IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MMILLA, J.A., And NDIKA, J.A.)

CIVIL APPLICATION NO. 184 OF 2014

RAMANI CONSULTANTS LTD ..... APPLICANT

VERSUS

1. **THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND**
2. **M/S LAND-PLAN ICON ARCHITECTS LTD**

..... RESPONDENTS

(Application for revision of the Judgment of the High Court of Tanzania, Commercial Division at Dar es Salaam)

(Kalegeya, J.)

dated the 7th day of June, 2002
in
Commercial Case No. 52 of 2000

.....

RULING OF THE COURT

27th February & 13th March, 2018

NDIKA, J.A.:

Ramani Consultants, the applicant herein, applied by way of a notice of motion under section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 ("AJA") and Rule 65 (1) and (4) of the Tanzania Court of Appeal Rules, 2009 for revision of the judgment of the High Court of Tanzania, Commercial Division (Kalegeya, J., as he then was) dated 7th June 2002 in Commercial Case No. 52 of 2000. At the hearing before us, Mr. Samson Mbamba, learned advocate, appeared for the applicant whereas Mr. Senen Mponda, learned

counsel, assisted by Mr. Daniel Welwel, learned advocate, represented the Board of Trustees of the National Social Security Fund, the first respondent. M/S Land-Plan Icon Architects Ltd, the second respondent herein, entered no appearance despite having been duly served with the notice of the hearing.

Before the hearing began in earnest, Mr. Mbamba rose up and acknowledged that the application was incomplete as it omitted the entire record of the proceedings of the trial High Court. The said omission, he submitted, rendered the matter incompetent and liable to be struck out. Accordingly, he prayed that the matter be struck out without any order as costs.

On his part, Mr. Mponda had no qualms with the prayer for striking out the application. However, he pressed for costs for the first respondent's preparation for the hearing as well as appearance for the hearing. In his view, it would have been a different matter had the applicant given notice in advance of its intention to move the Court to strike out the matter on account of its incompetence.

Rejoining, Mr. Mbamba contended that the respondents were not entitled to any reimbursement of costs on two grounds: first, they filed no

documents in response to the application; and secondly, they wasted their effort and resources to prepare for the hearing of an application that was apparently incompetent. In support of the second ground, Mr. Mbamba relied upon this Court's decision in **East African Development Bank v Khalfan Transport Co. Ltd**, Civil Appeal No. 68 of 2003 (unreported).

On our part, we agree with the learned counsel that the application is rendered incompetent for the omission of a copy of the proceedings of the trial High Court and that it is liable to be struck out. We so hold as it is settled that a party who moves the Court for revision under section 4 (3) of the AJA is enjoined to supply a copy of the proceedings from which the revision arose. There is a plethora of decisions of the Court on that position, one of which is **the Board of Trustees of the National Social Security Fund (NSSF) v. Leonard Mtepa**, Civil Application No. 14 of 2005 (unreported). In that case, the Court reaffirmed that position as follows:

> *"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*

court or courts as well as the ruling and, it may be added, the 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."

See also this Court's decisions in **Benedict Mabalanganya v. Romwald Sanga**, [2005] 1 EA 236; and **Patrobert D. Ishengoma v. Kahama Mining Corporation Ltd (Barrick [Tanzania] Bulyanhulu) and Two Others**, Civil Application No. 59 of 2014 (unreported).

Since we have held that the application is incompetent on account of omission of a copy of the proceedings, the matter is accordingly struck out.

On the issue of costs, we would, at first, state that costs are awarded at the discretion of the Court subject to the general rule and practice that costs should normally follow the event unless the Court orders otherwise for a good cause (see, for example, this Court's decision in **Itex Sari v. The Chief Executive, Tanzania Roads Agency (TANROADS) & Another**, Civil Application No. 14 of 2015). The proper exercise of such discretion involves taking into account all relevant factors.

In considering whether or not to award costs, we have taken into account that this matter has been disposed of upon the applicant's own acknowledgement of the incompetence of the application. The respondents did not raise that point even though it was apparent on the face of the record that the trial High Court's proceedings had not been included. We think that Mr. Mponda's contentions for compensation for the effort and resources spent in preparation for the hearing were fully answered by Mr. Mbamba. First, the respondents filed no documents in response to the application, implying that they made little effort, if any, towards opposing the application. Secondly, they unwittingly wasted whatever energy and resources they expended in preparation for the hearing of a matter that was, on the face of it, incompetent.

As rightly submitted by Mr. Mbamba, in **East African Development Bank** (supra) the Court refrained from awarding costs to the respondent who had pressed for compensation for time and resources spent in preparation for hearing of an appeal that was eventually struck out by the Court for being incompetent, the said incompetence having been pointed out by the Court *suo motu*. The Court reasoned as follows:

"The more we deliberated over the arguments of Mr. Matunda, the more we became convinced that had he made a more focused research he would have discovered from the outset that the order appealed against was a non-appealable one. He ought to have started his 'involving research' by asking himself whether or not the High Court's order was appealable at all. That he did not do so, while he was expected to do so, he cannot be compensated for the misapplied resources."

The Court held further that awarding costs to the respondent, in the circumstances:

"would be tantamount to compensating a person for leaving no stone unturned in preparation for a contest against an opponent who, it was public knowledge, never qualified for the contest."

We totally subscribe to the above position, which we find fully applicable to the facts of this matter. We have thus come to the conclusion that an order

for costs will not be in the interests of justice in the circumstances of this matter. Accordingly, we order each party to bear its own costs.

Ordered accordingly.

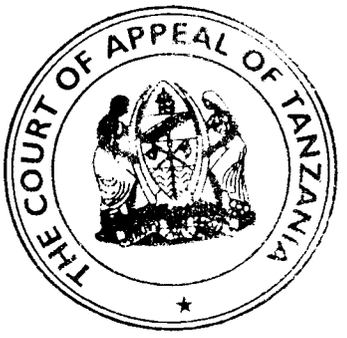
DATED at **DAR ES SALAAM** this 9th day of March, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

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



P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL