

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CIVIL REVISION NO. 7 OF 2021

***(Arising from Decision of the District Court of Serengeti at Mugumu in
Matrimonial Appeal No. 03 of 2020)***

BETWEEN

MARWA MAGIGE..... APPLICANT

VERSUS

MWITA CHACHA MGENDI RESPONDENT

RULING

A. A. MBAGWA, J.:

This revision was opened by this court ***suo motu*** following the court order via its ruling dated 13th day of April, 2021 in PC Civil Appeal No. 4 of 2021.

The respondent, Mwita Chacha Mgendi instituted a Civil Case No. 54 of 2020 in the Primary Court of Mugumu. He was claiming for return of his dowry to wit; five herds of cattle. The respondent was married to the applicant's daughter one Esther Marwa Magige. He paid ten herds of cattle as dowry. However, their marriage lasted for only a year. It was the contention of the respondent that after their marriage was broken, his father-in-law namely Marwa Magige, the applicant returned five herds of cattle and promised that

he would give him the remaining five herds after his daughter married to another man. According to the respondent, his former wife one Esther Marwa Magige got married to another man in 2014 but the applicant declined to give him his remaining five cows.

The applicant, on his part, disputed the claims by the respondent. He said that he gave the respondent five herds of cattle instead of ten because his daughter stayed with and worked for him for one year. He denied that he promised to return another five cows. As such, the applicant stated that he did not owe the respondent any cow.

Having heard the evidence, the trial magistrate adjudged in favour of the respondent Mwita Chacha Mgendi. The trial magistrate ordered the applicant Marwa Magige to pay Mwita Chacha Mgendi five cows.

The applicant Marwa Magige was not amused by the verdict of the trial Primary Court. He thus appealed to the District Court to challenge the Primary Court's decision. Nonetheless, his appeal was unsuccessful as the appellate magistrate struck it out. The appellate magistrate stated that the applicant wrongly titled his appeal as Matrimonial Appeal No. 3 of 2020 instead of Civil Appeal.

The applicant was aggrieved by the decision of the District Court as such he filed PC Civil Appeal No. 4 of 2021 before this Court. However, the court found the appeal out of time but for interest of justice it directed to open a revision hence the present application.

Parties argued the matter by way of written submissions. I have keenly gone through the record and written submissions by the parties. The central issue for determining this revision application is whether the decision by the appellate magistrate to strike out Matrimonial Appeal No. 3 of 2020 on the ground that it was wrongly titled was correct.

It is now a trite law that courts should not be tied up by technicalities while dispensing justice. This is the import of introducing the overriding objective rule in our laws. See sections 3A and 3B of the Civil Procedure Code and **Yusuf Nyabunya Nyatururya vs. Mega Speed Liner Ltd and Another**, Civil Appeal No. 85 of 2019, CAT at Zanzibar.

According to the record, the said Matrimonial Appeal No. 3 of 2020 was filed in time. The only fault was that it was titled as Matrimonial Appeal instead of Civil Appeal. Alive to the overriding objective principle and taking into account that the parties were not represented, it is my considered opinion that the anomaly was not fatal.

In view of the above, I set aside the order striking out Matrimonial Appeal No. 3 of 2020 dated 15/10/2020 by Hon. I. E. Ngaile SRM. The District Court is directed to correct Matrimonial Appeal No. 03 of 2020 and make it read Civil Appeal and proceed to hear the appeal on merits. The appeal should bear a number following the current Civil Case register.

The case file should be remitted to the District Court of Serengeti and be heard on merits. Each party should bear its own costs.

It is so ordered.

The right of appeal is explained.




A. A. Mbagwa

JUDGE

12/09/2022