

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And JUMA, J.A.)

CRIMINAL APPLICATION NO. 5 OF 2010

GERALD KASAMYA SIBULA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for Revision from the Decision of
the High Court of Tanzania at Mbeya)**

(Mrema, J.)

**dated the 10th day of June, 2003
in
Criminal Appeal No. 34 of 2002**

RULING OF THE COURT

25th & 27th June, 2013

JUMA, J.A.:

On 12th October 2010, the applicant Gerald Kasamya Sibula, moved this Court by a Notice of Motion under Rule 48 of the Tanzania Court of Appeal Rules, 1979, for an order of revision of the Judgment of the High Court of Tanzania at Mbeya in DC Criminal Appeal No. 34 of 2002 (Mrema, J.).

The events leading up to this Notice of Motion begun at the District Court of Mpanda where the applicant and other co-accused were tried and convicted on two counts: (i) of unlawful possession of Government Trophy c/s 67 (1) and 2 (b) of the Wildlife Conservation Act, read together with paragraph 16 of the First Schedule and section 56 (1) and 59 of the Economic and Organized Crime Control Act as amended by Act No. 10 of 1989; and (ii) unlawful possession of weapons in certain circumstances c/s 11 of the Wildlife Conservation Act read together with section 17 (1) and (2) of the First Schedule and section 56 and 59 of the Economic and Organized Crimes Control Act as amended by Act No. 10 of 1989.

Only the applicant was convicted by the District Court. He was sentenced to serve twenty years imprisonment on the first count, and fifteen years imprisonment on the second count. Aggrieved by the decision of the trial court, the applicant filed his first appeal to the High Court of Tanzania at Mbeya. The applicant succeeded in so far as the first appellate court ordered his sentences of twenty and fifteen years to run concurrently. Otherwise, the applicant's first appeal was dismissed on 10th June, 2003 hence this application for revision.

On 24th June 2013, reacting to this application for revision and acting under Rule 4 (2) (a) of the Tanzania Court of Appeal Rules, 2009 the respondent Republic filed a Notice of Preliminary Objection. The grounds of the objection are:

1. The application is incompetent for being time barred.
2. The application is incompetent for citation of a dead law.
3. The applicant is wrongly invoking the revisional powers of the court as alternative to appeal.

When this revision came up for hearing on 25th June 2013, the applicant appeared in person while Ms Lugano Mwakilasa, learned State Attorney appeared for the respondent Republic. Submitting on the ground of this application being time barred, Ms Mwakilasa contended that the Judgment of the High Court on first appeal was delivered on 10th June 2003, but the applicant lodged his application for revision seven years later on 12th October 2010. The learned State Attorney insisted that this application was filed outside the sixty-day limitation period, prescribed by sub rule (4) of Rule 65 of the 2009 Rules. Ms Mwakilasa next took issue

with the way the applicant cited Rule 48 of the revoked Court of Appeal Rules, 1979 which she submitted to be inapplicable for applications seeking revisional jurisdiction of this Court. She pointed out that when Gerald Kasamya Sibula filed his application on 12th October 2010, the present Tanzania Court of Appeal Rules, 2009 had already become operational since 1st February 2010 vide Government Notice No. 36 of 2010. On the third ground of objection, Ms Mwakilasa submitted that this Court has through several of its decisions, settled the law to the effect that a revision is not an alternative to an appeal to this Court. And to that end, the applicant should have exercised his right to appeal instead of this revision. The learned State Attorney asserted that the door is still open to the applicant to seek an extension of time and lodge an appeal to this Court.

After the substances of the legal points arising from the preliminary objection had been explained to him, unrepresented as he was; the applicant requested for more time to prepare another application that complies with the law. He also urged us to still look into the substance of his application and save his application in the interests of justice.

From the foregoing submissions and assertions of the parties, we propose to begin with the way the applicant cited Rule 48 of the 1979 Rules to move this Court. The learned State Attorney is right when she asserted that we have in the recent past taken a judicial notice that vide GN No. 36 of 2010, the 1979 Rules have since 1st February 2010 been revoked and replaced by the 2009 Rules (see- **CRIMINAL APPLICATION NO. 1 OF 2009, WILFRED ONYANGO NGANYI & OTHERS VS THE INSPECTOR GENERAL OF POLICE & OTHERS (unreported)**; and **CRIMINAL APPLICATION NO. 2 OF 2012, MASHAKA HENRY VS. THE REPUBLIC (unreported)**). Ms Mwakilasa is also correct to submit that on 13 October, 2010 when the applicant lodged his application for revision, the 1979 Rules were no longer good law in Tanzania for purposes of matters that are filed after its revocation. The applicant in other words cited a revoked provision which does not confer this Court with requisite jurisdiction to hear and determine an application for revision.

Even if for the purposes of argument we were to allow the applicant to move us through the avenue of Rule 48 of the revoked the 1979 Rules, still his application would still not be properly before us. The cited Rule 48

has nothing to do with applications for revision. Before its revocation, it made provisions for lodging of applications in appropriate registry:

48. An application to the Court shall be lodged in the appropriate registry, save where the matter is one of urgency, in which case it may be lodged in the Registry, even if it is not the appropriate registry.

It is now common knowledge that ever since 1st February 2010 when the 2009 Rules came into operation, the procedure available to a party seeking a revision jurisdiction of this Court, is provided under Rule 65 of the Court of Appeal Rules, 2009 (see- **TABORA CIVIL APPLICATION NO.2 OF 2010, DISMAS S/O CHEKEMBA VS. ISSA S/O TANDITSE** (unreported)). The relevant Rule 65 provides:

65.-(1) Save where a revision is initiated by the Court on its own accord, an application for revision shall be by notice of motion which shall state the grounds of the application.

(2) The notice of motion shall be signed by or behalf of the applicant.

- (3) The notice of motion shall be supported by one or more affidavits of the applicant or some other person or persons having knowledge of the facts.*
- (4) Where the revision is initiated by a party, the party seeking the revision shall lodge the application within sixty days (60) from the date of the decision sought to be revised.*
- (5) The Notice of motion and affidavits shall be served on the respondent within fourteen days from the date of filing. The party filing the notice shall file proof of service with the Court.*
- (6) Where the application is initiated by the Court on its own accord, the Court shall have discretion to summon the parties and shall grant the parties an opportunity to address the court.*
- (7) Every application for revision shall be heard by the Court.*

It is abundantly clear therefore from the above-cited Rule 65, an application for revision initiated by a party like the present one is, must be initiated by filing a Notice of Motion under Rule 65, stating the grounds of the application (Rule 65 (1)). That Notice of Motion must be signed, either by the party himself or by his advocate (Rule 65 (2) and must be

accompanied with supporting affidavit containing relevant facts relevant to the application (Rule 65 (3)). In the present application for revision, the applicant should have cited Rule 65 of the 2009 Rules relating to revision initiated by a party. It is therefore obvious that by citing Rule 48 of the revoked 1979 Rules, this Court has not been properly moved.

In our opinion, Ms Mwakilasa is also correct in so far as limitation period to apply for revision jurisdiction of this Court is concerned. The applicant was way outside the prescribed sixty-day period of limitation when on 12th October 2010 he filed this application for revision. Revision proceedings must be instituted in this Court within sixty days (60) from the date of the decision sought to be revised (Rule 65 (4)). The applicant's first appeal was dismissed by the High Court (Mrema, J.) on 10th June 2003. It took the applicant more than seven years to lodge this application on 12 October 2010. The applicant should not only have sought an extension of time before filing this application for revision, he should also have cited proper provision.

Before we conclude, we should say a few words about our jurisdiction in revisional proceedings should not be regarded as an alternative to available statutory right to appeal to this Court. Ms. Mwakilasa is with due respect correct in submitting that we have always insisted that an application to move us in revision is not alternative to an appeal. We came out very clearly on this position in **CIVIL APPLICATION NO. 151 OF 2008, CHAMA CHA WALIMU TANZANIA VS. THE ATTORNEY GENERAL (unreported)** where we said:

"It is settled law that except under exceptional circumstances a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court, unless it is shown that the appellate process had been blocked by judicial process."

Gerald Kasamya Sibula was a party to proceedings in the High Court. There is nothing on record for us to suggest that his right to appeal against the decision of the High Court has been blocked by any judicial process. At the very least, the applicant can still seek an extension of time and lodge his appeal to this Court.

In the result and for the foregoing reasons, we find that the applicant has failed to move this Court to exercise its revision jurisdiction and his application is incompetently before this Court. This application is hereby struck out. It is so ordered.

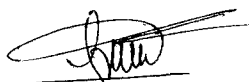
DATED at **MBEYA** this 26th day of June, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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



P.W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL