IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: MBAROUK, J.A., NDIKA, J.A., And MWAMBEGELE, J.A.)

CIVIL APPLICATION NO. 4 OF 2015

BARTAZAR MARK ASSEY ..... APPLICANT

VERSUS

LAZARO ZABLON ..... RESPONDENT

(Revision from the order of the High Court of Tanzania at Moshi)
(Sumari, J.)

dated the 3rd day of July, 2015
in
Land Review No. 2 of 2015

RULING OF THE COURT

5th & 11th July, 2018

MWAMBEGELE, J.A.:

By a Notice of Motion taken under the provisions of section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2002 (hereinafter referred to as the AJA), the applicant seeks the indulgence of the Court to exercise its powers of revision to revise the order of the High Court (Sumari, J.) given in Land Review No. 2 of 2015. The Notice of Motion is supported by an affidavit sworn by Bartazar Mark Assey; the applicant.

When the application was called on for hearing on 05.07.2018, the applicant appeared in person, unrepresented. The respondent appeared through Mr. Apollo John Maruma, learned Counsel.

At the very outset we prompted the parties to address us on the competence or otherwise of the application before us given the fact that some of the relevant documents were not incorporated in the record before us. To that question, the appellant conceded that, indeed, some of the documents which were relevant for the determination of the application were not attached with the application. The applicant had therefore no qualms if the application would be struck out.

Mr. Maruma, for the respondent, had the same view; that the application was deficient of some documents which were relevant for the determination of the application. He thus prayed that the application be struck out. Initially, the learned counsel prayed for costs but having been reminded that the incompetence of the matter was raised by the Court on its own motion and that the practice of the

Court has it that no order is given in such eventualities, he withdrew his prayer.

In order to appreciate the verdict we are going to reach and orders we are going to make, we find it apt to narrate, albeit briefly, the factual background to the present application as far as they can be gleaned in the documents before us, more especially, in the affidavit supporting the application. They go thus: the applicant's quest for his rights commenced when he lost in a land dispute between him and the respondent in Kilema Kusini Ward Tribunal in which the latter successfully sued the former vide Application No. 1 of 2005 over a parcel of land. The decision of the Ward Tribunal did not amuse the applicant. He unsuccessfully appealed to the District Land and Housing Tribunal of Kilimanjaro at Moshi (hereinafter referred to the District Land and Housing Tribunal) vide Land Appeal No. 4 of 2005.

Still dissatisfied, the applicant appealed to the High Court of Tanzania vide Land Appeal No. 3 of 2005. That appeal was dismissed on 29.11.2006 (Rugazia, J.) for want of prosecution after Mr. Maruma

who represented the respondent so prayed, it being alleged that the appellant; the applicant herein, was aware of the hearing date.

Undaunted, the applicant, vide Miscellaneous Land Application No. 1 of 2007, applied for restoration of Miscellaneous Land Appeal No. 3 of 2005 which was dismissed for want of appearance as alluded to above. The application for restoration was dismissed by the High Court (Rugazia, J.) on account that it was not timeously lodged.

Still undaunted, the applicant filed in the High Court Miscellaneous Land Application No. 5 of 2008 for enlargement of time within which to file an application for restoration of Miscellaneous Land Appeal No. 3 of 2005. That application was granted by Mugasha, J. (as she then was) on 07.09.2012.

In compliance with the foregoing order, the applicant filed Miscellaneous Land Cause No. 57 of 2012. That application was argued on 10.06.2015 and was dismissed on the same day by Sumari, J. on account that it was time barred.

Undeterred, the applicant filed in the same High Court Land Review No. 2 of 2015 seeking the indulgence of the High Court to review its decision in the foregoing paragraph; that is, the decision in Miscellaneous Land Cause No. 57 of 2012. The application for revision was summarily rejected by Sumari, J. on 03.07.2015 on the ground that it was an abuse of the Court process. It is this order that the applicant wants us to be pleased to revise.

Adverting to the deficiencies in the application, we haste the remark that the applicant must be a very unlucky person. The present application, like most of them in the High Court and the courts below, must be struck out. Much as we sympathize with the applicant, but this Court being a court of law and not one of sympathy, will follow the letter of the law to strike it out the instant application.

It is now fairly settled that in applications of this nature; that is, in applications for revision, copies of proceedings, judgment/ruling, and decree/order should mandatorily be attached so that the Court would reach a fair decision. There is a string of decisions which have settled this position. We will mention just a few of them here. In

Amos Fulgence Karungula v. Kagera Co-operative Union (1990) Ltd, Civil Application No. 2 of 2013 (unreported), confronted with an akin situation, we quoted an excerpt from our previous decision in **The Board of Trustees of the National Social Security Fund (NSSF) v. Leonard Mtepa**, Civil Application No. 140 of 2005 (unreported) which we think merits recitation here as it lays down the law in applications for revision like the present. In **NSSF** (supra), we observed:

> *"... This Court has made it plain, therefore, that if a party moves the Court under Section 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."* [Emphasis supplied].

In the instant case, it is without dispute and the applicant so conceded that the following documents are relevant for determination of the application: **one**, copies of proceedings, judgment/ruling and decree/order in Application No. 1 of 2005 before Kilema Kusini Ward Tribunal, **two**, copies of proceedings, judgment/ruling and decree/order before the District Land and Housing Tribunal of Kilimanjaro at Moshi in Land Appeal No. 4 of 2005, **three**, copies of proceedings, judgment/ruling and decree/order before the High Court of Tanzania in Land Appeal No. 3 of 2005, **four**, copies of proceedings, judgment/ruling and decree/order before High Court in Miscellaneous Land Application No. 1 of 2007 in which he applicant applied for restoration of Miscellaneous Land Appeal No. 3 of 2005, **five**, copies of proceedings, judgment/ruling and decree/order before the High Court in Miscellaneous Land Application No. 5 of 2008 in which he successfully applied for enlargement of time within which to file an application for restoration of Miscellaneous Land Appeal No. 3 of 2005, **six**, copies of proceedings, judgment/ruling and decree/order in the High Court Miscellaneous Land Cause No. 57 of 2012 and, finally, copies of proceedings, judgment/ruling and decree/order in

High Court Land Review No. 2 of 2015 on which the applicant seeks revision of this Court.

It is no gainsaying that in the instant application, a big chunk of documents referred to in the foregoing paragraph have been left out. Put differently, it is apparent that only the following documents have been appended with the present application: one, the ruling and drawn order of Miscellaneous Land Application No. 1 of 2007, two the drawn order in Miscellaneous Land Application No. 5 of 2008, proceedings and ruling in Miscellaneous Land Cause No. 57 of 2012 and the order sought to be revised, that is, the order in Land Review No. 2 of 2015. As already alluded to above, the rest of the documents, which are also very relevant for the determination of the instant application, have not been appended. In view of what was observed in **NSSF** (supra) and reiterated in **Karungula** (supra) and **Chrisostom H. Lugiko v. Ahmednoor Mohamed Ally**, Civil Application No. 5 of 2013 (our unreported decision cited in **NSSF**), this application is incompetent.

In the upshot, we strike out the incompetent application. As the point that has finalised the matter was raised by the Court on its own motion, we order that each party shall bear its own costs in this application.

Order accordingly.

DATED at **ARUSHA** this 9th day of July, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL