

IN THE HIGH COURT OF TANZANIA

AT TABORA

CIVIL REVISION NO. 1 OF 2021

(Arising from Bill of Cost No. 9 of 2020 and Misc. Civil Application No. 5 of 2020 both pending in the Resident Magistrate Court of Tabora at Tabora)

CHELA JAMES GHANAI 1ST APPLICANT

PACT TANZANIA 2ND APPLICANT

VERSUS

DEOGRATIAS NDANU RESPONDENT

RULING

Date of Last Order:08/10/2021

Date of Delivery:05/11/2021

AMOUR S. KHAMIS, J.

This revision proceeding was commenced by the Court suo motu following a letter of complaint dated 11th March, 2021. For proper appreciation of the circumstances in which the Court was prompted to take this course, I find it convenient to set out the background of the matter briefly.

The applicants herein were sued by the respondent in the Resident Magistrates' Court for the tort of malicious prosecution via Civil Case No. 5 of 2016. In its decision, the trial Court determined the matter in favour of the respondent and ordered the applicants to pay the respondent Tshs. 150,000,000/= as General damage, Specific Damage to the tune of Tshs. 15,000,000/= and costs of the suit.

Feeling aggrieved with the decision of the trial Court, the applicants preferred an appeal to this Court via Civil Appeal No. 1 of 2019. The appeal was entertained by the late Bongole, J (as he then was) and in the end the appeal was dismissed with cost.

Meanwhile, in the course of executing a decree, the respondent filed in the Resident Magistrate's Court Misc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020.

Discontented with the dismissal order in Civil Appeal No. 1 of 2019, the applicant filed an application for review (Civil Review No. 2 of 2020). Upon being satisfied that there was an error on the face of the record, Kihwelo J (as he then was) rectified the error and allowed the appeal with costs. That was on 17/12/2020.

On 19/02/2021, when parties entered appearance in the Resident Magistrate's Court before Hon. Ngaeje, RM for both Misc. Civil Application No. 5 of 2020 and Taxation Cause No. 9 of 2020, the Court was informed on the outcome of Civil Review No. 2 of 2020 and moved to struck out the applications for being overtaken by events.

Instead of striking out the applications, the Magistrate made an order directing the parties to keep entering appearance before him until an appeal that is intended to be filed by the respondent is fully determined by the Court of Appeal.

It is from that background that the applicants approached this Court through a letter dated 11/03/2021 complaining that;

- 1. The pending applications for execution and bill of cost filed in the Resident Magistrates Court have been overtaken by events*

for reason that the same are pending in Court on non-existing judgment and decree of the Court.

- 2. The applicants who are judgment debtors in the Resident Magistrate Court will be incurring unnecessary expenses to travel their advocates from Dar es Salaam to Tabora to attend matters which have already been determined and closed by the Court.*
- 3. There is no pending appeal at the Court of Appeal in respect of Civil Review No. 2 of 2020*

On the basis of that letter, this Court was prompted to order that a revisional file be opened for the purpose of examining the records and orders of the Resident Magistrate Court.

In this revision proceedings, Mr. Raphael Rwezahula, learned advocate, represented the applicants whereas Ms. Stella Thomas Nyakyi, learned advocate, appeared for the respondent.

By consent of both parties and with approval of this Court, the revisional proceedings were argued and disposed of by way of written submissions. Both parties filed their respective written submissions as scheduled.

In his written submission, Mr. Raphael Rwezahula was brief and to the point. He submitted that this Court has powers under the provision of Section 44(1) (a) and (b) of the Magistrates Court Act, Cap 11 R.E 2019, to call and inspect the records of the subordinate courts and give directions as it may consider necessary in the interest of justice.

He submitted that Misc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 were filed in the Resident Magistrate's Court of Tabora by virtue of Civil Appeal No. 1 of 2019 and asserted that, as the dismissal order in Civil Appeal No. 1 of 2019 was lifted in Civil Review No. 2 of 2020, then, Misc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 could have not been entertained by the Resident Magistrates' Court for being overtaken by event.

He contended that, the Resident Magistrate's Court order directing the parties in Msc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 to keep entering appearance before him prejudiced them because they will be attending to Court and incurring unnecessary expenses to matters which have been overtaken by events.

In view of the foregoing, he urged this Court to exercise its revisional power quash and set aside the said order.

In reply thereof, Ms. Stella Nyakyi, learned advocate was of the different view. She vehemently opposed the application for the following reasons; Firstly, she contended tha this Court exercised its revisionary power suo motu without reasonable justification and in total violation of Section 79(1) of the Civil Procedure Code, Cap 33, R.E 2019. Secondly, she contended that revision is not an alternative to appeal for which, if the applicants felt aggrieved with the order made by Ngaeje, SRM, their first remedy was to appeal and not to challenge the same by way of revision.

To support her argument, the learned counsel cited the cases of *Mwanahawa Muya vs Mwanaidi Maro* (1992) TLR 78 and *Dismas Chekamba vs Issa Tanditse*, Civil Application No. 2 of 2010 (unreported).

Lastly, Ms. Nyakyi contended that Msc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 have not been overtaken by events as alleged. She argued that the order by the Resident Magistrate was made to safeguard the interest of the respondent in case he succeeds in his appeal and not otherwise.

Based on the submissions she made, the learned counsel urged this Court to dismiss the application in a contempt it deserves.

In a brief rejoinder Mr. Rwezahula submitted that Section 79(1) of the Civil Procedure Code cited by the counsel for the respondent was misplaced.

He asserted that, the law cited in his submission in chief moving the Court to exercise its revisional power was Section 44(1)(a) and (b) of the Magistrate Court's Act.

Further counsel reiterated his submissions in chief and added that the order complained of is tainted with material irregularity for the reason that the decision subject of the said application was set aside in Civil Review No. 2 of 2020.

I have considered the submissions made by both learned counsel representing the parties. In the first place, I agree with the learned counsel for the respondent that revision and appeal are

two different remedies available to the parties who intend to challenge a decision of the Court if aggrieved. The two remedies work independently not in the alternative.

Where the law provides for right of appeal, against the legally binding decision one has to pursue an appeal unless there are reasons leading to exceptions of that general rule.

This was well expounded by the Court of Appeal of Tanzania in the case of ***Kisea Violet Matto v. National Bank of Commerce and Another***, Civil Application No. 127 of 2005 (unreported)

In this case, the learned counsel for the respondent contended that an appeal to the High Court was the only remedy provided for to any party aggrieved by a decision or order of the Resident Magistrate Court. She submitted that the applicants ought to have instituted an Appeal and not revisional proceedings allegedly because revision is not alternative to an appeal.

With due respect, to the learned counsel in my considered view, her assertion is not a correct position. Section 44(1)(a) and (b) of the Magistrate Court Act, Cap 11, R.E 2019 under which this revision is brought reads as follows.

44 (1) in addition to any other powers in that behalf conferred upon the High Court, the High Court –

(a) Shall exercise general powers of supervision over all district court and courts of a resident magistrate and may at any time, call for and inspect or direct inspection or direct the inspection of the record of such courts and give

such directions as it considers necessary in the interest of justice, and all such courts shall comply with such directions without undue delay.

(b) May in any proceedings of a civil nature determined in the district court or a resident magistrate, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it seems fit.

Under the above provision of the law, it goes without saying that the High Court has revisional powers in any proceedings determined in the District Court or Court of Resident Magistrate.

The High Court may exercise such powers on application being made in that behalf by any party or on its own motion if it appears that there has been an error material to the merits of the case involving injustice.

Powers of the High Court under section 79 of the Civil Procedure Code are limited in that it may be invoked where it appears that the subordinate Court exercised a jurisdiction not vested to it by law or, that it failed to exercise jurisdiction so vested or that it acted in exercise of its jurisdiction illegally or with material irregularity.



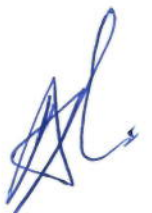
Section 44 (1) of the Magistrate Court Act goes beyond jurisdiction considerations; it covers merits of the case, that is to say this Court can assume revisional jurisdiction in any case where it appears that there has been an error material to the merit of the case involving injustice.

In this case, the counsel for the applicants is challenging the order made on 3/3/2021 by Hon. Ngaeje, SRM directing parties in Misc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 to keep entering appearance before him until an intended appeal by the respondent is filed and fully determined by the Court of Appeal.

He complained that the order occasioned injustice to the parties because Civil Appeal No. 1 of 2019 from which the applications (Msc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020) was set aside in Civil Review No. 2 of 2020 and that appearing in Court for matters that were overtaken by event attracts unnecessary costs.

I have followed the rival submissions. It is not in dispute that Civil Review No. 2 of 2020 was decided in favour of the applicants in which, the decision in Civil Appeal No. 1 of 2019 was lifted. After the decision in Civil Appeal No. 1 of 2019 was made, the respondent was left with nothing to be executed .

In those circumstances, on order by the Senior Resident Magistrate's occasioned injustice as parties will have to incur unnecessary expenses to attend matters which have been overtaken by events.



That being the case, and for the reasons set out hereinabove, the order by the Senior Resident Magistrate's of 3/3/2021 directing parties in Misc. Civil Application No. 5 of 2020 and Taxation No. 9 of 2020 to keep appearance before him pending determination of an intended appeared to the Court of Appeal is hereby quashed and set aside.

I make no order as to costs.



AMOUR S. KHAMIS

JUDGE

05/11/2021

ORDER

Ruling delivered in chambers in the presence of Mr. Raphael Rwezahula, advocate for the applicants and Ms. Stella Nyakyi, advocate for the respondent.

Right of appeal explained



AMOUR S. KHAMIS

JUDGE

05/11/2021