IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB REGISTRY)

AT DAR ES SALAAM

REVISION NO. 29 OF 2021

(*Originating from Matrimonial Cause No. 8/2020 of Temeke District Court*)

ANNA GUSTAV LYIMO.....APPLICANT

VERSUS

ISAKWISA LAMECK MWAMUKONDA.....RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The respondent herein has raised two points of preliminary objection on point of law that:

1. The application for revision is bad in law as it contravenes Section 79(2) of the Civil Procedure Code, Cap. 33 R.E 2019 ("CPC"), for the decision to be revised arises from an interlocutory order that did not finally and conclusively determine Matrimonial Cause No. 06/2020.
2. That the application is bad in law for having been preferred under wrong enabling provision of the law that is Section 44(1)(a) of the Magistrate Court's Act, Cap. 11 R,E 2019.

It was the respondent's prayer that this application be struck out/dismissed with costs. The objections were disposed by way of written submissions. Before this court, the respondent's submissions were drawn and filed by

Mr. Godfrey Namoto, learned advocate while the applicant's submissions were drawn and filed by Ms. Magreth Ngasani, learned advocate.

Brief background of the application beforehand is that there are some pending proceedings at the District Court of Temeke, a Matrimonial Cause No. 08/2020 between the parties herein. In due course of those proceedings, on the 03rd day of June, 2021 when the parties appeared before the Hon. Trial Magistrate for hearing, the respondent therein/applicant herein, raised an objection that the practicing licence of Mr. Godfrey Namoto, learned Counsel representing the respondent therein expired and hence he was appearing contrary to Section 38, 39, 40 and 41 of the Advocates Act. On the 16th day of 2021, the District Court rendered its ruling on the objection raised and while upholding that the said licence had expired, the court also invoked the overriding objective of the law, and dismissed the appellant's consequential prayers that the proceedings and hearing conducted by an advocate whose license had expired be struck out from the records. It is this refusal that aggrieved the applicant and has lodged this application calling for this court to:

1. That, may the honourable court be pleased to call for and examine the records and or proceedings of the Temeke District court in Matrimonial Cause No. 8/2020 and satisfy itself on the correctness and legality of the ruling in respect of the Preliminary Objection delivered on 16th June 2012 and if necessary revise the proceedings and make such decision or order therein as it deems fit.
2. Costs of this application be costs in due course

3. Any other order this Court Honourable Court shall deem fit and just in the to grant.

On the 04th day of July, 2022, the respondent herein raised a preliminary objection on points of law as stated above hence this ruling. Before this court the applicant was represented by Ms. Magret Ngasani, learned advocate while Mr. Godfrey Namoto, learned advocate, represented the respondent. The application was disposed by way of written submissions.

In his submissions to support the objection, the respondent argued that the order that revision is sought for is an interlocutory order hence not a subject of revision under Section 79(2) of the CPC. He cited the case of **University of Dar-es-salaam Vs. Sylvester Cyprian & 210 others, 1998 TLR 175** where the word interlocutory was defined. To that end, he submitted that it is law and the practice of this court not to entertain application for revision arising from interlocutory orders. That in the instant case, the ruling delivered by the trial court on 16/06/2021 did not determine the matter between the parties hence an interlocutory one as the words in the cited provisions of Section 79(1) of the CPC put it in mandatory form.

In reply Ms. Ngasani submitted that the issue whether the interlocutory orders should be revised is an issue to be treated on merits of each case. She argued that in the case at hand, when the counsel had no valid practicing certificate, conducts and draw legal documents then the proceedings and drawn documents are treated as a nullity. She then elucidated that if we are to take the respondent's arguments, then even if

the proceedings are a nullity, as far as the orders has no any effect of finalizing the matter, the court should proceed with a nullity and until the final determination is when the party may appeal. She argued that the intention of the legislature in introducing the said provision was not to that effect as the precious time of the court and parties cannot be so wasted on nullity proceedings. However, her submission following this argument had the effect of going into the roots of the application hence I will not consider them.

In rejoinder, the respondent also submitted on the merits of the application regarding the validity of the proceedings before the District Court hence I will also not consider his submissions.

The second limb of objection was that the court is wrongly moved as the application was preferred under a wrong enabling provision of the law, that is Section 44(1) of the MCA. He argued that although the section empowers the court with supervisory duties over District Courts and Resident Magistrate's Courts, it is not open to invocation by a party seeking revision. That the applicant ought to have move the court by invoking the provisions of Section 44(1)(b) of the MCA. He supported his submissions by citing the case of **Director of Public Prosecutions Vs. Elizabeth Michael Kimemeta @ Lulu, Criminal Application No. 06/2012** in which the Court of Appeal stated that under Section 44(1)(a) the High Court supervises the District and Resident magistrates court but that to supervise is not the same thing as to revise. He also cited the case of **Finca Tanzania Ltd. Vs Shabani Said Maganga, Civil Application No. 16/2021** whereby this court noted that for it to intervene suo moto

under Section 44(1)(a), there must be a serious reason which calls for such intervention. He concluded that by moving the court under a wrong provision, the application should be struck out or dismissed with costs.

In reply, Ms. Ngasani submitted that the application is brought under two laws which is the Section 44(1)(a) of the MCA and Section 79(1)(c) and 95 of the CPC. She hence argued that if the court is not moved under the MCA, still the provisions of the CPC can be invoked.

In the alternative, she resorted to the current position introduced by case laws that even if the applicant has cited wrong citations of the law, it does not make the application incompetent. She supported her arguments by citing the case of **MIC Tanzania Limited & 3others Vs. Golden Globe International Serbices Limited, Civil Appeal No. 1/16 of 2017** (unreported) where the court accepted to have been moved by one of the laws cited therein. He also cited the case of **Alliance One Tobacco Tanzania Limited Vs. Mwajuma Hamis & Another, Misc. Civil Application No. 803 of 2018** (unreported) where His Lordship, Mlyambina J invoked the overriding objective in determining that the wrong citation of the law could not affect the jurisdiction of the court to determine the matter. She concluded by a prayer that the objections be dismissed with costs.

In rejoinder, the respondent reiterated his submissions and the cited case of **Director of Public Prosecutions Vs. Elizabeth Michael Kimemeta @ Lulu** (Supra) and argued that on the nature of the application, one has to properly guide the court on which of the two provisions they are moving

the court, failure of which it becomes a fatal error. He reiterated his prayer that the application is incompetent and ought to be dismissed with costs.

Having considered the parties submissions, I will start with the first limb of objection whereby Mr. Namoto argued that the order that revision is sought for is an interlocutory order hence not a subject of revision under Section 79(2) of the CPC. On her part, Ms. Ngasani argued that the issue whether the interlocutory orders should be revised is an issue to be treated on merits of each case. She argued that in the case at hand, when the counsel had no valid practicing certificate, conducts and draw legal documents then the proceedings and drawn documents are treated as a nullity. Unfortunately, Ms. Ngasani did not cite any authority to the effect that in determining whether a revision in an interlocutory should be entertained, each case should be decided on its own merits. On my part, I am in agreement with the submissions of Mr. Namoto that pursuant to Section 79(2) of the CPC, revision on interlocutory orders which did not finally dispose the matter should be prohibited. For ease of reference, the provisions of the Section 79(2) are hereby reproduced:

> *"(2) Notwithstanding the provisions of subsection (1),* ***no application for revision shall lie*** *or be made* ***in respect of any preliminary or interlocutory decision or order*** *of the Court* ***unless such decision*** *or order* ***has the effect of finally determining*** *the suit."*

The wording in the cited section is captioned in a mandatory form and there are no exceptions to the sub-section. It is therefore clear that for

this court to entertain any revision application by a party, the interlocutory orders/decision sought to be revised shall have finally determined the dispute or the rights of parties therein. If we are to entertain revision that did not finally dispose the matter, then we might open doors where trials can be held by two court because a party may even be aggrieved by a court's order refusing to admit an exhibit during trial, would that call for a party to apply for revision? The answer is no, the gist of the provision of Section 79(2) is to have one court conducting a trial without interference until its final disposal. In the cited case of **University of Dar-es-salaam Vs. Sylvester Cyprian & 210 others, 1998 TLR 175,** the full bench of the Court of Appeal held:

> *"We are in agreement with Mr. Lukwaro in his understanding of the judgement in Mvita Construction Co. Ltd. The requirement on a respondent to supply an address for service is still intact and failure to do so will have its consequences in appropriate cases.* ***The question whether or not the failure will render a respondent not to have a locus standi will have to be decided by an ordinary panel of three Justices of this Court*** *since Mvita Construction Co. Ltd. has not decided that issue."*

In the cited case, although the court took cognizance of the fact that the requirement on a respondent to supply an address for service was mandatory and failure to do so will have its consequences in appropriate cases, it did not proceed to determine that question and instead held that

the question on whether or not the failure will render a respondent not to have a locus standi will still have to be decided by an ordinary panel of three Justices of the Court of Appeal. What it means therefore, much as Ms. Ngasani's argument may be valid (which is not what am deciding at this point), so long as it did not have the effect of finally determining the matter, whether or not the objection was upheld, it cannot be brought at this court during pendency of the final determination of the suit as it did not have the effect of finally determining the matter.

Having said the above, the objection raised by Mr. Namoto is hereby sustained. The application beforehand contravenes the provisions of Section 79(2) of the CPC and it is hereby dismissed with costs.

Dated at Dar es Salaam this 20th day of March, 2023.

HIGH COURT OF TANZANIA

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S.M. MAGHIMBI

JUDGE