

IN THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES LAAM

CIVIL REVISION NO. 12 OF 2021

(Arising from Civil Revision No. 02 of 2021 of Bagamoyo District Court at Bagamoyo and originating from Matrimonial Cause No. 05 of 2019 of Mwambao Primary Court in Bagamoyo which appealed and registered as Matrimonial Appeal No. 07 of 2019 at Bagamoyo District Court)

SAID MTORO SHOMARI.....APPLICANT

VERSUS

MWANAISHA KASSIM.....RESPONDENT

RULING

Date of Ruling: 7th September, 2021.

MRUMA. J;

This application for revision was brought Under Section 30(1) (a) of the MCA [Cap 11 R. E. 2019] and Section 79(1) (c) of the CPC [Cap 33 R. E. 2019] the Applicant is calling upon this court to revise the proceedings of the District Court of Bagamoyo in Civil Revision No. 2 of 2021 for alleged procedural irregularities and substantive material errors which has occasioned injustice. As is the practice the application is supported by Affidavit of the Applicant Said Mtoro Shomari affirmed on 19th April, 2021.

The Application is strongly resisted by the Respondent Mwanaisha Kassim who affirmed a Counter Affidavit on 31/5/2021.

The Applicant's main contention is that the Resident Magistrate In-charge had no jurisdiction to entertain Civil Revision No. 2 of 2021 in view of the Judgment and Orders of the same court (Mwaria DRM) in Civil Appeal No. 7 of 2019.

Parties were not represented at the hearing of this application, therefore Laymen, they had nothing material to contribute.

Submitting in support of the Application the Applicant contended that the District Court erred in law by delivering two judgments in the same matter. He said that the first judgment and the second judgment were delivered by the same court in the same premises. He said that in the first judgment he was ordered to pay the Respondent Tshs. 1,000, 000/= and he paid but, in the second judgment that order was changed and he was ordered to give the Respondent 50% of his house.

Responding to the Applicant's submission the Respondent contended that the District Court did not pass two judgments as alleged by the Applicant. She said that what the District Court did is to correct errors in the first judgment following her complaint to the Resident Magistrate In-charge of the District Court. I have carefully considered the pleadings grounds of revision, records of the lower court and submissions of the parties in this case and, I agree with the Applicant that the Learned Resident Magistrate In-charge grossly erred in law and in fact in revising the proceedings and orders of the Mwambao Primary Court in Civil Case No. 5 of 2019 in view of Civil Appeal No. 7 of 2019 which originated from the same case. Judgment of Civil Appeal No. 7 of 2019 was handed down on 30/12/2020 and no further Appeal was preferred. It follows that at the time the learned Resident Magistrate In-charge was entertaining Civil Revision No. 2 of 2021, Civil Appeal No. 7 of 2019 had already been concluded. The matter was therefore resjudicata.

Section of the Civil Procedure Code [Cap 33 R. E. 2019], provides that:

"No Court shall try any suit or issue in which the matter directly and substantively in issue has been directly and substantially in issue in a former suit between the same parties".

In the present case the issue in the matter and the parties were the same therefore, it was illegal for the District Court to sit under the guise of revision and hear it again. The matter was res-judicata and the District Court had no jurisdiction to hear it. If the present Respondent was aggrieved by the

decision of that court in Civil Appeal No. 7 of 2019, she ought to have been advised to appeal to the High Court.

Having found irregularities in opening, hearing and determining Civil Revision No. 2 of 2021, this court invokes its inherent powers under section 30 (1) (a) and (b) (i) of the MCA to revise all the proceedings, quash and set aside all orders of the District Court of Bagamoyo in Civil Revision No. 2 of 2021.

As this is a Matrimonial Cause I make no orders as to the costs



A. R. Mruma

JUDGE

7/9/2021.

COURT:

Delivered in presence of the parties this **7th** day of **September 2021.**

Right of Appeal Explained.



A. R. Mruma

JUDGE

7/9/2021.