

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

**CIVIL REVISION NO. 12 OF 2021**

*(Arising from Civil Appeal No. 21/2016 of Sengerema District Court and Originating from Civil Case No. 09/2016 of Kasenyi Primary Court at Sengerema)*

**TULUHOSAHWO ANGELO ..... APPLICANT**

**VERSUS**

**MSOLAPA KWIZIZILE ..... RESPONDENT**

**RULING**

*24<sup>th</sup> & 28<sup>th</sup> FEB., 2022*

***Kahyoza, J.:***

The applicant, **Tuluhosahwo Angelo** was a party to Civil Case No. 09/2016 before the primary court of Sengerama District at Kasenyi and civil appeal No. 21/2016 before Sengerema District. **Tuluhosahwo Angelo**, who was the respondent before the primary court won the day. Aggrieved, **Msolapa Kwizizile** appealed to the District Court. The district court reversed the decision of the primary court and ordered **Tuluhosahwo Angelo** to pay Tzs. 3,000,000/= as compensation for damaged trees to **Msolapa Kwizizile**. **Tuluhosahwo Angelo**, instead of appealing against the decision of the district court, he lodged revision proceedings.

Before I heard the appeal, I called upon the parties to address me if the revision proceedings were properly instituted. It is also in the record that the respondent's advocate had raised a preliminary objection to the

effect that the application for revision is incompetent for contravening section 44(1) of the Magistrates Courts' Act, [Cap. 11 R.E.2019].

The respondent submitted orally in support of the preliminary objection whereas the applicant replied by filing a written submission. As to the issue this Court raised *suo mottu*, the applicant and the respondent's advocate submitted orally.

I will commence with the issue raised *suo mottu* if the application is sustained I revert to the preliminary objection. The issue raised by this Court *suo mottu* raises one issue whether an application for revision instituted by the applicant, who is a party, is legally competent.

**Is an application for revision instituted by the applicant, who is a party, legally competent?**

Undeniably the applicant and the respondent were parties to the suit and appeal before the primary and district courts, respectively. The district court delivery the judgment sought to be revised on the 13.2. 2017 in the presence of the parties. **Tuluhosahwo Angelo**, the applicant, was not amused, for reasons not clear from the record he did not appeal. He had to wait until 20/7/2021 to lodge an application for revision.

Mr. Innocent, the respondent's advocate submitted that the applicant had first instituted Civil Rev. No. 1/2020 before the High Court. He resisted the application because it was time barred and bad in law as the applicant was require to appeal instead of applying for revision. The Resident Magistrate with Extended Jurisdiction decided against his client and granted time to the applicant to institute an application for revision. He

argued strongly that the applicant was not required to file the application for revision.

As expected, the applicant, a layperson, had nothing substantive to submit to the legal issue this Court raised *suo mottu*. He prayed for time to reply by filing a written submission. I refused to grant the prayer. It is on record that the applicant drafted and filed the pleadings he is therefore competent with the legal procedures. Having heard the submissions, it is obvious that the proceedings before this Court are a nullity and the nullity cannot be adjourned. I decided to proceed.

It is an established principle of law that revision is not an alternative for appeal. Revisional jurisdiction can be invoked in very limited circumstances by parties to the case. Parties to the suit can invoke revisional jurisdiction upon proving that the right to appeal has been blocked by technicalities or other circumstances as stated in the case of **Ms. Farhia Abdullah Noop Vs. Advantech Office Supplies Ltd and Bolsto Solutions Ltd**. Civil Application No. 261/16 of 2017 where the Court of Appeal stated,

*"Clearly therefore, because the applicant had a right to appeal, she should not have invoked the revisional jurisdiction of the Court..... It is instructive to state here that, invocation of the Court's revisional jurisdiction is not dependant on the nature of the grounds upon which a party seeks to challenge a decision or order of the High Court.*

*The Court power of revision may be resorted to only where there is no right if appeal or where such right exists but has been blocked by judicial process.*

*A party may also invoke the revisional jurisdiction of the Court where, although he has a right of appeal, sufficient reasons amounting to exceptional circumstance exists or where a person was not a party to the relevant proceedings of the High Court.*

To cement the above position **Mulla in Explanatory Notes** and Commentaries on the Civil Procedure Code -10<sup>th</sup> Edition, p. 277 says

*"The special and extra ordinary remedy by invoking the revisional powers of the court should not be exercised unless as a last recourse for an aggrieved litigant. **The recognized rule is that if a party to the civil proceedings applies to the court to exercise its powers of revision, he must satisfy the court that he has no other remedy open to him under the law to-set right** that which he says has been illegally or irregularly or without jurisdiction done by a subordinate court. The remedy to the applicant must be certain and conclusive."*

I examined the record of the trial and the appellate and found that the respondent sued the applicant for compensation. The applicant lost the suit. He appealed to the district court, which overturned the decision of the primary court. The district court awarded the respondent Tzs. 3,000,000/=. The district court decided the appeal in the presence of the applicant and the respondent. There is nothing on record to suggest why did the applicant fail to appeal. I have seen no special record which may entitle the applicant to invoked revision jurisdiction of this Court. It is for that reason, I find that this application was not properly filed before the Court. It is incompetent.

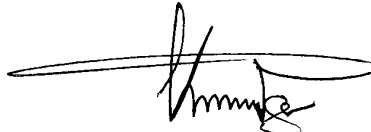
In the end, I find no justification for the applicant to invoke revisional jurisdiction of this Court. For that reason, I strike out the application for revision instituted by the applicant, the party to the appeal before the district court. I see no urge to determining the preliminary objection raised by the respondent's advocate. The respondent is awarded costs.

It is ordered accordingly.



**J. R. KAHYOZA**  
**JUDGE**  
**28/02/2022**

**Court:** Ruling delivered in the presence of the parties in person. B/C. Ms. Martina (RMA) present.



**J. R. KAHYOZA**  
**JUDGE**  
**28/02/2022**