

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

CIVIL REVISION NO. 2 OF 2020

(Arising from the Resident Magistrate's Court of Bukoba at Bukoba in Civil Application No. 14/2019 and Original Civil Case No. 19/2019)

AMIN MUSTAPHA.....1ST APPLICANT

MAGATA PRIMARY CO-OPERATIVE SOCIETY.....2ND APPLICANT

VERSUS

JOSEPHAT RWEYEMAMU.....1ST RESPONDENT

JR SERVICE STATION LTD.....2ND RESPONDENT

RULING

Date of Ruling: 07.09.2021

Mwenda, J

By a chamber Application brought under **order XLIII Rule 2 of the Civil Procedure Code, [CAP 33 RE 2002] section 79 (1) (C) of the CPC [Cap 33 RE 2002]** and **section 44 (1) (a) (b) of the Magistrate's Courts Act, [CAP 11, RE 2002]** the Applicants are requesting this court to call for and inspect the records of the proceedings in **Civil Application No. 14/2019** at the Resident Magistrate's court of Bukoba and revise the said proceedings and quash the respective orders.

The said application is supported by an affidavit sworn by the applicants. After being served, the respondents filed their counter affidavit and a preliminary objection with two points, to wit;

- 1. The Application has been filed prematurely and thus incompetent on account that there is nothing to be revised since the ruling and order emanating from preliminary points of law did not determine the suit to its finality or determine the suit on merits and;*
- 2. This Application is abuse of court process and since the Application has no placed (sic) before this court the illegalities and injustices to be revised, the court lacks (sic) jurisdiction to exercise its revisional powers.*

When the hearing of the preliminary objection came, the applicants were represented by Mr. Danstan Mutagahywa, learned Advocate and the respondents enjoyed the services of Mr. Kabunga, learned Advocate.

When invited to submit in respect to the preliminary objection Mr. Kabunga, Learned Advocate for the respondents stated that this Revision emanates from **Civil Application No. 14/2019** and the **Original Civil Case No. 19/2019** which is still pending before Resident Magistrate Court of Bukoba.

The learned Advocate submitted that in this Application the applicants are praying for revision of the Ruling dated 19/12/2019. He said that their objection is to the

effect that since the orders impugned emanate from a preliminary objection which did not determine the matter to its finality then this application is incompetent and intended to abuse the court process. In support to this argument he cited **Section 74 (2) and Section 79(2) of the Civil Procedure Code, [Cap 33 R.E 2019]** which restrict filing of appeal against any decision on interlocutory orders, or ruling and **section 79 (2) of Civil Procedure Code [CAP 33 R.E 2019]** which restrict application for revision on interlocutory orders which has no effect of finally determining the suit. In addition he cited the case of ***Bukoba Municipal Council VS. Maliki Sudi, Land Case Revision No. 4 of 2020***, where this court, among other things stated that Revision or an appeal cannot lie on interlocutory orders and thereby dismissed the application.

Mr. Kabunga finalized his submission by stating that despite being aware on the current status of the law, the applicant's advocate filed this application in trying to circumvent the hearing of the main case which is still pending before the Resident Magistrate Court of Bukoba. According to him this is an abuse of the court process and he prayed this application to be dismissed with costs.

In reply to the submission by the learned advocate for the respondents, the learned advocate for the applicants submitted that they are not applying to revise the orders in **Civil Application No. 14/2019**, rather they seek to revise the proceedings which are irregular which led to illegal findings. According to him,

paragraph 4 – 11 of their affidavit enlisted the said irregularities. With regard to **section 74 (2) of the Civil Procedure Code [Cap 33 R.E 2019]** cited by the learned advocate for the respondent, the learned advocate for the applicant submitted that this section refers to appeals and not revisions. As for **section 79 (2) of the Civil Procedure Code [Cap 33 R.E 2019]** he said, to them, **sub section (3) to section 79** is what is important as it state that nothing shall be construed as limiting this court to exercise revisional jurisdiction under the **Magistrate court's Act [Cap 11 RE 2019]**. He said the present application is filed under **section 44 (1) (a) and (b) of the Magistrate's court Acts [Cap 11 RE 2019]** which mandates this court to revise proceedings of civil nature. He further submitted that they are not opposing the injunctions and orders sought, rather they seek to revise the proceedings as stated above.

With regard to a case of **Bukoba Municipal Council** (supra) cited by Mr. Kabunga in support to this preliminary objection, the learned advocate for the applicant submitted that this case is distinguishable to the present application as the cited case originated from land case while the present application is a civil revision. He added that land matters are governed by land statutes and in land statutes there is no room for revision. He concluded by stating that this application is properly before this court as stated in paragraphs 4 – 11 of their affidavit and he prayed this preliminary objection to be dismissed.

In rejoinder, Mr. Kabunga submitted the **Magistrate Court's Act [Cap 11 R.E 2019]** is a substantive law and which does not govern the procedures in civil matters. He further submitted that **S. 44 (1) of the Magistrate Court's Act [Cap 11 R.E 2019]** does not empower a party to apply for revision, rather the court may *suo moto*, call for and revise the court's records. He further stated that the learned Advocate for the Applicant wrongly interpreted that section in that the words "**the matter is determined**" and "**..... on merits of the case**" entail determining the matter on merits and since in the present case the prayers are levelled on interlocutory matter which did not determine the matters, then the said section cannot apply.

The learned advocate further submitted that if the learned advocate for the applicant alleged that they want this court to revise the proceedings only, the said proceedings contain orders and the two cannot be dealt in isolation. He then conclude by submitting that the case of **Bukoba Municipal Council** (supra) is not distinguishable.

In this matter the issue is whether the preliminary objection has merits.

In answer to this issue, this court revisited the record and noted that this application emanates from the Ruling in **Civil Application No. 14 of 2019** which arose from **Civil Case No. 19 of 2019**. In the said Application, the respondent applied for the court's order to issue temporary injunctions, among other things,

restraining the 2nd applicant from using or removing, for any purpose the sum of Tsh. 180,750,000 in Account No. 3201000003655 NMB (Muleba Branch) or which may be deposited therein at any time which is the subject matter complained of in the main suit. For the purpose of preventing the removal or wasting of the said amount until the disposal of the main suit. These orders were granted.

It is clear that the said orders were issued pending determination of **Civil Case No. 19/2019** which is still pending before the Resident Magistrate Court of Bukoba. It is also apparent that orders in **Civil Application No. 14/2019** did not conclude the matter and as was rightly pointed out by Mr. Kabunga. In the case of **The Board of Trustees of National Social Security Fund (NSSF) Vs Pauline Matunda, Labour Revision No. 541 of 2019** (unreported) the court defined interlocutory order by referring to legal dictionary by S.L. swan and UN, 25th Edition, 2015 to mean.

"Order determining an immediate issue, made in the course of a pending litigation which does not dispose of the case but abides further court action resolving the entire controversy. They are steps taken towards the final adjudication for assisting the parties at the prosecution of their case in the pending proceedings".

Again in this case, citing the case of **Vodacom Tanzania Public Limited Company Vs. Planetel Communication Limited Civil Appeal No. 43 of 2018, CAT**, the court adopted the test in the case of **Bozson Vs. Artincham Urban District Council (1903) 1 KB 547**, where Lord Alveston stated as follows;

"It seems to me that the real test for determining this question ought to be this. Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as final order, but if it does not, it is then in my opinion, an interlocutory order".

In the present application as rightly submitted by Mr. Kabunga, the orders in **Misc. Civil Application No. 14/2019** were not capable of disposing of **Civil Case No. 19/2019**. The said case is still pending before Bukoba Resident Magistrate's Court and that being the case, the said orders are interlocutory which fall in the ambit of the definitions in the legal Dictionary by S.L swan and V.N (supra) and in the case of **Vodacom Tanzania Public Limited Company (supra)**.

On the basis of the said position it was not proper for the applicants to file for revision as in our law, **section 79 (2) of the Civil Procedure Code, [Cap 33 RE 2019]** state clearly that;

".....No application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the court unless such decision or order has the effect of finally determining the suit".

Again in the case of Board of Trustee of National Social Security Fund (NSSF) Vs. Chedrick Komba, Revision No. 571 of 2018, High Court Labour Division at Dar es salaam (unreported) it was held inter alia that;

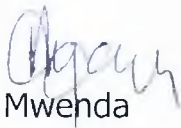
"If the arbitrator had overruled the preliminary objection, the applicant would not be allowed to apply for revision at that stage. Revision on that issue would have to wait until finalization of the dispute on merit to be raised on subsequent revision application hence the application lacks merits, dismiss it and order the case remitted to the CMA for it to continue with arbitration process".

Also in the case of **Bukoba Municipal Council Vs. MalikI Masoud, Land Civil Revision No. 4 of 2020** the court held inter alia that;

"...It is glaring fact that, the Applicant was not supposed to file the present Revision in this court as she has appropriate remedy readily available after judgment of the Tribunal. If the Applicant will be aggrieved by the final decision of the Tribunal, she may wish to prefer an appeal in this court attached with explanations or grounds of appeal on how she was aggrieved".

From the above analysis the orders issued in **Civil Application No. 14/2019** were interlocutory order which cannot be subjected to revision. This preliminary objection therefore is upheld and the application is dismissed with costs. It is ordered that the dispute be remitted back to Resident Magistrate's Court to proceed with the hearing.

It is so ordered.


A.Y. Mwenda
Judge,

07.09.2021

This Ruling is delivered in chamber under the seal of this court in the presence of the Applicants and their learned Counsel Mr. Danstan Mutagahywa and in the absence of the Respondent.




A.Y. Mwenda

Judge

07.09.2021