

**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

24th October & 8th December, 2022

KISANYA, J.:

This application for revision is made under section 79(1)(b) of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC) and section 43 (3) and 44(1)(b) of the Magistrate's Courts Act, Cap. 11, R.E. 2019 (the MCA). It is preferred against the ruling of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Misc. Civil Application No. 93 of 2021.

Supporting the application is an affidavit of Protace Kato Zake, counsel for the applicant. On the other hand, the application has been opposed by the respondent, through the counter affidavit of Florence Alyoce Tesha, learned advocate.

The factual account underlying this application is to the effect that: The applicant was the plaintiff in the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 306 of 1999. He sued the respondent claiming to be the lawful owner of a piece of land described as Plot No. 843, Block "H", Mbezi Medium Density. The respondent disputed the applicant's claim. He alleged that the disputed land was not Plot No. 843 but Plot No. 841 which was renamed latter as Plot 2015.

Having examined the adduced evidence, the learned trial Resident Magistrate held the view that the correct number of Plot was 843 and not 841. He also arrived at a finding that the applicant was the lawful owner of Plot No. 843 Block 11 or Plot No. 2015 Block H, Mbezi Medium Density in Dar es Salaam City.

It turned out that the applicant failed to execute the decree on the account that the decree extracted from the judgment did not reflect the trial court's findings. He therefore applied before the trial court for correction of the error in the decree to include the words "or Plot No. 2015 Block H Mbezi Medium Density Dar es Salaam" which were not included in the decree.

Having considered the recorded and arguments by the counsel for the parties, the trial court refused to exercise his powers under section 96 of the CPC on the ground that the said provision was not the in application.

Not amused, the applicant has filed the present application for revision on the reason that the refusal by the trial court to exercise its jurisdiction to amend the decree has rendered the judgment of the trial court nugatory and that he cannot execute the same.

At the hearing of the application, the applicant was represented by Mr. Protace Kato, learned advocate, while Mr. Florence Tesha, also learned advocate, represented the respondent. -With leave of the court, both learned counsel filed their respective written submissions for and against the application.

In his written submission, Mr. Kato started by stating the basis of the application and prayers as stated in the chamber summons and affidavit. He submitted that the application filed before the trial court was made under section 96 of the CPC which empower the trial court to correct clerical or arithmetical mistake in judgments, decree or order or errors arising therein from any accidental slip or omission in order to represent the true and correct state of affair in the decree found in the judgment. He then prayed to adopt the contents on the chamber summons and supporting affidavit as part of his submission and urged the Court to grant the application.

In his further submission, Mr. Kato faulted the learned trial magistrate for holding that section 96 of the CPC does not extend to include the correction alleged to be accidental on the reason that it was not pleaded in

the plaint. His argument was based on the ground that the application was based on the finding of the trial court after framing issues.

It was his further submission that had the trial court properly extracted the decree reflecting the proceedings or judgment, he wouldn't have complained on the omission. Making reference to the trial court's judgment on determination of the framed issues, he submitted that Plot No. 843 is one and the same Plot No. 2015. Therefore, he was of the view that the plot numbers ought to have appeared in the decree to reflect the record of the trial court.

Mr. Kato was alive to the position of law on amendment of pleadings and decree. However, he submitted that there are circumstances under which a decree on issue which has not been pleaded can be issued. To expound his argument, the learned counsel cited the cases of **Agro Industries Ltd vs Attorney General** [1994] T.L.R. 43 and **Jovet Clavery Rushaka & Another vs Bibiana Chacha**, Civil Application No. 236 of 2020 (unreported).

Mr. Kato further submitted that the respondent filed a counter-claim claiming to own Plot No. 2015 on which the applicant had trespassed. He also contended that the correction of decree would not have prejudiced the respondent but to put the trial court's record in order as provided for under section 96 of the CPC. For that reason, he argued that there was no need of the applicant to seek for amendment of pleadings or review.

The learned counsel went blaming the respondent's counsel for misleading the trial court on the decision of the Court of Appeal in **William Getari Kegere vs Equity Bank and Another**, Civil Application No. 24/18 of 2019.

He submitted that the accurate record of the proceedings included the judgment, decree and its orders. Therefore, he submitted that failure to include the finding when extracting the decree is accidental omission which the trial court had jurisdiction to correct under section 96 of the CPC. To bolster his argument, he cited the case of **Modest Joseph Temba vs Bakari Seleman and Chiku Salum (as joint administrators of the Estate of the Deceased Ashura Kongoro)** and Another, Civil Application No. 223/17 of 2019 (unreported) and Mulla on Civil Procedure, 15th Edition by P.M. Barksh, Vo. 1.

Making reference to the ruling of the trial court, Mr. Kato submitted that the trial court was duty bound to correct the order in the decree to confirm with the judgment in that the disputed plot was Plot No. 843 or 2015. He was of the view that the defect could not have been resolved by way of review. He invited this Court to consider the case of **Johwara Castor Kiiza vs Accer Petroleum (T) Limited** (unreported) where the application for correction of error was granted. Citing further the provision of Order XX Rule 6(1) of the

CPC, he prayed that the application for revision be granted and that the finding of the trial court be added in the decree.

Responding, Mr. Tesha submitted the issue for consideration is whether the trial court acted contrary to section 96 of the CPC by rejecting the Applicant's application to amend the decree issued to include another plot number. He also adopted the counter affidavit filed in opposing the application to form part of his submission.

Mr. Tesha was of the further view that, it is imperative to examine whether the execution court acted under section 96 of the CPC. He argued that the motive behind section 96 of the CPC founded on the maxim "*actus curiae neminem gravabit*" that no man would be punished on omission or act of court failure to discharge its obligation properly. He then cited the famous jurist Sir Dinshaw Farnduji Mulla in his book titled "*The Code of Civil Procedure*", 17th Edition, on applicability of section 152 of the India Civil Procedure Code which is *pari materia* to section 96 of the CPC. Further to this, he submitted that the above provision has received judicial interpretation in many authorities including **Stanlay Runyonyo vs Ms Compass Construction Co. Ltd**, Civil Appeal No. 31 of 2020 (unreported) and **William Getari** (supra).

Basing on the position stated in the said case, Mr. Tesha contended that the orders sought by the applicant did not result from the omission done

by the trial court or its officer. His argument was based on the following reasons:

One, the impugned decree was based on the particulars of the claim pleaded in the plaint thereby complying with Order XX Rule 6 of the CPC. That being the case, he was of the view that it is verily wrong at this moment to cast blame on the trial court to forget to include, Plot No. 2015, Block H Mbezi Medium Density in the decree.

Two, the mistake in the decree if any, did not result from the trial court, rather, from the applicant himself. This reason was based on the ground that, during the hearing, the applicant did not pray to amend the plaint to include the plot number sought to be added in the decree. It was argued that the applicant cannot rely on what was pleaded in the written statement because parties are bound by their own pleadings. To substantiate his argument, he cited the case of **Gitahi and Another vs Maboko Distributors Ltd and Another** (2005) 1 EA. It was therefore his contention that granting the order sought by the applicant at execution stage will amount to granting an order of amendment of the applicant's plaint or pleadings, which is not right in law and in merit.

Three, that failure to execute the decree which was issued based on the claim presented in the plaint is not a good ground to amend the decree to enable the decree holder to execute the decree. To support this argument,

the learned counsel referred this Court to the case of **Mapalala vs British Broadcasting Corporation** (2002)1 EA 132.

Four, that the application presented at the execution court was time barred. At the outset, the learned counsel submitted that an application made under section 96 of the CPC can be filed at any time. However, he argued that the present application was presented at the execution court and thus not falling under the provision of section 96 of the CPC. His submission was based on the reason that there was no slip of pen in issuance of the decree. It was also his contention that the applicant was seeking for an order of review of decree using the back door, which was required to be filed within 30 days from the date of decision. To support his contention, he cited the case of **Jewel & Antiques (T) Ltd vs National Shipping Agencies Co. Ltd** [1984] TLR 107.

In the light of the foregoing, Mr. Tesha asked this Court to uphold the decision of the execution court and dismiss the Applicant's application with costs.

In rejoinder, Mr. Kato submitted that the applicant's application for correction of decree was filed before the trial court and not the executing court. He reiterated his submission in chief that the trial court is enjoined to amend or vary a decree where the decree or order does not correctly state

what was actually decided and intended in the judgment and where there has been accidental slip or omission.

On the contention that decree was based on particulars of the claim pleaded in the plaint, he urged this Court to consider Order XX rule 6(1) which requires the decree to specify the relief granted or other determination of the suit. On that account, he argued that the trial court ought to have corrected the decree to reflect the true record. His submission was based on the reason that the trial court omitted its determined finding that the land in dispute was "Plot No. 843 or 2015 Block H Mbezi Medium Density.

As for the contention that the applicant had failed to execute the decree, Mr. Kato submitted that this was not a case for review but correction of decree to cure the omission. Further, he submitted that the application was filed under section 96 of the CPC and not Order XLII Rule 2 of the CPC which deals with review. He was of the view that the case of **Jewels & Antiques (T) Ltd** (supra) supports the applicant's position. He reiterated his prayer that the application be granted.

I have considered the submissions and the cited authorities by the learned counsel for both parties. I appreciate the work demonstrated and presented by both counsel in support of their respective positions.

First for consideration is Mr. Tesha's argument in his submission in reply that the application presented before the trial court was time barred. I am

alive to the position that the issue of time limitation goes to the root of the case. This is so when it is considered that courts have no jurisdiction to determine a matter filed out time. For that reason, I agree with Mr. Tesha that the ground of time limitation can be raised at any stage of the proceedings.

As indicated earlier, the learned counsel conceded that an application preferred under section 96 of the CPC is not subject to the law of limitation. This position was held in the case of **Jewels & Antiques (T) Ltd** (supra), when the Court of Appeal underscored as follows:

“On our part we are satisfied that the phrase ‘at any time’ means just that, ‘at any time’. Subject to the rights of the parties, there should be no point in limiting the time in which to correct such innocuous mistakes or errors which are merely clerical or arithmetical with absolutely no effect on the substance of the judgment, decree or order.”

His argument that the application was time barred is based on the reasons that it was presented at the court and that the applicant applied for review through the back door. Reading from the record, I respectfully disagree with him on that point. The record displays that the application which gave rise to this matter was made under sections 95 and 96 of the CPC. The main reliefs sought before the trial court were, correction of the incidental slip in the decree extracted from the judgment of the Civil Case No. 306 of

1999; and correction to the typographical error in the decree extracted from the judgment in respect of the month on which the judgment was delivered. Considering that the application was not made in the execution proceedings, I am at one with Mr. Kato that, it was not presented before the executing court. Further to this, nothing to suggest that the reliefs sought were for review in order for the law of limitation to apply. It was the duty of the trial court to consider whether the application fits under section 96 of the CPC. For the foregoing, the ground that the application presented before the trial court was time barred lacks merit. It is hereby dismissed.

Reverting to the merit of this application for revision, the main borne of contention is whether the trial court erred to reject the application to amend the extracted decree to include another plot number. Before moving any further, I find it apt, for ease of reference to reproduce the relevant prayer as stated in the chamber summons presented before the trial court. Prayer (a) reads:

"This honourable court may make correction of the accidental slip in the Decree extracted from the judgment of Civil Case No. 306 of 1999 delivered on 21st February, 2011 by adding in its first order words "or Plot No. 2015 Block "H" Mbezi Medium Density Dar es Salaam".

It is worth noting here that, the application on the said relief was made under section 96 of the CPC which provide for amendments of judgments, decrees or orders. The section stipulates:

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties."

As it can be glanced from the above cited provision, the court has discretion to correct the judgment, decree or order. It follows therefore that this application revolves around the exercise of discretion by the trial court. It is settled law that a superior court can interfere with the exercise of discretion by a court subordinate to it on the following grounds: *One*, where the lower court misdirected itself; *two*, when the lower court acted on matters which it should not have acted; and *three*, where the lower court failed to take into consideration matters which it should have considered thereby arriving at a wrong finding. [See **Yese s/o Gewe vs R**, Criminal Appeal No. 48 of 2019].

In the instant case, the learned counsel are at one that the provision of section 96 of the CPC is aimed at a party to the case not being punished on omission or act of the court on failure to discharge its duty properly. However, as rightly submitted by both counsel, applicability of section 96 of the CPC is restricted to minor errors arising from slip or omission by officers of the court

in judgment, decree or orders. There is plethora of authorities on that position. Some of them were cited by the both learned counsel. This include the cases of **Jewels & Antiques (T) Ltd** (supra), **Stanlay Runyoro** (supra) and **William Getari Kagege** (supra). For instance, in **Kagege's** case which was relied upon by both counsel, the Court of Appeal underlined as follows:

*"If we are pressed to cite an authority on the slip rule under section 96 of the CPC, our decision in **Jewels & Antiques (T) Ltd v. National Shipping Agencies Co Ltd** [1994] immediately comes to our mind. In that case, we said the "slip rule" under section 96 of the CPC is applied to correct clerical mistakes and accidental slips or omissions by officers of the court in judgments, decrees or orders. As the High Court held in **VIP Engineering & Marketing Limited v. Societe Generate De Surveillance (S.A) & Another**, Commercial Case No 16 of 2000 (unreported) to which we subscribe as depicting the correct position of the law in our jurisdiction, that "a litigant should not be allowed to suffer through the mistake of an officer of the Court connected with the administration of justice and that Courts have a duty to ensure that Court records are true and that they represent an accurate record of the proceedings."*

In our case, the trial court was moved to correct the decree extracted from its judgment in Civil Case No. 306 of 1999. In their respective submissions, both learned counsel made reference Order XX Rule 6 (1) of the

CPC. The said provision provides for the contents of decree in the following terms:

"The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

As it can be discerned from the above provision, a decree is required to be in agreement with the judgment. In other words, the decree is required to confirm the judgment. Also, as rightly argued by Mr. Tesha, the particulars of claim must be stated in the decree. Further to this, the decree must contain the relief granted or other determination of the suit as submitted by Mr. Kato.

Now, the trial court is being faulted for failure to exercise its powers under section 96 of the CPC while the decree sought to be rectified was not in agreement with the judgment in respect of the relief granted or other determination of the trial court.

It is common ground that, in the plaint presented before the trial court, the applicant claimed to be the lawful owner of Plot No. 843 Block "H" Mbezi. It is also not disputed that in his written statement of defence, the respondent averred that the disputed land was Plot No. 2015 Block "H" Mbezi Medium Density Dar es Salaam and not Plot No. 843 Block "H" Mbezi. The record is clear that the respondent raised a counter-claim against the applicant. Basing

on the pleadings filed by both parties, the following issues were recorded for determination of the dispute:

- 1. What is the Plot number of the disputed area, Plot No. 843 Block H Mbezi or Plot No. 2015 Block H Mbezi Medium Density Dar es Salaam.*
- 2. Who is a lawful owner of the disputed Plot.*
- 3. Whether it is the defendant or plaintiff, who committed trespass on the disputed Plot.*
- 4. Whether any of a party who (sic) suffered damages as result of such trespass.*
- 5. What are the relief(s) do the parties entitled*

I have also gone through the judgment of the trial court. The relevant excerpt on the foresaid issues reads:

"It is undoubtedly that the plaintiff is a rightful owner of plot no. 843 block H or plot no. 2015 block H Mbezi Medium Density in Dar es Salaam City.

Issue number third, it is the defendant who used evict acts to commit trespass into the plaintiff's land.

Since the inception of this dispute, where the plaintiff had started construction, he is the one who suffered damages

In concluding this judgment is that all costs should be borne by the defendant.

I am fully convicted to say that plaintiff has proved its suit under the preponderance of probability compared to a very weak case of the defendant,

Costs of the suit to follow the event

So, I order

Sgd: M.C. Mteite - RM

Order: Plaintiff wins the action and the defendant losses.

The costs of the suit to be borne by the defendant.

Sgd: M.C. Mteite -RM”

Reading from the foregoing decision, I hold the view that the trial court endeavoured to address the first, second, third and fourth issues. Apart from the relief as to costs, the trial court did not specifically decide the fourth issue titled “What are the relief(s) do the parties entitled”. Thus, other reliefs including “an order for declaration that the plaintiff is the rightful owner of the right of occupancy comprising Plot No. 843 Block H Mbezi Medium density Dar es Salaam” does not feature in the judgment which gave rise to the impugned decree.

It is also my humble view that after arriving at a finding that the applicant was “a *rightful owner of plot no. 843 block H or plot no. 2015 block H Mbezi Medium Density in Dar es Salaam*” the trial court ought to have stated it in the judgment, whether a declaratory order is granted to that effect or otherwise. As hinted earlier, Mr. Kato was alive to the provision of Order XX, Rule 6(1) of the CPC which require the decree to specify the reliefs. In the absence of the clear decision of the trial court on the reliefs to which the

parties were entitled to, I hold the view that the impugned decree could not be corrected under section 96 of the CPC to add the words "or Plot No. 2015 Block "H" Mbezi Medium Density Dar es Salaam". It is also my considered view that the error or omission pointed out by the applicant's counsel cannot be branded as accidental slip or omission for the provision of section 96 of the CPC to apply.

On that account, the trial was justified to decline from exercising its power under section 96 of the CPC to add "or Plot No. 2015 Block "H" Mbezi Medium Density Dar es Salaam" in the first relief/order but basing on the reason stated herein.

In the light of the above, this application for revision is hereby dismissed for want of merit. Given the circumstances surrounding the judgment and decree, I make no order as to costs

DATED at DAR ES SALAAM this 8th day of December, 2022.



S.E. KISANYA
JUDGE