

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: LUANDA, J.A., MASSATI, J.A., And KAIJAGE, J.A.)**

**CRIMINAL APPLICATION NO. 11 OF 2013**

**BAGENI MGAYA.....APPLICANT  
VERSUS  
MATHIAS CHACHA MANG'ENYI..... RESPONDENT**

**(Application from Ruling of the High Court of Tanzania  
at Mwanza)**

**(Mruma, J.)**

**Dated 24<sup>th</sup> day of May, 2013**

**in**

**Misc. Criminal Application No. 17 of 2012**  
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**RULING OF THE COURT**

13<sup>th</sup> & 14<sup>th</sup> May, 2014.

**LUANDA, J.A.:**

Basically the applicant BAGENI MGAYA intended to move the Court to exercise its revisional powers in respect of the decision of the High Court (Mwanza Registry) in Misc. Criminal Application No. 17 of 2012 originating in the Primary Court of Tarime sitting at Urban.

When the matter was called on for hearing, the respondent did not enter appearance; he was not served. Thus the applicant prayed that the

matter be adjourned to another date to be fixed so as to enable him trace his opponent.

Before we acceded to his request, we informed him that the application before us was incompetent in that the Notice of Motion cited a wrong enabling provision of law. The Notice of Motion cited Rule 65 (1) of the Court of Appeal Rules, 2009 (the Rules) which reads:-

*"65 (1) Save where a revision is initiated by the Court on its own accord, an application for revision shall be by notice of motion which shall state the grounds of the application."*

The above cited sub-Rule does not confer the Court with revisional powers. Indeed, the entire Rule 65 of the Rules gives guidelines as to how to file revisional proceedings in the Court like the time frame to file and effect service; that it shall be heard by the Court as opposed to a single Justice etc. The powers of revision lies under section 4 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002. So, in terms of Rule 48 (1) of the Rules, the Court was not properly moved.

The applicant conceded that much after he was told that anomaly and he left it to the Court to decide.

From the foregoing, it is clear that the applicant had cited the wrong provision of the law. The Court, therefore, was not properly moved; as such the application before us is incompetent. Notwithstanding the non-appearance of the respondent, the same is struck out. We make no order as to costs.

It is so ordered.


**DATED** at **MWANZA** this 13<sup>th</sup> day of May, 2014.

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. A. MASSATI  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**