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IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 151 OF 2002

MOROGORO CERAMIC WARES LTD } APPLICANT
(Under Receivership) }

VERSUS

GEORGE CARLO & 17 OTHERS RESPONDENT

Date of last Order - 17/2/2006
Date of Judgment - 7/3/2006

R U L I N G

ORIYO, J.:

The applicant, using the services of MSK Law Partners (Advocates), filed an application for revision against a ruling of the District Court of Morogoro dated 9th September 2002. The impugned ruling had dismissed with costs, three points of preliminary objection raised by the applicant in Labour Civil Case No. 37/01 between the Respondents and the Applicant. The revision was brought under Section 79 of the Civil Procedure Code, 1966 and Section 44 (1) of the Magistrates Courts Act, 1984. The parties were allowed to argue the application in writing and it was duly done.

In their written submissions, the respondents raised a preliminary point of objection on the jurisdiction of this court to entertain the application. I must admit that it was unprocedural to raise the preliminary objection in the written submissions as was done by the respondents. But since the jurisdiction of this court is being challenged, I have to determine the objection first.

The applicant had opportunity to respond to the objection in its submissions in rejoinder. The applicant does not deny that the impugned ruling was merely an interlocutory decision of the district court over the dispute and that the substantive suit was still pending before the trial court. On the respondents' objection itself, the applicant submitted that the application is maintainable and this court has jurisdiction because the present revision was filed under Section 79 of the Civil Procedure Code and Section 44 (1) of the Magistrates Courts Act. The case of HENRY LYIMO vs ELIABU E. MATEE [1991] TLR 93 relied upon by the respondent was distinguished by the applicant, on the ground that the cited case was a revision brought under Section 79 (1) of the Civil Procedure Code only.

Act 25 of 2002, the Written Laws (Miscellaneous Amendments) (No. 3) amended Section 79 of the Civil Procedure Code as follows:-

- (i) by designating the old Section 79 as 79 (1);
- and

- (ii) by creating a new subsection (2) which provides as follows:-

“Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.”

Actually, Act 25 of 2002 effected amendments to the Appellate Jurisdiction Act, 1979; the Civil Procedure Code and the Magistrates Courts Act which disallowed appeals and applications for revision on preliminary and interlocutory decisions of the High Court to the Court of Appeal and those of the Resident Magistrate Court and the District Magistrates Court to the High Court. That being the import of the amendments effected; the distinction made by the applicant between applications for revision filed under Section 79 and those filed under Section 79 (1), seems to be unreliable and unfounded. Strictly speaking, the present application for revision under Section 79 of the Civil Procedure Code without stating whether it was brought under Section 79 (1) or 79 (2) can be successfully challenged in that the Court is not properly moved.

On the foregoing and for the reasons stated, I hold, that the impugned decision of the trial court is an interlocutory one. Pursuant to the provisions of Section 79 (2) of the Civil Procedure Code, it is not subject to revision. In the result the preliminary objection by the respondent is sustained. Accordingly the application for revision is struck out for being incompetent. The respondents to have their costs.

Let the record be remitted to the trial court to proceed with the main suit.

(K.K. ORIYO)

JUDGE

7/3/2006

Coram: Oriyo, J.
For the Applicant: Msuya E.A. Advocate
For the Respondent: George Carlo
C.C.: Emmy

Court: Ruling delivered in the presence of parties.

(K.K. ORIYO)

JUDGE

7/3/2006

686 Words.