IN THE HIGH COURT OF TANZANIA

IN THE DODOMA DISTRICT REGISTRY

AT DODOMA

MISCELLANEOUS CIVIL APPLICATION NO. 57 OF 2022

(*From the decision of the District Court of Dodoma in Civil Case No. 1 of 2013*)

SEVERINE SHIRIMA ..... APPLICANT

VERSUS

TANESCO..... RESPONDENT

RULING

Date of Last Order: 08/11/2023

Date of Ruling: 13/11/ 2023

LONGOPA, J.:-

This application originates from Civil Case No. 1 of 2013 filed at and determined by the District Court of Dodoma. In that case the applicant sued the respondent seeking an order for reconnection of electricity to his premises. This resulted from action of TANESCO's employees disconnecting electricity at the Applicant flour milling machine at Mtumba allegedly for tempering with electrical meter. The case was heard *ex parte* as the respondent did not enter appearance during the hearing and the decision was delivered in favor of the applicant since 2015.

However, the *ex parte* judgment was not executed following the allegations that it cannot be executed as the same does not reveal the rights and obligations of the parties. To rescue the situation the applicant

filed an application before the District Court vide Miscellaneous Application No. 45 of 2022 under section 96 of the Civil Procedure Code seeking the court to make amendment of its judgment and decree of the Civil Case No. 1 of 2013. The court ruled out that it had no jurisdiction to make amendment of its own decision. It went further stating that the remedy in a situation the applicant was, was to file an appeal to the High Court.

Instead of filing an appeal as stated in Miscellaneous Application No. 45 of 2022, the applicant has filed this application again under section 96 of the Civil Procedure Code Cap. 33 R.E 2019 praying the court to amend judgment and decree of Civil Case No. 1 of 2013 determined by the District Court of Dodoma. The application is supported by affidavit sworn by Severine Shirima on 3rd October 2022.

In the Chamber Summons initiating the Application the applicant is praying to heard, among others, on the following:

> That this Honourable Court be pleased to **allow the application of the Applicant and make amendment of judgment and decree** of case no 10 of 2013 to allow the applicant to make execution of the same.

On the other hand, an affidavit of Severine Shirima supporting this application state the following:

1. That I am the Applicant hereof hence conversant to depone the facts hereunder.
2. That I was the Plaintiff in Civil Case No 01 of 2013 before the District Court of Dodoma at Dodoma and the Respondent hereof was the Defendant whereas the ex parte judgment by Hon. E. Anangisye RM was delivered on 25.6.2015 in my favour. Leave is hereby craved to adduce copy of the said Judgment to be marked as "A1" to form part of the Affidavit.
3. That the **said judgment did not display/reveal the rights of the parties** which made it unexecutable due to some errors made by the Court.
4. That through the service of Njulumi and Company Advocates I lodged an application for execution to this Court as a Misc. Civil Execution No.15 of 2016 that was dismissed for being incompetent as per the ruling dated 13th April 2017. Leave is hereby craved to adduce copies of ruling and drawn order collectively as "A4" to form part of this affidavit.
5. That following the abovementioned errors I took the initiative to file for application to correct the said errors in district court of which was dismissed for the lack of competence which was read and obtained on 1st September 2022. Leave is hereby craved to adduce copies of the Ruling and Drawn Order collectively to be marked as "A5" to form part of the affidavit.
6. That should this honourable Court deny the right to hear and determine this application for amendment of the judgment

and decree, I, the applicant hereof, will suffer an irreparable loss.

The respondent upon being served with the application filed counter affidavit accompanied with a notice of objection that this court had no jurisdiction to entertain the application.

On 08th day of November 2023 I heard the parties. The applicant was represented by Ms. Joanitha Paul, learned Advocate and the respondent was represented by Mr. Omary Ngatanda, learned State Attorney, Ms. Agness Makuba, State Attorney and Mr. Norbert Beda State Attorney.

Before submitting on the preliminary objection raised, Mr. Ngatanda informed the court that during preparation of the hearing of the preliminary objection raised the respondent discovered that there is another important point of objection regarding the time limitation on filling this application. He therefore prayed leave of the court to add such point of objection, a prayer which was granted. He therefore argued on two points of objections.

Submitting on the first preliminary objection, he said that the provision which this application has been made relates to clerical or arithmetical mistakes in judgment, decree or order. The application is to be done by the parties or *suo motto*. It was his argument that, it is the court that made the decision which has powers to make such corrections.

It was argued that in instant application the applicant is seeking this court to make amendment of the judgment and decree issued by Dodoma District Court in Civil Case No. 1 of 2013. According to the learned State Attorney for the respondent, this Court has no jurisdiction to make such amendment as by doing so the Court will be contravening the provision of section 96 of the Civil Procedure Code, Cap 33 R.E 2019. It was his prayer that the application be dismissed for want of jurisdiction.

On the second point of objection, it was submitted that this court has no jurisdiction again to determine this application as it has been filed out of time. The reference was made to Item 21 on Part III of the Schedule to the Law of Limitation Act, Cap. 89 R.E 2019 which requires the application to be filed within sixty days. He said the instant application was filed on 04th October 2022 whereas the impugned judgment and decree was issued on 26th June 2015 which is seven years since the decision was delivered.

Furthermore, it was submitted for the respondent that there is no proof to the effect that the applicant sought and was granted extension of time to file the application out of time. Mr. Ngatanda argued that the only remedy available in the circumstances is to dismiss the application in accordance with section 3 (1) of the Law of Limitation Act. In conclusion, Mr. Ngatanda urged this Court to dismiss the application with costs.

In reply, Ms. Joanitha Paul attacked the procedure adopted by the respondent on the inclusion of the second point of objection stating that it

is an afterthought as the respondent filed the objections twice and the second one was not included in the written notice of objection filed in court. The objection should not have been brought as a surprise to the other party.

Submitting on the first point of objection, Counsel for applicant stated that this Court has jurisdiction to hear and determine the application at hand as section 96 of the Civil Procedure Code does not state that the court which determined the matter is the one to make correction of the clerical or arithmetical errors.

It was submitted that the section does not bar the High Court as it has the general jurisdiction conferred to it under Article 108 of the Constitution of United Republic of Tanzania of 1977, Cap 2 R.E. 2002. The Counsel for applicant added that according to sections 3 and 7 of the Judicature and Application of Laws Act Cap. 358 R.E 2019 a Judge is empowered to make a decision on anything a magistrate has done. In fortification of her submission, she cited the case of **Bentho Thadei Chengula vs. Abdulahi Mohamed Ismail**, Civil Appeal No. 183 of 2020 [2023] TZCA 17519 (TanzLII).

On the second preliminary objection, applicant argued that the limitation of sixty days is for application whose time limit not specified under the law. She argued that section 96 of the Civil Procedure Code is very clear that the correction can be done at any time. Hence the

application cannot be dismissed under section 3(1) of the Law of Limitation Act as suggested the Mr. Ngatanda. It was her prayers that this preliminary objection be overruled thus the application be heard on merits.

In rejoinder, Mr. Ngatanda stated that this Court has no jurisdiction over the matter as section 96 of the Civil Procedure Code provides for exception to the general jurisdiction of the High Court. He said the section is clear it provides for the court which determine the matter to make amendment to its judgment and decree and the term "the court" used in such section referred to the High Court, the Court of Resident Magistrates and the District Court as defined in the interpretation section of the same law that is section 3 of the Civil Procedure Code Cap. 33. According to Ngatanda, learned State Attorney the term "the Court" as used in section 96 implies a Court that determined a particular case, and it does not mean the High Court as the Counsel for applicant submitted.

I have considered the submissions made by the learned State Attorney and Advocate appearing herein. I appreciate the efforts put in assisting the Court to resolve the issues raised. The issue to be determined now is whether the two preliminary objections have merits.

On the first preliminary objection which has basis on the provision of section 96 of the Civil Procedure Code, Cap. 33, the omission envisaged in the above provision of the law does not entail issuing a new judgment all together but just amending the orders already issued so as to achieve what

was intended by the court by correcting any clerical or arithmetical mistakes.

According to **Black's Law Dictionary**, 19th Edition, Brayan A. Garner, West Publishers, clerical error is defined to mean an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination. On the other hand, arithmetical are errors relating to mathematics particular in adding, multiplying, dividing and subtraction of numbers.

There are several decisions on what amount to clerical errors or arithmetical corrections. These may be spelling mistakes in a name, date of the judgment or order, and typographical errors that do not go the root of the matter. For instance, in the case of **Mwita Joseph Ikohi & Others vs Republic** (Criminal Appeal 60 of 2018) [2019] TZCA 88 (8 March 2019), the Court of Appeal stated that:

> In order to remove any confusion or doubts which may result from the failure to name the first appellant's last name, to mention the correct date of the appealed Judgment and correct the typographical errors in the Judgment, we on our own volition invoke Rule 42 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 and correct the first appellant's last name, and the date of appealed Judgment, which shall read...

See also **John Barnaba Machera vs North Mara Goldmine Ltd** (Civil Case 29 of 2016) [2023] TZHC 16984 (19 April 2023); **Stanley Runyoro vs Ms. Campass Construction Co. Ltd** (Civil Appeal 31 of 2020) [2020] TZHC 4154 (8 December 2020); and **China Henan International Cooperation Group Co Ltd (chico) vs Morning Glory Construction Company** (Misc. Civil Application 2 of 2021) [2021] TZHC 3301 (11 May 2021).

It is important to note at the outset that powers by courts in correction of clerical or arithmetical errors should be exercised with great care. This is for a reason that ordinarily a Court once finally determine a matter it becomes *functus officio.* As such, I think the powers to correct minor mistakes termed as clerical or arithmetical errors is an exception to this principle. Judiciously exercise of such powers should always fall within what is termed as slip rule only, that is, minor issues that does not touch the root of the matter.

In the case of **NIC Bank Tanzania Limited & Another vs Samora Mchuma Samora Co. Ltd** (Civil Appeal No. 340 of 2020) [2023] TZCA 76 (28 February 2023), the Court of Appeal was faced with a situation where there existed two judgments due to correction of clerical errors. This arose after the parties received the copies, the appellants discovered that the decree was defective because it did not cite the parties properly as reflected in the judgment. The judgment referred to two

plaintiffs Samora Mchuma and Samora Co. Ltd (although in the title, Samora Co. Ltd was, again, erroneously referred to as the 2nd defendant). By a letter written by their advocate, dated 29/6/2020, the appellants requested to be supplied with a rectified decree. The prayer was acted upon by the trial court and by a letter of Ref No. HC. Civil Case No. 26 of 2015 dated 25th June 2020, they were informed that, what was to be rectified was the judgment and were thus informed that the amended judgment was ready for collection. The Court of Appeal stated that:

> ...we are at one with him that the procedure which was adopted by the trial court to rectify the defect of variance between the judgment and the decree was, with respect, erroneous. The rectification should not have been done by formulating the second judgment as by so doing, the effect was to have two judgments in one case; the original and the amended version of the judgment. Under s. 96 of the CPC, cited by the counsel for the appellants, a judgment may only be corrected if it contains clerical or arithmetical mistakes. Such correction may be done by way of a separate order, not by formulating a corrected version of the judgment.

The immediate issue is whether this court now has jurisdiction to amend the judgment and decree of the District Court. The answer to this issue is in the negative. The reason is simple. A clerical or arithmetic in a judgment and decree should be left to the court that delivered that

judgment and decree. That court is vested with all material evidence regarding such clerical or arithmetic errors.

I find guidance regarding this matter in a decision of a Court of Appeal in **Puma Energy Tanzania Ltd vs Ruby Roadways Tanzania Ltd** (Civil Appeal 35 of 2018) [2020] TZCA 186 (15 April 2020), where the counsel for appellant invited the Court to amend the decree during hearing of an appeal on account that the error was minor and just clerical error. The Court of Appeal observed that:

> It follows thus that the invitation to us to invoke our revisional power under section 4(2) of the ADA falls away. We cannot exercise that power to make good an appeal which is otherwise incompetent for want of a valid decree incorporated in the record of appeal as required by rule 96(1)(h) of the Rules. Having disposed of the first argument, we are firmly of the view that the prayer for the amendment of the defective decree under rule 111 of the Rules is equally misconceived. **We do not see how the appellant can amend the defective decree other than having it done by the trial court and have a proper decree find its way into the record without filing a supplementary record.**

From this decision of Court of Appeal, correction of arithmetic or clerical errors ordinarily is to be done by a proper court that determined that matter. The being a trial court that delivered a judgment or order there are aspects or facts only within its domain relating to clerical error that needs to be corrected.

This aspect regarding powers of the trial court to correct clerical or arithmetical errors was also analysed in the case of **Nassoro Abubakar Khamis & Another vs Wakf & Trust Commission Zanzibar & Others** (Civil Appeal 245 of 2020) [2021] TZCA 736 (3 December 2021), where the Court stated that:

> From the foregoing deliberation, **we are settled that cognizant of fostering substantive justice, currently, in fitting circumstances, the Court has been granting the respective appellant an opportunity to approach the court which issued the decree to rectify it** and thereafter lodge an amended version through a supplementary record of appeal instead of striking out the appeal. For this stance, see Anthony Josephat @ Kabula v. Hamis Maganga, Civil Appeal No. 150 of 2020 and Daudi Hagha v. Salum Ngezi and Damiani Toyi, Civil Appeal No. 313 of 2017 (both unreported). **Besides, we are of the settled view that this approach is in recognition of the fact that in both the CPC and Civil Procedure Decree (CPD)**

sections 96 and 130 respectively empower trial courts which issue defective decree to correct clerical mistakes and errors apparent in the decree before execution is done.

These decisions of the Court of Appeal have cemented the decisions of this Court on the matter. It was the position of this Court in case of **Rayna Said Nassoro vs. Zulekha Abdulwahid & Another**, Civil Appeal No. 108 of 2012 [2012] TZHC 26 (TanzLII). Hon. Juma, J.: (as he then was) held to the effect that it is the trial court which heard the case which has power to amend its decision or order for clerical or arithmetic errors.

Also, it was held so by this court in the case of **Mwita Chacha Nyaheri & Another vs. Col. Machera Mwise Machera,** Land Appeal No. 36 of 2022 [2022] TZHC 14705 (TanzLII). In this case there was a complaint on the inconsistence of the size of the disputed land where it was alleged to be a slip of the pen. It was held that if this was the case the respondent would have applied to the trial court/tribunal to rectify the error as provided under section 96 of the Civil Procedure Code.

I entirely agree with submission by Mr. Ngatanda that the word "the court" referred to under Section 96 is subject to interpretation to refer to all courts where the Civil Procedure Code applies including the High Court, Resident Magistrates Court, and District Court. The section does not imply that it is applicable to the High Court only.

Therefore, in case it is the judgment, decree, or order from District Court which is to be amended then the proper court to amend it is the same District Court which made that decision and not any other court including this Court if the same is preferred under Section 96 of the CPC.

It is my careful and considered opinion that though it is true that High Court has inherent jurisdiction to determine all matters that fall within its purview, this application is not falling within that ambit. If this Court exercises the power to amend the so-called clerical errors in the judgment and decree of the District Court in my considered opinion the High Court will be exercising jurisdiction other than original jurisdiction. Such exercise shall be illegal as the framing of the application entails going to the root of the matter. Amendment which is so requested is to provide for rights of the parties to make the said judgment and decree executable. That can only be determined by the High Court in appropriate remedies other than correction of arithmetical or clerical errors.

Respectfully, I do not agree with the submission that section 3 and 7 of the Judicature and Application of Laws Act, Cap. 358 R.E 2019 can be applied to cloth a judge with any powers to correct the so called arithmetical or clerical errors unless properly moved through appropriate remedies and the case of Benitho Thadei Chengula (supra) is misplaced.

In the circumstances, I find merits on the first ground of the Preliminary Objection that this Court has no jurisdiction to entertain an application before it. I sustain that point of objection.

In respect of the second point of objection that the application is time barred, reading the provision of section 96 of the Civil Procedure Code application for correction of judgment, decree or order may be filed at any time. The section reads and I quote:

> Clerical or arithmetical mistakes in judgments, decrees, or orders, or errors arising therein from any accidental slip or omission may, **at any time**, be corrected by the court either of its own motion or on the application of any of the parties. (Emphasis is mine)

A plain meaning of the provision seems to suggest that there is nothing to limit the application aimed at correcting or rectifying clerical or arithmetical mistakes in judgments or decrees or orders arising from accidental slip or omission. The legislature did not so specifically provide for time limitation under the CPC.

I am aware that Item 21 in part III of the Schedule to the Law of Limitation provides for sixty-days rule for all applications under the Civil Procedure Code or the Magistrates Court Act or the Law of Limitation Act or any written law whose time limit is not provided. I think this should be

the rule in respect of correction/rectification of clerical or arithmetical errors in judgments, orders, or decrees.

Also, I have closely examined the provision of Section 43 of the Law of Limitation, Cap 89 R.E.2019. In my view, this provision does not exclude the application for correction of clerical or arithmetic errors from the provisions of the Law of Limitation Act. I am of the view that the sixty-days rule would be applicable in the circumstances.

The sixty-days rule would be *intandem* with the provisions of section 62 of the Interpretation of Laws Act, Cap R.E. 2019 which requires taking action at all convenient speed and as often as due occasion arises. This provision calls for taking an action in a timely manner.

I must state at this point that I am unaware of a decision that support the sixty -day rule in correction of clerical or arithmetical errors in our jurisdiction. However, there are decisions that point to the direction that such application is limited by parties having taken initiatives to execute the decree or challenge the same to the higher court.

In the case of **NBC Holding Corporation and Another vs Agricultural and Industrial Lubricants Supplies Ltd and 2 Others** (Civil Application 42 of 2000) [2001] TZCA 5(9 April 2001), the Court of Appeal, at page 4, stated that:

> The Court, recognising that there has to be-finality of judicial proceedings, ruled that an application to the Court for the purpose of correcting errors must be made before the execution of the decree in question is completed; an interested person cannot be allowed an indefinite delay in making such application.

That position was reiterated in a recent decision of **Nassoro Abubakar Khamis & Another vs Wakf & Trust Commission Zanzibar & Others** (Civil Appeal 245 of 2020) [2021] TZCA 736 (3 December 2021), the Court stated categorically that time limit for the application for correction of errors to any time before execution of the decree.

Yet, there is a decision the Court of Appeal as well in the case of **Jewel &Antiques (T) Ltd vs. National Shipping Agencies Co. Ltd** [1984] TLR 107 where the Court categorically stated only subject to rights of the parties there is no limitation on application of correction of clerical or arithmetical errors. The Court held that:

> On our part we are satisfied that the phrase at 'any time' means just that, 'at any time'. Subject to the rights of the parties, there should be no point in limiting the time in which to correct such innocuous mistakes or errors which are merely clerical or arithmetical with absolutely

no effect on the substance of the judgment, decree or order.

That being the case, I am inclined to state that given the fact that until the time of filing this application, there was no execution of decree relating to the decision of the District Court of Dodoma in Misc Civil Application No. 57 of 2022. The applicant requests this Court is overrule these Preliminary Objection so that the application can be heard on merit.

Scrutiny of the merits so prayed is for the Court to amend the judgment and decree so that rights and obligations of the parties are clearly provided for in judgment and decree. Finally, such amendment would assist the applicant to ably execute the decree. It is therefore apparently that execution of the decree in respect of the matter decided by the District Court of Dodoma is yet to be done. It may be therefore considered that so far as the execution is not completed then the applicant is not barred in terms of time from approaching the court under section 96 of the CPC. The bar may be when there is initiative to challenge the decision to Court through appeal or revision or execution proceedings on the same have commenced.

In **John Barnaba Machera vs North Mara Goldmine Ltd** (Civil Case 29 of 2016) [2023] TZHC 16984 (19 April 2023), the High Court held that it had no jurisdiction to rectify the clerical errors in the judgment and decree it had previous delivered on account that an appeal to the Court of

Appeal was already preferred prior to the High Court invoking its powers under Section 96 of CPC to correct clerical errors.

The jurisprudence is still developing on whether under the Law of Limitation Act, Cap 89 R.E. 2019, an application for correction of clerical or arithmetical errors would fall under the Law of Limitation Act. As of now this Court is bound by the jurisprudence from the Court of Appeal, therefore, I shall refrain from finding merits on this ground. I overrule this second ground of preliminary objection.

In the upshot, I sustain the Preliminary Objection on jurisdiction. I dismiss the application for want of jurisdiction with costs.

It is so ordered.

DATED and **DELIVERED** at Dodoma this 13th day of November 2023

E.E. LONGOPA

JUDGE

13/11/2023.