

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL REVISION NO.128 OF 2004

GABRIEL ELIASAPPLICANT

VERSUS

**THE DIRECTOR GENERAL TANZANIA HARBOURS
AUTHORITYRESPONDENT**

R U L I N G

A.Shangwa,J.

On 16/12/2004, the Applicant filed an application for revision of the decision of the Court of the Resident Magistrate at Kisutu in Misc . Civil Application No.75 of 2004.

On 19/7/2005, learned counsel for the Respondent MS F.K. Law Chambers, Advocates filed a notice of preliminary objection against the said application in which they stated

that in this particular case, a revision does not lie. They outlined four grounds for their objection. Out of these grounds, I will deal with the third ground only which I think is sufficient to dispose of this preliminary objection. This ground is to the effect that a revision does not lie as the proper remedy in the Circumstances is an appeal.

In order to resolve this ground, it is important to look at the decision of the Court of the Resident Magistrate which the Applicant wishes to be revised. This decision was delivered by the said Court at Kisumu on 27th October, 2004 . On that date, the Court held that the Applicant's application to enforce the decision of the Minister for labour and Youth Development was incompetent and bad in law and that the Court lacked jurisdiction.

In my view, an application for revision of the lower Court's record is usually preferred in cases where there is a material error on the face of the record which involves injustice or where the decision or order made by the lower Court is incorrect, illegal or inappropriate.

In this case, the lower Court did not commit any irregularity by accepting and upholding the Respondent's arguments that the Applicant's application to enforce the decision of the Minister for Labour and Youth Development was incompetent and bad in law or by holding that it had no jurisdiction to entertain the same. By so doing, the lower Court decided what it thought was correct and appropriate in the circumstances of the matter which was before it.

For this reason, I think that the Applicant's application for revision of the lower Court's decision is incongruous. I

agree with learned counsel for the Respondent that a revision does not lie in this case. If the Applicant is not satisfied with the decision of the lower Court in the matter, the proper remedy is to prefer an appeal against it.

The case of **MATEMBA VS YAMULINGA(1968) E. A. 643** which was cited by learned counsel for the Respondent at page 3 of their written submissions is very much in point. In that case, the Court of Appeal of Eastern Africa held that a revision does not lie where there is a right to appeal . In this particular case, there is such a right.

For this reason, I hereby uphold the respondent's preliminary objection and dismiss this application with costs.


A. Shangwa, J.

30/12/2005.

Delivered in Court this 30th December, 2005.


A. Shangwa,

JUDGE

30/12/2005