

**THE UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**DAR ES SALAAM SUB-REGISTRY**  
**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 478 OF 2023**

*(Revision against the decision of the Court of Resident Magistrate of Dar es salaam  
at Kisutu in Civil Application No.60/ 2023 originating from the Proceedings of Civil  
Case No.153 of 2022 as per Hon. Shaidi, PRM dated 25<sup>th</sup> July 2023)*

*Between*

**M/S TRANSPORTATION EAST AFRICA LIMITED.....APPLICANT**

**VERSUS**

**BORDER LINK GENERAL TRADING LIMITED.....RESPONDENT**

**RULING**

*Date of last Order: 07/11/2023*

*Date of Ruling: 22/11/ 2023*

**GONZI, J.;**

The applicant through his chamber summons has moved the court for orders that:

- (i) That this honourable court may be pleased to call for and examine the records of proceedings of the Resident Magistrate's court of Dar es Salaam at Kisutu in Misc Civil Application No. 60 of 2023 and revise for the purpose of

satisfying itself as to the correctness, legality or propriety of the Ruling and drawn order dated 25<sup>th</sup> July 2023.

- (ii) This Honourable Court may be pleased to revise and set aside the Ruling and order of the Resident Magistrate's court of Dar es Salaam at Kisutu in Misc.Civil Application No.60/ 2023 dated 25<sup>th</sup> July 2023, and consequently the judgment and decree in civil case No.153 of 2022 dated 13<sup>th</sup> April 2023 be set aside as well.
- (iii) Costs be provided for,
- (iv) Any other order or reliefs as the court deems fit.

The Application is supported by the affidavit of Advocate Daniel B.Welwel, for the Applicant and is brought under section 79(1)(c) of the Civil Procedure Code, Cap 33 of the Laws of Tanzania R.E 2019 as well as section 44(1) of the Magistrates' Courts Act Cap 11 of the Laws of Tanzania R.E 2019.

In the affidavit in support of the Application it is deponed that the Respondent instituted Civil Case No.153 of 2022 in the Court of Resident Magistrate of Dar es Salaam at Kisutu claiming for principal sum and accrued interest of Tshs. 55,912,089.77/=. That the Applicant engaged the

law firm designated as Asyla Attorneys to represent it in the said suit and that they drafted for the applicant the Written statement of defence denying the entire claim and filed the same in the trial court. That on 13<sup>th</sup> April 2023, when Civil Case No.153/2023 came for final pretrial conference, the trial court entered judgment on admission in part of the claim as Advocate Steven Byabato who appeared for the Applicant that was the Defendant in the Civil Case No.153/2022, admitted verbally the principal debt of Tshs.13,205,175/=. The court scheduled hearing date for the disputed claims in the suit. That subsequent to the Court making the judgment in respect of the admitted claim, the Applicant filed Misc.Civil Application No. 60/2023 for the trial court to review its own decision as the Applicant had not instructed the advocate to make an admission of the claim and its pleadings were not discernible as admitting any portion of the claim. However the Trial Court declined to grant the review as per its Ruling dated 25<sup>th</sup> July 2023.

It is due to the Ruling dated 25<sup>th</sup> July 2023 declining the review that the Applicant felt aggrieved with what he considers to be illegalities therein and has lodged the present application. In the application at hand the applicant has raised illegalities namely: the trial court erred in the Ruling to have

demanded a supporting affidavit from Advocate Steven Byabato; that the trial court accepted oral admission rather than written one; that the court itself proceeded to enter judgment on admission in Civil case No.153/2022 suo mottu; the trial court erred to require independent evidence in review proceedings.

The applicant's counsel in his affidavit deponed further that the Applicant has no right of appeal against the review Ruling in Misc. Civil Application No.60/2023 hence this revision.

Through the counter affidavit of Stanslaus Ishengoma, Advocate for the Respondent, the respondent opposed the application. The respondent deponed that the ruling sought to be revised arises from an interlocutory matter that that did not put the case to finality. That there was an avenue for the alleged illegalities to be put in an appeal at the end of the proceedings in the Civil Case No.153/2022 now pending in the trial court.

Mr. Ishengoma deponed further that as the Applicant was being represented by a professional advocate in court, the Applicant was bound by what his advocate presented before the court on his behalf. He concluded that there were no illegalities or irregularities.

The hearing of this application proceed by way of written submissions where Mr. Eric Mhimba, learned Advocate represented the Applicant. The respondent was represented by Mr.Stanslaus Ishengoma learned Advocate. Both sides duly filed their written submissions.

It was submitted by the applicant that the RM's court erred in denying the application for review on the basis that there was a need or a supporting affidavit of Advocate steven Byabato. The applicant submitted that there were apparent errors in the Judgment on admission which were enough for the court to entertain the review application. He submitted that review is made by way of memorandum of review which by its very nature does not have a room for including any supporting evidence like affidavits.

It was submitted further that the Ruling denying review did not consider the fact that the admission was made orally while the law under orderXII Rule1,2,3 of the CPC provide that admissions should be in pleadings or in writing. Therefore the oral admission by Advocate Steven Byabato was contrary to the law. that in the WSD filed, the applicant never admitted any claim. The argued further that in order for an admission to be entered there must be a plain and obvious written admission by a party.

The applicant submitted further that in the case of Full **Gospel Bible Fellowship versus Elgoodness Emmanuel Rwatto**, the High Court held that to constitute an admission, the court must be satisfied that the admission is not ambiguous and all material facts regarding the claim are not contested in any way at all. It was submitted that the oral admission made by the advocate without express admission by the applicant, was wrong as it contravened what was pleaded by the parties.

The appellant submitted that the trial court in civil case no.153/2022 in the last paragraph of page 4 of the judgment on admission, upheld the judgment on admission dated 13<sup>th</sup> April 2023 in absence of any prayer by a party. That this offended Order XIIRule 4 CPC. He argued that the decision from India in **Dinesh Kumar vs Stock Exchange**, 2003 is neither binding nor persuasive as in Tanzania there is no law allowing admission without a party applying.

The counsel for applicant concluded that the present application is interlocutory but it falls within exception under section 79(3) CPC which allows revisions under the MCA. That they have cited section 44(1) of the MCA.

In reply submissions the respondent submitted that the application at hand is in admissible as it emanates from interlocutory orders of the court which did not finally determine the rights of the parties. He relied on the case of **Rev. Asumwisye Mwafongo Mwaisabila and 3 others versus The Registered Trustees of the Evangelistic Assemblies of God**, Misc. Civil Application No.69 of 2022, HC Mwanza, where the High Court rejected an application for revision in respect of an interlocutory order unless it has the effect of finally determining the suit.

The respondent's counsel argued further that in **Yusufu Same and another versus Hadija Yusufu and another** (1996)TLR 347 it was held that the revisional powers of the court are discretionary and must be used fairly judiciously .

The respondent's counsel submitted that the word admission is not defined under the CPC but under sections 19 and 20 of the Evidence Act, it includes oral, electronic, or documentary and it can be made by an agent of a party expressly or impliedly authorized by him to make admission. The learned counsel argued that all advocates appearing in court representing their clients are fully and dully instructed and the court will take as valid

any business they do for their clients. Therefore it was proper for the court to reject the review application.

The respondent's counsel submitted further that the trial magistrate was correct to enter judgment on admission as there was no fact in issue. The records of the court cannot be impeached by mere words. The case of full bible gospel involved abuse of court where a non-existing party was sued.

He argued further that the present application is an abuse of court process to delay the ongoing proceedings.

I will start with the competence of the present application. There have been arguments by both sides that the decision from which the present application emanates from was an interlocutory decision hence not capable of being challenged by way of Revision. That was the argument of the Respondent and it has been conceded by the Applicant but who attempted to bring the application within the exception under sections 79(1) ( c) CPC and 44 (1) of the MCA. I asked myself whether or not the decision to which the application for review relates to is inter locutory. It must be noted that there are two decisions of the trial court up to this moment in respect of the same matter which is pending in the trial court. The first decision is the



judgment on admission in respect of the part of the claim to the extent of Tshs.13.2 million. This judgment on admission was made in the main case namely Civil Case No.153/2022 and the case is set to proceed in respect of the non-admitted claims which the Respondent herein is required to prove in the trial court during the pending trial. The second decision is the one made with respect to Misc.Civil Application No.60/ 2023 dated 25<sup>th</sup> July 2023. This was the Ruling in respect of review application which the Applicant attempted to use to undo the judgment on admission. He lost in that application for review. Being the applicant under the review, he is barred from preferring an appeal against the decision under review in terms of Order XLII rule 7(1) of the CPC that provides that: **"An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected."**

The Applicant therefore has preferred the present application for revision as he argued because he has no right to appeal against the decision under review. Looking at the prayers in the chamber summons, it is clear that the Applicant is seeking to challenge the decision in the review proceedings by way of revision. Therefore, it can be said without doubt that the present application for revision, seeks to challenge the decision in the Misc. Civil

Application No. 60/2023 and which was Ruling in review proceedings. Can it be said that the Ruling in the review proceedings was interlocutory? I do not think so. I am of the view that it was the partial judgment on admission in respect of the Main suit made in Civil Case No.153/2022 that was interlocutory. In my view, when the Applicant filed Misc.Civil Application No.60/2023 moving the court to review the partial judgment on admission, that was an attempt to challenge an interlocutory decision of partial judgment on admission. When the review application was decided, the decision thereof cannot be said to be interlocutory. It was substantive decision in respect of review proceedings. The present application is equally a substantive application for revision against the substantive decision in review proceedings. If the present application is regarded as emanating from an interlocutory decision, it would mean that the review application would be interlocutory proceedings emanating from another interlocutory decision in the partial judgment on admission. I hold the view that the rights of the parties in the review application were determined finally and there were no further proceedings to take place in the review proceedings in Misc. civil Application no.60 of 2023. The test as to whether the proceedings are interlocutory or not is whether after

issuance of the decision, there would still be further proceedings in the same case? this was stated in the case of **Joseph Chuwa and another versus The Republic**, Criminal Appeal NO. 75 OF 2006, Court of Appeal of Tanzania at Arusha. In that case there was main case in the District Court and a party filed revision proceedings arising from an order therefrom. Upon determination of the revision proceedings, an appeal was preferred to the court of appeal, and an objection was taken that the decision in the revision proceedings were interlocutory hence not appealable. The court of appeal held that:

*"The appeal before us is on a point of law arising from a decision of the High Court in a revision matter before it. The decision in the revision which was before the High Court was not "interlocutory" but was final in that **nothing further would be done in the High Court subsequent to the ruling.** What was to happen was that the trial of the case which was still pending in the subordinate Court would proceed before the same trial magistrate".*

In the matter at hand, I asked myself a similar question as to whether or not any further proceedings would proceed in the review case file after the delivery of the ruling? I find that there was no further proceedings therein.

Hence the ruling in review application was final and not interlocutory. Conversely, the partial judgment on admission in the civil case No. 153/2022 was interlocutory. Further proceedings were scheduled to follow after issuance of the partial judgment on admission.

Due to my finding that the Ruling in the review case was final and that the partial judgment on admission in Civil Case No.153/2022 was interlocutory, it follows therefore that the present application for revision should only be directed to what was decided in Misc.Civil Application No.60/2023 and not to the partial Judgment on admission in Civil case No.153/2022. Although the two cases interrelate, but the Applicant ought to tread very carefully not to confuse the two. I expect to see all grounds of revision such as the alleged illegalities and irregularities directed at the Ruling and Proceedings in Misc.Civil Application No.60/2023, the review case against which the present revision proceedings relate. Any ground of attack directed towards the partial judgment on admission in Civil case No.153/2022 ought not be considered because the same was already challenged on review in Misc.Civil Application No.60/2023. This is not a further appeal on the merits of or arising from the decision in partial judgment on admission in Civil case No.153/2022.

I will now proceed to consider the grounds for revision advanced in the present application in relation to the Misc. Civil Application No.60/2023 (review case) only and see whether they fit within the grounds for review under the legal provisions under which the present application is premised.

The application was brought under section under section 79(1)(c) of the Civil Procedure Code, Cap 33 of the Laws of Tanzania R.E 2019 as well as section 44(1) of the Magistrates' Courts Act Cap 11 of the Laws of Tanzania R.E 2019. I reproduce them for ease of reference.

***CPC S. 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-***

***(c)to have acted in the exercise of its jurisdiction illegally or with material irregularity.***

***MCA S.44.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-***

***(a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and***

***may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice, and all such courts shall comply with such directions without undue delay;***

***(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit:***

***Provided that, no decision nor order shall be made by the High Court in the exercise of the jurisdiction conferred by paragraph (b) of this subsection, increasing any sum awarded or altering the rights of any party to his detriment, unless the party adversely affected has been given an opportunity of being heard.***

Cumulatively analysed, the above provisions establish the grounds of: **(a) where the subordinate court appears to have acted in the exercise of its jurisdiction illegally or with material irregularity. (b) if it appears that there has been an error material to the merits of the case involving injustice.**

Like it was held in the case of **Yusufu Same and another versus Hadija Yusufu and another** (1996)TLR 347, that **the revisional powers of the court are discretionary and must be used fairly and judiciously** . So, I embarked on the task of using my judicial discretion carefully not to outstep my boundaries and confuse the present application for an appeal against the review case or the partial judgment on admission. I am only conducting revision in respect of the Proceedings and Ruling in Misc. Civil Application. No.60/2023. In conducting revision, I cannot go into the merits of the decision as I would be entitled to in the case of an appeal thereof. I asked myself what aspects of the proceedings and Ruling of the Court of Resident Magistrate in Misc.Civil Application No.60/2023 (the review case) which the Applicant is complaining of as having violated the provisions of section 79(1)(c) of the CPC above and Section 44(1) of the MCA above? Did the lower Court act illegally or with

material irregularity while handling the review case? Did it commit an error material to the merits of the review case involving injustice?

The term material irregularity has been defined in the case of **Sher Singh (Dead) By Lrs vs Joint Director of Consolidation & others**, decided by the Supreme Court of India, ( 1978) AIR 1341, 1978 SCR (3) 982 where it was held that:

***"It is now well settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction under section 115 of the Code of Civil Procedure to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the- court to try the dispute itself.***

***The legal position was succinctly laid down by the Privy Council as early as 1884 in Rajah Amir Hassan Khan v. Sheo Baksh Singh(1) in the following words :-***



***"The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."***

The phrase **error material to the merits of the case involving injustice** was also interpreted in the same way by the High Court of Uganda in the case of **Kweya v Ocana** (Miscellaneous Civil Application No. 105 of 2017) [2018] UGHCCD 55 (25 October 2018) that:

***"The expression means some material irregularity in procedure which may possibly have produced error or defect in the decision of the case upon the merits. The material irregularity or injustice envisaged by this provision does not cover either errors of facts or law in the decision arrived at itself, but rather the manner in which it was reached. Errors of facts or law in the decision arrived at itself are matters for an appeal."***

From the two persuasive precedents above it follows therefore that material irregularity or illegality or material irregularity occasioning

injustice are all concepts confined to irregular exercise of jurisdiction by the trial court. It is not directed to the outcome of the case. Next in question is whether there were such kind of irregularities in the proceedings and Ruling in Misc. Civil Application No.60/2023 (review application)? I have not seen any allegation let alone proof of the court lacking jurisdiction or refusing to exercise jurisdiction of irregularly exercise jurisdiction in respect of Misc. Civil Application no.60/2023 (Review case). All the complaints in the present case were directed to the merits or outcome of the case. In this application the Applicant's case is premised on such complaints like that the trial court erred in the Ruling to have demanded a supporting affidavit from Advocate Steven Byabato; that the trial court accepted oral admission rather than written one; the court proceeded suo mottu to enter judgment on admission in Civil case No.153/2022; the trial court erred to require independent evidence in review proceedings.

The grounds brought by the applicant to support this application go to the substance of the decision sought to be reviewed as if the application for revision was an appeal. Worse still the Applicant while seeking revision of the Misc. Civil Application No. 60/2023 (review case), has trespassed the boundaries and has attempted to challenge even the partial judgment on

admission in Civil Case No. 153/2022; and that which is not the subject of the present application and which is an interlocutory decision as further proceedings in respect thereof are set to continue in the trial court. The Applicant will have the right to appeal against the decision in Civil Case No.153/2022 once the same is finalized. Even the Judgment on admission entered in respect of partial claim can be challenged by the Applicant at the right time using the appropriate legal remedies which will be available to him at the appropriate moment.

I therefore decline to exercise the revisional powers of this court over Misc. Civil Application No.60/2023 (review case) or the judgment on admission of partial claim in Civil Case No. 153/2022. The Applicant is attempting to pursue an appeal in disguise by arguing the merits of the decisions reached in Misc. Civil Application No. 60/2023 and the partial judgment on admission in Civil case No.153/2022. This application is therefore dismissed with costs.

It is so ordered.

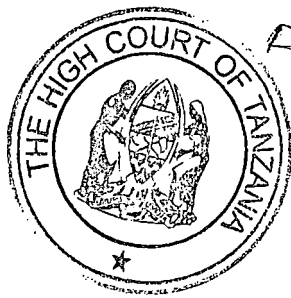


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**A.H.Gonzi**  
**JUDGE**

**22/11/2023**

Ruling is delivered in Court this 22<sup>nd</sup> day of November 2023 in the presence of Mr. Eric. Mhimba, Advocate for Applicant and Mr. Stanslaus Ishengoma, Advocate for Respondent.



A handwritten signature in black ink, appearing to read "A.H. Gonzi", is written over the seal.

**A.H.Gonzi**

**JUDGE**

**22/11/2023**