

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: MAKAME, J.A., MNZAVAS, J.A., And LUBUVA, J.A.)

CIVIL APPLICATION NO. 21 OF 1995  
In the Matter of an Intended Appeal

BETWEEN

NATIONAL BANK OF COMMERCE. . . . . APPLICANT

AND

LUSHOTO TRADING AGENCY LTD . . . . . RESPONDENT

(Application for satisfying itself as  
to the correctness from the Ruling  
of the High Court of Tanzania at  
Dar es Salaam)

(Kyando, J.)

dated the 4th day of May, 1995

in

Civil Case No. 27 of 1992

R U L I N G

LUBUVA, J.A.:

At the commencement of the hearing of this application,  
Mr. Semgalawe, learned counsel for the respondent raised a  
preliminary objection. This follows from the notice of Preliminary  
Objection which he had filed on behalf of the respondent on  
655.1996. The Preliminary Objection raised was that the  
in  
application was not properly/the Court.

Arguing on the preliminary objection, Mr. Semgalawe relied  
on the authority of the decision of this Court in Halais Pro-  
Chemie Industries Ltd. V Wella AG, Civil Application No. 19 of  
1995 (unreported). In that case this Court in clear terms set  
out four circumstances in which the Court can invoke its  
revisional powers as provided under sub-section (3) of Section  
4 of the Appellate Jurisdiction Act, 1979 as amended by Section 2

of the Appellate Jurisdiction (Amendment) Act, 1993 - No. 17 of 1993. The following are the circumstances:

1. The Court may, on its own motion and at any time, invoke its revisional jurisdiction in respect of proceedings in the High Court;
2. Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court;
3. A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable with or without leave;
4. A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process.

It was Mr. Semgalawe's submission that as none of these four circumstances were applicable to the instant case, the application was incompetent, it should be dismissed. Elaborating further on this point, Mr. Semgalawe stated that this was a matter in which if the applicant were dissatisfied with the decision of the High Court (Kyando, J.) rejecting the application for review, an appeal should have been filed. Instead, Mr. Semgalawe stressed, the applicant has come to this Court as an alternative to appeal. This, Mr. Semgalawe urged should not be allowed.

For the applicant, Miss Mutabuzi learned counsel relied on circumstance 2 set out above in the Halais Pro-Chemie Industries Ltd. case. That there were special circumstance that would

warrant the Court's exercise of its revisional powers. Asked what the special circumstances were, she stated that the learned judge erred in the decision complained against and that the counsel from the Tanzania Legal Corporation who handled the case at the trial had left the Corporation (TLC). On the basis of this, she maintained, the application was competent.

We have given anxious consideration to these submissions. The only issue here is whether the application is properly before this Court. As we stated in Civil Application No. 46 of 1994 Transport Equipment Ltd. V Devram P. Valambhia brought up under Section 2 (2) and (3) of Act No. 17 of 1993 - Appellate Jurisdiction Act (Amendment) 1993 was not meant to be used as an alternative to the appellate jurisdiction of this Court. If as stated by Miss Mutabuzi, learned counsel that it was felt that the learned judge had erred in the decision complained against then clearly in our view there was every justification for lodging an appeal. This was not done, instead the Court is being moved to exercise its revisional jurisdiction. Furthermore, Miss Mutabuzi would want us to accept that the counsel who handled the case at the trial having left the TLC as special circumstance. With great respect, we cannot accept this as a special circumstance set out in the Halais Pro-Chemie Industries Ltd. case.

Consequently, in the circumstances of the case we are satisfied that none of the situations set out in the Halais Pro-Chemie Industries Ltd. case apply in the instant case. There being no circumstance to warrant this Court's exercise of its revisional jurisdiction, the matter is, in our considered

view, not propely before us. With respect, Mr. Sengalawe's preliminary objection is sustained. In the event, the application is struck out with costs.

At any rate, glancing through the record, even if the matter went further on its merits, the legal position on summary procedure was so elaborately considered by the trial judge that we are doubtful if the appeal would succeed.


DATED AT DAR ES SALAAM THIS 11TH DAY OF JULY, 1996.

L.M. MAKAME  
JUSTICE OF APPEAL

N.S. MNZAVAS  
JUSTICE OF APPEAL

D.Z. LUBUVA  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
( M.S. SHANGALI )  
DEPUTY REGISTRAR