IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And MASSATI, J.A.)

CIVIL APPLICATION NO. 4 OF 2011

SAID ALI YAKUT ..... 1ST APPLICANT
SELEMAN ZAHARO ..... 2ND APPLICANT
MRS. REHEMA SAID ..... 3RD APPLICANT
MR. KALIKE PONY STUDIO ..... 4TH APPLICANT
MR. DEUS ..... 5TH APPLICANT

VERSUS

FEISAL AHMED ABDUL ..... RESPONDENT
(Administrator of the Estate of the late Ahmed Abdul)

(Application arising from the proceedings and decision of the High Court of Tanzania at Bukoba)

(Mjemmas, J.)

dated the 4th day of November, 2010
in
Civil Revision No. 3 of 2010

RULING OF THE COURT

14 & 23 FEBRUARY, 2011

MJASIRI, J.A.:

In this Notice of Motion, filed under a ***"certificate of urgency"***, the applicants seek to move this Court under Rule 4 (3) of the Appellate Jurisdiction Act, 1979 as amended by Act No. 17 of

1993 and Rules 65 (1) (2) (3) (4) and 4 (1) (2) (b) of the Tanzania Court of Appeal Rules, 2009 to exercise its revisional jurisdiction, to revise the proceedings in High Court Civil Revision No. 3 of 2010. The applicants had four grounds for seeking the revisional jurisdiction of the Court. However, the major complaint is covered under ground 1 which is summarized as under:-

> *"All proceedings in the Resident Magistrate's Court in Misc. Civil Application No. 26 /2010 and in the High Court Civil Revision No. 3 of 2010 were irregular. This calls for the intervention of this Court in order to prevent the abuse of Court process and to meet the ends of justice".*

At the hearing of the application the applicants were represented by Mr. Mathias Rweyemamu, learned advocate and the Respondent was represented by Mr. Aaron Kabunga, learned advocate.

Mr. Rweyemamu gave a lengthy account on the injustices suffered by his clients and the procedural irregularities in the lower courts and called for this Court's intervention. When asked by the Court whether he had taken any steps to file an appeal against the High Court decision, he readily conceded that he had not done so. However, he did not give any justifiable reasons why he failed to do so.

Mr. Kabunga argued that the order of Mjemmas J. is appellable with leave. The applicants have a right of appeal. The application for revision is therefore not properly before the Court. He urged the Court to dismiss the application with costs.

Upon reviewing the record, it is evident that the applicants have come before this Court being aggrieved by the decision of Mjemmas, J. They are asking the Court to interfere with the said decision by way of revision. The ruling of the High Court was delivered on November 4, 2010. No steps have been taken by the applicants to file an appeal against the said decision. A notice of appeal has not been filed and no leave to appeal has been sought.

Instead an application for revision has been filed before this Court under a ***"certificate of urgency"***. No exceptional circumstances have been raised to warrant the applicants to move the Court to exercise its revisional jurisdiction as an alternative to the appellate jurisdiction. No justification has been made for the Court to consider the application for revision.

Under Section 4 (3) of the Appellate Jurisdiction Act, 1979 as amended by Act No. 17 of 1993, the Court is empowered to call for and examine 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 as to the regularity of any proceedings of the High Court.

In revisional proceedings the Court is guided by the principles set in the cases of **Moses Mwakibete v. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Company,** (1995) TLR 134; and **Halais Pro-Chemie v. Wella A.G.** (1996) TLR 269.

The case before us is not an appeal but an application for revision. The applicants are dissatisfied with the decision of the High Court. They have a right of appeal but they are moving the Court to resolve their grievances through revision. We therefore need to consider whether or not this is a proper case for the Court to exercise its revisional jurisdiction?

In this case the applicants have not yet exhausted all remedies available to them, and that, they can still file an appeal to this Court after obtaining leave. The conditions in the **Mwakibete** and **Halais** cases cited above do not cover the circumstances of the instant application where the applicants have another remedy provided by law, that is, to institute an appeal. It is only where there is no right of appeal, the applicants have a right to move the Court to exercise its revisional jurisdiction to resolve their grievances.

It is common knowledge that under Section 4 (2) (3) of the Appellate Jurisdiction Act, 1979, this Court is vested with revisional jurisdiction. But this jurisdiction can only be exercised in appropriate circumstances. The conditions under which this Court can properly

invoke its revisional jurisdiction were considered at length by this Court in **Moses Mwakibete** (supra) where it was held:

> "i) *The revisional powers conferred by section 4 (3) of the Appellate Jurisdiction Act, 1979, are not meant to be used as an alternative to the appellate jurisdiction of the Court of Appeal; accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under Section 4 (3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised that right.*
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> *ii) The Court of Appeal can be moved to use its revisional jurisdiction under section 4 (3) of the Appellate Jurisdiction Act, 1979 only where there is no right of appeal, or where the right of appeal is*

there but has been blocked by judicial process.

iii) Where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal."

These principles were reiterated in the cases of **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161. And **Halais Pro-Chemie v. Wella A.G.** (1996) TLR 269.

In the instant case it is common ground that the applicants have a right of appeal. They have therefore an alternative remedy provided by law, that is, to file an appeal to this Court. It is our considered view that, where a party has the right of appeal, he cannot properly move the Court to use its revisional jurisdiction. He must first exhaust all remedies provided by law before invoking the revisional jurisdiction of the Court. As the applicants have not yet exhausted all remedies provided by law, they cannot invoke the

revisional jurisdiction of the Court. This application is therefore incompetent.

In the event and for the reasons stated herein we strike out the application. The respondent is awarded costs.

DATED at MWANZA this 17th day of February, 2011

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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

J.S. MGETTA
DEPUTY REGISTRAR
COURT OF APPEAL