

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

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

**CIVIL APPLICATION NO. 21 OF 2013**

<b>1. MUSSA HAMISI MKANGA 2. AGNESS GIDION MOLLEL 3. HAPPY EMMANUEL KIVUYO</b>	}	..... APPELLANT
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**AND**

**GODBLESS JONATHAN LEMA.....RESPONDENT**

**AND**

**THE HON. THE ATTORNEY GENERAL ..... THE NECESSARY PARTY**

**(Application for a Review by the Court of the Judgment  
and Order of the Court of Appeal of Tanzania  
at Dar es Salaam)**

**(Kimaro, J., Luanda., Massati, JJJ.A)**

**dated the 21<sup>st</sup> day of December, 2012**

**in**

**Civil Appeal No. 47 of 2012**

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**REASONS FOR THE DECISION**

22<sup>nd</sup> April 2013 & 19<sup>th</sup> September, 2016

**LUANDA, J.A.:**

On 21/12/2012 we allowed the appeal lodged by Godbless Jonathan Lema (henceforth the respondent) in respect of Civil Appeal No. 47 of 2012, set aside the decision of the High Court (Arusha Registry) which unseated the respondent as a Member of Parliament for Arusha Constituent

and declared him as a lawful elected Member of Parliament. The above named applicants have come to this Court for a review. The application for review was made under Rules 48(1)(2) and 66(1)(a)(b) of the Court of Appeal Rules, 2009 (henceforth the Rules). After we heard the application on 22/4/2013 we dismissed it as we were satisfied that the application had no merits. We accordingly dismissed it with costs and certified costs for two advocates for the respondent and the Hon. Attorney General a necessary party in those proceedings. We reserved our reasons which we promised to give out at a later date which we now give.

In this application Mr. Mughwai Alute learned counsel assisted by Mr. Modest Akida learned advocate represented the applicants; Mr. Method Kimomogoro and Mr. Tundu Lissu learned counsel appeared for the respondent; whereas Mr. Vincent Tangoh learned Principal State Attorney represented the Hon. Attorney General.

Submitting about referring the matter to a full bench of seven Justices to rehear the appeal excluding those who first heard the appeal Mr. Alute said they were making the request because the decision of the Court was arrived at **per incuriam** in that it conflicts with its previous decisions of the Court.

Responding Mr. Kimomogoro and Mr. Tangoh strongly opposed the suggestion. Mr. Kimomogoro said Mr. Alute had mixed up things. He went on, the powers to resolve conflicting decisions of the Court are distinct from those of review. The powers of review are geared towards correcting errors which are patent and obvious. The suggestion made by Mr. Alute is tantamount to sitting on an appeal which the seven Justices have no such powers, the learned counsel argued.

On the other hand Mr. Tangoh said the Court has no such powers for a panel of three Justices to submit to the seven Justices. The composition of the Court which is empowered to hear the review is provided under Rule 66(5) of the Rules. Like Mr. Kimomogoro, he submitted that the Court has no such power to rehear the appeal.

We entirely agree with both Mr. Kimomogoro and Mr. Tangoh that the powers to resolve conflicting decision and review are quite distinct. Whereas the purpose of review is to correct or amend errors which had been inadvertently omitted and which if not considered will result into a miscarriage of Justice, on the other hand to resolve a conflicting decision is to declare which among the two decisions of the Court is correct. The procedure pertaining the two scenarios differ.

In **Mussa Arbogast Mutalemwa V R**, Criminal Application No. 5 of 1996 (unreported) this Court said:-

*" But it is clear that where conflict exists between two decisions of this Court on the same matter, the position is not resolved by invoking the power of review of the Court."*

The Court went on,

*"In the event a conflict does exist between the decisions in the applicant's case and that of **Stephano Ndagizi and Another** such conflict will be resolved by constituting a full bench to consider the matter, in an appeal coming before it and involving the issue at hand, and to decide which of the two views is right. As there is no appeal before the Court now there is no basis for deciding which of the two views is right."*

As for review the Court is asked to correct an obvious error on the face of the record. In this case Mr. Alute neither did he point out the manifest error on the face of the record nor did he show that the

applicants were not afforded an opportunity of being heard. Even if, assuming there had been an error on the face of record, it was not shown how it occasioned a miscarriage of justice. It was for the foregoing reasons that we dismissed the application.

**DATED at DAR ES SALAAM this 5<sup>th</sup> day of September 2016.**


E.A. KILEO  
**JUSTICE OF APPEAL**

B.M LUANDA  
**JUSTICE OF APPEAL**

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

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



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