

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS CIVIL APPLICATION NO 11 OF 2020

ROSE JOSEPH_____ **APPLICANT**

VERSUS

IDD MAGOTI_____ **RESPONDENT**

(Arising from the Decision and Orders of the District Court of Bunda at Bunda, Hon. Rugemallla SRM, in Civil Appeal No 15 of 2019 dated 15.01.2020)

EX PARTE JUDGEMENT

Date of last order; 02.04.2020
Date of Judgment; 24.04.2020

GALEBA, J.

This application for revision arises from the decision of the district court of Bunda dismissing the applicant's appeal which she had filed to challenge a decision of Bunda urban primary court in civil case no 116 of 2019. The applicant was dissatisfied with the dismissal of the district court hence the present application for revision.

How it all started is unclear but parties were husband and wife from the year 2003 until 19.10.2010 when their marriage was dissolved by Bunda urban primary court upon issuance of a divorce decree. It appears some matters were not settled so the applicant filed **civil case no 101 of 2012** in Bunda urban primary court, mainly to claim division of matrimonial assets. Following that case she was given a

few kitchen wares, one mattress and two bed sheets. She was aggrieved by that decision because she had wanted one of the two houses their family owned. She therefore filed **civil appeal no 24 of 2012** in the district of Bunda to challenge the above decision of the primary court which did not give him one of the houses. According to the applicant that appeal was dismissed in 2014, but she does not have any record, because again according to her, the district court did not give her a copy of the judgment and later the court told her that the file had gone amiss.

In 2019 she approached the Bunda urban primary court and filed **civil case no 116 of 2019** moving it to engage in ordering division of matrimonial assets. The primary court would not budge an inch. It dismissed the case because the division had been done in **civil case no 101 of 2012** before the same court, so the matter before it was *res judicata*. The applicant was aggrieved by that second decision of the primary court, so she filed **PC civil appeal no 15 of 2019** in the district court at Bunda, charging that the primary court was wrong to hold that division of matrimonial assets had been ordered in **civil case no 101 of 2012**, and that it had no powers to reopen it. The district court would not buy that idea and on 15.01.2020 Hon. Rugemalila SRM of that court dismissed the appeal thereby upholding the decision of the primary court in **civil case no 116 of 2019**, that that court had no jurisdiction to reopen the division which was carried out in 2012 by the same court. It is this decision of the

district court upholding that of the primary court that the applicant is now challenging before this Court by way of revision.

When this application came up for hearing on 02.04.2020, the applicant appeared but the respondent was not in attendance. After perusing the records I noted that the respondent had been duly served with the chamber summons indicating the date and time of the hearing and had filed his counter affidavit. Because of this assurance I issued an order in favor of the applicant to proceed **ex parte** the respondent.

To start with I asked the applicant why she had to apply for revision instead of appealing taking into consideration that she consulted advocate Godfrey Marobhe Muroba of Afrexima Law Chambers who drew the application documents. Her reply was that she filed revision because she is complaining as her file in civil appeal no 24 of 2012 was lost and the court did not give her any letter although she also complained orally. That was, essentially the reason why she substituted revision for an appeal.


I decided to start with this matter because this Court had a feeling that its resolution could dispose of the whole application without getting into its merits because, when aggrieved by a decision, a party must appeal unless the law does not permit him or her to do so. In this case the applicant was a party in the district court and there is no reason why she opted to file an application for revision

under **sections 79(1) (a) and (b) and 95 of the Civil Procedure Code [Cap 33 RE 2002], (the CPC)**. Although that is what the applicant did but section 80(3) of the **Law of Marriage Act [Cap 29 RE 2002] (the LMA)** under which domain the subject of this application falls, provides that unless there are rules made under that Act permitting application of the CPC, that Act (the CPC), shall not apply to appeals in matrimonial proceedings.

Generally matrimonial proceedings in courts are provided for under **Part VI of the LMA** read together with **Law of Marriage (Matrimonial Proceedings) Rules 1971 (Marriage Rules)**. In this case, the applicant was supposed to appeal under **the LMA** and the Marriage Rules made under it and not to apply for revision as she did, because the decision she is moving this Court to revise is appealable.

This discussion is sufficient to dispose of this matter with no further need of getting into its merits. That said this application is struck out for being incompetent with no orders as to costs.

DATED at MUSOMA this 24th April 2020



Z. N. Galeba
JUDGE
24.04.2020

Court; This Judgment has delivered today the 24th April 2020 in the absence of parties but with leave to be absent following the corona

virus outbreak globally and the medical advice to maintain social distance between individuals.

Order; Sufficient copies of this judgment and decree be deposited at the Judgment Collection Desk for parties to collect their copies free of charge.



A handwritten signature in black ink, appearing to read "Z. N. Galeba", is written above the printed name.

Z. N. Galeba
JUDGE
24.04.2020