IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: JUMA, C.J., MZIRAY, J.A., And NDIKA, J.A.)
CIVIL APPLICATION NO. 350/15/2017

MINAZ IBRAHIM AYOUB (As the Administrator of the Estate of the Late Ibrahim Ayoub Bachoo) ..... APPLICANT

VERSUS

1. **SAID KHAMIS HEMED**
2. **MWENYEKITI WA USHIRIKA WA MNADA KUMEKUCHA**
3. **SAMEER IBRAHIM AYOUB**
4. **HAMID ABUBAKAR MOHAMED**

..... RESPONDENTS

(Application for revision of the ruling of the High Court of Zanzibar at Vuga)

(Sepetu, J.)

dated the 28th day of March, 2017
in
Civil Application No. 2 of 2015
.....

RULING OF THE COURT

30th November & 6th December 2017

NDIKA, J.A.:

At the centre of this dispute is the legality or propriety of the sale of landed property described as House No. 2155 situate at Mkunazini, Zanzibar. The aforesaid property was attached and sold by the second respondent, a duly appointed court broker, on 20th December 2014 in execution of a decree of the High Court of Zanzibar in Civil Case No. 15 of

2013 in favour the first respondent (originally the plaintiff) as against the third respondent (the then defendant). Aggrieved, the applicant instituted, belatedly though, objection proceedings before the High Court (Civil Application No. 16 of 2014) seeking to set aside the sale on the ground that the property in dispute was wrongly attached and sold as it did not belong to the judgment-debtor but the estate of the late Ibrahim Ayoub Bachoo. That application came to naught as it was struck out on 30th December 2014 for being time-barred. Undaunted, the applicant lodged two further applications in succession but none of which bore any fruit. The last of the two applications (i.e., Civil Application No. 2 of 2015) is the subject of this application. It was dismissed by the High Court on 28th March 2017.

The applicant is dissatisfied with the aforesaid dismissal, mainly on the ground that it was based upon a point of law raised by the Court *suo motu* without affording the parties an opportunity to be heard on that point. He has now come to this Court seeking revision pursuant to the provisions of section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 ("the Act") and rule 65 (1) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"). The application is made by a notice of motion

supported by an affidavit deposed by Mr. Jambia S. Jambia, an Advocate for the applicant, avowedly conversant with the facts of the matter. In opposition to application, the first respondent filed his affidavit in reply. In addition, Mr. Ussi Khamis Haji, learned Counsel for the first respondent, filed a notice of preliminary objection, containing six points of law, challenging the legal sufficiency of the application. For reasons that will become obvious shortly, we need not reproduce herein the six grounds upon which the preliminary objection is based.

When the application came up before us for hearing, Mr. Haji rose up to address us on the preliminary objection that he raised. Before he did so, he acknowledged, at the prompting of the Court, that the record of the application, only containing the notice of motion and the supporting affidavit annexed with copies of the impugned ruling and drawn order of the High Court, was incomplete. He admitted that the record omitted the chamber summons, the supporting affidavit and the entire proceedings in Civil Application No. 2 of 2015 before the High Court. On that basis, he urged us to strike out the application as he was firmly convinced that it was rendered incompetent.

Mr. Masoud Rukazibwa, learned Counsel for the applicant, had a different view. While acknowledging that the record before us omitted the documents alluded to earlier, he submitted that it was not necessary that all the materials before the High Court be included in the record for the purpose of revision. He contended that since the Court is seized with a copy of the impugned ruling of the High Court it could easily examine and determine its correctness, legality and propriety. His reasoning was that because the main issue complained of, that the learned Judge of the High Court determined the matter upon the points it raised *suo motu* without hearing the parties, was apparent on the face of the impugned ruling. The omitted materials, he argued, were irrelevant to the determination of the issues complained of before this Court.

The second, third and fourth respondents appeared at the hearing unrepresented. Understandably, they made no submission on the competence of the application.

From the learned rival submissions, it is undisputed that the record of this application only contains the notice of motion as well as the supporting affidavit annexed with copies of the impugned ruling and drawn order of the High Court. It is common ground that the applicant has not included in

the said record copies of the chamber summons, the supporting affidavit and the entire proceedings in Civil Application No. 2 of 2015 before the High Court.

We wish, at this point, to observe that although rule 65 (1) and (3) of the Rules simply states that an application made by a party for revision must be made by notice of motion supported by one or more affidavits of the applicant or some other persons having knowledge of the facts, it is the jurisprudence of this Court that copies of the proceedings, judgment (or ruling, as the case may be) and decree (or order, as the case may be) must also be included in the application. That much was held by this Court in **Mabalanganya v Sanga** [2005] 1 EA 236. In that case, the Court reasoned, at page 239, that revision by the Court under section 4 (3) of the Act necessarily entails examination of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. On that basis:

> ***"... the record of proceedings of the High Court, and in the case of the appellate jurisdiction of the High Court, then the record of proceedings of the lower Court or***

Courts, must be before this Court*. This is glaringly certain from the very definition of what revision entails and if the Court is to perform that function. This does not depend on the existence of any rules to that effect. The rules, if any, will just state the obvious. Now, when the Court acts on its own motion it will have to call for those records itself.* ***But when the Court is moved, as in this case, then the one who moves it will have to supply those records.****"* [Emphasis added]

The above stance has been echoed by the subsequent decisions of the Court. For example, in **The Board of Trustees of the National Social Security Fund (NSSF) v Leonard Mtepa**, Civil Application No. 140 of 2005 (unreported), the Court recalled that:

"This Court has made it plain, therefore, that if a party moves the Court under section 4 (3) of the Appellate Jurisdiction Act, 1979 to revise the proceedings or decision of the High Court, he must make available to the Court a copy of the proceedings of the lower court or courts as well as the ruling and, it may be added, the copy of the extracted order of the High Court.

An application to the Court for revision which does not have all those documents will be incomplete and incompetent. It will be struck out."

Again, in **Chrisostom H. Lugiko v Ahmed Noor Mohamed Ally**, Civil Application No. 5 of 2013 (unreported), the Court declined to exercise its revisional jurisdiction on the following reasoning:

"... we are unable to say anything meaningful in relation to Land Application No. 25 of 2007 because we are not seized with all the proceedings relating to the said application. As such, we cannot step in and make an order for revision over something we do not have full picture."

We also wish to cite two other recent decisions of the Court replicating the same position: **Nundu Omari Rashid v The Returning Officer Tanga & Two Others**, Civil Application No. 3 of 2016 (unreported) where the application for revision was struck out for the omission of a copy of the drawn order complained of; and **Patrobert D. Ishengoma v Kahama Mining Corporation Ltd (Barrick Tanzania Bulyanhulu) & Two Others**, Civil Application No. 59 of 2014

(unreported), which was struck out because the record of the revision lacked copies of the extracted order complained of and the written submissions of the parties on which the High Court (Mihayo, J.) relied to compose the impugned ruling.

By way of emphasis, we state that it is firmly settled that the party moving the Court to exercise its revisional jurisdiction has no choice but to supply all the records. He has no latitude to pick and supply only those documents that he deems relevant or material to the points in controversy. Exclusion of any of the records will inevitably render an application for revision incomplete and, as a result, incompetent.

In final analysis, we are of the firm view that this application is incompetent due to the omission of copies of the chamber summons, the supporting affidavit and the entire proceedings in Civil Application No. 2 of 2015 before the High Court. Accordingly, we order that this matter be and is hereby struck out. As the outcome of this matter has been premised upon an ailment pointed out by the Court *suo motu*, we make no order as to costs.

DATED at **ZANZIBAR** this 4th day of December 2017.

I.H. JUMA
CHIEF JUSTICE

R.E.S. MZIRAY
JUSTICE OF APPEAL

G.A.M. NDIKA
JUSTICE OF APPEAL

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

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL