

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS CIVIL APPLICATION NO. 15 OF 2023

(Arising from Civil Application No. 2 of 2022 of Hanang District Court and originating from Matrimonial Cause No. 8 of 2020 of Katesh Primary Court)

JULIANA MUHALE.....APPLICANT

VERSUS

DEEMAY LOHAY.....RESPONDENT

JUDGMENT

22nd & 22nd June, 2023

Kahyoza, J.:

Juliana Muhale sued **Deemay Lohay** successfully before the primary court. **Deemay Lohay** appealed to the district court, which overruled the primary court and quashed the proceedings and set aside the judgment of the primary court. Aggrieved, **Juliana Muhale** filed an application for revision under section 79 of the **Civil Procedure Code**, [Cap. 33 R.E. 2019] (the **CPC**) against **Deemay Lohay** to challenge the decision

of district court of Hanang'. She instituted the application for revision by way of a "**Memorandum of Revision**".

I entertained doubts whether it was proper for **Juliana Muhale** to institute an application for revision by **Memorandum of Revision**. I ordered **Juliana Muhale**, the applicant, to appear and address the Court as to the competence of the application instituted by the **Memorandum of Revision**.

Juliana, the applicant submitted that the application was proper as the same was drafted by an advocate. She was not ready to disclose the advocate's name.

Deemay Lohay, the respondent, appeared and was represented by his advocate, Mr. Kim. Mr. Kim, learned advocate submitted that the application was incompetent as the applicant filed a **Memorandum of Revision** instead of filing a chamber summons supported by an affidavit. He was emphatic that an application for revision, like any other application instituted under the CPC, must be instituted by a chamber summons supported by an affidavit. To support his contention, the respondent's advocate, Mr Kim cited the Order XLIII rule 2 of the CPC.

In her rejoinder, **Juliana**, a layperson, had nothing substantive to rejoin. She insisted that the application was proper as it was an advocate who drafted it.

It is evident that **Juliana** instituted an application for revision under section 79 of the CPC. It is trite law that an application under the CPC must be instituted by a chamber summons supported by an affidavit. I agree with the respondent's advocate that Order XLIII rule 2 of the CPC provides the format of instituting an application under the CPC, that an application should be instituted by a chamber summons supported by an affidavit. It states that-

2. Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit:

Provided that, the Court may where it considers fit to do so, entertain an application made orally or, where all the parties to a suit consent to the order applied for being made, by a memorandum in writing signed by all the parties or their advocates, or in such other mode as may be appropriate having regard to all the circumstances under which the application is made. (Emphasis added)

Juliana, the applicant, instituted an application for revision by a Memorandum of revision. **Juliana's** format of filing an application for revision by memorandum of revision, was not only her own invention but also a violation of the clear and mandatory provision of the law. I am alive of the urge to administer substantive justice without undue regard to technicalities. That notwithstanding, I am of the position that rules of procedures are made to be complied with. Parties should not be allowed to disregard the law or say rules of procedures as that will cause anarchy.

I wish to insist that laws are made to be complied with. To allow parts to a litigation to overlook mandatory provisions of the law for the sake of substantive justice is a clear way for anarchy and disorderly growth of the law. Interests of justice are best served when the playing ground is leveled by provisions of clear procedural laws which parties must adhere to. A party who is under obligation to comply with the requirements of clear requirements of statutory provisions cannot flout them and expect courts to invoke the overriding objective principle.

In the end, I find that it was wrong for **Juliana**, the applicant, to institute an application for revision by a memorandum of revision instead of

a chamber summons supported by an affidavit. Thus, the application is incompetent for being flouting the clear and mandatory provision of Order XLIII rule 2 of the **CPC**. Consequently, I dismiss the application as it is incompetent. I make no order as to costs as the respondent was not summoned to appear and basing on their marital relationship.

It is ordered accordingly.

Dated at Babati this 22nd day of June, 2023.



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**John R. Kahyoza,
Judge**

Court: Ruling delivered in the presence of the applicant, the respondent and Mr. Kim, the respondent's advocate. B/C Mr. Shadrack present.

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**John R. Kahyoza,
Judge**

22. 6. 2023