

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA
CIVIL REVISION NO. 08 OF 2020

(From the decision of the District Court of Mbeya at Mbeya in Civil Appeal No. 28 of 2019. Originating from Uyole Primary Court in Civil Case No. 84 of 2016)

SOPHIA SAMSON.....APPLICANT
VERSUS
NEPHALI SWILA.....RESPONDENT
REVISIONAL ORDER

Date of Last Order: 13/08/2021
Date of Ruling : 09/09/2021

MONGELLA, J.

The applicant filed this application under section 30 (1) (a) and section 31 (2) of the Magistrates' Courts Act, Cap 11 R.E 2019. He prays for this court to call for and examine the record of the district court of Mbeya with respect to Civil Appeal Number 28 of 2019 on a matter originating from Civil Case No. 84 of 2016 in Uyole primary court, so as to satisfy itself on its correctness, legality and propriety. He also prays for the district court's judgment to be quashed after being revised.



Both parties appeared in person and prayed to argue the application by written submissions. They both complied with the scheduled orders in filing their written submissions.

The applicant made a brief submission in faulting the district court's decision. She contended that there is a material irregularity apparent on face of record in the district court decision that needs to be revised by this court. She argued that while the matter was pending in the district court an issue was raised to the effect that the decision of the primary court was purely barred by the doctrine of res judicata. She submitted that the said issue was raised as there were two judgments regarding the same issues and same parties in the primary court. She submitted further that the first case was before M.M. Mwansasu and was Civil Case No. 84 of 2016 and the second case also before Hon. Mwansasu and was decided on 28th November 2016. She though did not state the case number. Referring to section 9 and section 79 (1) (c) of the Civil Procedure Code, Cap 33 R.E. 2019 she was of the stance that the district court erred for entertaining a matter which was res judicata.

The respondent on the other hand, before replying to the applicant's submission, raised a legal issue to the effect that this court lacks jurisdiction to entertain the application as it has been filed out of time. He argued that the impugned decision of the district court was delivered on 21st October 2019 and the application at hand was filed on 18th August 2020, which was after 287 days from the date of the impugned judgment. He contended that there is no specific provision under the law which provides for time limitation for filing revision in this court. However, he

argued, the situation does not allow parties to file for revision as they please in this court.

In the premises he argued that the provisions of the Law of Limitation Act, Cap 89 R.E. 2019 under Item 21 come into play to fill the lacunae. This provision provides for 60 days limitation for applications under the Civil Procedure Code and the Magistrates' Courts Act whose time limit is not provided under any written law. He also referred the court to the case of **Bank of Tanzania v. Said A. Marinda & 30 Others**, Civil Reference No. 3 of 2014 (CAT at DSM, unreported). Considering the delay he prayed for the application to be dismissed with costs.

Without prejudice to the legal issue raised, the respondent proceeded to challenge the application on merits. He contended that the applicant's contention that Civil Case No. 84 of 2016 is res judicata, is baseless and an afterthought. Giving the history of the matter, he further contended that the respondent instituted Civil Case No. 84 of 2016 against the applicant at Uyole primary court whereby the applicant failed to enter appearance with no reasons resulting into the matter proceeding ex parte.

He continued to submit that the applicant thereafter filed Misc. Civil Application No. 22 of 2018 before Mbeya district court for extension of time to file appeal out of time. The application was dismissed and the applicant advised to apply for an order to set aside the ex parte judgment. The applicant then applied for extension of time in the trial court, but the same was denied for want of sufficient reasons for her non-appearance. Dissatisfied with that decision, the applicant appealed to

the district court in Civil Appeal No. 28 of 2019, which was dismissed for want of merit (the impugned decision).

Considering the sequence of events as presented above, the respondent was of the view that there are no similar suits determined by Uyo primary court as claimed by the applicant. He was of the stance that there is nothing to be revised on the district court decision on the ground asserted by the applicant. He prayed for the decision to be dismissed for lack of merit.

The applicant rejoined by addressing the issue of time limitation. Relying on section 19 (2) of the Law of Limitation Act she argued that she is not time barred. The said provision directs that the time one spends waiting for copies of judgment and decree is to be excluded in computation of time. She insisted for the court to revise the district court's decision and quash the same accordingly.

After considering the submissions by both parties and going through the lower courts record, I shall first address the legal issue raised by the respondent regarding time limitation. First of all, I agree with the respondent that the time limitation for filing revision not being specifically provided under any written law is governed under Item 21 of the Law of Limitation Act. The provision provides for 60 days for filing applications not prescribed under any written law.

In rejoinder, the applicant sought to shelter under section 19 (2) of the Law of Limitation Act which directs for exclusion of the time spent in waiting for

copies of judgment and decree. She however, did not state when she was availed the said copies of judgement and decree to enable the court decide as to whether she was within time or not when filing this application. Nevertheless, The Court of Appeal in the case of ***The Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & 15 Others***, Criminal Appeal No. 384 of 2017 (CAT at Tabora, unreported) reiterated the provision under section 19 (2) of the Law of Limitation Act by ruling that the time one waits for issuance of the copies of judgment or proceedings has already been excluded under the law. The CAT in this case was discussing the application of section 379 (1) (b) of the Criminal Procedure Act, which is couched in similar terms as section 19 of the Law of Limitation Act.

This position was further cemented in the case of ***Samuel Emmanuel Fulgence v. The Republic***, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported), by providing the exact time on which time is to start running. The Court ruled that time shall start to run on the date the copies of judgment and decree were ready for collection, that is, on the date certified by the court/tribunal on the said judgment or decree. See also: ***Alex Senkoro and 3 Others v. Eliambuya Lyimo***, Civil Appeal No. 16 of 2017 (CAT, unreported).

I have gone through the original copies of the district court's judgment to ascertain the date in which the same were ready for collection. In my search I found no stamp or date of certification on the judgment. The judgment only bears the stamp of the principal resident magistrate with no date of certification. In the premises, it is difficult to tell as to when the

copies were ready for collection by the parties. In consideration thereof I find it just to give the applicant benefit of doubt that she delayed while waiting for copies of judgement and decree. The issue of time limitation by the respondent is therefore dismissed.

Regarding the merits of the application, the applicant seeks for this court to revise the proceedings and decision of the district court on the ground that it decided on appeal on a matter that was *res judicata* in the primary court. For *res judicata* to apply certain conditions must be fulfilled. Section 9 of the Civil Procedure Code, Cap 33 R.E. 2002 provides on this doctrine that:

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

The CAT in the case of ***Ester Ignas Luambano v. Adriano Gedam Kipalile***, Civil Appeal No. 91 of 2014 when elaborating section 6(1) of the Civil Procedure Decree, Cap 18 of the Laws of Zanzibar, which is in *parimateria* to section 9 of Cap 33 had this to say:

"The scheme of section 9 therefore contemplates five conditions when co-existent, will bar a subsequent suit. The conditions are:

- i) The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.*

- ii) The former suit must have been between the same parties or privies claiming under them.
- iii) The parties must have litigated under the same title in the former suit.
- iv) The court which decided the former suit must have been competent to try the subsequent suit.
- v) The matter in issue must have been heard and finally decided in the former suit."

The CAT also quoted the case of **Kamunye and Others v. The Pioneer General Assurance Society Limited** (1971) EA 263 in which it was stated that:

"The test whether or not a suit is barred by res judicata seems to me to be –is the plaintiff in the second trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before the court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time...the subject matter in the previous suit must be covered by the previous suit, for res judicata to apply..."

See also: **Umoja Garage v. NBC Holding Corporation** (2003) TLR 339. I have gone through the primary court record, and just like argued by the respondent, Civil Case No. 84 of 2016 was the only case filed in Uyoile primary court between the parties. It was decided by Hon. H.H. Mwansasu. The respondent was the plaintiff in this case whereby he claimed T.shs. 505,000/- from the applicant. The matter was heard ex parte for non-appearance of the applicant. Later, upon execution she

applied for extension of time in the district court in Misc. Civil Application No. 22 of 2018. It appeared that her house was auctioned by court brokers in execution of the ex parte decree. The application was dismissed for not being the right forum.

The Hon. Magistrate in her ruling advised the applicant to seek for relevant remedy in the trial court. The applicant went back to the trial court, this time before H.M. Nyekelela praying for the respondent to hand over back her house in accordance with the district court's orders. In fact, as evidenced on record, no fresh suit was filed or new case file was opened. The application was entertained in the same case file as it concerned execution of the court decree whereby her house was auctioned.


The primary court this time rejected the applicant's application on the ground that its previous decision which was in favour of the respondent had not been quashed by a higher court. It also found that no order by the district court to have the applicant's house, auctioned in execution, handed back to her was issued by the district court as claimed by the applicant in her application before the primary court. It found that instead, the district court had dismissed her application for extension of time and advised her to seek remedies in the trial court and instead of her applying for extension of time to file an application to have the ex parte decision set aside she applied for her auctioned house to be handed back to her.

In my considered view, though the matters in the primary court involved the same parties, they were not based on the same subject matter for

there to be res judicata. In Civil Case No. 84 of 2016, the respondent claimed from the applicant T.shs. 505,000/- as inspection and meal expenses while in the application made by the applicant in the same Civil Case No. 84 of 2016, the applicant claimed to be handed back her house auctioned in execution of a court decree. The conditions set in the above referred cases on res judicata do not exist in the matter decided in the primary court as claimed by the applicant.

The application for revision is therefore found to be baseless. It is consequently dismissed with costs.

Dated at Mbeya on this 09th day of September 2021


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 09th day of September 2021 in the presence of both parties appearing in person.


L. M. MONGELLA
JUDGE

