

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISC. LAND APPLICATION NO.65 OF 2020

COSMAS KISABU MAGORIAPPLICANT

VERSUS

MAHAWA COSMAS MAGORI..... RESPONDENT

RULING

22nd March & 30th April, 2021

Kahyoza, J.

The parties herein are wrangling over the ownership of a piece of land the property of **Cosmas Kijabu Magori**, the applicant (**Cosmas**). It is worth noting that **Cosmas** is the respondent's father. **Cosmas** allocated a piece of land to **Mahawa Cosmas Magori**, the respondent (**Mahawa**). The nexus of the wrangle is the boundary between the land **Cosmas** allocated to his son, **Mahawa**, and the rest of his (**Cosmas**) land.

Cosmas sued **Mahawa** successfully in the ward tribunal. Aggrieved, **Mahawa** appealed to the district land and housing tribunal. Both parties were represented before the appellate tribunal. On the date the appeal was fixed for hearing two things happened; **one**, **Mahawa's** advocate Mr. Mligo disqualified himself for want of instructions; **two**, **Cosmas's** advocate Mr. Cosmas informed the tribunal that the ward tribunal proceeded without a quorum. He prayed the proceedings of the ward tribunal to be nullified. **Cosmas** was the respondent. The appellate tribunal heeded to the request.

It nullified the proceedings and ordered the matter to be restored to the competent tribunal.

Dissatisfied, **Cosmas** presently seeks to move this Court to vacate the decision of the appellate tribunal in revision.

The applicant's advocate Mr. Mweha submitted that the appellate tribunal wrongly struck out the matter as the advocates colluded to the applicant's detriment.

The respondent's advocate Mr. Noah resisted the application on the ground that the conditions *sine quo none* provided under section 43 of the Land Disputes Courts Act, Cap. 216 R.E. 2019 have not been complied with. He added that the applicant being a party to the proceedings before the appellate tribunal ought to have appealed instead of instituting the application for revision. To buttress his submission, he cited the cases of **Mansoor Daya Chemicals Limited v. National Bank of Commerce Ltd**, Civil Application No. 464/64 of 2014 and **Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd**, Civil Application No. 261/16 of 2017.

In his short rejoinder, the applicant's advocate Mr. Mweha submitted that the cited cases are distinguishable.

I took pains to read the above cited cases what is evident from the authorities cited is that, if there is a right of appeal, then that right has to be pursued by the concerned party and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort, by the party to the revisional jurisdiction of the Court. Both cases refer to the decision of **Halais Pro-Chemie Vs Wella A.G** [1996] TLR 269. I find it settled that party to the proceedings before the courts subordinate to this Court may institute

revision proceedings in the following circumstances; **one**, *where, although he has a right of appeal, sufficient reason amounting to exceptional circumstance exists, which must be explained*; **two**, *where the appellate process has been blocked by judicial process*; **three**, *where is no right of appeal exists*; or **four**, *where a person was not party to the relevant proceedings*. The Court of Appeal in the **Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd** added that *the invocation of the Court's revisional jurisdiction is not dependent on the nature of the grounds upon which a party seeks to challenge a decision or order of the High Court*.

To cement the above position **Mulla in Explanatory Notes** and Commentaries on the Civil Procedure Code -10th Edition, p. 277 says

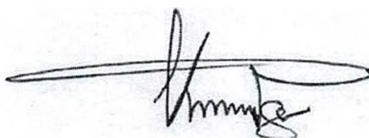
*"The special and extra ordinary remedy by invoking the revisional powers of the court should not be exercised unless as a last recourse for an aggrieved litigant. **The recognized rule is that if a party to the civil proceedings applies to the court to exercise its powers of revision, he must satisfy the court that he has no other remedy open to him under the law to-set right that which he says has been illegally or irregularly or without jurisdiction done by a subordinate court. The remedy to the applicant must be certain and conclusive.**"*

The applicant being a party, had a right of appeal. He would therefore, resort to the revisional jurisdiction of this Court only in the circumstances enunciated above. It is clear, the matter under our consideration does not,

at all, fall under any of the foregoing benchmarks. The application is conspicuously incompetent.

In the end result, I am of the firm view that the applicant improperly invoked the revisional jurisdiction of this Court, this application is incompetent and I, accordingly, strike it out without costs. Given the nature of the relationship between the parties, father, and son relationship, I hesitate to condemn any party to bear costs of this application.

It is ordered accordingly.

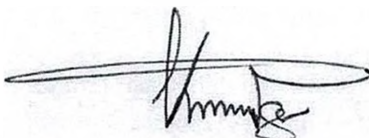


J.R. Kahyoza,

Judge

30/4/2021

Court: Ruling delivered in the presence of the parties. B/C Catherine present.



J.R. Kahyoza

Judge

30/4/2021