

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: NDIKA, J.A., SEHEL, J.A. And KHAMIS, J.A)**  
**CIVIL APPLICATION NO. 339/01 OF 2021**

**JITESH JAYANTILAL LADWA.....APPLICANT**

**VERSUS**

**BHAVESH CHANDULAL LADWA.....1<sup>ST</sup> RESPONDENT**  
**AATISH DHIRAJLAL LADWA.....2<sup>ND</sup> RESPONDENT**  
**NILESH JAYANTILAL LADWA.....3<sup>RD</sup> RESPONDENT**  
**MOTORRAMA (T) LIMITED.....4<sup>TH</sup> RESPONDENT**

(Revision from the Proceedings, Ruling, and Decision of the High Court of  
Tanzania (Commercial Division) at Dar es Salaam)

**(Nangela, J)**

dated the 16<sup>th</sup> day of July 2021  
in

**Misc. Commercial Application No. 35 of 2020**

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**RULING OF THE COURT**

18<sup>th</sup> July & 10<sup>th</sup> August, 2023

**KHAMIS, J.A.:**

Bhavesh Chandulal Ladwa, Aatish Dhirajlal Ladwa, Nilesh Jayantilal Ladwa and Motorrama (T) Limited through Miscellaneous Commercial Cause No. 35 of 2020, petitioned the High Court of Tanzania (Commercial Division) for a declaration that the conduct and

operations of Jitesh Jayantilal Ladwa were and are unlawful and prejudicial to the interests of Motorrama (T) Limited, a company in which they are shareholders and directors, for an order restraining Nilesh Jayantilal Ladwa from permanently taking part in the management of the affairs of the company and an order compelling him to vacate the office and business premises of the company.

Alongside an Answer to the Petition, Jitesh Jayantilal Ladwa filed Miscellaneous Commercial Application No. 108 of 2020 against Aatish Dhirajlal Ladwa and Nilesh Jayantilal Ladwa alleged to be foreign nationals, for an order to deposit the sum of United States Dollars One Hundred Thousand (US \$ 100,000) each as security for costs incurred and likely to be incurred in Miscellaneous Commercial Cause No. 35 of 2020 (the main case).

On 7<sup>th</sup> day of May 2021, the trial Judge (Nangela, J) dismissed Miscellaneous Commercial Application No. 108 of 2020 with costs for want of prosecution and subsequently, on 16<sup>th</sup> July 2021, handed down a ruling in Commercial Cause No. 35 of 2020 declaring the conduct and operations of Jitesh Jayantilal Ladwa as prejudicial to the interests of the company and other shareholders and directors.

The trial Court ordered Jitesh Jayantilal Ladwa to vacate the company's office and business premises and directed other directors to call for an Annual General Meeting of the company in accordance with the requirements of the law.

Consequently, Jitesh Chandulal Ladwa filed this application for revision moving this Court to call for, examine and revise the record of the High Court (Commercial Division) at Dar es Salaam in Miscellaneous Commercial Cause No. 35 of 2020 and in particular the proceedings, ruling and order given by the trial Judge on 16<sup>th</sup> July 2021 for purposes of satisfying itself as to the correctness, regularity, legality or propriety of the trial Court's findings in order to issue appropriate orders and directions.

The application was made by way of notice of motion predicated under Rule 65(1), (2), (3) and (4) of the Tanzania Court of Appeal Rules, 2009 and supported by an affidavit affirmed by Jitesh Jayantilal Ladwa.

Upon being served with the application, the respondents filed a notice of preliminary objection containing two points of law to which at the time of hearing, Messrs Patrick Kaheshi and Robert Rutaihwa,

learned advocates who appeared for the respondents, abandoned one and retained the first, to wit:

*"1. The application before the Court is incompetent for seeking the Court to exercise revisional jurisdiction in alternative to appellate jurisdiction."*

When the matter was placed before us for hearing, the applicant was represented by Messrs Jeremia Mtobesya and Sisty Bernard, learned advocates. As hinted earlier, Messrs Patrick Kaheshi and Robert Rutaihwa, learned advocates, were in attendance with full instructions from the respondents to proceed with hearing of the objection.

In support of the preliminary objection, Mr. Rutaihwa submitted that the application was incompetent because the impugned decision in Commercial Cause No. 35 of 2020 is appealable pursuant to section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141, R.E 2019 and contended that there are no exceptional circumstances to warrant this Court to invoke its revisional jurisdiction.

He asserted that the affidavit in support of the application omitted to give reasons for the applicant's choice of revision instead of appeal

and wrongly omitted to enlist or identify grounds for exceptional circumstances expected in law.

The learned counsel accused the applicant of conducting window shopping allegedly because prior to the filing of this application, he filed a notice of appeal challenging the impugned decision.

Mr. Rutaihwa relied on unreported decisions of this Court in **HARITH RASHID SHOMVI v AZIZA JUMA ZOMBOKO**, Civil Application No. 496/01 of 2020 and **SIMON HAMIS SANGA v STEPHEN MAFIMBO MADWARY & UDUGU HAMIDU UMGANI**, Civil Application No. 193/01 of 2021 in asserting that not every non – appealable order is revisable.

Further, learned advocate for the respondent contended that the application was wrongly initiated on the ground that revisional powers of the Court are not in alternative to its appellate jurisdiction.

On the basis of these reasons, the learned counsel urged us to find that the application is incompetent and proceed to strike it out with costs.

In reply thereof, Mr. Jeremia Mtobesya pointed out that based on several decisions of this Court, Miscellaneous Commercial Application

No. 108 of 2020 is considered as interlocutory to Commercial Cause No. 35 of 2020 as the former arose out of the latter.

He contended that in view of that legal stance, the present application should be viewed as challenging the proceedings, rulings, and or orders made by the trial Court in the two matters, namely: Commercial Cause No. 35 of 2020 and Commercial Application No. 108 of 2020.

The learned advocate submitted that the two matters engendered peculiar circumstances worth to be considered by this Court as warranting exercise of its revisional jurisdiction. To that end, he drew our attention to grounds marked (f), (g), (h), (i) and (j) in the notice of motion which he said, make it fit for this Court to invoke its appellate jurisdiction.

Further, Mr. Mtobesya asserted that the trial Court wrongfully disregarded the applicant's report to the effect that he lodged a notice of appeal to this Court and strongly argued that the matter fell under the second limb to Section 4(3) of the Appellate Jurisdiction Act.

As regards contents of the supporting affidavit, the applicant's counsel differed with Mr. Rutaiwa and submitted that the affidavit

particularized issues of concern in the impugned proceedings including the applicant's attempts to highlight important areas of law and procedure that were unjustifiably disregarded by the trial Judge.

The learned counsel capped on submitting that this is a fit case for revision and prayed for grant of the orders sought.

By way of rejoinder, Mr. Rutaihua reiterated his earlier submissions and averred that the so called exceptional circumstances of the case were not stated in the affidavit in support of the notice of motion.

He argued that it was wrong to rely on the grounds stated in the notice of motion instead of highlighting them in the supporting affidavit.

Further, the respondent's counsel alerted this Court to take note of the fact that the notice of appeal lodged by the applicant in respect of Miscellaneous Commercial Application No. 108 of 2020 still exists rendering these proceedings to be a misuse of court machinery.

Additionally, the learned counsel argued that in absence of an order for withdrawal or striking out of the filed notice of appeal, this Court is not empowered to entertain these revisional proceedings.

On further address of the Court, the respondent's counsel urged this Court to disregard this application allegedly because the notice of motion was improperly drafted such that it became impossible to distinguish Commercial Cause No. 35 of 2020 from Miscellaneous Commercial Application No. 108 of 2020.

He submitted that there is no confusion whatsoever in the trial Court's proceedings and insisted that the matter fell short of the requirements stated in the case of **FAHARI BOTTLERS LTD & ANOTHER v REGISTRAR OF COMPANIES & ANOTHER**, Civil Revision No. 1 of 1999 (unreported).

Finally, Mr. Rutaiwa invited us to examine the grounds presented by the applicant in the notice of motion in faulting the trial Court's proceedings and hold, as he personally view, that the same are better suited for an appeal and not revision purposes.

We have carefully read the application and considered the counsel rival submissions which undisputedly, raises an issue on whether the application is incompetent for invoking revisional jurisdiction of this Court instead of appeal.



The powers of this Court on revision are provided for under Section 4(3) of the Appellate Jurisdiction Act which reads:

*"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."*

The established legal principle made in the case of **HALAIS PRO – CHEMIE v WELLA A. G [1996] TLR 269** is that a party to the proceedings in the High Court may invoke the revisional jurisdiction of this Court in matters which are not appealable with or without leave.

In **TRANSPORT EQUIPMENT LTD v DEVRAM VALAMBIA**, Civil Application No. 46 of 1994 (unreported), this Court at page 10 of the typed ruling, pointed out that:

*"The appellate jurisdiction and the revisional jurisdiction of this Court are, in most cases, mutually exclusive. If there is a right of appeal then that has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot*

*be resort to the revisional jurisdiction of this Court. The fact that a person through his own fault has forfeited that right cannot, in our view, be exceptional circumstance. If a party does not have an automatic right of appeal, then he can use the revisional jurisdiction after he has sought leave but has been refused...."*

In **AUGUSTINO LYATONGA MREMA v REPUBLIC & ANOTHER [1996] TLR 267**, this Court had this to say:

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

In the instant matter, the applicant's counsel admitted that the applicant has a right of appeal against the two matters: Commercial Cause No. 35 of 2020 and Miscellaneous Commercial Application No. 108 of 2020 in accordance to Section 5 of the Appellate Jurisdiction Act.

It was also depicted in paragraphs 17 and 18 of the affidavit in support of the notice of motion affirmed by Jitesh Jayantilal Ladwa, that prior to the filing of this application, the applicant had advanced with

necessary steps towards lodging of an appeal which includes the filing of a notice of appeal, thus:

*"17. That upon such dismissal, I immediately instructed my lawyer to file an appeal against such dismissal order mentioned in paragraph 17 (sic – 16) above. In preparation of the said appeal, a letter was written to the Deputy Registrar requesting to be supplied with certified copies of ruling, drawn order and proceedings in Misc. Commercial Application No. 108/2020. Copy of the said letter is attached herewith marked JJ – 11.*

*18. That sequel to paragraph 18 (sic – 17) above, on 2 June 2021, I filed a notice of appeal through my lawyers to challenge the dismissal order dated 7 May 2021. A copy of the said notice was well served on the respondent on 16<sup>th</sup> June 2021. Copy of a notice of appeal filed and served on the respondent is attached herewith and marked JJ – 12."*

Upon perusal of the record of revision, we noted that the impugned decision in Commercial Application No. 108 of 2020 was handed down on 7<sup>th</sup> May 2021. On 2<sup>nd</sup> June 2021, the applicant through his advocates, Elly Musyangi of Lawgical Attorneys, issued a notice of

appeal in terms of Rule 83 of the Court of Appeal Rules. The same was served on rival parties on 15<sup>th</sup> June 2021.

The record further shows that on 27<sup>th</sup> May 2021, Lawgical Attorneys wrote to the Deputy Registrar of the Commercial Court requesting for copies of the impugned order and proceedings for purposes of appeal. The letter was served on Patrick Toyi Kayeshi, advocate for the respondents, on 16<sup>th</sup> June 2021.

This application for revision was lodged by the applicant on 23 July 2021, about 51 days after the filing of a notice of appeal. The applicant asserted that there are exceptional circumstances which necessitated the filing of this application.

We examined the grounds of revision itemized as (g), (h), (i) and (j) which the learned counsel for the applicant, contended that, show the exceptional circumstances for an order of revision. For the benefit of doubt, we opt to reproduce the same, as hereunder:

*g) The Court erred in law and fact by refusing the prayer for stay of Misc. Commercial Cause No. 35 of 2020 on the ground that the notice of appeal filed on 2<sup>nd</sup> June 2021 was not in the court file*

*despite the fact that the same was well served on the respondent as required by the law.*

*h) That after refusing applicant's application for stay in paragraph (a) above, on 23 June 2021 court erred in law and fact by proceeding with the hearing of Commercial Cause No. 35 of 2020 without there being an affidavit to support and verify the petition as required by the law.*

*i) That the court erred in law and fact by granting relief which were not prayed and or asked for by the petitioners.*

*j) That the court erred in law and fact by granting the petitioner's prayers without there been any evidence and material to support the allegation."*

By way of summary, in the reproduced grounds, the applicant alleges that there was a notice of appeal on Commercial Application No. 108 of 2020 which was duly filed and served on the opposite parties but the trial Court said it was not reflected in its file, that the trial Judge refused to order stay of the main case pending determination of appeal against decision on the interlocutory application, that the trial Court heard the main case and disposed it to its finality in absence of an

affidavit to support and verify the petition and finally, that the trial Judge granted reliefs that the petitioner had not sought for.

In our view, all these grounds raised by the applicant are not in any way, unique or special such that cannot be attended in an appeal. As rightly asserted by the respondent's counsel, the matters pointed out above can serve better as grounds of appeal as they focus on the substance of the trial court's decisions and address matters of mixed facts and law.

We take note that the applicant has a right of appeal and has taken steps towards that approach. It was not indicated that the appeal process was halted or abandoned at any point in time. That means, the two remedies: appeal and revision, are jointly pursued.

In the circumstances, we are of the firm that the applicant's approach amounts to an abuse of the Court process as pointed out by this Court in **ISIDORE LEKA SHIRIMA & CATHERINE ROBERT BARONG v THE PUBLIC SERVICE SOCIAL SECURITY FUND (as successor of PSPF, PPF, LAPF and GEPF), THE CAPITAL MARKET AND SECURITIES AUTHORITY (CMSA), HON. ATTORNEY GENERAL & KINONI ADAM WAMUNZA *as Interim Manager***

**NATIONAL INVESTMENTS COMPANY LIMITED**, Civil Application No. 151 of 2016 (unreported) particularly at page 11 of the typed ruling, thus:

*"...it is our considered view that the application at hand cannot co-exist with the appeal as the Court is being approached on two fronts in respect of the same matter which amounts to an abuse of the court process..."*

The same conclusion was made by the Court in **ATTORNEY GENERAL v HAMMERS INCORPORATION CO. LTD**, Civil Application No. 270 of 2015 (unreported), thus:

*"We wish to add that the position against invoking the two jurisdictions simultaneously does not change even where, like in this case, the applicant is a stranger or an interested party who did not participate in the proceedings before the High Court. Besides, we think that in the circumstances like the one obtaining in the present application, to allow an applicant who was not a party in the previous proceedings to apply for revision where one of the parties has initiated an appellate process, is to bring confusion in the administration of justice. This is so because some of the matters raised in the grounds of*

*revision could be properly raised in an application for stay of execution or as grounds in the intended appeal by a party who has initiated the appeal process."*

For the reasons stated above, we are of the view that this is not a proper case for revision. In the circumstances therefore, the application for revision lodged by the applicant is incompetent and thus hereby struck out with costs.

It is so ordered.

**DATED at DAR ES SALAAM** this 9<sup>th</sup> day of August, 2023.


G. A. M NDIKA  
**JUSTICE OF APPEAL**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

A. S. KHAMIS  
**JUSTICE OF APPEAL**

The ruling delivered this 10<sup>th</sup> day of August, 2023 in the presence of Mr. Deogratius Cosmas Mahinyila, learned counsel for the Applicant and Mr. Patrick T. Kaheshi, learned counsel for the Respondents, is hereby certified as a true copy of the original.



  
R. W. CHAUNGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**