

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: LUANDA, J.A., MASSATI, J.A. And MUGASHA, J.A.)

CIVIL APPLICATION NO. 59 OF 2014

PATROBERT D. ISHENGOMA.....APPLICANT

VERSUS

- | | | |
|---|---|------------------|
| <p>1. KAHAMA MINING CORPORATION LTD.
(BARRICK [TANZANIA] BULYANHULU)</p> <p>2. MINISTER FOR LABOUR, EMPLOYMENT
AND YOUTH DEVELOPMENT</p> <p>3. THE ATTORNEY GENERAL</p> | } |RESPONDENTS |
|---|---|------------------|

(Application for Revision from the **decision** of the High Court of Tanzania at Dar es Salaam)

(Mihayo, J.)

dated the 19th day of November, 2009

in

Misc. Civil Cause No. 97 of 2007

RULING OF THE COURT

4th & 7th December, 2015

LUANDA, J.A.:

This is an application for revision made under S.4(3) of the Appellate Jurisdiction Act, Cap. 141 RE. 2002 (the Act). The applicant intends to move the Court for the following orders:

"(a) The Court be pleased to revise, nullify and quash the decision and ruling of the High Court of Tanzania at Dar es Salaam (Mihayo,

J.) dated the 19th day of November, 2009 in Misc. Civil Cause No. 97 of 2007.

(b) The Court be pleased to revise, nullify and quash the whole Proceedings in Misc. Civil Cause No. 97 of 2007 in the High Court of Tanzania at Dar es Salaam.

(c) Costs of this application be provided to the applicant against the 1st respondent."

The application is supported by an affidavit of Patrobert Ishengoma, the applicant.

In this application, the applicant appeared in person; whereas Mr. Juma Masanja, learned Senior State Attorney appeared for the second and third respondents. Mr. Alex Mgongolwa, learned advocate appeared for the first respondent.

When the application was called on for hearing, the Court wished to satisfy itself as to whether the application before the Court was competent. The Court posed that question because the record of the revision lacked an extracted order and the written submissions of the parties on which Hon. Mihayo, J. relied to compose his ruling. The

appellant conceded that much, **that the** record lacked the aforesaid documents. He, however, **blamed the High Court** for not supplying him with the same, despite follow ups. **He** prayed that he be given time to make yet another follow up, **though he said** the High Court is reluctant to supply him with the documents **as he is** not a party in *certeriori* and *mandamus* proceedings the **subject matter** in Misc. Civil Cause No. 97 of 2007 before the High Court of **Tanzania (Dar es Salaam Registry)**. When he was told that as the record **is incomplete** and thus the application is incompetent the same is liable **to be struck** out, he pleaded to the Court not to do so. He prayed that **the matter** be adjourned to another date. **Mr. Masanja** appeared to side **with the applicant** that we should not strike it out for the sake of justice.

On the other hand **Mr. Mgongolwa** said failure to include those documents renders the application **incompetent** and is liable to be struck out.

This matter should not **detain us** as the position on an application for revision made under **S.4(3) of the Act** moved by a party without supplying the Court with a **copy of proceedings** is very clear; the

application is incompetent and is liable to be struck out. In Civil Application No. 14 of 2005 **THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) V. LEONARD MTEPA** (unreported - CAT) this Court said:

"This Court has made it plain, therefore, that if a party moves the Court under S.4(3) of the Appellate Jurisdiction Act, 1979 to revise the proceedings or decision of the High Court, he must make available to the Court a copy of the proceedings of the lower court or courts as well as the ruling and, it may be added, the copy of the extracted order of the High Court. An application to the Court for revision which does not have all those documents will be incomplete and incompetent. It will be struck out."

*[See also **BENEDICT MABALANGANYA Vs ROMWALD SANGA**, Civil Application No. 1 of 2002 (CAT-unreported)].*

Since in our case the extracted order and submissions are missing, the application is incompetent. The same is struck out with no order as to costs.

The applicant bitterly complained to us that the High Court is reluctant to supply the missing documents. We order the Deputy Registrar of High Court of Tanzania (Dar es Salaam Registry) to supply the same to the applicant without delay to enable him refile his application if he wishes, subject to the law of limitation.

It is so ordered.

DATED at TABORA this 5th day of December, 2015.




B. M. LUANDA
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

S. E. MUGASHA
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL