IN THE COURT OF APPEAL OF TANZANIA
AT TANGA

(CORAM: MZIRAY, J.A., MWAMBEGELE, J.A., And KEREFU, J.A.)

CIVIL APPLICATION NO. 218/12 OF 2018

HASSAN NG'ANZI KHALFAN ..... APPLICANT

VERSUS

1. **NJAMA JUMA MBEGA (Legal Representative of the late MWANAHAMISI NJAMA)**
2. **JAMBIA NG'ANZI KHALFAN**

..... RESPONDENTS

(Revision from the Ruling of the High Court of Tanzania at Tanga)
(Khamis, J.)

dated the 27th day of December, 2017
in
Misc. Civil Application No. 82 of 2017

.....

RULING OF THE COURT

11th & 20th February, 2020

MWAMBEGELE, J.A.:

The background to the present application is rather chequered. To appreciate the nature of the present application, we find it apt to narrate it, albeit briefly, as we could glean from the record. It is this: on 27.12.2007, the Tanga Urban Primary Court, through Probate Cause No. 240 of 2007, appointed the second respondent Jambia Ng'anzi Khalfan as administrator of the estates of the late Ng'anzi Khalfan. On 29.07.2011 that appointment was annulled by the same Primary Court upon a complaint and appointed

the first respondent Mwanahamisi Njama and Jupiter Auction Mart to jointly administer the estates.

In a bizarre twist of things, the applicant Hassan Ng'anzi Khalfan, who was a witness in the probate cause that appointed the second respondent as administrator and conceded to his being so appointed, filed another application in the same Primary Court but sitting at Mwang'ombe vide Probate Cause No. 4 of 2011 in which he was appointed administrator of the same estates. However, his appointment was revoked on revision by the District Court of Tanga on 08.11.2011 vide Civil Revision No. 9 of 2011 which proceedings were declared null and void and the appointment by the Tanga Urban Primary Court of the first respondent and Jupiter Auction Mart as joint administrators of the estates of the late Ng'anzi Khalfan was confirmed.

The ruling of the District Court of Tanga on revision did not amuse the applicant. He thus appealed to the High Court vide PC Civil Appeal No. 13 of 2011. The High Court (Khamis, J.), on 16.09.2015, quashed the appointment of Jupiter Auction Mart as joint administrator of the estates and, in its stead, the second respondent herein, was reappointed. The appointment of the first respondent was affirmed. That is to say, the

respondents herein were to jointly administer the said estates of the late Ng'anzi Khalfan.

The judgment of the High Court did not make the applicant happy. However, his intention to challenge it was not implemented timely. He thus filed Misc. Civil Application No. 82 of 2016 seeking the High Court orders for extension of time to file an application for leave to appeal to this Court and for leave to appeal to the Court against the decision handed down on 16.09.2015. The High Court found that application to be "misconceived and without basis" and proceeded to dismiss it with costs.

Undeterred, the applicant has come to this Court by way of revision seeking to assail that refusal of the High Court. His notice of motion, taken out under the provisions of section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2002 and rule 65 of the Tanzania Court of Appeal Rules, 2009 – GN No. 368 of 2009 (elsewhere referred to as the Rules), has the following grounds:

1. *Whether a probate cause without having death certificate of the deceased person can be a legally granted;*
2. *Whether the probate cause which was filed in the court can be legally granted without having:*

i) Clan meeting minute proposing administrator

ii) Letter of street chairman

iii) Letter of ward executive officer

iv) Publication of probate cause

3. *Which section empowers High Court and Court of Appeal between section 5 (1) (c) and 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 in an Application for leave to appeal.*

When the application was placed before us for hearing on 11.02.2020, the applicant appeared in person, unrepresented. As for the respondents, the first appeared through Mr. Obediodom Chanjarika, learned counsel and the second, like the applicant, appeared in person, unrepresented.

Before we could go into the hearing of the application in earnest, Mr. Chanjarika intimated to the Court that the first respondent was no more. He added that an administrator of her estates, one Njama Juma Mbega, who was also present in Court, had been appointed. He produced the relevant certificate of death and the letters of appointment of Njama Juma Mbega as administrator of the estates of the late Mwanahamis Njama. In the circumstances, he fronted a prayer to have the said Njama Juma Mbega step into the shoes of the late Mwanahamis Njama who passed away on 29.04.2019. That prayer was predicated on the provisions of rule 57 (3) of

the Rules. To that prayer, the applicant and second respondent, had no objection. We thus granted the prayer and, in terms of rule 57 (3) of the Rules, made Njama Juma Mbega a party to the application in place of Mwanahamis Njama, now deceased.

When we gave the floor to the applicant to argue his case, he did no more than adopt the written submissions he earlier filed in its support as part of the oral arguments. The applicant had also no substantial response when we prompted him to respond to the point in the reply written submissions to the effect that he ought to have come to the Court by way on an appeal; not revision as he did and that for that reason his application was incompetent. He simply said he was a lay person who could not know which proper course to take.

On the other hand, Mr Chanjarika for the first respondent, adopted the reply written submissions he earlier filed in opposition to the application and reiterated that the proper course to have been taken by the applicant was to challenge the decision of the High Court by way of an appeal; not revision. He submitted that the application was therefore incompetent prone to be dismissed. The learned counsel did not buttress the argument with any authority. However, alternatively, the learned counsel was of the view that

the position taken by the High Court was quite appropriate and thus implored us to dismiss the application with costs.

The second respondent supported the application. He ascribed his support to the reason that the defects complained of by the applicant were apparent. That is the probate proceedings were opened without proper documents being accompanied with the application thereby calling upon this Court to rectify the ailment.

In view of the verdict we are going to reach in the determination of this application, we are not going to refer to a big chunk of the applicant's submissions which mainly challenge the tenability of the decision of the Primary Court which appointed the administrators allegedly without proper documents; like minutes of the clan meeting which was not made available to it.

We hasten to remark at the very outset of our determination that the point raised by Mr. Chanjarika on the propriety of this application before us is of paramount importance worth of determination before going into the nitty gritty of the application. We say so because we are positive that the law is now settled that revisional powers of the Court are not an alternative

to its appellate jurisdiction. We have pronounced ourselves so in a number of decisions. In **Halais Pro-Chemie v. Wella A.G.** [1996] TLR 269, the Court relied on its two previous decisions in **Moses Mwakibete v. The Editor - Uhuru and two others** [1995] TLR 134 and **Transport Equipment Ltd v. Devram P. Valambhia** [1995] TLR 161 to hold (I quote from the second headnote):

> *"Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court".*

The foregoing stance has religiously been followed by the Court ever since it was articulated – see: **Mantrac Tanzania Ltd v. Junior Construction Co. Ltd & 3 others,** Civil Application No. 552/16 of 2017, **Kempinski Hotels S.A v. Zamani Resorts Limited & Another**, Civil Application No. 94/14 of 2018, **Felix Lendita v. Michael Long'idu**, Civil Application No. 312/17 of 2017 and **Yara Tanzania Limited v. DP Shapriya & Company Limited**, Civil Application No. 345/16 of 2017 (all unreported), to mention but a few. In all these authorities, the Court has pronounced itself in no uncertain terms that, unless there are exceptional circumstances, the revisional jurisdiction of the Court should not be resorted

to as an alternative to its appellate jurisdiction. We are guided by that position in the determination of this application.

It is evident from the affidavit deposed by the applicant in support of the application as well as the written submissions supporting it, that the applicant, having been dissatisfied with the decision of the High Court in PC Civil Appeal No. 13 of 2011, he was minded to challenge it by an appeal and, because he could not challenge it timely, he filed an application for extension of time to file an application for leave to appeal to the Court and to file the intended appeal. That application failed. The application did not pursue that course further. He opted to challenge that decision by revision. It is not clear from the record if the applicant ever lodged any notice of appeal thereof. What is evident is that he lodged the present application timely; that is, within sixty days of the decision sought to be assailed. No reason is advanced why no notice of appeal was lodged so that he could challenge the decisions through an appeal. When we asked him at the hearing why he opted for this course of action, the applicant simply hid under the shield of being a lay person.

The issue before us is whether, in view of the above, the present application is incompetent as alluded to by Mr. Chanjarika, learned counsel

for the first respondent. On the authorities cited above, we are inclined to agree with Mr. Chanjarika that the course taken by the applicant to invoke the revisional jurisdiction of the Court was uncalled for. It has been taken as an alternative to an appeal. We are satisfied that the applicant had no justification do so, for no reasons have been brought to the fore why the appeal process was abandoned. Neither has it been established that the appeal process has been blocked. At this juncture, we wish to reiterate what the Court observed in **Moses Mwakibete** and recited in **Halais Pro-Chemie** (both supra)

> *"Before proceeding to hear such an application on merits, this court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by subsection (3) were not meant to be used as an alternative to the appellate jurisdiction of this court. In the circumstances, this court, unless it is acting on its own motion, cannot properly be moved to use its revisional powers in subsection (3) in cases where the applicant has the right of appeal with or without leave and has not exercised that option..."*

The above said, we think the impugned decision could be challenged by way of an appeal with or without leave of the High Court. The applicant

has not brought to the fore exceptional circumstances that would legally entitle him to resort to the revisional powers of the Court, instead of its appellate jurisdiction. Thus, the application before us is incompetent and bad in law for being preferred as an alternative to an appeal. For the reasons we have endeavoured to assign, we strike out this application with costs to the first respondent.

Order accordingly.

DATED at **TANGA** this 18th day of February, 2020.

R. E. S. MZIRAY
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 20th day of February, 2020 in the presence of Hassan Ng'anzi Khalfan, the Applicant in person and Mr. Obediodom Chanjarika, learned counsel for the 1st Respondent and Jambia Ng'anzi Khalfan, 2nd Respondent in person is hereby certified as a true copy of the original.

H.P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL