

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MSC. CIVIL APPLICATION NO 13 OF 2022

(Arising from Civil Revision no 07 of 2021 in the District Court of Musoma and
Originating from civil Case No 21 of 2018 at Nyambono Primary Court)

MALYANGO MALIMAAPPLICANT

VERSUS

JAPHET GAMBA RESPONDENT

RULING

24th August & 24th August, 2022

F. H. MAHIMBALI, J :

In this application, the applicant is seeking to file an appeal out of time against the decision of Musoma District Court which revised the decision of the trial court without according parties with the right to be heard.

During the hearing of the application, the applicant appeared in person whereas the respondent defaulted appearance, thus the application was heard ex parte.

In digest to the applicant's affidavit and hearing of the submission by the applicant, I am satisfied that the application is meritorious.

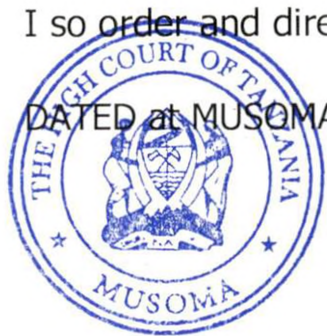
It is meritorious because there is an illegality pointed out. The District Court in its revisionary power, could not raise issues *suo mutto* and determine them at the detriment of a party of the case in their absence. That is not proper.

It is trite law that there cannot be court's decision or order without first according the right to be heard to the parties likely to be affected by that decision. (see **Sabasabaenosi V. Republic**, Criminal Appeal No. 135 of 2015, CAT at Mwanza, **Richard Kamugisha @ Charles Samson and 5 Others V. Republic**, Criminal Appeal No. 59 of 2001 and **Article 13 (6)(a) of the Constitution of the United Republic of Tanzania, 1977**).

That said, the application is granted. I thus proceed to quash the decision of Musoma District Court which nullified the said decision of the trial court *suo-motto* and in the absence of the parties. For want of according the parties with the right to be heard, the resulting decision is hereby declared nullity and I accordingly nullify it.

For expeditious trial, I hereby direct that let the said execution be carried out as per law. Should there be any legal concern then the District Court must make sure that it complies with the law.

I so order and direct.




DATED at MUSOMA this 24th day of August, 2022.


F. H. Mahimbali

JUDGE

Court: Ruling delivered this 24th day of August, 2021 in the present both parties and Mr. Gidion Mugo, RMA.


F. H. Mahimbali

JUDGE