IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KIMARO, J.A., KALEGEYA, J.A., And MANDIA, J.A.)

CIVIL APPLICATION NO. 100 OF 2009

KAGERA TEA COMPANY ..... APPLICANT
VERSUS
USANGU GENERAL TRADERS ..... RESPONDENT

(Application for Revision from the decision of the
High Court of Tanzania
at Dar es salaam
(Mruma, J.)

dated the 22nd day of June, 2009
in
Commercial Case No. 55 of 2005

RULING OF THE COURT

19th August, 2011 & 16th February, 2012

MANDIA, J.A.:

The Applicant Kagera Tea Company filed an application in the High Court of Tanzania, Commercial Division, in which he made two prayers namely, an application for extension of time to file an application for leave to appeal and also an application for leave to appeal against an order of the High Court made on 4th December, 2007. The respondent in the said

application is Messrs Usangu General Traders who is also the respondent in this Court.

The application which was filed in the High Court comprised of a Chamber Summons supported by an affidavit. The application drew out a preliminary objection from the respondent in which the respondent argued that the jurat in the affidavit supporting the Chamber summons was defective, which made the application incompetent. The respondent therefore prayed that the application filed be struck out. The High Court sustained the preliminary objection and struck out the application with costs.

On 4th September, 2009 the applicant lodged a notice of motion in this Court in which he prayed for revisional orders against the order of the High Court striking out the application for extension of time. The applicant argues that the High Court erred in law in striking out the application for leave.

When the application came up for hearing before this Court, M/s Cresencia Rwechungura, learned advocate, appeared for the applicant, and Mr. Michael Masaka, learned advocate appeared for the respondent.

Mr. Masaka, learned advocate, raised a preliminary objection on a point of law containing three points namely:-

(1) that the revisional proceedings applied for are time-barred.

(2) that revision is not a proper remedy which makes the application incompetent.

And (3) that the application is incompetent because it is not accompanied by the record of the case.

Before proceeding with arguments, Mr. Michael Masaka, learned advocate, abandoned the first ground relating to limitation. In the second ground Mr. Michael Masaka, learned advocate, argues that the proper remedy in the circumstances of this application was for the applicant to prefer an appeal against the order of the High Court and not to file an application for revision. On her part Ms. Cresencia Rwechungura

presented an argument that the application for revision is proper because the court has to consider not only the order of striking out but even the correctness of the application itself.

We are of the opinion that the second ground alone is enough to dispose of this application. On this score, we observe that there are specific provisions of the law which governs the revisional jurisdiction of this court. These are sub – sections 2 and 3 of Section 4 of the Appellate Jurisdiction Act, Chapter 141 R.E. 2002 of the Laws which provides as follows:

> "4 (1).....
>
> (2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power authority and jurisdiction conferred by this Act,

have the power of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought

(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court.

(4) .....

(5) .....

The learned advocates representing the two respective sides agree on one point: that the application for extension of time was struck out for being incompetent because the affidavit supporting the Chamber Summons had a defective jurat. The learned advocates disagree on the consequences of the order striking out the application. One advances the reasoning that what follows should be an application for revision, while the other argues that what should follow is an appeal. With respect to both learned advocates, we are of the opinion that both arguments are misconceived. Since they both agree that the application in the High Court was declared incompetent and struck out, they implicitly agree that no substantive application has been placed before the High Court and decision on merits made thereat from which any further step could be taken. The only possible course of action open to the affected party was to file a fresh application if they so desired, and not to come to the Court of Appeal on either revision or appeal. For different reason we therefore uphold the preliminary objection. Since the reason for upholding the preliminary objection was not canvassed by any of the parties, we allow the preliminary objection and strike out the application but order that each party shall bear their respective costs.

DATED at **DAR ES SALAAM** this 7th day of **JANUARY**, 2012

N.P. KIMARO
JUSTICE OF APPEAL

L.B. KALEGEYA
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

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

Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL