

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL REVISION NO 46 OF 2017

(Arising from Civil Case No 129 of 2017 in the Resident Magistrates Court at Kisutu)

**1. INTERGRATED COMMUNICATION SYSTEMS LTD
2. DAVID MAIVAJI.....} APPLICANTS**

VERSUS

ADAM HURFORD.....RESPONDENT

RULING

Date of last Order: 30/10/2019

Date of Ruling: 30/10/2019

MLYAMBINA, J.

On 17th October, 2017 the Resident Magistrates Court of Dar es Salaam at Kisutu dismissed Civil Case No. 129 of 2017 for being time barred. Consequently, the applicant filed this application praying *inter alia* for the court be pleased to call for, examine and revise the proceedings, ruling and orders of the Resident Magistrates Court at Kisutu dated 17th October, 2017 in Civil Case No. 129 of 2017.

In reply, the respondent raised a *plea in limine litis* to the effect that the application for revision is incompetent as the applicant has

right of appeal as required by law hence barred from using the discretionary remedy of revision.


When the matter came for hearing of the preliminary objection on 30th October, 2019 counsel Oliva Mark conceded with the preliminary objection on the reason that the order issued by the trial court was appealable. Counsel Oliva Mark, however, prayed the court to waive costs using its discretion. Counsel Ally Hamza on his part insisted for costs.

I have carefully considered the prayer for waiving costs. I find there are no good reasons for waiving costs. This court, in the case of **Bahati Moshi Masabile T/A Ndono Filing Station v. Camel Oil (T)**, Civil Appeal No 216 of 2018 observed that; *as a general rule, a winning litigant, as a matter of right must be awarded costs. if the court is of the view that costs should not be granted, it must state sufficient or concrete reasons except where the court have no reasons of giving reasons.*

In this case, the applicant has not advanced sufficient material as to why costs should not be awarded. It is clear, the applicant lodged this application for revision while aware or had reason to know that the proper remedy was to file an appeal within 30 days in terms of Section 25 (1) (b) of the Magistrates Courts Act.


It is not disputed that the respondent filed counter affidavit, engaged a lawyer and entered appearance before the court. In all these circumstances, the respondent incurred costs.

It follows therefore that there are no reasons to deny the respondent with costs. In the end, the preliminary objection is upheld. The application is dismissed with costs for being incompetent before the court. It is so ordered.



Y. J. MLYAMBINA
JUDGE
30/10/2019

Ruling dated and delivered on 30th day of October, 2019 in the presence of Oliva Mark Advocate for the applicants and in the presence of Ally Hamza Advocate for the respondent.



Y. J. MLYAMBINA
JUDGE
30/10/2019