

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB REGISTRY**

**AT DAR ES SALAAM**

**CIVIL REVISION NO. 7122 OF 2024**

**Arising from the Decision of the District Court of Ilala at Kinyerezi in Civil Appeal No. 93 of 2019 (Hon. G.E. Nkwera, RM) dated 5<sup>th</sup> March 2020: Originating from the decision of the Primary Court of Ilala in Civil Case No. 52 of 2019 (Hon. D.P. Nyamkerya, RM) dated 16<sup>th</sup> August 2019)**

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**SAYUNI MSIGWA LUNONZO .....APPLICANT**

**VERSUS**

**AMRI HABIBU RASHID .....1<sup>ST</sup> RESPONDENT**

**FIKI MAIKO VULI.....2<sup>ND</sup> RESPONDENT**

**YONO AUCTION MART.....3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of last Order: 24<sup>th</sup> April 2024*

*Date of Ruling: 22<sup>nd</sup> May 2024*

**MTEMBWA, J.:**

Under ***section 11(1) of the Appellate Jurisdiction Act Cap 141, R.E 2019***, the Applicant is seeking for an order of extension of time within which to file an Application for Revision to this Court against the decision of the District Court of Ilala at Kinyerezi

in **Civil Appeal No. 93 of 2019** dated **5<sup>th</sup> March 2020**. The same was brought under a certificate of extreme urgency and is supported by an Affidavit of the Applicant.

When the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were served, the following preliminary objections in law were taken to wit, that;

- 1. The Application is incompetent and bad in law for being sub-judice.*
- 2. The Application is incurably defective.*

When the matter was placed before me for orders on 24<sup>th</sup> April 2024, the Applicant was represented by **Mr. Hassan Chande**, the learned counsel while the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were represented by **Mr. Mashiku Sabasaba**, the learned counsel. By consent, parties agreed to argue the raised preliminary objections by way of written submissions. Upon going through the records, I noted that, parties adhered to the agreed schedule to which I personally subscribe.

Launching up the missiles, Mr. Sabasaba submitted that, this Application is caught up in a web net of incompetency in view of ***Section 8 of the Civil Procedure Code, Cap 33, R.E 2019.*** Prefacing on what transpired before, the learned counsel observed that, in the year 2019, the Applicant commenced objection

proceedings resisting the attachment of her House located at Majohe in execution of the Decree against the 2<sup>nd</sup> Respondent in favour of the 1<sup>st</sup> Respondent in **Civil Case No. 52 of 2017** in the Primary Court of Ilala. That, the objection proceedings so filed was unsuccessful as a result, the alleged House was sold in execution. Dissatisfied, she appealed to the District Court of Ilala in **Civil Appeal No. 93 of 2019**.

Mr. Sabasaba continued to note that, an appeal to the District Court of Ilala was struck out *suo motto* on ground that, the objection proceedings is non-appealable. Still undaunted to demonstrate her rights, the Applicant filed an Application in the District Land and Housing Tribunal for Ilala (herein "DLHT") in **Land Application No. 80 of 2020** seeking *inter alia*, an order of declaration that she is a lawful owner of the disputed land (a land already sold in execution of a Decree in Civil Case No. 52 of 2017). He added further that, the DLHT determined the matter to its finality and issued a Judgement and Decree dated 6<sup>th</sup> February 2023 in the Applicant's disfavour.

Mr. Sabasaba submitted further that, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents herein were aggrieved too by the Decree of the DLHT as

a result, appealed to this Court vide **Land Appeal No. 77 of 2023** which is pending before Hon. Kiswaga, PRM (extended Jurisdiction). It is for this reason Mr. Sabasaba maintains that, this Application is *res sub judice*. To fortify, Mr. Sabasaba cited ***Section 8 of the Civil Procedure Code (Supra)***. He finally implored this Court to find that, this Application is unmaintainable before this Court.

On the second preliminary objection, Mr. Sabasaba complained that, this Application is incurably defective for failure to disclose both, the reasons for the delay and errors apparent on the face of records sought to be revised warranting a grant of this Application. He observed further that, this Court is empowered to extend time for purposes of filing a Revision out of time in view of ***section 14(1) of the Law of Limitation Act, Cap 89, R.E 2019*** but such powers can only be exercised upon justifiable cause depending on the circumstances. That, the Applicant was under duty to advance in her supporting affidavit, in addition, the errors apparent on the face of the records sought to be revised. In that stance, Mr. Sabasaba beseeched this Court to strike out the Application for want of competence.

In rebuttle, Mr. Chande forcefully submitted that, the common law principle of *res sub judice* is incorporated under **section 8 of Civil Procedure Code (supra)** and it applies when a second suit is instituted by the same title, the same parties praying for the same reliefs with regard to the same matter directly and substantially in issue in a previous suit which is pending. He added that, the word "shall" in the cited provision of the law implies mandatory under **the law of Interpretation Act, Cap, R.E 2019**. To buttress, he cited the case of **Escorts Construction Equipments Ltd Vs. Action Construction Equipments Ltd 1998**.

Mr. Chande continued to note that, the object of the rule under **section 8 of the Civil Procedure Code (supra)** intends to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action and the same subject matter of the same reliefs. That, the Policy is couched with the view to confine a litigant to one litigation forum and avoid the possibility of having two contradictory verdicts.

To add, Mr. Chande cited pages 65 to 68 of the celebrated Book by Takwani, C. K titled **Civil Procedure with Limitation**, 7<sup>th</sup> Edition

where the following conditions were observed; **One**, that, there must be two suits, one previously instituted and the other subsequently instituted; **Two**, that, the matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit; **Three**, that, both suits must be between the same parties or their representatives; **Four**, that, the previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other Court; **Five**, that, the Court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit and; **Six**, that, such parties must be litigating under the same title in both suits.

Mr. Chande contended further that, the appeal before this Court was filed by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents herein and the reliefs claimed are; to quash the decision of the DLHT and costs of the Appeal whereas the Respondent is Sayuni Msigwa Lunonzo, the Applicant herein. From what I have gathered is that, the parties and the reliefs claimed are deferent in Land Appeal No. 77 of 2023 and this Application. Mr. Chande observed therefore that the rules pertaining to *res sub judice* can not apply.

On the second preliminary objection, briefly, Mr. Chande submitted that, it was clearly stated in the Application that, in executing a decree in Civil Case No. 52 of 2017, the Court wrongly attached the Applicant's house and as such, the error disclosed on the face of records was the wrongful attachment of the said House located at Majohe Village. He added further that, the Applicant herein was neither a part to the transaction giving raise to **Civil Case No. 52 of 2017** nor consented for her house to be pledged as collateral. He concluded that, in such circumstances, this Court has mandate to extend time so that decision of the lower Court can be revised.

In rejoinder, Mr. Sabasaba insisted that, this Application seeks to enlarged time within which to file an Application for Revision against the decision of the Ilala District Court in **Civil Appeal No. 93 of 2019** which is *res sub judice* to the pending **Land Appeal No. 77 of 2023** which involves the same subject matter to wit, the property which was attached and auctioned in execution of a decree in **Civil Case No 52 of 2017**. He added further that, unlike in the doctrine of *res judicata*, the essential ingredient in *res sub judice* is the subject

matter. He recited ***Section 8 of the Civil Procedure Code (supra)*** which provides clearly that no parallel actions can be tried by the Court involving the same subject matter and same parties.

Mr. Sabasaba further noted that, the subject matter involved in **Land Appeal No. 77 of 2023** which is pending in this Court is substantially the same as in this Application and that even the parties are the same in both cases.

Rejoining to the second preliminary objection, Mr. Sabasaba insisted that, the Applicant is duty bound to establish justifiable cause for extension of time by stating in the supporting affidavit not only the reasons for the delay but also apparent errors on the face of the records which is sought be revised. He was of the views that, the supporting affidavit is silent on the reason of the delay and apparent errors discovered giving raise to this Application. Lastly, he implored this Court to struck out this Application.

Having considered the rival arguments by the parties, the issue before me is whether this Application is competent before this Court. From what I have observed from the counsels' submissions, the



following facts are not in dispute; **One**, that, sometimes in 2019, the Applicant through objection proceedings, unsuccessfully challenged the attachment and sale of the disputed House located at Majohe Village; **two**, that, following such unsuccessful attempt, the said House was accordingly sold in execution; **three**, that, dissatisfied, the Applicant appealed to the District Court of Ilala where the Appeal was dismissed; **four**, that, in order to demonstrate her rights over the disputed House, the Applicant opted to file an application in the DLHT for Ilala which ended on her disfavour; and **five**, that, as a result of the DLHT's decision, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents opted to file an appeal to this Court which is pending.

In such circumstances therefore, the issue can be narrowed to whether the Applicant was legally justified to file this Application seeking for extension of time within which to file an Application for Revision against the decision of the District Court of Ilala in **Civil Appeal No. 93 of 2019** dated **5<sup>th</sup> March 2020**. Before I delve to tackle the raised preliminary objections, I feel instructive to determine whether the said decision of the appellate Court is capable of being revised by this Court even if time is so extended.

It has been principally established that, the right to invoke the Court's power of revision cannot be exercised as an alternative to appealing. It follows therefore that, whoever wants this Court to exercise its revisional powers, he or she must make sure that the right to appeal is not exercisable or that the appellate process has been blocked by judicial process and or where there are sufficient reasons amounting to exceptional circumstances. However, this Court in its own motion may invoke its revisional powers in respect of any proceedings of the subordinate Courts.

In the case of ***Barozi Abubakari Ibrahimu & Another Vs. Ms Benandys Limited and 2 Others, Civil Revision No. 6 of 2015, Court of Appeal at Dar es Salaam***, the Court cited with approval the case of ***HALAIS PRO —CHEMIE V. WELLA A.G. [1996] TLR 269*** at page 272 and noted that;

*We think that **MWAKIBETE's case** read together with the case of **Transport Equipment Ltd** are authority for the following legal propositions concerning the revisional jurisdiction of the Court under s (3) o f s. 4 of the Appellate Jurisdiction Act, 1979:*

(i)N/A

*(ii) Except under exceptional circumstances a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court;*

*(iii) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable with or without leave;*

*(iv) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process.*

(Emphasis mine)

As said before, if time is extended, the Applicant intends to file a Revision to revise the decision of the District Court of Ilala in **Civil Appeal No. 93 of 2019**. With deepest respect that right is not exercisable even if time is enlarged in the circumstances of this case. The reason is not far to fetch; the right to appeal against the said decision has not been blocked by any judicial process and there have been no cogent reasons amounting to exceptional circumstance offered warranting the exercise of such powers.

The Applicant did not indicate in his supporting Affidavit why she failed to appeal to this Court against the decision of the District Court of Ilala in **Civil Appeal No. 93 of 2019**. She has not even laid justifiable reasons amounting to exceptional circumstances justifying the exercise of this Court's power of revision if time is extended. In ***Eqbal Ebrahim vs Yesseh K. Wahyungi, Civil Application No. 202/17 of 2022, Court of Appeal at Dar es Salaam***, the Court noted at page 7, thus;

*Relying on the above authorities, we find that it is a settled principle of law that if there is a right of appeal then, that right has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court.*

At page 8 thereof, the Court continues to note, thus;

*It should be noted that in an application of this nature, it is not the duty of the Court to dig up for illegalities, irregularities and improprieties or discovering the alleged exceptional circumstances which are not explicitly stated in the applicant's application. It is for the applicant to demonstrate that exceptional circumstances do exist for the Court to invoke its power of revision.*

*On the other hand, considering the nature of the proceedings and the decision of the High Court, we are of the view that the*

*applicant, subject to compliance with the law, had a right of appeal. Nonetheless, he has not given any sufficient reasons why he did not wish to appeal against that decision. Equally so, he has not alleged that the appellate process had been blocked by any judicial process.*

Looking at the Application, the Applicant intends to challenge the decision of the District Court of Ilala as aforesaid where she was also a party. That alone suffices, if she so wishes, to initiate appeal proceedings against the said decision. It is when the appeal processes are blocked by judicial process the Applicant can opt to come to this Court by way of Revision.

The Chamber Summons includes one main prayer that is, extension of time within which to file application for Revision. Although the same has not been heard on merits due to the objections raised by the learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, I am of the settled mind that, in determining the propriety of the Application for extension of time, this Court should not detain or limit itself to the reasons for the delay. It must go further and determine the implications or the end results of the main

Application if time is extended. The order would not be issued if will serve no purposes or abuse Court processes.

In this matter, even if time is extended, the Applicant will go nowhere for reasons advanced above. In the case of ***Reuben Lubanga Vs. Moza Gilbert and 2 Others, Civil Application No. 533 of 2021, Court of Appeal of Tanzania at Dar es Salaam (Unreported)*** the Court observed, thus;

*It is equally the law that, in deciding whether or not to grant an extension of time, the Court should not limit itself to the delay. Instead, it has to consider as well the weight and implications of the issues involved in the intended action and whether the same is prima facie maintainable. This is because, the order being equitable, it cannot be granted where it will serve no purpose or where it is a mere abuse of the court process.*

Even if this Application is granted, will serve no purposes because this Court has no mandate to exercise its revisional powers where the appeal processes have not been blocked by any judicial process or where no exceptional circumstances have been laid. In my conviction, the Applicant if still dissatisfied by the said decision, is at liberty to apply for extension of time within which to file an appeal to

this Court against the decision of the District Court of Ilala in **Civil Appeal No. 93 of 2019**. In addition, and by way of passing, the Applicant also still has an opportunity to appeal against the decision of the DLHT for Ilala in **Land Application No. 80 of 2020**. However, since she has been joined as one of the Respondents in **Land Appeal No. 77 of 2023** which is pending before this Court, still she can file a cross appeal or objection.

Having so observed, unless it is for academic use, I see no reason to discuss the raised preliminary objections. Since the issue leading to the disposal of this matter was raised by this Court *suo motto*, in the circumstances, there will be no order as to costs. In fine, this Application is struck out for being incompetent.

It is so ordered.

Right of appeal explained.

**DATED at DAR ES SALAAM** this 22<sup>nd</sup> May 2024.



**H.S. MTEMBWA  
JUDGE**