

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

CIVIL REVISION NO. 9 OF 2023

*(Arising from Misc. Civil Application No. 81 of 2022 Temeke District Court,
dated 23rd March, 2023 Hon. A.H. Mbodjo – RM)*

ENTREPRENEURES FINANCE CENTRE.....APPLICANT

VERSUS

ATHUMAN JUMA KINOTA.....RESPONDENT

RULING

POMO, J

The Applicant, ENTREPRENEURES FINANCE CENTRE, under section 79(1)(c) of the Civil Procedure Code, [Cap. 33 R.E 2022] (the CPC), set into motion this court praying for the following: -

- 1. That, this Honourable court be pleased to call records and examine execution proceedings of the District Court of Temeke in respect of Misc. Civil Application No. 81 of 2022 dated 23rd March, 2023, Hon. A.H. Mbodjo – RM, for purposes of satisfying itself as to the correctness, legality and propriety of the aforesaid*

Further, in the chamber summons, the Applicant has set out grounds on which revision is preferred thus: -

- (i) That, the trial Magistrate erred in law to order the attachment of the Applicant's Bank Account with the amount of TZS 120,000,000/- to be the value of the alleged confiscated goods as per exhibit P2 while the decree has not provided the same*
- (ii) That, the trial magistrate erred in law to rely on the decree of the District Court in respect of Civil Case No. 51 of 2017 in which the reliefs sought to be executed has not been granted or not clear*
- (iii) Any other relief(s) as the court will deem fit to grant*
- (iv) Costs of the suit be provided*

Its supporting affidavit is deponed by Ms. Nancy Kisanga, who is the company secretary to it.

Briefly stated, the facts of the matter can be gleaned as follows. Against the Applicant, the Respondent filed Civil Case No. 52 of 2017 at Temeke District Court. This was after the Applicant confiscated his stocked goods which are said to be worthy Tshs 120,000,000/-. The Applicant did confiscate the respondent's stocked goods because he had defaulted the 7th and 8th loan repayment schedules, that is to say, the June and July,

2017 loan payment schedules. The respondent's default made the outstanding loan be TZS 46,830,143.38 principal amount and TZS 26,669,356.32 interest thereto.

How all these happened is as follows. In the year 2017 the Respondent obtained from the Applicant a loan of TZS 50,000,000/- attracting an interest of 32,000,000/-. The loan was payable from 1st December, 2016 to 1st November, 2019 in accordance with the agreed schedule of monthly payments. The Respondent defaulted, as alluded above, the June and July, 2017 loan repayment schedules, hence the commencement of the said suit when the Applicant confiscated the Respondent's stocked goods

On 28th December, 2018 the trial court pronounced its judgment in favour of the Respondent. Aggrieved, the Applicant filed an appeal, Civil Appeal No. 51 of 2019 before this court. On 5th May, 2022 this court pronounced judgment which upheld the trial court decision and in addition this court ordered for rescheduling of the loan repayment. No further appeal was preferred by any party against the two concurrent verdicts. Following that, the Respondent commenced execution by filing Misc. Civil Application No. 81 of 2022 to execute the decree of the trial court against the Applicant. Ruling was delivered on 23rd March, 2023 Hon.

A.H. Mbodjo – RM by ordering the Applicant’s bank account held at the Bank of Tanzania be attached. It is this ruling which aggrieved the Applicant hence the instant Application to have it revised by this court, asserting that it is tainted with illegality in that what is being executed is not what was decreed. See paragraphs 3;5 of the affidavit and grounds of revision set in the chamber summons.

The application is resisted by the Respondent through a counter affidavit he deponed on 2nd May, 2023 and filed it in court on 3rd May, 2023. As if that was not enough, he also filed a notice of preliminary objection against the application to the effect that this revision application is an abuse of court process.

I ordered both the Application and the raised preliminary objection be argued by way of written submissions. While the Applicant enjoyed legal service of Mr. Cleophas James, learned advocate, the Respondent had legal representation of Mr. Evodius Mtawala, learned advocate too. I am grateful to both learned counsel for abiding the orders of filing submissions.

To begin with, I will determine the raised objection to the effect that the Applicant’s revision is an abuse of court process.

Expounding the objection, Mr. Mtawala argued that, in this application the Applicant is challenging by way of revision what was the subject matter in her appeal before the High Court, Civil Appeal No. 51 of 2019 against Civil Case No. 51 of 2017 of the trial court and having lost the appeal did not appeal against it therefore cannot challenge it by way of revision. Therefore, to him this revision is an abuse of court process because revision is not an alternative of appeal. He referred this court to the decision of **Isidore Leka Shirima and Another versus The Public Service Social Security Fund and 3 Others**, Civil Application No. 151 of 2016 CAT at Dar es Salaam (unreported); **Augustino Lyatonga Mrema versus Republic and Another** [1996] TLR 267 and **Moses J. Mwakibete versus The Editor-Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd** [1995] TLR 134. In the end, he prayed the application be dismissed with costs.

In reply, Mr. James contends that the application is not an abuse of court process arguing that, since there is no room for appeal against execution proceedings, an aggrieved party can only challenge it by way of revision per section 79(1)(c) of the Civil Procedure Code, [Cap.33 R.E. 2019]. Therefore, this revision was filed in such cause. To bolster, he cited to this court the case of **Joseph Mwita Magige versus Mokami**

Werema Gesaya, Land Appeal No. 36 of 2020 High Court at Musoma;
Mohamed Makata versus Rukia Mtama, Revision No. 6 of 2022 High Court at Tanga, (Both unreported).

On my part, I have considered the parties' submissions for and against the objection. The question to determine is whether this revision application is an abuse of court process. It is undeniable fact that execution orders of the court are not appealable save that can be challenged by way of revision. In **Mohamed Makata's** case (supra) this court at page 7 had this to state:

*"Without ado, I concur with the counsel for the Applicant that **an appeal cannot be preferred against an execution order**. This is pursuant to section 74(1)(a) to (i) and Order XL Rule 1(a) to (v) of the Civil Procedure Code [Cap. 33 R.E.2019]"*

Following the above position, in my considered view, this revision application is not an abuse of court process rather utilizing the avenue available to the Applicant in challenging the order of execution issued by the lower court. That said, I hereby overrule the objection for being misconceived.

Having determined the objection, now I turn to determine the merit or otherwise of the application.

In support of the Application, Mr. James having adopted the content of the affidavit supporting it, argued that the decree sought to be executed is not executable stating that what the Applicant was ordered in the decree is releasing the Respondent's confiscated stocked goods listed in exhibit D9. That, nowhere in the trial court decree is ordered paying the respondent TZS 120,000,000/- therefore the Respondent brought a new thing which is not allowed in execution process. That, the executing court therefore altered the decree and executed something which was not decreed. That is an illegality which warrant this court to exercise its revisionary power to revise the same. To support his stance, he referred this court to the decision of **Rachel Nakware versus Josephine Joseph Magelanga t/a Apex Car Care**, Execution No. 28 of 2022 High Court at Arusha and **Mihayo Maziku Misana versus Abdallah Mashimba Nzingula**, Land Revision No. 3 of 2021 High Court at Shinyanga (Both unreported).

Responding, Mr. Mtawala having adopted the counter affidavit proceeded to argue that he agrees with what was stated in **Rachel Nakware** case (supra) that the duty of executing court is to give effect the terms of the decree, and not beyond. That, although it has power to interpret the decree, it cannot make new decree for the parties under the disguise of interpretation. That, it was admitted in evidence that illegal

confiscated goods were valued at TZS 120,000,000/- therefore the court was justified in ordering such amount and by so doing it didn't alter the decree or make a new decree rather interpreted it. Therefore, Mr. Mtawala prayed the Application be dismissed with costs.

In rejoinder, Mr. James submitted that what is decreed is the Applicant to release the confiscated stocked goods to the Respondent asserting that such decree is not executable. That, the amount of TZS 120,000,000/- was not decreed. He then reiterated his submission in chief and prayed the proceedings be revised. That marked the end of submissions

Having considered the submissions and both affidavits by the parties, the issue for determination is whether the revision application herein is merited.

The executing court record vividly reveals that the respondent, who is the decree holder, through Form No.C.C.10, did apply for execution thus, I quote: -

"Amount of costs, if any, NIL

*Any Other award Awarded: - **The Judgment Debtor to Release Confiscated Stock goods to the Decree Holder immediately***

*Against whom to be executed: - **Judgment Debtor***

Mode in which the assistance of the court is required:

- 1) Attachment of the Judgment Debtor monies at the Bank of Tanzania to the amount of TZS 120,000,000/- which is the value of the confiscated goods as per exhibit P2 of the judgment*
- 2) Issuance of Garnishee Order nisi to the Bank of Tanzania to effect payment of attached monies to the Decree Holder*
- 3) Arrest and detention of Jagjit Singh, Joseph Malatula and Project Massawe who are Directors of the Judgment Debtor”.*

From the above excerpt of the Execution Application Form lodged by the Respondent before the executing court; clearly indicates he applied against the judgment debtor to **Release the Confiscated Stocked goods to the Decree Holder**. Mode of assistance sought from the court is as listed under item (1) to (3) whereby the court allowed the 1st and 2nd. It has to be noted here that, what is decreed in the decree is one thing and the manner in which court assistance is asked for by the decree holder is another thing. Reading the executing decision, there is nowhere in it the decree is altered decree anyhow rather than issuing an order implementing the mode of assistance the Respondent sought from it. Under the circumstances, contrary to what the Applicant alleged, I find nothing to fault the executing court. It could have been something

different if the Applicant was challenging the mode of court assistance the Respondent sought, which is not the case here.

In the upshot, I find the revision application to be devoid of merit and consequently is hereby dismissed with costs.

It is so ordered

Dated at Dar es Salaam this 15th day of December, 2023



MUSA K. POMO

JUDGE

15/12/2023



Court: - Ruling delivered this 15/12/2023 in the presence of **Mr. Evodius Mtawala** for Cleopas James for the Applicant and **Mr. Evodus Mtawala** for the Respondent

S. B. FIMBO

DEPUTY REGISTRAR

15/12/2023