

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)
AT MWANZA**

MISC. CIVIL APPLICATION NO. 154 OF 2021

*(Arising from Misc. Probate and Admin. Cause No. 4 of 2021 and Appeal No. 3/2020 of Chato District Court and
Originating from Probate Case No. 245/2015)*

ZAWADI MANYIRIZU.....APPLICANT

VERSUS

THE ADMINISTRATOR GENERAL

(The Administrator of Estate of

Deceased Leonard T. Kairu) RESPONDENT

RULING

25th May & 17th June, 2022

DYANSOBERA, J.:

In this application, the applicant Zawadi Manyirizu is praying that this court be pleased to call for and examine the records of Chato District Court in Misc. Probate and Administration Cause No. 4 of 2021 for the purpose of satisfying itself as to correctness, legality and propriety of the decision and orders of the court, and be pleased to make revision of the decision and orders therein, costs of the suit and any other orders. The application has been preferred under section 31 (1) of the Magistrates' Courts Act [Cap. 11 R.E.2019] and section 79 (1) (c) of the Civil Procedure Code [Cap. 33 R.E.2019]. In support of the application, an affidavit affirmed by Zawadi Manyirizu, the applicant, has been filed.

The respondent, the Administrator General (Administrator of the Estate of the deceased Leonard T. Kiratu) has, through the learned State Attorney, prefaced the Counter Affidavit with a notice of preliminary objection on a point

of law that **'this application is not maintainable in law as the revision cannot be invoked as an alternative to appeal'**.

Before I determine this preliminary objection, I think a brief background of the matter is apposite. In Misc. Civil Application No. 154 of 2021, the applicant sought a restraining order against the respondent as well as giving the respondent special directions that the house located at Msilale Chato Urban which is the estate in his charge jointly acquired by the applicant and her deceased husband Leonard T. Kairu thus not subjected to distribution to any person other than the applicant and her children. The said application was not heard on merit. It was struck out on 16th day of September, 2021 upon the respondent's preliminary objections on the competence of the application being sustained.

On 23rd day of December, 2021, the applicant filed this application as indicated above.

On 25th day of May, 2022 when the matter was called for hearing of the preliminary objection, Mr. Salvius Rwechungura, learned State Attorney, represented the respondent and argued in support of the preliminary objection. He submitted that objection is based on the following legal premises. One, the court can invoke revisional jurisdiction only where there is no right of appeal. Two, the revisional jurisdiction can be invoked where the right is there but has been blocked by judicial process. Three, where the right of appeal existed but was not taken and here, good and sufficient reasons must be given for not having lodged an appeal.

The learned State Attorney explained that in this application, after the applicant lost in Misc. Civil Application No. 4 of 2021 at Chato District Court by its being struck out with costs. She was supposed to lodge an appeal as she was aware of such application; the ruling having been delivered under her presence. In his view, the Court of Appeal of Tanzania in different decisions has stressed the point that revision is not the substitute of appeal. He cited the case of **Rajabu Christmas V. Republic**, Mwanza Criminal Application No. 4 of 2005 to buttress his point.

On the right of appeal being blocked by judicial process, it was submitted on part of the respondent that the applicant did not state any judicial process which has barred her from lodging an appeal; the proper course the applicant was supposed to take.

As to third point, Mr. Rwechungura submitted that there is no sufficient reason given by the applicant for not lodging an appeal and that if she was beyond the time prescribed for lodging the appeal, the applicant was required to seek extension of time and her affidavit does not state any reason for her failure to lodge the appeal. This court was referred to the case decided by the Court of Appeal of Tanzania at Zanzibar, Civil Application No. 94/14 of 2018 between **Kempinski Hotels S.A v. Zamani Resorts Limited** and another case which was decided by this court, that is **Suleiman Maulid Ramadhan v. Maulid Ramadhani**, Misc. Civil Application No. 599 of 2019, HC Dar es Salaam.

As to what the revision aims to cure, this court was referred to the case of **Abbas Juma Buge v. Maua A. Athuman**, Misc. Civil Application No. 327 of 2018 HC. (T) Dar es Salaam (unreported). The learned State Attorney concluded her submission by informing this court that revision is the last resort.

I have considered the arguments advanced by the learned State Attorney in support of the preliminary objection and the relevant case laws cited on part of the respondent. I have also considered the fact that the applicant did not make any counter-submission.

The issue is whether this revision is incompetent before this court. Generally, a revision is not the same as an appeal. While an appeal is a right based remedy and can be claimed as of right if there is statutory existence of it, revision is the purely discretionary remedy and cannot be claimed as of right. Revision does not confer any substantive right, and the right of revision is merely a privilege granted to a party. Indeed, revision means re-examination of cases which involve the illegal assumption, non-exercise or irregular exercise of jurisdiction. Before entertaining an application for revision, the court must be satisfied not only that the trial court's decision is not appealable but also that the trial court has either exercised jurisdiction not vested in it, or failed to exercise a jurisdiction vested in it, or acted in exercise of its jurisdiction illegally or with material irregularity. Indeed, the applicant has not placed any material upon which this court can exercise its discretionary powers to grant the application for revision in that the record does not indicate that there was any of those prerequisites. As rightly contended by the learned State Attorney, where there is a right of appeal a party should not equate revision with an appeal and revision rectifies irregularities, impropriety and illegalities. The applicant has not pointed out those circumstances which are requisite to

warrant this court revise the proceedings of the District Court in the view the applicant seeks.

For those reasons, I am satisfied and find that the respondent's preliminary objection has merit. Accordingly, I uphold it and struck out the applicant's application for revision with costs.

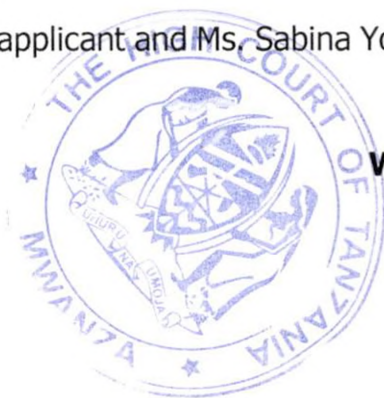
Order accordingly.


W.P. Dyansobera

Judge

17.06.2022

This ruling is delivered under my hand and the seal of this Court on this 17th day of June, 2022 in the presence of Ms. Stella Sangawe, learned Counsel for the applicant and Ms. Sabina Yongo, learned State Attorney for the respondent.




W.P. Dyansobera
Judge