IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL APPLICATION NO. 16 OF 2021

FINCA TANZANIA LTD .....APPLICANT

VERSUS

SHABAN SAID MAGANGA .....RESPONDENT

RULING

22nd April, & 26th May, 2021

Kahyoza, J.

Finca Tanzania Ltd (Finca) instituted an application for revision praying this Court to call and examine the records of the Resident Magistrates' Court of Musoma at Musoma in RM Civil Case No. 31/2020. Shaban Said Mganga, the respondent opposed the application by filing the counter-affidavit and raising a preliminary point of objection. The preliminary point of objection has three limbs that:-

(a) That, Applicant application is incompetent and misconceived for being grounded on an interlocutory decision for originating from interlocutory order or Ruling which did not dispose the case.

(b) This applicant application is improperly filed and incurably defective which is contrary to section 74 (2) of the Civil Procedure Code [Cap 33 R. E 2019].

(c)That the Applicant Application is incompetent for not citing the applicable provision of law or for citing wrong provision of the law.

The basic issue to be considered is whether the application is competent.

The background of this matter is that Shaban Said Mganga sued Finca in the Resident Magistrates' court praying for specific damages, compensation and for loss of profit. Finca filed the written statement of defence and raised a preliminary point of objection that the suit was *res subjudice* and that the trial court lacked pecuniary jurisdiction.

The trial court heard the preliminary objection and dismissed both limbs with cost. Aggrieved, Finca instituted the instant revisional proceedings.

Both parties were represented and filed written submissions as directed. I pray to refer to the submission while answering the issue raised. For that reason, I will not reproduce them.

Is the application competent?

Shaban Said Maganga submitted through his advocate that, first that the application was incompetent on the ground that it was grounded on interlocutory application. The respondent advocate submitted that an interlocutory order is not revisable. To buttress his position, he cited section 79(1), (2) of CPC, which states that:-

> *"(2) Notwithstanding the provisions of sub- section (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"

He also cited the case of **University of Dar –es-salaam V. Sylvester Cyprian and 210 others** [1998] TLR 175, where it was held that-

"Interlocutory proceeding that do not decides the right of parties but save to keep thing in status quo pending determination of those right pr enable the Court to give direction as to have the cause is to be conducted or what is to be done in the progress of the cause so as to enable the Court ultimately to decide on the right of the parties appeal against interlocutory order not finally determine the suit".

He also cited the case of **Managing Director Sauza Motors Ltd V. Riaz Gutamali and Another** [2001] TLR 405 where it was held that.

"A decision on or order of preliminary or interlocutory order is not appellable unless it has the effect of finally determining the suit"

The respondents' advocate cited another case of **James B. Rugamalira Vs the R** of 2020. He added that ruling or the order under consideration was an interlocutory order or ruling as it did not terminate or dispose the proceedings. As a result, Finca was precluded to challenge it by way of appeal or revision.

Shaban Said Maganga's advocate submitted that courts have already defined what amounts to interlocutory or preliminary proceedings. In the

case of **Israel Solomon Kivuyo V. Wayani Langoyi and Maishooki Wayani** [1989] the court defined what amounts to interlocutory order by quoting from JOWITTS' Dictionary of law, 2nd ed. Pg. 999

> *"An interlocutory proceeding is incidental to the principle object of the action, namely, the judgment. Thus interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of their cases, whether before or after judgment; or of protecting or otherwise dealing with the subject matter of the action before the righted of the parties are such are applications for time to take a step, eg. To deliver a pleading, for discovery, for an interim injunction, for appointment of a receiver, for a garnishee order, etc.".*

Shaban Said Maganga's Advocate concluded his submission by praying the application to be struck out with costs.

Fincas' advocate replied that the High Court may exercise its revision jurisdiction to correct errors on the face record *suo motto* or on an application under section 44(1) of the Magistrate Courts Act, [Cap. 11 R.E. 2019]. The applicants' advocate cited the case of **Tanzania Habours Authority V. African Liner Agencies Co. Ltd**. HC, Civ. Rev. No 113/2002 [2004] TLR 127, where the High Court held that-

> *"The provision of section 44 (1) a of the Magistrates' Courts Act 1982 clothe the High Court with sufficiently wide powers to make interventions and give directions necessary in the interests of*

justice" by using the power vested to it the High Court quashed the proceedings and set aside the order in the case".

The applicant's advocate contended that the Court of Appeal in the case of "**Ally Linus and Eleven others Vs. Tanzania Habours Authority & Labour Conciliation Board of Temeke District** (1998) TLR, the Court of Appeal of Tanzania, Hon. Nyalali, CJ as he then was while considering the decision of the High Court by refusing to grant certiorari orders believing that it would be hearing an appeal in interlocutory decisions, held that *"(iv) ... the High court in exercising its supervisory jurisdiction does not amount to hearing an appeal from the conciliation Boards."*

It is settled that no appeal or application for revision lies against or may be made in respect of any preliminary or interlocutory decision or order, unless such decision or order has the effect of finally determining the criminal charge or suit. See section 79 of the CPC, and the decision of the Court of Appeal in **Kweyambah Richard Quaker vs The Republic,** Criminal Appeal No. 19/ 2002, (CAT, unreported), **D.P.P v Samwel Mnyore @Mamba and Ghati Msembe @Mnanka** Cr. Application No. 2/2012 (CAT, unreported), **JUNACO (T) Ltd and Justine Lambert vs. Harlel Mallac Tanzania Limited**, Civil Application No. 373/12 of 2016. In **Kweyambah Richard Quaker vs The Republic,** the Court of Appeal held that-

"By that amendment (the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2002 [ACT NO. 25 of 2002]) *no appeal or application for revision shall lie against or be made in respect of*

any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the criminal charge or suit."

The impugned ruling is an interlocutory one, it neither determines the rights of the parties nor has the effect of determining the matter conclusive, thus, no appeal or revision would lie. The applicant's advocate argued that section 79 of the **CPC** did not oust this court's supervisory jurisdiction under section 44 (1) of the **MCA**. She cited the case of **Tanzania Habours Authority V. African Liner Agencies Co. Ltd** (supra) to support her submission. In deed this Court's jurisdiction *to make interventions and give directions necessary in the interests of justice* under section 44 (1) a of the MCA was not ousted. However, there should be reasons for this Court to intervene. This Court exercised its revisionary powers in the case referred in **Tanzania Habours Authority V. African Liner Agencies Co. Ltd** (supra) as the circumstances in that case called for such intervention. In the **Tanzania Habours Authority's case,** the district court of Ilala issued an *ex parte* order to restrain the Port Manager from suspending the services of handling, clearing the vessel of Africa Liner Agencies (T) Ltd as well as storage and other services to the vessel at the port of Dar es Salaam pending the hearing of the main application *interpartes*. The district court made the order without jurisdiction as the matter was admiralty and it lacked pecuniary jurisdiction.

It is worth noting that the circumstances in this case are distinguishable from the circumstances in **Tanzania Habours Authority's case** (supra). In **Tanzania Habours Authority's case,** the Court moved

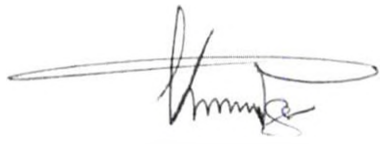
suo mottu to address the injustice, while in the instant case it is the applicant who has moved the Court.

In addition, unlike in the **Tanzania Habours Authority's case,** the applicant did not convince me that there is a serious violation of the applicant's right or any injustices caused by the impugned ruling, which cannot wait until final determination. The resident magistrates' court's failure to find that the suit was *subjudice,* did not cause any serious injustice to the applicant, which may not wait until final determination. Thus, there is no reason for this Court to intervene. The Court of Appeal in **JUNACO (T) Ltd** and **Justine Lambert vs. Harlel Mallac Tanzania Limited**, (*supra*) was of the view that when there is a serious violation of the right to be heard it may interfere by way revision to address the violation. It stated that-

> *"Neither are we convinced that there was serious violation of the right to be heard which could not wait until the final determination"*

In the upshot, I find the application is incompetent as it is preferred against an interlocutory decision. Consequently, I uphold the preliminary objection and dismiss the application with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
26/5/2021

Court: Ruling delivered in the presence of MS. Anna Adv. for the applicant and Mr. Philipo Adv. for the respondent. B/C. Catherine present.

J. R. Kahyoza
JUDGE
26/5/2021