IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REVISION NO. 40 OF 2018

(Originating from Probate Appeal No. 1/2015 in the Kilombero District Court and Probate Civil Case No. 15/2015 in the Ifakara Primary Court

VESTINA MTANZAMA.....APPLICANT

VERSUS

ALOISIA POMONI.....RESPONDENT

RULING

Last order date: 28/04/2020
Date of Ruling: 17/07/2020

MLYAMBINA, J.

There is one legal issue to be determined in this Civil Revision:

> *Whether the application is legally untenable for abusing court process as it has been preferred as alternative to appeal.*

Before addressing the issue before the court, the following are undisputed facts: ***First,*** the respondent herein success fully applied at Ifakara Primary Court through *Probate Cause No. 15 of 2015* for grant of letters of administration of the estate of the late David Mtazama. ***Second,*** the applicant herein appeared as an objector before the Primary Court of Ifakara in Probate Cause No. 15 of 2015. ***Third,*** the applicant was aggrieved with the decision of the Primary Court. She preferred appeal to the Kilombero District

Court. It was Civil Appeal No. 1 of 2015. The appeal was dismissed and the Primary Court decision was upheld. ***Fourth,*** the applicant lodged *Misc. Civil Application No. 63 of 2017* before this court seeking for extension of time to file revision. On 10th October, 2018 this court granted application. Hence, this application.

It was the respondent's submission, in support of her *plea in limine litis,* that in terms of *Section 25 (i) (b) of the Magistrates Courts Act,* if the applicant was aggrieved with the decision of the District Court, her statutory right was to appeal and not to prefer revisional proceedings. Further, an appeal is the only automatic remedy available to the party who is aggrieved by the decision of the District Court when exercising its appellant or revisional jurisdiction. But the applicant brought a revision under the blanket assumption that:

> *The District Court of Kilombero unjustifiably and prejudicially pronounced an erroneous, unsystematic, unreasonable and unjustifiable judgement in the favour of the respondent without considering all grounds of appeal and left them hanging while they were also important for the determination of the rights of the applicant.*

The respondent correctly argued that revisional power of the court is resorted only where there is no right of appeal or where the right of appeal exists but it has been blocked by judicial process and where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal. Thus, in this case, there is no any complaint on the jurisdiction of the court or on breach of natural justice. To buttress the position, the respondent cited the case of **Felix Lendita v. Michael Longidu** *Civil Application No. 312 of 2017* Arusha Registry (unreported) in which the court held:

> *According to the law therefore, where there is a right of appeal the power of revision of this court cannot be invoked. Such powers are exercised in exceptional circumstances.*

In the cited case law, the court cemented its position by referring to various cases including **Transport equipment Ltd v. Devram P. Valambhia** *(1995) TLR 161,* **Moses J. Mwakibete v. The Editor Uhuru, Shirika la Magazeti ya Chama and Another** *(1995) TLR 134 and* **Halais Pro-Chemie v. Wella Attorney General** *(1996) TLR 269,* **M/S NBC Ltd v. Salima Abdallah and Another** *Civil Application No. 83 of 2001 and* **Kezia Violet Mato v. NBC and 3 Others,** *Civil Application No. 127 of 2005 (all unreported).*

In response, the applicant relied *on Section 44 (1) of the Magistrates Courts Act* (*supra*) and submitted that this application is one of any proceedings which is of civil in nature. Thus, the errors in the judgement of the District Court are open which do not need an appeal. It is a judgement of half a page. Thus, it is very simple to see the errors. The respondent argued that it does not need to see the errors through the torch of appeal.

Upon going through the entire records and the arguments of both parties, I must agree with the respondent that, as a matter of right, an aggrieved party has the appeal remedy and not revisional remedy. That is the requirement under *Section 25 (1) (b) of the Magistrates Courts Act* (*supra*) which provides:

> "25. (1) save as hereinafter provided.
>
> a) .....
>
> b) In any other proceedings any party if aggrieved by the decision or order of a District Court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, *appeal therefrom to the High Court...*" (Emphasis put).

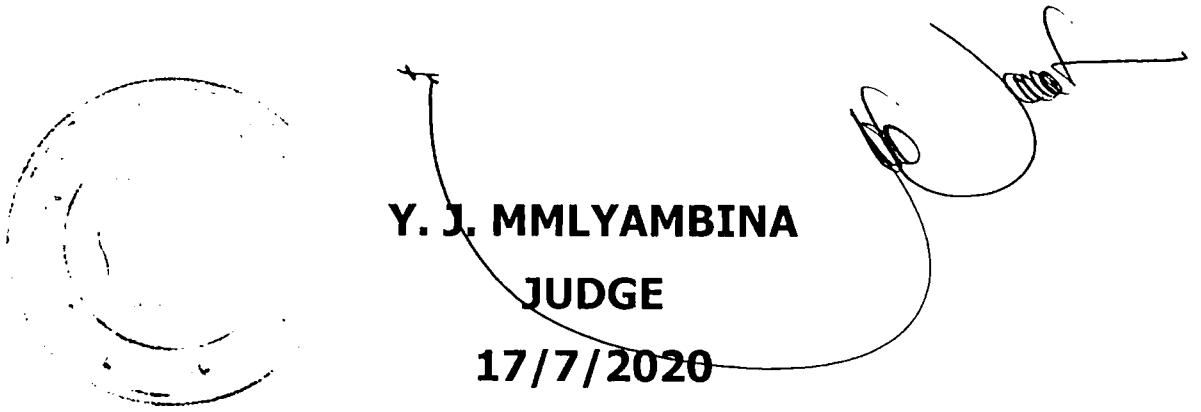
In the cited case of **M/S NBC Ltd v. Salma Abdallah and Faisa Abdallah,** Civil Application No. 83 of 2001 Court of Appeal of Tanzania, it was held:

> *Revisional powers conferred to the court are not meant to be used as an alternative to the appellate jurisdiction of the court. Therefore, the court cannot be moved to use its revisional jurisdiction where an applicant may exercise his right of appeal to the court.*

In the light of the above position of law, I hold that the applicant did not satisfy the requirement of invoking revisional remedy under the provision of *Section 44 (1) (b) of the Magistrates Courts Act* (supra). Her remedy available was to appeal to this court. As such, the objection is sustained. The application stands dismissed with costs for being incompetent before the court.

Y. J. MMLYAMBINA
JUDGE
17/7/2020

Ruling delivered and dated 17th July, 2020 in the absence of the applicant and presence of the respondent in person.



Y. J. MMLYAMBINA

JUDGE

17/7/2020