

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

**(CORAM: MBAROUK, J.A., LUANDA, J.A., And MUSSA, J.A.)**

**CIVIL APPLICATION NO. 28 OF 2015**

**DAUDI LENGIYEU.....APPLICANT**

**VERSUS**

**DR. DAVID E. SHUNGU.....RESPONDENT**

**(Application to revise the Ruling and Order of the High Court of  
Tanzania at Arusha)**

**(Mwaimu, J.)**

**Dated 29<sup>th</sup> day of May, 2015**

**in**

**Misc. Civil Application No. 102 of 2014**

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**RULING OF THE COURT**

15<sup>th</sup> & 17<sup>th</sup> February, 2016.

**MBAROUK, J.A.:**

The applicant in this application has filed a notice of motion and cited Rule 65 (1) (2) (3) and (4) of the Court of Appeal Rules, 2009 seeking for the order of this Court to revise the ruling and order of the High Court of Tanzania at Arusha in Civil Application No. 102 of 2014 dated 29<sup>th</sup> May, 2015. At the same time he also sought the order for extension of time to file leave to appeal to the

Court of Appeal of Tanzania without citing the enabling provision to move the Court.

When the application was called on for hearing, the Court raised a point *suo motu* and wanted to satisfy itself as to whether the applicant has properly moved the Court. This was for the reason that the applicant is seeking for revision which is under the domain of three Justices, whereas at the same time he sought for the order of extension of time which is under the domain of a single Justice. The two applications should have been filed and entertained separately. This Court in the case of **Bibie Hamad Khalid v. Mohamed Enterprises (T) Ltd. And Two Others**, Civil Application No. 6 of 2011 (unreported) stated as follows:-

*"... it was wrong for the notice of motion to contain omni-bus applications."*

Apart from that anomaly, the Court also noted that the applicant's notice of motion has cited Rule 65 (1) (2) (3) and (4) of the Rules without being combined with section 4 (3) of the Appellate Jurisdiction Act (the AJA) which is the main enabling provision when

the applicant is seeking for revision. In addition to that the notice of motion has failed to cite a specific Rule to enable the Court to entertain the order sought for extension of time. In terms of Rule. 48 (1) of the Rules, every application to the Court shall be by notice of motion supported by affidavit and **shall** cite the specific rule under which it is brought and state the ground for the relief sought.

In the instant application, the applicant has failed to cite a proper enabling provision for Court to revise the ruling and the order sought to be revised. Also, he has failed to cite the enabling provision to seek for extension of time.

Both, the applicant and Mr. Lengai Loita, learned advocate for the respondent agreed to the defects pointed out by the Court. However, Mr. Loita prayed for costs.

As pointed out earlier, it is wrong for a notice of motion to contain omni-bus applications. An application for Revision which is under the domain of three Justices cannot be in the same notice of motion with an application for extension of time which is to be heard

by a single Justice. That defect renders the application incompetent for being omni-bus.

In addition to that, the applicant has failed to cite a proper enabling provision to move the court to revise the ruling and order sought to be revised, and he also failed to cite the specific rule to seek for the order of extension of time.

Cumulatively, the defects render the application incompetent. For that reason, we strike it out with no order as to costs.

**DATED** at **ARUSHA** this 16<sup>th</sup> day of February, 2016.

M. S. MBAROUK  
**JUSTICE OF APPEAL**

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

K. M. MUSSA  
**JUSTICE OF APPEAL**

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

  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

