

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM
CIVIL REVISION NO. 32 OF 2018**

RAMADHANI AHAMAD MTIMAUMO (as administrator
Of the estate of the deceased **AHAMADI ALI MTIMAUMO**).....**APPLICANT**

VERSUS

ZADHILI HAJI KINJIMBI.....**1ST RESPONDENT**
MOHAMED HAJI KINJIMBI.....**2ND RESPONDENT**
RAJABU HAJI KINJIMBI.....**3RD RESPONDENT**
MOHAMED CHINGA.....**4TH RESPONDENT**

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Section 30(1)(a)&(b) of the Magistrates Courts Act, Cap. 11 R.E 2002 ("the MCA"). In his Chamber Summons, the applicant is moving the court for the following orders:

1. The Court may be pleased to revise the proceedings and orders of the Kilombero District Court at Ifakara in Civil Application No. 11/2018 between the parties herein made by Hon. L.O. Khamsini RM on the

24th day of August, 2018 and satisfy itself as to their correctness, propriety, legality and make any appropriate orders to correct the claimed incorrectness, impropriety and illegality if any.

2. Costs of and incidental to this application abide by the result of this application.
3. Any other reliefs that this honorable court deems fit and just to grant.

The Chamber Summons was supported by an affidavit of the applicant deponed on the 20th day of September, 2018. The application was disposed by way of written submissions following this court's order dated 08th day of April, 2021. This file was reassigned to me on the 07th day of March, 2023 following the transfer of the previous judge to another duty station. When I was going through the file for the purpose of constructing a ruling, I raised a concern on the propriety or otherwise of the application for revision before me. When the matter came for mention on the 15th day of March, 2023, only the applicant appeared. I directed him to address me on the competency of his appeal, particularly whether the matter is fit to be lodged as revision and not an appeal. Since he was unrepresented, the applicant did not have much to say, he thought was he lodged was an

appeal and he said the District Court decided contrary to the orders of the High Court. At this point, I find it important, albeit brief, to narrate the brief background that has led to the revision at hand.

The matter originated from a Probate and Administration Cause No. 15/2011 at Mang'ula Primary Court whereby the applicant herein had petitioned for letters of administration for the estate of his late father Ahamadi Ali Mtimaumo. In due course of the probate, there was lodged an objection on the ownership of a piece of land measuring four acres and a house, properties which were listed as part of the estate of the deceased. The objector, Fadhili Kinjimbi, the 1st respondent herein was afforded an opportunity to be heard on his objection. In the final verdict, the Primary Court declared that the four acres of land and a house belonged to one Amina Mtimaumo also deceased. Aggrieved by the decision, the applicant herein lodged before the District Court of Kilombero ("District Court") an appeal registered as Probate Appeal No. 03/2012 ("the Probate Appeal"). The District Court quashed the order granting the house to the 1st respondent on the ground that the primary Court erred in determining ownership of a house instead of dealing with what was before it, granting the letters of administration. Having quashed the decision of the Primary

Court, the District Court granted the letters of administration to the applicant herein. Aggrieved by the decision of the District Court, the 1st respondent herein appealed to this court vide Civil Appeal No. 37/2013. On the 06th day of February, 2015, this Court (Hon. Bongole, J(as he then was)) dismissed the appeal with costs.

Following the dismissal of the appeal above, the applicant herein lodged before the District Court a Civil Application No. 11/2018 moving the court to order the respondents herein to appear personally and show cause why they should not be committed to prison for contempt of lawful order of the District court in the probate appeal. It would so appear that in due course of the continuation of the dispute, the respondents lodged a Land Application No. 12/2017. Owing to that fact, the District Court dismissed the application and ordered parties to wait for the judgment of the Tribunal in the Land Application No. 12/2017 where ownership of the disputed landed property will be determined. Aggrieved by this verdict, the applicant has lodged the current application seeking for the above-mentioned orders. In his affidavit to support the Chamber Summons, the applicant has listed the following grounds of revision:

1. That the Kilombero District Court erred in law in re-opening the matter on the issue of ownership of the suit house whereas the same had already determined on the 11th day of March, 2013 by the same Court vide probate Civil Appeal No. 3 of 2012 and further confirmed by this Court on the 06/02/2015 vide Civil Appeal No. 37 of 2013, thus the Kilombero District Court was functus officio.
2. That the Kilombero District Court was wrong to rule out the only remedy available to the Applicant is to institute a fresh suit before the Court having jurisdiction to try the matter relating to land whereas the same court in probate Civil Appeal No. 3 of 2012 decided the dispute house and four acres to belong to the estate of the late AHAMADI ALI MTIMAUMO which is administered by the Applicant herein.
3. That generally the said decision of the Kilombero District Court is unlawful and against the law is what was supposed to do by the Kilombero District Court is to execute its decision made on the 11th day of March. Court on the 06/02/2015 vide Civil Appeal No. 37 of 2013 and not otherwise.

Having looked at the grounds of appeal and the decision of the District Court in Civil Application No. 11/2018, I was concerned on whether the current application fits to be determined as a revision application or is it an appeal in disguise for the reasons that will soon be apparent. To start with, the proper provisions which the applicant has moved the court with is Section 30(1) (a)&(b) of the MCA. The Section provides:

The High Court shall exercise general powers of supervision over all courts in the exercise of their jurisdiction under this Part, and may at any time-

(a) call for and inspect the record of any proceedings under this Part in a district court or primary court and may examine the records or register thereof; or

(b) direct any district court to call for and inspect the records of any proceedings of the primary court established in its district and to examine the records and registers thereof, in order to satisfy itself, or to ensure that such district court shall satisfy itself, as to the correctness, legality and propriety of any decision or order and as to the regularity of any proceedings therein; and may-

(i) itself revise any such proceedings in a district court;

(ii) where it has exercised its appellate jurisdiction in relation to proceedings which originated in a primary court between or against parties not all of whom were parties to the appeal, itself revise such proceedings in the primary court; or

(iii) direct the district court to revise any such proceedings in a primary court, and all such courts shall comply with such directions without undue delay.

From the cited Section, the powers to call for the records is in so far as to satisfy itself, as to the correctness, legality and propriety of any decision or order. Looking at the grounds of revision stated, the applicant is moving the court to error the district court in re-opening the matter on the issue of ownership of the suit houses where the same had been determined in Civil Appeal No. 03/2012 and confirmed by this court in Civil Appeal No. 37/2013. Looking at the records, the issue of ownership had not been determined by any of the court mentioned hence the applicant is challenging the reasoning of the District Court and not the correctness, legality or propriety of the proceedings. The applicant is further challenging the holding of the District Court in holding that the remedy available to the applicant is to institute fresh suit before a court competent to try such matters. Again this is challenging the reasoning of the District Court and not the proceedings.

It is trite law that revision application should not be used as an alternative to an appeal. A party is allowed to file a revision application where there is

irregularity or incorrectness, illegality or impropriety of any decision or order and as to the regularity of any proceedings therein. Revision is also allowed where the party's right to an appeal is barred by law. This position was also emphasized by the Court of Appeal in the case of **Moses J. Mwakibete v. The Editor? Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd. (1995) TLR 134** where it held:

*"The **revisional powers** conferred by section 4 (3) of the Appellate Jurisdiction Act, 1979, **are not meant to be used as an alternative to the appellate jurisdiction of the Court of Appeal**; accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under Section 4 (3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised that right."*

The same position was also held in the cases of **Transport Equipment Ltd. v. D.P. Valambhia (1995) TLR 161** and that of **Halais Pro-Chemie v. Wella A.G. (1996) TLR 269**. As for the application at hand, the grounds set forth in the application are grounds of appeal and not revision and since the impugned decision of the District Court was appealable, the applicant could not use the route of revision as an alternative to an appeal. That being the case, the application beforehand is misconceived and it is hereby dismissed. Given the nature of the relationship between

parties and the fact that the matter originated from a Probate Cause, I
make no order as to costs.

Dated at Dar-es-salaam this 27th day of March, 2021



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.

S. M. MAGHIMBI
JUDGE