

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

CIVIL REVISION NO. 20 OF 2023

(Arising from the District Court of Temeke in Civil Appeal No 53 of 2020

Hon. Ngeka RM)

HARUNA RASHID KASOGELAAPPLICANT

VERSUS

RACHAEL BERNARD CHEMPONDA RESPONDENT

RULING

9th & 28th May 2024

KIREKIANO, J:

The parties hereon are siblings. Before the Primary court of Temeke at Temeke, the applicant herein sued the respondent for recovery of Tshs. 26,500,000. According to the claims in the primary court, the claim was that the money was proceeds of sale of a house of their late father in which the applicant claimed that having inherited the house the siblings disposed the same and the respondent pocketed his share.

The primary court was satisfied that the applicant had proved his case. In its decision in Civil case no 71 of 2020 dated 29.06.2020 it condemned the respondent to pay the applicant the said amount. Dissatisfied the respondent successful appealed to the District Court. The District Court on 17.06.2021 delivered its Judgement and held that the

proceeding of the primary court was flawed by illegalities and irregularities. It thus made an order that the appellant's case at the primary court be tried *denovo* before another magistrate.

The applicant on 13.06.2023 filed this revision proceeding seeking the following orders; This court be pleased to invoke its revision powers to call for examine and revise the proceedings record and decision of the District Court, cost to be provided for and any other necessary relief.

The application is predicated under section 79 (1) of Civil Procedure Code cap 33 [RE 2019] (sic) supported by the applicant's affidavit.

In his affidavit he narrated the background of the dispute and deposition that the application is brought intime. He said he was granted extension of time in civil application no 401 (sic). He also deponed that there was no irregularity or illegality in the primary court decision for the district court to order trial *denovo*.

The application is contested by the respondent who filed counter affidavit, in her depositions she did put the applicant to prove that he was granted extension of time to file revision out of time. As such she stated that the order of trial *denovo* was clear and correct thus this application does not constitute good ground of revision. No rejoinder affidavit was filed.

When the application was placed before me for hearing, it was heard by way of written submissions. The applicant informed this court that he would get legal aid. The respondent had service of Mr Robert Rutaihwa learned advocate.

In his submission the applicant argued that the district court erred in law and fact to order retrial the case denovo while there was no any irregularities or illegality done by the trial court. According to him the purpose of retrial is to correct the procedural wrong committed in the course of the trial but did not exist in this case. He cited **Joanita Joel Mutalemwa Vs Christina Kamugisha Tushemeleirwa, Pc Criminal Appeal No. 3 of 2022 where** this court on the purpose of trial denovo that there should be irregularity or illegality. He did not submit anything on whether the application was filed in time.

On his part, Mr Rutaihwa submitted that an application for revision is not an alternative to appeal, and a party would not be allowed to invoke the revisional jurisdiction of the court where the right to appeal is straightforward. He cited the decision of this court in **Teresiphory Muganyizi Anthony vs Merchades Osward Kalemela Land Revision No. 42 of 2021 HC (unreported)**, citing **Edward Msago v. Dragon Security Services Ltd**, that to invoke the power of Revision,

there should be no right of appeal in the matter, the purpose of this condition to prevent of revision being used as an alternative to appeal. He also narrated on the alleged illegality taking a stand that the district court correctly quashed the proceeding following anomalies in composition of court.

In rejoinder, the applicant submitted that the applicant does not challenge the facts but the illegality and irregularity in the decision of the District Court in interpreting as section 7(1) of the Magistrates' Courts Act cap 11; thus, a revision was the proper cause.

In this application, it is on record that the decision originated from the primary court. Given this, the applicant missed a point that the relief sought under section 79 (1) of **Civil Procedure Code Cap 33 [RE 2019 Civil Procedure Code]**, is misplaced because the Civil Procedure Code does not apply in the High Court when dealing with civil matters originating from the primary court. The reason is simple, this was not the rule of procedure applicable during the trial. In **Julius Petro V Cosmas Raphael [1983] TLR 346.**

In this state of affairs, an application for revision could have been made under section 30 (1) a of the Magistrate Court Act. This brings me to an important issue, which was contentious in the parties' affidavit: whether

the application for revision was filed in time. The decision was issued on 17.06.2021, and the applicant filed this application on 13.06.2023, two years later. In view of the law of limitation Act Cap 89 Part III paragraph 21, the applicant ought to have made his application within sixty days.

The applicant intimated that he obtained an extension of time to file this application. His deposition under paragraph 4 of the affidavit was not proved by any supporting annexure of the order extending time. Taking a rather progressive view, this court inquired from the registry, but the said number mentioned by the applicant did not refer to any application by the applicant for the years 2021, 2022, and 2023. It follows that in absence of proof of extension of time, this application was brought outside permissible time.

Having deliberated that the application is time-barred, I also wish to clarify in passing the resort to be taken by a party aggrieved by the district court's decision.

A district court decision may be appealed against under section 25 (1) b of The Magistrate Court Act Cap 20. The section provides to the effect that any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction, may, within thirty days after the date of the judgment or order, appeal to the High Court.

In the case of **Said Ali Yakut & Others v Feisal Ahmed Abdul (Civil Application 4 of 2021) [2011] TZCA 145**, the court of appeal cited the decision in **Moses J Mwakibete v The Editor, Uhuru & Two Others [1995] T.L.R 134**, and stated that:

“It is our view that, where a party has the right of appeal, he cannot properly move the Court to use its revisional jurisdiction. He must exhaust all remedies provided by law before invoking the revisional jurisdiction of the Court. As the applicants have not yet exhausted all remedies provided by law, they cannot invoke the revisional jurisdiction of the Court.”

In this application, the applicant, under section 25 MCA, had the right to appeal to the High Court. As the respondent counsel rightly submitted, he could not prefer revision.

All said the last point to be decided is the proper order to be made; I have taken the same view in dealing with appeals, that is, once the time prescribed by the law to appeal has lapsed, and an application for an extension of time is not sought the remedy is to have the same dismissed with costs. See **Medard Kajuna Anacret vs Eustace Christian (Civil Appeal 26 of 2016) [2018] TZHC 2643 (1 June 2018)**. This application, being out of time, is accordingly dismissed. Considering that the applicant had legal aid, there will be no order as to costs.



A. J. KIREKIANO

JUDGE

28.05.2024

COURT

Ruling delivered in chamber in the absence of the applicant and the presence of Miss Anastella Selestine holding brief of Mr Robert Rutaihwa, counsel for the respondent.



A. J. KIREKIANO

JUDGE

28. 05.2024