IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

CORAM: MUGASHA, J.A. LILA, J.A. And MWAMBEGELE, J.A.)

CIVIL APPLICATION NO. 435/04 OF 2017

AMOS FULGENCE KARUNGULA ..... APPELLANT

VERSUS

KAGERA CO-OPERATIVE UNION (1990) LTD..... RESPONDENT

(An Application for Revision from the proceedings and Orders of the High Court of Tanzania at Bukoba)

(Mjemmas, J.)

dated the 21st March, 2012

in

Civil Review No. 1 of 2011

RULING OF THE COURT

30th November & 6th December, 2017

MUGASHA, J.A.:

On 24th May, 2016, the applicant **AMOS FULGENCE KARUNGULA,** moved this Court by way of Notice of Motion under section 4(3) of Appellate Jurisdiction Act [**CAP 141 RE. 2002]** AJA, Rules, 2, 48(1) 65(1) and (4) of the Tanzania Court of Appeal Rules, 2009, (the Rules). The

applicant is seeking an order of revision of the Ruling of the High Court of Tanzania in Civil Review No. 1 of 2011 handed down on 21st March, 2012.

The salient facts giving rise to this application are as follows: The applicant unsuccessfully sought a review of Civil Appeal No. 5 of 2007 before the High Court vide Civil Review No. 1 of 2011 which is a subject of revision before us. The Review was dismissed with costs for lack of merit in the decision dated 21.3.2012. Later, vide BK Civil Application No. 6 of 2012 the applicant successfully sought and was granted by the Court extension of time to apply for revision within 30 (thirty) days from the date of Ruling delivered on 8/3/2013. Subsequently, vide Civil Application No. 2 of 2013 he unsuccessfully filed an application for revision which was on 19/2/2015 struck out with costs having not included the record of the proceedings and the extracted order intended to be revised. Ultimately, on 24/5/2016 the applicant brought the present application seeking revision of the Review decision of the High Court.

The application is accompanied by the affidavit of **AMOS FULGENCE KARUNGULA**, the applicant. The application is opposed by the respondent

through the affidavit in reply of **AARON KABUNGA**, learned counsel for the respondent.

Parties have filed written submission in support of the arguments for and against the application. The applicant as well, filed notice of preliminary objection opposing the respondent's delayed filing of the affidavit in reply and written submissions.

The applicant appeared in person and the respondent was represented by Mr. Aaron Kabunga, learned counsel.

When the application was called on for hearing, we had to satisfy ourselves on its competence in terms of Rule 65 (4) of the Rules. We thus required parties to address us on that issue. The applicant adopted the contents of the written submissions and attempted some elaboration.

He submitted that, the struck out revision application was filed subsequent to the grant of extension of time vide Civil Application No. 6 of 2012. Following the striking out of the initial revision application due to lack of proceedings and the drawn order, the applicant pursued those documents which he obtained from the High Court on 29/3/2016 as exhibited by Exchequer Receipt No.7923423. Subsequently, he filed this

application on 24/5/2016 arguing the same not beyond the prescribed sixty (60) days. Besides, he added that, without the said documents he could not have applied for an order of revision in the present application. Moreover, he argued that since the initial struck out revision was filed subsequent to obtaining extension of time, he was thus not obliged by the law to seek extension before filing the present application for revision. As such, he was of the view that the time limit of sixty (60) days stated under Rule 65 (4) of the Rules is not applicable in the circumstances of the present matter. He as well argued that, the Court should exclude the period he spent in prosecuting the initial application and when waiting to be supplied with the proceedings and drawn order in terms of sections 19(2) and 21(2) of the Law of Limitation Act **[CAP 89 RE.2002].**

On the other hand, Mr. Kabunga submitted that, the application is time barred having been filed beyond 60 (sixty) days from the date of the decision sought for revision. He added that, following the striking out of the initial revision application, before filing this application, the applicant should have sought extension of time under Rule 10 of the Rules. He further argued that nothing remained before the Court after the initial revision application was struck out and as such, the applicant had to file a

fresh application for revision subject to the prevailing law on limitation. In the alternative, he argued that, even if the applicant waited to be supplied with the proceedings and drawn order; the same were ready as of 18/3/2016 as exhibited by the date when the Drawn Order was extracted. However, the applicant did not bother to file the present application not later than 60 days after receipt of the said documents. In view of his submission, Mr. Kabunga urged us to strike out the application with costs.

In his brief rejoinder, the applicant mainly reiterated his earlier submission arguing that, he could not file this application without the proceedings and drawn order which were obtained on 29/3/2016 and before the expiry of 60 days on 24/5/2016 filed the present application. He was of the view that, the present application is properly before us and it should be heard on merits.

After a careful consideration of the rival arguments of the parties, the point for our determination is whether the present application is properly before the Court.

We preface our discussion on the legal requirement specifying the time limit in which a revision can be sought. Rule 65 (4) states as follows:-

"Where a revision is initiated by a party, the party seeking revision shall lodge the application within sixty days (60) from the date of the decision."

It is not in dispute that the present revision was initiated by the applicant and as such Rule 65 (4) imposes a mandatory requirement to the effect that an application for revision must be lodged not later than sixty (60) days from the date of the decision sought to be revised. This has been emphasised by the Court in numerous decisions including the case of **GERALD KASAMYA SIBULA VS REPUBLIC**, Criminal Application No. 5 of 2010 (unreported). Failure to file the revision application initiated by a party within the prescribed sixty (60) days as stipulated under Rule 65 (4) of the Rules, is a fundamental irregularity which renders the revision application incompetent. (See **NJAMBA S/O KULAMIWA VS REPUBLIC**, Criminal Application No. 4 of 2010 (unreported).

In the case at hand, while the applicant persistently insisted that, the time to apply for revision must be reckoned from the date he was supplied with the proceedings and the drawn Order and that seeking extension of time was unnecessary, the respondent argues that, the

application ought to have been filed afresh subject to the prevailing laws on limitation.

In our considered opinion, since the decision sought to be revised was handed down on 21.3.2012, sixty days count is reckoned from that date. Thus, the 31/5/2012 was the sixtieth day and deadline of lodging the application for revision as per requirements of Rule 65(4) of the Rules. We find that, the applicant being aware of this requirement prior sought and obtained extension of thirty days before filing the initial revision application which was struck out. The extension order was specifically pegged on the filing of the initial revision which was struck out. Therefore, in our considered view the lifespan of the extension order lapsed with the filing of the initial revision application which as well ceased to exist after it was struck out. In this regard, both the order giving extension and the struck out application have no bearing whatsoever with the present application for the purposes of computing the time limit in which it ought to have been filed.

We are thus in agreement with Mr. Kabunga that, since the struck out revision application was no longer in existence and as the applicant

was still desirous of pursuing his cause, he was obliged to file this application not beyond the prescribed limitation period of sixty days as stated under rule 65(4) of the Rules. The applicant's argument that the extension order extends to the present application is farfetched as it is tantamount to resurrecting non-existent matters which have no bearing on the timeliness or otherwise of the current application. We say so because the present application is new bearing unique number quite distinct from the struck out application and the order giving extension.

We are not in agreement with the applicant's argument to reckon the limitation of filing the present application from the date he was supplied with the drawn order and the proceedings. We say so because, the present matter is not an appeal whereby Rule 90(1) of the Rules regulates the modality of the intending appellant to enjoy exclusion of time spent to be supplied with the requisite documents upon certification by the Registrar. Such procedure is not applicable in an application for revision where the time limit to file the revision initiated by a party is prescribed under Rule 65 (4) of the Rules.

In the alternative, in case of delay to obtain the requisite documentation for one intending to apply for revision that would probably constitute or suffice as sufficient cause to seek extension of time as prescribed under Rule 10 of the Rules.

Furthermore, the applicant's argument that we should exclude the period he spent in prosecuting the struck out revision application and to be supplied with the proceedings in terms of the provisions of the limitation does not hold ground at all. We say so because: **One**, As earlier stated, Rule 65(4) of the Rules is crystal clear that a revision initiated by a party must be filed within 60 days from the date of the impugned decision. **Two,** an instance of delay can be remedied by invoking Rule 10 of the Rules, upon one showing sufficient cause for not timely filing the respective application within prescribed time. Thus, the doors are not closed. **Three,** the Law of Limitation Act [**CAP 89 RE.2002**] is not applicable to applications and appeals before the Court in terms of Section 43 (b) which categorically states that the Act shall not apply to applications and appeals to the Court of Appeal. Therefore, before filing this application the applicant must have sought and obtained extension of time

In view of the aforesaid, in the absence of an order for extension of time to apply for revision, the present application is time barred having been instituted more than four (4) years from the date of the impugned decision having violated Rule 65 (4) of the Rules. The application is thus incompetent as the Court is not properly moved to entertain it.

At the beginning we indicated that the applicant on 27/11/2017 lodged a purported preliminary objection challenging the modality of the respondent's filing of the affidavit in reply and the written submissions. Parties addressed us on the preliminary objection. We find the purported preliminary objection untenable because raising of a preliminary objection is a weapon available to the respondent, not the applicant. Besides, an effort by an applicant to move a court of law through a preliminary objection is misplaced. (See the case of **HAJI HASSAN AMOUR AND 112 OTHERS VS MANAGING DIRECTOR, PEOPLE'S BANK OF ZANZIBAR**, Civil Application No. 20 of 2011 (unreported). This position has not changed even with current amendment of Rule 107 (1) of the Rules vide G.N. 362 of 22/9/2017 which currently regulates the manner in which the preliminary objection can be raised against appeals and applications before the Court by the respondent having stated that:

" A respondent intending to rely upon a preliminary objection to the hearing of the appeal or application shall give the appellant or applicant three clear days notice hereof before hearing, setting out the grounds of objection such as the specific law, principle or decision relied upon, and shall file five such copies of the notice with the Registrar within the same time and copies of the law or decision as the case may be, shall be attached to the notice."

In view of the stated position of the law, the applicant's purported preliminary objection is misplaced and it is hereby struck out. By such determination, we are not suggesting that the applicant is completely shut out to point out shortfalls on the respondent's document relating to an application before the Court. However, without prejudice, in our considered view, instead of raising a preliminary objection which is barred by the law, with leave of the Court, the applicant may under Rule 4(2) (a) of the Rules, draw the attention of the Court during the hearing of the matter.

On account of time bar we accordingly strike out the application with costs. If the applicant so wishes, he may pursue another application subject to Limitation specified under Rule 65(4) of the Rules.

DATED at **BUKOBA** this 5th day of December, 2017.

S.E.A. MUGASHA
JUSTICE OF APPEAL

S.A. LILA
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

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

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL