IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL REVISION NO. 04 OF 2022

(Arising from the Resident Magistrate's Court of Dar es Salaam in the Civil Case No. 04 of 2004)

BOULANGERIE SAINT THOMAS ..... APPLICANT

VERSUS

TANZANIA INTERNATIONAL

CONTAINER SERVICES LTD ..... 1ST RESPONDENT

RULING

13th December, 2023 & 13th March, 2024

BWEGOGE, J.

This is an application for revision instituted by the applicant herein in respect of the decision rendered by the Resident Magistrate's Court of Dar es Salaam in Civil Case No. 13 of 2004, dated 17th February, 2023. The applicant herein prays for orders, among others, thus:

1. *That this court be pleased to partially revisit the judgment and decree of the trial court in Civil Case No. 13 of 2004 and declare that the items (b) and (c) of the said judgment are in material irregularity to the merit of the case resulting to the inexecutable decree.*

2. *That this court be pleased to partially revise the judgment and decree of the trial court in the relevant case by rectifying the irregularities at items (b) and (c) of the said judgment and decree and order that the prevailing interest rate and bank rate interest in Burundi be ascertained.*

The application herein is brought under section 79 (1) (c) and (3) of the Civil Procedure Code [Cap. 33 R.E. 2019] and supported by the affidavit of one Doris Deus, the principal officer of the applicant herein.

The factual background of the case herein may be briefly stated thus: Way back in 2004, the applicant commenced civil proceedings against the respondents herein claiming for payment of euros 27, 117.00, interest on the principal sum at the prevailing rate in Burundi or damages for loss of business; interest at bank rate in Burundi from the date of filing of the suit to the date of judgment, among others. The action succeeded. The trial principal resident magistrate, having found that the applicant had substantiated the claim on preponderous of evidence, concluded his finding with words, I beg to quote:

"…I enter judgment for the plaintiff as prayed in the plaint with costs."

It suffices to point out that the trial court having decided in favour of the applicants herein, judgement and decree to that effect were duly issued.

After a long slumber, in 2018, the applicant herein initiated execution proceedings of her decree in the trial court. The claimed fruits of her decree were as follows:

1. *Principal (specific damages) ……. € 21, 117.00*
2. *Loss of business (interest on principal sum as per interest rate in Burundi) …….. ……..€ 181,491.53*
3. *Interest at the Bank rate in Burundi…… € 79,273.98*
4. *Interest at the court rate…….. € 45,556.56*

   Total decretal sum being ……..€ 333,888.07

The senior resident magistrate (as he then was), upon scrutiny of the pleadings, judgment and decree, reached a conclusion that items number 1, and 4 were executable, but the items 2 and 3. The reason being that the reliefs sought to be executed were not specifically pleaded, neither specifically granted by the court; hence, inexecutable. The attempt to lodge an application for revision of the decision of the trial court to cure the afore-highlighted defects failed in the trial and appellate courts. Now, the applicant has approached this court with an application herein to that effect.

The application herein was argued by way of written submissions. Mr. David Shadrack Pongolela, learned advocate, argued the applicant's case

whereas Mr. Yassin Mwaitenda Maka, learned advocate, argued the respondent's case.

In substance, Mr. Pongolela charged that the trial court having entered judgment for the applicant, awarded reliefs without stating them specifically and this made the decree inexecutable. That the anomaly mentioned is a serious irregularity in that; **First,** the decree didn't state categorically the rate of interest that was awarded. **Secondly,** the decree didn't state to what extent the awarded loss of business should the plaintiff be compensated. The counsel asserted that the purported decree is dumb in prayer (b) and (c); hence, the applicant has failed to enjoy the fruits of the decree.

Further, the counsel expounded that the judgment entered by the trial court which is subject to the revision herein, didn't conform to the dictates of the law under Order XX, rule 4 of the CPC which provides that:

> *"A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision."*

In the same vein, the counsel alleged that the judgment of the trial court sinned against the provision of Order XX, rule 6(1) of the CPC which aptly provides:

> *"The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit."*

Likewise, the mind of this court was directed to the cases: **Ali Abdallah Amour & Another vs. AL Hussein Sefudin** [2004] TLR 313; **Anuralu Ismail vs. Regina** 1 TLR 370 and **Hamis Rajabu Dibagula vs. Republic** [2004] TLR 196 to reinforce the argument.

On the above premises, the applicant's counsel concluded that the trial court ought to have stated the awarded interest rate and the loss to be compensated. The failure to do so amounts to manifest error which has occasioned failure of justice. Hence, the counsel prayed this application to be allowed in its entirety.

Responding to the submission in chief, Mr. Maka contended that the provisions of section 79 (1) (c) of the CPC invoked to support the application herein are misconceived as no material irregularity in the impugned decision of the trial court. That the alleged omissions of the trial court don't amount to material irregularity warranting revision.

Otherwise, the counsel contended that the case has been conclusively determined and any attempt to effect the proposed revision would result in reopening the case, taking evidence and evaluating the facts. That the

revision is not an alternative to appeal. The counsel referred the case of **Mansoor Daya Chemicals Ltd vs. National Bank of Commerce** (Civil Application No. 464 of 2014 [2014] TZCA 183 to bolster his point.

It suffices to point out that the respondent's counsel asserted that the applicant herein failed to make specific prayers and prove the same. Therefore, the applicant should not fault the court because the court granted all that was prayed in the plaint. That as the applicant filed empty prayers the principle "**the court is not your mother to grant what was not specifically pleaded**" applies herein.

On the above premises, the counsel prayed the application herein to be dismissed with costs.

In rejoinder, the applicant's counsel reiterated what was submitted in chief and I find it needless to replicate herein.

The question herein is whether the application herein is tenable.

Ab initio, I find it paramount to revisit the relevant provision under which the application herein purports to have been brought. The provision of section 79 (1) (c) of the CPC aptly provides viz:

"*Section 79:*

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) …….. (not applicable);
   (b) ……(not applicable);
   (c) or 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."* [Emphasis mine).

The provision above enjoins this court with power to call for and exercise revision in cases where the lower court exercised its jurisdiction illegally and, or with material irregularity. It has been alleged by the applicant's counsel that in the circumstances of this case where the trial court issued inexecutable decree, the defects thereof amount to material irregularity subject to revision.

Having considered the pleadings filed hereto, annextures thereof, decision and decree issued by the trial court, along with the submission made by the applicant's counsel in expounding the deposed facts, with due respect, I am of the settled view that the application herein is patently misconceived and submission made thereon wholly amiss. Hereunder, are my reasons: **First,** the plaint lodged by the applicant herein claimed for judgment and decree for reliefs categorized in six (6) items, including the items (b) and

(c) which are subject the of this matter. For clarity, I would reproduce the same as hereunder:

a) *An order that the defendants jointly and, or severally pay the plaintiff euros 27,117.00 as per paragraph 4.*
b) *An order for the defendants jointly and, or severally pay the plaintiff* ***interest on the principal sum at the prevailing rate in Burundi*** *or* ***damages for loss of business,*** *as per paragraph 4.*
c) ***Interest at bank rate in Burundi*** *from the date of filing of the suit to the date of judgment.*
d) *Interest at court rate of 12% from the date of judgment to the date of payment of the decretal sum in full.*
e) *Costs*
f) *Any other and further reliefs as the court may deem just.*

It is gleaned from the list of reliefs prayed for by the applicant/plaintiff that under items (b) and (c) the plaintiff prayed for; **one**, payment by the plaintiff **interest on the principal sum at the prevailing rate in Burundi** or **damages for loss of business**, as per paragraph 4. And, **interest at bank rate in Burundi** from the date of filing of the suit to the date of judgment. It goes without saying that the appellant prayed for interest rates in Burundi, her place of domicile, which were not specified. Likewise, the alternative given for payment of **damages for loss of business was not quantified.** Hence, in view of the above, the anomalies, or empty reliefs were occasioned by the applicant and endorsed by the trial court.

Secondly, as I mentioned before, the alternative given in item (b) for payment of **damages for loss of business** was likewise not quantified. As long as the same didn't specify that they were meant to be general damages, I presume the same was specific damages. No fact in the affidavit, the averment of under paragraph 4 which specify the actual amount of the alleged damages for loss occasioned pleaded. Likewise, the applicant's counsel didn't enlighten this court on whether the applicant had ever proved the purported damages in court. It is needless to point out that such fact is not discerned in the judgment entered by the trial court.

Thirdly, As the reliefs under items (b) and (c), specifically, interests rates applicable in Burundi, were not specified, the court was left with an option to presume the applicable rates. I have seen the predicament faced by the trial magistrate who presided over the execution proceedings. The same observed that the plaint, the judgment and decree didn't indicate at what percentage of interest, in Burundian rates, should the court grant. That the pleadings never provided the range of interest prayed in Burundian rates. And, he opined, he was not in the position to speculate. I subscribe to this opinion. Further, I reiterate that reliefs prayed for by the party to the suit should be specified for scrutiny by the trial court as well as to afford the adverse party room to contradict, if necessary. The applicant was duty-bound to be specific in her prayers. The omission to specify the relief

prayed for leave it to the court to presume. The trial magistrate refrained to do so lest he prejudiced the respondent. I find the opinion of the trial court sound. I had expected the applicant to have assisted the trial court in this task. But she abrogated her obligation.

In fine, I find the charges levelled against the trial court's decision unwarranted and the submission thereof amiss. The anomaly complained of was the applicant's own fault. The only fault on part of the trial principal resident magistrate is to have overlooked and blindly passed the decree on reliefs prayed for.

Given the foregoing, I find the application herein untenable. I hereby dismiss the same. The respondent shall have her costs.

I so rule.

DATED at **DAR ES SALAAM** this 13th March, 2024.

O. F. BWEGOGE

JUDGE