

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MSOFFE, J.A., KIMARO, J.A., And MJASIRI, J.A.)

CIVIL APPLICATION NO. 5 OF 2013

CHRISOSTOM H. LUGIKO.....APPLICANT

VERSUS

AHMEDNOOR MOHAMED ALLY.....RESPONDENT

**(Application for revision from the Judgment of the High
Court of Tanzania at Tabora)**

(Rumanyika, J.)

dated 15th October, 2013

in

Land Case Appeal No. 5 of 2006

RULING OF THE COURT

12th & 17th March 2014.

MSOFFE, J.A.

This application lodged under section 4(3) of the Appellate Jurisdiction Act [CAP 141 R.E. 2002] (the Act) and taken at the instance of Chrisostom M. Lukiko (the applicant) seeks revision of the judgment of the High Court (Rumanyika, J.) dated 15/10/2013 in Land Case Appeal No. 5 of 2006. It is duly supported by an affidavit deposed by the applicant.

At the hearing the Court had to deal with a preliminary objection notice of which was given earlier. We did so because it is well established that a court seized with a preliminary objection is first required to determine the objection before going into the merits or the substance of the case or application before it. In **Bank of Tanzania Ltd. V. Devram P. Valambhia**, Civil Application No. 15 of 2002 (unreported) this Court observed and emphasized that:-

The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily.

In this application the preliminary objection is grounded on two points:-

(i) The Applicant is improperly seeking the revisional jurisdiction of this Honourable Court as an alternative to its appellate jurisdiction.

(ii) The application is legally incompetent since the impugned decree in appeal of the High Court was not accompanied with the application.

At the hearing Mr. Method Kabuguzi, learned advocate for the respondent, submitted first and foremost that the second limb of the above objection is actually in the alternative to the first one. As regards the first limb of the objection he contended in effect that the remedy open to the applicant was an appeal rather than invoking this Court's revisional jurisdiction under section 4 (3) of the Act. In the process, he cited this Court's decision to the above effect as stated in **J.H. Komba Esq. Ex-employee, E. A. Community v. The Regional Revenue Officer, Sub-Treasury- Arusha and two Others**, Civil Application No. 3 of 2002 (unreported) wherein this Court's decisions in **Halais Pro-Chemie v. Wella A.G** [1996] TLR 269 and **Transport Equipment Ltd. v. Devram P. Valambhia** [1995] TLR 161 were also cited.

On the other hand, Mr. Kamaliza Kamoga Kayaga, learned advocate for the applicant, resisted the above limb of the objection. His strong point lies in the relevant averments of the applicant's affidavit particularly paragraphs 1, 2, 3, 4, and 6 thereto where the gist is that the applicant lost another application in the District Land and Housing Tribunal at Kigoma No. 25 of 2007 on the same subject and it was not brought up in the appeal before the High Court. Since the applicant won in the two

applications he could not file an appeal. In his view therefore, a revision is the best remedy in the circumstances.

The law is settled that a revision is not an alternative to the appeal process. The two remedies are different and should not be invoked in place or in substitution of the other. Appeals to this Court are governed by sections 5 and 6 of the Act whereas revisions are invoked under section 4 of the said Act. It is also worthwhile mentioning here that a revision is at the discretion of the court whereas an appeal is an aggrieved party's right subject of course to factors such as limitation, leave or a certificate, etc.

It is also pertinent to observe that as per this Court's decision in **Halais** (supra):-

A party to proceedings in the High Court may invoke the revisional jurisdiction of the court where the appellate process has been blocked.

In response to Mr. Kayaga's oral submission we wish to make the following pertinent points. **One**, we are unable to say anything meaningful in relation to Land Application No. 25 of 2007 because we are not seized with all the proceedings relating to the said application. As such, we

cannot step in and make an order of revision over something we do not have the full picture.

Two, since a revision is not an alternative to the appeal process we are not satisfied that this is a fit case in which we could exercise our revisional jurisdiction in lieu of the appellate jurisdiction. At any rate, a look at the complaints canvassed in the affidavit in support of the notice of motion will show that the said complaints are actually akin to the sort of complaints that would normally be raised in an appeal and not in a revision. The complaints are characterized by words like *"the judge erred on point of law, the judge erred in supporting the submission by the respondent's counsel,"* etc. Needless to repeat, these are the sort of words that would normally be canvassed, or rather feature, in an appeal.

Three, there was, and there still is, no intimation that the appeal process has been blocked in line with the principle laid in this Court's decision in **Halais**(*supra*). Indeed, Mr. Kayaga did not submit anything to suggest that the appeal process has been blocked. This means that the appeal process is a remedy which is still open to the applicant subject of course to the law governing limitation, etc.

In the light of the foregoing, we are satisfied that there is merit in the first limb of the preliminary objection. For this reason, the application is incompetent. In view of the position we have taken on the first limb of the objection we will not address the alternative second limb of the preliminary objection.

For the above reasons, we hereby strike out the application with costs.

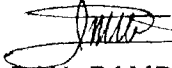
DATED at TABORA this 14TH day of March 2014.

J. H. MSOFFE
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL