

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: RUTAKANGWA, J.A., LUANDA, J.A. And MMILLA, J.A.)

CIVIL APPLICATION NO. 16 OF 2016

HAMIDA HAMISI APPLICANT

VERSUS

THE PRINCIPAL MAGISTRATE MBAGALA PRIMARY COURT 1ST RESPONDENT

HAMISA SALUM UBUGUYU 2ND RESPONDENT

THE ATTORNEY – GENERAL 3RD RESPONDENT

**(Application for revision from the decision of the High Court of
Tanzania at Dar es Salaam.)**

(Mwaikugile, J.)

dated the 30th day of May, 2014

in

Civil Application No. 192 of 2011

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RULING OF THE COURT

8th April & 15th June, 2016

LUANDA, J.A.:

This is a ruling in respect of an application for revision taken out under S. 4 (3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (the Act). The application has been made by Hamida Hamisi (the Applicant).

Briefly the background to the application is to the following effect. The applicant was sued in the Primary Court of Temeke at Mbagala by the 2nd respondent (Hamisa Salum Ubuguyu) for recovery of Tshs. 1,123,600/= being the value of goods supplied to her for sale. The trial primary court found in favour of the 2nd respondent but the amount was reduced to Tshs. 888,000/=. The applicant was aggrieved by that finding, she intended to appeal to the District Court of Temeke. But before she could do so, her house was sold by a Court Broker to one Samear Saidiq Mohamed following an attachment made by the trial primary court. It was the attachment order which made her realize that she was to pay Tshs. 16,417,722/= or else her house would be sold by way of an auction. The applicant was very much upset. She instituted a suit in the High Court of Tanzania (Dsm Registry) against the above named respondents claiming in total Tshs. 110,000,000/= as damages. But her suit was met with an objection on points of law. One of the point of law raised and which carried the day was that the suit did not comply with the provisions of Order VII, rule 1 (i) of the Civil Procedure Code, Cap 33 R.E. 2002 (the CPC). The rule reads:-

1. The plaint shall contain the following particulars:-

a) NA

b) NA

c) NA

d) NA

e) NA

f) NA

g) NA

h) NA

i) A statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

Mwaikugile, J. struck out the suit with costs for failure to state the value of the subject matter. The applicant did not give in; she applied for a review in the same court. The 1st and 3rd respondents yet again raised a preliminary objection in that the application for review was time barred. The High Court (Mwaikugile, J.) sustained the point of objection raised. The application was dismissed with costs, hence the filing of these revisional proceedings.

In this application for revision, the applicant appeared in person. The 2nd respondent was advocated for by Mr. Mafuru Mafuru, learned counsel. The 1st and 3rd respondents who were duly served, did not enter appearance. In terms of Rule 63 (2) of the Court of Appeal Rules, 2009 (the Rules) we found no reason whatsoever to adjourn the matter; we decided to proceed with hearing of the application in the absence of the 1st and 3rd respondents.

The applicant has filed her written submission. To put it in a nutshell, the applicant, if we understood her properly, which we believe we did, said the striking out of her suit and subsequently dismissing her application for review was not justified at all in three respects. **Firstly**, the point of law raised in the preliminary objection in respect of her suit does not have the effect of finally deciding the suit. At best, she went on to say, if the statement of the value of the subject matter of suit is missing, then the appropriate action which ought to have been taken was to reject the plaint as is provided under Order VII, rule 11 of the CPC instead of striking it out. **Secondly**, she went on to say that in case the High Court found out that the proper action is not to reject the plaint, then the High Court should have ordered the applicant to give further and better particulars as

is provided under Order VI, rule 5 of the CPC upon such terms as it to costs or otherwise as the court may deem fit to impose. **Thirdly**, she went further to say that her application for review was not filed beyond the prescribed time as she was awaiting for a copy of an extracted order. She prayed that the Court to revise the same.

Mr. Mafuru resisted the application contending that the 2nd respondent had raised a point of law in that the applicant failed to state the value of the subject matter as is mandatorily required by Order VII, rule 1 (i) of the CPC. Furthermore, he went on to say an application for review was filed beyond the prescribed time. It was properly dismissed. As regards Order VII, rule 11 of the CPC, Mr. Mafuru said, the said order stipulates under what circumstances a plaint shall be rejected. Failure to state the value of the subject matter is not one of such categories. The said rule is not applicable. Likewise Order VI, rule 5 of the CPC which is for requirement on the part of the plaintiff to give further and better particulars is not applicable either. It is the submission of Mr. Mafuru that both applications were thrown out not on technicality as contended by the applicant. Rather the applications were struck out and dismissed for failure to abide with the mandatory requirements of the provisions of the laws

namely the CPC and the Law of Limitation, Cap 89 R.E. 2002. He prayed that the application be dismissed with costs.

We have carefully read the record as well as the written submissions. We wish to state from the outset that indeed there is no statement of the value of the subject matter of the claim as mandated by Order VII, rule 1 (i) of the CPC though the applicant is claiming in total Tshs 110,000,000/= as damages. But the purpose of stating the value of the subject matter is two fold. **One**, to ascertain whether the court in which the case was filed has a request jurisdiction. **Two**, it will enable the Court to assess the correct fees.

Furthermore, in this case the applicant was suing, among others, the Hon. Attorney General after she had complied with the mandatory requirement by giving notice to sue the Government. For all intents and purposes it is a suit against the Government. In terms of SS. 6 (4) and 7 of the Government Proceedings Act, Cap 5 R.E. 2002 the Court which is competent to trial the suit is no other than the High Court, irrespective of the value involved. The section provides:-

6 (4) All suits **against** the Government **shall be instituted in the High Court** by delivering in the Registry of the High Court within the area where the claim arose. [Emphasis is ours].

7. Notwithstanding any other written law, **no civil proceedings against the Government** may be instituted in **any court other than the High Court**. [Emphasis supplied].

From the foregoing, it is clear that the value of the subject matter for purpose of ascertaining whether the court has a requisite jurisdiction in a suit against the Government is not a criteria in ascertaining the issue of jurisdiction. In terms of the above reproduced sections, when it is the Government which is being sued, it is the High Court which is clothed with jurisdiction to entertain such suit irrespective of the amount of money involved. So, in our case the suit was properly filed in the High Court.

As regards the court fees, this issue was not canvassed at all. We take it that the applicant paid the requisite court fees basing on her total claim of Tshs. 110,000,000/= . That is in compliance with the requirement

of Order VII, rule 1 (i) of the CPC though not stated in the plaint. In view of the foregoing therefore, the High Court was wrong when it struck out the suit on the ground that the appellant failed to state the value of the subject matter. Even if we take it that the applicant did not state the value of the subject matter, we do not think the High Court was entitled to do what it had done, to strike out the suit, simply because the word "shall" is used.

We don't think the word "shall" in that context connotes mandatoriness when taken into account that such a defect could be amended as provided under Order VI, rule 17 of the CPC which reads:-

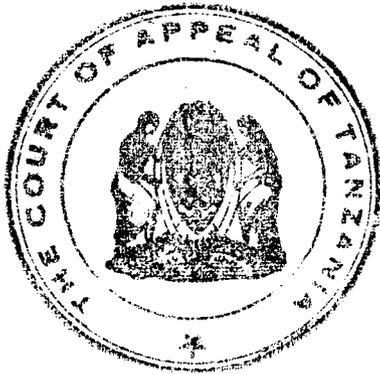
17. The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

We are unable to agree with Mr. Mafuru that the High Court had properly struck out the case and dismissed the application for review. We, however, agree with him that Order VII, rule 11 and Order VI, rule 5 of the CPC as to rejection of plaint and to furnish further and better particulars, respectively are not applicable in the circumstances of this case.

In the exercise of our revisional powers, as provided under S. 4 (3) of the Act, we quash both the proceedings of the High Court which struck out the suit and that of review and restore the suit for hearing. The same to be heard by another judge. Costs in the cause.

Order accordingly.

DATED at DAR ES SALAAM this 9th day of June, 2016.



E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

I certify that this is a true copy of the original


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL