

**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. 2 OF 2022

AMIR R. ABDALLAH APPLICANT

VERSUS

MOHAMED A. WADI RESPONDENT

**[Arising from the decision of the Resident Magistrate's Court of Dar
es Salaam at Kisutu in Mic. Civil Application No. 93 of 2021]**

RULING

5th and 31st August, 2022

KISANYA, J.:

The applicant has filed an application for revision of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Mic. Civil Application No. 93 of 2021. Contesting the application, the respondent filed a notice of preliminary objection on the following of point of law:

- 1. The application before the Honourable Court is incompetent for being preferred as an alternative to appeal.*

When the application came up for hearing on the 14th day of July 2022, it was resolved that the preliminary objection be disposed of by way of written submission. Mr. Florence Tesha, learned advocate for the respondent filed written submission in support of the preliminary objection,

while the submission against the preliminary objection was filed by Mr. Protace Kato, learned advocate for the applicant.

In his submission in chief, Mr. Tesha added an additional point of law in the following terms:

"This Court has no jurisdiction to entertain this application in which its prayer on substance of the application is time barred, hence the same ought to have been dismissed with costs."

Starting with the first point of objection, Mr. Tesha's argument that the present application does not meet the criterion for revision set out under section 79 of the CPC and section 144 of the MCA. He further argued that much as the applicant intends to challenge the decision of the trial court, the proper recourse is to file an appeal and not revision. To support his argument, he cited the case of **Transport Equipment Ltd vs Devram P. Valambia** [1995] TLR 161 where it was held among others that, if there is a right of appeal then such right has to be pursued and, expect for sufficient reason amounting to exceptional circumstances.

Submitting in support of the second point of objection, Mr. Tesha argued that section 96 of the Penal Code can be invoked at any time. However, he submitted that an application for correction of the decree is subject to the law of limitation if it aims at amending the decree by adding

new issue. It was further submitted that the time within which to file the said application is 30 days. In that regard, Mr. Tesha submitted that the present application for revision is untenable on the account that the applicant has moved this Court to revise the ruling which was based on the application that was time barred. To bolster his argument, Mr. Tesha cited the case of **Jewel & Antiques (T) Ltd vs National Shipping Agencies Co. Ltd** [1994] TLR 107, **Morital B. Publishers vs Standard Chartered Bank** [2006], High Court of India at **Delhi and Letang vs Copper** [1964] 2 ALL ER 929. It was therefore, his contention that the present application contravenes the law.

In the light of the foregoing submission, the learned counsel moved this Court to dismiss the application with costs.

Mr. Kato prefaced his submission in rebuttal by contending that the points of law are misconceived and have no legs to stand on. Countering the first point of objection, the learned counsel submitted that the respondent has not demonstrated how the present application is incompetent and how the case of **Transport Equipment Ltd** applies to the issue under consideration. Referring the court to sections 95 and 96 of the CPC, the learned counsel argued that the trial court had mandate to correct the accidental slip in the decree extracted from the judgment.

Therefore, it was his submission that much as the court failed to exercise its jurisdiction, the applicant was entitled to file the present application under section 79(1)(b) of the CPC.

In his further submission, Mr. Kato contended that the respondent had not cited the provision of law which requires the applicant to lodge an appeal and not revision against the ruling subject to the matter at hand. Making reference to Order XL Rule 1 and section 74 (1) of the CPC, and the cases of **Joseph Mwita Magige vs Mokami Werema Gesaya**, Misc. Land Appeal No, 582 of 2020, HCT at Musoma and **Joram Emanuel Gagala vs Emmanuel Mkongo**, Civil Appeal No. 33 of 2020, HCT at Arusha (both unreported), the learned counsel argued that the impugned ruling or order is not appealable and thus, the remedy available to the applicant is to file revision.

On the second point of objection, Mr. Kato submitted that it is misconceived. He was of the view that the said objection ought to have been raised during the hearing of the application in which its decision is subject to revision at hand. It was his further argument that this application was filed in time and that it is not an application for review. That being the case, he was of the view that the case of **Jewels & Antiques (T) Ltd** (supra) is not applicable in the circumstances of section

96 of the CPC. That said, the learned counsel implored me to dismiss the objection with costs for want of merits.

In his rejoinder, Mr. Tesha reiterated that the applicant had an opportunity to appeal against the decision of the trial court on the account that the decision finalized the matter before it. Therefore, he submitted that the present application does not fit with the special circumstances under which the Court can exercise its revisional jurisdiction. As regards the case of **Joseph Mwita Magige** (supra), he submitted that it dealt with appeal against execution order which is not the case at hand. With respect to the case of **Joram Emmanuel Gagala** (supra), he submitted that the Court held that section 74(1) and Order XL of the CPC are not exhaustive on appealable orders. Referring to section 74(2) of the CPC, he argued that the impugned decision is appealable because it finally determined the suit before the trial court.

Responding to the applicant's submission against the second limb of objection, the learned counsel reiterated his submission in chief that this Court has no jurisdiction to entertain the application in which its prayer and substance of the application is time barred. He therefore asked me to dismiss the same in its entirety with costs.

Having dutifully considered the rival submissions and arguments made by the counsel for parties, the ball is now on the Court to determine whether the objections have merits.

With respect to the first point of objection, I agree with Mr. Tesha that the settled law in country is to the effect that revision is not an alternative to appeal. Therefore, where there is a right of appeal, such right must be exercised first before resorting to filing of an application for revision. However, the law recognizes that for sufficient reason amounting to exceptional circumstances, this Court may exercise its revisional jurisdiction even if the party has not exercised his right of appeal. I am fortified, among others, by the case of **Transport Equipment Ltd** (supra) referred to me by Mr. Tesha.

In the light of the above position, the first point of objection requires us to consider whether the ruling subject to this application is appealable. As rightly submitted by Mr. Kato, appealable orders are set out under section 74(1) and Order XL, Rule 1 of the CPC. And parties are at one that, the impugned ruling was made by the trial court in the exercise of its powers under section 96 of the CPC. Now, reading from section 74(1) and Order XL of the CPC, I agree with Kato that, an order made under section 96 of the CPC is not listed as one of the appealable orders. That being the

case, such decision is not appealable even if the matter was finally determined by the trial court. The authorities relied upon by Mr. Tesha are not applicable in the case at hand. None of the cited decisions suggest that an order made under section 96 of the CPC is appealable. On the reasons advanced herein, I find no merit on the first point of objection.

Moving to the second point of objection, this Court was invited to hold that it has no jurisdiction to entertain the application on the account that it is based on the prayer which is time barred. I was then inclined to go through the chamber summons. As hinted earlier, the Court is asked to call for and examine the record of the trial court for purposes of satisfying itself as to correctness, regularity, legality or propriety of the decision on correction of the decree and revise the same. Mr. Tesha did not address the Court on how the Court has no mandate to determine the application at hand. His submission was grounded on the contention that the prayer for correction of decree is time barred and ought to have been dismissed. With respect, the issue whether the prayer before the trial court was time barred cannot be determined at this stage. It is not disputed that the trial court heard and dismissed the applicant's prayer for correction of decree. Since the said application was determined on merit, one of the issues which may be determined in the application for revision is whether the

application before the trial court was time barred. For that reason, I find no need of discussing the said issue at this stage.

In the upshot, both points of objection are hereby overruled and dismissed for want of merits. Consequently, the application will be heard on merit, while the costs shall follow the event.

It is so ordered

DATED at DAR ES SALAAM this 31th day of August, 2022.



S.E. Kisanya
JUDGE