

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., MUSSA, J.A., And LILA, J.A.)

CIVIL APPLICATION NO. 186 OF 2012

WENCESLAUS WILLIAM ISHENGOMA APPLICANT
VERSUS

FARID OMARI MPIRIRESPONDENT

(An Application for Revision of the Order of the High Court of
Tanzania at Dar es Salaam)

(Ngwala, J.)

Dated 9th day of October, 2012

In

Land Case Revision No. 2 of 2011

RULING OF THE COURT

1st & 12th August, 2016

MUSSA, J.A.:

The applicant seeks to move the Court to revise the Order of the High Court (Ngwala, J), dated the 9th October, 2012. The application is by way of a Notice of Motion which has been taken out under section 4(3) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Laws (AJA), as well as Rule 65(1) and (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

The Notice of Motion is supported by an affidavit of the applicant according to which on the 9th June, 2009 he instituted Application No. 95 of

2009 against the respondent, in the District Land and Housing Tribunal, at Temeke, with respect to the premises standing at Mtoni Relini (Bank Club) which we shall henceforth simply refer to as "*the suit premises*". In the application before the Tribunal, the applicant is, *inter alia*, seeking to be declared the rightful owner of the suit premises and further prays for the issuance of a permanent injunction to restrain the respondent and his agents from trespassing the suit premises. In the claim, the applicant estimated the value of the suit premises be Tshs 48,000,000/=.

At a later stage of the proceedings before the Tribunal, the applicant sought to withdraw his claim with leave to refile the same in the High Court. The quest, he says, was prompted by a report by a Municipal Valuer which postulated the market value of the suit premises to the sum of Tshs 65,000,000/=. The way it appears, the applicant desired to accord his claim with the pecuniary jurisdictional requirements but, according to him, the request was declined by the Tribunal. Nonetheless, we are unable to glean over the reasons behind the Tribunal's refusal since the requisite proceedings and Order of the inferior Tribunal have not been availed. In the aftermath, the applicant, through his Advocate, sought the intervention

of the Judge Incharge of the High Court (Land Division), by a letter which was dated the 18th August, 2010.

In response, the High Court (Land Division) called for the record of the Tribunal for revision purposes and, in the upshot, on the 9th October, 2012 Ngwala, J. pronounced the impugned Inspection Note through which the decision of the Tribunal was upheld. As it were, the High Court took the position that the application before the Tribunal had reached such an advanced stage to the extent that it was inappropriate to grant the applicant's prayer. In consequence thereof, the matter was remitted back to the Tribunal for it to proceed with the hearing. The applicant is dissatisfied with the decision and, hence the application at hand.

Before the application was called on for hearing, the applicant lodged a Notice under Rule 4(2) (a) of the Rules to the following effect:-

"TAKE NOTICE THAT at the day when the application will be called on for hearing counsel for the applicant will apply to the court for leave to file a proper affidavit in lieu of the one filed in support

of the Notice of Motion which is defective for the jurat not disclosing the name of the commissioner for oaths who attested it."

At the hearing before us, the applicant was represented by Mr. Samson Mbamba, learned Advocate, whereas the respondent was fending for himself, unrepresented. Mr. Mbamba reiterated his desire to amend the supporting affidavit although he, seemingly, refined it by predicating the request under Rules 50(2) and 4(2) (b) of the Rules. The learned counsel for the applicant also prayed that the leave to amend be granted to allow him to append the record of proceedings. Speaking of the proceedings desired to be revised, it is noteworthy that the applicant did not attach the same in either the Notice of Motion or the accompanying affidavit.

We, however, promptly expressed to Mr. Mbamba that the pertinent issue of contention is whether or not, in the absence of the proceedings, the application is in the first instance, properly before the Court. His response was in the affirmative and, to buttress his contention, the learned counsel referred us to the unreported Civil Application No. 186 of 2008 – *Stephen Mafimbo Madwary vs Udugu Hamidu Mgeni and Another.*

For his part, the respondent did not have much to submit on this particular issue apart from leaving it for the determination of the Court.

Addressing the issue relating to the absence of the proceedings, granted that in the case of **Stephen Mafimbo** (supra) leave was granted to allow the applicant to annex the proceedings to be revised but, in a plethora of the decisions of this Court, it is now settled that an omission to attach the proceedings and order desired to be revised is fatal to the extent of rendering the application incompetent. The practice was, apparently, pioneered in the unreported Civil Application No. 112 of 2003 – Citibank Tanzania Limited vs Tanzania Telecommunications Company Ltd and Others where the Court observed:

"In case the circumstances permit the Court to exercise its revisional jurisdiction do exist, how can such a task be undertaken without the Court seeing a copy of the ruling being sought to be revised? Since there is no specific provision in the Court Rules, we would respectively invoke Rule 3(2) (a) of the Court Rules and direct that all application for revision should be accompanied by a copy of the decision sought to be revised".

The foregoing observation was referred and approvingly endorsed in Civil Application No. 183 of 2005 – **Abbas Sherally and Another vs Abdul Sultan Haji Mohamed Fazalboy** (unreported) in the following words:-

"From this decision, there is no denying the fact that the Court by its decision has established a practice which is to be followed in all applications to this Court for revision".

Thus, on account of the non-attachment of the decision desired to be revised, the respective applications in both the above referred cases were adjudged incompetent and, accordingly, struck out. In some other decisions, the requirement was extended to include the proceedings embodying the decision desired to be revised. In, for instance, the unreported Civil Application No. 14 of 2005 – **The Board of Trustees of NSSF vs Leonard Mtepa**, the Court observed:-

"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 courts or courts as well as the ruling and, it may be added, the copy of the extracted order of the High Court. An application for revision which does not have all these documents will be incomplete and incompetent”.

Corresponding remarks were made in Civil Application No. 1 of 2002 – Benedict Mabalanganya vs Remwald Sanga; Arusha Civil Application No. 11(b) of 2012 – Robert Marko Raibala and Another vs Sabina Paulo Raibala; Civil Application No. 59 of 2014 – Patrobert Ishengoma vs Kahama Mining Corporation Ltd and Two Others (All unreported).

To say the least, in the matter under our consideration, the proceedings of the High Court, as well as those of the Tribunal were not attached to the Notice of Motion. To that extent and, on a parity of the decisions of this Court, such omission renders the application incompetent. Thus, the issue is not whether or not an amendment should be allowed to put on record the proceedings. Inasmuch as the application is incompetent,

the Court cannot allow an amendment of what is not properly before it. Under such circumstances, what the Court should imperatively do is to strike out the incompetent application. The same is, accordingly, struck out with costs.

It is so ordered.

DATED at DAR ES SALAAM this 5th day of August, 2016.



M.S. MBAROUK
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

S.A. LILA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read 'P.W. Bampikya'.

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL