

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISC. CRIMINAL REVISION NO. 2 OF 2020

(Originating Criminal Appeal No. 12/2019 of Muheza District Court)

ELIZABETH LEONARD..... APPELLANT

VERSUS

GASPA JORDAN..... RESPONDENT

RULING:

MRUMA J.

This Revision application will not detain me much as it is misconceived and has no merits.

The Applicant Elizabeth Leonard was the Appellant in Criminal Appeal No. 12 of 2019 before Muheza District Court. Her appeal was fixed for hearing on 13/12/2019. When the matter was called before the presiding appellate Magistrate, the Appellant (now the Applicant) was absent without notice. Counsel for the Respondent successfully prayed for dismissal of the appeal for want of prosecution. About one month after dismissal, the Applicant filed this application praying for two substantive orders namely:

1. That this court be pleased to examine the proceedings and ruling of the District Court in Criminal Appeal No. 12 of 2019 for purposes of satisfying itself as to legality and propriety of such proceedings and ruling and be pleased to revise them.
2. That this court be pleased to make any appropriate orders as it may deem fit including to order the appeal lodged by the Appellant to be restored for seek of justice (sic).

This revision is pegged under Section 30 and 31 of the Magistrates' Courts Act [Cap 11 R.E. 2019 "Plus any other enabling provision of the law" and it is supported by the affidavit of the Applicant.

While section 30 of the Magistrates Courts Act which has three sub-sections deals with supervisory powers of the High Court over subordinate Courts, Section 31 of the same Act also has three (3) subsections prescribing revisionary powers of the High Court over the proceedings conducted in subordinate courts. The Applicant did not specify under which sub-section(s) of section 30 and 31 she was moving the court. This is wrong because the court is left in limbo as by which law it is moved. There are myriads of authorities of this court and the Court of Appeal and I need to cite none, to the effect that citing general sections without

showing specific subsection under which the court is moved renders the application incompetent and the appropriate order for an incompetent application is to struck it out.

Secondly, assuming that the application was competent before the court, would it have any merits? My answer is no.

The applicant has asserted throughout her supporting affidavit that she got admitted at Teule District Hospital of Muheza on 12/12/2019 and was discharged on 14/12/2019 thus, she was unable to appear in court on 13/12/2019 when the matter was called for hearing for reason(s) of sickness.

In paragraph 5, she asserts that she sent her sister one Loida Leonard to report to the court about her sickness and in paragraph 6 she states that Loida Leonard passed that information to a court clerk one Ms. Mchomvu @ Mama Shayo who promised to pass it to the presiding magistrate. However, the Applicant did not secure affidavits from neither Loida Leonard nor Ms. Mchomvu @ Mama Shayo to support her assertions. Failure to secure affidavits from these two crucial witnesses renders her assertions that Loida was promised by Ms. Mchomvu @ Mama Shayo to

pass the information to the presiding magistrate hearsay evidence which in law is not admissible.

Finally, it is my considered view that in a situation like this where proceedings and in this matter an appeal is dismissed for want of prosecution, the appropriate remedy available to the Applicant was to seek restoration of the dismissed appeal and not to file revision proceedings. Revision proceedings are intended to move the court to remove any defect or grant relief against irregular or improper exercise or non-exercise of jurisdiction by a lower court. It is like re-working and re-writing proceedings. In the present matter, the Applicant was complaining about factual issues and not irregularities in exercising court's jurisdiction.

That said, this revision is dismissed for reasons that it is both incompetent and has no merit.



A.R. MRUMA,

JUDGE

15/03/2021

Date: 15/03/2021

Coram: A.R. Mruma, J.

Applicant: Present

Respondent: Present

C/C: Deborah

Court:

Ruling delivered.




A.R. Mruma

Judge

15/03/2021