

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO.119 OF 2021

(Originating from Criminal Case No.656 Of 2019 before Temeke District Court)

KHAMIS RAPHAEL MHINAAPPLICANT
VERSUS
THE REPUBLICRESPONDENT

RULING

13/04/2022 & 06/05/2022

MASABO, J:-

By way of a preliminary objection, the respondent is challenging the tenability of the application for revision. Represented by Ms. Jacqueline Werema she has argued, among other things, that the application is untenable as the ground upon which the application is premised is appealable. On his party, the applicant has contended that the application is well premised.

The genesis of the application is the judgment of the District Court of Temeke in Criminal Case No.656 Of 2019 vide which Khamis Raphael Mhina, the applicant herein, was sentenced to 30 years imprisonment after being

convicted of the offence of incest by male contrary to section 158 (1)(a) of the Penal Code [Cap 16 RE 2019] and impregnating a school girl contrary to section 60 A (3) of the Education Act [Cap 353 RE 2002] as amended by Act, No.4 of 2016. It was alleged that he carnally knew and impregnated her daughter who was then a secondary school student. His major complaint in this application is that he was treated unfairly as his request for a DNA test which would have conclusively proved the charges against him was ignored.

It is the trite law in our jurisdiction that, revision would not lie where the right of appeal exists as it is not a substitute for appeal. The challenged proceedings having emanated from the district court are governed by section 359(1) and (3) which states that, save for interlocutory orders which are not appealable, all decisions of subordinate courts are appealable to this court. In this context, much as section 371(1) of the Criminal Procedure Act [Cap 20 R.E. 2019] clothes this court with revisional powers over proceedings and decisions of subordinate courts, these powers are reservedly invoked where the right of appeal is in-existent; in cases where appeal lies but the aggrieved party could not exercise it because he was not a party to the proceedings. Revisional powers may also be exercised suo motto where the court is of the

opinion that an illegality is apparent on the face of the record in which case it will direct the opening of a revision file, suo motto.

As the applicant herein has not demonstrated existence of any of the factors above, I hastily agree with the learned state Attorney that the application is misconceived. The preliminary objection is upheld and the application is consequently, struck out for incompetence.

DATED at DAR ES SALAAM this 6th May 2022.

5/6/2022

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

