

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL REVISION NO. 128 OF 2004

GABRIEL ELIAS APPLICANT

VERSUS.

**THE DIRECTOR GENERAL
TANZANIA HARBOURS AUTHORITY RESPONDENT**

Date of Last Order: 07/12/2006

Date of Ruling: 22/02/2007

RULING

MLAY, J:

This ruling is on a application for leave to appeal to the Court of Appeal of Tanzania. The application is made under Section 4 (1) (c) of the Appellate Jurisdiction Act, 1979, Rules (a) and 44 of the Tanzania Court of Appeal Rules, 1979 and section 95 of the Civil Procedure Code 1966 and it is supported by the affidavit of MOHAMED I.A. MKALI, the applicants advocate. In the said affidavit, the learned advocate has averred, inter alia, as follows:

1.

2. That on 6th day of December the Applicant herein filed an applications (sic) for Revision before this

Honourable Court the respect of the decision of the Court of the Resident Magistrate at Kisutu in Misc. Civil Application No.75 of 2004.

- 3. That on the 30th day of December, 2005 this Honourable Court (Hon. Shangwa, J) dismissed the application on a preliminary point of objection.**
- 4. That the Applicant is aggrieved by the said decision and I intends (sic) to appeal to the Court of Appeal of Tanzania and has already filed Notice of Appeal and a letter to apply for records of the proceedings for appeal purposes.**
- 5. That it is intended to ask the court of Appeal to make a pronouncement on the following issues (grounds) namely:**

- a) Whether the Resident Magistrate's Court lacks jurisdiction to entertain an application for execution of the decision made by the Minister for Labour and Youth Development.*
- b) Whether leave of the High Court is necessary for enforcement of the decision made by the Minister for Labour and Youth Development.*
- c) Whether revision is prohibited in rulings and orders which do not determine the matter conclusively.*

- 6. That the points raised above are crucial points of law of general importance to the public and the development of the law in the country which is a superior court of the land is called upon to made a pronouncement on the same.**
- 7. That chances of success of the intended appeal are overwhelming on the Applicants part.**
- 8. That it will be in the interests of justice if the prayers prayed in the chamber summons will be granted.**

At the hearing of this application on 22/6/2006, the Applicant appeared in person but the respondent who was served through F.K. Law Chambers Advocates, did not appear. The applicant prayed to adopt the reasons contained in the affidavit supporting the application and the application was adjourned for the ruling.

As stated in paragraph 2 of the affidavit supporting this application, the applicant filed an application in the court of the Resident Magistrate at Kisumu. Misc. Civil Application to enforce the decision of the Minister for Labour made under section 44 A of the Security of Employment Act.

The Resident Magistrates Court dismissed the application upon a preliminary objection that the Magistrates Court had no jurisdiction by reason that the respondent was a "*specified authority*" and the

applicant had not obtained leave of the High Court to institute the proceedings against a specified corporation, in accordance with the provision of Section 9 of the Bankruptcy Ordinance.

The applicants filed an application for revision in this Court, under section 68 (e) and 95 of the Court Procedure Code, 1966 and Section 44 (1) of the Magistrates Court Act, 1984. The application came up for hearing before my brother Shangwa, J. The respondents Counsel raised a preliminary objection, that an application for revision does not lie. His Lordship Shangwa, J upheld the preliminary objection and dismissed the application on grounds "..... that a revision does not lie in this case" and "if the Applicant is not satisfied with the decision of the lower Court in the matter the proper remedy is to prefer an appeal against it". His Lordship cited the case of MATEMBA vs YAMULINGA (1968) E.A 643 in which it was held by the Court of Appeal of Eastern Africa that a revision does not lie where there is a right to appeal. His Lordship found that there was such a right in relation to the proceedings which were the subject of the application for revision.

It is on this decision that the application is seeking leave to appeal from.

Having given consideration to the application and in particular to the points of law raised in paragraph 5 of the affidavit as the

points for consideration by the Court of Appeal, I am of the settled view that leave should not be granted.

This is because the decision of this court which is the subject of the proposed appeal did not determine any of the points intended to be raised before the Court of Appeal as contained in paragraph 5 (a) – (c) of the affidavit. The decision of this court Shangwa, J was that an application for revision did not lie because the decision of the Resident Magistrates Court which was intended to be challenged by way of revision, was appealable. The High Court did not decide that the Resident Magistrates Courts lacked jurisdiction, 5 (a) or the leave of the high court was necessary for the enforcement of the Minister for Labour; 5 (b) or even that revision is prohibited in rulings and orders which do not determine the matter conclusively 5 (c).

This court cannot grant leave to the applicant to raise matters before the Court of Appeal which were not considered and determined by this court in the decision which is being challenged.

As the applicant is not challenging the decision that an application for revision does not lie where the matter is appellable, and there being no other points of law raised which are worth the consideration by the Court of Appeal, this application is dismissed.

The applicant is reminded that the door is still open to challenge the decision of the Resident Magistrate Court by way of appeal, subject to complying with the requirements of the law relating to limitation.

In the final analysis this application is dismissed. As the respondent did not appear or file any documents, no order is made as to costs.



J. I. Mlay

JUDGE

22/2/ 2007