

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

CIVIL APPEAL NO. 20 OF 2022

(Arising from Civil Application for Revision No. 6 of 2021 of Muleba District Court arising from an order and Probate and Administration Cause No. 8 of 2011 of Kamachumu Primary Court)

YAHYA KHAMIS----- APPELLANT

(Administrator of the estate of the late Idd Seif)

Versus

HAMIDA HAJJ IDD----- 1ST RESPONDENT

IDRISA IDD----- 2ND RESPONDENT

RULING

Date of Ruling: 17.02.2023

Mwenda, J.:

This ruling emanates from a point of Law which was raised by the learned counsel for the appellant, Ms. Pilly Hussein. The learned counsel informed the court, prior to commencement of the hearing of Civil Appeal No. 20 of 2023, that the proceedings, ruling and order in Civil Application No. 6 of 2021 are a nullity. Since the point of Law can be raised at any time, the court invited the parties to submit in that regard.

Having taken the floor, Ms. Pilly Hussein submitted that the present appeal is improper as it emanates from a nullity proceedings. She said that in Civil Revision No. 6 of 2021 the appellant (the then applicant) challenged two decisions. These

are, the order dated 29/4/2021 before Ngonyani and the one dated 25/6/2020 before Hon. Rugaibura. She said that it was not proper to file an application to revise two orders in one application. The learned counsel was of the view that the applicant ought to have filed two different appeals and not to file an application for revision. The learned counsel went further to state that a revision is not a substitute to an appeal and in support thereof she cited the case of RAJAB DISMAS V. REPUBLIC, CRIMINAL APPLICATION NO. 4 OF 2025.

In her conclusion she prayed to the court to invoke revisional powers under S.31 of the Magistrate's Court's Act Cap 11 of 2019 to nullify the orders, ruling and proceedings of CIVIL REVISION NO. 6 OF 2021.

In response to the submission by the learned counsel for the appellant, the 1st respondent had nothing of essence to submit. She rather left it to the court to decide on the raised legal issue.

On his part, the second respondent briefly submitted that the appellant ought to have filed an appeal and requested the court to accordingly deliberate on the raised point of law.

That being the submission by the parties, it is pertinent to note that Civil Revision No. 6 of 2021 was meant to revise two Primary Court's orders. One, the judgment on Misc. Probate and Administration Cause No. 8 of 2011 before Hon. Rugaibula dated 25/6/2020 and the subsequent ruling delivered by Hon. Ngonyani on

29/4/2021. In Misc. Probate and Administration Cause No. 8 of 2011, the then Applicant (now the appellant in the present appeal) filed an application seeking, among other things, the court's pleasure to scrutinize in regard to the validity of the two wills which were made in the year 2003 and 2010. After a due consideration of the records and the evidence, on 25/6/2020, the court adjudged that both wills were invalid and as such it instructed the administrator to distribute the deceased's estate as if he died interstate. After the said decision Idrissa Idd (the second respondent in this matter) complained before the same court, (Hon. Ngonyani) that the distribution made by the appellant on 15/1/2016 was unfair. The Hon. Magistrate revisited the records of Probate and Administration Cause No. 8 of 2011 and rejected the applicant's application on the reasons that, already, the said distribution was overtaken by events as in Misc. Probate Cause No. 8 of 2011, the administrator was ordered to distribute the deceased's estate as if the deceased died interstate. The Hon. Magistrate went further to direct the parties to file an inventory on conclusion of administering exercise. The Hon. Magistrate was clear that upon filling an inventory, any aggrieved party may then file his complaint against any unfair distribution. Following that order, the appellant was aggrieved and filed Civil Revision No. 6 of 2021 challenging legality of both rulings. At the end of the judicial day the Hon. Magistrate who presided over the said Revision ruled out that both Lower Court's Magistrates were justified in their findings. With regard to the order dated 25/6/2020, the Hon. Magistrate was of the view that

such order was proper and correct on the ground that since the two wills were invalidated then the deceased's estate ought to be distributed in accordance to interstate succession.

As for the second Primary Court's order dated 29/4/2021 in which the applicant alleged that the Hon. Magistrate, while making reference to the order dated 25/6/2020 misdirected himself when he ordered the properties and assets of the deceased to be distributed without using a will, the Hon. Resident Magistrate was also of the view that the applicant wrongly misinterpreted the said order because the Primary Court's Magistrate did not order redistribution, rather, while acknowledging the order made on 25/6/2020, he instructed him (the administrator) to conclude the distribution exercise and file an inventory thereafter.

That being the summary of the matter, it is now the task of the court to deliberate on the point of law as raised by Ms. Pilly Hussein, learned counsel for the appellant. As I have stated earlier Ms. Pilly was of the view that after being dissatisfied by the orders of the Primary Court, the appellant ought to have lodged two different appeals and not to file application for revision. She said, since in both orders the appellant was a party, he ought to have subjected the said orders into two different appeals and not filing revision as revision is not a substitute to appeal.

This court have considered Ms. Pilly Hussein's submission that the appellant ought to have lodged an appeal and not revision because revision is not a substitute to an appeal, the following are this court's observations. It is true that revision is not a substitute to an appeal and this position was stated in the case of RAJABU CHRISTMAS V. THE REPUBLIC, MZA CRIMINAL APPLICATION NO. 4 OF 2005 (unreported). In the said case, the court ruled out as follows that;

"It seems clear to me that the application is mis concerned. If the applicant was dissatisfied with the ruling of the High Court, the correct course to follow was to appeal to this court and not to envisage revision, as revision is not a substitute or alternative for an appeal..."
[emphasis added].

In his Revision No. 6 of 2021 before the District Court, the applicant (now the appellant was challenging the orders of distributing the deceased's estate in disregard to the will (fresh distribution of the same). His complaints are crafted in para 12 (a) – (h) of his affirmed affidavit. Looking at the gist of his complaint it is clear that the said orders of are appealable under S. 20(1) (b) of MCA. This section reads as follows, that;

"20 (1) save as hereinafter provided.

(a) N/A or

*(b) In any other proceedings, any party if aggrieved by an **order or decision of the primary court**, may appeal therefrom to the District Court of the District for which the Primary Court is established."*

While interpreting S. 20 (1) (b) of MCA (supra) this court (Kisanya J,) having quoted the said section went on to state as follows that;

*"The import of the above cited provision is that every **decision or order** of the Primary Court is appealable. That being the case, the proper recourse was for the appellant to appeal against the decision of Primary Court. This is so when it is considered that the grounds advanced in the application for revision ought to have been raised in the appeal to the District Court. **The Law is settled that revision is not a substitute of appeal and it follows that an application filed in lieu of appeal is misconceived...**" [emphasis added].*

Further to that the court, having reproduced the principle stated in RAJAB CHRISTMAS V. REPUBLIC (supra) went on to state as follows, that;

"In my opinion, the principle stated in the above decision applies also to appealable decisions or order made by

Primary Court. For that reasons, the application subject to this appeal was incompetent before the District Court.”
[emphasis added].

From the foregoing observations and after being guided by the above position, and having no reasons to differ with my fellow judge’s decision which I find persuasive to me, I venture to take the cause taken by him in this appeal to **nullify the proceedings** of District Court of Muleba in Civil Revision No. 6 of 2021 and the ruling arising therefrom. The appellant is at liberty to challenge the decision of Primary Court in accordance to the law.

Each party shall bear its own costs.




A.Y. Mwenda
Judge
17.02.2023

Ruling delivered in chamber under the seal of this court in the presence of Ms. Gisela Maruka, learned counsel for the Appellant and in the presence of the Respondents.




A.Y. Mwenda
Judge
17.02.2023