

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

CIVIL REVISION NO. 01 OF 2020

(Arising from Misc. Civil Application No. 251 of 2019, which arises out of Civil Case No. 297 of 2019 the District Court of Kinondoni- before Hon. F.L. Moshi)

COCA-COLA KWANZA LTD----- APPLICANT

VERSUS

CHAGUO SERVICES & CONSULTANTS LIMITED----- RESPONDENT

RULING

Date of Last order:17.03.2020

Date of Ruling: 12.06.2020

EBRAHIM, J.:

Coca Cola Kwanza Limited, the applicant herein has made an application in this court praying for the following orders:

1. That this court be pleased to call for and examine the record and proceedings of the Kinondoni District Court in Misc. Civil Application No. 251 of 2019 which arises out of Civil Case No. 297 of 2019 of the District Court of Kinondoni, Dar Es Salaam, and further the honorable court be pleased to determine the

illegalities, improprieties and the material irregularities in the said proceedings, and its consequent orders;

2. That this court be pleased to nullify the proceedings and orders in the above mentioned proceedings and make such orders as the court thinks fit, based on the main grounds that the District Court lacks jurisdiction to preside over, entertain or determine arbitration matters, and it exceeded its jurisdiction in entertaining matters beyond its territorial jurisdiction.

That the application has been preferred under the provisions of **section 79(1) (a) and (c) and Order XLIII Rule 2 of the Civil Procedure Code Cap 33 RE 2002**; and it is supported by the affidavit of Erastus Vincent Mtui, principal officer of the applicant.

Brief facts of the matter as could be discerned from the records are that the applicant and the respondent entered into a contract on 1st September 2017 for a provision of plant/depot operational services for the period of two years. The respondent was contracted to employ and recruit employees to work for the applicant according to the demanded workforce. According to their agreement (clause 17) it was expressly agreed that parties shall first strive to settle the dispute arising out of the agreement by arbitration under the **Arbitration Act, Cap 15, RE 2002**. It was further agreed that each party shall issue

three months' notice in the event where either party contemplates to terminate the contract. On 13th December 2019, the applicant informed the respondent that their existing contract has been terminated and instead the applicant has contracted another service provider due to commence operations by 1st January 2020. Following such incident the respondent herein filed Civil Case No. 297 of 2019 at the District Court of Kinondoni at Kinondoni. Emanating from the mentioned civil case the respondent filed Miscellaneous Civil Application 251 of 2019. The respondent on 23.12.2019 successfully prayed for ex parte order of maintenance of status quo pending hearing of the application for injunction inter-parties. The matter was then scheduled for mention on 03.02.2020. On 15th January 2020, the applicant filed Written Statement of Defense and a counter claim raising points of preliminary objection among others that the trial court lacks territorial and pecuniary jurisdiction to entertain the suit. They also challenged the jurisdiction of the District Court to entertain arbitration proceedings. At the same time on 3rd January 2020, the applicant filed the present application.

On 03.02.2020 both parties entered appearance at the trial court. Counsel for the respondent one Atlay Thawe informed the court that they have already filed a counter affidavit and raised a preliminary objection, thus prayed for a hearing date. The trial court fixed a hearing date to 04th March 2020.

In this matter the applicant is represented by advocates Atlay Thawe and Jonathan Kesi. The Respondent is represented by advocate Clement Kihoko.

On 31st March 2020, this Court ordered the application to be disposed of by way of written submission and set a schedule thereof.

The applicant's submission pointed out the illegalities and irregularities occasioned at the trial court. He defaulted the disregard of the arbitration clause, none observance of the issue of jurisdiction, the defective and confusing pleadings, the manner which the *ex parte* orders were entertained and issued, the impracticability of the drawn order, the disproportional sequence of court events after issuance of court order, the injustice and losses the respondent has been suffering as consequence of the lower court's orders.

Responding to the submission by the Counsel for the applicant, Counsel for the respondent among others pointed out two issues that the application is wrongly filed before this court by citing the provisions of **Section 79(1)(a)(c) of the Civil Procedure Code, Cap 33 RE 2002**; and that the application has been filed prematurely.

In rejoinder Counsel for the applicant responded to the point raised on the applicability of **Section 79(1)(a)(c) of the CPC** that it does not mandatorily require a matter to have been determined to its finality. Otherwise he repeated what he submitted in chief.

In determining this application, I shall concentrate on the issues that this application has been wrongly filed in this court; and the application has been prematurely filed in this court.

The Applicant has moved this court to exercise its revisional powers under the provisions of **Section 79(1) (a) and (c) of the Civil Procedure Code, Cap 33 RE 2002**. The said provision of the law reads;

*“79.-(1) The High Court may call for the record of any case **which has been decided by any court subordinate** to it and in which no appeal lies thereto, and if such subordinate court appears-*

(a) to have exercised jurisdiction not vested in it by law;

(b) NA

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit." (emphasis is added).

The catch word from the above piece of legislation is "**decided**". The law is clear and does not call for any other interpretation other than the literal meaning of the word that for a matter to have been **decided** it connotes the finality and the resolve of the matter to the end. In our case it would have been the decision that confers rights to the parties.

Counsel for the applicant in responding to the argument by the Counsel for the respondent argued that in his reading of the provisions of **section 79(1) (a) and (c) of the CPC together with section 44(1) of the MCA, Cap 11**, he is certain that it does not mandatorily require a matter to be have been determined to its finality. I would comment here that Counsel for the applicant twists words so as to fit to his misconception and wrong application of the law. I agree that **section 44(1) of Cap 11** gives powers to the High Court to call and examine the proceedings of the subordinate court at any time in its supervisory jurisdiction. To the contrary **Section 79(1) of the CPC** confers those powers of revision on matters that have already been decided and

no appeal applies. I am saying that the Counsel for the applicant is twisting the words because nowhere in his submission in chief he referred to **section 44(1) of Cap 11** not even in passing. He has relied heavily on **section 79(1) (a) and (c) of Cap 33** alone as it is conspicuously seen in the chamber summons. More-so there is nothing yet to be decided by the subordinate court. The order of the trial court was an interim ex parte order of maintaining status quo pending the hearing of the application inter-parties. There was no determination of either status or rights of parties to justify the invoking of **section 79(1)(a) and (c) of the CPC**. Without wasting much time, as correctly observed by the Counsel for the respondent. I find that the application has been preferred under the wrong provision of the law. Now coming to the issue that the application has been prematurely filed in this court. As intimated earlier when giving brief facts of the I said that the instant application has been filed following the on-going proceedings at the District Court of Kinondoni at Kinondoni. I must state out-rightly here that indeed this application has been filed prematurely.

The applicant seeks this court to determine the jurisdiction of the trial court whilst the issue was scheduled to be determined by the trial court following the point of objection raised by the Counsel for the applicant on 04.03.2020. Instead of proceeding with the hearing of the preliminary objection, the applicant has rushed to this court raising a number of incorrigible defects which are best known to applicant and her legal counsels themselves and have no any bearing whatsoever. Legally, procedurally and practically, they were supposed to wait for the points of objection to be heard and determined by the trial court. The decision of which would have determined whether the application for injunction could continue to be heard. Again, the applicant rushed to this court before she could even be heard inter-parties on the application that she is complaining about. Instead of defending and arguing the application for injunction, the right that she was vividly availed with, she wasted much time coming here wanting this court to pre-empt and interfere with the proceedings, management of the case and worse still the decision of the trial court. I am not ready for such absurdity!

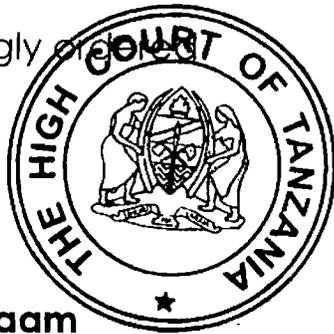
Counsel for the applicant has averred that the drawn order of the trial court is vague, untimely and impractical and he has also pointed out the mistakes on the titles of case.

I find that the Counsel for the applicant in his misguided and failure to comprehend the law embarks on a journey of pointing out defects which could have been easily rectified by the trial court. Obviously the misspelling and incorrect headings could easily be rectified by the trial court in the interest of justice and a bid to serve parties time; particularly his client's. As for the drawn order, I see that it is self-explanatory as per the prayers made by the respondent in the relevant application when one reads the application and the order in its context.

Counsel for the applicant has complained that the order of the court and illegality and improprieties of the proceedings have caused injustices and losses to his clients. To the contrary, it is his slackness and failure to follow rules of practice and procedure that have caused wastage of time and resources of his client as he had no reason to desperately come to this court while he had an avenue at the trial court and the matter is still pending.

All said and done, I accordingly agree with the counsel for the respondent that this application has been prematurely filed in this court and I dismiss it with costs. Consequently, I remit the file to the District Court to proceed with the matter from where they ended on 04.03.2020.

Accordingly ordered




R.A. Ebrahim
Judge

Dar Es Salaam
12.06.2020