

**IN THE UNITED REPUBLIC OF TANZANIA**  
**THE JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
**AT MTWARA**

**CRIMINAL REVISION NO. 02 OF 2018**

*(Originating from Lindi District Court in Criminal Case No. 90 of 2017  
before NGALU, RM)*

**THE REPUBLIC ..... APPLICANT**

**VERSUS**

**SELEMAN AMRI MKOKOTOLE ..... RESPONDENT**

**RULING**

*Hearing date on: 05/03/2021*

*Ruling date on: 08/03/2021*

**NGWEMBE, J:**

The Republic preferred revision against the judgement of the trial court delivered on 29<sup>th</sup> December, 2017, which acquitted the respondent on the offence of rape. To move this court to call upon the trial court's file and review, the learned senior State Attorney Ms. Mwahija M. Ahmed wrote a letter dated 20<sup>th</sup> February, 2018 addressed to the Deputy Registrar of this court asking this court to invoke its revisional jurisdiction to revise the judgement of the trial court.

The genesis of this application traces back to 9<sup>th</sup> day of August, 2017 at Nangaru Village in Lindi District within Lindi Region, where the Respondent was alleged to have carnal knowledge with a girl aged 14 years old. Being so arraigned in court, the respondent was charged for rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code Cap 16 R.E. 2002.

Since the victim is a girl below the age of majority and according to the Law of the Child, read together with Circular No. 2 of 2018, dated 20<sup>th</sup> March, 2018, of the Chief Justice of Tanzania, the victim's actual name is hereby hidden, instead she is baptized as "**BD**" throughout of this ruling. The purpose of hiding her actual name is to preserve her respective privacy, integrity and future respect in a civilized society.

On trial the prosecution lined up seven (7) witnesses including the victim. Equally, the accused/respondent BY defending himself without an assistance of another witness. However, at the end, the court found the accused not guilty on the offence of rape, hence acquitted him forthwith.

The applicant after being aggrieved by that acquittal, preferred an application for revision by writing to this court an omnibus application for revision comprising five (5) different cases of similar offence. Sections 372 and 373 (1) (4) of Criminal Procedure Act were cited as enabling provisions to move this court to revise the trial court's judgement.

When this application was called UP for hearing, unfortunate the respondent was nowhere to be seen and all the efforts of the Republic,

yielded no fruitful results. As time went on, this court ended up effecting its statutory duty to advertise this revision three times in Nipashe newspapers of 8<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> February, 2021. Even those efforts yielded no positive results. Finally, the prosecution was invited to proceed with hearing of the revision ex-parte.

On the hearing date of this revision, the learned senior State Attorney Mr. Paul Kimweri, argued quite strongly, that the evidence adduced on trial by the prosecution was watertight leading to conviction of the accused. He pointed out the evidence of PW1 as per pages 12 and 13 of the trial court's proceedings. The evidence proved both penetration and the age of the victim. Thus, proving the two that is the victim and the accused had sexual intercourse. Such evidence was strong to find the accused liable on the offence of rape.


I fully, subscribe with the arguments advanced by the learned senior State Attorney, that this court has statutory powers to call and revise any criminal case decided by subordinate courts. Sections 372 and 373 of Criminal Procedure Act, [Cap 20 R.E.2019], speaks louder on the powers of this court. Procedurally, this court may even *suo mottu* or may be moved by either party in a case by either a letter or any other means of communication to inform on the matter which the court may invoke its powers to call the file and revise accordingly. As such the learned senior State Attorney Mwachia M. Ahmad was right to move this court by way of a letter dated 20/2/2018. However, there are certain principles upon which revisional powers may be invoked by this court. First, revisional powers



should not be taken as an alternative or substitute to appeal. Second, the court may *suo mottu* or by being moved exercise its revisional jurisdiction; third, there must be clear and unqualified illegalities or irregularities or incorrectness or inappropriateness apparent on the records of the trial court, be it in the proceedings or judgment or in the conviction or sentence. The applicant cannot by shire option or as alternative come to this court on revision, while the judgement is appealable as of right.

The merits and demerits of the case or issues of sufficiency or insufficiency of evidences adduced by either party in court during trial are reserved for appellate jurisdiction as opposed to revisional jurisdiction.

To the best, revisional jurisdiction is concerned with incorrectness, illegality or impropriety of any finding, sentence or order passed by a trial court. The Court of Appeal in the case of **Halais Pro-Chemie Vs. Wella A. G. [1996] T.L.R 269 (CA)**, made reference to the case of **Moses Mwakibete Vs. The Editor-Uhuru and Two Others [1995] T.L.R 134 (CA)** and in the case of **Transport Equipment Ltd. Vs. D P Valambia [1995] T.L.R 161.**

Accordingly, this court may exercise its revisional jurisdiction only when the decision of the trial court or subordinate court is; **first** not appealable by operation of the law; **second** the right to appeal is not provided for or is blocked by judicial process; **third**, the right to appeal is not opted by the aggrieved person for sufficient reason; and **four** usually on revision the court does not determine merits and demerits of the suit generally, rather 


determines propriety of the records; proper application of laws; and legality of the sentence meted by the trial court.

In this revision the learned senior State Attorney, strongly argued the merits of the case as if he was arguing an appeal. He submitted that the evidences adduced by the prosecution witnesses were watertight, sufficient to draw conviction and sentence against the respondent. But did not address this court on areas on what went wrong by the trial court, if any, or illegalities and impropriety either in the proceedings or judgement of the trial court.

In totality this revision is misplaced same is not maintainable in law. Consequently, this application for revision is dismiss forthwith.

**I accordingly order.**

**Dated** at Mtwara in Chambers this 8<sup>th</sup> day of March, 2021



**P.J. NGWEMBE**

**JUDGE**

**8/3/2021**

