

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM SUB-REGISTRY)

AT DAR-ES-SALAAM

CIVIL REVIEW NO. 4 OF 2023

(Arising from Miscellaneous Civil Application No. 658 of 2021)

DR. SEBASTIAN SIASA NDEGE APPLICANT

VERSUS

NEXT BRIDGE CONSULTING CO. LTD 1ST RESPONDENT

STANBIC BANK TANZANIA LTD 2ND RESPONDENT

RULING

Date: 21/09/2023 & 04/03/2024

NKWABI, J.:

By a memorandum of review, brought under the provisions of section 78, and Order XLII Rule 1 & 3 of the Civil Procedure Code, Cap. 33 R. E. 2022 the applicant is impressing upon this Court to (i) review and overturn its ruling and order dated 20/03/2023 dismissing Misc. Civil Application No. 658 of 2021, (ii) Costs of the application, and (iii) any other relief and order as the Court deems fit and just to grant. The applicant did not approach this Court for the reliefs empty handed. The applicant has four foundations of this review as I emulate:

1. The Court arrived at its decision by mistakenly relying on the board resolution drawn from the meeting purported to be held by the members of the company on 2nd December 2021 instead of that which

was drawn from the meeting held by the board of directors on 8th December 2021.

2. The Court erroneously confused between the notice required to convene a meeting of a company and the special notice which is the instrument mandatorily required to notify the director intended to be removed from the office of his intended removal.
3. The Court did not get time to properly review and evaluate the evidence presented by the respondent in proof of compliance with the mandatory steps prior to holding the meeting by the members of the company to see if the same meets the required standard of proof.
4. The applicant has learnt of the deception and fraudulent acts occasioned by the 1st respondent with ill intent to mislead the Court to decide to its favour.

No doubt, this Court should be guided by lionized principles of laws such as, parties are bound by their pleadings, where fraud is alleged, it must be specifically pleaded and strictly proved see **Happy Kaitira Burilo t/a Irene Stationary & Another v. International Commercial Bank (T) Ltd**, Civil Appeal No. 115 of 2016, CAT, review is limited in scope and it is by no means an appeal in disguise for litigation must come to an end, see **Njake**

Enterprises Ltd v. Tanzania Sewing machine Co. Ltd, Civil Application
No. 118/17 of 2017, CAT.

The application was disposed of by way of written submissions. Mr. Denice Tumaini, learned counsel, drew and filed written submissions in support of the Civil Review. The respondents had the services of Mr. Peter Majanjara and Ms. Lilian Gawile, both learned counsel for the 1st and 2nd respondents respectively.

I will commence my determination by considering the ground that the applicant has learnt of the deception and fraudulent acts occasioned by the 1st respondent with ill intent to mislead the Court to decide to its favour. It is submitted that the meeting dated 02nd December 2021 was never held even with those shown as present as alleged. The applicant's counsel asks this Court to direct under Rule 10 of Order XI of the CPC to produce before the Court the device used to create the 1st and final drafts of the said resolution to prove the originator of the document and the date and time of its creation.

The counsel for the applicant goes on to state that there are contradictions in respect of the resolutions dated 2nd December and 8th December both of

2021 and the resolution does not state about transfer of the monies. He poses a question why was it not stating anything about the distribution of funds?

The counsel for the applicant goes on to criticise himself for failure to bring hard evidence in the application which gave rise to this application and yet wishes to win the case. How could he win the case without hard evidence? He wants to introduce hard evidence through the back door. That appears to me to be mere afterthought, that is all after trying to wantonly insinuate that this Court perceived that the applicant admitted that he authorized transfer of funds out from the very resolution. Without any affidavit to substantiate those serious allegations, I am inclined to reject it not without good reason because it is the applicant, not the respondents, who ought to have proved his allegations as per **East African Road Services Ltd v. J.S. Davis & Co. Ltd.** [1965] E.A. 676 where it was held that:

"He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant."

The applicant tries to deny that he transferred the funds as per the resolution. This denial clearly will need a long-drawn argument which is not within the purview of review proceedings. Further the denial is nowhere found in the evidence but in the submissions by the Counsel of the applicant. With fervent acclaim to the counsel for the applicant that is audacious violation of the law.

With respect, I cannot agree more than what was stated by the counsel for the respondent that what the applicant is seeking is incapable of review because if this Court condones what is done by the applicant it would be reconstituting itself as an appellate Court and re-determine the matter just as said in **Njake's** case supra that,

"... the law frowns on utilizing review as a backdoor method to re-argue the unsuccessful appeal ..."

In the rejoinder submission, the counsel for the applicant forcefully argues that the concern may have been designed to pre-empt and frustrate the step of exhuming liars from their hideouts. What actually the applicant was supposed to do, was to prove her case when she brought it. The attempt in this review if allowed, will open the pandora's box where parties will be

allowed to re-open cases, thus endless litigation, I am not prepared to do that. The counsel for the applicant did not end there, he also painted a picture that the cited case by the counsel for the respondents are distinguishable to the case at hand. He unfortunately, failed to indicate how they are inapplicable to the circumstances of this case.

All I can say, if the applicant was aggrieved by the decision of this Court so far as it relates to the evaluation of evidence, he ought to have appealed against the decision. What it appears to me is that the applicant knows that in the application that gave rise to his review, she had no evidence to prove his allegations that is why he insinuates that he has discovered new facts (matter). He even forgets the trite law that the defence is under no obligation to prove its defence, in the rejoinder submission. I will leave the rejoinder submission to speak for itself:

"We sought to be allowed to run discovery process on 1st respondent to be able to strictly prove the resolution attached to the counter affidavit and others were not made on the date this Court was made to believe they were made."


The question is why did the applicant fail to do so in Miscellaneous Civil Application No. 658 of 2021?

Ultimately, I entirely endorse the arguments of the counsel for the respondents while I rebuff the submissions of the counsel for the applicant in total because they are prone to long-drawn arguments and thus, I rule that this application for review is misconceived and unmerited. I dismiss it with costs.

It is so ordered.

DATED at **KIGOMA** this 4th day of March, 2024




J. F. NKWABI
JUDGE