IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL REVISION NO. 22 OF 2022

(Arising from the Ruling and Order of the Resident Magistrates' Court of Dar es Salaam at Kisutu (Hon. Isaya, SRM) in Execution No. 32 of 2019, dated 2nd August, 2022.)

STANBIC BANK TANZANIA LIMITED ..... APPLICANT

VERSUS

PAUL FRANCIS KILASARA ..... RESPONDENT

RULING

4th, & 16th November, 2022

ISMAIL, J.

These revisional proceedings have been instituted against the ruling and order of the Resident Magistrates' Court of Dar es Salaam at Kisutu. It is in respect of Execution No. 32 of 2019 whose decision was delivered to the parties on 2nd August, 2022.

The execution proceedings emanated from the Civil Case No. 72 of 2016, which pitted the respondent, then featuring as the plaintiff and decree holder, against the applicant who occupied the position of the defendant and

judgment debtor. The former sued the applicant, an erstwhile banker turned foe, for various money reliefs, arising out of what the respondent alleged to be multiple acts of negligence and malice which involved giving of false information about the respondent's credit worthiness.

In a decision delivered in the respondent's favour, an error was noticed to the effect that the judgment and decree read as Civil Case No. 72 of 2017, instead of Civil Case No. 72 of 2016. At the instance of the respondent, and vide a letter dated 16th September, 2021, the trial court was moved to effect a rectification of the error. The court was moved under section 96 of the Civil Procedure Code, Cap. 33 R.E. 2019. This prayer was acceded to, vide a ruling delivered on 2nd August, 2022.

In the affidavit that accompanies the application, several averments have been made. Key among them is the contention that the trial court's decision to entertain the respondent's prayer for correction in the judgment and decree, from Civil Case No. 72 of 2017 to Civil Case No. 72 of 2016, is tainted with apparent illegalities on the face of the record. The illegalities eroded legitimacy of the decision. Instances of such illegalities are enumerated in paragraph 18 of the supporting affidavit.

The respondent did not contest the factual account deposed by the applicant. Mr. Eustace Rwebangira, learned counsel for the respondent,

chose to confine himself to legal issues that he intended to raise in the course of the hearing.

Kicking off the conversation was Mr. Makarius Tairo, learned counsel whose services were enlisted by the applicant. He began by reminding the Court that in paragraph 14 of the affidavit, three different decisions in respect of the same matter have been cited. These were Civil Case No. 72 of 2017; appeal proceedings known as HC-Civil Appeal No. 202 of 2017; and Civil Application no. 80/01 of 2019, the latter of which were intended to challenge the decision in HC-Civil Appeal No. 202 of 2017.

Mr. Tairo acknowledged the fact that the letter submitted by the respondent, for correction of the error, was erroneously placed in Execution No. 32 of 2019, instead of Civil Case No. 72 of 2017. From this error, Mr. Tairo contended, four instances of illegalities arise, as follows:

1. That the trial court had no jurisdiction to correct errors at a time when the matter had been escalated to higher courts. Any correction ought to have started from above;
2. That there was no application for correction of errors. The prayer for correction was done by way of a letter instead of applying Order XLIII rule 2 of the CPC. Circumstances of the case demanded that a formal application be preferred;

3. That the correction of errors was treated as a matter falling under Execution No. 32 of 2019 instead of Civil Case No. 72 of 2017, holding that a wrong package cannot correct itself; and
4. That the correction caused some controversy as the decision in Civil Case No. 72 of 2017 was delivered on 26th July, 2017, and was certified on the same day, while corrections effected on 2nd August, 2022, appear to apply retrospectively. This was wrong.

Learned counsel urged the Court to grant the application and revise the entire process.

Mr. Rwebangira began by submitting that when the case was instituted it was designated as Civil Case No. 72 of 2016, and that the error came at the stage of typing the judgment, when it was typed 2017 instead of 2016. He argued that this error affected the decree as well. Learned counsel argued that the error escaped the minds of the parties, and that it was discovered when proceedings reached the Court of Appeal of Tanzania.

On why the court was moved informally, Mr. Rwebangira submitted that the intention was to let the court correct the error *suo motu,* and that would be possible, were it not for the objection by counsel for the applicant, who contended that the court had no jurisdiction to correct the error. The

view taken by the trial court was that the prayer by the respondent was an allowable practice and went ahead to cure the error.

On the placement of the letter in the Execution No. 32 of 2019, learned counsel's argument is that the letter quoted the proper case number and that the misplacement would easily be cured by giving a proper direction of lifting the letter and proceedings to a proper case file.

Mr. Rwebangira argued that what is relevant here is the question as to whether the error is curable, and that, in his view, this is an error falling within the ambit of section 96, and, therefore, one that can be cured at any time, at the instance of the parties or by the court itself.

Regarding the invocation of Order XLIII rule 2 of the CPC, Mr. Rwebangira admitted that the said provision requires that applications be made by way of chamber summons. He was quick to submit, however, that the proviso to the said provision includes *suo motu* motions by the court, and that the court was at liberty to choose any of the modes under the proviso. He noted that the trial court had powers to rectify the errors since, at the time of correcting the error, no proceedings were pending in the Court of Appeal of Tanzania, and that the judgment of this Court did not have such error. Not even the memorandum of appeal to this Court. Mr. Rwebangira insisted that proceedings in the Court of Appeal have since died with the

striking out of the notice of appeal and that what remains is the execution of the appeal. He fortified his contention by citing a number of decisions. These are: ***Jobos & Co. Ltd v. Serengeti Breweries Ltd***, HC-Misc. Civil Application No. 658 of 2017 (unreported); ***Jewels & Antiques (T) Ltd v. National Shipping Agencies Co Ltd*** [1994] TLR 107; and ***Aristides Pius Ishebabi v. Hassan Issa Likwedembe & 3 Others***, CAT-Civil Appeal No. 5 of 2019 (unreported).

Regarding the retrospective application of the correction, the view held by Mr. Rwebangira is that no alteration has been effected in the decision save for the case number. He added that, in any case, rectification operates retrospectively in order to address the position as it ought to have been. He wondered why the applicant chose to institute revision and not an appeal as was directed in ***Nondo Kalombola t/a N.J. Petroleum SPRL & Another v. Broadgas Petroleum (T) Ltd & 3 Others***, CAT-Consolidated Civil Applications Nos. 165/16 & 518/16 of 2019 (unreported). He urged the Court to dismiss the application and direct that the proper file for the correction is Civil Case No. 72 of 2016.

Mr. Tairo was adamant in rejoinder, that the fact that the correction was done in the wrong file is enough to nullify the proceedings. He wondered whether the appeal process should start afresh. He argued that there is also

a question on the status of the higher courts' proceedings based on the old version of the decision. He maintained that a serious irregularity exists calling for revision.

The broad question to be resolved is whether this application has what it takes to succeed.

Besides other adjudicatory powers, this Court is also vested with powers to revise decisions made by courts subordinate thereto. These powers are conferred on it by the provisions of section 79 (1) of the CPC, read together with section 44 of the Magistrates' Courts Act, Cap. 11 R.E. 2019. The former provides as hereunder:

> *"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) to have failed to exercise jurisdiction so vested; or*
> >
> > *(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.*"

What comes out from the cited provision is that illegal or irregular exercise of jurisdiction constitutes the basis for having the proceedings and the decision bred out of the said illegality or irregularity called into question and revised. The pertinent question to be settled is whether the impugned decision and proceedings is tainted with any illegality. I will review each of the instances of the alleged illegality.

With regards to effecting of the correction, the powers of the courts to order amendment of judgments, decrees or orders, to cure errors are vested in them by statute, and the relevant provision is section 96 of the CPC whose substance is as quoted hereunder:

> *"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties."*

From the quoted provision, the following takeaways are distilled:

(i) That corrections allowed under this provisions must relate to clerical, arithmetical errors or mistakes, or those that arise from accidental slip or omission;

(ii) That the said errors or mistakes may be corrected either of the court's own motion, or at the instance of the parties and through an application; and

(iii) That such correction may be done at any time.

While Mr. Tairo has not seriously challenged the fact that the insertion of 2017 instead of 2016 was an accidental slip, his qualms reside in the timing of effecting the said amendments or correction. In his view, so much ground had been covered to allow corrections, and the fact that the matter took a couple of ladders up rendered the correction illegal and liable to a challenge through the instant revisional proceedings.

I am not convinced that this contention carries with it any semblance of plausibility. It is at stark variance with law, which allows effecting of such corrections at any time. In my humble view, ***"any time"*** has no bearing on and disregards any steps that may be taken subsequent to the issuance of a decision sought to be corrected. Thus, it would matter less, in my view, if the decision was afterwards subjected to a couple of legal challenges by way of appeal to this or higher Court. Such escalation would not take away the trial court's power to mend the errors apparent on the decision.

It is my conviction that there was nothing irregular in the trial court's decision to accede to the prayer for correction of the error after the decision on the appeals had been made. It was precisely in keeping in order with the latitude provided through the phrase ***"at any time"*** spelt out in the law, and consistent with what was held in ***Jobos & Co. Ltd v. Serengeti Breweries Ltd*** (supra), and ***Jewels & Antiques (T) Ltd v. National Shipping Agencies Co Ltd*** (supra) in both of which ***"at any time"*** was held to be just that, ***"at any time"***. Accordingly, I find the contention by Mr. Tairo specious and I reject it out of hand.

Regarding the applicant's contention that the court was wrongly moved, my fortified position is that this argument is destitute of any merit. While it is accepted that the general rule, as set out in Order XLIII rule 2 of the CPC, is to the effect that every application made under the Code should be made by way of chamber summons, the same provision has created an exception. This is embodied in the proviso to rule 2 which provides as hereunder:

> *"Provided that the Court may where it considers fit to do so, entertain an application made orally or, where all parties to a suit consent to the order applied for being made, by a memorandum in writing signed by all parties or their advocates,* ***or in such other mode as may be***

appropriate having regard to all the circumstances under which the application is made." [Emphasis supplied]

The obvious fact is that the Court may choose a mode through which to entertain the application for rectification of errors, but regard should be had to the circumstances under which the application is made. The view held by Mr. Tairo is that circumstances of this case demanded that the court be moved through a formal application. He is economical with facts, however, on why he thinks that circumstances of this case demanded that the application be by way of chamber summons. Nothing convinces me, one bit, that such circumstances existed in the proceedings from which this revisional matter arises. It is my unflustered view that the court indulged in no illegality when it chose to be moved by a letter and grant the prayer made by the respondent.

The applicant's other area of consternation touches on the treatment of the application as though it was part of Execution No. 32 of 2019, instead of Civil Case No. 72 of 2017. I join hands with Mr. Tairo and hold that it was silly to congest the case file relating to Execution No. 32 of 2019 by putting into it a matter that it does not relate with. Equally senseless, was the trial magistrate's designation of the ruling as part of Execution No. 32 of 2019. A

cursory review of these documents would sufficiently address this needless misstep.

That said, however, I agree with Mr. Rwebangira that, whilst the mix-up is in bad taste and would be avoided, the said error is of a trifling effect, and I am convinced that the uproar sounded by Mr. Tairo is far overboard and unwarranted. It is not significant enough to warrant the attention of this Court, and be the basis for having the proceedings quashed. I am of the firm view that this ground of illegality is equally hollow.

On the effectiveness of the amendment, my hastened view is that, the moment the said correction was made, the same had an instant effect to the decision. This is quite elementary, and I am not in agreement with Mr. Tairo, that the amendment ran parallel with the decision in Civil Case No. 72 of 2017. In any case, I don't consider this to be a ground for revision. This is in view of its triviality.

Overall, I find the application lacking in merit and, as I dismiss it with costs, I accede to Mr. Rwebangira's prayer, and order that necessary placement of the documents be done, together with designation of the ruling as Civil Case No. 72 of 2017 (subsequently amended as Civil Case No. 72 of 2016), and not as part of Execution No. 32 of 2019.

Order accordingly.

DATED at **DAR ES SALAAM** this **16th** day of **November, 2022.**

M.K. ISMAIL

JUDGE

16/11/2022