

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

(CORAM: MUGASHA, J.A., WAMBALI, J.A., and KEREFU, J.A.)

CIVIL APPLICATION NO. 79B/20 OF 2018

INDEPENDENT TELEVISION LIMITED.....APPLICANT

VERSUS

TANZANIA COMMUNICATION REGULATORY AUTHORITY.....RESPONDENT

**(Application for Revision from the Judgement and Decree of the Fair
Competition Tribunal of Tanzania at Dar es Salaam)**

**(Sahel, J. (as she then was) Chairperson, Mwenegoha and Mlyambina
(as he then was), Members)**

dated the 11th day of January, 2018

in

Appeal No. 7 of 2016

RULING OF THE COURT

25th March, & 14th April, 2021

KEREFU, J.A.:

In this application, the applicant seeks the indulgence of the Court to exercise its power to revise the decision of the Fair Competition Tribunal (the Tribunal) dated 11th January, 2018 in Appeal No. 7 of 2016. The notice of motion is made under section 4 (3) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2002] (the AJA) and Rules 46 (1), 48 (1), (2) and 65 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by an affidavit duly sworn by Michael Joachim Tumaini Ngalo,

learned counsel for the applicant. The grounds for the intended revision, as indicated in the notice of motion are as follows: -

- (a) That, in terms of the provisions of section 84 (1) of the Fair Competition Act, Cap. 285 R.E. 2002, the decisions of the Tribunal are final and hence non-appealable;*
- (b) In view of ground (a) above, the applicant's right of appeal with or without leave against the decision of the Tribunal is blocked by the above said law i.e the Fair Competition Act, Cap. 285 R.E. 2002;*
- (c) The proceedings of the respondent's broadcasting service (Content) Committee from which the decision of the Tribunal subject of the application arose, are fraught with material procedural irregularities and illegalities with regards to observance of, among others, principles of natural justice and fair trial by quasi-judicial bodies such as the respondent's said Contents Committee;*
- (d) The Tribunal failed or omitted to determine each specific ground of appeal raised by the applicant in its memorandum of appeal with the result that no definite decision(s) was/were made on those grounds; and*

- (e) *The Tribunal erred in failing to find and hold that the irregularities and illegalities complained of vitiated the proceedings of the Committee and erred further by failing or declining to declare those and the decision emanating therefrom a nullity.*

On the other hand, the respondent has filed an affidavit in reply opposing the application.

In order to appreciate the context in which this application has arisen, we find it apposite to briefly provide the material facts of the matter as obtained from the record of the application. In June, 2016 the applicant broadcasted two programs through its television commonly referred to as ITV. The first broadcast was made on 15th June, 2016 in the morning programme famously known as 'kumekucha' which was basically an interview between the applicant's journalist one Godfrey Monyo and Hon. Peter Msigwa, Member of Parliament (MP). It was alleged that in the course of the said interview, Hon. Peter Msigwa uttered defamatory words against Hon. Dr. Tulia Ackson, the Deputy Speaker of the Tanzania National Assembly. It was further alleged that in the course of broadcasting the said programs, the applicant had violated Regulations 5

(f), (g) and 6 (2), (b) and (3) of the Broadcasting Services (Content), Regulations, 2005 (the Regulations).

The second broadcast was made on 23rd June, 2016 during the news bulletin at around 07:00 to 08:00 hours concerning the sixteen years old girl (the victim) who was raped and impregnated by her uncle. It was alleged that in that bulletin, the identity of the victim was disclosed by stating her name and the name of the school she was attending. The applicant was thus condemned to have violated the provisions of Regulation 9 (2) and (3) of the Regulations.

It was further stated that, on 28th June, 2016 the applicant was served with the notice concerning the first allegation, but there was no notice on the second allegation. However, the two complaints were submitted before the Contents Committee (the Committee) where the applicant was required to reply. In her defence, in respect of the first complaint, the applicant contended that the defamatory words were uttered by Hon. Msigwa in his personal capacity and Mr. Monyo did not probe him further on those defamatory words. On the second complaint, the applicant contended that the parents of the victim were consulted and

consented that the names of their child and the school be revealed for purposes of tracing the rapist.

Upon hearing parties on the two complaints, the Committee found that the applicant had violated Regulations 5 (f), (g), 6 (2), (b), (3), 9 (2) and (3) of the Regulations. Accordingly, the Committee warned and ordered the applicant to pay fine at the tune of TZS 5,000,000.00 on each allegation within thirty (30) days from the date of the decision.

Aggrieved, the applicant unsuccessfully appealed to the Tribunal vide Tribunal Appeal No. 7 of 2016 where the decision of the Committee was upheld. Still aggrieved, but also having noted that under section 84 (1) of the Fair Competition Act, [Cap. 285 R.E. 2019] (the Act) the decision of the Tribunal is final and non-appealable, the applicant decided to lodge the current application to challenge the decision of the Tribunal by way of revision.

The application was confronted with a notice of preliminary objection raised by the respondent on one point of law to the effect that, this Court has no jurisdiction to revise the record of proceedings of the Tribunal and its decision.

At the hearing, the applicant was represented by Mr. Michael Joachim Tumaini Ngalo, learned advocate whereas the respondent was represented by Mr. Deodatus Nyoni, learned Principal State Attorney assisted by Ms. Joyce Yonazi, learned State Attorney and Mr. Adronicus K. Byamungu, learned advocate.

As the practice of the Court demands, the preliminary objection has to be disposed first before determination of the application on merit. Having that in mind, we invited the counsel for the parties to address us on the preliminary objection raised by the respondent.

Mr. Nyoni argued the point of preliminary objection by stating that the Court derives its revisional powers from two sources; first, Article 117 (1) of the Constitution of the United Republic of Tanzania, 1977 [Cap. 2 R.E. 2019] (the Constitution) and second, section 4 (2) and (3) of the AJA. He then argued that in terms of those provisions, the Court has powers to call and examine the proceedings of the High Court. He contended that any quasi-judicial body or Tribunal which is not part of the High Court and not in the judicial hierarchy cannot be termed as a High Court.

Mr. Nyoni submitted further that since section 84 (1) of the Act clearly provides for finality of the decision of the Tribunal, the Court has no jurisdiction to entertain this application. To bolster his proposition, he referred us to the decision of the Court in **P. 9219 Abdon Edward Rwegasira v. The Judge Advocate General**, Criminal Application No. 5 of 2011 (unreported). He then argued that, if the applicant is still intending to challenge the decision of the Tribunal may wish to proceed by way of judicial review but not through revision in this Court. Based on his submissions, Mr. Nyoni urged us to sustain the preliminary objection and dismiss the application with costs.

In reply, Mr. Ngalo vehemently argued against the preliminary objection. He contended that section 4 (2) and (3) of the AJA cloth this Court with jurisdiction to revise proceedings of the High Court and Tribunals which are being presided over by the Judges. It was his argument that, since the proceedings of the Tribunal herein were presided over by the Judge of the High Court, then the same, by all purposes and intents, can be regarded as proceedings of the High Court.

Mr. Ngalo also cited Article 13 (6), (a) of the Constitution and argued that the applicant has a constitutional right to be heard. That, this Court,

being an apex Court of the land in the administration of justice, its revisional jurisdiction cannot be excluded or ousted by any other legislation. To that extent, Mr. Ngalo argued that this is an appropriate forum to revise the proceedings of the Tribunal. To fortify his contention, he cited the case of **Mabibo Beer Wines and Spirits LTD v. Lucas Mallya aka Baraka Stores and Commissioner for Customs Tanzania Revenue Authority**, Civil Application No. 160 of 2008 (unreported) whereby the Court entertained an application for Revision against the decision of the Tribunal. He thus distinguished the case of **P. 9219 Abdon Edward Rwegasira** (supra) by arguing that the facts in that case are not applicable to the current application. He argued further that, in that case the application was on the review of the Court's decision which is not the case herein. He also added that in that application the Court considered an ouster clause in respect of the Court Martial Appeal Court while in this matter, the ouster clause in question, is on the Tribunal proceedings. In that regard, Mr. Ngalo urged us to overrule the preliminary objection raised by the respondent.

In a brief rejoinder, Mr. Nyoni challenged the submission made by Mr. Ngalo and emphasized that the jurisdiction of the Court is provided for

by statutes but not by practice or wishes of the parties. He argued further that the fact that the applicant enjoys constitutional rights to be heard under Article 13 (6) (a) of the Constitution, that alone does not confer jurisdiction to this Court. Mr. Nyoni also argued that, although section 4 (3) of the AJA confers jurisdiction to the Court to call for and examine the record of any proceedings before the High Court for purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other proceedings of the High Court, the same does not include proceedings of all tribunals presided over by the Judges of the High Court. To expound his argument, Mr. Nyoni argued that other Tribunals like the one complained of herein is not covered under that phrase because section 84 (1) of the Act has, in clear terms, ousted the jurisdiction of the Court. As such, Mr. Nyoni insisted that the preliminary objection be sustained and the application be dismissed with costs.

Having carefully considered the arguments by the counsel for the parties for and against the preliminary objection, there is no doubt that the issue of controversy is the jurisdiction of the Court to entertain the application. Therefore, the issue for our consideration, is whether the preliminary objection raised by the respondent is meritorious.

It is common ground that jurisdiction of courts is a creature of statute and is conferred and prescribed by the law and not otherwise. The term "Jurisdiction" is defined in Halsbury's Laws of England, Vol. 10, paragraph 314 to mean: -

*"...the authority which a court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. **The limits of this authority are imposed by the statute; charter or commission under which the court is constituted, and may be extended or restrained by similiar means.** A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended or it may partake of both these characteristics."* [Emphasis added].

In the matter at hand, and as submitted by both counsel for the parties, the Court is established by Article 117 of the Constitution. For the sake of clarity, the provisions of Article 117 (1), (3) and (4) provides that: -

- (1) *"There shall be a Court of Appeal of the United Republic (to be referred to in short as "the Court of Appeal") which shall have the jurisdiction of the*

Court of Appeal as provided in this Constitution or any other law."

- (3) *"The functions of the Court of Appeal shall be to hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or of a magistrate with extended jurisdiction."*
- (4) *"A law enacted in accordance with the provisions of this Constitution by Parliament or the House of Representatives of Zanzibar may make provisions stipulating procedure for lodging appeals in the Court of Appeal the time and grounds for lodging the appeal and the manner in which such appeals shall be dealt with." [Emphasis added].*

In terms of the above provisions, there is no doubt that the jurisdiction of the Court is derived from the Constitution and/or any other written law. To that extent, it is limited. In addition, and in respect of the matter before us, the Court derives its revisional jurisdiction under section 4 (2) and (3) of the AJA. For the sake of clarity, the said provisions provide that: -

"4(2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act,

the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the Court from which the appeal is brought; and

4(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court”.

From the above provisions, it is clear that the revisional jurisdiction of this Court is to be exercised on the decisions of the High Court or of a magistrate with extended jurisdiction. The said jurisdiction can be exercised in two ways, **first**, under section 4 (2) of the AJA, which presupposes existence of an appeal before the Court as expounded in the case of **Christopherson Company Limited v. Tanga Cement Company Limited**, Civil Revision No. 3 of 2008 (unreported). **Second**, under section 4 (3) of the AJA as stated by the Court in **Mabalanya v. Sanga** [2005] 1 EA 236, where it was stated that: -

"Revision under section 4(3) of the Appellate Jurisdiction Act, Cap 141 (the AJA), entails examination by the Court of the records of any proceeding before the High Court for purposes of satisfying itself as to the correctness, legality or any other decision and the legality of any proceedings before the lower courts." [Emphasis added].

In terms of the above provision, the revisional jurisdiction of the Court is exercised over "any proceedings before the High Court". This is the provision relied upon by the applicant herein to lodge this application. We are mindful of the fact that in justifying that this Court has jurisdiction to entertain the application, Mr. Ngalo argued that since the Tribunal proceedings were presided over by the High Court Judge then the same is subject for revision by this Court. With respect, we are unable to agree with Mr. Ngalo on this point because, not all proceedings of tribunals presided over by a High Court Judge is subject for revision by this Court. As indicated above, the appellate or revisional jurisdiction of the Court is conferred by either the Constitution or other laws, therefore the Court will only assume its jurisdiction where the law has specifically stated so. This can be demonstrated under section 25 of the Tax Revenue Appeals Act,

[Cap. 408 R.E. 2019] where it explicitly states that any person who is aggrieved by the decision and decree of the Tribunal may prefer an appeal to the Court on matters involving questions of law.

On the other hand, where the jurisdiction of the Court is ousted, then the Court cannot exercise its jurisdiction on such matters. A good example on this aspect can be drawn from section 20 (1) of the Loans and Advances Realization Trust Act, 1991 (the LART Act) which initially ousted the jurisdiction of this Court on matters that emanated from the LART Tribunal by indicating in that section that the decision of the LART Tribunal is final. For clarity, we find it apposite to reproduce the said section herein below. Section 20 of the LART, in 1991 provided that: -

- "20 (1) A judgment or order of the Tribunal on any matter before it shall, subject to subsection (2) be final;*
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court;*
- (3) It shall not be lawful for any court to entertain any action or proceedings of any nature for the purposes of making any judgment, finding, ruling, order or proceedings of the Tribunal and for the avoidance of doubt, it shall not be lawful for any court to entertain*

any application for an order or writ in the nature of habeas corpus, certiorari, mandamus, prohibition, quo warrant, infraction or declaration in respect of a judgment, order finding, ruling or proceedings of the Tribunal.

However, in 1994, section 20 of the LART was amended by Written Laws (Miscellaneous Amendments) Act No. 6 of 1994. The said section was amended - by deleting subsection (1) and substituting for it the following –

- (i) A judgment or order of the Tribunal in any matter before it shall be final;*
- (ii) By replacing subsection (2)*
- (iii) By renumbering subsection (3) as subsection (2).*

Furthermore, in 1995 section 20 (1) of the LART was again amended by Written Laws (Miscellaneous Amendments) Act No. 5 of 1995 to specifically provides for the jurisdiction of this Court to entertain matters from the LART Tribunal. The amended section reads thus: -

*"20 (1) A judgment or order of the Tribunal on any matter before it **shall not be final and shall be challenged in the Court of Appeal;** and*

(2) It shall be lawful for the Court of Appeal to entertain any action or proceedings of any nature for the purpose of questioning any judgment, finding, ruling, order or

proceedings of the Tribunal; and for the avoidance of doubt, it shall be lawful for the Court of Appeal to entertain any application for an order or writ in the nature of habeas corpus, certiorari, mandamus, prohibition, quo warrant, injunction or declaration in respect of a judgment, order, finding, ruling or proceedings of the Tribunal.”
[Emphasis added].

It is in this regard that, on account of the said amendment, the Court was vested with the jurisdiction to entertain appeals and applications for revision from the LART Tribunal (See **Lalago Cotton Ginnery and Oil Mills Company Limited v. Loans and Advances Realization Trust (LART)** [2004] TLR 416).

With respect, we find that the submission of Mr. Ngalo that this Court has jurisdiction to revise the proceedings and decision of the Tribunal by relying on our previous decision in **Mabibo Beer Wines and Spirits LTD** (supra) to have no any justification. We have travelled through the decision of this Court in that case and there is no indication that the issue of jurisdiction of this Court on matters emanating from the Tribunal was raised. So, in that case, this Court did not have the opportunity to consider

and decide whether or not it has such jurisdiction to entertain an appeal or application for revision from the Tribunal. Therefore, this Court is now going to determine that issue as it was done in **Tambueni Abdallah & 89 Others v. National Social Security Fund**, Civil Appeal No. 33 of 2000.

We are mindful of the fact that in challenging this application, Mr. Nyoni cited section 84 (1) of the Act and argued that, the Court has no jurisdiction to revise proceedings of the Tribunal. Incidentally, even the applicant in his first intended ground of revision reproduced above, he acknowledges that fact by stating that, under section 84 (1) of the Act, the decision of the Tribunal is final. He, however contends that after being aware that the appeal process has been blocked, he decided to lodge the current application. In that regard, we find it apposite to reproduce the provisions of section 84 (1) of the Act herein below: -

"A judgment or order of the Tribunal on any matter before it shall, subject to sub-section (2), be final."

From our reading and construction of the above section, it is plainly clear to us that it meant to explicitly exclude the jurisdiction of the Court over the proceedings and decision of the Tribunal both in appeal and revision. In our considered view, it was the intention of the legislature in its

wisdom to make such proceedings and decision of the Tribunal final and conclusive. If the legislature intended to have those proceedings being subjected to an appeal or revision to this Court, it would have stated so in the law as it was done in the LART Act through the amendment. This stance was emphasized in the case of **P. 9219 Abdon Edward Rwegasira** (supra) cited to us by Mr. Nyoni where the Court considered section C. 153 of the Code of Service Discipline which also ousted the jurisdiction of the Court by providing that decision of the Court Martial Appeal Court is final. The provision of section C. 153 of the Code provide as follows: -

*"Any determination by the Court Martial Appeal Court of any appeal or other matter which it has power to determine under the provisions of this part **shall be final and no appeal shall lie from the Court Martial Appeal Court to any other Court.**" [Emphasis added].*

Notably, the Court considered the said provision and observed that it has no jurisdiction to revise the decision of the Court Marshal Appeal Court. It is instructive to note that, in dealing with an appeal brought before it, the Court Martial Appeal Court, in terms of Section C. 146 (2) of the Code, the proceedings must be presided over by three (3) Judges of the High

Court. Yet the law as currently set, is to the effect that the decision of that Court is final and thus not amenable for an appeal or revision before this Court. Specifically, section C. 146 (2) and (4) of the Code provides that: -

"C. 146 (2) The Judges of the High Court shall be the Judges of the Court Martial Appeal Court;

(4) The three Judges of the Court Martial Appeal Court constitute a quorum, and the decision on any appeal shall be determined by the vote of the majority of the Judges present, and in the event of an equality of votes, the appeal shall be dismissed."

Therefore, the fact that a Tribunal's proceedings is presided over by a Judge of the High Court is not a warrant for this Court to assume jurisdiction and entertain an appeal or revision, as Mr. Ngalo, with respect, spiritedly seemed to suggest and urged us to adopt that stand. We wish to emphasize that, where jurisdiction is not provided for under Article 117 of the Constitution, it must be provided under any other law as clearly stated therein. Unfortunately, while other legislations establishing other Tribunals have clearly provided for the right of appeal or revision, in the current application that right is not provided for. This is clear under the provisions of section 84 (1) of the Act. Thus, as the decision of the Tribunal is final,

we are settled that the Court has no jurisdiction to entertain this application. In this regard, we are in agreement with the submission of Mr. Nyoni on this point. In the event, we do not, with respect, agree with Mr. Ngalo that the decision in **P. 9219 Abdon Edward Rwegasira** (supra) is distinguishable because it dealt with review. It is noted that at the end, the Court declared that it had no jurisdiction to revise the decision of the Court Martial Appeal Court. In similar vein, see also the cases of **Mr. Reginald Abraham Mengi and Mrs Mercy Anna Mengi v. The Loans and Advances Realization Trust (LART)**, Civil Appeal No. 45 of 2001 and **Tanzania Revenue Authority v. Tango Transport Company LTD**, Civil Appeal No. 84 of 2009 (both unreported).

We wish also to emphasize that, the fact that a particular legislation provides that the decision of a Tribunal is final, is not a warrant for the aggrieved party to resort to this Court for revision. For a party to approach this Court, he must ensure firstly, that the jurisdiction exists as per the provisions of the law before asserting that the criteria for revisions set by various decisions of this Court have been met. It is therefore our considered opinion that, in such circumstances, if the applicant still intends

to challenge the decision of the respective Tribunal may wish to resort to other remedies provided by the law.

In the event and for the foregoing reasons, we uphold the preliminary objection raised by the respondent to the effect that the Court has no jurisdiction to entertain this application. Accordingly, the application is hereby dismissed with costs.

DATED at DAR ES SALAAM this 12th day of April, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 14th day of April, 2021 in the presence of Mr. Michael Ngalo, learned counsel for the Applicant and Miss Joyce Yonazi, learned State Attorney for the Respondent, is hereby certified as a true copy of original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL