

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 42 OF 2005

(Originating from Civil Case No. 31 of 2003 At Kinondoni District Court)

**1. THE MANAGING DIRECTOR
SHABAHA TRANSPORT/ULC (T) BRANCH} . . . APPLICANTS
2. PANKRAS ASSEY**

VERSUS

REVOCATUS THOMAS RESPONDENT

Date of last order - 8/2/2007
Date of Ruling - 28/3/2007

R U L I N G

ORIYO, J.:

The applicants were dissatisfied with a decision of the Kinondoni District Court dated 16/12/2004 (learned Mbuya SRM) in Civil Case No. 31 of 2003.

On 8th July 2005, they filed this application for orders as follows:-

- (i) To extend time for making the application

- (ii) To Revise the proceedings and judgment given by the trial court on 16/12/2004
- (iii) Costs
- (iv) Other relief(s)

The application was filed under SECTION 44 Magistrates Court Act and SECTIONS 79 and 95 Civil Procedure Act.

Alongside his counter affidavit the respondent raised a point of preliminary objection; notice of which had earlier been filed. The objection reads thus:-

"That the applicants application is incompetent in law as the same is out of time filed without leave of the court."

The applicants were represented by Mr Chabruma, learned counsel and the respondent was represented by Mr Nassoro, learned counsel.

Counsel made brief submissions but to the point.

There is no dispute that in this application the applicants did not cite which provisions of law is relied upon to move the Court to enlarge the time for filing Revision. The application for Revision can only be entertained after enlargement of time by the Court. The provisions cited by the applicants; Section 44 of the Magistrates Courts Act and Section 79 of the Civil Procedure Act are all on Revision and Section 95 is on the inherent powers of the court.

As stated by the Court of Appeal of Tanzania in the case of NAIBU KATIBU MKUU (CCM) vs MOHAMED IBRAHIM VERSI and SONS, ZNZ Civil Application No. 3/2003 Zanzibar Registry (unreported) at page 3 of the typed judgment:-

*" . . . it is important that the Court must be properly moved to hear and determine the application. The applicant has not cited the provision from which the court derives power to enlarge time to appeal to this Court out of time. **This is a basic***

requirement, it is a prerequisite in an application.” (emphasis supplied)

As the Court here has not been properly moved, the application is undoubtedly incompetent.

The preliminary objection raised by the respondent is sustained. Accordingly the application is struck out with costs.

DATED at Dar Es Salaam this **28th** day of **March** 2007

(K.K. ORIYO)

JUDGE

28/3/2007

461 Words.