

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CIVIL REVISION NO. 39 OF 2021

ROSE NURA APPLICANT

VERSUS

GEOFRID CHIKOJO RESPONDENT

**(Arising from the decision of the District Court of Ilala at Ilala in
Matrimonial Appeal No. 54 of 2020)**

RULING

23rd June & 21st July, 2022

KISANYA, J.:

The applicant, Rose Nura, is moving the Court to call and examine the proceedings and decision of the District Court of Ilala (Hon. C.N. Laizer) dated 21st May, 2021 in Matrimonial Appeal No. 54 of 2021, and revise the same or make any other relief as the Court may deem fit and just to grant. Her application is by chamber summons made under section 30(1)(a),(b)(i) and (b)(ii) of the Magistrates' Courts Act, Cap. 11, R.E. 2019 (the MCA) and Order VIII, Rule 2 of the Civil Procedure Code, Cap. 33, R.E. 2019. It is supported by an affidavit sworn by the applicant on 22nd November, 2021.

The sequence of events giving rise to this application can be summarized as follows. The applicant was married to the respondent in 1997. Their marriage was

blessed with two issues. Upon arising of the matrimonial dispute between the duo, the applicant approached the Primary Court of Ukonga in Matrimonial Cause No. 202 of 2020. She petitioned for divorce, custody of children and division of matrimonial property.

When served with the petition of appeal, the respondent moved the District Court of Ilala in Misc. Civil Application No. 164 of 2020 to be pleased to transfer to itself the records of Matrimonial Cause No. 202 of 2020. His application was premised on the ground that he (the respondent) wanted to engage an advocate to represent him. On 13th August, 2020, the District granted the application in favour of the respondent.

However, neither the applicant nor the respondent informed the trial court about the said order. The parties addressed the trial court that they were ready to proceed with the matter. As a result, the matrimonial cause was heard by the trial court which was convinced that the marriage between the parties had not broken down irreparably. However, the trial court proceeded to make an order of separation for 8 months.

Aggrieved, the respondent appealed to the District Court. One of the grounds advanced by the respondent was to the effect that he was denied the right to legal representation due the trial court's failure to transfer the records to the District Court. In its judgment dated 21st May, 2021, the District Court reversed

the decision of the trial court. It found that the marriage had been broken down beyond repair on the ground of mental cruelty. In the end result, the District Court remitted the case file to the trial court which was ordered to grant a decree for divorce and make an order as to division of matrimonial properties.

In view of the foregoing, the applicant filed the present application for revision. For the reasons to be apparent in this ruling, I find it apt to reproduce the reasons for this application. The same were deposed in paragraph 16 of the supporting affidavit which is quoted hereunder:-

"16. That the proceedings and decision of the Ilala District Court ought to be revised by this Honourable Court as the same are laden with incurable irregularities and illegalities as under:

- a. The District Court erred in law in failing to address the propriety of the Primary Court's failure to honour its earlier order to transfer to itself the record in Matrimonial Cause No. 202/2020 from the trial Primary Court of Ukonga after it had granted the order of transfer dated 14/08/2020.*
- b. The having (sic) granted the order to transfer to itself the record in Matrimonial Cause No. 202/2020 from trial Primary Court of Ukonga for determination on merit to itself, the District Court erred in law in failing to address the grounds raised in the respondent's petition of appeal, particularly, ground No. 3 regarding non-compliance of its lawful order.*
- c. That upon deciding that the marriage between the parties had broken down irreparably, the District Court grossly erred*

in law in failing to exercise the jurisdiction it possess to vary the Primary Court's order of granting 8 months separation in order for divorce thereof.

d. That the District Court erred in law to remit back the trial court file back to Primary Court to proceed to grant a decree for divorce.

e. The District Court erred in law to raise new issues relating respondent's 'mental cruelty' suo motu at the tune (sic) of composing the judgment without involving the parties and ended up deciding the appeal on the strength of the raised new facts and denied the applicant's right to be heard.

f. That generally the District Court erred in law in failing to evaluate properly the whole evidence on records hence reached to an erroneous conclusion."

It worth noting here that, the application is being contested by the respondent who filed is a counter affidavit to that effect.

When the application came up for hearing, both parties had legal representation. Mr. Elisaria Masha, learned advocate appeared for the applicant, while the respondent was represented by Mr. Hamis Kijazi, learned advocate.

Before the hearing could commence on its merit, I wanted to satisfy myself on the competence of the instant application filed by the applicant who was a party to the proceedings before the trial court and the District Court.

Submitting on the issue raised by the Court, Mr. Mosha argued that the application is competent before the Court and that it was not an alternative to appeal. His argument was based on the contention that the provision of section 30 of the MCA empowers this Court to call for record of the primary court in order to satisfy as to its propriety or legality.

Mr. Mosha went on submitting that revision comes in when the right to appeal has been blocked. He was of the view that the applicant was blocked to appeal because the District Court had ordered the primary court to transfer the record to itself. Therefore, it was his submission that the application for revision was filed due to confusion in the proceedings of the lower courts. Alternatively, Mr. Mosha prayed that this Court to allow the applicant to file an appeal out of time.

On his part, Mr. Kijazi submitted that the application is misconceived on the account that the grounds for revision deposed in the supporting affidavit raise points of law which ought to have been raised in the appeal. Making reference to the District Court's judgment, the learned counsel submitted that parties were informed of their right to appeal. Referring the court to the cases of **Moses J. Mwakibete vs. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134, **Transport Equipment Ltd vs DB Valambia** [1995] TLR 161 and **Patrick Malogozi Mongela vs The Board of**

Trustees of Public Service Pension Fund, Civil Application No. 342/18 of 2019 (unreported), he argued that a party to the case cannot invoke revision as an alternative to appeal and that revision is exercised where an appeal has been blocked by judicial process. In that regard, the learned counsel moved me to strike out this application with costs.

In his rejoinder, Mr. Mosha urged me not to make an order as to costs on the reasons that this is a matrimonial matter and that there is a confusion on the record of the trial court. He contended that the authorities cited are distinguishable to the circumstances of this case because the provision of section 30 of the MCA were not discussed thereto.

Having considered the submissions by both learned counsel, it is common ground that this matter originates from the matrimonial proceedings between the parties herein. In terms of the chamber summons, the impugned decision was made by the District Court while exercising its appellate jurisdiction in matrimonial proceedings. It is also not disputed that in terms of section 30 of the MCA, this Court has revisional powers on the decision arising from the primary court. The issue is whether this Court can exercise its revisional jurisdiction in the circumstances of this case.

I agree with the learned counsel for both parties that, revision is invoked when the right to appeal has been blocked by judicial process. It is also trite law

that revision cannot be employed as an alternative of appellate power of the higher court. There is a plethora of authorities on that position, including the cases of **Moses J. Mwakibete** (supra) TLR 134 and **Transport Equipment Ltd** (supra) cited by Mr. Kijazi. For instance, in **Moses. J. Mwakibete's** case, the Court of Appeal observed that:-

“Before proceeding to hear such an application on merits, this court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by ss (3) were not meant to be used as an alternative to the appellate jurisdiction of this court. In the circumstances, this court, unless it is acting on its own motion, cannot properly be moved to use its revisional powers in ss (3) in cases where the applicant has the right of appeal with or without leave and has not exercised that option.”

The law is further settled that, the circumstances under which an aggrieved party may apply for revision in lieu of appeal are; where the lower court's record is called for revision by the higher court on its own motion; if there are exceptional circumstances; where matters complained of are not appealable with or without leave; or where the process of appeal has been blocked by judicial process. [See the case of **Halais Pro - Chemie vs Wella A. G.** [1996] T.L.R. 269].

In the instant case, the decision of the District Court in the exercise of its appellate jurisdiction in matrimonial proceedings originating from the primary court

is appealable under section 80 (1) and (2) of the Law of Marriage Act [Cap. 29, R.E. 2019]. Therefore, the applicant's right to appeal has not been blocked by judicial process. It is also on record that this Court did not call the lower record for revision. Further to this, the exceptional circumstances that warranting this Court to exercise its revisional powers were not deposed in the supporting affidavit. I also agree with Mr. Kijazi that, the proposed grounds raise points of law worth of consideration in the appeal. This is so when it is considered that the said grounds stems from the proceedings and or decision sought to be revised.

On the foregoing findings, I hold the view that this is not a fit case for the Court to exercise its revisional powers. Considering that applicant has not yet exhausted the remedies provided by law she cannot beseech the revisional jurisdiction. Thus, the application fails for being incompetent.

In the event and for the above reasons, I hereby strike out this application for being incompetent. This being a matrimonial matter, I make no order as to costs.

DATED at DAR ES SALAAM this 21st day July, 2022.



S.E. Kisanya
JUDGE

