

IN THE HIGH COURT OF TANZANIA
AT DODOMA

CIVIL REVISION NO. 3 OF 2006
(ORIGINAL DODOMA CIVIL CASE NO. 11 OF 2005 OF
RESIDENT MAGISTRATES COURT OF DODOMA AT DODOMA
BEFORE: N. MWASEBA, ESQ. RESIDENT MAGISTRATE)

THE BOARD OF TRUSTEES OF NSSF..... APPLICANT
VERSUS
IBRAHIM SUBETI RESPONDENT

19.05.2006 & 19.05.2006

ORDER IN SUMMARY REJECTION

MASANCHE, J.

The applicants, The **Board of Trustees of The National Social Security Fund**, are, or, were locked in litigation with the respondent, **Ibrahim Subeti**. It was alleged that the respondent had been employed by the applicant as from March, 1992 to 18th September 2000. The pleadings show that the respondent was employed as a Regional System Administrator. He got fired. But, it

was discovered that while he was in the said employment, he had taken some loans from the applicant, to the tune of Shs.7,657,950.00.

The applicant sued the respondent for the recovery of the loan, in Dodoma Resident Magistrates Court Civil Case No. 11/2005. The court appearance of the applicant became not impressive. On 31.03.2006, the suit of the applicant was dismissed. It has been dismissed after the respondent had applied that it be dismissed. I notice that the learned resident magistrate wrote an *ex parte* judgment dismissing the same. Now, the applicants ask for a revision of that judgment given *ex parte*.

I cannot admit this application for a revision, for several reasons:

First, if the judgment of the district court was given *ex parte*, the applicant, could, in the normal circumstances, apply to the same court to have the *ex parte* judgment set aside. The law on setting aside judgments given *ex parte* is loud and clear, and has been elaborated by several cases (see cases, Watson Scaffold @ Poultry Co v. Hasiali hirji Shariff [1967] H.C.D. 56; Simon Peters Zirambajuzazle vs Andrew Gorret [1962]EA 694; Shabir Din v. Ram Parkash Anand 22 E.A.C.A. 48; Kimani v. Mac Connel [1966] E.A. 5 & 7, 555; Sodha v Hamraj v Gasyall

[1968] EA 300; **Peter Bujiji v. Daljeet Singh Diloo t/a Dodoma Auto Works** – Civil Case No. 14/87 – Dodoma HC Chipeta J. – to mention but a few).

Secondly, if the application to set aside the ex parte judgment would have been refused, then, the applicant could come to the high Court by way of appeal, not by way of asking for a revision. Counsels should not be obsessed with applications for revisions when their cases flounder in the district courts. Revisions entail correcting of errors apparent on the face of the record: They are not meant to correct decisions. Magistrates have jurisdiction to make mistakes, and, that is why we have appellate ladders or systems of appeal, which, I may add, are quite elaborate.

This is what Mulla says in Explanatory Notes and Commentaries on the Civil Procedure Code – 10th edition p. 277:

“The special and extra – ordinary remedy by invoking the revisional powers of the Court should not be exercised unless as a last re course for an aggrieved litigant. The recognized rule is that if a party to civil proceedings applies to the Court to exercise its powers of revision, he must satisfy the Court that he has no other remedy open

to him under the law to set right that which he says has been illegally or irregularly or without jurisdiction done by a Subordinate Court. The other remedy open to the applicant must, of course, be a certain and conclusive remedy allowed by the law."

That passage is quoted with approval by Mchome, J. in Israel Mwakalabeya v Ibrahim Mwaijumba (Miscellaneous Civil Application No. 21/91 – Mbeya).

In fact, in refusing an order for revision, Mchome J. concluded:

"The right to invoke the Courts powers of revision is not an alternative to appealing. Where the order complained against is appealable, the Court will not use its revisional powers, for right to appeal is a remedy open to the aggrieved party. Even where the time for appealing has expired, a party has the remedy of applying to appeal out of time."

I see nothing worth of revision here. Admitting this application to hearing will be a waste of time. The appeal is summarily rejected.



(J.E.C. MASANCHE)

JUDGE

DODOMA

19th May, 2006