

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

CIVIL REVISION NO. 1 OF 2021

(Arising from Misc. Civil Application No. 9/2020 Kasulu District Court, before Hon. I. Batenzi - RM, Application for execution No. 1/2018, before Hon. I. Batenzi – RM, Misc. Application no. 2/2020, before Hon. I. Batenzi – RM, Original Civil Case No. 1/2017 of Kasulu District Court before Hon. C.A. Mushi – RM)

NSK OIL AND GAS LIMITED APPLICANT

VERSUS

M/S GRACE MHAGO FILING STATION..... RESPONDENT

RULING

16th & 16th March, 2021

I.C. MUGETA, J.

The era of technicality in adjudication in lieu of substantive justice was buried in 2018 vide the Written Laws Miscellaneous Amendment Act No. 6/2018. This law amended several laws and introduced the concept of the overriding objectives in our legal system including the Civil Procedure Code [Cap.33 R.E. 2019] by enacting therein sections 3A and 3B. Three years later, some members of the legal fraternity are yet to understand the principles underlying that concept as this ruling shall demonstrate.



The application before me is for one major substantive relief that the court be pleased to call and make revision in Misc. Civil Application No. 9/2020 of Kasulu District Court in order to certify (sic) itself on correctness, legality or propriety of the records in that application.

The history of this case is brief and straight forward. The respondent sued the applicant in Civil Case No. 1/2017, Kasulu District Court and obtained judgment on admission to the tune of Tshs. 33,166,500/= . The rest of the disputed facts were adjudicated and proved ex-parte against the appellant where the respondent was awarded Tshs. 6,000,000/= and Tshs. 3,000,000/= as special and general damages respectively. This was in 2017 and todate no appeal has been preferred. Later, according to the respondent and it is undisputed, the applicant managed to settle Tshs. 34,315,500/= leaving Tshs. 7,851,500/= as unpaid balance. However, the applicant claims to have settled fully the decretal sum.

In a bid to execute the unpaid balance, the applicant applied to the trial court, the District Court of Kasulu District, for execution. The trial court transfered the decree for execution to the District Court of Arusha. Thereat the applicant presented ex-parte evidence that she had settled the claim and the decree was marked fully satisfied by that court. Consequently, the

application for execution was marked dismissed. It seems the executing court never reported back to the trial court about its processes. As a result, the respondent filed at the trial court the Misc. Civil Application No. 9/2020 which is subject of these proceedings. One of the prayers was for the Principal Officer of the applicant one Navin Aggarwal to appear and show cause why the unpaid sum Tshs. 7,851,000/= should not be settled in full satisfaction.

The applicant appeared and filed a counter affidavit. One of the issue raised was that the District Court of Arusha had decided that the decree had been fully settled. The trial court heard the parties and finally held that the amount exhibited before the District Court of Arusha as satisfaction of the Tshs.7,851,500/= was part of the settlement for Tshs. 34,315,500/= and that the applicant had failed to prove the contrary. The trial court adjudged that Tshs. 7,851,500/= remained unpaid. It is this order which the applicant complains about.

Nelius Rugakingira, learned advocate, appeared for the applicant while the respondent enjoyed the service of Ignatus Kagashe, learned advocate.

Counsel for the applicant submitted, basing on paragraph 8 and 9 of the affidavit, that the proceedings in Civil Case No. 1/2017 and Misc. Civil Application No. 9/2020 were a nullity for illegality because the respondent sued and applied in his trade name without disclosing her personal name. He referred the court to the comments in **Sakar's, the Law of Civil Procedure** 9th edition (2000) at page 1804 where it is stated: -

"... a trade name. Such a person may be sued in his trade name, but cannot sue in that name."

The learned counsel submitted that the respondent sued in her trade name without disclosing her personal name. He proposed that the respondent ought to have filed the case in the name, Grace Mhago t/a Grace Mhago Filing Station and not otherwise.

In reply, Mr. Kagashe was brief but sharp. He submitted that this argument is an afterthought which has been raised in execution proceedings.

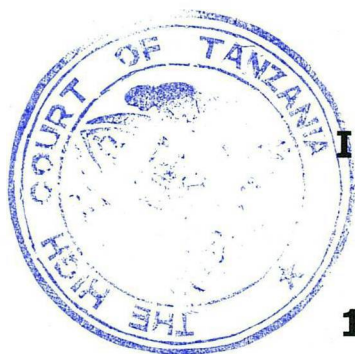
I agree with Mr. Kagashe. Not all objections can be raised at any stage of the proceedings. Unlike objections on time limitation and jurisdiction, which I doubt also if they can be raised anyhow, other matters ought to be raised at the earliest possible opportunity. The issue advanced by counsel for the applicant is not based on limitation or jurisdiction.

The foregoing notwithstanding, the applicant ought to have at least established how such an irregularity prejudiced her where she admitted part of the claim and has already partly settled it. The applicant cannot be allowed at this stage to hide behind legal technicalities and sit on other's right to enjoy the fruits of the decree. That cannot be accepted in terms of the limitations imposed by section 3A and 3B of the Civil Procedure Code. Courts have been enjoined to facilitate just, expeditious, proportionate and affordable resolution of civil disputes. Applications and objections of this nature derails the trial and makes litigation unnecessarily expensive. Counsels ought to observe their duty under section 3B (2) of the Civil Procedure Code.

Coming to the merits of the application, the parties adopted the contents of the affidavit and counter affidavit respectively. I have read them it is my view that the applicant has not pointed out any substantive irregularity in terms of the execution processes. Indeed, in its ex-parte decision the District Court of Arusha ruled that the decree had been executed. Could it be said that by that ruling the executing court became *functus officio*? The answer is in the negative. In execution proceedings, the trial court does not become *functus officio* unless proved that the decree has been fully satisfied. The

trial court found that the decree has not been fully satisfied and even in this application there is no evidence that the payments that were shown to the District Court of Arusha was not part of the paid Tshs. 34,315,500/=. It is upon the applicant to prove that fact which burden she has failed to discharge.

In the event, I hold that the application has no merits. I accordingly dismiss it with costs.




I.C. Mugeta

Judge

16/3/2021

Court: Ruling delivered in chambers in the absent of the applicant and in the presence of the respondent and her advocate, Mr. Ignatius Kagashe.

Sgd: I.C. Mugeta

Judge

16/3/2021