IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., KOROSSO, J.A., And MAKUNGU, J.A.)

CIVIL REVISION NO. 556/01 OF 2021

EDWARD MSAGO ..... APPLICANT

VERSUS

DRAGON SECURITY SERVICE LIMITED ..... RESPONDENT

(Application for Revision of the Ruling of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam)

(Shangwa, J.)

dated 28th day of April, 2009

in

Civil Revision No. 49 of 2008

.....

RULING OF THE COURT

29th March, & 6th April, 2022

MUGASHA, J.A.:

This application arises from the Ruling of the High Court of Tanzania dated on 28/4/2008 in Civil Revision No. 49 of 2008. In the said application, the respondent successfully sought the indulgence of the High Court to quash the warrant of attachment of the respondent's properties in Employment Cause. No. 62 of 2001 by the Court of Resident Magistrate at Kisutu. According to what we have gathered in the record before us, initially, before the High Court the Employment Cause No. 62 was a subject of Civil Appeal No. 126 of 2006. Having considered that, the

subordinate court was wrongly moved to fault the employer's compliance with the Minister's decision, Othman, J. as he then was, invoked revisional jurisdiction under section 44 (1) (b) of the Magistrates' Courts Act CAP 11 R.E 2002 and nullified the decision of the subordinate court. Consequently, the appellant was directed to enforce the Minister's decision as if it were a decree in accordance with the proper procedures. Subsequently, as earlier stated, the appellant lodged an execution application in which he was issued with a warrant of attachment of the properties of the respondent. This as earlier stated, became a subject of the revision application before Shangwa,J., whose decision is now impugned.

Undaunted the respondent successfully sought before the High Court an application for revision which is a subject of this application by way of notice of motion predicated under section 4 (3) of the Appellate Jurisdiction Act (Cap 141 R.E. 2002) (the AJA and Rule 65 of the Tanzania Court of Appeal Rules, 2009. The applicant is moving the Court to call and examine the proceedings and Ruling of the High Court in Civil Revision No. 49 of 2008, and revise the same for the purposes of annulling the same on the following grounds:

i. *Following the decision of the Minister for Labour in a Labour dispute between the Applicant and the Respondent a Labour Report was lodged in the Kisutu Resident Magistrate Court for execution to the effect that the Applicant be paid his termination benefits which included repatriation and subsistence expenses.*

ii. *The said Labour Report was registered as Employment Cause No. 62 of 2001 and was heard and determined as a fresh Labour Dispute whereby it was decided that the Applicant was entitled neither to repatriation expanses nor subsistence allowance. The Applicant being aggrieved by the said decision immediately appealed to the High Court of Tanzania Vide-Civil Appeal No. 126 of 2006.*

iii. *The said Appeal was heard by Honourable Justice Othman (as he then was) who found that the entire proceedings and the decision of the lower Court were irregular. The respective judgment and decree were accordingly nullified and the Applicant was ordered to enforce the Minister's decision as if it were a decree.*

iv. *Following the said High Court decision, the Applicant dully lodged an Application for execution of the decision of the Minister for Labour whereby an order for execution was issued on 5th September, 2008. However, the Respondent immediately filed an Application for Revision in the High Court (Civil Revision No. 49/2008.*

v. *The said Civil Revision was placed before Honourable Justice Shangwa, who upon hearing granted the Application and quashed the execution order of the Lower Court. The decision of Honourable Justice Shangwa was largely based on the previous invalid proceedings and decision of the lower Court which were nullified by the decision of Honourable Justice Othman in Civil Appeal No. 126/2006 as stated hereinabove.*

The application is accompanied by the affidavit of Edward Msago, the applicant. On the part of the respondent, no affidavit in reply was filed to oppose the application. When the application was called for hearing the applicant appeared in person unrepresented whereas on the part of the respondent, in appearance was Mr. Raymond Machicho Mmuni, the administrative officer of the respondent.

Before the commencement of the hearing, having enlightened the parties on the requirements of the law that the remedy available to the applicant is an appeal, we wanted to satisfy ourselves on the propriety or otherwise of this Revision application. On taking the floor, the applicant contended to have filed the application after withdrawing the notice of appeal. Upon being probed by the Court on remedy of an appeal instead of a revision, he persistently maintained that, the present application for revision is the proper course. On the other hand, Mr. Mmuni who was a

layperson had nothing useful to add apart from imploring on the Court to ensure that the law takes its course.

Having considered the record before us and the submission of the parties, it is glaring that the applicant was a party in a Ruling of the High Court which in terms of section 5 (1) (a) of the AJA, is not appealable as of right having not arisen from the decree made by the High Court in a suit under the Civil Procedure Code [Cap 33 R.E.2002] in the exercise of its original jurisdiction. Since the impugned Ruling in this case was in relation to execution of the decree, it is not appealable as of right. However, it is appealable with leave of the High Court or of the Court under clause (c) of section 5 (1) of the AJA which stipulates as follows:

> *"In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeai shall lie to the Court of Appeal: -*
>
> > *With leave of the High Court or the Court of Appeal, against every other decree, order, judgment, decisions or finding of the High Court."*

In the light of the stated position of the law, the applicant had a right of appeal and as such, he should not have invoked the revisional jurisdiction of the Court. This is regardless of the errors complained of considering that invoking the Court's revisional jurisdiction is not

dependent on the nature of the grounds upon which a party seeks to impugn a decision or order of the High Court. At this juncture, we wish to restate that, the power of revision of the Court may be invoked only where there is no right of appeal or where the right exists it has been blocked by a judicial process. In addition, a party may invoke the revisional jurisdiction of the Court where, sufficient reason amounting to exceptional circumstance exists where a person was not a party to the relevant proceedings before the High Court. See - **TRANSPORT EQUIPMENT LTD VS. DEVRAN P. VALAMBHA** (1995) TLR 161, **HALAIS PRO-CHEMIE VS WELLA A.G** [1996] TLR 269] and **MOSES MWAKIBETE VS. THE EDITOR, UHURU AND TWO OTHERS** (1995) TLR 134. In the latter case the Court held:

> *"(i) The revisional powers conferred by s. 2(3) of the Appellate Jurisdiction Act 1979 are not meant to be used as an alternative to the appellate jurisdiction of the Court of Appeal; accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under s 2(3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised that right;*
>
> *(ii) The Court of Appeal can be moved to use its revisional jurisdiction under s. 2(3) of the*

Appellate Jurisdiction Act 1979 only where there is no right of appeal, or where the right of appeal is there but has been blocked by judicial process, and lastly, where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal;

(iii) The applicant in this case had a right to appeal and has not given any good and sufficient reasons why he did not appeal; therefore, he cannot move the Court of Appeal to exercise its revisional jurisdiction".

Besides, the Court following the cited position of the law in the case of **AUGUSTINO LYATONGA MREMA VS REPUBLIC AND MASUMBUKO LAMWAI** [1991] T.L.R. 273, emphasized as hereunder:

"To invoke the Court of Appeal's power of revision there should be no right of appeal in the matter; the purpose of this condition is to prevent the power of revision being used as an alternative to appeal."

In view of the clear position of the law and the grounds upon which the revision is sought, it is vivid that, the remedy of revision has been wrongly sought in guise of an appeal which cannot be condoned by the Court. Thus, on account of what we have endeavoured to discuss, the

present revision application is rendered incompetent and is hereby struck out. If the applicant so wishes to pursue an appeal, against the decision of Shangwa, J. may do so in accordance with the dictates of the law.

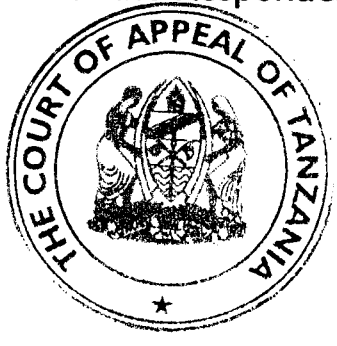
DATED at **DAR ES SALAAM** this 1st day of April, 2022.

S. E. A. MUGASHA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

This Ruling delivered on 6th day of April, 2022 in the presence of Applicant in person and Mr. Raymond Machicho Mmuni, administrative officer of the Respondent, is hereby certified as a true copy of original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL