



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL REVISION NO. 10 OF 2019

(Arising from Bukoba District Court in Civil Case No. 20 of 2019)

JOSSON MUTAGAHYWA KAGISA.....APPLICANT
(Administrator of Estate of Deceased Simon Mwijage Kagisa)

VERSUS

HELMELINDA BENEDICTO KAHATANO.....1ST RESPONDENT
CYRUS SIMON KAGISA.....2ND RESPONDENT

RULING

08th April & 26th May 2021

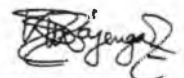
Kilekamajenga, J.

The applicant approached this Court seeking revision of the decision of the District Court of Bukoba in Civil Case No. 20 of 2019. He moved the Court by way of Chamber summons supported with an affidavit deposed by his counsel, Mr. Mathias Rweyemamu. The application was made under **section 44(1)(a) and 43(1) of the Magistrates Court Act, Cap. 11 RE 2002**. In response, the respondent lodged a counter affidavit resisting the application and raised seven points of objection thus:

- 1. This Hon. Court is not properly moved to entertain and decide the said application for revision that was filed by the advocate for the applicant.*

2. *The application for revision is incompetent and bad in law for being filed in contravention of the provisions of the law that prohibits applying for revision in respect of preliminary or interlocutory decisions.*
3. *The said application is not maintainable in law for moving this Hon. Court to deal with two different matters to wit a revision and supervision at the same time and in one application.*
4. *The said application for revision is incompetent and bad in law for being supported by a defective affidavit that has been made without adhering to the all principles governing the making of an affidavit,*
5. *The said application is not sustainable in law for containing extraneous matters and legal arguments.*
6. *The said application for revision/supervision is not maintainable in law for being supported by incurably defective affidavit that has been made and developed by the advocate for the applicant, without adhering to the rule of practice which provides that an advocate should not act as both counsel and witness in the same case. Something that goes contrary to the provisions of the Rule 36 (e) and 37(3) (b) of the Rules of Professional Conduct and Etiquette of the Tanganyika Law Society.*
7. *The said application is fatal defective for being hinged on the unknown title or heading that has been made contrary to the provisions of Rule 8(2) of the High Court Registries Rules as amended by GN No. 96 of 2005 of the Judicature and Application of Laws Act [Cap. 358 RE 2019].*

When the application was called for hearing, the applicant appeared under the representation of the learned advocate, Mr. Mathias Rweyemamu whereas the respondents appeared in person and without representation. The respondent prayed to dispose of the points of preliminary objection by way of written



submission and the prayer was granted. In the written submission, the respondent advanced several arguments which most of them were irrelevant and illogical. The respondents argued that the court was not properly moved to determine the application for revision because the applicant was supposed to move the court using **section 31(1) and (2) of the Magistrates' Courts Act, Cap. 11 RE 2019**, instead of **section 44(1)(a) and 43(1) of the same Act**, because the matter originated from the Primary Court in **Probate and Administration Cause No. 15 of 2019 and Probate and Administration Cause No. 80 of 1995**.

On the second point of objection, the respondent submitted that the application is incompetent before the Court because it was preferred from an interlocutory order which did not conclusively determine the case. Therefore, the application violates **section 43(2) of the Magistrates' Courts Act, Cap. 11 RE 2019**.

When arguing on the third point of objection, the respondent submitted that the application is unmaintainable in law for containing omnibus applications. She argued further that the application contains two different prayers namely revision and supervision. The two prayers in this application are completely different to each other and do not deserve to be lumped into one application hence the application should be struck out.



On the 4th and 5th limb of objection, the respondent argued that the application is incompetent and bad in law for being supported by an incurably defective affidavit. She submitted further that the affidavit accompanying the application contains extraneous matters and legal arguments contrary to Order XIX, Rule 3(1) of the Civil Procedure Code, Cap. 33 RE 2019. Also, the affidavit supporting the application has a bad verification clause contrary to Order VI, Rule 15(1) and (2) of the Civil Procedure Code, Cap. 33 RE 2019. On the 6th point of objection, the respondents argued that the application is unmaintainable for being supported with a defective affidavit which was made, signed, deposed and filed by the counsel for the applicant contrary to Rule 36 (e) and Rule 37(3)(b) of the Rules of Professional Conduct and Etiquette.

In reply to the respondent's submission, the counsel for the applicant raised a lot of issues and some of them were irrelevant in this matter. He however insisted that the application was competent before the court and rightly moved by section 44(1)(a) and 43(1) of the Magistrates Court Act. This court has the right to correct, supervise, direct and revise the irregular proceedings of the District Court. He urged further that the affidavit in support of the application did not contravene any law.

When rejoining, the respondent did not raise any substantial argument than reiterating the prayers in the submission in chief.



In trying to dispose of these multiple points of objection, I carefully read the objections vis-à-vis the contents of the application, affidavit and other annextures but fairly failed to understand the basis of the respondent's objection. For instance, I read the affidavit accompanying the application and did not find any defect as alleged by the respondents. I considered the application and did not understand why the respondent alleged that **the application contains extraneous matters**. The respondents also alleged that the counsel for applicant was a witness in this case something which is unfounded and a pure lie. Generally, the application properly moved this court and the objections raised by the respondents are frivolous, flimsy and vexatious. For the interest of justice, I do not see the need to traverse on every point of objection while knowing that there was no merit on the objections. It is therefore prudent to allow the application to proceed on merit than waste time on baseless objections that do not go into the root of the case. I hereby dismiss the application and allow the case to proceed on merit. No order as to costs due to the nature of the dispute. It is so ordered.

DATED at BUKOBA this 26th Day of May, 2021.



Ntemi N. Kilekamajenga.
JUDGE
26/05/2021



Court:

Ruling delivered this 26th May 2021 in the presence of the applicant and his counsel, Mr. Mathias Rweyemamu (Advocate) and the 1st respondent present in person.



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