

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CIVIL REVISION NO.2 OF 2022

SAEED YESLAM SAEEDAPPLICANT

VERSUS

KASIMU UWESU MOHAMED..... RESPONDENT

RULING

7/3/2023 & 30/5/2023

LALTAIKA, J.

Albert Einstein once said, "The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing." The applicant herein **SAEED YESLAM SAEED** has chosen to distance himself from such a group of people who look and do nothing. Vide a Chamber Summons supported by an affidavit, the applicant has fronted the following prayers for consideration by this court:

- 1. The court be pleased to call for the records of "Shauri la Madaai" No. 37 of 2019 and examine or proceedings and determine the legality and propriety of procedures used to transfer the matter from [the] Primary Court of Mikindani to District Court of Mtwara and revise it.*
- 2. The court be pleased to call for the records of Civil Case No. 18 of 2021 and examine orders or proceedings and determine the legality, illegality and*

propriety of procedures used to transfer the matter from Primary Court of Mikindani to District Court of Mtwara and revise it.

3. Cost of this application.

4. Any other relief the court will deem fit to grant.

When the application was called on for hearing **Mr. Jonathan Kessy and Mr. Robert Dadaya**, learned Advocates appeared for the Applicant and Respondent respectively. Mr. Dadaya indicated that he had put a preliminary point of objection as he was of a firm belief that the application was misconceived. After a great deal of consultation, the learned counsel prayed to make oral submissions for and against the application. In the next paragraphs, I summarize such submissions before moving on to my verdict.

Mr. Dadaya stated that his preliminary objection was twofold: **First**, that the application **was time-barred**, resulting in the court lacking jurisdiction to entertain it. Second, that the application **was misconceived**, also rendering the court without jurisdiction to entertain it.

Addressing the first objection regarding the time-barred nature of the application, Mr. Dadaya averred that based on the records, the orders objected to originated from a decision **delivered on June 15, 2021**, by the Mtwara Primary Court. The application in question was filed on February 17, 2022, which was 240 days after the delivery of the Primary Court's decision. This exceeded the 60-day limit required for filing a Revision. Therefore, emphasized Mr. Dadaya, the application for revision violated **Item 21(3) of the Schedule to the Law of Limitations Act Cap 89 RE 2019**.

The learned counsel emphatically submitted that the application was irregularly before the court and should be dismissed under Section 3(1) of the Law of Limitations Act. Mr. Dadaya referred this case to the case of **Tima Haji versus Amiri Mohamed Mtoto and Another Civil Revision No 61 of 2003**, where an application was dismissed for contravening the cited section. He requested the court to dismiss the current application accordingly.

Moving on to the second point of law, Mr. Dadaya contended that the application was misconceived as it was based on an interlocutory order. He emphasized that there is no appeal or revision against interlocutory decisions or orders, as provided by **Section 79(2) of the Civil Procedure Code Cap 33 RE 2019**. He stated that the current application stemmed from a decision that did not address the merits of the matter, making it an interlocutory order.

Consequently, Mr. Dada asserted, this court lacked jurisdiction. He referred to the case of **Israel Solomon Kivuyo v. Wayani Langoi and Another [1998] TLR 140**, where the Court of Appeal interpreted interlocutory proceedings as those incidental to the principal objective of the action, namely judgment. Mr. Dadaya mentioned that the matter was still pending in the District Court, where it had been transferred.

To buttress his arguments, Mr. Dadaya then cited the **Bench Book for Judges in Tanzania (2019)**, pages 49 and 50, which stated that certain considerations must be taken into account when exercising revisional jurisdiction. One such consideration being there must be a case decided by

a court, and the decision must be one in which an appeal lies to the High Court. He argued that the decision to transfer the case file from the Primary Court to the District Court did not address the merits or decide any rights. Therefore, the application before the court was irregular, and the appropriate course of action would be **to wait for the finalization** of the case and challenge it on appeal.

Mr. Kessy, counsel for the applicant, on his part, started off by acknowledging the submissions made by his learned brother and expressed his understanding that the senior counsel had misconceived the application. He explained that the court was currently dealing with the revision of two filed cases.

He clarified that the application was made under **Section 79(1)(a), (b), and (c) of the Civil Procedure Act (CPA) Cap 33 RE 2019**, in conjunction with **Section 30(1)(a) of the Magistrates' Courts Act (MCA) Cap 11 RE 2019**, as well as **Section 44(1)(b) of the MCA**. Mr. Kessy stated that their concern was not with the proceedings in the Primary Court's *Shauri la Madai 37 of 2019*, but rather with how the order was being implemented. Mr. Kessy cited the case of **Triphone Elias and Prisca Elias versus Majaliwa Daudi Mayaya** Court of Appeal Tanzania (CAT), which emphasized the duty of the court to apply and interpret the laws and the duty of superior courts to ensure proper application of the law by lower courts.

Mr. Kessy referred to the sections cited in their application, highlighting the High Court's role as a superior court responsible for ensuring adherence to the law by subordinate courts.

Mr. Kessy submitted emphatically that his application for review was based on events that occurred after the case file was transferred to the Mtwara District Court under Civil Case No 18 of 2021. He mentioned two grounds for the transfer order: the plaintiff's intention **to rely on electronic evidence, which the Primary Court was not empowered to handle**, and the **increase in the monetary value of the subject matter in dispute**. However, the court disregarded the latter ground as there was no prayer for amendment from the plaintiff based on the subject's value.

It was Mr. Kessy's submission further that the application for revision was centered on what transpired after the transfer. The case file of Civil Case No 18 of 2021 contradicted the grounds for transfer because the monetary value of the cause of action went against the second ground recognized by the Primary Court. The sought revision, emphasized Mr. Kessy, was based on the alleged illegality.

Mr. Kessy highlighted that the jurisdiction of courts is determined by the pleadings before them, which must indicate jurisdiction. In the present matter, the claim of **TZS 35,614,300 was a new figure that did not align with the records of the Primary Court**, thus violating the transfer order. He emphasized his duty as an officer of the court to report such irregularities. He stated that parties should not believe they can confer

jurisdiction on the District Court, as jurisdiction is a statutory provision and not within the court's authority to assume.

To support his argument, Mr. Kessy referred to a decision of this court (Masabo J.) in the case of **Asha Rashid Onyenzi vs. Jastine Meli (Admin. Of Chaulembo Meli's estate)** Civil Appeal No 218 of 2019 (HCT), where it was stated that jurisdiction of courts is derived from statutes, not from the parties or the court itself. He quoted this decision to emphasize the continuation of alleged illegality from the Primary Court onward. He noted that the figure appearing in the Primary Court records **was TZS 23,133,600**, which contradicted the jurisdiction exercise of lower courts according to page 50 of the Bench Book.

In conclusion, Mr. Kessy requested the revision of two files to enable the High Court to ascertain what had occurred in the District Court.

In rejoinder, Mr. Dadaya stated that he inferred his colleague had conceded on the time limitation, technically, and if that were true, he reiterated their request for the matter to be dismissed.

He pointed out that his learned colleague had referred to **MCA section 44(1)(b)**, which states that there can be no revision unless there are merits to the case. According to him, there are no merits, meaning that the rights have already been decided. He further argued that even if there was any illegality, the learned counsel should have requested condonation and applied for an extension of time.

Mr. Dadaya asserted that **the Civil Case No 18 of 2021**, pending in the District Court, did not violate the transfer order due to the variation of the

order, which remained silent. He emphasized that the Primary Court had made its decision based on the records, as per the letter dated 22/7/2021 provided by the District Court. Consequently, he concluded that the appropriate course of action would be to dismiss the application since the learned counsel had not refuted their claims.

Having dispassionately considered the rival submissions and the lower court records, I am inclined, first and foremost, to pen down my findings on the whole process leading to the current application.

On 11/10/2019 **KASIMU UWESU MOHAMED** (the respondent herein) filed "**Madai Namba**" **37 of 2019** before Mikindani Primary Court against the applicant herein. The claim was made through the claimant form **No. J/PCF.52** whereby **he claimed TZS. 23,133,600/=** being costs used to repair the applicant's vehicles and also for rendering security services to same. On the other hand, the applicant prayed for the general and costs for running the matter was heard **expar-te on 18/12/2019**. The matter was adjudged in favour of the respondent whereby the trial court ordered the applicant to pay the respondent **TZS 23,133,600/= plus TZS 1,000,000/=** being general damages.

Dissatisfied, the applicant lodged Misc. Civil Application No. 01/2020 on 14/2/2020 with two prayers: **One**, extension of time within which to lodge an application to set aside expar-te judgement. **Two**, an application to set aside the expar-te judgment of 15/12/2019. Indeed, on 16/3/2020 the application was dismissed for nonappearance. Consequently, the applicant appealed to the **District Court of Mtwara vide Civil Appeal No. 4 of**

2020 which was dismissed on 13/7/2020 on the ground that the applicant was supposed to file an application for setting aside an order which struck out Misc. Civil Application No. 1 of 2020.

Records reveal further that on 24/7/2020 the applicant lodged "**Shauri la Maombi Namba 2/2020**" at the trial court. The applicant made two prayers; **One**, enlargement of time to lodge an application for setting aside ex-par-te judgment of Civil Case No. 37 of 2019. **Two**, setting aside ex-par-te judgment delivered on 18/12/2019 vide Civil Case No. 37 of 2019. The trial court heard the application and on 1/10/2020 dismissed it on the pretext that it lacked merit.

As a result of the above dismissal, the applicant lodged another appeal to the District Court of Mtwara vide Civil **Appeal No.9 of 2020** based on two complaints; **One**, the trial magistrate erred in law in delivering two duly executed Rulings on the same Application No.2 of 2020. On this complaint, the applicant complained that the ruling delivered on 1/10/2020 had five pages. The applicant contended that on 5/10/2020 he was served with the ruling of five pages. Surprisingly, one week later the court clerk phoned him to collect a copy of another ruling on the same matter and issue.

The second complaint was about the failure of the trial court to make proper analysis of the evidence adduced before it. The District Court heard the matter and dealt with the first complaint. Consequently, the District Court quashed the said rulings and set aside the orders so entered. The district court went further and ordered a fresh hearing of the application before another magistrate.

Upon hearing the parties, the trial court granted the application and **restored Misc. Civil. Application No. 1 of 2020**. Furthermore, the matter was heard by a new Magistrate who eventually granted the enlargement of time of lodging an application for setting aside the expar-te judgment. Moreover, it set aside the expar-te judgement and further ordered the parties to appear during a fresh hearing **of Civil Case No.37 of 2019**.

On 7/6/2021 the trial court received a letter from **KASIMU UWESU MOHAMED** (the respondent) requesting the court to adjourn the matter and order the same to be transferred to the District Court of Mtwara. The respondent raised four grounds for the transfer of the matter. **One**, lack of pecuniary jurisdiction because he claimed TZS 35,013,600/= the amount which was beyond the pecuniary jurisdiction of the trial court as per section 18(1) (a) (iii) of the **Magistrates' Courts Act [Cap. 11 R.E. 2019]**.

Two, the respondent intended to tender electronic evidence of which the trial court has no. jurisdiction to entertain it. **Three**, the respondent contended that there were issues which could not be resolved by Customary or Islamic laws. **Four**, in case the matter was not transferred to the District Court there was a huge possibility that justice could not be done since there were some technical issues which could not be settled by using different laws.

On 9/6/2021 the matter was called on for hearing, again the respondent prayed orally to transfer the suit to the District Court. At that moment, the respondent submitted on the first and second ground for the transfer featured in his letter. On the other hand, the applicant vehemently

resisted the prayer on the ground that the respondent was playing a technical delay.

The matter took a completely different turn **on 15/6/2021**. It was called on for ruling which was delivered in the absence of the parties. The trial court accepted the request of the respondent to transfer the matter to the District Court. It further ordered that the procedures for the transfer of the matter to the District Court be adhered to since the same had jurisdiction to transfer the matter to itself. The tone and the delivery of the ruling in the absence of parties may attract an interpretation that the learned trial magistrate was under some sort of external pressure. **On 22/6/2021** again in the absence of the parties the trial court dismissed the case after being satisfied that the District Court had directed that the case be transferred to it.

The directions of the District Court were given to the trial court through a **letter dated 22/6/2021 with reference NO. DM/CIV/80/100**. The said letter has a message of accepting the request made by the respondent vide a letter dated on 15/6/2021. It further directed the respondent to follow the procedures of lodging a civil case to it.

As strangely as it sounds, presumably on being advised by a learned counsel and officer of this court, on 16/7/2021 the respondent filed a fresh suit before the **District Court of Mtwara vide Civil Case No.18 of 2021**. The filing of the suit was through a Plaint against the applicant. In the fresh suit, the respondent claims TZS. 35,614,300/= being a total sum of repair and security services to the applicant's motor vehicles. The respondent

lodged that suit as a result of acceptance of his request to transfer the same to the District Court.

As eloquently explained by Mr. Kessy, initially the respondent filed a claim at the Primary Court of Mikindani for TZS. 23,133,600/=. This amount is the one which was decided *expar-te* in favour to the respondent. Even when the matter was restored by Mikindani Primary Court still the figure claimed remained the same. The problem arose when the respondent lodged his letter praying for the transfer of the matter to the District Court. To make matters worse, the Plaint filed at the District Court also carries a new figure of **TZS. 35,614,300/=**.

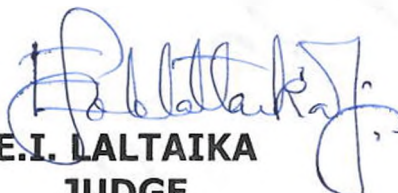
Indeed, this court is very puzzled as to how a new figure of claim was brought in the Plaint while the District Court was aware that the amount which the respondent claimed was TZS. 23,133,600/=. section 44 of the **Magistrate Court Act [Cap. 11 R. E. 2019]** empowers the High Court with the power to exercise supervision over all District Courts and Courts of a Resident Magistrate and at any time may call for and inspect or direct the inspection of the records of such courts and give directions as it may be necessary in the interest of justice. An application may also be made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice. The High Court may revise the proceedings and make such decision or order therein as it sees fit. However, this court cannot increase any sum awarded or altering the rights of any party to his detriment, unless the party adversely affected has been given an opportunity of being heard.

All said and done, I allow the application for revision. Consequently, I nullify **Civil Case No. Civil Case No.18 of 2021** which is before the District Court of Mtwara. In addition, **I restore Civil Case No.37 of 2019 of Mikindani Primary Court.** I direct that the application for transfer to the District Court proceeds without tampering with the original figure on the amount claimed. I make no order as to costs. Each party to bear its own costs.

It is so ordered.



COURT:


E.I. LALTAIKA
JUDGE
30/5/2023

This Ruling is delivered under my hand and the seal of this Court on this 30th day of May 2023 in the presence of Ms. Lightness Kikao for Counsel for the Respondent and holding brief for Mr. Emmanuel Ngongi learned advocate for the respondent.




E.I. LALTAIKA
JUDGE
30.5.2023