

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA
ARUSHA SUB - REGISTRY
AT ARUSHA
CIVIL REVISION NO. 6 OF 2022

(C/f Civil Case No. 18 of 2020 Babati Primary Court)

SAUMU MBAGA APPLICANT

Versus

GERVAS GERALD ISOWE RESPONDENT

RULING

2nd February & 21st March, 2022

GWAE, J.

The application is brought under section 30 (1) (a) (b) and 31 (1) (2) of the Magistrates Courts Act, Cap 11, R.E. 2019. The applicant, Saumu Mbaga has brought this application praying for the exercise of supervisory and revisionary jurisdiction by the court in respect of the decision of the Primary Court of Babati (the trial court) in Civil Case No. 18 of 2020 in order to ascertain correctness or propriety of the decision therein. The decision subject of this ruling was delivered in the on 12th day of May, 2022.

Brief history which gave birth to the present application is to the effect that, on 25th December, 2021, the respondent herein hired his motor vehicle with registration No. T. 974 ASM to the applicant herein for

the purpose of loading charcoal from Babati to Arusha. The consideration was Tshs. 1,500,000/= for five days which is equivalent for Tshs. 300,000/= per day. According to the records, on 30th December, 2019, the said vehicle was seized at a place called Kimotoro near Babati by the village authorities on allegations that, the applicant had not paid all the charcoal levies to the Natural Resources Department. The motor vehicle was seized until 44 days later when the respondent herein managed to salvage the situations and retained his vehicle back. He then filed Civil Case No. 18 of 2020 at the trial court claiming for Tshs. 13,200,000/= for 44 days which the vehicle was seized without work.

The trial court decided on his favour, and upon Miscellaneous Application by the respondent, the trial court ordered the charcoal to be unloaded so that, the vehicle can be used for other works. However, in the said miscellaneous application hearing the matter proceeded *ex parte* in absence of the applicant herein even though she gave notice of absence. Aggrieved by the decision, she appealed to the District Court of Babati at Babati (District Court) vide Appeal No. 7 of 2020 which held that, the appeal was filed prematurely as interlocutory order issued by the trial court was not appealable.

Still aggrieved, she appealed to this Court (**Gwae, J.**) vide PC. Civil Appeal No. 43 of 2020. This court was of the view that, the District Court raised the issue as to whether the impugned order by the trial court was appealable or not and reached its conclusion without affording the parties right to be heard on the matter. This court ordered the matter be remitted back to the District Court so that the parties can properly address the District Court. When the matter was remitted back to the District Court, among other things, it nullified the trial court's proceedings in respect of the Miscellaneous Application hearing and ordered the same to restart a fresh at the trial court.

When the matter was dispatched back to trial court to be heard afresh, the judgment was delivered in favour of the respondent herein and the applicant was ordered to pay the respondent Tshs. 13,200,000/= being the cost of 44 days when the motor vehicle was not working. Aggrieved by the decision, she has filed the present application praying that this court revise the trial court's decision.

The hearing of this application was by way of written submissions, the applicant appeared in person and unrepresented whereas the respondent was represented by Mr. Arnold Tarimo, learned Advocate. Supporting the application, the applicant submitted that, according to the

testimony of the respondent, there was no valid claims against the applicant in respect of hiring the motor vehicle in question at the rate of Tshs. 300,000/= per day. She argued that, there was no valid contract to substantiate respondent's claims and the 44 days claimed to be overstayed were just presumptuous. She averred that, the vehicle was impounded for lacking required permits, and she did not abandon such vehicle rather she went to clear what was required of her. Hence, it was wrong for the respondent to be handed over the vehicle with her charcoal in it without any justification. She also challenged the trial court's decision for ordering her to pay for the overstay charges while the exact days for such overstay were not certain.

The applicant further contended that, the respondent was well aware of the fact that the vehicle and the charcoal was impounded at Babati, and she was also aware of the fines she paid in order to secure back her charcoal and the respondent's vehicle. She went on submitting that, the trial magistrate erred in determining the validity of the respondent's claims in his favour without considering the circumstances of the whole case as the respondent is intentionally preventing her from claiming the 200 bags of charcoal which he still holds unlawfully to date. She finally prayed that, this court to invoke its revisionary powers and

quash the proceedings and decision of the trial court dated 12th May, 2022.

Disputing the revision, Mr. Tarimo submitted that, the application is incompetent in this court as it was supposed to be filed at the lowest court which according to section 22 (1) of the Magistrate's courts Act, that court is the District Court. More so, this court can only exercise its revisionary powers against the proceedings, decision or order tainted with irregularities leading to injustice committed by either the District Courts or the Resident Magistrate's Courts. He invited this court to refer to the case of **Kulwa Daudi vs. Rebeca Stephen** (1985) TLR. 116. He prayed that, this court to dismiss the application for being filed in the wrong court forum.

Mr. Tarimo's further submission is that, the High Court revisionary powers may be exercised where there is no room of appeal as held in the case of Southern **Esso vs. Peoples Bank of Zanzibar and Another** (2001) T.L.R. 43 and **The Registered Trustees of Social Action Trust Fund and Another vs. Happy Sausages Ltd and Ten Others** [2002] T.L.R. 285. He argued that, the enactment of court's revisionary powers is not to operate as an alternative to the appellate jurisdictions of the courts but rather for the court to satisfy itself as the correctness, legality

and propriety of any proceedings and decision of the subordinate courts.

The respondent's learned counsel further contended that, in the application at hand, the applicant is not challenging any incorrectness, illegality or irregularity of the trial court's proceedings and decision. However she is vividly complaining on the merit of the case which would have been done through an appeal before the competent appellate court and not by way of filing an application for revision. He thus prayed the application be dismissed with costs.

In her rejoinder, the applicant argued according to section 30 (1) (a) (b) of the Magistrates Courts Act, this application has been properly filed before this court. She went on stating that respondent has failed to give any reasonable explanation on the illegalities and irregularities pointed out by the applicant. She also stated that, the cases cited by the respondent are irrelevant to this application.

Having gone through both parties' submissions as well as the trial court's proceedings, the question for determination is whether this application has merit. However, before going to the merit of the application, I find it pertinent to deal with the issue raised, argued by the respondent's counsel and responded by the applicant on, whether this

revision is proper before this court. According to him, the applicant ought to have appealed to the District Court instead of filing this revision before the court. In reply, the applicant claimed that this court is properly moved under 30 (1) (a) (b) of the Magistrates Courts Act. The moving section reads;

"30.-(1) The High Court shall exercise general powers of supervision over all courts in the exercise of their jurisdiction under this Part, and may at any time

(a) call for and inspect the record of any proceedings under this Part in a District Court or primary court and may examine the records or register thereof; or

(b) direct any District Court to call for and inspect the records of any proceedings of the primary court established in its district and to examine the records and registers thereof, in order to satisfy itself, or to ensure that such District Court shall satisfy itself, as to the correctness, legality and propriety of any decision or order and as to the regularity of any proceedings therein; and may-

(i) itself revise any such proceedings in a District Court;

(ii) where it has exercised its appellate jurisdiction in relation to proceedings which originated in a primary court between or against parties not all of whom were parties to the appeal, itself revise such proceedings in the primary court; or

(iii) direct the District Court to revise any such proceedings in a primary court, and all such courts

shall comply with such directions without undue delay."

With due respect to the applicant's argument, the above provisions are in respect of the supervisory powers of the High Court and not as purportedly submitted by the applicant. The above statutory provisions do give directives on what should the High Court do in the instances such as irregularities, illegalities and the like when exercising its supervisory powers.

However, the present application is not as the result of supervision conducted at the trial court. The powers of revision conferred upon this court are very wide and purely discretionary in nature; they have to be exercised in exception and cannot be used as alternative of appeal. In the case of **Moses J. Mwakibete vs. The Editor-Uhuru, Shirika La Magazeti ya Chama and National Printing Co. Ltd** (1995) TLR 134 it was instructively held;

*"Before proceeding to hear such an application on merits, this court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by accordingly to laws were not meant to be used as an alternative to the appellate jurisdiction of this court. In the circumstances, this court, unless it is acting on its own motion, **cannot properly be moved to use its revisional powers in cases where the***

applicant has the right of appeal with or without leave and has not exercised that option.” (Emphasis added)

Guided and applying the above position in the application at hand, after the trial court delivered its judgment, the applicant ought to have appealed against such decision under section 20 (1) (b) of the Magistrates Courts Act (supra) instead of filing the current application. The section reads;

"20.-(1) Save as hereinafter provided-

(a) n/a; or

*(b) in any other proceedings, any party, if aggrieved by an order or decision of the primary court, **may appeal therefrom to the District Court of the district for which the primary court is established.***” (Emphasis supplied)

According to the above quoted provision of the law, the remedy available in favour of the applicant after she had been aggrieved by the decision of the primary court was to file an appeal to the District Court if she intended to challenge the merits or otherwise of the trial court's decision. Alternatively, if she challenges correctness or propriety of the same, she would have applied for revision by the District Court and not this court.

Be as it may, and as rightly argued by the respondent's counsel, revisionary powers are in respect of judicial ascertainment of legalities, correctness, propriety and the like on decision, order or proceedings of the subordinate courts. Reading the applicant's submission between the lines, her grievance is on the merit of the case but not how it was done. She did not raise any concern regarding trial court's procedural irregularities that require this court's intervention.

For the foregoing reasons, I find this application is without merit and proceed to dismiss it with costs. For the interest of justice, should the applicant wish to pursue her right of appeal or revision to the District Court of Babati at Babati, she is given **thirty (30)** days from the date of this order to do so.

It is so ordered.

Dated and Delivered at **Arusha** this 21st day of March, 2023.




M.R. GWAE
JUDGE