

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MBEYA

MISC. CIVIL REVISION NO. 5 OF 2021

BETWEEN

EMMANUEL BURTON MWAKISAMBWEAPPLICANT

AND

ASSA SALIFU KIBALE.....RESPONDENT

RULING

Date of last order: 14.12.2021

Date of Judgment: 25.02.2022

Ebrahim, J.

The revision proceedings has been initiated by the court suo-motto following the complaint by the Applicant herein in respect of the ruling of the District Court Magistrate of 11.12.2020 in Matrimonial Appeal No. 33 of 2018 which declared the 1st appellate court to have no jurisdiction to determine the issue of ownership hence the matter be filed at the District Land and Housing Tribunal.

The genesis of this matter is that the Respondent herein filed Matrimonial Cause No. 68 of 2018 seeking for an order of divorce

at Urban Primary Court Mbeya. The trial court granted a decree of divorce on the basis of cruelty and ruled that there was no matrimonial properties subject for division between the parties. Aggrieved, the Applicant herein appealed to the District Court of Mbeya at Mbeya vide Matrimonial Appeal No. 33 of 2018. The 1st appellate court upheld the decision on the issuance of decree of divorce but ordered the trial court to take additional evidence on the extent of contribution of each spouse towards the acquisition of the alleged matrimonial house.

Dissatisfied again, the Applicant lodged an appeal at the High Court, Matrimonial Appeal No. 5 of 2019. This court, on 15.07.2020 ordered the 1st appellate court to take additional evidence in terms of **section 21(1)(a) and (b) of the Magistrate's Courts Act** and decide on the division of matrimonial properties.

At the District Court, being moved by the counsel for the Respondent, the 1st appellate court made a finding on 12.11.2020 that the issue is on the ownership of the house, hence the District Court had no jurisdiction to try the matter. The 1st appellate magistrate advised either party to institute the proceedings at the District Land and Housing Tribunal. The respondent herein acted

on the advice and filed Land Application No. 237/2020. It is the said order of the 1st appellate court and the filed Land Application that prompted the Applicant to write a complaint letter complaining on the flaunting of procedure, hence the instant revision.

When parties were called to address the court, the Applicant appeared in person; whilst the Respondent was represented by advocate Dickson Mbilu. The application was eventually heard by way of written submission.

In his submission, the Applicant strongly challenged the order of the District Court to refer the matrimonial matter to the DLHT whilst hon Judge Mongella ordered the first appellate court to take additional evidence in respect of the division of the matrimonial properties. He insisted that the DLHT has no jurisdiction to determine on the matrimonial assets whilst the case was still at the District Court. To substantiate his argument, he cited the case of **Agness Sanga Vs Amon Halinga and Peter Haonga**, Land Appeal No. 22 of 2016 (HC) on the holding that Land Tribunals lack jurisdiction to entertain disputes of matrimonial nature. He prayed

for the intervention of this court and prayed for the application to be allowed with costs.

Responding on the submission by the Applicant, counsel for the Responding firstly argued that the application for revision is time barred as it was instituted after the lapse of 330 days from the impugned ruling of the District Court. He cited a plethora of authorities to substantiate his argument of which I shall not list them here.

Citing the provisions of **section 33(b) of the Land Disputes Court Act, Cap 216 RE 2019**, Counsel for the Respondent contended that the 1st appellate court was correct to order the matter to be referred to the DLHT to determine the issue of ownership of the said house on whether it is a matrimonial property or not.

In rejoinder, responding on the issue of time limitation, the Applicant contended that firstly, the **Law of Limitation Act, Cap 89** does not apply on matters originating from Primary Court. Secondly, the revisional proceedings were initiated by the court suo motto in the exercise of its jurisdiction under **section 79(1) of the Civil Procedure Code, Cap 33 RE 2019**. He reiterated his

submission in chief that the DLHT has no jurisdiction to determine issues of matrimonial properties. He reiterated his prayers.

In addressing the issues subject for the revision, I would outrightly begin with the raised issue of time limitation by the counsel for the Respondent. With respect, as rightly argued by the Applicant, this revision was called by the court suo-motto after calling for the records of the District Court following a complaint letter by the Applicant.

Indeed, **section 30(1)(a) and (b)(i) of the Magistrate Court Act, Cap 20 RE 2019** read together with **section 79(1) and (3) of the Civil Procedure Code, Cap 33 RE 2019**, the High Court has supervisory powers over District Court and any court subordinate to it and in its own motion call, examine and revise the proceedings to satisfy itself as to its correctness, legality and propriety of any decision made. I therefore outrightly dismiss the argument by the counsel for the Respondent that the Applicant initiated revisional proceedings out of time considering the fact that there is no filed application as even the Respondent Counsel could not state whether he was served with the chamber

summons supported by an affidavit. More-so the cited case of **Bank of Tanzania Vs Said A. Marinda & 30 Others**, Civil Reference No. 3 of 2014 is distinguishable with the circumstances of this case as in the cited case the Applicant filed extension of time to file notice of appeal as a second bite to the Court of Appeal after being refused extension of time by the High Court instead of making application before the Court of Appeal following refusal within 60 days. In this case it is the court that initiated the revision in its supervisory and revisional powers.

Coming to the issue of ownership and the jurisdiction of the DLHT to determine a matter at issue at the District Court; this need not detain me much. Counsel for the Respondent cited the provisions of **section 33(b) of the Land Disputes Court Act, Cap 216 2019** in showing that the DLHT has jurisdiction in proceedings relating to land. In so arguing, he insisted that the issue at the District Court was on ownership of matrimonial property. Again, with respect while he is admitting that the issue was on matrimonial property and the case emanated from the issue of the extent of contribution of the alleged matrimonial house, it is not rocket science that the issue for determination was whether

the disputed house was a matrimonial property and if so the determination on the extent of contribution. It is purely absurd for the counsel for the Respondent to suggest that the issue for determination of whether a house is a matrimonial property is to be determined by the DLHT whilst it is clear that it is a matrimonial issue to be determined by the matrimonial court.

Furthermore, it is also disturbing to learn that the 1st appellate Magistrate entertained other issues whilst he had specific order and directive from the High Court to collect additional evidence only in respect of acquisition of the matrimonial property and extent of contribution so as to decide on the division of matrimonial properties as empowered under **section 21(1) (b) of the Magistrate's Courts Act, CAP 20 RE 2019**. In that respect, the 1st appellate Magistrate had no mandate to deal with anything else or issue any other order contrary to what he has been specifically directed to do by the superior court than his. Again, the file was not remitted to him for re-trial but rather to perform a specific task. As such he was functus officio to determine any other issue apart from the order of taking additional evidence and decide on the specific issue on controversy as ordered by the High Court.

That being said, by declaring that the District Court has no jurisdiction and ordered parties to file the matter at the DLHT, the 1st appellate court usurped powers he did not have and was in defiance of the order of the High Court. Consequently, he abdicated his duty and embarked on a journey which was not his to take.

From the above therefore, I find that the 1st appellate court erred by not performing what he was ordered to do by the High Court and empowered by the law. Accordingly, I nullify and set aside the ruling of the 1st appellate court of 12.11.2020 in Matrimonial Appeal No. 33/2018. I further order the court to proceed with hearing of witnesses in collection of additional evidence from where it ended on 06.11.2020.

Being the fact that the error was contributed by the court, I give no order as to costs. Each party to bear its own.

Accordingly ordered.



Mbeya
25.02.2022


R.A. Ebrahim
JUDGE

Date: 25.02.2022

Coram: Hon. P. D. Ntumo – PRM, Ag-DR.

Applicant:] Present.

Respondent:]

For the Respondent: Miss. Jalia Hussein, Advocate.

B/C: P. Nundwe.

Court: The ruling has been delivered in chambers in the presence of the parties and Miss Jalia Hussein Advocate for the respondent this 25th day of February 2022.



P.D. Ntumo - PRM
Ag- Deputy Registrar

25/02/2022