

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**CIVIL REVISION NO. 1 OF 2022**

**PETER PAMBI ..... APPLICANT**

**VERSUS**

**DEOUS MIZENGO ..... RESPONDENT**

(Arising from the order of the District Court of Sumbwanga at Sumbawanga)

(G. J. William, RM)

Dated 21<sup>st</sup> day of January 2022

In

Civil Appeal No. 21 of 2021

**RULING**

Date: 30 & 30/06/2022

**NKWABI, J.:**

The applicant is entreating this court to revise the order of the District Court of Sumbawanga that dismissed Civil Appeal No. 21 of 2021 that was pending before it, which was lodged by the applicant herein. The order of the District Court goes:

*"The matter is dismissed under Rule 13 (2) of the Civil Procedure (Appeals originating in Primary Courts) Rules G. N. 312 of 1964."*

Mr. Peter Kamyalile, learned counsel for the applicant argued that even if they would have applied before the District Court for restoration of the appeal by setting aside the dismissal order, the proceedings of the District Court is terribly marred with fatal irregularities for the District Court failed to adhere to its orders. That, prior to the date the appeal was dismissed, the District Court had ordered for notices of hearing be issued to parties. No such notices were issued. So, it was irregular for the court to dismiss the appeal without even complying to its orders. Further, the proceedings are intelligible.

Ms. Tunu Mahundi, learned advocate for the respondent, did not dare to duel this application for revision. Despite pointing out that the applicant could have had an avenue to apply for restoration of the appeal, she admitted the irregularities in the proceedings and prayed the application be granted. She was minded, however, to pray that this court should refrain from granting costs of the application.

Truthfully, I would have dismissed this application, had it not been that the proceedings in the District Court leading to the dismissal of the appeal were

not impaired by serious irregularities. In the situation, I hope, to me, guidance is given by the Court of Appeal of Tanzania in **Meporoo Rison v Elisa Sangeti**, Civil Application No. 10 of 2021 where it was stated:

*"... We admit that is not a pleasing situation on the part of the court. Indeed, it is a sign of irresponsibility. Whatever proceedings are filed in Court. The responsible officers are obliged to take the necessary steps, in accordance with the law, to have the parties served so that the proceedings can be determined. When there is failure to take the necessary steps, as in Misc. Civil Application No. 83 of 2010, the parties are not only inconvenienced, but we witness, as in this application, filing of unwarranted applications, and complaints against the court which cannot be defended. Such attitudes should be totally discouraged."*

One may also seek the guidance of the Court of Appeal of Tanzania in **Patrick Magologoi Mongella v The Board of Trustees of the Public Service Social Security Fund**, Civil Application No. 342/18 of 2019 where the Court ruled that:

*"..., in determining the legality of a particular decision or order of the High Court, this Court will examine if that decision or order has the quality of being legal; that it has complied with the applicable law or doctrine. As for correctness and propriety of an impugned decision or order, it would involve the same endeavor to determine if it is legal and proper. The inquiry into the regularity of the impugned proceedings will not go beyond examining whether the proceedings followed the applicable procedure and accorded with the principles of natural justice and fair play.*

In the proceedings of the District Court, no fair play is displayed. In the circumstances and as the counsel for the respondent conceded and, in my view, properly so, this application for revision is granted, the proceedings of the District Court is hereby revised to the extent that the order dismissing Civil Appeal No. 21 of 2021 in the District Court is set aside and the Civil Appeal is restored in the District Court. The same has to be presided over by another magistrate of competent jurisdiction. Each party shall bear their own costs of this revision.

It is so ordered.

**DATED** at **SUMBAWANGA** this 30<sup>th</sup> day of June, 2022



J. F. NKWABI

**JUDGE**