IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REVISION NO. 08 OF 2020

(C/F Primary Court of Arusha Urban, Matrimonial Cause No. 117 of 2018 vide Misc. Civil Application No. 07 of 2020 and Civil Revision No. 9 of 2020)

IDD JUMA LAIZER.....APPLICANT

VERSUS

KURUTHUM MICHAEL KANOTI.....RESPONDENT

RULING

17.05.2022 & 16.06.2022

N.R. MWASEBA, J.

Before me is the application for revision brought by the applicant herein seeking for the following orders:

1. That this honourable court be pleased to call and inspect the records of Arusha district court in civil revision Number 09 of 2020 as to the correctness, legality or propriety of its decision therein.

2. That this honourable court be pleased to revise the decision of Arusha district court.

3. Any other order (s) that this honourable court may deem fit to grant.

His application is made under Section 22 (1) of the Magistrate's Court Act, Cap 11 R.E 2019 supported by an affidavit of the applicant himself affirmed on 11th day of December, 2020. The counter affidavit for the respondent as well was affirmed by the respondent herself.

Before moving any step forward, a brief background of the matter is necessary. The applicant and respondent were husband and wife before their marriage being dissolved at Arusha urban primary court before Kalokola RM. In the first instance, the court issued a decree of divorce but did not deal with other remedies. Thereafter, the applicant herein went to the same court and moved it to deal with the distribution of matrimonial assets. The same was determined before Hon Silayo RM who after scrutinizing the evidence decided that the respondent was supposed to be given Tsh 1,000,000/= as her contribution to the matrimonial assets. Custody of children was vested to the respondent herein and the applicant was ordered to pay Tshs 50,000/= and other expenses like education, health and accommodation. After giving the judgment, the trial magistrate notified them that the aggrieved party have the right to appeal within 45 days from the date of the verdict.

Regardless of being well informed about their right of appeal the respondent herein decided to file a revision case at the district court of Arusha. She moved the court by using **Section 22 (1) of the Magistrate Court Act** Cap 11 R.E 2002. The district court revised the order for division of matrimonial assets and ordered that the respondent be given the second house and that children should be under her custody. The applicant was ordered to pay maintenance as ordered by the trial court. This decision dismayed the applicant herein hence this application which is also made under **Section 22 (1) of the Magistrate Court Act** Cap 11 R.E 2002.

At the hearing of this application both parties appeared in person, unrepresented. They opted the application to be disposed of by way of written submission and this court blessed their wishes.

Before going to the merit of this application, I observed that the trend of this case on how the parties have been moving the courts to exercise their remedies is unconventional. Thus, before proceeding with hearing this application on merits, this court must satisfy itself as to whether it is being properly moved to exercise its revisional jurisdiction.

Both, the application before this court and before Arusha district court were made under **Section 22 (1) of the Magistrate Court Act.** The provision stipulates as hereunder:

> *"**A district court may call for and examine the record of any proceedings in the primary court** established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings." (Emphasis is mine)*

This provision confers revision jurisdiction to the district court to examine records of any proceedings in the Primary court for purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court. This power can be exercised by the district court in *suo mottu.* The same can not be invoked as an alternative to an appeal for an aggrieved party as the facts of this case. The provision neither applies to the High Court nor as an alternative to an appeal. The applicant and the respondent exercised their rights at the High Court and District Court respectively by filing a revision case while their right of appeal was open.

Section 80 (1) of the Law of Marriage Act as amended by Act No 15 of 1980 stipulates that:

> "(1) ***Any person aggrieved by any decision or order of a Primary Court, or by any decision or order of a District Court, may appeal from that court****, respectively, to the district court or the High court." (Emphasis added)*

Looking at the above provision, it is clear that the parties had the right to appeal against the judgment of the primary court and also the decision of the district court. And the record is speaking aloud that the right of appeal was well explained to them. However, they opted to file for revision as an alternative to appeal. There is no justification as to why they opted for revision instead of an appeal.

It is a settled principle that revisional jurisdiction cannot be invoked as an alternative to the appellate jurisdiction. This principle has been repeatedly stated by the Court of Appeal in a number of cases. In the case of **Transport Equipment Ltd V. Devram P. Valambhia** [1995] TLR 161 the Court of appeal held that:

> *"Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court:"*

This principle has been maintained in a number of Court of Appeal decisions. See **Kempinski Hotels S.A V. Zamani Resorts Limited & Another**, Civil Application No. 94/14 of 2018, **Felix Lendita V. Michael Long'idu**, Civil Application No. 312/17 of 2017, **Hassan Ng' anzi Khalfan V. Njama Luma Mbega (Legal Representative of the late Mwanahamisi Njama) and Another**, Civil Application No. 218/12 of 2018. In all these cases the Court of Appeal asserted that unless there are exceptional circumstances, the revisional jurisdiction of the court should not be resorted to as an alternative to its appellate jurisdiction.

The notion "under exceptional circumstances" has been clarified in the cited authorities to mean the situation where the appellate process has been blocked by the judicial process. In the case at hand the parties had the right to appeal since the decision of the primary court was delivered. However, there is no reason as to why the appeal process was abandoned.

In the case of **Augustino Lyatonga Mrema V. Republic and Another** (1999) TLR 273, the Court of Appeal held:

> *"To invoke the Court of Appeal's power of revision, there should be no right of appeal in the matter, the purpose of*

this condition is to prevent the power of revision being used as an alternative to appeal."

Being guided by the above decisions, I am inclined to hold that this application is incompetent and bad in law for being preferred as an alternative to the appeal. It ought to be dismissed as I do. The same applies to the application before the district court which is subject to this revision of which I nullify the proceedings, ruling and its order for being founded from an incompetent application. This being a family issue, I give room for the aggrieved party to exercise his/her appellate jurisdiction from primary court to the district court within 45 days from the day of this ruling.

It is so ordered.

DATED at **ARUSHA** this 16th Day of June 2022.

N.R. MWASEBA

JUDGE

16.06.2022