IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUBUVA, J.A., MROSO, J.A., And MSOFFE, J.A.)

CIVIL APPLICATION NO. 183 OF 2005

1. ABBAS SHERALLY]
2. MEHRUNISSA ABBAS SHERALLY]……
APPLICANTS
VERSUS
ABDUL SULTAN HAJI MOHAMED FAZALBOY……
RESPONDENT

(Application for Revision from the decision of the High Court of Tanzania at Dar es Salaam)

(Luanda, J.)

dated the 16th day of August, 2002
in
Civil Case No. 17 of 1990

RULING OF THE COURT

4 & 24 July 2006

LUBUVA, J.A.:

This is an application for revision in terms of the provisions of section 4 (3) of the Appellate Jurisdiction Act, 1979 as amended by Act No. 7 of 1993. The application arises from the decision of the High Court (Luanda, J.) of 16th August, 2002 in Civil Case No. 17 of 1990.

The historical background giving rise to this matter may briefly be stated. In High Court Civil Case No. 17 of 1990 the respondent in this application Abdulsultan Haji Mohamed

Fazalboy, was the plaintiff. He instituted proceedings against the National Housing Corporation seeking among other reliefs, a declaration that the plaintiff is the legal tenant – purchaser in the suit premises, payment of rent and interest. On 24.3.1995 judgment in favour of the plaintiff was delivered. Apparently, based on the judgment and decree in this case several orders were subsequently made in the process of execution. Among such orders was issued on 16/8/2002 against the Registrar of Buildings and another. In this application the applicants, Abbas Sherally and Mehrunissa Abbas Sherally, who it would appear were staying in the suit premises, subject of the proceedings in Civil Case No. 17 of 1990, allege that although they were not party to this Civil Case (No. 17 of 1990) eviction order of 16.8.2002 was issued against them. Not being party to the civil suit, the applicants could not appeal against the order. Hence this application for revision has been filed.

At the commencement of hearing this application, the court *suo motu* raised the issue whether the application was competent. The reason is that no copy of the ruling which is sought to be revised was attached to the application for revision.

In his submission on this issue Mr. Kesaria, learned counsel for the applicant, was quick to concede that the

application was not accompanied with a copy of the ruling which was sought to be revised. However, he said in this case after the application was filed by notice of motion on 1.12.2005, a copy of the ruling was made available to the court attached to the affidavit in reply which was filed on 15.3.2006. In that situation , Mr. Kesaria urged that the objective to enable the court to see and examine the ruling sought to be revised was achieved. After all, Mr. Kesaria further submitted, there is no specific provision in the rules of the Court requiring the attachment of a copy of the decision subject of the revision, to be attached to the application. On the other hand Mr. Kesaria took the view that if the court finds that as a matter of practice it is necessary to attach to the notice of motion a copy of the ruling he prayed for the court's indulgence to grant leave for him to file an amended notice of motion to include a copy of the ruling to comply with the practice of the court.

On his part, Mr. Marando, learned counsel for the respondent, submitted that it is now settled that applications to this Court for revision should be accompanied by a copy of the decision which is sought to be revised. He referred to the Court's decision in **Citibank Tanzania Limited v Tanzania Communications Company Ltd. and Others,** Civil Application No. 112 of 2003, (unreported). In this case, Mr. Marando further submitted, as Mr. Kesaria conceded, the

application for revision was lodged without the attachment of a copy of the decision subject of the revision sought. The application lodged in this Court was therefore incompetent, it should be struck out, he urged. Mr. Marando added that Mr. Kesaria's prayer for the Court's indulgence to grant leave for him to rectify the position and file an amended notice of motion is untenable. According to him the reason is that the application before the Court being incompetent there is no legal basis upon which the Court can be moved to accommodate Mr. Kesaria's prayer.

It is common ground that in this application under the provisions of section 4 (3) of the Appellate Jurisdiction Act, 1979 as amended by Act No. 17 of 1993, there was no attachment of a copy of the High Court decision of 16.8.2002 to the application which was sought to be revised. It is also not disputed that the respondent's reply to the affidavit in support of the application affirmed by the applicants, Abbas Sherally and Mehrunissa Abbas Sherally filed on 15.3.2006 had the attachment of the order of 16.8.2002 by Luanda, J.

The question for consideration is whether the copy of the decision attached by the respondent to the affidavit in reply satisfies the requirement for the attachment of the decision sought to be revised to the application as urged by

Mr. Kesaria. We do not think so. As submitted by Mr. Marando, and Mr. Kesaria apparently is not disputing, at the time the application for revision was filed on 15.12.2005 no attachment of the copy of the decision subject of revision had been attached to the application. It would therefore follow that the application was incompetent on account of lack of attachment of a copy of the decision sought to be revised.

At any rate, Mr. Kesaria having failed to attach a copy of the ruling to the application cannot resort to rely on the copy of the decision furnished by the respondent in the affidavit in reply. The rationale behind the Court's exercise of its revisional jurisdiction under section 4 (3) of the Appellate Jurisdiction Act, 1979 as amended is not far to seek. The revisional jurisdiction is aimed at enabling the Court to examine the proceedings before the High Court in order to satisfy itself as to the correctness, legality or propriety of the decision thereon. If that is the objective of vesting the Court with revisional jurisdiction, it goes without saying that the Court can hardly invoke its revisional jurisdiction meaningfully unless it is seized with the decision which is sought to be revised.

In this regard, we may even go further. In applications for stay of execution, the Court has consistently

taken the view that such applications should be accompanied by a copy of the decision which is sought to be stayed. See for instance, **East African Development Bank v Blue line Enterprises Ltd.** Civil Application No. 35 of 2003 (unreported). All the more reason in applications for revision for requiring the attachment of a copy of the decision, subject of revision in order for the Court to examine by reading the decision and satisfy itself as to its correctness, legality or propriety.

In the same vein, in **Citibank Tanzania Limited v Tanzania Telecommunications Company Ltd. And Five Others,** Civil Application No. 112 of 2003 (unreported) the Court had occasion to address among other things the effect of non-attachment of a copy of the decision which is sought to be revised. In that case, although the application for revision was not affected because the ruling of the High Court Commercial Division, was attached to the application, the Court *inter alia* observed:

> "In case the circumstances permit the Court to exercise its revisional jurisdiction do exist, how can such a task be undertaken without the Court seeing a copy of the ruling being sought to be revised? Since there is no specific

> provision in the Court Rules, we would respectfully invoke rule 3 (2) (a) of the Court Rules and direct that all applications for revision should be accompanied by a copy of the decision sought to be revised."

From this decision, there is no denying the fact that the Court by its decision has established a practice which is to be followed in all applications to this Court for revision. We are therefore unable to accept Mr. Kesaria's contention that as there is no specific provision in the Court Rules, 1979 requiring the attachment of a copy of the ruling the objective of the rules had been achieved when the affidavit in reply was filed on 15.12.2005 with a copy of the decision sought to be revised attached. Similarly, we are of the settled view that Mr. Kesaria's prayer for leave to amend the notice of motion to include the copy of the ruling of the High Court Commercial Division of 16.8.2002 is also misconceived. The application being incompetent, there is no legal basis upon which the Court could grant Mr. Kesaria's prayer for the amendment of the notice of motion.

For the foregoing reasons, the application is struck out with costs.

DATED at DAR ES SALAAM this 18th day of July,

2006.

D.Z. LUBUVA
JUSTICE OF APPEAL

J.A. MROSO
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.M. RUMANYIKA)
DEPUTY REGISTRAR