

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC CRIMINAL REVISION NO 154 OF 2016

CHAPALISI MULIYANGA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

4 Oct. 2017 & 9 Apr. 2018

DYANSOBERA, J.:

The applicant, **Chapalisi Muliya** has filed the instant application for revision before this Court asking it to revise the decision of Morogoro Resident Magistrate Court in criminal case No 264 of 2015.

The application is preferred under **section 31(1), 43(1) and 44(1)** of the **Magistrate Court Act (Cap.11.R.E.2002)** and **section 221(1) (a)** of the **Criminal Procedure Act, (Cap.20.R.E 2015)** and supported by the affidavit of the applicant affirmed in Dar es Salaam on the 4th day of October 2016.

The respondent/republic objected this application. In this squabble which proceeded by way of oral submission, the applicant appeared in person while the respondent/republic was represented by Ms. Neema Mbwana learned state attorney.

In support of the application the applicant submitted that this application is in respect of criminal case No 264 of 2015 derived by Morogoro Resident Magistrate Court. He had nothing to add and so he prayed this Court to adopt his grounds for revision as reflected in his affidavit.

In reply Ms. Neema Mbwana, learned state attorney submitted that the ground reflected on paragraph five in the appellant's affidavit is an after thought. As to the ground indicated on six paragraph of the affidavit by the appellant the learned state attorney stated that the appellant mentioned his age as eighteen years old.

In emphasizing his point the learned state attorney brought into the attention of the Court the decision of Court of Appeal Tanzania in **George Maili Kemonge v. Republic Criminal Appeal No 32 of 2017(Unreported)** which cited with approval the principle enunciated in the case of **Damian Ruhere v. Republic Criminal Appeal No 501 of 2007**.

The fore cited decisions provides the legal position insisting that failure to cross examine a witness on important matter ordinarily implies the acceptance of the truth of the witness evidence. She lastly submitted that

since the applicant did not state that he was a minor his ground that he was fourteen years old had no merit and so prayed the application to be dismissed.

In this case, there is only one issue to be resolved by this Court that is whether or not this application meets standard requirement for revision as provided under section 372 of the Criminal Procedure Act, (Cap.20. R. E 2002).

In the line of the above provision an application for revision can be considered by the Court whenever there is a question in respect of correctness, legality or propriety of any finding of the subordinate Court.

Looking at the affidavit in support of the application deposed by the applicant, it is clear the same depends on two major grounds namely, the **issue of age of the appellant** and **the issue of language** whereby the appellant claim did not understand the language used in the trial Court.

The grounds preferred by the applicant in this application as reflected under **paragraph five and six** of his affidavit do not form part of the grounds required to move the Court in order to exercise its revisional power.

The Court is of the view that under the circumstances of this case it was not necessary for the applicant to file this application against the trial Court's order for convicting the appellant. This leads into the conclusion that it was improper for the applicant to file this application since his

grounds contains the point of law which would have prompted the applicant to prefer an appeal instead of revision.

The Court has also noted this application is incompetent as it was brought under the wrong provision that is, section 31(1) 43(1) and 44(1) of the Magistrate Court Act (Supra) and section 221(1) of the Criminal Procedure Act (Supra). The same are not proper provision for the application for revision.

Therefore, this application is misplaced and it is hereby dismissed.



W.P. DYANSOBERA

JUDGE

9.4.2018

Delivered this 9th day of April, 2018 in the presence of the appellant in person and Ms. Faraja George, learned State Attorney for the respondent Republic



W.P. DYANSOBERA

JUDGE