IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 2 OF 2002

ADAM SAID KIBWE.....APPLICANT

V E R S U S

SIJALI RAMADHANI .....RESPONDENT

RULING

KIMARO, J.

Misc.Civ.Case.No. 11 of 2000 was instituted at the District Court of Morogoro. It is a suit in which Adam Said Kibwe is the plaintiff and Sijali Ramadhani the defendant. In these revisional proceedings, they are the applicant and the respondent respectively. In the suit which was filed at the District Court the plaintiff is praying for a restraint order against sale of a family house and may be a declaration that he is still the administrator of the estate of one Ramadhani Iddi.

Actually, to me it appears strange, why the case should be titled Miscellaneous Civil Case instead of Civil Case No. 11 of 2000. The case is a suit and not merely an application. This is a matter which the Resident Magistrate in Charge of the Morogoro District should look into. The cases must be given proper description, otherwise the civil registry may end up being in a mess.

While the case was going on, the defendant sold the house which forms the subject matter of the suit. The sale took place despite there being a temporary injunction restraining the sale.

When the case was called on 19/10/2001, Mr Taslima who was representing the plaintiff applied for leave to add another defendant in the suit. At last this is what I gather from the last sentence of the proceeding, in Mr Taslima's submission. The defendant objected to the application and the case was adjourned for a ruling.

In her ruling, the trial magistrate did not confine herself to the prayer which was made by Mr. Taslima. Instead, it is shown that what Mr. Taslima had prayed for was leave to start the suit afresh because the suit was wrongly filed. Going by the court record, this is not what Mr. Taslima had prayed for.

The trial magistrate went ahead and held that the suit was wrongly filed. That since there was Probate and Administration Cause No. 180 of 1997 already filed, what was being prayed for by Mr. Taslima had to be pursued through the Probate and Administration Cause No. 180 of 1997. She held that the suit was res judicata.

The ruling of the trial court is what has prompted, the filing of these revisional proceedings. They have been filed by Mr Taslima Learned Advocate, under Sections 79(1) and 95 of the Civil Procedure Code, 1966 as well as Section 44 of the Magistrates Courts Act 1984.

I do not know why the Advocate has choosen to cite both the provisions under the Civil Procedure Code and the Magistrate Courts Act, 1984 because they cater for different circumstance. Whereas a revision under the Civil Procedure Code 1966 is restricted to jurisdiction, under the Magistrate Courts Act 1984 it covers all circumstances where an injustice has been done. The advocate ought to be clear whether his complaint falls under the provisions in the Civil Procedure Code 66 or under the Magistrate Court Act rather than just doing a guess work.

The main reason given for seeking for a revision is that the ruling which was given is irregular and has errors material on the face of the record involving injustice.

The hearing of the revision was carried out by written submissions. I thank both Mr. Taslima, Advocate and the respondent for their submissions.

The respondent has raised a preliminary objection on several points which I must confess do not fall within matters which can be argued by written submission. I am in total agreement with the submission made by Mr. Taslima on this aspect.

That a preliminary objection must be confined to points of law only. Where any matter can not be resolved without evidence then the matter can not be raised as a preliminary objection. The case of Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd [1969] E.A. 696 cited by Mr. Taslima gives an elaborative explanation on what constitutes a preliminary objection. The points raised by the respondent cannot be resolved as preliminary objections because they are matters which require evidence before the court can resolve them.

Regarding the application itself, I must say that it has merit. The record of the trial court is very clear that Mr. Taslima has asked for leave to amend the plaint so that another party can be added. When the magistrate made a ruling, she diverted from the issue which was before her and started adressing other matters of the suit being res-judicata and an application to start afresh. Obviously these were matters which had not been raised and argued before her. What she had to resolve was the issue of amendment of the plaint to add another defendant. By adressing an issue which was not raised the trial magistrate acted with material irregularity under section 79(1)(c) of the Civil Procedure Code, 1966.

I quash the ruling dated 5/12/2001 and order a proper ruling to be written adressing the issue which was raised by the advocate. That is the issue of leave to amend the plaint with a view of adding another defendant. The case to be placed before another magistrate with competent jurisdiction. It is so ordered.

N. P. KIMARO
JUDGE
13/09/2002