AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., LUBUVA, J.A., And SAMATTA, J.A.)

CIVIL APPLICATION NO.7 OF 1997

BETWEEN

GEORGE M. SHAMBWE .....APPLICANT

AND

NATIONAL PRINTING CO. LTD.....RESPONDENT

(Application for the Review of the decision in Civil Application No.19 of 1995 of the Court of Appeal of Tanzania at Dar es Salaam per Ramadhani, J.A., Mnzavas, J.A. And Lubuva, J.A. dated 27th day of October, 1995).

RULING OF THE COURT

RAMADHANI, J.A.:

George Shambwe filed a suit in the High Court seeking a declaration that his agreement of the sale of his house to the National Printing Co. Ltd. was inoperative for lack of the consent of the Commissioner for Lands and sought an order for vacant possession of the suit premises. MKUDE, J. dismissed the suit and Shambwe unsuccessfuly appealed to a panel of this Court consisting of OMAR, J.A., MNZAVAS, J.A., And LUBUVA, J.A. He came back to this Court for a review under s.4 (2) of the Appellate Jurisdiction Act, 1979, as amended by Act No. 17 of 1993. At that time OMAR, J.A. was no longer with the Court, so a panel comprising RAMADHANI, J.A., MNZAVAS, J.A., and LUBUVA, J.A. heard the application for review.

The Court was split but the majority opinion rejected to review the judgment and dismissed the application. The dissenting opinion (RAMADHANI, J.A.) favoured a review

.../2

because the judgment of the Court did not discuss Nitin Coffee Estates Ltd. & Others v. United Engineering Works Ltd. & Another, Civil Appeal No. 15 of 1988 (CAT) (unreported) though that decision was cited to the Court but it merely mentioned it in the judgment. This Court in Nitin decided that an agreement for the sale of immovable property is inoperative if the consent of the Commissioner for Lands has not been obtained.

In this application Shambwe in essence wants this Court to review its first review in Civil Application No. 19 of 1995.

The National Printing Co. Ltd., the respondents in this application, filed a preliminary objection alleging three things. First, that the application was time barred. Second, that there is no proper citation of law as to whether the application is one for review or one for reference and lastly, that the application is not properly before the Court. Mr. Maira, learned counsel for the respondent pointed out that there was a review which was dismissed and that there cannot be a second one as that constitutes an abuse of the court process. The learned advocate argued that if the applicant wants a hearing by the full Court, as hinted in paragraph 4 of his affidavit, then that is a misapprehension. He pointed out that the Court is a creature of a statute and that it only enjoys powers given to it by the statute and there is no provision for a hearing by the full bench. Mr. Maira pointed out further that an application for review has to be filed within seven days from the date the decision complained of was delivered. In this application, he said, more than seven days have elapsed. However, he admitted

.../3

that there is no time limit prescribed for a reference to the full bench.

On behalf of the applicant, Mr. Semgalawe, learned advocate, argued that the current application is one for a review, and not for a reference, by the full bench on the ground that there is a manifest error on the record of Civil Application No. 58 of 1995, that is the first review. The learned advocate said further that they were late to file this application because they received a copy of the dissenting opinion on 4/3/97 whil it was delivered on 2/10/96.

Over the recent past there has grown a habit of asking this Court to review its previous decisions. We must say that this habit should be discouraged otherwise there will never be an end to litigation even after this final Court of the land has made its decision. Erroneously, section 4 (2) of the Appellate Jurisdiction Act, 1979, as amended by Act No. 17 of 1993, is cited as the provision enabling such an exercise. A full bench of this Court categorically said that the Appellate Jurisdiction Act does not contain any such enabling provision. Seven of us said so in Transport Equipment Ltd. v Devram P. Valambhia, Civil Application No. 18 of 1993 (unreported). After discussing various authorities we held that this Court has inherent jurisdiction to review its own decision in four instances: first, where a party was not given a hearing. Second, where judgment was obtained by fraud, third, where the Court did not have jurisdiction and lastly where there is a manifest error on the record resulting in a miscarriage of justice. Under that decision we have on a number of occasions reviewed our previous decisions but we have never ever reviewed a previous review. We think that that would be an abuse of the process of court and should be totally discouraged.

.../4

What the applicant wants here is for the full bench of this Court to sit on judgment of the majority and the dissenting opinion in the Civil Application No. 58 of 1995. But whatever the merits or the demerits of the dissenting opinion, there is no doubt at all that a dissenting opinion has no adjudicative value. Therefore, the application by George Shambwe to review the judgment of this Court, was dismissed. That was that. We admit that there are now two decisions of this Court: one, Nitin, saying that an agreement for sale of immovable property without the consent of the Commissioner for Lands is inoperative and then there is this decision that despite the lack of the consent of the Commissioner for Land, the sale agreement is valid. That conflict will have to be resolved by the full bench at an appropriate occasion but not now.

The application is dismissed with costs.

DATED at DAR ES SALAAM this 12th day of December, 1997.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

B.A. SAMATTA
JUSTICE OF APPEAL

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

(M.S. SHANGALI)
DEPUTY REGISTRAR