

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. CIVIL REVISION NO. 07 OF 2023

(Arising from Civil Case No. 17 of 2007 at Resident Magistrate's Court of Musoma)

MARY SANGE APPLICANT

VERSUS

IBRAHIM ALLY KIGOMBE RESPONDENT

RULING

09 & 12 October, 2023

M. L. KOMBA, J.:

This is an application under certificate of urgency brought by way of chamber summons under section 44 (1) (a) and (b) of the Magistrate Courts Act, Cap 11 R.E. 2019 (CAP 11) read together with section 79 (1) (e) and (2) of the Civil Procedure Code, Cap 33 R.E. 2019. The applicant is praying for the following orders:

- (i) This court be pleased to call for and revise the order dated 23/08/2023 of the Resident Magistrates' Court of Musoma in execution No. 17 of 2007 original RM Civil Case No. 17 of 2007.*
- (ii) That this court look into and decide on the legality, correctness and propriety of the order.*

(iii) Costs to be provided for.

The affidavit of **Mary Sange**, the applicant is in support of the application attached with judgment in Civil case No. 17 of 2007 and ruling in execution No. 17 of 2007 delivered on 2016. On the other hand, respondent filed counter affidavit in opposing the application.

The background to this application as gathered from the applicant's affidavit is briefly as follows: Applicant and respondent had several execution applications where respondent was knocking the rock as the court could not order attachment of properties of the Applicant which has her name while the suit was among the respondent and M/S Mara Microfinance Co. Ltd. On 23/08/2023 applicant was arrested for failure to honor court order that authorized decree to be settled by the directors of M/S Mara Microfinance Co. Ltd. Further it was deponed that on 16/08/2023 applicant decline service from the court process server there follows her arrest.

On 24/08/2023 the applicant appeared before the Resident Magistrate's Court where she had to explain why should not be imprisoned as a civil prisoner for failure to settle Tsh. 20,000,000/ which was a decree in civil case No. 17 of 2007 between respondent and M/S Mara Microfinance Co.

Ltd. The order was issued ex-parte. During hearing applicant was then given right to be heard where she explained she was out of the country and submitted travelling documents. The executing court agreed with the reasons and vacated its ex-parte order issued on 16/08/2023.

There after as both parties made appearance, the matter heard interparty and the applicant had to show cause why she did not pay the decretal sum or else she has to be a civil prisoner. She informed the court she has no money. The executing court ordered her to be civil prisoner, order which forced her to sign deed of settlement and payment schedule of the decretal sum of Tsh. 20,000,000/-. According to the applicant, deed of settlement was signed without her own will as it appears in paragraph 12 of her affidavit.

Countering the story, respondent adduced that applicant was one of Directors of M/S Mara Microfinance Co. Ltd. As per letter with reference No. MITM//RC/60821/6 dated 23/03/2016 from BRELA and she hide from the service of summons. Parties were given rights to be heard and the applicant was supposed to show cause why she should not settle the decretal sum. After her refusal to settle the decree, executing court order the applicant to be civil prisoner until full payment. From that order signed

deed of settlement with payment schedule and, on default, she provides her car to be sold to settle the amount claimed (deed of settlement and car registration card was attached in respondent counter affidavit). He deponed further at paragraph 3 that applicant is among director who failed to pay the decretal sum where the procedure was followed as the applicant and her advocate failed to identify company properties before cooperate vail was lifted.

When the matter was called for hearing, both parties appeared in person, without any representation. Applicant submission based on her affidavit (which was adopted) that she had no share in the said company, she was just an employee and wondering she had to pay the respondent as the decree was issued between the respondent and M/S Mara Microfinance Co. Ltd. She was aggrieved by that order that's why she apply for revision.

Respondent informed this court that all his submission can be obtained from affidavit which was adopted by this court. He further informed this court that applicant is among the directors of M/S Mara Microfinance Co. Ltd as revealed by BRELA.

After hearing submission by both parties, I invited them to address this court if there was order issued by Resident Magistrate committing the applicant as a civil prisoner as it was not attached in present application.

Applicant was the first to address this court on that issue. In her brief submission applicant said she does not have evidence to show that she is supposed to pay respondent instead of M/S Mara Microfinance Co. Ltd. and she did not have a copy of the said order neither did she attach to her application.

Respondent submitted that there was a written order issued by Resident Magistrate, he informed this court that he has a copy of the said order which was issued on 23 August, 2023 while Resident Magistrate court was executing High court order. He conceded that it was not attached in the application.

My duty is to determine whether the application is properly before this court. As hinted, application was attached with judgement issued in year 2011 and ruling dated 2016 both originating from Civil Case No. 17 of 2007. The applicant is complained of the court order issued on 23/08/2023 as clearly elaborated in her chamber summons. That order was not

attached. During hearing applicant confirmed that she doesn't have a copy of the order, in other words she had no order which she was complained of. Her words confirm that she did not attach the said order as she did not have.

Attaching the order and proceedings complained of is important and necessary to allow this court to exercise its revisionary powers as prayed. It is settled practice of this court even the Court of Appeal that a party who initiates an application of this nature must attach copies of impugned proceedings and order to be revised. See **Mohamed Rabii Honde (as the administrator of the Estate of the late RABII ISMAIL HONDE) vs. Hamida Ismail Honde and 11 others**, Civil Application No. 461 of 2017 CAT at Iringa (unreported), **Benedict Mabalanganya vs. Romwald Sanga**, Civil Application No. 1 of 2002 and **The Board of Trustees of the National Social Security Fund (NSSF) vs. Leonard Mtepa**, Civil Application No. 140 of 2005.

In the latter case of **The Board of Trustees of the National Social Security Fund (NSSF)** for instance, it was decided that;

'..... he must make available to the court copy of the proceedings of the lower court or courts as well as the ruling and, it may be added, the copy of the extracted order of the High Court. An application to the Court for revision which does not have all those documents will be incomplete and incompetent. It will be struck out.'

It is indeed clear from the cited authorities that the applicant is duty bound to attach order sought to be revised in this application for revision, failure to that, the application becomes incompetent as was decided in the case of **Mohamed Rabii Honde** (supra).

In the application at hand, the applicant informed this court that she does not have an order of the court showing that she has to pay the debt. She did not deny the she did not attach as she did not have. In reality the order was issued. Basing on the cited authorities, it was the duty of the applicant, Mary Sange to attach the complained order to allow the revision. This court is, in that account denied the opportunity to know the arguments of the parties and the resultant order of the Resident Magistrate so that I can examine its legality, correctness and propriety. The attached

Judgment and ruling in Civil Case No 17 of 2007 alone is not sufficient to enable this court to exercise its revisionary powers effectively as provided under S.44 (1) (a) and (b) of CAP 11.

I find the application is incompetent for want of impugned order of the Resident Magistrate. I accordingly strike it out.

As the issue was raised by this court, I make no order as to costs.

DATED at **TARIME** this 12th day of October, 2023.




M. L. KOMBA
Judge