

TANZANIA / JUDGMENT

CIVIL Revision DC

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Page 1 of 10 IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT GEITA CIVIL REVISION NO. 20911 OF 2024 (Arising from revision application No. 17272 of 2024 Geita District Court, Originated from Civil Case No. 33 of 2024 Nyankumbu Primary Court.) BETWEEN EVA ALEX.....APPLICANT VS ELVIRA BYABATO.....RESPONDENT

RULING

Date of last Order: 19/09/2024 Date of Ruling 20/09/2024 MWAKAPEJE, J.: The applicant herein is seeking orders to revise the decision of the District Court of Geita in Revision Application No. 17272 of 2024, dated 21 August 2024, to ascertain the correctness of the said decision. This application is made by way of chamber summons under section 30(1)(a) and 31(1) and (2) of the Magistrates Courts Act, CAP 11 R.E 2019, supported by the affidavit of the applicant. Though under normal circumstances, the facts giving rise to this application would not be necessary, I, however, find it prudent to narrate them for clarity purposes and more understanding of what transpired in the lower courts that the parties to the application are claiming against each other. The facts are straightforward: the applicant successfully sued Page 2 of 10 the respondent before the Nyankumbu Primary Court in Civil Cause No. 33 of 2024 for the recovery of debt totalling Tshs 21,800,000/=, which she owes the respondent. When the claim was read against the respondent, she admitted to having been indebted. Subsequently, the court recorded the admission by the respondent and proceeded to issue orders of repayment of the admitted debt/claims of the applicant on 14/3/2024. Following the trial court's order for the respondent to pay the debt in three instalments, which she failed to honour, the applicant applied for execution. This led to the attachment of several properties of the respondent, including a motor vehicle. Immediately after this attachment, the respondent filed the revision application against the decision of the trial court before the District Court of Geita. The application was confronted by a preliminary objection from the applicant (the then-respondent). However, before determining the raised preliminary objection and substantive application for revision, the District Court ordered the release of the attached motor vehicle. The applicant was unhappy with that decision; thus, she is now resisting the order of releasing the said motor vehicle before this court. Page 3 of 10 At the hearing, both parties were represented by learned advocates, Mr Laurent Bugoti appearing for the applicant and Mr Bartholomeo Msiyangi for the respondent, respectively. In his submission, Mr Bugoti argued that the District Court's release of the motor vehicle was contrary

to the law, as a Preliminary Objection (PO) had been raised but not heard. He also mentioned that the application, with Registration No. 12272 of 2024, was not heard either. Citing the case of Mondorosi Village Council & Others vs Tanzania Breweries Ltd & Others (Civil Appeal No. 66 of 2017), Mr Bugoti noted that it was well established that a Preliminary Objection must be determined before the court proceeds with the substantive matter. He also referenced Povey vs Povey [1971] WLR 381 to emphasise that even if the court exercises discretionary powers, it must do so judiciously, according to the law, and not arbitrarily. He further contended that since the Primary Court had initially ordered the attachment of the motor vehicle, any application for its release should have been made before the Primary Court. If the District Court wished to entertain the matter, it should have first heard the Preliminary Objection and the application on its merits before issuing a decision. He invited the court to determine that the District Court lacked Page 4 of 10 the jurisdiction to issue the order, citing Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda & Two Others [1995] TLR 155 (CAT). Mr Bugoti also referred to paragraph 4 of the applicant's affidavit, noting that the respondent's prayer was for review, not revision. He pointed out that review should be sought before the court that made the decision, which in this case was not the District Court. Citing Tanzania Tanzania Ports Authority vs Pembe Flour Mills Ltd., Civil Application No. 78 of 2007 (unreported), he emphasised that the decree-holder has the right to see his decree properly executed. He concluded by praying that the application be granted, with costs. In reply, Mr. Msiyangi submitted that the order rendered by the District Court to release the attached motor vehicle had been made in the interest of justice and without being hindered by legal technicalities. He explained that the motor vehicle in question was used in the respondent's business and that the District Court had acted in accordance with Article 107A(2) of the Constitution of the United Republic of Tanzania, 1977. He further supported his position by referencing the case of Abubakar Ali Himid vs Edward Nyelusye (Civil Appeal No. 70 of 2010). In his view, the District Court had not acted with ill intent toward the applicant but had instead aimed to facilitate fairness between the parties. He, therefore, prayed for the court to uphold the District Court's order, with costs. Page 5 of 10 In rejoinder, Mr. Bugoti insisted that the case did not involve legal technicalities. He maintained that there had been a Preliminary Objection, and the application giving the District Court jurisdiction had not been heard. He further argued that if the District Court had no bad intent, it should have considered the applicant's rights, which had been established at the appropriate time. Mr. Bugoti concluded by stating that Article 107A and the case cited by the respondent's counsel were distinguishable from the circumstances of this case, and he reiterated his prayer for the revision to be granted. Having heard the parties' submissions, I took time to go through the proceedings of the District Court to ascertain what actually transpired thereto. The findings were on 21/08/2024, when the case was scheduled for a hearing of the preliminary objection. The counsel for the respondent, Mr Batholomeo, prayed for a short adjournment till 04/09/2024 for him to attend before the District Land and Housing Tribunal. However, he had another prayer: releasing the attached vehicle to facilitate the then-applicant's catering business. It is from that prayer, though strongly contested by the respondent's advocate, that the District Court proceeded to order the release of the said motor vehicle. The District Court had the following remarks when reaching that decision; Page 6 of 10 "Mahakama: Kuzingatia ukweli kwamba mleta maombi ameonesha nia ya kulipa deni

analodaiwa na mjibu maombi; na pia ukweli kwamba gari lililokamatwa na dalali ndio analolitegemea katika shughuli zake za catering services ili kuweza kupata pesa ya kulipa deni, basi ni busara ya mahakama hii kuwa gari hilo liachiwe na apewe mleta maombi kwa msingi mkubwa wa kufanya shughuli yake ya catering ili aweze kupata pesa ya kulipa deni analodaiwa badala ya kuendelea kuliweka bila kufanya kazi ya uzalishaji.” The above script is the decision that finally ordered the release of the attached motor vehicle. Now, this court is only tasked with one duty: to ascertain whether what transpired before the District Court was the proper procedure to be followed when faced with a similar situation. It is undoubted that the respondent, after lodging a revision application before the District Court of Geita, was challenged by the applicant herein through preliminary objection. It is also apparent that the said preliminary objection was not determined whatsoever, though the order of release of the attached motor vehicle was issued. It is from that release order that the applicant is now trying to challenge before this court. The practice of the Court in our jurisdiction is that when there is a preliminary objection, the court is duty-bound to determine the said preliminary objection first before resorting to a substantive application or suit. That is not a new procedure as far as practice is concerned, in the Page 7 of 10 cases of Njake Enterprises Ltd vs Blue Rock Ltd and Another (Civil Appeal 69 of 2017) [2018] TZCA 304 and Mondorosi Village Council and Others vs Tanzania Breweries Ltd and Others (supra), it was stated that: “As the practice demands, we had to dispose of the preliminary objection first.” [Emphasis added] In the instant application, neither the preliminary objection nor substantive application was determined by the District Court, though the decision regarding the attachment of the subject matter was issued. Under circumstances such as this, where there was a preliminary objection, what every prudent magistrate would have done or was expected to do was first to determine the preliminary objection raised. This is because a preliminary objection is argued first, followed by a substantive suit/application to expedite the proceedings. If the court upheld the preliminary objection, it would then proceed to dismiss the substantive suit/application. However, if the said preliminary objection fails, then the court will proceed to consider the suit/application on its merit. In this application, whatever decision made by the District Court was expected to have come from either a preliminary objection raised by the respondent (then respondent) or a substantive application filed by the Page 8 of 10 respondent (then applicant). However, for reasons not disclosed to the attention of this Court, the learned Magistrate went ahead and issued orders to release the attached motor vehicle without determining what was before him for determination from both parties. The argument by Mr Msiyangi that the magistrate acted to ensure justice without being hindered by technicalities is disheartening. I say this because there was no technical issue in the revision application before the District Court. If the magistrate intended to allow the respondent to continue conducting her business to generate income for payment, he essentially concurred with the trial court's finding that the respondent indeed owed the applicant. In such a case, instead of summarily dismissing the application, the learned magistrate should have addressed the matter substantively had the preliminary objection were to be overruled. Moreover, suppose this was the position the learned magistrate adopted. In that case, one must question whether he properly considered what had prevented the respondent from making payments earlier, especially since the attached motor vehicle had continued to operate in her business without any reported

interruptions. As long as these key questions remain unanswered, the decision to release the vehicle seems not to stem from judicial wisdom but perhaps from a lack of it. Page 9 of 10 Indeed, the District Court, in this application, acted in a manner that the applicant described in paragraph 6 of her affidavit as prematurely pre-empting the outcome of both the preliminary objection and the revision application. This assertion is valid because the dismissal of the preliminary objection and granting the respondent's revision application would have naturally led to the release order for the attached motor vehicle, as reflected in the District Court's ruling. Therefore, the issuance of the release order summarily implied the rejection of the preliminary objection and the granting of the respondent's sought relief in the revision application, which, in essence, was not heard. Regarding Mr Bugoti's argument that what was before the District Court was review and not revision, with due respect to the counsel for the applicant, the application was made under section 22(1) of the MCA, which provides explicitly for revision and not review. Even in the entire affidavit, including paragraph 4 mentioned by the respondent, the then-applicant sought revision. Hence, he was properly before the District Court, for it is vested with such mandates over the proceedings and decisions of the primary court. To cut a long story short, I hereby concur with the applicant and exercise the powers conferred to me by section 31(1) of the Magistrates Courts Act, Cap 11 R.E 2022, since what transpired should not be left to Page 10 of 10 persist as it has resulted in an anomaly that this Court cannot afford to close eyes on without making necessary rectification to prevent the occurrence of similar orders in future. Consequently, the order issued by the District Court of Geita on 21/08/2024 is hereby quashed and set aside. The order of attachment issued by the trial court is upheld, pending the determination of the revision application No. 17272 of 2024 filed before the District Court of Geita by another magistrate with competent jurisdiction. The said motor vehicle released should, with immediate effect, be returned to the court broker for his actions. In the end, the application is granted with costs. It is so ordered. DATED at GEITA this 20th day of September 2024. G.V. MWAKAPEJE JUDGE

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