

**IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR**

(CORAM: JUMA, C.J., MBAROUK, J.A., And MZIRAY, J.A.)

CIVIL APPLICATION NO. 348/15 OF 2017

ZANAIR LIMITED 1ST APPLICANT
CARL SALISBURY.....2ND APPLICANT

VERSUS

HASSAN & SONS LTD.....RESPONDENT

**(An Application for Revision of the proceedings, rulings and orders,
of the High Court of Zanzibar)**

(Makungu, C. J.)

**dated 20th January, 2017, 23rd January, 2017 and 20th March, 2017
in
Civil Case No. 3 of 2017**

RULING OF THE COURT

29th November & 6th December, 2017

MZIRAY, J.A.:

These revisional proceedings were instituted under section 4(3) of the Appellate Jurisdiction Act, Cap 141 (the Act) and Rule 65 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). At issue is the correctness, legality or propriety of the proceedings, rulings and orders of 20th January, 2017, 23rd January, 2017 and 20th March, 2017 in Civil Case No. 3 of 2017 in the High Court of Zanzibar.

In response, the respondent raised a notice of preliminary objection couched in the following words:-

- 1. The application is incapable of being heard by the Court for failure on the part of the Applicants to comply with Rule 106 of the Court of Appeal Rules, 2009.*
- 2. The application is incompetent at law for being on interlocutory orders which have no effect of finally disposing of the main issues in dispute.*

Before entertaining the preliminary objection raised, the Court, *suo motu* raised the issue whether the application was competent. This is particularly so when it transpired that the plaint and written statement of defence, that is, the pleadings upon which the action was founded, were not included in the record of the application.

Mr. Walter Chipeta, learned advocate for the applicant, in response submitted that in as far as the application is concerned, the applicant only annexed documents relevant to the matter in

controversy and that the plaint and written statement of defence were not necessary documents by looking and taking into account the nature of the application.

On his part, Mr. Othman Masoud Othman, learned counsel for the respondent, submitted that the failure to incorporate the two documents in the record of the application renders the matter to be incompetent. On that account, he urged us to strike out the application as it is incompetent.

In revisional proceedings, as is the case in an appeal, the applicant has to file the entire lower court proceedings. That is inescapable. A decision to choose documents that are not relevant for the determination of the matter in controversy is not optional on the party filing the record. (See for example, –**Mariam Idd [as Administratrix of the estate of the late Mbaraka Omari] v. Abdulrazack Omary Laizer [as Administrator of the estate of the late Abubakar Omari and Rodrick Humphrey Jonas]**; Civil Appeal no. 20 of 2013, **Fedha Fund and two others v George T. Vargheese and Another**, Civil appeal No. 8 of 2008 and **Jamal A.**

Tamim v. Felix Francis Mkosamali And the Attorney General-
Civil Appeal no. 110 of 2012 (all unreported).

We are of the settled mind that the applicant had an obligation to file a complete record. There have been many decisions on this, among others – see for example **Tanzania Air Services Ltd versus Registered Trustees of the Precious Blood Fathers**, Civil Appeal No. 90 of 2008, **Dominic Mbalamula and 23 Others versus Tanzania Breweries Ltd**, Civil Appeal No. 62 of 2004, (both unreported), **Kiboro versus Ports and Telecommunications** (1974) E.A. 155. **The National Bank of Commerce versus Methusela Magongo** (1996) TLR 394 and **The Board of Trustees of the National Social Security Fund (NSSF) v. Leonard Mtekpa**, Civil Application No. 140 of 2005 (unreported).

To illustrate this position, we find it instructive to reproduce what the Court stated in **The Board of Trustees of The National Social Security Fund (NSSF)** (supra) as follows:

*"...In the **Benedict Mabalanganya** case [Civil Application No. 1 of 2002] which was cited by the respondent, this*

Court was dealing with an application for revision under section 4(3) of the Act, and asked itself the question whether that application was competent. **It made a finding that the record before it was incomplete for revision purposes. It did not have all the necessary documents.** It had only the notice of motion, the advocates' affidavit and the ruling of the judge of the High Court which was sought to be revised. It did not have a copy of the proceedings of the High Court. It then said:-

The record of proceedings of the High Court, and **in the case of the appellate jurisdiction of the High Court, then the record of proceedings of the lower court or courts, must be before this Court. This is glaringly certain from the very definition of what revision entail and if the Court is to perform that function** ----. Now, when the Court acts on its own motion it will have

to call for those records itself. But when the Court is moved, as in this case, then the one who moves it will have to supply those records.” [Emphasis added].

The issue of completeness of the record was also discussed in the case of **Chrisostom H. Lugiko vs Ahmednoor Mohamed Ally**, Civil Application No. 5 OF 2013 (unreported). The Court declined to exercise its power of revision because the whole record was not before it. The following observation which the Court made is relevant to the present application before us:

*“...we are unable to say anything meaningful in relation to Land Application No. 25 of 2007 because we are not seized with all the proceedings relating to the said application. As such, **we cannot step in and make an order of revision over something we do not have the full picture.**”*
[Emphasis added].

On the basis of the preceding cited authorities herein above, definitely this application is not properly before the Court. It is

incompetent for not incorporating the plaint and the written statement of defence, which are pleadings upon which the action was founded in the High Court.

That said therefore, we strike out this incompetent application. We make no order as to costs as the issue of incompleteness of the record was raised by the Court *suo motu*.

It is ordered accordingly.

DATED at **ZANZIBAR** this 4th day of December, 2017.

I.H. JUMA, C.J
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

R.E.S MZIRAY
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL