**Mabalanganya v Sanga**

**Division:** Court of Appeal of Tanzania at Mbeya

**Date of judgment:** 2 June 2004

**Case Number:** 1/02

**Before:** Ramadhani, Nsekela and Msoffe JJA

**Sourced by:** Lawafrica

*[1] Appeal – Appellate jurisdiction – Power of review – Procedure in exercise of such power – Whether*

*High Court has power of review of decisions of primary courts.*

**Editor’s Summary**

After being unsuccessful in Primary Court civil case number 15 of 2000, the applicant appealed to the district court in civil appeal number 2 of 2001. Upon failing to succeed on the appeal, the applicant went to the High Court with civil appeal number 10 of 2001, which was summarily rejected. The applicant went back to the High Court for a review but the same was dismissed. The applicant then moved the Court of Appeal seeking revision.

**Held** – The Tanzania Court of Appeal Rules confer to the Court of Appeal the power of revision and the court can exercise that power in one of two ways, namely; the court can revise proceedings in the course of hearing an appeal, and, the court may on its own motion call for and examine the record of any proceedings before the High Court and the latter includes instances where the court is moved to exercise its jurisdiction of revision – *Halais Pro-Chemie v Wella AG* [1996] TLR 269 referred to. Revision entails examination by the Court of Appeal of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. Therefore, the record of proceedings of the High Court, and in case of the appellate jurisdiction of the High Court then the record of proceedings of the lower court must be before the Court of Appeal. When the court acts on its own motion it will have to call for those records itself. However, when it is moved, then one who moves it will have to supply those records. It is imperative in both criminal and civil appeals for a judge to give reasons for rejecting an appeal summarily. However, even if reasons are not assigned, that is a ground of appeal. *Kondo v R* criminal appeal number 46 of 1998 (UR) followed. When an appeal from a lower court is summarily rejected by the High Court, an application for review by the High Court is not a remedy available to the appellant as the High Court does not have power to review an matters emanating from the primary courts. Application dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Halais Pro-Chemie v Wella AG* [1996] TLR 269

*Kondo v R*, criminal appeal number 46 of 1998 – **F**