

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC CIVIL APPEAL NO. 22 OF 2022**

*(Arising from the decision of the District Court of Musoma in Civil Revision  
No. 03 of 2021)*

**BETWEEN**

**EDITHA MUDAY ..... APPELLANT**

**VERSUS**

**TEDDY MAGACHA KIKURO..... 1<sup>ST</sup> RESPONDENT**

**JUMA RAJABU ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**A. A. MBAGWA, J.:**

The appeal at hand emanates from the decision of the District Court of Musoma in Civil Revision No. 3 of 2021. Prior to the Civil Revision No. 3 of 2021, the 1<sup>st</sup> respondent Teddy Magacha Kikuro filed a Civil Case No. 68 of 2021 against the appellant and the 2<sup>nd</sup> respondent before the Primary Court of Musoma Urban. The 1<sup>st</sup> respondent's claims were the total sum of Tshs. 2,214,700/= which she owes the appellant and 2<sup>nd</sup> respondent in the course of doing fish business.

During the hearing of the Civil Case No. 68 of 2021 the appellant admitted part of the claim i.e., she admits she owed Tshs. 2,014,200/= as she has already paid the 1<sup>st</sup> respondent Tshs. 200,000/=. The trial court went on passing the judgment by admission and ordered the appellant to pay the 2<sup>nd</sup> respondent Tshs. 2,014,200/= which she admitted and Tsh. 50,000/=

as costs of the suit. The payment was ordered to be paid within 30 days. As regard to the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent decided to drop the suit against him contending that she only used him to send money to the appellant.

The appellant did not comply with the order of the trial court, an act which instigated the 1<sup>st</sup> respondent to file the execution application. In execution, the trial court ordered the attachment and sale of the appellant's properties but later they learnt that the appellant had no any property to attach and more so the appellant denied the 1<sup>st</sup> respondent cooperation i.e., she did not respond to the summons of the trial court when summoned to show cause on how she would pay the 1<sup>st</sup> respondent's debt. The appellant's behavior left the 1<sup>st</sup> respondent with no choice than to file an application of detaining the appellant as a civil prisoner.

Before the hearing of 1<sup>st</sup> respondent's application to detain the appellant as a civil prisoner, the appellant filed a Civil Revision No. 3 of 2021 seeking the following three orders from the District Court of Musoma;

1. That, the record in the Musoma Urban Primary Court at Musoma in Civil Case No. 68/2021 be called and inspected in order that this Honourable Court may satisfy itself as to the correctness, legality

and propriety of the Judgment, Proceedings and Orders therein which appear materially erroneous to the merits of the case involving injustice.

2. That as a corollary to prayer 1 immediately hereinabove, this Honourable Court may be pleased to revise errors material to the merits of the case, quash and set aside Judgment, Proceedings and make orders or directions all being in the interest of justice.
3. That the costs of this application be provided for.

Upon hearing of the Civil Revision No. 3 of 2021 the District Court of Musoma found the application has no merits rather than the delaying tactics by the appellant to frustrate the court process in executing its orders. Besides of dismissing the application, the District Court of Musoma further found the appellant guilty of an offence of contempt of Court contrary to section 114 A (a) (b) (c) of the Penal Code [Cap 16 R.E 2019] and ordered her arrest to serve her sentence which is not yet made known.

The appellant was not amused by the decision of the District Court of Musoma in Civil Revision No. 3 of 2021, she thus lodged an appeal at hand to challenge the said decision. The appellant's appeal consists of five grounds which can be read as follows;

1. That the 1<sup>st</sup> Appellate Court was biased and erred in law and fact to pronounce Judgment in favour of the respondents refusing to give and rights to the appellant to appeal to the High Court to challenge the Judgment delivered on 26<sup>th</sup> day of January, 2022 according to the law.
2. That the 1<sup>st</sup> Appellate Court was erred in law for failed to state the truth in the Judgment paragraph 2 in page No. 1 that the appellant was filed the application for Review under section 22(1) and (4) of the Magistrates Courts Act [Cap 11 R.E 2019] while he knew that section 22(1) and (4) of the Magistrate Courts Act [Cap 11 R.E 2019] it was deal with the Revision and not Review.
3. That the 1<sup>st</sup> Appellate Court was biased and erred in law and fact to order the Appellant to be arrested and sentenced to jail for the offence of Contempt of the Court contrary to section 114 (a) (b) (c) of the Penal Code [Cap 16 R.E 2019] while he knew that there is no any criminal matter instituted against the appellant but appellant was filed the application for revision which is civil matter and not criminal matter.
4. That the Magistrate of the 1<sup>st</sup> Appellate Court was biased and erred in law to order the appellant to be guilty and convicted to serve the

sentence without heard and go contrary to Article 13 (6) (b) of the Constitution of the United Republic of Tanzania of 1977.

5. That is would be in the interest of justice to allow this appeal. A copy of judgment was applied for in time and the same was supplied to appellants on 23<sup>rd</sup> day of February, 2022. Therefore, the Appeal was filed in time.

During the hearing of appeal, the appellant was represented by Ernest Muhagama whilst the 1<sup>st</sup> respondent was represented by Baraka Makowe, both the learned advocates.

Submitting in support of the appeal, Mr. Muhagama diverged from the grounds of appeal and argued generally that it was not proper for the magistrate in the District Court to sentence the appellant as there was no transaction that amounted to court contempt as defined under section 114 (1) of the Penal Code. He was of the view that, it was wrong for magistrate to order the arrest of the appellant. He prayed the said order to be quashed.

On the second ground, he submitted that, the revision in the District Court emanated from the irregular proceedings taking into account under page 3 of the Primary Court Proceedings the record does not indicate the fate of the 2<sup>nd</sup> respondent, Rajabu Juma nor does it show the proof of the

undisputed amount of the 1<sup>st</sup> respondent. He added that, this was a serious irregularity which makes the proceedings a nullity. He thus prayed the court to order trial *de novo* before another magistrate.

Responding, Mr. Makowe submitted that he agreed with the appellant's counsel submission. In addition, he submitted that the order of the Primary Court is inconclusive and contains irregularities. The counsel was of the opinion that the order of the court should be express and not implied. He further argued that, since there is no express order by the court as judgment by admission, the same is categorically inexcusable as such, there was no judgment in favour of the 1<sup>st</sup> respondent.

Mr. Makowe also contended that there were changes of assessors. He elaborated further that judgment by admission was made before assessors namely, Meki and Riziki. Subsequently, the record indicates different Magistrate Mkeha RM with assessors Aloyce and Meliciana. The counsel went on and prayed the court to quash the entire proceedings of the Primary Court. He also prayed each party to bear its own costs.

The applicant's counsel did not have anything to rejoin.

Having gone through the record, grounds of appeal and submission by the parties, the crucial issues for determination of this appeal are two.

**One**, whether the District Court of Musoma inappropriately found guilt

and sentenced the appellant of contempt of court contrary to section 114 A (a) (b) and (c) of the Penal Code and **Two**, whether the proceedings and order of the Primary Court of Musoma Urban are tainted with irregularities.

In determining the first issue, I find it pertinent to refer section 114 (a) (b) and (c) of the Penal Code which reads as follows;

**114A. Any person who-**

- (a) willfully obstructs or knowingly prevents or in any way interferes with or resists the service upon himself or any other person of any summons, notice, order, of warrant or other process issued by a court for service on himself or such other person, as the case may be;**
- (b) willfully obstructs or knowingly prevents or in any way interferes with or resists the execution of any summons, notice, order, warrant or other process issued by a court, or any person lawfully charged with its execution; or**
- (c) absconds in order to avoid being served with any summons, notice, order, warrant or other process issued by a court, is guilty of an offence and shall be liable on**

**conviction to imprisonment for a term not exceeding one year.**

From the above section of law, as rightly submitted by the appellant's counsel, it is clear that there was no transaction that amounted to court contempt before the District Court of Musoma. What was before the District Court of Musoma was an application for revision. The court ought to call and inspect the record of Civil Case No. 68 of 2021 to satisfy itself as to the correctness, legality and propriety of the judgment, proceedings and orders.

What was done by the District Court of Musoma should have been done by the trial Primary Court as it was the court which was in a better position to do so if it found necessary when determining the execution application. It is the trial Primary Court which issued the summons to the appellant and heard the execution application, thus if the court in any way found that the appellant obstructed the court process, it should have taken an action against the appellant if found necessary to do so.

Besides, the District Court of Musoma did find the appellant guilty of contempt of court without according her with an opportunity to be heard on a particular matter before reaching its decision. It is trite law that any decision affecting the rights or interest of any person arrived at without



hearing the affected party is a nullity, see **Mufindi Paper Mills Limited vs Ibatu Village Council & 3 Others**, Civil Revision 555/17 of 2019 CAT at Dar es salaam. I therefore find this ground has merits and consequently I quash the order of the District Court of Musoma on contempt of court.

As regard to the second ground that the proceedings of the trial primary court are tainted with illegalities, it is the contention of the appellant's counsel that the proceedings do not indicate the fate of the 2<sup>nd</sup> respondent, Rajabu Juma. However, the proceedings speak otherwise. After thorough perusal of the trial court proceedings, I found that after the court entered the judgment by admission to the appellant, the trial Magistrate probed the 1<sup>st</sup> respondent as to the fate of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent decided to withdraw the claims against the 2<sup>nd</sup> respondent giving the reasons that she only used him to send money to the appellant.

And regarding to the respondent's counsel submission that there were changes of Magistrate and assessors in the proceedings of the trial court, this is true but the changes happened in different proceedings. Hon. Bwire – RM assisted by assessors Meki and Riziki heard the case from a start until he delivered the judgment. When the 1<sup>st</sup> respondent filed an

application for execution, the application was heard by Hon. Mkeha – RM assisted by assessors Aloyce and Melicana. Thus, although different Magistrates and set of assessors appeared in one file, it is important to note that the case file contains two different proceedings namely, main suit and application for execution. Therefore, I find this ground devoid of merit and I dismiss it.

On the other hand, I am at one with the District Court of Musoma that the appellant’s application for the revision is abuse of court process as the appellant is using it as delaying tactics. In the event, I find this appeal without merits and I dismiss it save for the order of the District Court of Musoma on contempt of court. The 1<sup>st</sup> respondent shall have her costs.

It is so ordered.

Right of appeal is fully explained.



  
**A. A. Mbagwa**

**JUDGE**

**13/10/2022**

Court: Judgment has been delivered in the presence of 1<sup>st</sup> and 2<sup>nd</sup> respondent and in absence of the appellant this 13<sup>th</sup> day of October, 2022

  
**A. A. Mbagwa**

**JUDGE**

**13/10/2022**