IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: MSOFFE, J.A., LUANDA, J.A., And ORIYO, J.A.)

CRIMINAL APPEAL NO. 126 OF 2010

CONSOLIDATED HOLDING CORPORATION.....APPELLANT

VERSUS

1. **SACKSON ANDREW LUHANJO**
2. **AKIM J. TWEVE**
3. **DIRECTOR OF PUBLIC PROSECUTIONS** .....**RESPONDENTS**

(Appeal from the decision of the High Court of Tanzania at Mbeya)

(Mackanja, J.)

dated the 26th day of March 2003
in
Misc. Criminal Application No. 47 of 2002

JUDGMENT OF THE COURT

30th Nov. & 2nd December, 2010

MSOFFE, J.A.:

This appeal revolves around the interpretation of **Section 372** of the **Criminal Procedure Act** (CAP 20 R.E. 2002), (hereinafter the **Act**) which reads: -

> *372. The High Court may call for and examine the record of **any criminal proceedings** before any subordinate court for the purpose of satisfying itself as to the **correctness**, **legality** or **propriety** of **any** finding, sentence or*

> ***order*** *recorded or* ***passed****, and as to the regularity of any proceedings of any subordinate court.*
>
> (Emphasis supplied.)

It is common ground that the first respondent SACKSON ANDREW LUHANJO and the second respondent AKIM JAMLON TWEVE (whose appeal against him was marked withdrawn on 30/11/2010) were accused persons in Criminal Case No. 216 of 1994 of the District Court of Mbeya. They were charged with forgery, uttering false document and obtaining cash by false pretences contrary to the relevant provisions of the Penal Code.

Briefly, the case arose out of cheque no. DA 0362337 for Tshs. 48,936,250/= purported to have been issued by the Ministry of Information and Broadcasting. The cheque found its way to the above respondents. It was further alleged that by false pretences on 23/5/1994 through cheque no. X 045556264 the above respondents obtained a sum of Tshs. 24,500,000/= being proceeds from cheque no. DA 0362337. After a full trial, the respondents were acquitted. In its judgment dated 24/9/1996 the District Court (Safari, SRM) made no order for release of any money to the respondents. On 18/7/2002,

which was six years or so after the judgment of the District Court, the above respondents made an application under **Section 357** of the **Act** seeking "refund" of Tshs. 24,436,250/=. Apparently this was the balance or "remaining" sum after Tshs. 24,500,000/= was paid on 23/5/1994. In that application, the respondent Republic was represented by Mr. Mbago, a Principal State Attorney, who had no objection to the application. On 9/8/2002 the District Court (Dyansobera, RM) made the following order: -

> *Upon the application by the applicant which has not been resisted by the respondent, it is ordered that the applicant be paid* ***a sum of Tshs. 24,436,258/= by the Consolidated Holding Corporation.***
>
> (Emphasis supplied.)

It will be observed at once here that the appellant herein, Consolidated Holding Corporation, was ordered to pay the above sum of money although it was not a party to the above application. Anyhow, on 9/10/2002 the appellant lodged Misc. Criminal Application No. 47 of 2002 before the High Court seeking revision of the order made by Dyansobera, RM on 9/8/2002. The application was made under **Sections 372** and **373(1)** of the **Act**. In a Ruling written and signed

by Mackanja, J. on 11/3/2003 and delivered by Lila, DR (as he then was) on 26/3/2003 the application was dismissed. The main reason given in the order of dismissal was that the appellant had no *locus standi.* In dismissing the application Mackanja, J. quoted with approval a portion from an earlier ruling by Mshote, J. in Misc. Criminal Application No. 70 of 1999, and then opined that in as much as the appellant *"was not a party in Mbeya District Court Criminal Case No. 216 of 1994 is not entitled to be heard in this application"*. Aggrieved, the appellant has preferred this appeal.

At the hearing of the appeal, we had to deal first with a preliminary objection notice of which was given earlier by the first respondent under Rule 107 (1) of the Tanzania Court of Appeal Rules, 2009. In brief, the objection was that the appeal is incompetent in that the appellant did not file a written submission as mandated by Rule 106(1) of the Court Rules. Or in the alternative, that the said respondent was not served with a copy of the written submission as required by Rule 106(7) thereof. In dismissing the objection, we upheld Mr. Rweyongeza in his oral submission that the provisions of Rule 106 apply to civil appeals, applications or other proceedings of a civil nature. Rule 106 does not apply in this criminal appeal.

As stated above, the determination of this appeal lies in a very narrow compass in that it essentially hinges on the interpretation of **Section 372**.

Mr. Richard Rweyongeza, learned advocate, appearing on behalf of the appellant submitted at length on the merits of the appeal. In brief however, his submission was basically that **Section 372** should be given a broad interpretation to include third parties. In this sense, he was of the view that it was not correct for the High Court to hold that the appellant, being a third party in the criminal proceedings, had no *locus standi* to prefer the application for revision.

The first respondent urged us to adopt his written submission filed on 25/11/2010 in opposition to the appeal. It will be noted however that, as correctly submitted by Mr. Rweyongeza, the first respondent's written submission is not relevant to this appeal. The submission is in respect of the above stated sum of Tshs. 24,500,000/= paid to the first respondent and the hitherto second respondent. Thus, the submission has no bearing on this appeal.

Mr. Vincent Tangoh, learned Senior State Attorney, appeared on behalf of the third respondent. He argued in opposition to the appeal. In this respect, he reiterated the position taken by Mr. Mbago before the District Court and the High Court that the appellant had no *locus standi* in the criminal proceedings which eventually led to the application for revision before the High Court. To recapitulate his oral submission on the point, he said as follows: -

> *...A person who is not a party to a case cannot chip in in any way. The right of revision was not available to any other person. The right of being heard was not available to the appellant...*

In saying so, in effect, Mr. Tangoh was inviting us to give **Section 372** a narrow interpretation so as to exclude the appellant who was a third party, so to say, in the criminal proceedings.

In our considered view, the interpretation of **Section 372** poses no difficulty. The **section** is very clear. In our reading of the **section** we do not get the impression that the legislature intended to exclude third parties. On the contrary, it is evident thereat that the High Court may call for and examine the record of **any criminal proceedings** for

the purposes of satisfying itself as to the **correctness**, **legality** or **propriety** of **any** finding, ... or **order**...**passed**... For our purposes, the catchword in the **section** is "any". In this sense, the High Court has powers over **any criminal proceedings**, irrespective of the party or person who initiated them. It follows that under **Section 372** the High Court has broad powers to include third parties, as correctly argued before us by Mr. Rweyongeza.

We are supported in the above view by comments made by the authors of the book RATANLAL AND DHIRAJLAL, CODE OF CRIMINAL PROCEDURE, 15th Edition reprint 1999, which was cited to the High Court by Mr. Rweyongeza in his written submission in support of the application for revision. In the said book, the authors made reference to **Sections 397** and **401(1)** of the Indian Code of Criminal Procedure Act No. 2 of 1974 which, save for a few additions, are in *pari materia* with **Sections 372** and **373(1)**, respectively, of the **Act**. Commenting on **Section 401(1)** the authors, had this say at page 635: -

> *Revision Application by third party- The High Court can exercise its revision jurisdiction under this section at the instance of a person who is a total stranger to the proceedings. If the illegality of a proceeding is brought to the*

notice of the High Court, it is immaterial who does so - whether he be a party or a stranger - and the court can take action of its own accord.

In view of the position we have taken on the interpretation of **Section 372**, it is clear that the High Court was wrong in holding that the appellant herein had no *locus standi* to initiate the application for revision. For this simple reason, we hereby allow the appeal and accordingly quash and set aside the Ruling of Mackanja, J. delivered on 26/3/2003. The High Court is accordingly directed to determine Misc. Criminal Application No. 47 of 2002 on merit.

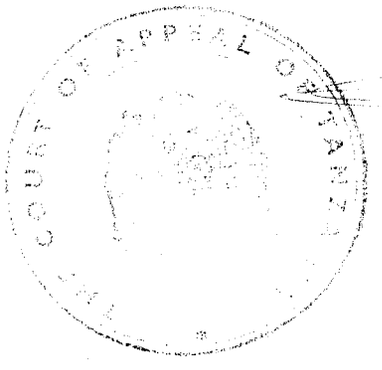
DATED at MBEYA this 1st day of December, 2010.

J. H. MSOFFE
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

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



(E. Y. Mkwizu)
DEPUTY REGISTRAR
COURT OF APPEAL