

**IN THE HIGH COURT OF
TANZANIA
AT DODOMA**

**MICELLANEOUS CIVIL APPLICATION NO. 66 OF
2003**

**(ORIGINAL CIVIL CASE NO. 43 OF 1999 OF THE
DISTRICT COURT OF DODOMA AT DODOMA)**

- 1. HEMED HUSSEIN**
 - 2. MAKOLOKOLO BIALI**
 - 3. MOSI IBIGA**
 - 4. MWINYI MPAGAMA**
 - 5. STAMBI MUHULOTO**

 - 6. SAIDI SIMBA**
- APPELLANTS**

VERSUS

NYEMBELA GANDAWEGA.....RESPONDENT

16.05.2006 & 20.06.2006

RULIH G/ORDER

MASANCHE. I.

What the learned advocate Mr. Nyangarika, tells me and what I read on record are two different things.

Mr. Nyangarika tells me that he is making an application

for leave to appeal to this court out of time, against the decision of the District Court of Kongwa, made on 13.10.2000. He tells me that he was late in appealing to this court. After realizing that he was late in appealing to this court, he made an application for leave to appeal out of time, an application which was, according to him, summarily rejected. He says the Judge dismissed it **suo motu**. After seeing that the judge had dismissed it summarily, he put up another application for review. This, again, was dismissed. That is what he tells me.

Now, my reading of the entire record reveals this:

Nyembela Gandawega filed a case in the District Court of Dodoma, in Civil Case No. 43/1999 against six persons, claiming for general damages arising out of injuries he sustained after the defendants had beaten him up. He said, as a result of the beating, he became incapacitated and caused other people to steal from him cash money and a wrist watch, quite easily. He won the case. That was on 13.10.2000. Three months later, he obtained a decree and went on to execute the decree. Total sum had risen to Shs.4,953.687/=.

On 07.08.2001, some six months later, the plaintiff filed a case in the High Court. He filed a case for revision in Miscellaneous Civil Revision no. 6 of 2001. He did not

file an appeal. That Miscellaneous Civil Revision No. 6/2001 was struck out as being time barred. In fact, both the application for a revision or an appeal, were both time barred.

The plaintiff did not want to give up. He filed what he called a review. His application for review was also thrown overboard by Kaijage J, on 11.11.2003. Now, the plaintiff has sought, once again, to appeal for leave to appeal to this High Court, out of time, against the judgment of the District Court, given on 13.10.2000.

This application for extension of time, within which to appeal to this court, is ill conceived. There has been, on record, no reasonable cause for the delay.

At best, I see the delay to be caused by lack of knowledge on part of advocates on appeal matters.

The advocate, or, the plaintiff, after the judgment of the District Court of Dodoma was read on 13.10.2000 should have appealed to the High Court against that decision.

And, even when he was late, he ought to have applied to appeal out of time, and not ask for revision. When he was ruled out, he came back and filed an application to **review** the dismissal order. In other

words this is a common confusion on the legal term- **review** and **revision**.

Once again, let me explain, a review and a revision are two different matters. A revision, under the Civil Procedure Code envisages a correction of errors; apparent on the face of the record. But, the correction higher court not the same court.

A review on the other hand, is also a correction of apparent on the face of the record. But, this is done by the same court that gave the earlier judgment. This is what the author **Aaarwala** says, in **The Civil Procedure Code** - 3rd edition, on reviews:

"It is well settled that the power of review is not an inherent power of a judicial officer, but such a right can only be conferred by statute"

4.

"A review is practically the hearing of an appeal by the same' officer who decided the case"

"a right to review is not an inherent power."

"One judge cannot set aside an order made by another Judge of the same court, although it may be wrong."

"A Court is not entitled to review its order without notice to the other side".

'Discovery of fresh evidence is not ground for review on second appeal.'

"An error of law is not sufficient reason for granting review."

"Any other sufficient reason must be taken rejusdem generis with the clauses preceding.'

"The person who wants review should at least prove strictly the diligence he claims, to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, nearly conclusive of the matter. The application for review cannot succeed on the ground of discovery of new and important matter or evidence which after exercise of due diligence, could not be produced at the time of passing the decree."

"The ground for review must be something which existed on the date of the decision of decree and not subsequent to the date of the decree."

"A court has jurisdiction to decide wrongly."

"In correct interpretation of the law is not an apparent mistake on the face of the record:

"An error of law is not sufficient reason for granting review."

"A party ought not to be allowed in review to raise a case which was never raised at the trial and on which no evidence was adduced."

"Grounds for review must be in existence on the date of the decree."

"When appeal is preferred, review is out of question and the party's procedure is to apply to the appellate court to admit additional

evidence."

"When an application for review is ordered, the judgment sought to be reviewed is not set aside, but only held in suspense until the case has been re-heard."

"A ground of review must be something which existed at the time of the decree. The rule does not authorize the review of a judgment which was right when made, but is shown to be erroneous by the happening of a subsequent event. So, when a judgment is based on a decision of Court, but subsequently it is set aside by a Superior Court, that fact is not a good ground for the granting of review"

"A review maybe granted, even on a ground not argued at the original hearing of the suit, in order to rectify some mistake or error apparent on the face of the record. Where the mistake is apparent on the face of the record, then, irrespective of whether the error appeared to be outside the ambit of the rule."

Incidentally, the words "any other sufficient reason" got defined in the Indian case of **Chhajju Ram v. Neki and Others** 1922 3 Lah 1 27 to mean:

"a reason sufficient on grounds at least analogous to those specified immediately previously:"

In **Attilio v Mbowe** [1970] H.C.D. 3, Georges C.J. said:

"Review involves correction of an error which was either apparent on the face of the record or had been clear because of subsequently discovered circumstances."

And Mnzavas J. noting in **Mbolve Mhurula v Sanva Mbolye** M 974) L.R.T. N. 48 that:

"the Principle underlying a review is that the Court would not have acted as it had if all the circumstances had been known."

And Mnzavas in fact remarked, in Mbolye's case, that the application for a review before him was *"an appeal in disguise."*

Revisions, as I said earlier, are different matters. They are, as I said, instigated by higher courts, in most

cases. A better illustration would be, in the words of our brothers Mrosso J. (as he then was) in **Awaki Shauri v Christopher Gwandu & Another** Civil Revision No. 9 of 98 Arusha High Court Registry, where he said:

"It is true that the High Court can decide to revise lower Court proceedings, decree or order after reading periodic civil returns or upon receiving an informal complaint either by word of mouth, by a letter or even as a result of radio or newspaper information It is then that the Court, of its own motion, orders revision proceedings to be opened."

And, indeed , as pointed out by Mchome J. in **Israel Mwakalabeya v. Ibrahim Mwaiiamba** Miscellaneous Civil Application No. 21/91 Mbeya HC:

"the right to invoke the Courts powers of revision is not an alternative to appealing. Where the order complained against is appellable, the court will not use its revisional powers, for the right to appeal is a remedy open to the aggrieved party. Even where the time for appealing has expired, a party has the remedy of applying to appeal out of time."

Now, to come back to the instant application, the record amply reveals that there inadvertences in the case. Both the applicants and their advocate just did not know what they were doing hence the application for revision, then review, and