

**IN THE HIGH COURT OF TANZANIA**  
**AT SONGEA**

**DC. MISC. CIVL REVISION NO. 1 OF 2008**

**RESIDENT MAGISTRATE COURT CIVIL CASE NO. 16 OF 2007**

**ISAACK LUTENGANO..... APPLICANT**

**VERSUS:**

1. BR. AIDAN MHUWA	}	..... RESPONDENT
2. BR. EDMUND KIMARIO	}	
3. UMICO CO. LTD.	}	

**30/9/2009 HEARING CONCLUDED**

**26/2/2009 RULING DELIVERED**

**R U L I N G:**

**UZIA, J.**

This is a ruling emating from the chamber summons filed by one Isaack Lutengano for revision made under the following provisions of the law; section 95, 79(1) of the Civil Procedure Act, (Cap. 33 R.E. 2002) and Section 44(1)(b) of the Magistrates Courts Act, Cap.11 R.E. 2002). This Court is requested to call for, examine and revise the record or decision of the Songea Resident Magistrate's Court (Hon. Mtega, RM) dated 18<sup>th</sup> June 2008 in respect of Misc. The chamber summons ellaneous Application No. 16 of 2007 for failure to exercise jurisdiction vested in it.

Is also supported by an affidavit of Isack Lutengano.

In paragraph 4 of the affidavit, he deponed that, efforts to have the decree executed in the normal way have proved futile as the judgment Debtor seemed to have no attachable arrests after a motor vehicle of Reg. No. T. 504 AKU has been proved to not her property. And in the 5<sup>th</sup> paragraph the applicant deponed that, he applied to the Court for orders that the judgment Debtor be summoned and examined as to her properties, and or, the decree be executed by arresting and detaining of the officers of the judgment Debtor, as civil prisoners.

Further to that, in paragraph 6, the trial Court declined to grant the orders, and, instead advised him to petition for winding up of the Company of the Judgment Debtor. Being aggrieved by the Ruling and order of the trial Court he brought this application to this Court.

On the hearing day, Mr. Mbogoro, learned Counsel for the respondent, argued that, there was no failure for the part of the trial Magistrate to exercise its jurisdiction so vested. The advice given by the Court was proper in the sense that UMICO Company was a Limited Company. It was improper to proceed against the respondents in their individual capacity.

Section 44(1)(b) of the Magistrate's Court Act No. 2 of 1984 under which the application is made, the issue here is whether it has been sufficiently shown that there has been an error at the trial resulting in an injustice to the applicant.

Going through the affidavit and the proceedings together with the Ruling there is no procedural error which caused injustice to the applicant. Both parties appeared on the day appointed for hearing and were given an opportunity to either state his/her case. I

find no good reason which made the applicant to come to this Court by way of revision,  
the open way for the applicant was to file the appeal to this Court.

For the reasons stated, I find this application for revision misconceived and is  
hereby dismissed with costs.



L.M.K. UZIA

**JUDGE**

**26/2/2009**

Right of Appeal.



L.M.K. UZIA

**JUDGE**

**26/2/2009**

LMKU/PJL.