

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOB A

CIVIL REVISION NO. 7 OF 2022

(Arising from Civil Appeal No. 26 of 2022 of Bukoba District Court, originating from Civil Case No. 315 of 2022 of Bukoba Urban Primary Court)

BINAMUNGU BUCHWECHWE.....APPLICANT

VERSUS

GRACE K. MUTAKYAWA.....RESPONDENT

RULING

*05/12/2022 & 12/12/2022
E. L. NGIGWANA, J.*

This is a revision *suo motu* initiated by this Honourable Court pursuant to the complaint letter titled " *MALALAMIKO DHIDI YA MWENENDO WA SHAURI LA RUFAA NO. 26/ 2022*" lodged by the Applicant herein before this court and received on 25/11/2022. The case file was assigned to me on 28/11/2022 by the Hon. Judge Incharge.

Following the said complaint which its detailed explanation will be availed later, the notice of hearing to both parties was effectively served and both parties attended and appeared together with their advocates before me. Before I explore the submissions advanced by both parties' advocates it is imperative to briefly recapitulate the root of the current revision.

The Applicant in this revision Binamungu Buchwechwe was sued by the respondent Grace K. Mutakyawa for the breach of contract of a motorcycle which was entrusted to him for the period of one year in agreement that

the applicant was to pay **Tshs. 7,000/=** Per day which is equivalent to **Tshs. 2,552,000/=** per year commencing from 17/07/2017 ending 17/07/2022.

The respondent claimed to have only received Tshs.1,865,000/= and therefore, in breach of contract as the outstanding balance of **Tshs. 665,000/=** was not paid up to to the finalization of a contract. The value of the motorcycle was estimated to be **Tshs. 3,000,000/=**.

The primary court after hearing the parties, was convinced that the respondent had proved her claims to the required standard and therefore ordered the applicant to hand over the said motorcycle to the respondent within three days from the date of the judgment.

The primary court judgment was not well received by the applicant therefore, he appealed to the District Court of Bukoba. The District Court (Before Flora Kaljage-RM) after hearing the parties, dismissed the appeal for want of merit and gave ancilliary orders viz;

- 1. The appellant to hand over the said motorcycle registration number MC. 3445 CUP, BAJAJ BOXER – BLACE, Chasis number MDZ A18A XXL W2J89375 to the appellant (sic), within two days from this day.*
- 2. The appellant to pay **Tshs. 665,000/=** being unpaid installments to the appellant within one month from this day.*
- 3. The appellant to pay **Tshs. 420,000/=** to the appellant being the loss accrued from the appellant's refusal to hand over the said motorcycle after the end of their contract, within two months from this day.*

On 23/11/2022, the respondent through his advocate Jovin Rutainunulwa returned to the District Court before the same Hon. Magistrate who heard an appeal and report that the orders through the judgment were not complied with by the applicant.

The respondent through her advocate Anesius Stewart were summoned and appeared to show cause why the court should not enter contempt of court orders. It was advocate Anesius Stewart's argument that; there was no proper execution proceedings for the applicant to hand over the motorcycle and that the District Court was not an executing court save the primary court where the case was tried.

After a long dialogue , the District Court on 25/11/2022 (Before the same Magistrate) gave another ruling with the quoted order;

"Under rule 58 (4) of the Magistrates Courts (Civil Procedure in Primary Courts) Rules GN. 310/1966, I order the Court Broker registered to seized (sic) the said motorcycle Reg. No. MC 3445 CUP, BAJAJI Boxer black Chassis number MDZ A18A XXL W2J89375 and hand over to the respondent within forty eight hours from now.

The order which is the center and root cause of the complaint letter.

I therefore invited the advocates to address me. Advocate Anesius Stewart faulted the District Court order of seizing the motorcycle that it was illegal as the District Court before **Hon. Flora Kaijage** which determined an appeal from Primary Court was not an executing court rather the appellate court thus, after determining the appeal, the file was to be returned to the trial court (The Primary Court).

To his riposte, Advocate Rutainunulwa equally agreed that this court should nullify the order of the District Court dated 26/11/2022 as the Appellate court could not have executed its orders for the case which was originating from Primary Court but he had different views concerning the orders which originated from the District Court appeal judgment dated 17/11/2022 as he prayed that the said order should remain intact so that the case file be returned to the executing court.

Now, after hearing the oral submissions from both sides, the duty of this court is to inspect the record of the District Court so as to satisfy itself as to its correctness, legality or propriety of a impugned decision or order. This court is also mandated to look if there were any irregularity in the proceedings which is subject to impunity or otherwise. The said duty is derived from the dictates of section 30 of the Magistrates' Courts Act, [Cap 11 R.E 2019] concerning supervisory and revisionary powers of the High Court over the subordinate courts.

The takeoff point is Rule 5 (4) of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules GN 310/1966 which was relied by the appellate Magistrate in her complained order which provides as quoted that:

"If the person in occupation of the land or in actual possession of the property fails to appear or having appeared fails to show cause to the contrary, the court may direct an officer of the court to evict such person from the land or to seize the property, as the case may be and to deliver the same to the party to whom it was awarded."

All parties' advocates were at one that the order dated 26/11/2022 by the appellate Magistrate was illegal. I agree with the unanimous submission by

both learned counsels. With due respect to the appellate magistrate, the above order was illegal and bad in law on the following reasons I now endeavour to advance as hereunder:-

One, The matter was tried in the Primary Court and appealed to the District Court upon which after the appellate Magistrate in the District Court had determined it and thereby giving her decision and orders, was supposed to return the case file to the trial Primary Court to continue with execution proceedings as the District Court/Magistrate was not executing Court in the circumstances. In other words, the appellate Magistrate was not an executing officer.

Two, rule 58 (4) the Magistrates' Courts (Civil Procedure in Primary Courts) Rules GN 310/1966 was wrongly invoked by the appellate Magistrate as the said law is not applicable in the District Court. Rule 3 of the same GN 310/1966 expressly provides, as quoted here under that:

"These Rules shall apply to all proceedings of a civil nature in a primary court."


Rule 2 of the interpretation clause in the same law defines a court to mean **a primary court**. It was therefore wrong for the Magistrate sitting in District Court having completed her duty of composing a judgment on appeal to continue holding a case file in her custody and to turn such a court to be a Primary Court and assume execution jurisdiction/powers which in fact does not have.

What the Magistrate did was actually to usurp powers and acting ultravires which does not augur good administration of justice. I say so because administratively, after delivering her judgment on appeal, her duty ended

there. She was therefore supposed to return the case file to the Resident Magistrate in-charge of the District Court so that he may cause the file to be returned to the Primary Court Magistrate in charge for execution steps. Resident Magistrates in the District Courts are reminded to observe and comply to the court practice and legal procedures so as to avoid chaos which would result in delay of justice and also unnecessary complaints in the administration of justice.

In the event, this court quashes the purported execution proceedings of the District Court and the resultant purported execution order dated 26/11/2022 which appointed the Court Broker to seize the said motorcycle and hand over to the respondent within forty eight hours from the date of such order. I further order the trial case file to be immediately returned to the trial court for necessary execution orders unless it is lawfully withheld in this registry for another lawful cause. It is so ordered.

Dated at Bukoba this 12th day of December, 2022.



E. L. NGIGWANA
JUDGE
12/12/2022

Ruling delivered this 12th day of December, 2022 in the presence of both parties in person, Mr. Rutainulwa, Advocate for the respondent, Hon. E.M. Kamaleki, Judge's Law Assistant and Ms. Lonsia Kyaruzi, B/C.



E. L. NGIGWANA
JUDGE
12/12/2022