

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

AT DAR ES SALAAM

CIVIL REVISION NO. 12 OF 2020

(Arising from the decision of the District Court of Mafia at Mafia in Civil
Case No. 05 of 2019 dated 23rd December, 2019 before Hon. O.B.
Mkamba, **RM**)

HELEN MARK TEMU APPLICANT

VERSUS

MAFIA DISTRICT COUNCIL RESPONDENT

RULING

23rd Sept & 16th Oct, 2020.

E. E. KAKOLAKI J

This is an application for revision preferred by the applicant under section 79(1) of the Civil Procedure Code, [Cap. 33 R.E 2019] against the decision and proceedings of the District Court of Mafia at Mafia in Civil Case No. 05 of 2019 which was decided in favour of the respondent. The application is supported by the affidavit of Helen Mark Temu the applicant, inviting this court to reverse the illegality and material irregularities contained in the said decision and proceedings. The application is uncontested as apart from being

served several times the respondent never appeared in court to defend herself save on the 09/09/2019 when appeared through Mr. Maarifa Buda, solicitor.

Briefly the applicant sued the respondent in the District Court of Mafia in Civil Case No. 05 of 2019 claiming for sum of Tshs. 2,600,000/= as special damages and Tshs. 90,000,000/= being general damages for malicious institution of Civil Case No. 06 of 2015 against her in the same court claiming a total sum of Tshs. 2,600,000/= as unpaid up hotel levy. The suit was resisted by the respondent through preliminary objection on the ground that the same is res judicata for being adjudicated and conclusively determined by the same court in Civil Case No. 06 of 2015. Both parties were heard by way of written submissions and the preliminary objection sustained by the court on the 23/12/2019 on account of being res judicata hence dismissal of the suit. It is from that decision the applicant has preferred this application inviting the court to reverse the illegality and irregularities obtained therein.

Hearing of this application proceeded by written submission. As alluded earlier the respondent failed to enter appearance and file the reply submission, thus this court is prepared to determine the application ex-parte basing on the applicant's submission. Before going into the merits and demerits of the application, the court paused and queried as to whether this application is properly before this court.

After going through the applicant's affidavit in support of the chamber application as well as the submission made in support of the application, the Court have noted that the applicant by large is challenging the ruling of the

trial court dated 23/012/2019 for being clothed with serious irregularities. She never appealed against that decision, instead preferred this application for revision in the name of illegality and irregularities obtained in the decision of the trial court. When the court invited the applicant to furnish explanation as to why she preferred revision instead of challenging the trial court's decision by way of appeal, she could not supply sufficient reasons.

It is trite law, revision is not an alternative to appeal. This position of the law is clearly stated in plethora of cases, to mention the least **Moses J. Mwakibete v. The Editor – Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134, **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161, **Halais Pro-Chemie v. Wella A.G.** (1996) TLR 269 and **Keiza Vaolet Mato Vs. Naciona Bank of Commerce**, Civil Application No. 127 of 2005 (CAT-unreported). Discussing on when a party or the court can invoke revisional jurisdiction the Court of Appeal in the case of **Halais Pro-Chemie Vs. Wella A.G** (1996) TLR 269 held that:

- (i) *The Court Could, on its own motion and at any time, invoke its revisional jurisdiction in respect of the proceedings in the High Court;*
- (ii) *Except under exceptional circumstances, **a party to proceedings in the High Court could not invoke the revisional jurisdiction of the Court as an alternative to the appellate Jurisdiction of the Court;***

- (iii) *A party to proceedings in the High Court could invoke the revisional jurisdiction of the Court in matters which were not appealable with or without leave;*
- (iv) *A party to proceedings in the High Court could invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process: the decision of the applicant's application for extension of time to apply for leave to appeal did not amount to judicial process which blocked the applicant's move. The Court of appeal had concurrent jurisdiction with the High Court to grant extension of time and it was therefore open to applicant to come to court to seek extension of time after the High Court had refused it; the reliance on the court's revisional jurisdiction was clearly misconceived.*
- (v) *The application was in the event hopelessly time-barred.*

Similarly in the case of **Moses J. Mwakibete Vs. The Editor-Uhuru, Shirika la Magazeti ya Chama and National Printing Co Ltd** (1995) TLR 134 the Court of Appeal laid down principles under which revisional powers can be invoked and held that:

- (i) *The revisional powers conferred by S. 2(3) of the Appellate Jurisdiction Act, 1979 are not meant to be used as an alternative to appellate Jurisdiction of the Court of Appeal: accordingly, unless acting on its own motion, **the Court of Appeal cannot***

be moved to use its revisional powers under S. 2(3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised that right;

- (ii) The Court of Appeal can be moved to use its revisional jurisdiction under S. 2(3) of the Appellate Jurisdiction Act, 1979 only where there is no right of appeal, or where the right of appeal is there but has been blocked by judicial process, and lastly, where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal;***
- (iii) The applicant in this case had a right to appeal and has not given any good and sufficient reasons why he did not appeal; therefore he cannot move the Court of Appeal to exercise its revisional jurisdiction. (emphasis supplied)***

Guided by the above laid down principles, it is evident to me that, in this matter the applicant for no apparent reasons preferred revision without assigning reasons as to why she failed to exhaust the remedy of appeal which was available and she has a right to. She has further failed to convince the court that there is no right of appeal in matter sought to be revised or the right exists but she has been blocked by judicial process to entitle her to go for revision as an alternative to appeal. For the foregoing reasons, I am satisfied that the applicant lacks justification to prefer this application for revision which I hold to be incompetent. Consequently the same is hereby

struck out. The applicant is at liberty to challenge the trial court's decision by way of appeal subject to the law of limitation of suits.

No order as to costs as there is no proof that the respondent incurred any.

It is so ordered.

DATED at DAR ES SALAAM this 16th day of October, 2020.



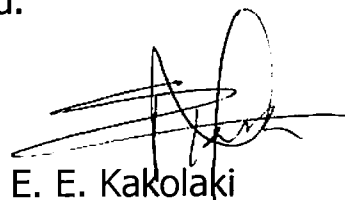
E. E. KAKOLAKI

JUDGE

16/10/2020

Delivered at Dar es Salaam this 16th day of October, 2020 in the absence of the appellant and in the respondent and in the presence of Ms. **Lulu Masasi**, Court clerk.

Right of appeal explained.



E. E. Kakolaki

JUDGE

16/10/2020