

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: BWANA, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CIVIL REVISION NO. 2 OF 2011

MOHAMED ENTERPRISES (T) LTD APPLICANT/OBJECTOR

VERSUS

- | | | |
|---|---|--------------------------|
| 1. TANZANIA INVESTMENT BANK LTD | } | RESPONDENTS |
| 2. MEIS INDUSTRIES LIMITED | | |
| 3. THE GOVERNMENT OF THE GREAT SOCIALIST
PEOPLE'S LIBYAN ARAB JAMAHIRIYA | | |

**(Application for stay of execution from the Decision
of the High Court of Tanzania
at Dar es Salaam)**

(Karua, J.)

dated 27th day of June, 2011

in

Civil Case No. 124 of 2010

RULING OF THE COURT

6 & 21 July, 2011

LUANDA, J.A.:

In the High Court of Tanzania sitting at Dar Es Salaam (DSM Registry), **MEIS INDUSTRIES LIMITED** (hereinafter referred to as the Decree-Holder) successfully sued the Government of the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as the judgment-Debtor) for release of U\$ 20,000,000 held at Tanzania Investment Bank.

The judgment was delivered on 26/10/2010. Following the delivery of the judgment, the Decree-Holder applied for execution of the decree which application was granted. So, execution process were put in motion. The execution was met with objection raised by MOHAMED ENTERPRISES TANZANIA LIMITED (henceforth the Objector) which was filed on 17/12/2010. The objection raised could not be heard for one reason or another; it was adjourned on several occasions.

On 17/6/2011 the learned Judge made an order that he was adjourning the matter for the last time and he made it clear that he was not prepared to adjourn the matter any longer. Indeed on 27/6/2011 when the matter was called on for hearing, the judge stuck to his guns that he would not adjourn the matter. It was at that juncture Dr. Masumbuko Lamwai learned Counsel for the Objector informed the Court that his client had filed an affidavit so that the Judge handling the matter disqualify himself. The judge refused to do so and ordered Dr. Lamwai to proceed with the hearing of objection proceedings. Dr. Lamwai did not do that. The judge dismissed the objection raised by the objector. Dr. Lamwai resorted writing a letter to the Hon. The Chief Justice complaining, among other things, that he was not afforded opportunity of being heard.

Kileo, J.A. to whom the letter was placed directed revisional proceedings be opened and made an interim order of stay of execution pending the hearing and determination of these revisional proceedings. Dr. Lamwai addressed us at length as to the merits of the revision in particular the complaint that he was not given opportunity to clarify on the issue of disqualification. Mr. Martin Matunda, learned advocate for the Decree-Holder, countered the points raised by Dr. Lamwai. He went on to say that once the objection is dismissed, in terms of Order 21, Rule 62 of the Civil Procedure Code, Cap 33 R.E. 2002 it cannot be challenged by way of revision. He did not say what remedy an aggrieved party is entitled to.

Whatever the position, we have read the points advanced for and against, by both learned Counsel, we are of the settled view that the real issue in this matter is whether a party whose objection proceedings were dismissed by the High Court is entitled to come to this Court by way of revision whether initiated by himself or by the Court itself suo motto.

Rule 62 of Order 21 of the Civil Procedure Code, Cap. 33 reads:

62. Where a claim or an objection is preferred, the party against whom an order is made may institute

a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.

First, we wish to state that from the wording of the above cited Rule, once the objection is dismissed there is no room for an appeal against that decision. The remedy is to institute a suit. What about revision?

In **Bank of Tanzania V Devram P. Valambhia** Civil Reference No. 4 of 2002 (Unreported) the Court said the following after it drew an inspiration from India where we derive our Civil Procedure Code. The Court said:-

*"In Indian cases of **Phoman Singh Versus A. J. Wells AIR 1923 Rangoon 195** and **Maug BA Ha Versus S.M.R.M. Firm A.I.R 1934 Rangoon 230** availed to us, the Rangoon High Court in India had occasion to address the issue while exercising its revisional jurisdiction. Dealing with a similar situation based on an order made under Order 21 Rule 21 of the India Code of Civil Procedure, the equivalent of Order 21 Rule 62 in Tanzania, before the 1976 amendment in India, the Court stated, inter alia:-*

*"In my opinion where the order in question has after proper investigation, been properly passed under Order 21, Rules 59 – 63 (the equivalent order 21, Rule 57-62 in Tanzania) Civil Procedure Code, this Court should not, **even though the order be erroneous, interfere on revision since there is a remedy by suit.** [Emphasis supplied]*

Hence where an application under Order 21 Rule 58 is dismissed the proper remedy is not a revision application from order of dismissal but a suit under Order 21, Rule 63."

In our case the record shows that the Court gave Dr. Lamwai opportunity and ordered him to present his client's objection as to why the decree should not be executed. Dr. Lamwai did not do that. Instead he wanted the Court to hear him about his intention of requesting the learned Judge to disqualify himself. But the learned Judge had already made his position known that he will not entertain any adjournment beyond that day and for whatever reason. Under the circumstances, we don't think Dr. Lamwai was not given opportunity. The dismissal of the objection under the aforesaid circumstances was proper. Dr. Lamwai had no reason to complain.

As the objection was dismissed for want of prosecution, the remedy available is to file a suit and not to challenge by way of revision as per the decision of the case cited (*supra*). We entirely agree with Mr. Matunda, notwithstanding that the revision was initiated by the Court.

The revision is strike out with costs.

DATED at DAR ES SALAAM this 21st day of July, 2011

S. J. BWANA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL



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


M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL