

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**

**(CORAM: MZIRAY, J.A., MWANDAMBO, J.A. And KEREFU, J.A.)**

**CIVIL APPLICATION NO. 464/16 OF 2014**

**MANSOOR DAYA CHEMICALS LIMITED.....APPLICANT**

**VERSUS**

**NATIONAL BANK OF COMMERCE LTD .....RESPONDENT**

**(Application for Revision of the proceedings of the High Court of Tanzania  
(Commercial Division) at Dar es Salaam)**

**(Makaramba, J.)**

**dated 7<sup>th</sup> day of December, 2015**

**in**

**Commercial Appeal No. 3 of 2014**

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**RULING OF THE COURT**

24<sup>th</sup> March & 15<sup>th</sup> April, 2020

**MZIRAY, J.A.:**

Before the Court is an application filed by way of notice of motion made under section 4(3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (AJA) and Rule 65(1) (2) and (3) of the Tanzania Court of Appeal Rules, 2009 as amended, seeking for the following orders, namely: -

- "1. That this Honourable Court may be pleased to call for and examine the record and proceedings of the High Court of Tanzania at Dar es salaam (Commercial Division) in Commercial Appeal No. 3 of 2014 for the purpose of satisfying itself as to the correctness, legality and propriety of the said proceedings.*
- 2. That this Honourable Court be pleased to find out that the entire proceedings were conducted by a court lacking jurisdiction to hear the appeal which did not arise from a commercial dispute."*

The notice of motion is supported by the affidavit deposed by one Sakerhanoo M. Daya, the applicant's advocate.

On being served with the notice of motion, the respondent through the services of Mr. Gaspar Nyika from IMMMA Advocates vehemently resisted the motion and in addition raised a preliminary point of objection contending that;

*"The application for revision is not maintainable in law for being preferred as an alternative to appeal."*

At the hearing of the application, Mr. Ashiru Lugwisa assisted by Mr. Dimesh Mawji, learned advocates represented the applicant; whereas Mr. Denis Maringo, learned advocate appeared for the respondent Bank.

We think that before moving any step forward, a brief background of the matter is necessary. The applicant was operating an account with the respondent Bank. She entrusted one of her accountants to operate the account. Acting dishonestly, the said accountant fraudulently forged some cheques and managed to withdraw on different occasions cash amounting to TZS. 80,380,000/= in the Bank account of the applicant. The theft was reported to police. As a result the said accountant in the name of Venance Lumumba was prosecuted and convicted in the District Court of Temeke in Criminal Case No. 669 of 2009. There was an order made by that court which directed the respondent to pay the applicant the money stolen. The order was not complied with. As a result, the applicant successfully filed Civil Case No. 64 of 2013 in the Resident Magistrate's Court of Dar es Salaam at Kisutu claiming TZS. 80,380,000/= as loss suffered due to the respondent's negligence. The respondent was aggrieved by the decision. She successfully filed

Commercial Appeal No. 3 of 2014 in the High Court of Tanzania at Dar es Salaam (Commercial Division) which reversed the decision of the trial court.

Being dissatisfied, the applicant lodged a notice of appeal in this Court on 21/12/2015. Few days later, on 28/12/2015 she lodged another application for leave to appeal to this Court. On 26/2/2016 she lodged a notice of withdrawal of the notice of appeal which was granted by the Court on 3/3/2016. She did not end there; on 31/4/2016 she filed an application for extension of time to file revision which was granted by the Court on 13/9/2016. The only pending application was for leave to appeal which unfortunately was dismissed by the Court on 18/5/2016. Having bounced in almost all these applications, he opted to file this revision.

As it is the practice, we started with the hearing of the preliminary objection. Submitting in support of the preliminary point of objection, Mr. Maringo submitted briefly that revisional powers of the Court can only be invoked where there is no right of appeal. He placed reliance on the decisions of this Court in **Hallais Pro-Chemie v. Wella A.G.** (1996) TLR

269, **Moses J. Mwakibete v. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134, **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161 and **Felix Lendita v. Michael Long'idu**, Civil Application No. 312/17 of 2017 (unreported).

The learned advocate went on to submit that, in the present case, the applicant had a right of appeal because what she complained of was on the issue of jurisdiction to the effect that the High Court (Commercial Division) had no jurisdiction to entertain an appeal from the Resident Magistrate's Court of Kisumu in a suit based on the tort of negligence. On that basis, he urged the Court to sustain the preliminary objection raised.

On his part, Mr. Dimesh Manji, learned advocate responded by submitting that, the objection has no merit and that the same should be overruled. He pointed out that since the High Court (Commercial Division) had no jurisdiction to entertain a tortious issue arising from Resident Magistrates' Court, then, the most appropriate way was to file revisional proceedings. On the basis of the above, the learned advocate for the

applicant submitted that the preliminary objection raised was without merit and urged us to dismiss it with costs.

We have duly considered the submissions made by the parties both in support and against the objection. All the same, under the provisions of section 4 (3) of the AJA, proceedings for revision may be initiated either by any interested party moving the Court to exercise revisional jurisdiction or by the Court *suo motu*. In exercising the revisional jurisdiction, the Court has established circumstances under which it can exercise such jurisdiction. It has insisted that revisional jurisdiction cannot be invoked as an alternative to the appellate jurisdiction except under exceptional circumstances like in situation where the appellate process has been blocked by judicial process. This is evident from the decisions of the Court in a number of cases. For instance, in **Hallaïs Pro-Chemie v. Wella A.G.** (1996) TLR 269 the Court *inter alia* stated:

"(i) .....

(ii) *Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the*

*revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court."*

A similar view was expressed in cases of **Moses J. Mwakibete v. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134 and **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161.

Relying on the above authorities, we find that it is a settled principle of law that if there is a right of appeal then that right has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court.

In his submission Mr. Maringo is of strong view that revision is not maintainable in law for being preferred as an alternative to an appeal. He submitted that revision is only filed if the right of appeal has been blocked by judicial process, which according to him is not the case here. He maintained that the applicant had a right of appeal but she never utilised

it. He ended by stating that the revision filed is an abuse of the Court process.

On the other hand, Mr. Mawji submitted that the appeal process in this case was blocked after the application for leave to appeal had been dismissed by the High Court. He argued that the only way the applicant could have approached the doors of this Court was to file an application for revision. However, upon being grilled by the Court he changed his direction and readily conceded that the appeal process was not blocked after the dismissal of the application for leave. He further conceded that the option to file a revision was inappropriate.

In our view, when the application for leave to appeal was refused, the dismissal order did not block the appeal process to make the applicant resort to revision. We believe that still the applicant had chance to lodge an application of the nature in the Court as a second bite. It is our considered view that refusal to grant leave will not fall under the exceptional circumstances articulated in the case of *Hallais-Pro-Chemie* (supra).



That said and for the foregoing reason, we uphold the preliminary objection raised and find the application to be misconceived. In the event, we strike out this application for revision with costs.


**DATED** at **DAR ES SALAAM** this 9<sup>th</sup> day of April, 2020.

R. E. S. MZIRAY  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE APPEAL**

The Ruling delivered this 15<sup>th</sup> day of April, 2020 in the presence of Mr. Dimeshi Mauji, counsel for the Applicant and in the absence of the respondent despite being duly served, is hereby certified as a true and correct copy of the original.

  
E. G. MRANGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**