

IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

(CORAM: MBAROUK, J.A., MASSATI, J.A., And ORIYO, J.A.)

CRIMINAL APPLICATION NO. 4 OF 2009

MAJUTO KIKULA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Application for revision from the Ruling of the High Court of Tanzania
at Iringa)**

(Mrema, J.)

dated 27th day of March, 2004

in

Misc. Criminal Application No. 9 of 2003

RULING OF THE COURT

12 & 14 March, 2012.

MBAROUK, J.A.:

The applicant, Majuto Kikula filed a Notice of Motion under sections 45(1) (2) and 46(1) of the Tanzania Court of Appeal Rules, 1979 and section 11(1) of the Appellate Jurisdiction Act, 1979, seeking for an order to revise the decision of Mrema, J. in Misc. Criminal Application No. 9 of 2003 dated 27-3-2004.

The notice of motion was supported by an affidavit sworn by Majuto Kikula. When the application was called on for hearing, we had first to deal with the preliminary objection notice of which was filed earlier by Mr. Faraja Nchimbi, learned Senior State Attorney representing the respondent/Republic. The respondent raised three points of law to be argued. They are to the effect that:-

- "(1) The application is incompetent as the applicant seeks to invoke the revisional jurisdiction of the Honourable Court as an alternative to its appellate jurisdiction.
- (2) The application before this Honourable Court is incompetent for want of the record of the lower Court.
- (3) The instant application is time barred."

At the hearing, the applicant appeared in person unrepresented, whereas the respondent/Republic was represented by Ms. Andikalo Msabila, learned Principal State Attorney, Mr. Faraja Nchimbi, learned Senior State Attorney and Mr. Edson Mwavanda, learned State Attorney.

Earlier on, Ms. Msabila prayed to withdraw the 2nd and 3rd preliminary points of objections and remained with the 1st preliminary point of objection. Submitting on the 1st point of preliminary objection, Ms. Msabila contended that the application is incompetent as the applicant opted to file a revision application instead of filing an appeal against the decision of Mrema, J. which is subject to this revision application. In support of her submission, she cited to us the decisions of this Court in **National Bank of Commerce v Sadrudin Meghji** [1998] TLR 503 (C.A) and **Halais Pro-Chemie v Wella A.G** [1996] TLR 269 (C.A). In concretizing her argument, she said, those cited authorities emphasize a point that revision is not an alternative to an appeal.

Ms. Msabila further submitted that, looking at the notice of motion, the applicant seeks for an order of this Court to revise the decision of the High Court in Misc. Criminal Application No. 9 of 2003. However, she said, the contents in the supporting affidavit are based on the grounds for extension of time rather than grounds for revision application.

The learned Principal State Attorney then urged us to find the application incompetent as the same was not supposed to be filed as a revision in the first place. Also she said, the defect which appeared in the notice of motion where the prayer for revision is not supported by grounds stated in the affidavit in support of the application renders the application to be incompetent. For the reason of being incompetent, Ms. Msabila urged us to strike out the application.

On his part, the applicant claimed that he is a lay person and not the one who drafted the application, hence he prayed for the application to be heard and justice be done.

In the course of hearing the preliminary objection, the Court raised a point on whether the application is properly before the Court. **First**, whether the provisions cited are correct to enable the Court be properly moved. **Second**, whether the application for revision is supported by appropriate grounds in the affidavit.

Ms. Msabila urged us to find that the applicant has cited wrong provisions in moving the Court. Firstly, she submitted that in the Court of Appeal Rules, there are no sections but Rules, hence the said defect renders the application incompetent. Secondly, Ms. Msabila submitted that as the applicant was seeking for revisional orders, the correct provision to be cited was section 4 (3) of the Appellate Jurisdiction Act, instead he has cited section 11(1) of the Appellate Jurisdiction Act which was a wrong provision. Thirdly, Ms. Msabila submitted that the grounds stated in the affidavit in support of the application for revision are not appropriate for application for revision as they support an application for extension of time rather than an application for revision. In addition to what she has submitted earlier, Ms. Msabila urged us to find the application to be incompetent and the same should be struck out.

Being a lay person, the applicant had nothing important to submit considering the fact that the points raised were points of law.

We are mindful of the importance of the preliminary point of objection raised by the learned Principal State Attorney, but we are of the

considered opinion that just on the face of it, the application is incompetently filed for citing wrong provisions in moving the Court.

What is sought by the applicant is the order of this Court to revise and set aside the decision of the High Court in Misc. Criminal Application No. 9 of 2003 dated 27-3-2004. The applicant has cited sections 45 (1)(2) and 46(1) of the Court of Appeal Rules, 1979 and section 11(1) of the Appellate Jurisdiction Act, 1979.

As pointed out by Ms. Msabila, the Court of Appeal Rules do not contain sections but rules. Secondly, all the provisions cited were not the correct provisions to move the Court to order revision. It is now settled that, failure to cite correct provision in moving the Court, renders the application incompetent and should be struck out. For instance, see the decisions of this Court **in Harish Ambaram Jina(By his Attorney Ajjar Patel) vs Abdulazak Jussa Suleiman**, ZNZ Civil Application No. 2 of 2003, **Abdulhamid Ramadhan Mjombo and Two Others vs Ali Salim Ali and Two Others**, Civil Application No. 4 of 2004, **Sunflag (T) Limited vs Yerome Wambura and Four Others**, Civil Application No. 5 of 2002

and **Alliance Insurance Corporation Ltd and Nine Others vs Commissioner of Insurance, Minister for Finance and Attorney General**, Civil Reference No. 5 of 2005 (All unreported), to name but a few.

As pointed out earlier, in the instant application the applicant has cited sections instead of the enabling rules to enable the Court be properly moved. That defect renders the application incompetent. Also the applicant has cited wrong provisions in seeking for revision. Furthermore, the applicant has failed to support his revision application with proper grounds in his affidavit. A combination of all these defects render the application incompetent. For being incompetent, we are constrained to strike out the application.

On the face of it, the application is incompetent for citing wrong provisions, we are of the considered opinion that it is prudent to finalize this application considering the fact that the application has cited wrong provisions.

Apart from all that, we sympathize with the applicant that he is a lay person, but our hands are tied to the effect that, ignorance of the law is no defence. (see, **Nalogwa Zakaria v Wandora Msunza** Civil Application No. 27 of 1995 (unreported)). For the reasons stated herein above, the application is hereby struck out.

DATED at **IRINGA** this 13th day of March, 2012

M. S. MBAROUK
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

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


(J. S. Mgetta)
DEPUTY REGISTRAR
COURT OF APPEAL