

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

**AT DAR ES SALAAM**

**CIVIL REVISION NO. 18 OF 2022**

*(Originating from the decision in Misc. Application No. 33 of 2022, the  
Temeke District at Temeke)*

**SHABANI KIPATI .....APPLICANT  
VERSUS**

- 1. LULUU GENERAL COMPANY LTD.....1<sup>st</sup> RESPONDENT**  
**2. OMARY MSIBA.....2<sup>nd</sup> RESPONDENT**  
**3. KULWA NCHEYE.....3<sup>rd</sup> RESPONDENT**

**RULING**

***Date of Last Order: 17/11/2023***

***Date of Ruling: 21/11/2023***

**MWAKAPEJE, J.:**

This application is made under section 79(1)(c) and section 95 of the Civil Procedure Code [Cap 33 R.E. 2019]. The Applicant herein applies for orders that this Court be pleased to call for, examine, and revise in Misc. Civil Application No. 33 of 2022, to satisfy itself as to the correctness, legality, and propriety of the proceedings and decisions of the said Temeke District Court; to set aside an order dated 10 June 2022 in respect of Misc. Application No. 33. Of 2022 at the Temeke District Court; maintenance of status quo; any other orders the Court may deem fit to grant; and end costs of this application to follow the event.

The application, filed under the certificate of urgency, is accompanied by chamber summons supported by an affidavit of one Shabani Kipati (The Applicant). In short, the gist of the application at hand is about the ownership of a trailer with Reg. No.T801DJG. It is said that the 1<sup>st</sup> Respondent owns the said trailer. Suffice it to say that the same fell into the hands of the Applicant, and it was stored in his garage. The Applicant refused to surrender the said trailer to the Respondent until he is paid the sum of **Tshs 6,800,000/=** he is owed as storage.

Since the said trailer was obtained by the 1<sup>st</sup> Respondent from the loan he secured from Tanzania Postal Bank, and since it was the source of income, the 1<sup>st</sup> Respondent filed a civil case in the District Court of Temeke for her to be declared lawful owner of the trailer in Civil Case No. 30 of 2022. In addition, she saw that the said trailer was decaying while in the Applicant's custody, and it is depreciating; she, therefore, in Misc. Civil Application No. 33 of 2022 applied to be granted safe custody of the said trailer pending final determination of the suit. On 10 June 2022, the application was granted, and the said trailer was ordered to be preserved under the custody of the 1<sup>st</sup> Respondent until further necessary orders. Following the execution of the interlocutory order, the Applicant seeks the same to be revised by this Court.

The application was disposed of by written submissions. The 1<sup>st</sup> Respondent, however, raised a preliminary objection that this Court has no jurisdiction to call and examine the records of the District Court if an order sought to be revised is an interlocutory order unless such order has the effect of determining the matter to its finality as far as section 79(2) of the CPC is concerned. The Respondent believed that the said order would determine the application to its finality, and he would suffer loss if the order was executed.

This application is brought under sections 79(1) and 95 of the Civil Procedure Code, [Cap 33 R.R. 2019] (CPC). However, the 1<sup>st</sup> Respondent has raised the question of jurisdiction for this Court to entertain this application. Since jurisdiction is a fundamental matter to be considered before deciding, I am obligated to pose and ponder on the same. The question is whether this has jurisdiction to entertain the application.

This application originates from Mic. Civil Application No. 33 of 2022 stemmed from Civil Case No. 32 of 2022. In the latter case, the 1<sup>st</sup> Respondent is the Plaintiff. In this application, the Applicant provides that:

*"79.-(1) The High Court may call for the record of any **case which has been decided** by any court subordinate to it and in which **no appeal lies thereto**, and if such subordinate Court appears-*

- (a) to have **exercised jurisdiction** not vested in it by law;*
- (b) to have **failed to exercise jurisdiction** so vested or*
- (c) to have **acted in the exercise of its jurisdiction illegally or with material irregularity**, the High Court may make such order in the case as it thinks fit. [Emphasis supplied].*

To my understanding, the main case is Civil Case No. 32 of 2022, from which the exparte ruling in Mic. Civil Application No. 33 of 2022 came from, but it has not yet been decided. According to this section, This Court cannot call for records on matters not determined to their finality. The same would be interfering with the proceedings of the subordinate Court, something which this Court is not ready to do.

Even if the Applicant were to move this Court with the provisions of subsection (2) of section 79, as stated by the 1<sup>st</sup> Respondent in the

preliminary objection, the same wouldn't apply in circumstances like these. The same reads:

*"(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.**"* [Emphasis supplied]

Since the given order in Misc. Application No. 33 of 2022 in the District Court of Temeke does not, in my opinion, determine the finality of the matter still pending in Court. Since the order is neither appealable nor revisable, the Applicant's option was to apply for a stay of execution and not file a revision application to this Court.

In the circumstances, I agree with the 1<sup>st</sup> Respondent that this is brought in this Court prematurely and, hence, cannot be entertained. I uphold the preliminary objection. I therefore dismiss this application for want of jurisdiction with costs.

It is so ordered.



  
**G.V. MWAKAPEJE**  
**JUDGE**  
**21/11/2023**

**Court:** Ruling delivered on 21 November 2023 in the presence of the Mr Sunday Msomi for the Applicant and the Respondent holding brief by Mr

Faraji Ahmed Advocate



  
**G.V. MWAKAPEJE**  
**JUDGE**  
**21/11/2023**