IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

(CORAM: LUANDA, J.A., LILA, J.A., And MKUYE, J.A.)

CIVIL APPLICATION NO. 461 OF 2017

MOHAMED RABII HONDE (as the administrator of the Estate of the late RABII ISMAIL HONDE (deceased) ..... APPLICANT
VERSUS
HAMIDA ISMAIL HONDE AND 11 OTHERS .....RESPONDENTS

(Arising from the Decision of the High Court of Tanzania atSongea.)

(Chikoyo, J.)

Dated the 25th day of May, 2017
in
Misc. Land Application No. 19 of 2016

RULING OF THE COURT

1st & 6th June, 2018

LILA, J.A.:

The applicant unsuccessfully sued the respondent before the District Land and Housing Tribunal for Ruvuma at Songea claiming ownership of a piece of Land the size of which is not disclosed in the documents contained in this record. That was in Land Application No. 8 of 2015. He appealed to the High Court in Land

Appeal No. 56 of 2015. In resisting the appeal the respondents raised a preliminary point of law that the said appeal was time barred. The High Court (Chikoyo, J.) upheld the objection and dismissed the appeal. Dissatisfied, the appellant wished to move the High Court to review its decision but he realized that he was late. He lodged an application for leave to file an application for review out of time. That was in Land Case Application No. 19 of 2016. Upon being satisfied that no good cause of delay was advanced by the applicant, the High Court (Chikoyo, J.) dismissed the application on 25/05/2017. Dissatisfied the applicant has come to the Court with an application seeking to move the Court to call and examine the records of the proceedings before the High Court in Misc. Land Application No. 19 of 2016 and subsequently issue orders and directions to re-establish within those proceedings, propriety of any finding, order or other decision made thereon and the correctness, consistency, rationality and credibility of the said findings, orders or other decisions made thereon as befits trial of civil suits or any other matter in the High Court.

The application is indicated to have been predicated under section 4 (3) of the Appellate jurisdiction Act, Cap 141 of the Laws of Tanzania R.E. 2002 (the AJA) and Rule 61(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is supported by an affidavit sworn by Mr. Edson Mbogoro, learned advocate. In resisting the application apart from the second respondent filing an affidavit in reply, the four respondents filed a preliminary point of law that the application was brought under the wrong provision of the law.

When the application was called on for hearing, the applicant appeared in person. He informed the Court that his advocate one Edson Mbogoro could not enter appearance because he was sick. No proof of sickness was availed to the Court. We accordingly decided to proceed with the hearing of the appeal.

On the part of the respondents, only the first, second, third and fourth respondents entered appearance and were unrepresented. There was no proof of service in respect of the remaining respondents.

However, having noted that the application is wanting for lack of the impugned order emanating from the ruling in Miscellaneous Land Application No. 19 of 2016 and the proceedings of the High Court in that respect, we *suo motu*, brought to the attention of the parties present such anomaly and asked them to address us on the propriety of the application before the Court. Nothing substantial came out from the parties as the issue was purely legal for which they are laypersons not learned in law.

We were prompted to take that cause on the understanding of the settled legal position that an incompetent application is similar to a non-existing application and cannot therefore be adjourned. (see **Village Chairman of Igembya Village and Four Others Vs Bundala Maganga**, Civil Application No. 5 of 2014 and **Edward Bachwa and Three others Vs The Attorney General**, Civil Application No. 128 of 2006 (Both unreported).

We are aware that the procedure for instituting applications of this nature is regulated by Rule 65 of the Rules and where it is initiated by a party, sub rules (4) and (5) of that Rule come into pray. They provide:

> *(4) Where the revision is initiated by a party the party seeking the revision shall lodge the application within sixty days (60) from the date of the decision sought to be revised*
>
> *(5) The notice of motion and affidavits shall be served on the respondent within fourteen days from the date of filing. The party filing the notice shall file proof of service with the Court.*

In order for the Court to effectively exercise its powers of revision under section 4(3) of the AJA which power is confined to correcting errors apparent on the record and determine whether such errors occasioned injustice to the applicant (see **Robert**

Marko Naibala and Another Vs Sabina Paulo Naibala, Arusha Civil Application No. 11 (b) of 2012), it is now settled practice of this Court that a party who initiates an application of this nature must attach copies of the impugned proceedings and order to be revised.(see **Benedict Mabalanganya Vs Romwald Sanga**, Civil Application No. 1 of 2002, **The Board of Trustees of the National Social Security Fund (NSSF) Vs Leonard Mtepa**, Civil Application No. 140 of 2005 and **Christom H. Lugiko Vs Ahmednoor Mohamed Ally**, Civil Application No. 5 of 2013 (All unreported).

In the case of **The Board of Trustees of The National Social Security Fund (NSSF) Vs Leonard Mtepa** (supra) the Court stated that:

> *"... 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 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 added)

In respect of the need to attach copy of the proceedings of the lower court in an application for revision, the above legal position was reiterated in the case of **Chrisostom H. Lugiko Vs Ahmednoor Mohamed Ally** (supra) where the Court stated that:

"... 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."

It is, indeed, clear that the cited decisions insisted that the applicant is duty bound to attach record of proceedings and order sought to be revised in an application for revision. They also made it clear that where the proceeding and the extracted order are missing the application becomes incompetent and liable to be struck out.

Now reverting to the instant application, it is a fact that the proceedings of the High Court and the extracted order (Drawn Order) in respect of Miscellaneous Land Case Application No. 19 of 2016 which are the subject of this application for revision are missing. The Court is, on that account, denied the opportunity to know the arguments of the parties and the resultant order of the High Court so that we can examine the propriety and correctness of the High Court decision. The attached High Court ruling alone is insufficient to enable the Court exercise its power of revision effectively.

All said, the application is incompetent for want of proceedings and order of the High Court. We accordingly strike it out and we order respondents in attendance to be paid costs.

DATED at **IRINGA** this 5th day of June, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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

P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL