

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)**

AT MWANZA

CIVIL REVIEW NO. 01 OF 2022

AFRIKA MASHARIKI GOLD MINE.....APPLICANT

VERSUS

JOSEPH WEGESA WANGUBO.....RESPONDENT

RULING

31st May & 1st June, 2022

DYANSOBERA, J.

This is an application for review of the ruling of this Court (Nyangarika, J. (rtd)) in Misc. Civil Revision No. 6 of 2009 whereby the present applicant and respondent were, respectively, the respondent and the appellant.

In order to fully understand and appreciate what is in issue in this matter, a brief history is apothegmatic. The respondent successfully filed a suit before Tarime District Court in Civil Case No. 11 of 2003. In a bid to execute his decree, the respondent had the applicant's motor vehicle attached but the court was informed that the respondent had already been paid his entitlements out of court. The execution proceedings were halted. The respondent alleged that he did not receive any payments. He lodged the proceedings before this court seeking to challenge the decision of the District Court.

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On 15th day of February, 2011 Hon. Nyangarika, J. delivered a ruling with three orders. One, he struck out the appeal. Two, he revised the proceedings before the District court and three, he directed the parties to produce witnesses before this court for further cross-examination to clear some doubts. After the matter was subsequently handled before different judges of this court, the applicant, though, Mr. Faustin Malongo, learned Counsel, applied for extension of time for filing a memorandum of review. The respondent who was represented by Mr. Akram Adam did not resist the application. The application was accordingly, granted and time to file memorandum of review extended, hence the application, the subject of this ruling.

At the hearing of this application for review, Mr. Faustin Malongo appeared for the applicant while the respondent was represented by Mr. Akram Adam. The learned Advocates were at one that this application should be granted with no order as to costs.

In his submission, Mr. Akram Adam informed the court that they were admitting the grounds for review, that is grounds nos. 1, 2 and 3 and urged this court to set aside its decision in Misc. Civil Revision No. 6 of 2009 dated

15th day of February, 2011 and then order the record of the trial court to be dispatched to the Tarime District Court in order for it to determine if the respondent was paid Tshs. 15, 000,000/= . Learned Counsel for the applicant joined hands with the submission by Learned Counsel for the respondent.

According to the memorandum of review filed by the applicant, the grounds advanced to support the review are one, that in the course exercising its revisional powers, the High Court has powers to take additional evidence from the parties. Two, the High Court erred in ordering cross examination of the parties' witnesses who had not testified before it. Three, the High Court erred in requiring witnesses to be cross examined before giving their evidence in chief and four, that once the high Court struck out the respondent's appeal, the High Court erred in proceeding to revise the District Court's proceedings and or ruling.

With these grounds, the applicant prayed for an order setting aside the decision of this court and that each party to bear his/its own costs and any other orders.

As said earlier on, this application has not been resisted as the respondent joins hands with the applicant.

As I understand, review means consideration, inspection or re-examination of a subject or thing. The power and circumstances under which a court can review its own decision are stipulated under Section 78 of the Civil Procedure Code, [Cap.33 R.E.2019]. The said Section provides:

“Subject to any conditions and limitations prescribed under section 77, any person considering himself aggrieved—

(a) by decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Code,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.

The Court of Appeal of Tanzania in the case of **Transport Equipment Ltd.**

v. Devram P. Valambhia, Civil Application No. 18 of 1993, a full bench of Seven Justices of Appeal considered the Court’s power to review its decisions and held that the court has the inherent jurisdiction to review decisions and it will do so in any of the following circumstances to wit, where there is a manifest error on the face of the record which resulted in miscarriage of

justice, or where the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard.

As far as the instant application is concerned, after going through the grounds of review and the submissions presented by both learned Counsel, I am satisfied that there is a manifest error on the face of the record which resulted in miscarriage of justice.

The decision of this court speaks louder than in the course of exercising its revisional power, the court ordered additional evidence to be taken from the parties and ordered cross-examination of the parties' witnesses who had not testified before it and before they had given their evidence in chief. Further, after the court struck out the respondent's appeal, it proceeded to revise the proceeding/ ruling of the trial District Court and ordered revision proceedings to be opened. These are grounds which sufficiently call this court to review its own decision.

For those reasons, the application for review is allowed. The decision and orders of this court given on 15th day of February, 2011 are quashed and set aside. It is ordered that the record of the District court be dispatched to Tarime

District Court for it to determine whether or not the respondent was paid the decretal amount of Tshs. 15, 000,000/=.

No order as to costs is made.



W. P. Dyansobera,

Judge

1.6.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 1st day of June, 2022 in the presence of Mr. Imani Mfuru, learned Counsel for the applicant but in the absence of the respondent.



W. P. Dyansobera

Judge