

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

CIVIL REVISION NO. 10 OF 2022

(Originating from the ruling of the Resident Magistrate's Court of Mwanza at Mwanza in Execution No. 10 of 2022 Hon. M.O. Ndyekobora – RRM)

ACCESS BANK TANZANIA LTD

(Now known as ACCESS MICROFINANCE BANK TZ. LTD.....APPLICANT

VERSUS

ASHIF FATEHAL LADHANI.....RESPONDENT

RULING

20th & 27th September, 2022

DYANSOBERA, J.:

The applicant herein has filed this application praying for the following orders:

1. That the Honourable Court be pleased to exercise its revisionary and supervisory powers to call for and call for and examine on propriety, legality and correctness of the ruling and order issued by Hon. M.O. Ndyekobora, PRM in Execution No. 10 of 2022 in the Resident Magistrate's Court of Mwanza at Mwanza delivered on the 29 day of August, 202
2. Costs of this application be provided for
3. Any other reliefs

The application has been preferred under section 79 (1) (c) and 95 of the Civil Procedure Code [Cap. 33 R.E.2019] together with any other enabling provisions of the law.

The application is made by way of a chamber summons and supported by an affidavit sworn by Patrick Suluba Kinyerero, learned Counsel for the applicant.

The respondent, through the counter affidavit deposed to by Mr. Frank Kalory John, his learned counsel, has opposed the application.

Having meticulously considered the application and its submissions of learned counsel for the parties, I am in no doubt that the application on hand is misconceived and lacks legal merit. The application on hand is misconceived and lacks legal merit. The application has been made under the provisions of section 79(1)(c) and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019].

It is provided by that section as hereunder:-

"79 (1) the High Court may call for the record of any case which has been decided by any court subordinate to it and which no appeal lies thereto, if such subordinate court appears to have:

- a. Exercised jurisdiction not vested in it by law,
- b. Failed to exercise jurisdiction so vested,

- c. To have acted in the exercise of its jurisdiction illegally or with material irregularity.

I have considered both the applicant's affidavit and the submission on his part, nowhere has he attacked the jurisdiction of the trial Court by showing either that it exercised jurisdiction not vested in it, failed to exercise jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity.

Further, it is an established principle that where there are specific issues calling for determination, the court cannot resort to its revisional powers. This principle was echoed by the Court of Appeal of Tanzania in the case of **Mwanahawa Muya v. Mwanaidi Maro** [1992] TLR 78 (CA) in which when dealing with that aspect, had this to say:-

"It is wrong, indeed improper for the High Court to resort to its revisional powers where there are specific issues calling for determination by the court."

Such issues as far as this matter is concerned are whether an appeal can in law operate as a stay of execution and whether it is proper for the executing court to stay execution in the absence of an order to that effect.

It is on record that this application has also been filed under Section 95 of the Civil Procedure Code. The application of this section was succinctly elaborated by the Court of Appeal in the case of **Tanzania Electric Supply Co. Ltd (TANESCO) versus Independent Power Tanzania Limited (IPTL) and 2 others** [2000] TLR at page 324. Under (iv) at page 327 the court of appeal had this to say:

"Section 95 of the CPC does not confer any jurisdiction to the High Court or Courts subordinate there. What it was intended to do, and does, is to save inherent powers of those courts. The section is in no doubt, a powerful provision, but it is not a panacea for all ill in the administration of justice in Civil Cases. The power granted by this section is intended to supplement other provisions of the code not to evade or ignore them or to invent a new procedure according to individual sentiments. So, S. 95 of the Code, Prima facie, constituted no authority to the High Court to entertain the respondent company application".

Since the substantive section, that is section 79 (1) (c) of the Civil Procedure Code has been found to have been misconceived, then Section 95 of the Civil Procedure Code can be of no assistance to the applicant.

For the reasons I have stated above, the application for revision falls away and it is, accordingly, dismissed with costs to the respondents.

However, in view of the fact that there are two matters, that is an appeal and an application for stay of execution which are pending before me, I order that the *status quo ante* be preserved pending the hearing and determination of the said matters.


W.P. Dyansobera

Judge

27.9.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 27th day of September, 2022 in the presence of Mr. Patrick Suluba Kinyerero, learned Counsel for the applicant and Mr. Sekundi B. Sekundi, learned Advocate for the respondent.

Rights of appeal to the Court of Appeal explained.




W.P. Dyansobera

Judge