

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CIVIL APPEAL NO. 22 OF 2022

*(Arising from Maswa District Court in Civil Revision No. 1 of 2022,
Original Execution Order of Nyalikungu Primary Court dated 6th May,
2022 in Civil Case No. 10 of 2019)*

JUMA MOREGA TEGENDA.....APPELLANT

VERSUS

MOHAMED HASSAN.....RESPONDENT

JUDGMENT

Date of last order 14/02/2023

Date of Judgment 16/03/2023

MASSAM, J

The respondent, Mohamed Hassan Mussa, filed a suit at the Nyalikungu Primary Court in Maswa claiming for the registration card of Motor vehicle No. T. 388 CSD following sale of Motor vehicle between him and the appellant herein which was done without a registration card. After a full trial, the court held that the respondent did prove his

case on the balance of probabilities and ordered the appellant to give the respondent a registration card of Motor Vehicle with registration No. T 388 CSD as per their sale agreement.

Aggrieved with the decision of Nyalikungu Primary Court, the appellant herein filed an appeal at Maswa District Court via Civil Appeal No. 7 of 2019 where by the decision of the Nyalikungu Primary Court were quashed and set aside for the reason that there was no agreement for sale of the Motor vehicle between the appellant and the respondent herein. However, after that decision the respondent went back to Nyalikungu Primary Court and filed an execution so that the appellant could return the Motor Vehicle with Registration No. T 388 CSD to the respondent.

Being dissatisfied with the execution application, the respondent herein wrote a complaint letter to Resident Magistrate in Charge of Maswa District Court which led to Civil Revision No. 1 of 2022. After hearing both parties, the court held that the attachment of Motor Vehicle with Registration No. T. 388 CSD done by Nyalikungu Primary Court was wrong as the District Court did not rule out for the same to be attached and returned to the appellant. The court ruled further that

as the Motor Vehicle was not a subject matter in Civil Case No. 10 of 2020, it was wrong to conduct execution against the said Motor Vehicle.

Aggrieved with the said decision the appellant is now before this court challenging all the decisions given by Maswa District Court in Civil Revision No. 1 of 2022 and Civil Case No. 10 of 2020 based on the grounds adduced herein.

(1) That the Resident Magistrate Court of Maswa erred in law and fact in holding that a decision and proceedings of Nyalikungu Primary Court in Civil Case no 10 Of 2019 were nullified by first appellate court.

(2) That the Maswa District Court in civil appeal case no 7 of 2019 having held that the appellant did not sell his motor vehicle with registration no T388 CDS to the respondent and the respondent appeal to Shinyanga resident magistrate court extended jurisdiction vide Pc civil appeal no 9 of 2020 having dismissed for time barred the honourable resident magistrate of Maswa District Court erred in law and fact in holding that Nyaikungu primary court could not order attachment

and or restoration of the said motor vehicle with T388CSD to the appellant.

(3) That the honourable resident magistrate of Maswa District court misdirected himself in making the findings that the appellant was required to file a suit for recovery of possession of motor vehicle with registration no T388CSD.

(4) That the honourable court of Maswa District court erred in law and fact for setting aside execution order for attachment of the aforesaid motor vehicle and ordering the motor vehicle.

(5) That further to ground no 4 herein the honourable the Resident Magistrate of Maswa District court erred in law and fact for ordering restoration of the motor vehicle in question to the respondent while the same did not belong to him.

(6) That the respondent written submission complainant dated 20/6/2022 which Honourable Resident Magistrate of Maswa District court acted upon to initiate civil

revision No 1 of 2022 was a revival of another appeal in disguise .

When the appeal was called for hearing on 14th day of May, 2023 Mr. Audax Constantine, learned counsel represented the Appellant Mr. Frank Samwel, learned counsel represented the Respondent. The appeal was argued orally.

Supporting the appeal on the first ground, Mr Audax argued that the 1st appellate court did not nullify the decision of Nyalikungu Primary Court in Civil Case No. 7 of 2019 as alleged by the Resident Magistrate of Maswa District Court.

Responding to this ground, Counsel for the respondent told the court that there was no decree to execute as Civil Appeal No. 7 of 2019 was already nullified.

On the second ground of Appeal, Mr Audax complained that hon. Magistrate of Maswa District court erred in law by holding that Nyalikungu Primary Court could not order attachment and /or restoration of the said Motor vehicle No. T 388 to the appellant. He argued further that after being aggrieved with the decision of the Primary Court the respondent appeal to the Resident Magistrate with extended Jurisdiction where his appeal was dismissed for being time

barred. Thus, the decision of Civil case No. 7 of 2019 was not overruled nor revised as alleged.

Counsel for the respondent's response to this ground was that the Primary Court has no jurisdiction for execution as there was no decree as it was already nullified. Therefore, the interested party was advised to file a fresh suit.

On the third ground of appeal, Counsel for the appellant stated that it was wrong for the District Court making a finding that the appellant was required to file a suit for recovery of the said Motor Vehicle with registration No. T 388 CSD as he was already ruled out that the same was never sold.

On the fifth ground of appeal, Mr Audax told the court that it was wrong for the District Court to order restoration of the said Motor vehicle to the respondent while the other Magistrate said that the motor vehicle was never sold to him. Thus, led to a contradicting decisions from different Magistrates.

Counsel for the respondent to his reply to this ground was that, the District Court was right in its decision that the Motor Vehicle to remain to the respondent as there was no order of the movement of

the motor vehicle from the respondent to the appellant as the source of the dispute was not the motor vehicle but the registration card.

Coming to the sixth ground of appeal, Mr Audax stated that the act of the District Court to act on the complainant letter to initiate Civil revision No. 1 of 2022 was a revival of another appeal in disguise. Thus, he prayed for the appeal to be allowed, the decree and decision in Civil revision No. 1 of 2020 be quashed and set aside and this court to order execution proceedings respect of Motor vehicle with Registration No. T 388 CSD to proceed.

Replying to the last ground of appeal, Mr Frank told the court that the letter of the respondent written on 20/06/2022 was challenging the execution which was to be carried on without a decree. so, he prayed for the appeal to be dismissed with costs.

In brief rejoinder, Mr Audax reiterated what has been already submitted in his submission in chief and maintain his prayer for the appeal to be allowed. And the Revision No. 1 of 2022 be quashed and set aside and execution to proceed or any other order fit and just to grant.

Having considered submissions from both parties and examined the grounds of appeal I will now proceed to make a determination on the merit of this appeal.

During the determination of this appeal all the grounds of appeal will be argued jointly as they both challenge the same thing that is the cancellation of the execution of a Motor Vehicle with Registration NO. T 388 CSD done by the Nyalikungu Primary Court.

Having revisited the records of this matter from Nyalikungu Primary Court up to Civil Revision No. 1 of 2022, the respondent herein was only claiming for the Registration Card of Motor Vehicle No. T 388 CSD and not the Motor Vehicle itself. And when they went to Maswa District Court via Civil Appeal NO. 7 of 2019 it was ruled out that there was no any sale agreement between the appellant and the respondent and proceed to nullify the decision of Primary Court by quashing and set it aside without any further orders. However, the appellant herein went back to Nyalikungu Primary Court and filed an application for execution claiming for attachment of the Motor Vehicle with Registration No. T 388 CSD without having any orders nor decree ordered the Motor Vehicle to be returned to him.

It is a trite law that a court will grant relief/s which was prayed for by the party. As it was held in the case of **Zanzibar Telecom Ltd vs Petrofuel Tanzania Ltd**, Civil Appeal No. 69 of 2014(CAT-Unreported)

"We would like to emphasize at this stage that as a matter of substantive law, the court cannot grant interest in a case where such interest was not pleaded and proved."

See also the case of **Ami Tanzania Limited vs Prosper Joseph Msele**, Civil Appeal No. 159 of 2020 (CAT- reported at Tanzlii) and **National Insurance Corporation (T) Limited vs China Civil Engineering Construction Corporation**, Civil Appeal No. 119 of 2004 (unreported).

Thus, being guided by the cited authority, this court do concede with the decision of Maswa District Court via Civil Revision NO. 1 of 2022 that in Civil Appeal No. 7 of 2019 the court did not order for the said Motor Vehicle to be returned to the appellant herein. Therefore, after the nullification of the trial court judgment the interested party in anything either Motor Vehicle or Registration Card was required to file a

a fresh suit or file an appeal to the higher court and not filing an execution as it has no bases as there was no order or decree to execute it.

Also, for the complained issue by the appellant that two Magistrates from the same court giving two different decisions. With due respect I wish to emphasize that the appellant's counsel and his client need to know that the first decision was give via Civil Appeal No. 7 of 2019 and the second decision was given via Civil Revision No. 1 of 2022. In Civil appeal No. 7 of 2019 the appellant challenged the decision of Civil Case No. 10 of 2019 and in Civil revision No. 1 of 2022 the complainant challenge the execution application filed by the appellant herein at Nyalikungu Primary Court. In such circumstance both Magistrate was not wrong for the Resident Magistrate to have different opinions as each case was challenging the different decisions.

Again this court finds out that for the claim that the District Court relied in a complainant letter to initiate Civil Revision No. 1 of 2022, the same was correct on the part of the District Court as the court is allowed to do so as court practise, the complainant can be brought orally or written and when the court finds it proper will order revision to be filed in order parties to be given their constitutional right to be

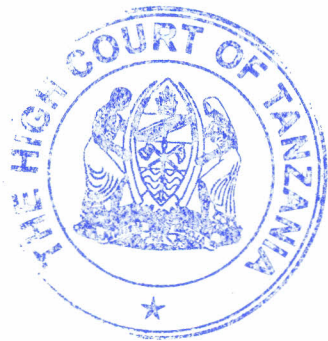
heard so in this case that was the one which happened as both parties were accorded a right to be heard before and decision was given.

So according to the foregone reasons this court find no merit in this appeal as the source of the dispute was not the motor vehicle but the registration card and Nyalikungu Primary court execute without having an order or decree to do so, as there was no order of shifting the motor vehicle from respondent to appellant.

To this end, this appeal has no merit. Accordingly, the same is dismissed with costs.

It is so ordered.

DATED at **SHINYANGA** this 16th day of March 2023.




R.B. MASSAM
JUDGE
16/03/2023