

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)
AT MWANZA

CIVIL REVISION No. 05 OF 2022

*(Arising from the Decision of the Nyamagana District Court in Misc. Civil Application
No. 57 of 2021 dated 04th April 2022)*

WILLIAM ZEPHANIAH WAITOGE APPLICANT

VERSUS

ISSACK MAIKO IGWENA RESPONDENT

RULING

19th & 23rd September, 2022

M.P. OTARU, J.

Before this Court is an application to revise the decision of the District Court of Nyamagana in Misc. Civil Application No. 57 of 2021 which ordered the transfer of Proceedings of the Mwanza Urban Primary Court, Civil Case No. 533 of 2020 from the Primary Court (the trial court) to the District Court.

The Application has been preferred by way of Chamber Summons under the provision of *Section 31(2)* of the Magistrates Courts Act, Cap. 11 of the Laws of Tanzania, praying to this Court to revise the District Courts proceedings, decision and orders in Misc. Civil Application No. 57 of 2021, quash them and make appropriate orders, due to material

errors on the record. The Application is supported by the Affidavit of the Applicant, *William Zephaniah*.

The facts constituting the basis for this Application are that the Applicant sued one *Sabina Sorongai* in the trial court. The matter was in respect of T.Shs 7,500,000/= that *Sabina Sorongai* owed him. It is on record that the Respondent was summoned but decided not to appear, as such, the matter was heard and decided *ex-parte* in favour of the Applicant. While the Applicant was in the process of executing the Decree, one *Issack Maiko Igwena*, the Respondent herein filed Application No. 57 in the District Court of Nyamagana praying for proceedings of the trial court to be transferred to the District Court of Nyamagana. The Application was granted on 22nd March 2022, thus this review.

When the matter came for hearing before this Court, the Applicant appeared in person with evidence that the Respondent had refused service of the Summons. Considering that the Respondent chose to forfeit his right of being heard, the Court proceeded to hear the Application *ex-parte*.

Arguing in support of the Application, the Applicant contended that in the District Court, he informed the magistrate that judgment was already delivered by the Primary Court which had jurisdiction to hear the matter. He further contended that judgment was delivered on 5th

February 2021 and that he was in the process of executing the Decree when the Respondent filed the transfer Application in the District Court. That, the District Court ignored the fact that the trial court had concluded the case, and continued to transfer the proceedings as prayed by the Respondent.

The Applicant further contended that the Respondent one *Isaack Maiko*, is a stranger to the proceedings because the original case was against *Sabina Sorongai*, therefore, the District Court should not have entertained the Application. He concluded his submissions by a prayer to quash the decision of the District Court and confirm the decision of the trial court.

Having heard the Applicant's submission, it is my duty to determine whether the Application carries any merit or otherwise.

The Application stands mainly on the question whether the District Court had mandate to transfer the case in question from the trial court therefore the question of parties has not been dwelled on much.

The Application before the District Court was filed under Section 47(1)(b) of the Magistrates' Courts Act Cap. 11 of the Laws of Tanzania. The Section mandates the District Court to transfer proceedings pending before the Primary Court to the District Court or Court of Resident

Magistrate at any time *before judgment*. As contended by the Applicant, the record indicates that the trial court delivered its judgment on 5th February 2021 and the Application was filed in the District Court on 13th July 2021. Meaning that when the Application to transfer proceedings of the trial court was filed, the decision of the same had been in existence for over five months.

There is no doubt that the Application was filed in the District Court while the proceedings had already been concluded and judgment delivered by the trial court. As a result, there were no proceedings capable of being transferred to the District Court.

The available remedies to the aggrieved party would have been to file an appeal, review or revision, as applicable, against the trial court's decision rather than requesting for transfer. It is also not clear how the Respondent turned out to be *Issack Maiko* instead of *Sabina Sorongai*. If the intention was to challenge execution of the decree, this was not a proper way of doing so. In any case, evidently, the District Court had no mandate to transfer the matter from the trial court, or even consider it at all, therefore this Application has merits.

Consequently, the Application is allowed. The proceedings, decision and order of the District Court in Misc. Civil Application No. 57

of 2021 to transfer Civil Case No. 533 of 2020 from Mwanza Urban Primary Court to the District Court of Nyamagana District, are hereby quashed and set aside. The decision of Mwanza Urban Primary Court, Civil Case No. 533 of 2020 is confirmed. Execution of the decision in Civil Case No. 533 of 2020 to proceed without further delay.

The Respondent to pay the Applicant's costs of this Application.

It is so ordered.

DATED at **MWANZA** this 23rd day of September, 2022.



M. Otaru
M.P. OTARU
JUDGE
23/09/2022

This ruling is delivered under my hand and the seal of this Court this 23rd day of September, 2022 in the presence of the Applicant who has appeared in person and unrepresented.

The right of appeal is duly explained.

M. Otaru
M.P. OTARU
JUDGE
23/09/2022