

IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM.

CIVIL REVISION NO. 56 OF 2010

FATUMA A. MOHAMED.....APPLICANT  
VERSUS.

1. HOLO JUMA..... 1<sup>ST</sup> RESPONDENT
2. BUSY BEES COURT BROKER.....2<sup>ND</sup> RESPONDENT
3. MOHAMED MUSSA MAKAME.....3<sup>RD</sup> RESPONDENT
4. NURU RASHID.....4<sup>TH</sup> RESPONDENT
5. SHEBE RASHIDI.....5<sup>TH</sup> RESPONDENT
6. MARTHER NESTORY MWANUKUZI.....6<sup>TH</sup> RESPONDENT

RULING

02/10/2012 & 26/3/2014

Utamwa, J.

In this application for revision the applicant, **Fatuma A. Mohamed** moved this court under ss. 79 and 95 of the Civil Procedure Code Act, Cap. 33, R. E. 2002 to make the following orders;

1. That the Honourable court be pleased to call for record and examine the proceedings of miscellaneous civil Application No. 17 of 2010 between the applicant and the respondents which was decided by the District Court of Morogoro sitting at Morogoro (the District Court).
2. Costs of this application be provided for.
3. Any other relief (s) and directions as this Hon. court may deem necessary to grant in the interest of justice.

The application is supported by an affidavit affirmed by the applicant herself. It is against **Holo Juma, Busy Bees Court Broker, Mohamed**

**Mussa Makame, Nuru Rashid, Shebe Rashidi and Marther Nestory Mwanukuzi** (first, second, third, fourth, fifth and sixth respondent accordingly). All the respondents objected the application and filed counter affidavits accordingly. The applicant was represented by Mr. Kusarika learned counsel while the respondents used the services of Mr. Wawa learned counsel. The application was heard by way of written submissions, hence this ruling.

According to the affidavit supporting the application and written submissions in chief made by the learned counsel for the applicant, the applicant complains to the following effect; that, in executing a decree issued by the District Court (in Civil Case No. 28B of 2007), in which she was one of the judgement debtors, the court attached and sold her house on plot No. 813/10 Block A at Nanenane area of Morogoro (the house) through the a court broker (the second respondent). The decree was in favour of the plaintiff in that suit (now the first respondent). The applicant then applied to the same court objecting to the attachment and praying for the house to be restored to her. The grounds for the prayer were *inter alia* that, the attachment was improper because the house was not attachable for being a residential house and that she had discharged her obligation by depositing part of the decretal sum in court. The other part of the decretal sum had to be paid by the rest of the judgement debtors (Now, the third to sixth respondents). The District Court however, ruled (on 18<sup>th</sup> November, 2010) against her and dismissed the application, hence this application. The grounds for this application are apparently similar to those advanced before the District Court.

The respondents' affidavits and submissions contended among other things, that the District Court rightly dismissed the application because the applicant was one of the judgement debtors and the house belonged to her husband, but he transferred the same to her apparently to circumvent the decree. The learned counsel for the respondents also argued in his replying written submissions that, the applicant had filed an appeal before this court with the same complaints against the same

ruling of the District Court. For these reasons, the applicant could not file this application.

The learned counsel for the respondents further contended that, this application is misconceived because, though the applicant cited the provisions of s. 79 of Cap. 33 as the enabling law, she did not indicate the way she wanted this court to invoke them. He added that s. 79 of Cap. 33 provides for three circumstances under which this court can make revisional orders. The conditions are that; the lower court had exercised jurisdiction not vested in it by law, or it had failed to exercise jurisdiction so vested or it had acted in the exercise of its jurisdiction illegally or with material irregularity. He also contended that even in the submissions by the learned counsel for the applicant, no specific provision of law were cited as violated by the District Court for this court to interfere by way of revision. In his rejoinder the learned counsel for the applicant essentially reiterated his submissions in chief and argued generally that the replying submissions were not forceful enough to justify the decision by the District Court.

In my view, the complaint by the learned counsel for the respondent related to the non-compliance with s. 79 of Cap. 33 amounts to a challenge that this application did not properly move this court for the applicant's failure to cite specific provisions of law floated by the District Court and those which empower this court to make the prayed revisional order. As shown previously, in his submissions, the learned counsel for the applicant opted not to specifically address himself to this point of law in justifying the omission complained of.

I am settled in mind that this point of law could have been suitably argued as preliminary point even before this application was heard. However, I will consider the same at this stage for the following grounds; that the point touches the authority of this court in deciding this application for, in case I will find that this court was improperly moved by wrong or non-citation of specific provisions of law enabling it to make the prayed order, then the law of this land will not permit me to proceed in deciding this application, see the prudence of the Court of

Appeal of Tanzania (CAT) in the case of **Chama Cha Walimu Tanzania v. The Attorney General, CAT Civil Application No. 151 of 2008, at Dare es Salaam** in which it was held that; the omission to cite the enabling provisions of law or wrong citation in applications, is not a procedural and technical matter within the scope of article 107A of the Constitution of the United Republic of Tanzania, 1977 (Cap. 2, R. E. 2002), it is a serious omission that goes to the root of the matter leading to the same to be struck out. See also **China Henan International Co-operation Group v. Salvant K. A. Rwegasira [2006] TLR. 220 (CAT)**.

Again, it is our settled law that a point of law that touches the jurisdiction of a court can be raised at any stage of the proceedings. It is thus my adjudication plan here that, I will first test the issue of *whether or not this court was properly moved in this application*. In case I decide the issue negatively I will make the necessary orders, but if I will determine it positively, I will proceed to consider the merits or otherwise of the application.

The provisions of s. 79 of Cap. 33 read, and I quote them for a readymade reference;

“(1) 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; or
- (b) to have failed to exercise jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

(2) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act”

From these provisions of law, it is lucid that s. 79 of Cap. 33 embody two sub-sections. The first sub-section envelopes three sub-sub-sections setting distinct circumstances under which this court may be justified to make revisional orders. In the chamber application however, the applicant did not cite any specific sub-section or sub-sub-section under which the application was preferred as rightly argued by the learned counsel for the respondent. The law would require the applicant to indicate in his chamber summons whether his application was based under the first or second sub-section of s. 79. In case his application was based on the first sub-section, she would be obliged to cite the specific sub-sub-section, i.e whether (a) or (b) or (c). The law is also settled now, that non-citation of a specific sub-section of the law under which an application is filed is fatal for not properly moving the court, see **Chama Cha Walimu Tanzania v. The Attorney General** (supra) and **M/S Ilabila Industries Ltd. & 2 Others v. Tanzania Investment Bank & Another CAT, Civ. Application No. 159 of 2004, at Dar es Salaam.**

I have also considered the cited s. 95 of Cap. 33 in the chamber summons. But this won't be of any help to the applicant since it is trite law now that, the inherent powers of this court under s. 95 of Cap. 33 is exercisable only where the law has made no specific provision governing the particular matter at hand, see the decision by the CAT in **Aero Helicopter (T) Ltd vs. F.N. Jansen [1990] TLR 142.** In the matter at hand, the learned counsel for the applicant did not argue anywhere that there is in fact, no any specific law providing for a remedy to the applicant so that this court can resort to these provisions of law. This is not thus a fit case for this court to invoke s. 95 of Cap. 33. I therefore, answer the issue posed above negatively to the effect that this court was improperly moved in this application. As hinted previously, the effect of the omission discussed herein above is none other than striking out the application for incompetence.

Having made the above finding, I consider myself not legally obliged to test the merits or otherwise of this application since the point

of law conversed herein above is forceful enough to dispose of the entire application. I therefore, strike out the application with costs. It is accordingly ordered.

JHK. UTAMWA

JUDGE

26/3/2014

26/03/2014

CORAM; Hon. Utamwa, J.

For Applicant; Mr. Kusarika advocate and the applicant in person.

For Respondents; Mr. Wawa advocate.

BC; Mrs. Kaminda.

Court; Ruling delivered in the presence of Mr. Kusarika advocate for the applicant and the applicant in person, and Mr. Wawa advocate for the respondents and the 6<sup>th</sup> respondent, in chambers, this 26<sup>th</sup> day of March, 2014.

JHK. UTAMWA

JUDGE

26/03/2014.