned subsidiary legislation to be cited as revised edition of 2019. The mentioned subsidiary legislation which was made under section 4 (3) of the Laws Revision Act, Cap 4 R.E 2002 requires the Chief Parliamentary Draftsman to prepare, publish and maintain a revised edition of the laws to which the Act applies.

That being the position of the law the court has found the issues for determination in the application at hand is whether citation of the Magistrates' Courts Act as R.E 2002 instead of R.E 2019 is wrong and whether that citation renders the application incompetent. The court has gone through section 20 (1) (a), (b) and (c) of the Interpretation of



Laws Act which the counsel for the applicant states it allows the laws to be cited as cited in the application at hand and find it is proper for the purpose of clarity to quote that provision of the law in this ruling. It states as follows:-

*"20. - (1) where a written law is referred to, it shall be sufficient for all purposes to cite or refer to that written law by-*

- a) the short title or the citation (if any) by which it was made citable;*
- b) in the case of an Act, the year in which it was passed and its number among the Acts of that year; or*
- c) in the case of an Act, the Chapter number given to the Act in any revised edition of the laws."*[Emphasis added)

From the wording of the above quoted provision of the law it is crystal clear that, a written law can be referred by its short title or the number and year in which it was enacted and or the Chapter number given to the Act in any revised edition. Although it is stated in paragraph (c) of the above quoted provision of the law that the Act can be referred by the Chapter number given to the Act in any revised edition of the law but the court is not in agreement with the counsel for the applicant that a law can be referred by using its old revised edition where there is a new revised edition.

To the view of this court the use of the word "any revised edition of the laws" in section 20 (1) (c) of the Interpretation of Laws Act does not mean you can cite even the old revised edition of the law where there is a new revised edition of the law. To the views of this court it

means where the law is referred by its Chapter number is required to be referred by Chapter number given to the law in its current revised edition and not in old revised edition of the law. The stated view of this court is getting support from section 12 (2) of the Laws Revision Act, which states as follows:-

*"12. -(2) from the date specified in the proclamation, the part or section of the revised edition or annual supplement described in such proclamation shall, subject to the provision of section 13, be deemed to be and shall be noted in all courts of law, as the proper law of Tanzania in respect of the laws included therein."*

The above quoted provision of the law shows clearly that, where a law has been revised and specified in a proclamation which passed a revised edition of the law, that law is required to be cited by making reference to its revised edition and all courts of law are required to deem and note it as the proper law of Tanzania. Since the Magistrates' Courts Act upon which the application at hand is made is included in the proclamation made in GN No. 140 of 2020 which published the current revised edition of the laws of 2019 it is the finding of this court that, as rightly argued by the counsel for the respondent it was wrong for the applicant to cite that law by making reference to the old revised edition of 2002 instead of the current revised edition of 2019.

The court is in agreement with the counsel for the applicant that the cases of **Barclays Bank Tanzania Ltd** and **Elly Peter Sanya** cited by the counsel for the respondent to support his argument that the



applicant's application is made under wrong citation of the law are distinguishable from the case at hand as were dealing with wrong citation of the provisions of the law upon which the applications were made and not wrong citation of the revised edition of the law upon which the applications were made as it is in the case at hand.

However, the court has found the issue of citing wrong revised edition of the law has been considered in the cases of the **Registered Trustees Archdiocese of Dar es salaam V. Adelmarsi Kamili Mosha**, Misc. Land Application No 32 of 2019, HC at Dar es Salaam and **Ally Mussa & 3 Others V. East African Spirit (T) Ltd**, Revision Application No. 01 of 2019, HC at Shinyanga (both unreported) and the court stated that, citing of the law by making reference to the revised edition of 2018 which had not been proclaimed instead of the current revised edition of 2019 was wrong.

Having found citation of old revised edition of the law instead of the current revised edition of the law is wrong the next issue to determine in this matter is whether the stated wrong renders the application incompetent to the extent of requiring the court to strike it out as urged by the counsel for the respondent. The court has found that, despite the fact that the cases of the **Registered Trustees Archdiocese of Dar es Salaam** and that of **Ally Mussa & 3 Others** cited hereinabove were struck out but the reason for striking them out was not only because of failure to cite the current revised edition of the law. They were struck out because there were other defects in those cases like wrong citation of the provisions of the law which in the application at hand is not the case.

The court has also found that, when the court was confronted with the similar issue of failure to cite a current revised edition of the law in the case of the **Legal and Human Right Centre and Others V. Attorney General**, [2006] 1 EA 141 it stated that, the said omission which occurred because the applicants were not aware that there was a new revised edition of the law was not fatal and ignored it by basing on Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 which requires the court to focus on substantial justice and do away with technicalities which defeat justice.

However, the court has found the circumstances found in the above cited case is different from the circumstances of the case at hand as the counsel for the applicant in the application at hand shows is aware of the existence of the new revised edition of the law cited in the application of the applicant but he cited the old revised edition believing it is not wrong to do so. Since the position taken by the court in the case of the **Legal and Human Rights Centre** was taken after the court seeing that omission and raised it *suo moto* at the time of preparing the decision of the court but the wrong found in the case at hand was raised by the respondent as a point of preliminary objection. In the premises the court has found it cannot ignore that wrong as it was done in the above cited case.

It is because of the above stated reasons the court has found the point of law raised by the respondent deserve to be upheld and the application is hereby struck out for being incompetent. However, after taking into consideration the nature of the wrong found in the application of the applicant the court has found proper for the interest of



justice to employ the principle of overriding objective to grant the applicant leave to re-file the application in the court under the properly cited law. If the applicant wishes to re-file the application in the court he can re-file the same within 21 days from today. The respondent is awarded costs in the matter. It is so ordered.

Dated at songea this 5<sup>th</sup> day of November, 2020



*I. Arufani*

**I. ARUFANI**

**JUDGE**

**05/11/2020**

**Court:**

Ruling delivered today 5<sup>th</sup> day of November, 2020 in the presence of the applicant in person and Mr. Zuberi Maulid Advocate who is holding brief of Mr. Dickson Ndunguru for the applicant and also representing the respondent. Right of appeal is fully explained.



*I. Arufani*

**I. ARUFANI**

**JUDGE**

**05/11/2020**