

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

CIVIL REVISION NO. 42 OF 2018
(Originating from Ilala District Court's Civil Case No 118 of 2009)

PAYAS R. MOREMI **APPLICANT**
VERSUS
JUMA SAMWEL **1ST RESPONDENT**

RULING

S.M. MAGHIMBI, J:

Before this Court is an application for revision lodged under the provisions of Section 44(1)(a) and (b) of the Magistrate Courts Act, Cap 11 R.E 2002 ("the MCA"). The applicant, Payas Moremi is aggrieved by the Ruling of the Ilala District Court (Hon. Mwakalinga RM) dated 04th day of February, 2013 a Ruling which dismissed the applicant's application for extension of time to set aside a dismissal order of the same court. In the Chamber Summons, the applicant moved this court for the following orders:

1. That this Honourable Court be pleased to call for and inspect or direct the inspection of the records of the proceedings in the Ilala District in Civil Case No. 118 of 2009 in order to satisfy itself as to

it correctness, legality and propriety of the decisions and orders made therein and give such directions as it considers may be necessary in the interests of justice, and revise it as may be appropriate.

2. Costs of the application.

3. Any other relief as the honourable tribunal may deem just to grant in the premises thereof.

The application was supported by an affidavit deposed by the applicant in person and dated 08th day of November, 2018. Before this court, the applicant appeared in person and unrepresented. On their part, initially the respondents were represented by Mr. Michael Ndibalema, learned advocate whom in due course stopped entering appearance, and so did the respondents. The application was therefore heard ex-parte of the respondents.

Brief background of this application is that the applicant herein was the Plaintiff in Civil Case No. 118 of 2009 ("the suit") at the Ilala District Court ("the trial court"). On the 16th day of November, 2010 the suit was dismissed for want of prosecution. Aggrieved by the said ex-parte dismissal order, on the 24th day of August 2011, the Applicant preferred an application for enlargement of time within which he could file an

application for setting aside the dismissal order and on the time be so extended, the applicant also tabled a prayer to set aside the said dismissal order. Having heard the applicant's grounds for both the delay and the non-appearance, the trial court, (Hon. Mwakalinga RM) on 4th day of February 2013, dismissed the application with costs. Aggrieved by the said dismissal, the applicant has lodged the current application on the ground that there are apparent errors on the face of the records of the District Court, which would have guided the District Court to grant the application for enlargement file the setting aside the ex – parte dismissal order, as well as for application for setting aside the dismissal orders includes.

In his submissions to support the application as well as what is deposed in the applicant's affidavit, it was the applicant's complaint that the trial court erred in entertaining the Respondents while there was a lawful court order which is still force to proceed ex – parte against Respondents for failure to file Written Statement of Defense. His argument can be summarized as that giving an illegal order to dismiss the main suit, for want of prosecution, while the previous order was for hearing of the preliminary objections raised by the Respondents themselves, and without first praying for abandonment of the raised preliminary objection, the trial court fell into error.

The applicants grievance was also on the failure on the part of the trial Magistrate to appreciate fact that the main reason for applying restoration of the main suit was to avail an opportunity to cure illegality that was made manifest in the course of the proceedings before it. He averred that at the trial court, when the Counsel for Respondents prayed for the said dismissal orders for want of prosecution, the Respondent had no audience before the same Court as previously, on the 16th day of December 2009, before the late Hon. Kibona PDM (deceased), the trial court ordered the matter to proceed ex – parte after the Respondents had failed to file their Written Statement of Defence despite being given extension of time to file the same twice. He therefore erred the dismissal being ordered at the instance of the respondents despite the fact that they had no right of audience before that court. The applicant prayed for the to grant the application and the ruling and drawn orders of the trial court be revised and set aside and the said suit be ordered to be tried de novo. The applicant also prayed for costs of this application and any other relief that the court may deem fit to grant.

Having gone through the records of this application and what is submitted by the applicant, I have asked myself if the matter is fit for revision or is it an appeal in disguise for reasons I shall elaborate. It is apparent that the applicant was aggrieved by the decision of the trial court which

dismissed his application for extension of time so that he could file an application to set aside a dismissal order. Unsatisfied with the grounds for the delay the trial court dismissed the application for want of merits.

In his application for extension of time to set aside dismissal order an setting aside the dismissal order, the applicant had moved the court under the provisions of Section 14(1) of the Law of Limitation Act Cao. 89 R.E 2002 and Order IX Rule 9(1) of the Civil Procedure Code Cap. 33 R.E 2002 ("the CPC"). It is obvious that the order dismissing an application for extension of time, having finally determined the rights of the parties in so far as determination of the suit is concerned, is an appealable order according to the law. The order to grant extension of time puts the matter to an end in so far as a party's right of action/claim is concerned, that being the case, the order is an appealable order. On the other hand, the order refusing to set as dismissal order under Rule IX (9) of the CPC is appealable under Order XL Rule 1(c) of the CPC. The applicant did not take that route, instead, he filed this application for revision. The question is whether the application before, the orders sought to be revised and set aside being appealable, is tenable in law.

It is trite law that a revision should not be used as an alternative to the appeal. Abdallah Hassys Juma Hamisi Sekiboko, Civil Appeal No. 22 of 2007, the Court of Appeal Tanga, (unreported) the court held:

*"We think the principles guiding revisional proceedings before this Court, **that is that revision should not be a substitute for an appeal** and that the court should be satisfied that in the interest of justice a revision should be employed rather than an appeal, should as well guide the High Court in applications for revision made under Section 44(1)(b) of the Magistrates Court Act, No.2 of 1984." (Emphasis is mine)*

As for the current application, since the order dismissing the application for extension of time was appealable, the applicant was therefore duty bound to appeal against the ruling that dismissed the application for extension of time. Instead, he has opted to file revision hence this application cannot be entertained on a trial and error basis after his application for extension of time was dismissed. He also did not advance any reason as to why he did not prefer an appeal instead. The application beforehand is therefore a kind of forum shopping which is a pure abuse of court process. For that reason, it is hereby dismissed. Since the

respondents stopped entering appearance and hearing was ex-parte, I
make no order as to costs.

Dated at Dar-es-salaam this 23rd day of August, 2023.



A handwritten signature in black ink, appearing to read "S.M. Maghimbi", is written over a horizontal dotted line.

S.M. MAGHIMBI.
JUDGE.