

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

CIVIL REVISION NO. 1 OF 2022

*(Arising from Civil Appeal No. 09 of 2013 from the District Court of Kilombero at Ifakara,
originating from civil case No. 33 of 2000 from Mkamba Primary Court)*

SEBASTIAN KATAYA AND 30 OTHERS APPLICANT

VERSUS

ASHA ATHUMAN1ST RESPONDENT

TRIFONI KOMBANILA2ND RESPONDENT

RULING

Final written submission date on: 29/04/2022

Ruling date on: 06/05/2022

NGWEMBE, J:

This application deserves to be dismissed forthwith for obvious reasons, the parties herein are misled by their advocates in bring up an application like this one. Being uninformed on the current facts, the applicants through their advocate Juma Ahmed Mwakimatu from S.A. Massati & Associates, instituted this application for revision under certificate of urgency inviting this court to examine the legality and propriety of the Order issued by the District Court of Kilombero on 14th February, 2022 in civil appeal No. 9 of 2013.

The applicants moved this court under section 79 (1) (a) (b) & (c) of Civil Procedure Code Cap 33 R.E. 2019. Above all, their advocate affirmed an affidavit in support therein. The affidavit had five (5) paragraphs whose relevant paragraph are 3 and 4 which I will refer thereafter.

The application was strongly resisted by the two respondents by filing a detailed counter affidavit comprising narrative background of the whole scenario authenticated by various attachments. As such and being filed under certificate of urgency, this court invited parties to address the court therein. Both parties procured learned advocates to represent them. While the applicants were represented by Mr. Mwakimatu assisted by advocate Deo Niragira, the respondents were represented by advocate Augustine Mathern Kusalika.

In arguing the application, Mr. Mwakimatu submitted that his clients were dissatisfied with the order issued by the District Court of Kilombero dated 14th February, 2022, which order had the effect of releasing funds to the respondents which money is reserved at Ilovo Sugar Company. Insisted that such order was made while there is a pending notice of appeal to the Court of Appeal.

Above all, he argued that, there were several orders which was made by the same magistrate on the same subject matter, and those orders were contradicting each other. The impugned order was contradictory to the previous order made by the same magistrate on the same subject matter. Insisted that the disputed land has already been distributed to the decree holders' way back to year 2007. Such irregular orders

intended to bring confusion to the disputants. Rested by a prayer that such order be revised and nullified by this court.

Responding therein, Mr. Kusalika boldly, argued that the application has no leg to stand. The reason therein was that the 28 acres of land were rightly executed and decreed to the applicants save only ten acres of land which belong to the respondents. The money which was released to the respondents were related to ten (10) acres of land not otherwise.

Counted further that, there is neither pending appeal nor notice of intention to appeal. The notice of appeal lodged by the respondents on 22nd April, 2021 to the Court of Appeal was, subsequently the same respondents issued another notice dated 4th December, 2021 to withdraw it. The withdrawal was effected by H.P. Ndesamburo Senior Deputy Registrar of the Court of Appeal on 15th December, 2021. Rested by a prayer that this application is nothing but an abuse to the court process.

In rejoinder, he insisted that the impugned order is irregular and should be revised by this court.

Having summarized the arguments of learned counsels, I intend to begin my consideration on propriety of the law applicable. Tracing the genesis of this application, undoubtedly, the original suit commenced and was decided by Mkamba Primary Court way back to year 2000. Any subsequent matter before other courts were in terms of appeal or revision like this one. Therefore, the law is clear like a brightest day light, that revision by this court on any matter originating from District



or Resident Magistrate Court draws its mandate from section 79 (1) of Civil Procedure Code Cap 33 R.E. 2019.

It is known like a day followed by night that, Civil Procedure Code is not applicable in Primary Courts. This is statutory under section 2 of Civil Procedure Code. Unless it is amended, otherwise, that is the law. Therefore, since the dispute originated from Primary Court, then this court will properly be moved if the applicants cite section 44 (1) (b) of Magistrate Court Act. Failure to cite properly the applicable law, this court cannot be moved.

I am not short sighted on the "Oxygen Principle" or the "Overriding Objective principle" as per section 3A of the Civil Procedure Code. Yet such amendment did not intend, to the best of understanding, that parties shall not appropriately apply the law as it is. Strictly speaking, this application falls short of proper application of law.

Considering on the merits of the application itself, the applicants in paragraphs 3 and 4, centered their complaint on the existence of either appeal or notice of appeal before the Court of Appeal. Unfortunate may be they did not make thorough research on it. According to the available records, there is neither appeal nor notice of appeal before the Court of Appeal.

Further I have painfully, revisited the whole proceedings from the beginning of trial before Mkamba Primary Court to the consent of the Court of Appeal to withdraw the filed notice of appeal. As such, the only executable decree is the one issued by the Primary Court.



Having so said, the question remains whether the District Court of Kilombero offended the law in issuing the alleged impugned order? The answer is found in the ruling itself which is partly quoted hereunder:-

"At the same I have observed.....it is this court that made a previous order on 20/2/2020, for Kilombero sugarcane to stop payment of the sugarcane harvest proceeds to the respondents on the fact that, they filed civil revision No. 45 of 2019 before Judge Rose Ibrahim (at Main Registry), this court has seen a High Court Ruling in the same Civil Revision, which was struck out with costs. I have thought it is necessary now to uplift my previous order (which I ordered the payment to stop pending determination of the Application at High Court Main registry), the respondents should now get their reserve from Kilombero Sugarcane Company Ltd pending other circumstances that will arise in the cause of hearing on the date that will be scheduled"

The contents of this order are clear, that in the absence of any pending revision or appeal before the High Court or Court of Appeal, the previous order to Kilombero Sugarcane Company Ltd became inoperative and ineffective. To the best such order could not offend any person properly guided or advised by a professional legal practitioner.

For the reasons so stated, this application lacks basis for this court to revise such order. Accordingly, the application is dismissed with costs.



I accordingly Order.

Dated at Dar es Salaam this 6th day of May, 2022



P.J. NGWEMBE

JUDGE

06/05/2022

Court: Delivered at Morogoro in Chambers on this 6th day of May, 2022 in the presence of advocate Jackson Liwewa0 for Mwakimatu Advocate for applicants and Jackson Liwewa for Kusalika Advocate for Respondents.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

06/05/2022