

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

CIVIL REVISION NO. 14 OF 2021

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 110 of 2016 and original Civil Case No. 5 of 2021 Nyakato Ward Tribunal)

DOMINIC PETER MUTUNZI.....APPLICANT

VERSUS

PETRONIDA THEOPHIL.....RESPONDENT

RULING

Date of Ruling: 29.09.2021

Mwenda, J.

This is an application for revision brought under **Section 44(1)(a)(b) and 62(1) and (2) of the Magistrates' Courts Act, [CAP 11 R.E 2019]** and **Section 79(2) and 95 of the Civil Procedure Code [CAP 33 R.E 2019]**. The applicant is requesting this court to exercise its supervisory powers by calling for and inspecting the records of the proceedings in Civil Case No. 5 of 2021 of Bukoba Resident Magistrate's Court in respect of the ruling or order given on 17th May 2021 for the purpose of giving directions or orders as this Court considers necessary for interest of justice.

This application is supported by affidavit sworn by the applicant and in counter thereof the respondent filed her counter affidavit which was accompanied by a notice of preliminary objections that:-

1. This application is incompetent and premature for contravening section 79(2) of the Civil Procedure Code [CAP 33 R.E 2019] as this kind of revision to challenge the interlocutory order is forbidden by in Law
2. This application is incompetent for being accompanied by a defective affidavit for contravening Order XIX rule 3 of the Civil Procedure Code [CAP 33.R.E 2019]

When this matter came up for hearing of the preliminary objection the applicant appeared in person without any legal representation and the respondent enjoyed the services of Mr. Mujuni, learned advocate.

Following their prayer to argue this application by way of written submission this court made a scheduling order which each party complied.

In support of the Preliminary Objection, Mr. Mujuni, learned advocate for the respondent submitted that a brief History of the matter is that the respondent filed a defamation suit against the applicant before Bukoba Resident Magistrate's Court. In the said suit the applicant raised a Point of objection in that, Court has no pecuniary jurisdiction to try that matter as it falls under jurisdiction of the Primary Court. The parties having filed their written submissions, the court delivered the ruling which overruled the said Preliminary Objection. The learned advocate said the applicant has now come before this court challenging the said ruling.

On the 1st Preliminary Objection regarding **Section 79 (2) of Civil Procedure Code** he said once interlocutory orders are delivered by court, no application for

revision or appeal to challenge such order are allowed. He reproduced the said section and added that the said section denies challenging interlocutory orders although it allows challenging it if the rights of the parties are finally determined. In this case the learned advocate said the rights of the parties were not determined to its finality.

He cited the case of **Junaco and Another vs. Haral Mellac Tanzania Ltd Civil Application No. 473 of 2016(unreported), Jitesh Jayantillah and Another vs. Dhirajlal Walji Ladwa and others Civil Application No. 154 of 2020 Court of Appeal of Tanzania (unreported), Sheheeza Moe Karmali vs. Noorkarim Diamond Kalmal, Civil Appeal No. 55 of 2020 (unreported)** and Section 43(1) of Magistrate Court Act, section 79(2) Civil Procedure Code and section 372 (2) of Criminal Procedure Act.

On the 2nd preliminary objection, the learned counsel submitted that paragraphs 4, 5,9,12,13,14,15,16,17,18 of the applicant's affidavit contain extraneous matter through arguments, comments and conclusions Contrary to Order XIX rule 3 of the Civil Procedure Code. He cited a case of **Uganda vs. Comm of Prisons Exparte Matovu [1961] 514** where the affidavit which contain extraneous matters was declared defective.

In reply to the submission by the counsel for the respondent, the applicant said under the provisions cited the court can act if there is illegality by invoking supervisory powers.

He said Section 79(2) of Civil Procedure Code [CAP 33 R.E 2019] and 43 (2) of Magistrate's Court Act [CAP 11 R.E 2019] cited by the respondent are not applicable in this matter and the said section does not prohibit parties to challenge interlocutory orders if the said decision has the effect of finally determining the suit. He also said that the precedent cited by the respondent are distinguishable.

On the 2nd preliminary objection which alleges that the affidavit is defective, the applicant submitted that the said affidavit was made strictly according to the requirement of law. He added that even if the purported affidavit is defective and the said paragraphs are expunged, still the remaining paragraphs will allow this court to proceed with determining this matter. He further stated that the court may invoke the principle of overriding objective to hear the case justly. In support to this argument, he cited a case of **Sanyou Service Station Ltd vs. BP Tanzania LTD Civil Application No. 185/17 of 2018** (unreported).

In this matter the issue is whether the order by Resident Magistrate's Court overruled the preliminary objection by the applicant is an interlocutory order.

The records are clear that the applicant, before hearing of Civil Case No. 5 of 2021 commenced raised a preliminary objection that the court had no pecuniary jurisdiction to hear and entertain that case. The said preliminary objection was overruled by the court.

From the said ruling, no rights of the parties were determined and for that matter, the ruling did not determine the rights of the parties. In the case of **JVNA Co.**

Tanzania Ltd and Justin Lambert vs. Harel Maellac Tanzania Ltd, Civil Application No. 473/16 of 2016, Court of Appeal of Tanzania the court held:

"In order to know whether the order is interlocutory or not "the nature of the order" must be conducted that is, did the order or judgment complained of finally dispose of the rights of the parties"

Since the order of the Resident Magistrate's Court did not finally dispose of the rights of the parties, then the said order is interlocutory and as such appeal or revision against it is prohibited.

In the case of **Iringa Municipal Council vs. Embalasasa Company Ltd Civil Appeal No. 4/2020 (unreported)** this court citing **Section 74(2) of the Civil Procedure Court [CAP 33 R.E 2019]** held inter alia that:

"Notwithstanding the provisions of subsection (1), No appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrates Court or any other tribunal, unless such decision or order has the effect of finally determining the suit"

Having discussed the first preliminary objection, and since it is capable of disposing of this matter, I find no reason to discuss the second preliminary objection.

That being said in this matter, the applicant was required to wait until determination of the main suit and not to apply for revision on interlocutory order which has no effect of determining the rights of the parties.

This court therefore find that the preliminary objection raised have merits the same is sustained. This application is therefore dismissed with costs.

It is so ordered.




A.Y. Mwenda

Judge

29.09.2021

Ruling delivered in chamber under the seal of this court in the presence of Mr. Dominic Peter Mutunzi the Applicant and in the presence of Mr. Ponsiani Mjuni learned counsel for the Respondent.




A.Y. Mwenda

Judge

29.09.2021