IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: BWANA,J.A.,MANDIA,J.A., And MUSSA, J.A.,)

CIVIL APPLICATION NO. 161 OF 2011

1. KULWA SALUM KANJOVU
2. MOHAMED MWALIMU
(LEGAL REPRESENTATIVE
OF THE LATE YUSUPH KILAMBO SAID) ..... APPLICANTS
VERSUS
YUSUPH SHABANI MATIMBWA ..... RESPONDENT
(Application for Revision from the decision of the High Court of Tanzania at Dar es Salaam)

(Nchimbi, J.)

dated the 29th day of November, 2011
in
Land Appeal No. 75 of 2009
.....

RULING OF THE COURT

21st October & 2014
MUSSA, J.A.:

The applicants were the unsuccessful parties in Land Application No. 33 of 2006 which was instituted and determined by the Temeke District Land and Housing Tribunal. Dissatisfied, they lodged Land Appeal No. 75 of 2009 in the Land Division of the High Court but, when the matter was placed before the presiding Judge on the 29th November 2011, Nchimbi, J; he ordered thus:-

"This appeal is dismissed, with costs to the respondents, for being barred by time. Reasons reserved."

The applicants are at odds with the above extracted High Court order and, presently, they are moving this Court to vacate the decision in revision. The application is by Notice of Motion which has been taken out under the provisions of section 4(3) and Rule 65 of, respectively, the Appellate Jurisdiction Act, Chapter 141 of the Laws (AJA) and the Tanzania Court of Appeal Rules, 2009 ("the Rules"). The Notice of Motion is accompanied by an affidavit duly sworn by Ms. Crescencia Rwechungura, the learned Advocate for the applicants.

The application is resisted by the respondent through an affidavit in reply sworn, on his behalf, by his learned advocate, Mr. Philemon Mutakyamirwa. In addition, counsel for the respondent appended a Notice of a preliminary point of objection to the effect that:-

"the Applicants' Application before this Honourable Court is incompetent to proceed to hearing as it has been brought by way of revision instead of an appeal."

At the hearing before us, both Mr. Mutakyamirywa and Ms. Rwechungura, respectively, addressed us in support and to counter the preliminary point of objection. But, quite apart, we were constrained to raise, *suo motu,* the issue whether or not the Court is, in the first place, properly seized of this application in view of the fact that the same is not accompanied with a copy of the decision which is desired to be impugned. As hinted upon, in dismissing the appeal, the High Court reserved its reasons which, according to Ms. Rwechungura, were later pronounced and delivered. The irony is that the applicants did not attach the copy of the Ruling in which the reasons for the dismissal were comprised.

Addressing the apparent infraction, the learned counsel for the applicants quickly rejoined that, after all, there is no specific provision in the Rules which requires an applicant for revision to attach, in the

Notice of Motion, the copy of the decision desired to be revised. Alternatively, Ms. Rwechungura prayed for the Court's indulgence to allow her to lodge the copy of the reasons at the close of the hearing.

On his part, Mr. Mutakyamirwa strenuously urged that on account of the non-attachment of the copy of the decision desired to be impugned, the application is, in effect, incompetent. The learned counsel for the respondent added that once the application is adjudged incompetent, there is no legal basis to accommodate Ms. Rwechungura's prayer to be allowed to lodge the copy the impugned decision of the High Court.

Reflecting on the learned rival contentions, we should express at once that the revisional jurisdiction is geared towards enabling the Court to examine the proceedings before the High Court in order to satisfy itself as to the correctness, legality or proprietness of the proceedings, as well as the decision emanating therefrom. If such is the objective, needless to have to emphasise that the court cannot meaningfully exercise its revisional jurisdiction unless the application for revision is accompanied with the decision desired to be revised. In this regard, we need only reiterate what was pronounced in the unreported Civil

Application No. 112 of 2003 – **Citibank Tanzania Limited v. Tanzania Telecommunications Company Limited and five Others:-**

> *"In case the circumstances permit the court to exercise its revisional jurisdiction, 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."*

Rule 3(2) (a) of the old Rules to which the Court made reference is, presently, Rule 4(2)(a) of the current Tanzania Court of Appeal Rules, 2009. To this end, despite the absence of a specific provision, the established practice of the Court is to require every application for revision to be accompanied by a copy of the decision desired to be revised. Where, as here, the impugned decision is not appended, the application is rendered incompetent (See the unreported Civil Application

No. 183 of 2005 – **Abbas Sherally and Another Vs Abdul Sultan Haji Mohamed Fazalboy).** Thus, as correctly formulated by Mr. Mutakyamirwa, the present application being incompetent, there is no legal basis to grant Ms. Rwechungura's request to allow her to lodge the unattached decision.

For the foregoing reasons, the application is struck out but, since this particular issue of incompetence was raised *suo motu* by the court, we give no order as to costs.

DATED at **DAR ES SALAAM** this 5th day of November,2014.

S.J. BWANA
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

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

M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL