IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CIVIL APPLICATION NO. 151 OF 2013

AMI TANZANIA LIMITED..... APPLICANT

VERSUS

1. OTTU ON BEHALF OF P. L. ASSENGA & 106 OTHERS
2. SUPER AUCTION MART & COURT BROKERS
3. THE ROYALE ORCHARD INN LTD
4. AMIKAN VENTURE LIMITED

.....RESPONDENTS

(Application for a Review of the decision of the Court in Civil Application No. 35 of 2011 contained in Application for Review - Civil Application No. 44 of 2012)

(Luanda, Mussa and Juma, JJJ.A)

Dated the 8th day of July, 2013

RULING

25th September & 19th December, 2013

MUSSA, J.A.:

The applicant, a Limited Company, seeks to invite the Court to review its own decision comprised in Civil Application No. 44 of 2012 **(Luanda, Mussa and Juma, JJJ.A)** and dated the 8th day of July, 2013. The application is by Notice of Motion taken out under the

provisions of Rule 66 (1) (a),(b), and (c) of the Court of Appeal Rules, 2009 (the Rules).The application is accompanied by an affidavit duly sworn by Mr. Walter Buxton Chipeta, Advocate. The application is vigorously resisted through affidavits in reply, duly sworn or affirmed by Messrs Peter Leina Assenga, Mustafa Omary Nyumbamkali, Mustafa Rashid and Abdulsalami Mohamed Abeid; on behalf of, respectively, the first to fourth respondents. In addition, counsels for the respondents have jointly enjoined a Notice of preliminary objection couched thus:-

> *In view of Rule 66 (7) of the Tanzania Court of Appeal Rules 2009, the decision of this Court in Civil Application No. 44 of 2013 dated the 10th July 2013 (sic), which reviewed the Court's decision in Civil Application No. 35 of 2011, is final and not amenable to the further application for review.*

It is, perhaps, pertinent to appraise at this stage that at the hearing before us, the applicant had the services of a team of Advocates, namely, Messrs Richard Rweyongeza, Amour Saidi Hamisi and Abdon Rwegasira. On the adversary side, whereas, the first, third and fourth respondents were, respectively, represented by Messrs

Rosan Mbwambo, Erasmus Buberwa and Sylvester Shayo; the second respondent was advocated by two counsels, namely, Messrs Mpaya Kamara and Martin Matunda. At the outset and, in the wake of a consensus reached by counsel on either side, it was ordered that the preliminary point of objection along with the main application be canvassed in turns by a single token. That is to say, it will suffice to dispose of the application on account of incompetence in the event we were minded to uphold the preliminary point but; if, on the contrary, the preliminary point is declined, the Court shall proceed to determine the substantive application on the merits. Nonetheless, to facilitate a quick perspective of the learned rival contentions with respect to both the preliminary point of objection and the main cause, a brief background of the matter is necessary.

Mr. Peter Leina Assenga and 106 others were employees of AMI Tanzania Ltd.; the applicant herein, until May, 1995 when they were terminated by way of redundancy. Through Enquiry No.18 of 1995, the first respondent, then an umbrella organization of Trade Unions, took up the matter and contested the retrenchment exercise in the defunct

Industrial Court of Tanzania; as it were, on behalf of Mr. Assenga and company. In a verdict handed down by Mr.Tendwa, who was then a Deputy Chairman of the Industrial Court, the Enquiry was dismissed on the 17th June, 1977. Dissatisfied, the first respondent initially mounted Civil Appeal No. 7 of 1977 in the High Court which was, however, struck out for want of a copy of a decree. Undaunted, the first respondent refreshed the beleaguered appeal with another Civil Appeal, numbered 96 of 1998. On the 21st August, 2000 the High Court sitting at Dar es Salaam, **(Katiti, J)** allowed the appeal and set aside the decision of the Industrial Court. The late Judge was not minded to grant a reinstatement of the retrenchees; rather, the applicant was ordered to pay compensation in lieu of reinstatement in terms of section 25 (a) of the Security of Employment Act.

Aggrieved, the applicant preferred Civil Appeal No. 76 of 2002, which was, however, struck out by this Court for not being in the company of a decree. Subsequently, the ill – fated appeal was refreshed with another one, namely, Civil Appeal No. 54 of 2004 but; once again, the second bite was befallen by the same plight of being

struck out on account of incompetence. Accordingly, the applicant's efforts to impugn the decision of **Katiti, J** by way of an appeal, ended in vain. In the meantime, first respondent had initiated the wheels of justice towards the execution of the won decree by seeking, from the High Court, a quantum of payments to the tune of a sum of Shs.5,071,273,684/=. In response, the applicant resisted the quest upon objection proceedings through which it was contended, *inter alia*, that the judgment of **Katiti, J** was, after all, declaratory and, thence, incapable of being executed. Nonetheless, the High Court, **(Rugazia, J)** was disinclined and, in the upshot, the objection proceedings were dismissed. More particularly, in its Ruling delivered on the 24th November, 2010 the High Court confirmed the first respondent's compensatory claim and ordered the execution of the decree in appeal by attachment and sale of several of the applicant' s properties. The second respondent was appointed to broker the sale and, in the aftermath, three immovable belongings of the applicant, all of them situate within Dar es Salaam City were lined up to be auctioned for sale on the 26th December, 2010. Whereas two of the immovable premises were on plots 6 and 7, Upanga area; the third property was comprised

in certificate of title No. 26240 and situate at Baobab village, Masaki area; The way it appears, despite an attempted obstruction from the applicant, the auction and sale were conducted by the second respondent as scheduled, whereupon, the third and fourth respondents emerged as purchasers. Nevertheless, a little later, on the 7th February, 2011 the applicant successfully secured an order of the High Court, **(Twaib, J)** setting aside the sale on account of irregularities.

Dissatisfied, the respondents mounted Civil Application No. 35 of 2011, seeking an order of this Court in revision, to impugn the February 7th verdict of the High Court. At the conclusion of the deliberations, the Court was of the view that the High Court, (Labour Division) was the one mandated to execute the decree in appeal in terms of Rule 48 (3) of the Labour Court Rules, 2007. Thus, in a Ruling dated the 16th February, 2012 this Court, **(Munuo, Luanda, Massati, JJJ.A;)** in the exercise of its revisional jurisdiction under section 4(3) of the Appellate Jurisdiction Act, 1979 nullified the entire execution proceedings below, as it were; setting aside the proclamation of sale as well as the subsequent order of **Twaib, J** which set aside the sale. It was further

ordered that the decree in appeal be transmitted to the Labour Division of the High Court so as to give allowance to the respondents, just in case they were minded to refresh the execution process. As it turned out, for whatever cause, the respondents were still discontented, whereupon, on the 12th April, 2012 they preferred Civil Application No. 44 of 2012, seeking to move this court to review its own decision comprised in Civil Application No. 35 of 2011. The thrust of the claim was that the invocation of Rule 48 (3) of the Labour Court Rules, 2007 was resorted to by the Court *suo motu*. Thus, in essence, Civil Application No.44 was premised on a complaint that the respondents, who featured as applicants in Civil Application No.35 0f 2011, were effectively and improperly deprived opportunity to be heard with respect to the issue of the applicability of the referred Rule 48 (3).

Having heard either side, the Court, **(Luanda, Mussa, Juma, JJJ.A;)** was, in effect, impressed by the argument and shared the respondents' sentiments with respect to the non – compliance with the *audi alteram partem* rule at the hearing of Civil Application No. 35 of 2011. In the upshot, we were minded of the following view: -

This Court did not consider the grounds raised and the submissions of the parties. In its stead it revised the entire High Court proceedings suo motu and invoked its revisional powers under section 4(3) of the Appellate Jurisdiction Act, Cap.141 RE. 2002 by nullifying all execution proceedings, proclamation of sale and the Ruling and Order of the High Court (Twaib, J) and in terms of Rule 48 (3) of the Labour Rules and ordered the transmission of the decree in appeal to the Labour Division of the High Court for execution...

On the premises, the application for review was granted and, accordingly, we vacated our verdict in Civil Application No. 35 of 2011 along with all orders made thereof which were, accordingly, quashed and set aside. Rather remarkably, we did not end there but proceeded further with this: -

But the Court did not at all discuss and made decision in respect of the revisional proceedings filed by the applicants. We find proper and appropriate under the circumstances to discuss and make a decision otherwise the said application namely Civil Application No. 35 of 2011 will be hanging in the air.

Fortunately the parties had already made their submissions.

We then entered the arena of a detailed consideration of the decision of **Twaib, J;** at the end of which we invoked the Court's revisional jurisdiction and quashed the proceedings of the High Court. In consequence thereof, the Court declared that the auction was properly carried out and that the buyers of the properties were *bona fide* purchasers for value. In the end result, we directed the High Court to finalise the execution process in conformity with the dictates of Rule 90 (1), 92 and 93 of Order XXI of the Civil Procedure Code.

With so much by way of a factual background, I should now be in a position to confront the rival learned arguments by addressing, in the first instance, the preliminary point of objection. As hinted upon, the preliminary point of objection at hand is predicated under Rule 66 (7) which stipulates: -

Where an application for review of any judgment and order has been made and disposed of, a decision made by the court on the review shall be final and

no further application for review shall be entertained

in the same matter.

Against the foregoing narrated factual setting, Mr. Kamara, on behalf of his colleagues, strongly submitted that this application is effectively barred by the referred provision. In a submission that was supported by a monumental list of authorities, counsel found it apt to preface his argument with the contention that in so far as the word "shall" is employed by the Rules, the finality feature attributable to a decision of the Court on review is vividly underscored thereat. Accordingly, counsel concluded, such decision is, imperatively, not amenable to a further or fresh application for review. As regards the import tagged on the application of the word "shall", Mr. Kamara referred us this Court's unreported Civil Application No. 160 of 2008; viz. - **Mabibo Beer, Wines and Spirits Ltd. Vs Lucas Mallya aka Baraka Stores and another.** It is, perhaps, noteworthy that in the course of a construction of section 70(2) (a) of the Fair Competition Commission Act No. 8 of 2003 where the word "shall" features, the Court in *Mabibo* authoritatively culled from section 53(2) of the Interpretation of Laws Act, chapter 1, which provides: -

Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

As regards the finality of a judgment of the final Court of the country, counsel further travelled us through numerous decisions, with a particular focus on the unreported Civil Application No. 21 of 2012; i.e. - **Blue line Enterprises Ltd. Vs East African Development Bank,** where this Court paid homage and totally subscribed to the conventional wisdom inherent in the decision of the Federal Court of India comprised in **Raja Prithwi Chand Lall Chaudhary v Sukhraj Rai** (AIR 1941 SCI): -

> *"This Court will not sit as a Court of appeal from its own decisions nor will it entertain applications for review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would, in our opinion, be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: 'There is a salutary maxim which ought to be*

observed by all courts of last resort.....' (It concerns the state that there be an end of law suits)'... Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this."

And so, it was, finally, Mr. Kamara's strong and uncompromising submission that this application is caught up by the provisions of Rule 66 (7), more so, as the same is merged with our decision on review in Civil Application No. 44 of 2012; lest the so - called ***"disguised applications for review of review"*** will undeservedly pass off for the entertainment of the Court. On the score and, speaking for himself and his colleagues, counsel prayed that the application be struck out with costs for incompetence.

In response, Mr. Rweyongeza, also on behalf of the rest of applicant's team of advocates, cautiously sought to clarify that the application does not, in fact, seek a review of review in that it does not

seek to impugn the decision which reviewed and disposed of Civil Application No. 35 of 2011. More particularly, he submitted that the application does not seek a review of that portion of the decision of the Court through which Civil Application No. 35 of 2011 was vacated along with its accompanying orders. Counsel conceded that, to the extent that the referred portion of the decision went so far as to review Civil Application No. 35 of 2011; so much of the verdict is unassailable and is, indeed, caught up by the provisions of Rule 66 (7). On the contrary, so went his argument, the mainstay of the contention in support of the application is, rather, as against the second limb of our decision through which this Court invoked its revisional jurisdiction, whereupon, the proceedings of the High Court and the decision of **Twaib, J** were quashed and set aside. Submitting further and, in reference to his friend's contention on the finality expected of a decision of this Court on review, the learned counsel suggested that Civil Application No. 44 of 2012 was kind of hybridized in that two verdicts of different dimensions were, actually, pronounced and juxtaposed at a single stroke. In sum and, exercising restraint not to spill his argument over the main cause; counsel urged that given the peculiarity surrounding

Civil Application No. 44 of 2012, the second limb of the decision is not caught by the provisions of Rule 66 (7) and is, on that account, reviewable.

Addressing now, for the moment, the rival learned arguments either in support of or to counter the preliminary point of objection, I should express, from the very outset, that in my resolve I need not attempt the invidious ingenuity of reinventing the wheel! I propose, as I am indeed obliged, to unequivocally abide by the cherished jurisdictional canons governing the principle of review. In this regard, a prefatory remark is, perhaps, well worth that unlike other jurisdictions, this Court is not endowed with statutory jurisdiction of review. The Court's exercise of review jurisdiction was originally derived of case law as pioneered by the unreported Civil Application No. 26 of 1989 - **Felix Bwogi v. Registrar of Buildings;** which held that the Court is enshrined with inherent jurisdiction to review its own decisions. Against this backdrop, Rule 66 (1) was promulgated and, in its present face, the Rule categorically restricts the Court's exercise of its inherent jurisdiction thus: -

> The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds:-
>
> (a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or
>
> (b) a party was wrongly deprived of an opportunity to be heard; or
>
> (c) the court's decision is a nullity; or
>
> (d) the court had no jurisdiction to entertain the case; or
>
> (e) the judgment was procured illegally, or by fraud or perjury.

Thus, on account of its nature and upbringing, the Court's power of review is a jurisdiction which is exercised very sparingly and with great circumspection. Such is the stance which this Court has all along given heed ever since it assumed the jurisdiction and; no wonder, in its

present standing, a review only avails in the rarest of situations which meet the specific benchmarks prescribed under the referred Rule 66 (1). On the premises, it should always be borne in mind that whilst the Court has an unfettered discretion to review its own judgment or order but the anchorage of the Court's discretion is not on the basis of sky's the limit. On the contrary, the Court is strictly barred from granting an order of review outside the five grounds enumerated under Rule 66 (1). The restriction was clearly spelt out in the unreported Civil Application No. 62 of 1996 – **Tanzania Transcontinental Co. Ltd. V Design Partnership** thus: -

> *"The Court will not readily extend the list of circumstances for review, the idea being that the Court's power of review ought to be exercised sparingly and in most deserving cases, bearing in mind the demand of public policy for finality and for certainty of the law as declared by the highest Court of the land"*

What is more, on the terms of the already referred Rule 66(7), a review does not contemplate a right to a second bite. That is to say,

where an application for review has been made and disposed of, a decision or order made by the Court on the review shall be final and no further application for review shall be entertained in the same matter. This requirement is, obviously, premised on the already expressed public policy demand for finality and certainty of the law. Perhaps, the requirement is further predicated on the assumption that the resultant decision or order on review will be encompassed within the four corners of the specific benchmarks prescribed under Rule 66 (1).

Without prejudice to the foregoing cherished canons of our review practice, it must be quickly rejoined that recourse for review is basically intended to amend or correct an inadvertent error committed by the Court and one which, if left unattended, will result into a miscarriage of justice. (See the unreported Criminal Application No. 4 of 2011 - **Rizali Rajabu vs. Republic).**To this end, review is, so to speak, a power which is necessary for the proper and complete administration of justice and one which is resident in all courts of superior jurisdiction and essential to their existence. (See **Chandrakant Joshubhai Patel v Republic** [2004] TLR 218). Putting

it differently, since this jurisdiction exists, justice demands that it ought to be exercised in fitting situations whenever circumstances of a substantial compelling character demand its invocation in order to correct a manifest wrong and ordain full and effective justice in a given situation. For instance, in the unreported Criminal Application No. 3 of 2011 - **Peter Kidole Vs. The Republic,** this Court referred and adopted the following principles which were succinctly set forth in the Australian case of **Autodesk Inc v Dyson (No. 2)** - 1993 HCA 6; 1993 176 LR 300:-

> *"(i) The public interest in the finality of litigation will not preclude the exceptional step of reviewing or rehearing an issue when a court has good reason to consider that, in its earlier judgment it has proceeded on a misapprehension as to the facts or the law.*
>
> *(ii) As this court is a final Court of Appeal there is no reason for it to confine the exercise of jurisdiction in a way that would inhibit its capacity to rectify what it*

perceives to be an apparent error arising from same miscarriage in its judgment.

(iii) It must be emphasised, however that the jurisdiction is not to be exercised for the purpose of re-agitating arguments already considered by the Court; nor is it to be exercised simply because the party seeking a rehearing has failed to present the argument in all its aspects or as well as it might have been put. The purpose of the jurisdiction is not to provide a back door method by which unsuccessful litigants can seek to re-argue their cases."

All said, and getting down to the nitty – gritty of the matter, I should interject a remark here that from the narrated factual setting, it is, indeed, as clear as pike stuff that our Civil Application No. 44 encompasses a double – jointed decision. Whereas, the first joint relates to the Court reviewing and vacating its previous Civil Application No. 35 of 2011; in the second joint, the Court went further into revising and setting aside the High Court decision of **Twaib, J.** As hinted upon,

it is the immediately foregoing second limb of the verdict which is the subject of the application at hand. As, I think, correctly formulated by Mr. Rweyongeza, in so far as the first limb of the decision amounted to a disposal of a previous decision by way of review, the same is not reviewable; much as, the contrary be true, the Court would have lent itself upon the inexactitude of entertaining the so - called "*application for review of a review.*" That aside, from where I am standing, the second limb of our decision is on a completely different footing. In this regard, I should suppose, one cannot play ostrich over glaring truism that what features in that limb of our decision is, so to speak, **an order in revision** as distinguished from a **review** which, as it were, characterizes the first limb of our decision. Thus, to me, the order through which the decision of **Twaib, J** was quashed and set aside is, to all intents and purposes, **an order in revision,** that is, irrespective of the fact that the same is interwoven in review proceedings. To say the least and, with unfeigned respect to the team of advocates for the respondents; upon a true and proper construction, the second limb of our decision is not exactly a sibling of the review exercise. Rather, the decision stands on its own, just as it transcends well beyond the barrier

provided under Rule 66 (7) and; is, as such, subject to review. That would suffice to dispose of the preliminary point of objection which is, accordingly, overruled.

Having dislodged the preliminary point of objection, it remains for consideration and determination whether or not the impugned decision was in compliance or, rather, crossed the specific benchmarks prescribed under Rule 66 (1), either singularly or cumulatively. In its Notice of Motion, the applicant has enumerated the following grounds through which a review is being sought, namely: -

a) the applicant herein was denied an opportunity to be heard, when the Court suo motu revised its decision in Civil Application No. 35 of 2011 without according the applicants the right to be heard, which is a fundamental right.

b) The decision of this court is based on manifest error on the face of record resulting in the miscarriage of justice for: -

i) The Court in dealing with the review went beyond the statutory powers of review and sat as an appellate Court.

ii)The Court in dealing with the application for review did not consider that the Court was not properly constituted to hear and determine the review in violation of the Court of Appeal Rules, namely Rule 66 (5) of the Court of Appeal Rules, 2009.

iii) The Court in dealing with the application before it exceeded its mandate on review and instead of correcting the decision of the Court it went on to issue directions to the executing Court, therefore denying and pre-empting the applicant in making any application for reasons that the decision of the Court of Appeal is final and cannot be reversed by the High Court.

iv) The Court abdicated its duties and misdirected itself by using written submissions meant for review as a basis of hearing an application for revision.

v) The Court erred in law in departing from the well established principle of stare decisis by departing without reasons from the judgment of the same Court which founded the criteria for Review, as laid down in the case of ***Blue line Enterprises Limited Versus East African Development Bank (CAT) Civil***

Application No. 21 of 2012 *(Unreported) an act which will lead to chaos and dilemma in the administration of justice for having two differing decisions of the same Court on the same issue.*

vi)The Court wrongly dealt with the execution proceedings in the High Court instead of concentrating with the only disputed aspect of the decision in Civil Application No. 44 of 2012 which is the reference to Rule 48 of the Labour Court Rules, 2007 without affording the respondents the right to be heard. Rule 48 of the Labour Court Rules, 2007 was not the basis for the Court's decision in Civil Application No. 44 of 2012 when it nullified all the execution proceedings, proclamation for sale therein including the rulings.

vii) The Court wrongly dealt with High Court execution proceedings and restored the ruling of Rugazia, J. which were nullified by this very Court in its decision in Civil Application No. 44 of 2012 which had not been reserved, causing a serious conflict in its decisions.

In paragraphs 8, 9 and 10 of the referred accompanying affidavit, Mr. Walter Buxton Chipeta sums up the applicant's grievances and prayers thus: -

8. *That, the Court was never asked to revise the execution proceedings in the High Court and the proceedings before Fauz, J. was (sic) neither the subject in the application for review nor was the court asked to revise them by the applicants or by the respondents.*

9. *That the matter before the Court was the review of its decision but the court decided suo motu to revise the execution proceedings in High Court Civil Appeal No. 96 of 1998 without giving the applicant the opportunity to the applicant (sic) and the decision affected him(sic).*

10. *That, for reasons of the grounds set forth in the Notice of Motion it is appropriate that the Court review that part of its order dated 10th July, 2013 which revised the proceedings before Twaib, J in the High Court Civil Appeal No. 96 of 1998.*

As hinted above, the application is vigorously resisted through affidavits in reply, duly sworn or affirmed on behalf of the respondents. As was the case with the preliminary objection, in the main cause, it

was again Mr. Rweyongeza who canvassed it on behalf of the rest of applicant's team of advocates. On the adversary side, Messrs Rosan Mbwambo, and Martin Matunda countered the submission on behalf of the rest of their colleagues. Admittedly, counsel on either side addressed the issues of contention in detail and thoroughly well but; I should pause here to hasten a confession that I will not go so far as to recite each and every detail comprised in counsel submissions. Rather, I propose to be choosy and only relate, in a nutshell, so much of their respective contentions which are conveniently relevant and sufficient for the disposal of the main issues of contention.

Mr. Rweyongeza commenced his submission in support of the application by fully adopting the Notice of Motion as well as the accompanying affidavit. Counsel then reiterated the applicant's desire to only challenge the second limb of our decision, that is, the one in which the Court invoked its revisional jurisdiction, quashed and set aside the decision of **Twaib, J.** Given the applicant's stance and, as readily conceded by Mr. Rweyongeza, quite obviously some of the grievances comprised in the Notice of Motion were conspicuously abandoned in the course of the submission. More particularly notable,

is the complaint grounded in paragraph b (ii) to the effect that, in terms of Rule 66 (5), the Court was not properly constituted to hear and determine the review. As regards the decision sought to be reviewed, Mr. Rweyongeza sought to impugn it upon two fronts. On the first front, it was his contention that by the mere fact that the Court *suo motu* embarked on a revision of the decision of **Twaib, J,** the applicant was actually denied and not accorded its a fundamental opportunity of being heard. On the second front, counsel for the applicant tried to match his submission with the manifest errors on the face of record alleged in the Notice of Motion as well as the accompanying affidavit enumerated and recited hereinabove. In his submission, the alleged manifest errors on the face of record either singularly or cumulatively resulted in a miscarriage of justice.

Mr. Rweyongeza's attacks were vigorously countered by both Messrs Mbwambo and Matunda. Learned counsels similarly commenced their submission by fully adopting the affidavits in reply as sworn or affirmed by the respective respondents. More particularly, Mr. Mbwambo contended that in the previous Civil Application No. 35 of 2011, the parties actually thoroughly submitted on the proprieties or

otherwise of the High Court decision of **Twaib, J.** As such, the Court in the impugned Civil Application No. 44 of 2012 was fully justified to predicate the revisional order on the previous submissions of the parties. As regards the alleged errors, counsel submitted that the same are neither here nor there, let alone the farfetched claim that they did occasion a miscarriage of justice. Mr. Mbwambo submitted that an error capable of being reviewed must be such as can easily be seen on the record which not the case in the matter at hand. On the premises, it was urged on behalf of the respondents that the applicant did not quite establish that the impugned decision, either singularly or cumulatively, crossed the specific benchmarks prescribed under Rule 66 (1).

In my approach to the points of contention I propose to first address the issue whether or not in our resort to revisional jurisdiction, the applicant was, thereby, denied the fundamental opportunity of a hearing. In doing so, it is instructive to have a clear hindsight that the jurisdiction and power of review is, by its very nature and essence, quite distinct from the jurisdiction and power of revision. As already hinted, in review, the aim is to have a second look at the Court's own judgment with a view to correct a manifest mistake apparent on the

face of the record and; in a fitting occasion, to defuse a resulting miscarriage of justice, that is, if any of the grounds specified in Rule 66(1) are shown. Thus, in review the Court is restricted within the four corners its own judgment and Rule 66(1). In revision, the purpose is to enable the Court to satisfy itself as to the regularity, correctness, legality or propriety of any finding, ruling or decision of High Court. This power may be exercisable in situations incidental to the hearing and determination of an appeal, as envisaged by section 4 (2) of the Appellate Jurisdiction Act, Cap. 141. But, quite apart, in a deserving moment, the Court may just as well invoke its revisional jurisdiction either on its own motion or upon being moved by the parties in terms of section 4(3). No doubt, the latter option involves the calling for the High Court record so as to determine the proprieties its proceedings or decision. Thus, whereas, in review the Court is asked to have a second look at its own decision; in revision, the Court does not deal with an own decision, rather, it concerns itself with the regularity or otherwise of an inferior decision or proceedings of the High Court.

All said and, if I may now revert to the situation at hand, it is beyond question that the Notice of Motion which was presented before

us by the respondents herein in Civil Application No. 44 of 2012 was, actually, taken out under Rule 66 (1) (a) (b) & (c) and (2) of the Rules. Through it the respondents expressly and, If I may add, without more, sought to review the Ruling comprised in the Civil Application No. 35 of 2011 upon grounds that they were wrongly deprived a hearing and that the decision was infested with manifest errors apparent on the face of the record. Thus, the Court was moved to review its own decision and; for sure, in their quest, the respondents did not, specifically, move the Court towards a revision of the decision of **Twaib, J.** On that score, neither could it be said that the applicant herein contemplated the revision that was to come. To say the least, we set upon and invoked the Court's revisional jurisdiction *suo motu,* at the time of composing our Ruling. The applicant was, so to speak, clearly caught napping, having not been accorded a prior hint, let alone a hearing on the issue of the regularity or otherwise of the decision of **Twaib, J.** The mishap was partly because we held an honest but, as it now turns out, a mistaken stance, that the parties' submissions in Civil Application No. 35 of 2011 sufficed the exercise. As I would presently conceive it, the mischief of our justification lies in the fact that the subsequent Civil

Application No. 44 of 2012 was, in fact, a different proceeding to which the parties were entitled to a fresh hearing and submissions on the issue. Finding, as I have just done, that the revision was resorted to without according the parties a hearing; I need not decide more than is necessary to dispose of the matter before us. That is to say I will not further belabour on the other points of grievance raised by the applicant, the more so as the finding would suffice to vacate the second limb of our decision through which the High Court decision of **Twaib, J** was revised and set aside.

Nonetheless, a question still looms: What needs doing next? In terms of Rule 66(6), in the aftermath of a review, the Court may *"rehear the matter, reverse or modify its former decision on the grounds stipulated in sub-rule (1) or make such other order as it thinks fit."* In this respect, it is noteworthy that in the first limb of our decision, the orders comprised in Civil Application No. 35 of 2011 were vacated. Thus, having presently just as well vacated the second limb of our decision, I am of the well considered and decided view that the only viable option would be for the Court to do what it ought to have done in the aftermath of the first limb of our decision and; that is, Civil

Application No. 35 of 2011 should be accorded a fresh hearing in terms of Rule 66 (6). Much as my brother, Juma, J.A is minded to share the conclusion, it is accordingly ordered that Civil Application No. 35 of 2011 be heard *de novo*. I give no order as to costs.

DATED at **DAR ES SALAAM** this 13th day of December, 2013.

K. M. MUSSA
JUSTICE OF APPEAL

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

Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL