

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MUSSA, J.A., And MZIRAY, J.A.)

CIVIL REVISION NO. 5 OF 2016

TANZANIA ELECTRICITY COMPANY LTD (TANESCO).....APPLICANT

VERSUS

1. MUFUNGO LEONARD MAJURA
2. ELIKIRA FANUEL KWEKA
3. KAMBEIRI OMARI SHAIBU
4. NOYA JOHN CONRAD
5. SALIMA RAJABU KIZIGO
6. MRS. ABNELI SALATIERI MBALLA
7. IRENE BARAZA SALEHE
8. GALIO BANKO KISESA
9. ALLY MWALIMU SHOMVI
10. OMARI SALUM NGALOMBA
11. NAHUMU ANAEL PALLANGYO
12. NGIMBA MARY PAUL
13. MAJOR MUSSA SELEMAN KINGAI
14. OMARI RAJABU REMMY
15. MASEGEDO JUMA MGWENO

..... RESPONDENTS

(Revision from the decision of the High Court of Tanzania,
(Land Division) at Dar es Salaam)

(Mansoor, J.)

dated the 5th February, 2015

in

Land Case No. 55 of 2008

RULING OF THE COURT

22nd & 30th November, 2016

MZIRAY, J.A.:

These proceedings were initiated by the Court *suo motu* under section 4(3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (AJA), for this Court to satisfy itself on the correctness, legality or propriety of the

decision of Hon. Mansoor, J. sitting at the High Court of Tanzania (Land Division) in Land Case No. 55 of 2008 dated 5/2/2015.

When the application was called on for hearing, the respondents under the services of Mr. Audax Kahendaguza Vedasto, learned Advocate raised two sets of preliminary objections. The first set was filed on 08/09/2016 containing ten grounds of objection, while the second one was filed on 16/11/2016 with only one ground of objection. Objectively and upon scrutiny of them, the two sets of objections were basically to the following effect and were raised in alternative. The first one was premised on the ground that **the Court of Appeal has no revisionary power to entertain the matter**. In the alternative to the above, the application was incompetent because at the time of lodging the application there was already a notice of appeal filed in this Court.

Addressing the first ground, Mr. Vedasto submitted that by virtue of Article 117(3) of the Constitution of the United Republic of Tanzania, 1977, (the Constitution), the Court of Appeal is vested only with powers to hear and determine every appeal brought before it arising from any decision of the High Court or of a Magistrate with extended jurisdiction. He submitted that the provision of Article 117(3) provide for appellate powers of the Court

and not its revisionary powers. On that basis therefore, the learned counsel was of the view that the Court of Appeal lacks the revisionary powers to entertain the revision.

Turning to the alternative point of objection, the learned counsel pointed out that the present application for revision cannot be allowed as the applicant has lodged a notice of appeal to appeal against the decision given by Mansoor, J. in Land Case No. 55 of 2008 whose revision she now also seek. The learned counsel argued that under the circumstance, they were riding two horses at the same time, which was improper and an abuse of the Court process. To buttress his position, the learned counsel referred this Court to the decisions in the cases of **Kombo Mkabara vs. Maria Louise Frisch**, Civil Application No. 3 of 2000, **Tanzania Postal Bank vs. Emir Wilson Daud Dioniz Kakukulo Kanyelegele**, Civil Application No. 129 of 2008, **Balozi Abubakari Ibrahim & Another v. Ms. Behandys Limited & two Others**, Civil Revision No. 6 of 2015 (All unreported) and that of **Harish v. Abdulrazik** [2004] TLR 339.

In reply, Mr. Richard Rweyongeza and Majura Magafu, learned counsel while responding to the first point of the objection raised, submitted that under Article 117(1) of the Constitution, the power of this Court is not

confined to hear appeals only as Mr. Vedasto is trying to suggest but such power under that Article extended to hear and determine other types of cases as provided by any other written law. It is argued that one of such other law is the AJA on which section 4(3) confers this Court with revisionary power.

In response to the alternative point of the preliminary objection, the learned Advocates for the applicant while conceding that there is a pending appeal in this Court but they are seriously convinced that as there is execution process proceeding in the High Court, then revision is the only remedy available to the applicant to block that process and such a move should be treated by this Court as an exceptional case.

On his rejoinder submission, Mr. Vedasto reiterated his submission in chief and added further that since there is a notice of appeal in the record of appeal, in his view, the possibility of executing the decree is very minimal.

Having carefully considered the rival submissions by the learned counsel both in support and against the application, we wish, in determining the matter to start with the alternative point of preliminary objection raised that the application was incompetent because at the time of lodging the application there was already a notice of appeal lodged in this Court. Before

discussing this point, we wish to make it clear that we entirely agree with Mr. Rweyongeza that in terms of Article 117(1) of the Constitution the power of this Court is not confined to hear appeals only but also other type of cases provided by any other law. The Kiswahili version of this Article is couched in the following words:

*"117(1) Kutakuwa na Mahakama ya Rufani ya Jamhuri ya Muungano ("itakayojulikana kwa kifupi kama "Mahakama ya Rufani") ambayo **mamlaka** yake yatakuwa kama ilivyoelezwa katika Katiba hii **au katika Sheria nyingine yoyote"***

(Emphasis added.)

In our view, the word **mamlaka** is wide enough to embrace jurisdiction, legal authority, statutory authority and legal mandate which was conferred to the Court by AJA.

We now revert to the alternative point of the preliminary objection. The learned advocates for the applicant did not in their submission dispute the fact that at the time of filing this application there was a notice of appeal filed in Court with intent to challenge the decision of Mansoor, J. in Land

Case No. 55 of 2008 delivered on 5/2/2015 and that, the same has never been withdrawn. This Court facing similar situation in the case of **Tanzania Telecommunication Company Limited & Others v. Tri-Telecommunication Tanzania Limited** [2006] 1 EA 393 observed *inter-alia* that:

"...since the appeal process was actively being pursued, it would be improper for the Court to allow the parties to invoke the revisional jurisdiction while at the same time pursuing the appeal process. This would also amount to riding two horses at the same time. That is by invoking the revisional jurisdiction while at the same time pursuing the appeal process. This Court cannot allow, it is improper."

Guided with the above authority cited, of which we subscribe, we find that it was wrong to initiate revisional proceedings while the applicant had already filed a notice of appeal because the two matters could not co-exist. That said therefore, the revision proceedings has to wither away and give room for the pending appeal to proceed.

In the result and for the reasons explained above, we uphold the alternative point of preliminary objection raised on the ground that the application is incompetent because at the time of lodging the application

there was already a notice of appeal to appeal in this Court. Since the alternative point of objection is sustained then there is no need of discussing the other point raised.

In the event, the application is struck out. We make no order as to costs as the revision was raised by the Court *suo motu*. Order accordingly.


DATED at **DAR ES SALAAM** this 25th day of November, 2016.

B.M. LUANDA
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

