

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

PC. CRIMINAL APPEAL NO. 17 OF 2017

*(Originating from Karatu District Court, Cr. Revision No. 2/2017, Karatu Primary Court
Cr. Case No. 200/2016)*

WILIHEMINA LENDWA.....APPELLANT

VERSUS

JAMES PAULO.....RESPONDENT

JUDGMENT

Date of Last Order: 6/07/2018

Date of Judgment: 06/08/2018

BEFORE: S.C. MOSHI, J.

This appeal originates from the decision of Karatu Primary Court where the respondent herein instuted a criminal case against the appellant herein for using abusive language contrary to section 89 (1) (a) of the Penal Code, Cap. 16 R.E 2002. The trial court after hearing both parties, convicted the appellant and sentenced him to three months conditional discharge. Consequently, the appellant filed an application for Criminal Revision before the District Court of Karatu under section 22 (1) and (2) of the Magistrates' Courts Act, [Cap. 11 R.E 2002]. The grounds for revision advanced by the applicant (herein the appellant) in his affidavit are that;

1. He was convicted without inviting the assessors to give opinion.

2. That the applicant was called to make defence without the trial Magistrate making a finding whether there was a case to answer for the accused to make a defence.
3. That when the applicant was testifying before the trial court, the trial Magistrate failed to read out the substance of evidence recorded.
4. That the applicant was convicted by the trial court based on contradictory evidence.

The Appellate Magistrate entertained the application and found that, there was no procedure omitted or violated and proceeded to uphold the decision of the trial court. Dissatisfied, the appellant appealed before this court on the following grounds;

1. That, the Appellate Court erred in law and facts for failed to quash and set aside the decision of the trial court which was illegally procured.
2. That, the Appellate Court erred in law and facts in uphold the decision and order of the trial court which entertained, heard and decided the matter in favour of the respondent while the case was not proved beyond reasonable doubt.

Before this court, the appellant was represented by Ngeseyani learned Advocate while the respondent appeared in person and unrepresented. This court ordered the hearing of appeal be disposed of by way of written submissions and both parties filed their submission accordingly.

Arguing the first ground of appeal, the appellant's counsel submitted that there was a great violation of the law during the hearing and determination of Criminal Case No. 200 of 2016 at Karatu Urban Primary Court as the

Magistrate violated section 35 (6) of the PCCPC MCA (CAP 11 R. E. 2002) which stated that;

"The magistrate shall record the substance of the evidence of the complainant, the accused person and the witnesses and, after each of them has given evidence shall read his evidence over to him and record any amendment or corrections and thereafter the magistrate shall certify at the foot of such evidence, that he has complied with this requirement."

He stated that, the Magistrate never read the record neither of the complainant nor of the accused and even the witnesses thereto. Worse enough the trial Magistrate never certified at the foot of the evidence that he has complied with that mandatory requirement of the law. He contended that, the District Court should have considered such weakness of the trial Court in deciding the matter thereto. He said that, the decision reached was based on the violation of law hence should not be left to stand and he prayed the Judgment of the Trial Court and that of the District Court be quashed and set aside.

Submitting on the second ground of appeal, he stated that in criminal case the standard of proof must be beyond reasonable doubt according to section 3 (2) (a) of the Law of Evidence Act (Cap. 6 R. E. 2002). He further stated that, the complainant's evidence in criminal case No. 200 of 2016 was not proved beyond reasonable doubt because there is no consistence in the evidence adduced by the prosecution side, as each witness adduced different evidence from another. He contended that, the evidence of the complainant side was purely contradictory; hence Criminal case No. 200 of

2016 of Karatu Primary Court was not proved beyond reasonable doubt as required by the law. He thus stated that, the whole proceedings, decision and orders of the trial court was void and he prayed for both judgment of the District Court and Primary Court to be quashed and set aside.

Responding to the first ground of appeal, the respondent submitted that the trial Magistrate complied with the requirement under section 35 (6) of the PCCPC (supra) as the records clearly show that the evidence was read and certified. He stated that, at the foot of the piece of evidence adduced, there is abbreviation I.K.S meaning, "Inasomeka kuwa ni sahihi" to mean it had been read and lastly certified. He therefore argued that, this ground is devoid of merit.

In regard to the second ground of appeal, he stated that the evidence adduced by the respondent and his witnesses was credible enough to convict the appellant. He said that the appellant proved his case beyond any shadow of doubt from which the trial court decided to convict the appellant.

Before proceeding to the merits of this appeal, I have noted some procedural irregularities; whether the District Court was properly moved to exercise its revisionary powers vested under section under section 22 (1) and (2) of the Magistrates' Courts Act (supra). I would like to quote the provision of the law in extenso as here under:

*" 22 (1) A **district court may call for and examine** the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the*

correctness, legality or propriety of any decision or order of the primary, and as to the regularity of any proceedings therein, and may revise any such proceedings.

(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction including the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of paragraph (b) of subsection (1) of section 21 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction."

According to the section 22 (1) of the Magistrates' Courts Act, the revisional powers of the District Court may be invoked; first, where there is a procedural irregularity or incorrectness, illegality or impropriety in the decision or order of the Primary Court. Secondly, revisionary powers of the District Court may be invoked by the Court on its own motion (*suo moto*) in respect of proceedings in the Primary Court. It is established principle of law that, the applicant may move the court to use its revisionary powers only when the applicant has no right of appeal or where the right of appeal is there but has been blocked by judicial process. Revisionary powers need not to be invoked as an alternative to appeal. See the case of **Moses J. Mwakibete vs. The Editor – Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd** [1995] TLR 134 and **Halais Pro – Chemie vs. Wella A.G** (1996) TLR 269 where the Court of Appeal addressed its revisional jurisdiction over proceedings of the High Court.

Although this matter refers to revisional jurisdiction of the District court over proceedings of the Primary Court; but substance of the provision of the law are the same.

Going through the application filed before the District Court for revision of the proceedings of the Primary Court, apart from the irregularity that the revisional jurisdiction was invoked by the applicant instead of the District Court on its own motion; the applicant in his grounds contained in the affidavit and already mentioned above among other things, challenged the merits of decision of the Primary Court, the errors which could be corrected by way of appeal. It is obvious that it is the appellant (applicant) who moved the court to exercised its revisional jurisdiction while the appellant/applicant had right of appeal but failed to exercise that right. I therefore find that the application for revision filed before the District Court was misconceived as the applicant had a right to appeal against the decision of the Primary Court subject to Law of Limitation. Based on the above, I therefore quash the proceedings and the decision of the District Court; and set aside any orders that are made there from and direct the appellant to invoke the appropriate remedy if he is so interested.

Orders accordingly.

Right of Appeal is explained.


S. C. MOSHI
JUDGE
06/08/2018

