IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)

CIVIL APPLICATION NO. 121 OF 2015

OMARY SHABANI NYAMBU ..... APPLICANT

VERSUS

DODOMA WATER AND SEWARAGE AUTHORITY ..... RESPONDENT

(Appeal from the Ruling of the High Court of Tanzania (Land Division) at Dar es Salaam

(Ndika, J.)

dated the 13th day of April, 2015
in
Misc. Land Application No. 93E of 2014

ORDER OF THE COURT

JUMA, J.A.:

By notice of motion which he made under Rule 65 (1) and 48 (1) (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant Omary Shabani Nyambu, is seeking two distinct orders of the Court. Firstly, he is moving the Court to call, revise and quash the record of the proceedings of the High Court (Land Division) at Dar es Salaam in Miscellaneous Land Application No. 93E of 2014 which was decided by Ndika, J. on 13/4/2015 on the ground that the learned Judge failed to consider material facts that were necessary for his determination.

Secondly, the applicant is seeking an order of extension of time to allow him to file his notice of appeal against the decision of Chinguwile, J. dated 11/10/2013 in Land Case No. 180 of 2007.

The respondent in this application, Dodoma Water and Sewerage Authority, has filed a notice of preliminary objection urging the Court, on reason of incompetence, to strike out the application with costs on two grounds:-

(a) The application for Revision in the Notice of Motion contravenes the provision of Rule 65 (1) (3) and (5) of the Tanzania Court of Appeal Rules, 2009.

(b) The application in the notice of motion to be allowed to file a notice of appeal out of time is not based on any known provision of the law.

When the parties appeared before us for the hearing of the motion, Mr. Deus Nyabiri, learned advocate appeared for the respondent. He informed us that he is ready to be heard on his preliminary points of objection. He drew our attention to Written Submission which he had earlier filed on 29th March, 2016.

Mr. Mohamed Tibanyendera learned advocate who appeared to represent the applicant at first expressed his resistance to the preliminary

points of objecting by inviting us to consider first the failure of the respondent to file their Affidavit in Reply. We however prevailed upon him that it is an established practice of the Court to first deal with preliminary points of objection because these points in the first place determine whether the Court has requisite jurisdiction to hear the application before it. At long last, and after being referred to section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 (AJA) which is the provision which the applicant should have cited to move the Court to exercise its power of revision, the learned advocate conceded that indeed his application is not competently before this Court.

On his part, Mr. Nyabiri agreed with the concession made by Mr. Tibanyendera, he however pressed to be awarded costs. He pointed out that he took the trouble to read the motion, he prepared both an affidavit in reply and his Written Submissions. All these involved costs. He has also made the appearance today. In the circumstances, he submitted that costs are due to him.

When Mr. Tibanyendera was asked to react to the issue of costs, he preferred to let the Court makes its decision thereon.

On our part, we are of the considered opinion that the provisions of Rule 65 (1) and 48 (1) and (2) of the Rules which the applicant cited,

extension of time to lodge a notice of appeal. An application for the Extension of time goes to a Single Justice of the Court and cannot be combined with an application for revision which is supposed to be handled by a panel of three Justices of the Court. In so far as the instant application for revision is concerned, the notice of motion should have cited section 4 (3) of AJA.

In **Paskali Arusha vs. Mosses Mollel**, Civil Revision No. 13 of 2014 (unreported) the Court took issue *suo motu* with the applicant on whether by citing Rule 65 of the Rules, he had properly moved the Court to exercise its power of revision. The Court stated:

> *"Having considered the matter, in our respectful view, this application under Rule 65 could not have properly moved the Court to exercise its revisional, 'authority and jurisdiction', which is expressly conferred upon it by section 4 (3) of the Appellate Jurisdiction Act. The application is therefore incompetent for having cited the wrong enabling provision of the law (see The* ***National Bank of Commerce V. Sadrudin Meghji,*** *Civil application No. 20 of 1997;* ***Almasi Mwinyi V. National Bank of Commerce and another,*** *Civil*

Application No. 88 of 1998, CAT, (unreported). This should be sufficient to dispose of the application."

Before we conclude, we also note that the application for revision which the applicant filed, was not accompanied with the record of proceedings whose judgment he would like the Court to revise. This also adds to the lists of defects in the application.

All the foregoing defects makes this application before us incompetent. We, as a result strike it out with costs.

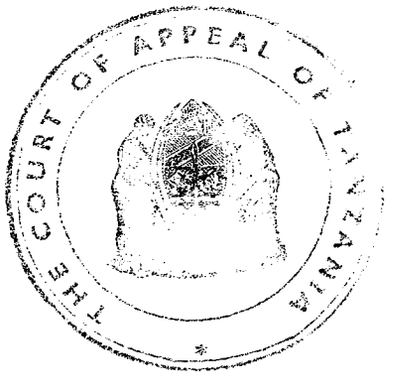
DATED at **DODOMA** this 25th day of April 2016.

E. A. KILEO
JUSTICE OF APPEAL

K. K.ORIYO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

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



E.F.FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL