

TANZANIA / JUDGMENT

20160216 TZHC Dar es Salaam 1

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TZHCDECIDED
16 February 2016

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IN THE HIGH COURT OF TANZANIA AT DODOMA MISC. CIVIL CASE REVISION NO. 2 OF 2014
(Arising from the Ruling of Dodoma District Court in Civil revision No. 6 of 2013 and Original
Civil Case No. 26 OF 2013 of Dodoma ' . Urban •Court) ATHUMANI ALLY MWAKASIMBA
APPLICANT Versus HADIJA HALIDI RESPONDENT Date of Last Order: 30/10/2015 Date of Ruling -
16/2/2016

RULING

This is an application for revision made under Section 30(1)(a) of the Magistrates' Courts Act Cap. 11. The application is supported by an affidavit affirmed by the applicant. The respondent filed a counter affidavit to resist the application for revision. The applicant requests this Court to revise the records and the ruling of Dodoma District Court made on 18th day of March; 2014. The reasons that led the applicant to move this court to exercise its revisional jurisdiction are that:- 1). The District Court erred in law by changing the appeal lodged by the respondent at the District Court from : ' . _ ~ 1 Appeal arising from Criminal Case No. 122 of 2013 to Civil Revision No. 06 of 2013. ii). At the Urban Primary Court there was no Crir;ninal Case No. 122 of 2013 rather there was a Civil Case No. 26 of 2013. iii). The act of the District Court to change the respondent's drawn and filed appeal_ without there being any application for amendment from the respondent was contrary to the law. The respondent replied that the applicant was not supposed to file an application for revision since he has a right of appeal. It was further submitted that the applicant has not shown any apparent error in the face of the record to warrant this court to exercise its revisional powers. It was the contention of the respondent that even the applicant acknowledged that there was no Criminal case before the Urban Primary court, hence the District Court properly invoked its revisional powers by nullifying the whole proceedings of the Primary Court. In rejoinder, the applicant submitted that this court have revisional powers even where there is a right of appeal. In support of this argument, he referred this Court to the cases of Mwanahawa Mweya Vs. Mwanaidi Maro [1992] T.L.R. 78 and Transport Equipment Ltd Vs. Devram P. Valambia [1995] T.L.R. 161. He submitted that the irregularity is the change of the Criminal Appeal to Civil R e v i s i ~ 2 f \ I have carefully gone through the records of the lower court in respect of the Civil Case No. 26 of 2013 and noted that there are two typed judgments. One is in relation to Civil Case No. 26 of 2013 and the other one is in relation to Criminal Case No. 122 of 2013. The difference between these two judgments is noted at the first page where they read as follows:- " Jamhuri ya Muungano wa Tanzania. Mahakama ya Mwanzo Mjini Wilaya Dodoma Shauri ya Jinai Na.

122/2013. Mlalamikaji Athumani Ally Mwakasimba Mshtakiwa Hadija Halidi Kosa: Kujipatia mali kwa njia ya udangayifu F.304 sura ya 16KA". So the above is the reading of the Criminal Case. The Civil Case reads as follows:- "Jamhuri ya Muungano wa Tanzania Mahakama ya Tanzania Mahakama ya Mwanzo M)ini Wilaya ya Dodoma Madai No. 26 ya 2013 Athumani Ally Mwakasimba M ~ ' 3 • Dhidi ya Hadija Halidi Mdaiwa ". All other details in the body of the judgments, if compared, are the same and one. The details, analysis of the evidence, and conclusion, contained in these two typed judgments are the same as they appear in the handwritten judgments. Therefore, the only difference is the title. The typed Civil Case Judgment was duly certified by the District Magistrate Dodoma. The typed Criminal Case Judgment had a Court seal of the Urban Court, Dodoma District Court. From the above analysis, it is obvious that the proceedings in the District Court were affected by the confusion of there being two different judgments. This confusion was deepened by the respondent when she lodged a "Petition of Appeal" against a Criminal Case No. 122 of 2013. I tried to call for records in respect of this Criminal Case but it seems that there was no such Criminal case. The confusion was further exacerbated by the Resident Magistrate when she altered, suo moto, the Criminal Appeal filed by the respondent into Civil Revision. I say so because, the "petition of Appeal" against Criminal Case No. 122 of 2013 is found in the records of Civil Case No. 26 of 2013. From the above, it is not clear as to why the District Court decided to place Criminal Appeal into Civil Case No. 26 of 2013. It is not clear as to whether the Criminal Appeal was ever placed in the Criminal register. The District Court is said to have acted under Section 22(1) and (5) of the Magistrates' Courts Act, Cap. 11. Indeed, the District Court has revisional powers which can be exercised suo moto. However, such powers do not grant it the powers of confusing court records. I am certain in my mind that all these confusions, warrant this court to exercise its revisional powers as the confusion is not emanable from the appellate process for remedy (see the Case of Fahari Bottlers Ltd and Southern Highlands Bottlers Ltd Vrs. Registrar of Companies and National Bank of Commerce (1997) Ltd, [2000] T.L.R. 102). It is against this background, I exercised my revisional powers under Section 30(1)(a) of the Magistrates' Courts Act, Cap 11 by quashing the proceedings and the ruling of Dodoma District Court in Civil Revision No. 26 of 2013. I further quash the two typed judgments of the Primary Court and direct the Primary Court to type a proper judgment as contained in the Court handwritten records. Due to the circumstances of this case, I make no order for costs as the mistake was occasioned by the court and not by the parties. It is so ordered. B.M.A. SEH EL JUDGE, 1st; 6th February, 2016 I 5

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