

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL REVISION NO. 33 OF 2023

(Arising from Civil Case No. 3 of 2023 in the District Court of Kigamboni)

NAFTARI BALAMPAMAAPPLICANT

VERSUS

ABDALLAH ISMAIL..... RESPONDENT

RULING

Date of last Order: 19th January 2024

Dat of Ruling: 15th March 2024

MTEMBWA, J.:

In the District Court of Kigamboni, the Respondent preferred a suit against the Applicant herein for the following orders, to wit; that, an order that, the Defendant (Applicant) pays to the Plaintiff (the Respondent) the sum of Tsh. 50,000,000/= being specific damages for the loss of income suffered arising out of malicious prosecution; an order that the Defendant (Applicant) pays to the Plaintiff (Respondent) the general damages as may be assessed by the trial Court; costs of the suit and other reliefs as the trial Court may deem just and fit to grant.

Having been served, in his Written statement of Defense dated **27th April 2023**, the Applicant (the defendant in the trial Court) raised one preliminary objection to the effect that, the trial Court had no jurisdiction to entertain the matter. He beseeched the trial Court to dismiss the suit with costs.

According to the records, the raised preliminary objection was tabled for hearing on 7th June 2023. Having heard the counsels for both parties, in its ruling dated 3rd July 2023, the trial Court overruled the objection on the pretext that it had jurisdiction to entertain the matter. The matter was then scheduled to proceed for first pretrial conference. I have not seen anything further except series of adjournments up to 4th November 2023. It could appear, up to the date when the original records were dispatched to this Court by the letter dated 26th October 2023, the conduct of the first pretrial conference was pending before the trial Court.

By records, this Court is pleased to call for the records of the proceedings of the trial Court in **Civil Case No. 3 of 2023** for purposes of examining its propriety and or correctness. The Application was brought under the provisions of ***section 79 (1) (a) of the Civil Procedure Code, Cap 33, RE 2002 (sic)*** is supported

by an Affidavit of the late Samweli Shadrack Ntabaliba, the then learned counsel for the Applicant.

Initially, this matter was presided over by Hon. E. Kakolaki, J who has been reportedly to have been transferred to another duty station. As such therefore, it was reassigned to me for final determination.

When the matter was placed before me for orders on **20th December 2023**, Ms. Marther M. Mohamed, the learned counsel appeared for the Respondent. She was also holding briefs with instructions to proceed for Mr. Samweli Shadrack Ntabaliba for the Applicant who was by then reportedly to have been admitted at Rabinisia Hospital at Tegeta. An order, however, to argue this Application by way of written submissions was issued. Very unfortunate, for the love of the almighty God, I was later on informed of the sudden death of the learned counsel for the Applicant to which, with respect, I share my condolences. I had, then, to vacate my previous orders on filing of the written submissions. Having perused the records, I noted that parties adhered to the agreed schedule to which I personally subscribe.

In the conduct of this Application, the Applicant appeared in person while the Respondent enjoyed the service of Ms. Marther M. Mohamed, the learned counsel. As said before, hearing proceeded by way of written submissions.

Taking the podium, the Applicant submitted that, by this Application, this Court is pleased to call for the records of the proceedings of the District Court of Kigamboni in Civil Case No. 3 of 2023 with the view to examine its propriety and or correctness. He placed before this Court one issue for determination, that is, whether the trial Court had jurisdiction to entertain the matter. He argued further that, being the issue of jurisdiction, it can be raised at any time in view of the case of ***Tanzania Revenue Authority vs. Tango Transport Company Ltd, Civil appeal No. 84 of 2009 (Unreported)***. He added further that, even at appeal stage, the issue of jurisdiction can be raised as per the cases of ***Michael Leseni Kweka vs. John Eliafe, Civil Appeal No. 51 of 1999; Tanzania Revenue Authority Vs. New Musoma Textiles Ltd, Civil Appeal No. 93 of 2009*** and ***Tanzania Authority Revenue Authority Vs. Tango Transport Company Ltd (supra) (all unreported)***.

The Applicant substantiated further that, the Plaintiff, the subject of this Application in the trial court, was mainly for the claim of Tsh. 50,000,000/= being damages arising out of malicious prosecution. That, as per ***section 18 (i) (a) (ii) of Magistrates Court act, cap 11 RE 2002***, the claimed sum falls under the pecuniary jurisdiction of the Primary Court. He was of the view that, the trial Court (the District Court of Kigamboni) had no jurisdiction to entertain the matter in such circumstances.

The Applicant, to fortify, cited the case of ***Charles Lala vs. Abdallah Mangi (1992) TZHC 35 (10th November)*** where it was observed that, the Primary Court and the District Court both have concurrent jurisdiction on matters relating to malicious prosecution. In such circumstances therefore, the Court of the lowest grade competent to try the matter, in view of ***section 13 of the Civil Procedure Code (Supra)*** is the Primary Court, the Applicant added. He lastly, implored this Court to grant the Application with costs.

On her part, having prefaced the genesis of this Application, Ms. Mohamed argued that, it is not the stipulated amount of Tsh. 50,000,000/= which empowers the Court to entertain the matter. There are other matters for determining the jurisdiction of the Court

especially, the fact that the matter based on a common law tort of malicious prosecution. She argued further that, being a common law tort of malicious prosecution, the Court of competent jurisdiction is the District Court. In support of her contention, she cited the cases of ***Adrew Ongong'a Ndiege Omolo Vs. Philimon Arko Angola, Civil Appeal No. 10 of 2021, High court of Tanzania at Musoma*** and ***Selemani Ramadhani Vs. Ally Juma (1984) TLR***.

Ms. Mohamed faulted the Applicant for citing the case of ***Charles Lala (supra)***. She noted further that, the Court did not observe that the Primary Court and the District Court both have concurrent jurisdiction on the common law tort of malicious prosecution rather, it was held that both Courts have concurrent jurisdiction on customary law tort. She proceeded to narrate on the grounds for customary law tort which I find to be not necessary for purposes of this application.

The learned counsel for the Respondent maintained that the District Court has jurisdiction in the circumstances and she cited in addition, the case of ***Ferdinand Nzyungu Vs. Erijin Kilosa, DC Civil Appeal No. 5 of 2021, High Court of Tanzania at Sumbawanga***. She lastly, implored this Court to dismiss the

Application so that the trial Court may proceed to determine the matter to its finality.

I have dispassionately gone through the rival arguments by the parties and noted that, the main issue for determination here is whether the trial Court had jurisdiction to entertain the matter. Before I dwell into the nitty gritty of the issue of jurisdiction however, I find it pertinent that I look into the propriety of this Application before this Court. As said before, the Application was brought under the provisions of ***section 79 (1) (a) of the Civil Procedure Code (Supra)***. The section provides as follows;

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) N/A

(c) N/A

From the above quoted provisions of the law, it is evident that, this Court has jurisdiction to call for the records of any subordinate Court to it where no appeal lies thereto, to examine whether it exercised its jurisdiction. Having examined the records, this Court may

issue orders appropriate considering the circumstances. However, the said section was amended by **Act No 25 of 2005** by adding to it subsection (2) which provides as follows;

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.

The cited provisions of the law do not need interpolations. It simply states that, although revision is allowable under **section 79 (1) of the Code**, no application shall lie in respect to any interlocutory or preliminary decision or order of the Court unless such decision or order has an effect of determining the matter to its finality. In my conviction therefore, the determining factor is whether the ruling of the trial Court dated 3rd July 2023 is interlocutory. If it is, then an application for Revision cannot lie but if it is not, then, the Application for Revision is allowable under the cited provisions.

The Court of Appeal of Tanzania in the case of **Murtaza Ally Mangungu Vs. the Returning Officer for Kilwa North Constituency and 2 Others, Civil Application No. 80 of 2016**

(unreported) happened to determine on what amounts to preliminary or interlocutory order or decision under **section 5(2) (d) of Appellate Jurisdiction Act** which is in consonant with **section 79 (2) of the Civil Procedure Code (supra)**. The Court observed that;

In our viewit is therefore apparent that in order to know whether the order is interlocutory or not, one has to apply 'the nature of the order test'. That is, to ask oneself whether the [decision] or order complained of finally disposes of the rights of the parties. If the answer is in affirmative, then it must be treated as a final order. However, if it does not, it is then an interlocutory order

In **MIC Tanzania Limited & 3 Others v. Golden Globe International Services Limited [2017] TLR 364** for instance in an application for revision to revise decision of the trial judge refusing to recuse from the conduct of the matter, the Court observed that:

The test is whether or not the order desired to be revised had the effect of finally determining the suit. In this regard, the impugned decision did not have such effect, despite the presiding officer's refusal to recuse himself, the suit was not extinguished and remains pending todate

I have considered various decisions of the Court in determining whether or not the decision or order is interlocutory of preliminary.

The test, in any case, is whether the said decision or order has an effect of finally determining the rights of the parties. If the matter remains pending after such order or decision, I am afraid to say that, the decision or order is interlocutory or preliminary.

As said before, the trial Court, having overruled the preliminary objection, the matter was set for first pretrial conference. According to the trial Court records, to date, the matter is pending waiting for decision of this Court. The Ruling or decision therefore, was purely interlocutory or preliminary in which no Application for revision can lie therefrom.

The heart of ***section 79 (2) of the Civil Procedure Code (Supra)*** is a bar to any application for revision against or made in respect of any preliminary or interlocutory decision or order unless such decision or order has the effect of finally determining the suit. The bar averts the possibility of the parties and the Court being inundated with incessant or endless appeals or revisions from preliminary or interlocutory decisions stalling effectual determination of the crux of their dispute (***see Mahendra Kumar Govindji Momani t/a Anchor Enterprises Vs. Tata Holdings (Tanzania) Ltd. & Another, Civil Application No. 50 of 2000; and Karibu***

Textile Mills Ltd. Vs. New Mbeya Textile Mills & 3 Others, Civil Application No. 22 of 2006 (both unreported).

In the circumstances, I hold the view that the Application is not properly before the Court because the Ruling of the trial Court dated 3rd July 2023 was interlocutory and or preliminary. It did not finally determine the rights of the parties. It is therefore not subject of Revision. The Applicant if aggrieved, may wait for a proper time to appeal or apply for revision after the matter has been finally determined by the trial Court and the points of dissatisfaction may include those arising from the interlocutory order or decision.

By citing the case of ***Mahendra Kumar Govindji Monani t/a Anchor Enterprises v. Tata Holdings (Tanzania) Ltd and Another, Civil Application No. 50 of 2002 (unreported)***, the Court in ***Jacquiline T. Limited vs EXIM Bank T. Limited, Civil Application No. 275/17 of 2022) [2024] TZCA 158*** had this to say;

.....an interlocutory or preliminary decision or order is not appealable (or subject to revision) and that a party aggrieved by such decision has to wait until the outcome of the case and if dissatisfied to proceed accordingly in an appeal (or revision)

with points of dissatisfaction including those arising from the interlocutory decision or order.

To that end, this Application is struck out with costs. The records are to be remitted to the District Court of Kigamboni before the same learned magistrate or any other, as the case may be, to proceed from where it ended.

I order accordingly.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 15th March 2024.



**H.S. MTEMBWA
JUDGE**