

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

**MISC. CIVIL APPLICATION NO. 29 OF 2021**

(Arising from execution No. 2/2021 Kasulu District Court)

**MAHAMUDU UHAI ..... APPLICANT**

**VERSUS**

**RASHIDI NTACHO ..... RESPONDENT**

**RULING**

22/6/2022 & 5/7/2022

**L.M. MLACHA, J**

The applicant Mahamudu Uhai and the respondent, Rashid Ntacho had two cases at the district Court of Kasulu. The first case was Criminal Case No. 120/2020. The applicant was the accused. The respondent was the complainant. The applicant was found guilty and convicted. He was sentenced to serve one year in jail or pay a fine Tshs 300,000/= . He was also ordered to pay compensation Tshs 7,200,000/= which was an amount of money involved in the criminal transaction. He did not prefer an appeal. He paid the fine Tshs 300,000/= to avoid going to jail but could not pay compensation Tshs 7,200,000/= as ordered. He remained silent.

Following the conduct of the applicant, the respondent returned to the district and filed Execution Application No. 2/2021 to enforce the order of the Criminal Case. The applicant was not alone in the proceedings. He heard the services of Mr. Hamisi Kimilomilo; an advocate based in Kasulu. The respondent stood alone, fending for himself. The application was heard and granted the application. The district court ordered the attachment and sale of the applicant's house located at Gungu, Soweto Kichwele, Kigoma to raise Tshs 7,200,000/= to pay the respondent. The ruling was delivered on 21/10/2021. The applicant appeared to have been aggrieved by the decision but did not prefer an appeal. He instead appeared before this court on 18/11/2021 and filed the present application. It is an application for revision of the decision of the district court made in Execution Application No. 2/2021. This time he had a new advocate, Mr. Moses Rwegoshora. The respondent proceeded to stand alone, fending for himself. This is the ruling on the application for revision. Hearing was done by oral submissions.

The submission of Mr. Rwegoshora was based on illegalities of the execution proceedings and decision. He had the view that the respondent was supposed to file his application under section 328 and 329 of the

Criminal Procedure Act, Cap 20 R.E 2019 because the matter had its genesis in a criminal case. He argued that it was not correct to proceed as a normal execution under the Civil Procedure Code Act, Cap 33 R.E 2019. He asked the court to revise the proceedings and the decision of the district court on that basis. When he was asked by the court to say something about the compensation order, he said that they are ready to pay the amount as ordered by the criminal court if given time. So the amount in issue has never been an issue between the parties.

It was the submission of the respondent that the former advocate, Mr Kimilomilo had promised to pay the amount in two installments of Tshs 4,000,000/= and Tshs 3,200,000/= but could not honour the promise. The court decided to sell the house following the failure, he submitted. He resisted the application.

I have examined the records and considered the submission carefully. The matter before the court is an application for revision of the decision of the district court made on 21/10/2021. As hinted about, that decision was appealable but the applicant did not opt to appeal. He instead filed an application for revision. I think is against the Law and practice for where there is a right of appeal one cannot file a revision save where there are

exceptional circumstance like where the appeal is barred by the legal process. **See Hamoud Mohamed Sumry v. Musa Shaibu Msangi and 2 others**, Application No.225 of 2015 page 8, **Dismas Chekamba v. Issa Tanditse** Civil Application No.2 of 2010 page 4 and **Siemens Limited and another v. Mtibwa Sugar Estates Limited**, Civil Application No.106 of 2016 pages 7 and 13. I could not see any exceptional circumstances in this case making the revision proceedings illegally before the court.

Further to that, the applicant does not deny to be indebted. He accepts this fact. It is thus clear that the applicant is just buying time. Instead of paying, he is using the courts to assist him to frustrate the payment process. That is a bad practice and has to be discouraged wherever it arises.

That said, the application is dismissed with costs.



A handwritten signature in blue ink, appearing to read 'L.M. Mlacha'.

**L.M. Mlacha**

**Judge**

**5/7/2022**

**Court:** Ruling delivered through our virtual court services.

Right of appeal explained,



A handwritten signature in blue ink, appearing to read "L.M. Mlacha", with a stylized flourish extending to the right.

**L.M. Mlacha**

**Judge**

**5/7/2022**

ORIGINAL