

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

**MISC.CIVIL APPL.NO. 24 OF 2006**

***(Originating from Musoma D/Court Misc. Civil Appl.No.11 of 2004)***

**VICENT MONGU.....APPLICANT**

**Versus**

**KUBOJA MAKOKA.....RESPONDENT**

**6/2/2007 & 5/4/2007**

**RULING**

**RWEYEMAMU,J:**

The applicant **Vicent Mongu** has filed an application under section 79 of the CPC praying for:-

*"(a) That the ruling of Misc. Civil Application No.11 of 2004 dated 24<sup>th</sup> February 2006. Together with misc. Civil Application No.23 of 1996 be revised.*

*(b) That the costs of this application be in the course"*

The application was supported by an affidavit sworn by the applicant and resisted by the respondent **Kuboja Makoba**, who filed a counter affidavit.

The law relied on reads and I quote:

*Rule 79. – (1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-*  
*(a) to have exercised jurisdiction not vested in it by law; or*  
*(b) to have failed to exercise jurisdiction so vested; or*

*record. Mulla in Explanatory Notes and Commentaries on the Civil Procedure Code – 10<sup>th</sup> edition, p 277 says:*

*"The special and extra ordinary remedy by invoking the revisional powers of the Court should not be exercised unless as a last recourse for an aggrieved litigant. The recognized rule is that if a party to civil proceedings applies to the Court to exercise its powers of revision, he must satisfy the Court that he has no other remedy open to him under the law, to – set right that which he says has been illegally or irregularly or without jurisdiction done by a subordinate Court. The other remedy open to the applicant must be a certain and conclusive remedy".*

And in a later case **Asha Chileko & 91 Others V Mwanza City Council** (HC) Civil Revision 10/2003, (MZA registry-unreported), in an Order in Summary Rejection of an application for revision, he goes on to elaborate further that:

*"A glaring error on a record would be lack of jurisdiction, or a mixture of parties names, or the like. A revision is not done on an error of law by a subordinate Court, for, subordinate Courts, have jurisdictions to make mistakes of law. That is why legal systems have avenues of appeal". (Emphasis mine)*

The applicant's affidavit does not show how the two applications subject matter of his application for revision is based on errors apparent on the face of the record. To make that apparent, I produce the affidavit grounds below:-

- "1. That, I am an applicant herein hence well conversant with the facts of this application.*
- 2. That in its ruling, the District court of Musoma at Musoma in Misc. Civil Application No.11 of 2004 dismissed the application*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;*  
*the High Court may make such order in the case as it thinks fit".*

I have gone through the grounds adduced by the applicant in his affidavit in light of the two impugned rulings annexed to the affidavit. It is clear to me the applicant does not understand conditions precedent for invoking the remedy sought of revision.

While the aggrieved party can move the court to grant the remedy, there are two condition precedents; one, there must be no other remedy available to the applicant and two, it must be to correct errors apparent on the face of the record on the grounds mentioned under the rule. My brother Mchome J succinctly sums up the principle in **Mwakalabeya V Ibrahim Mwaijumba** HC Miscellaneous Civil Application No.21/91 – (Mbeya registry – unreported) that:

*"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 powers, for the right to appeal, is a remedy open to aggrieved party. Even where the time for appealing has expired, a party has the remedy to applying to appeal out of time".*

And having referred to the above decision Hon. Masanche J, in **SAMWEL GESASE V. THE MANAGER –TARDECO TARIME**, HC Civil revision 16/2001 (MZA registry-unreported) stresses that; *"Once again, this Court reiterates that grievances on rulings and judgments of the District Courts **must** come to this Court by way of appeal. A revision will only be preferred when there is an error apparent on the face of the*

*made by the herein applicant. A copy of ruling s attached and marked as Annexure "A".*

- 3. That in the said application the court was moved to order for a lifting a warrant of attachment against the land of the applicant made in Misc. Civil Application No.23 of 1996*
- 4. That in Misc. Civil Application No.23 of 1996 it was ordered that the certificate of occupancy of the Applicant over form No.26 be nullified – A copy of that ruling is appended and marked as Annexure "B".*
- 5. That as a matter of fact the ruling of the District court in Misc. Civil Application No.11 of 2004 did not consider the fact that the ruling of Misc. Application No.23 of 1996 was given while there was a pendency of an appeal registered in High court of Tanzania at Mwanza as Civil Appeal No.16 of 1996 which originated from Musoma District Court Civil Case No.20 of 1995.*
- 6. That on appeal the High Court at Mwanza in civil appeal No.16 of 1995 ordered Civil Case No.20 of 1995 be remitted to the Musoma District court for consideration on its merits and of which same has not b3en determined to date save the two orders which have the effect of determining Civil Case No.20 of 1995 on technicalities. A copy of High court judgment is appended and marked as Annexure "C".*
- 7. That as a result of executing the two orders of the District court of Musoma, the applicant's houses have all been demolished without Civil Case No.20 of 1995 has been determined on merits as it is still pending in court.*
- 8. That in view of the foregoing it is my sincere belief that a revision order of the said ruling and other ruling of Misc. Civil Application No.123 of 1996 will meet the ends of justice".*

Two, it does not indicated if revision is the only remedy open to him under the law. After checking the impugned rulings, three things

are clear. One, the door of appeal was not closed to the applicant, two as for the ruling in Misc. 23/1996, the same was clearly time barred (but even then a remedy, by way of application for extension of time to appeal exists). Three, the procedure of seeking revision of two different cases in one application is I believe, unprocedural.

In view of the above, I dismiss the application with costs for reason of being incompetent in law.

**Sgd: R. M. RWEYEMAMU**  
**JUDGE**  
**5/4/2007**

**Date: 5/4/2007**

**Coram:** Hon. R. M. Rweyemamu, J

**Applicant:** Present in person

**For Respondent:** Present in person

**Court:** Ruling delivered this 5/4/2007 as per coram above.  
Right of Appeal Explained.

**Sgd: R. M. RWEYEMAMU**  
**JUDGE**  
**5/4/2007**