

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REVISION NO. 5 OF 2020

**(Originating from Civil Revision No. 06 of 2018 in the District Court of Arusha
at Arusha)**

STEPHEN SAMWEL KIMBELE.....1ST APPLICANT

CHRISTOPHER SAMWEL KIMBELE.....2ND APPLICANT

VERSUS

NEMBRIS SAMWEL KIMBELE.....1ST RESPONDENT

RUTH SAMWEL KIMBELE.....2ND RESPONDENT

NAANYUNI SAMWEL KIMBELE.....3RD RESPONDENT

RULING

15/12/2020 & 23/12/2020

GWAE, J

This application has been brought up by the applicants under the provisions of section 30 (1) (a), (b) (i), 31 (1) and (2), 32 (2) of the Magistrates' Courts Act [Cap 11 R.E. 2002] on the orders that the revision before the District Court was time barred, the revision before the District Court was conducted without affording the applicants right to be heard, the District Court Magistrate misdirected himself

by assuming the role of the two administrators of estates and also the respondents had the right of appeal but they did not want to pursue it.

On the date fixed for hearing of this application Mr. Moses Mahuna learned counsel for the respondents conceded with the applicants' first ground of their application that the Civil Revision before the District Court was out of the prescribed time of twelve months. Following the admission by the respondents' counsel the applicant's counsel had nothing to add to his submission.

The question of Jurisdiction of a court is fundamental, therefore, the court must satisfy itself before commencing any proceeding. Equally, jurisdiction of a court is a creature of statute, The East African Court of Appeal held in **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at 202 that:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory."

Further to that the Court of Appeal of Tanzania in the case of **FANUEL MANTIRI NG'UNDA VS HERMAN MANTIRI NG'UNDA & 20 OTHERS**, (CAT) Civil Appeal No. 8 of 1995 (unreported) had held that;

"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature .. (T)he questions of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.... It

is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."


In relation to the matter at hand, the revisional jurisdiction of District Court in matters originating from Primary Court particularly on the limitation of time is governed by Section 22 (4) of the Magistrates Courts Act Cap 11 R.E. 2019 where the time limitation provided thereto is twelve (12) months from the determination of such proceedings in the Primary Court.

Apparently, it appears that the Revision in the District Court of Arusha was determined after the expiration of 22 months and 12 days far beyond the prescribed period required by the law.

That being told, I find that the District Court had no jurisdiction to entertain the revision before it. Accordingly, the District Court's ruling, drawn order and proceedings are hereby quashed and set aside.

It is so ordered.




M. R. GWAE
JUDGE
23/12/2020