

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MJASIRI, J.A. KAIJAGE, J.A. And MUSSA, J.A.)

CIVIL APPLICATION NO. 155 OF 2015

COMMERCIAL BANK OF AFRICA

(TANZANIA) LIMITED APPLICANT

VERSUS

MOHAMED TRANS LIMITED RESPONDENT

**(Appeal from the Ruling and Orders of the High Court of Tanzania
Commercial Division at Dar es Salaam)**

(Mansoor, J.)

Dated the 8th day of June, 2015

in

Miscellaneous Commercial Application/Cause No. 121 of 2015

RULING OF THE COURT

12th November, 10th December, 2015

KAIJAGE, J.A.:

The applicant herein was aggrieved by the Ruling dated 8/6/2015 made by the High Court Commercial Division sitting at Dar es Salaam in Miscellaneous Commercial Application No. 121 of 2015. In consequence thereof, on 4/8/2015, the applicant filed the present application which is by notice of motion premised on section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and rules 48(1), 48(2) and 65(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). In this application which is supported by an affidavit of Lilian Musingi, a Company Secretary of the applicant's

establishment, the Court is being moved to examine and revise the proceedings, the ruling and the consequential orders of the High Court.

Earlier, Mr. Michael Ngalo, learned advocate for the respondent, had given Notice under rule 4(2) (a) of the Rules raising a total of six (6) preliminary points of objection to the hearing of the application. However, when the application was called on for hearing, he abandoned the last three (3) points of objection and proceeded to argue the following remaining three (3):-

- (1) That, the record of the application for revision is incomplete for want of among others, the Petition filed in the High Court, Commercial Division vide Miscellaneous Commercial Cause No. 121 of 2015, the proceedings thereof and the Ruling from which the revision is sought.*
- (ii) That, the application is bad in law for non-joinder of the appointed administrator i.e Paul Mgaya;*
- (iii) That, the application is misconceived and untenable in the eyes of the law for want of any pending proceedings before*

*the High Court, Commercial Division in respect of
Miscellaneous Commercial Cause No. 121 of 2015.*

On the first point of objection, Mr. Ngalo made a brief, but focused submission. He cited the decisions of this Court in **BENEDICT MABALANGANYA Vs SANGA** [2005] 2 EA 152 and the unreported case of **TANZANIA TELECOMUNICATIONS CO. LTD Vs ALFRED ANASA SHARA**; Civil Application No. 226 of 2013, to contend that applications seeking to move the Court to invoke its revisional jurisdiction under Section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and rule 65(1) of the Rules, must be accompanied by copies of proceedings, judgments or rulings which are desired to be revised. On account of the non-attachment, to the notice of motion, of copies of the proceedings and the Ruling of the High Court desired to be revised, the record of the application for revision is incomplete and, for that reason, the present application has been rendered incompetent and liable to be struck out, he stressed.

Responding to Mr. Ngalo's submission, Mr. Gaspar Nyika, learned advocate who appeared for the applicant, readily and commendably conceded the first point of objection. Whilst restating the legal position on the point, Mr. Nyika further correctly asserted that on account of non-

attachment to the notice of motion of the vital documents referred to by Mr. Ngalo in his submission, the present application is incomplete and incompetent.

On our part, we hold a firm view that the determination of the first point of objection which we consider to be decisive should dispose of this application without necessarily canvassing the remaining points for which we commend both learned counsel for their effort in presenting interesting and refreshing arguments on them.

Indeed, we are in full agreement with both learned counsel's respective submissions on the first point of objection. Their submissions are unarguably consistent with the instructive observation made in **THE BOARD OF TRUSTEES OF THE N.S.S.F. Vs LEONARD MTEPA**, Civil Application No. 140 of 2005 (unreported). In that case, we said:-

"This Court has made plain, therefore, that if a party moves the Court under section 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

ordered, a 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."

Unfortunately, the applicant herein has moved this Court to revise the proceedings and the ruling of the High Court not availed to us. On the authority of the decision in **THE BOARD OF TRUSTEES OF THE N.S.S.F.** (supra), we have found the present application incomplete and incompetent. Accordingly, it is hereby struck out with costs to the Respondent.

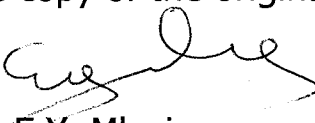
DATED at DAR ES SALAAM this 17th day of November, 2015.

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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


E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL