

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MUSOMA DISTRICT REGISTRY**  
**AT MUSOMA**

**CIVIL REVISION CASE NO. 04 OF 2022**

(Arising from the Decision of the District Court of Tarime at  
Tarime Civil Appeal No. 42 of 2022)

**MGENDI CHACHA MWITA .....1<sup>ST</sup> APPLICANT**

**JULIUS CHACHA .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MARWA MARIJAN .....RESPONDENT**

**RULING**

*9<sup>th</sup> & 15<sup>th</sup> February 2023.*

**M. L. KOMBA, J.:**

This court has been invited to call and examine the records of Civil Appeal No. 42 of 2022 and determine on the illegality and correctness of the decision issued by the first appellate court on account that the appeal emanated from the judgement of Tarime Urban Primary Court in Civil Case No. 180 of 2022 which had no jurisdiction to hear and determine on matters relating to Gold Mining disputes between parties and determine whether such irregularity does not affect rights of the parties. The Chamber summons was filed under Order XLIII Rule 2 and Section 79 and

95 of the Civil Procedure Code [Cap 33 R. E. 2019] (the CPC) and supported by the affidavit of both applicants.

It is from the record that Applicants (then plaintiffs) entered into the contract with respondent worth Tsh 12,400,000/ for them to use the mining pit (shimo Na. 7) but the respondent did not honour the contract, action which made the applicants to sue respondent (Civil Case No. 180 of 2022) and claim the total sum of Tsh. 17,500,000 among them is 12,400,000/ as a value of the contract and 5,100,000/ as exhaustive improvement done by the applicants. At the end of trial, applicants lost the case on the ground that the amount claimed was settled in alternative for the offer of the mine pit.

Dissatisfied by that decision, applicants preferred an appeal (civil appeal No. 42 of 2022) with only one ground that evidence was obtained unprocedural on account that one witness did not take an oath before he testify in court. The appeal was dismissed. Then applicants decided to file this revision.

When the matter was called for hearing, applicants hired the service of Mr. Leonard Magwayega, while respondent enjoyed the service of Mr. Dominic Jeremiah Chacha, both being an Advocates.

When given time to make the ball rolling, Mr. Magwayega prayed for adoption of applicants' affidavits and submitted that, the gist of this dispute is gold pit for the mining activities at Kibaga. Applicants filed a civil case No. 180/2022 at Tarime Primary Court which was decided in 2022 but the dispute was filed as a contract dispute. According to him, the subject matter was not really contract and the trial court Magistrate was supposed to know that her court lacks jurisdiction. He submitted that issue involved is mining activities and the applicable law is the Mining Act, [Cap 123 R. E. 2019] specifically at section 119 was of great concerned. The section provides;

*'119 (1) The Commissioner may inquire into and decide all disputes between persons engaged in **prospecting or mining operations**, either among themselves or in relation to themselves and third parties other than the Government not so engaged, in connection with-*

*(a) The boundaries of any subject to a mineral right;*

*(b) The claim by any person to be entitled to erect cut, construct, or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have priority of water taken, diverted, used or delivered, as against any other person claiming the same;*

*(c) The assessment and payment of compensation pursuant to this Act; or*

*(d) Any other matter which may be prescribed. [Emphasis added]'*

It was his submission that the trial Magistrate was supposed to refrain from entertain the matter and direct parties to go to proper court and that her decision based on wrong premise hence nullity. He proceeds saying that the appeal to District Court was based on nullity decision and that according to him it was irregularity. He submitted further that as matter of law, all irregularities are subject to revision by the higher court and rectify the wrong done by the lower courts. He said he did not prefer an appeal rather he come for this temple of justice to rectify, to correct and reverse the irregularity done by lower court. He further informed the court that irregularities done by lower courts amounted to injustice to his clients and prayed the court to grant costs of the suit and to order the matter be filed afresh to the relevant court where the provision of the Mining Act can be applicable.

Responding to the what has been submitted, Mr. Dominic while praying the court to adopt the affidavit of Marwa Marijani, he objected the revision on the ground that all courts are created by statute and their jurisdiction is purely statutorily as decided in **Republic vs. Deaman** [1980] TLR 116. He insisted that Tarime Primary Court had jurisdiction to entertain the dispute filed in it as the dispute was of civil nature where the plaintiffs were claiming Tshs. 17,500,000/= to the defendant, amount which was arising from the breach of contract.

He submitted that substantive claims are the one used to determine the jurisdiction of the court as decided in the case of **Tanzania China friendship Textile Ltd vs. Our lady of Usambara Sisters** (2006) TLR at page 7. He further submitted that so far as the applicants were claiming for that amount of money then section 18 (1) (a)(iii) of the Magistrate Court Act, [Cap 11 R. E. 2019] confers jurisdiction to primary court to hear and determine disputes which arise from contract whose value does not exceed 30 million shillings. The claim of the applicant was within the armpit of the jurisdiction of the primary court.

Mr. Jeremiah further submitted that, in testimony, at the trial court applicants (then plaintiffs) revealed the nature of case was civil where

applicants were seeking to recover Tsh 17,500,000/. This is witnessed in the proceedings where, at page 8 PW1 (Mgendi Chacha Mwita who is the 1<sup>st</sup> applicant) on 06/07/2022 informed the trial court that;

*'...mdaiwa aliahidi kutulipa deni tarehe 29/4/2019 lakini alishindwa kulipa deni hivyo tulienda kulalamika Mahakama ya Mwanzo Nyamwigura. ....kesi ya jinai mbele ya Mhashimiwa Bhoke iliamriwa mdaiwa atulipe Tsh. 17,500,000 lakini alishindwa kulipa ikabidi akabidhi shimo hilo lipo kibaga...'*

PW1 proceeded at page 11 ;

*'Tunaomba Mahakama itupe fedha, hatutaki shimo sababu walichimba...'*

PW2 (Julius Chacha Kigula) informed the trial court on the same date 06/07/2022 at page 13 of the proceedings that;

*'...tumekuja Mgendi Waitara na Mimi Julias Kigula tunadai Tsh.17,500,000/ milioni 12,400,000/ tulimpa mdaiwa na milioni 5,100,000/ ni fedha za uchafu tulishindwa kufanya kazi mahakama itusaidie kupata haki.'*

Unofficial translation of the above quotations is that while in trial court 1<sup>st</sup> and 2<sup>nd</sup> applicants informed the court that they are claiming for money the sum of 17,500,000/ which was given to the respondent. from this Mr. Jeremiah concluded that the court had jurisdiction as the dispute was not on mining activities.

In a different note, counsel submitted that remedy opted by the applicant is not proper as revision was supposed to be the better option after an

appeal and the counsel for applicants did not explain circumstances which force him to decide for this option. Mr. Jeremia was of the opinion that revision should be the last option after an appeal bearing in mind that the issue raised is one of jurisdiction, it can be raised in appeal and pray this court to find the revision is misconceived before this court. To buffer up his argument he refers this court to the case of **Mansoor Daya Chemicals Ltd vs. NBC**, Civil Application No. 464 of 2014 CAT where the court directed as to when the revision power can be invoked. He prays this court to find the application to be baseless and dismiss it.

In rejoinder Mr. Magwayega reiterate his submission in chief insisting that irregularity which emerge in the lower court is subject to revision by this court.

In view of the verdict, I am going to reach in the determination of this application, I am not going to refer to a big chunk of the applicants' submissions which mainly challenge the jurisdiction of the Primary Court and first appellate court which determined the matter which purported to have been dealt with, in according to the Mining Act.

I am hastening to remark at the very outset of my determination that the point raised by Mr. Jeremiah on the propriety of this application before this court is of paramount importance worth of determination before going into the nitty gritty of the application. I say so because the law is now settled that revisional powers of the Court are not an alternative to its appellate jurisdiction. See **Hassan Ng'azi Halfan Vs. Njama Juma**, Civil Application No. 218 of 2018 CAT at Tanga.

As explained in the first paragraph that this court is moved by Order XLIII Rule 2 and Section 79 and 95 of the Civil Procedure Code, Cap 33 R. E. 2019 (the CPC) section 79 provides that;

*'79.-(1) The High Court may call for the record of any case which has been **decided by any court subordinate to it and in which no appeal lies thereto**, and if such subordinate court appears- (a) to have exercised jurisdiction not vested in it by law; (b) to have failed to exercise jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it think fit.*

*(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.*



*3)Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act.'*

The above section proved condition that it is applicable only when no appeal lie thereto. Mr. Magwayega informed the court that he just prefers revision on the ground that all irregularities are subject to revision by the higher court and rectify wrong done by the lower courts. He did not explain if he encounters any obstacle in appeal. On the other hand, Mr. Jeremiah was of the firm argument that if the issue is jurisdiction of the court, then, applicant could raise it in an appeal and the applicant did not explain what circumstances forced him to apply for revision and not an appeal. It was his submission that the application is misconceived and buffer up his argument by citing the decision of Court of Appeal in **Mansoor Daya Chemicals Ltd V. NBC** Civil Application No. 464 of 2014 CAT at Dar es salaam that;

*'It has been insisted that revisional jurisdiction cannot be invoked as an alternative to the appellate jurisdiction except under exceptional circumstances like in situation where the appellate process has been blocked by judicial process.'*

The court keep on insisting on this condition in a number of decisions includes **Hallais Pro-Chemie v. Wella A.G.** (1996) TLR 269 the Court inter alia stated;

*'(i)...*

*(ii) Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisions jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court.'*

See also **Moses J. Mwakibete vs. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134 and **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161, **Hassan Ng'azi Halfan Vs. Njama Juma**, (supra) and **Golden Palm Ltd Vs. Cosmas Proparties** Civil Application No. 561/01 of 2019 (unreported).

Relying on the above authorities, I am firm that it is a settled principle of law that if there is a right of appeal then that right has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court.

In my view when the applicants lost an appeal in District court, that appeal did not block the appeal process to make the applicant resort to revision. I

believe that still the applicant had chance to lodge an application of the nature in the Court as a second bite.

The applicants have not brought to the fore exceptional circumstances that would legally entitle them to resort to the revisional powers of this Court, instead of its appellate jurisdiction. Thus, the application before this court is incompetent and bad in law for being preferred as an alternative to an appeal. For the reasons I have endeavored to assign, I dismiss this application with costs.



NK  
**M. L. KOMBA**  
**JUDGE**

**15 February, 2023**

Ruling delivered under the seal of the court on this 15<sup>th</sup> day of February, 2023 in the presence of both applicants who appeared in personal and Advocate Jeremiah Chacha Dominic who represented the respondent

NK  
**M. L. KOMBA**  
**JUDGE**

**15 February, 2023**