**IN THE COURT OF APPEAL OF TANZANIA**
**AT DAR ES SALAAM**

**(CORAM: LUBUVA, J.A., MROSO, J.A., And MSOFFE, J.A.)**

**CIVIL APPLICATION NO. 118 OF 2002**

**CYPRIAN TWEVE ..... APPLICANT**
**VERSUS**
**NATIONAL BANK OF COMMERCE LTD. ..... RESPONDENT**

**(Application for revision of the proceedings, ruling and orders of the High Court of Tanzania – Commercial Division at Dar es Salaam)**

**(Dr. Bwana, J.)**

**dated the 19th day of September, 2002**
**in**
**Commercial Case No. 217 of 2002**

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**R U L I N G**

28 November & 7 December, 2006

MROSO, J.A.:

The applicant and the respondent have a case in the High Court, Commercial Division, Commercial Case No. 217 of 2002. The case is still pending in that court. In the case the applicant, as defendant, appeared under three different names, giving the wrong impression that there were three different defendants.

On 17th September, 2002 the applicant appeared before the High Court accompanied by a Mr. Edwin T. Msigwa, his brother-in-law, who was a law graduate. The said Mr. Msigwa had a power of attorney from the applicant and he was to represent him in the case for the reason that he (the applicant) was suffering from hypertension, diabetes and memory lapses. The applicant believed that since his brother-in-law had studied commercial law at university, he would be a fit person to represent him in the Commercial case in court. Mr. Msigwa was not an advocate.

Subsequent to that appearance in court by both the applicant and Mr. Msigwa the High Court, Bwana, J., wrote a ruling which was dated 19th September, 2002 to the effect that since Mr. Msigwa was not an advocate, he could not represent the applicant in the case, notwithstanding the power of attorney. The learned judge said –

> "So long as Mr. Tweve himself is present in Tanzania, he should proceed with his case, his inability to engage an advocate, for whichever reasons, notwithstanding."

The learned judge clearly had in mind Rule 28 (2) of the Court of Appeal Rules, 1979 which provides that a person not resident in the United Republic could appear (before the Court of Appeal) by a lawfully authorized attorney. Be that as it may, Mr. Msigwa was barred from appearing in the case on behalf of the applicant for the reason given in the High Court ruling. Aggrieved by that ruling the applicant made application to this Court to revise it, citing section 4 of the Appellate Jurisdiction Act, 1979 as authority.

At the hearing of this application the applicant appeared in person and the respondent was represented by Mr. Mujulizi, learned advocate, from IMMMA Advocates. The legal propriety of the application was in issue and the applicant, being a lay person, could hardly be of assistance to the Court apart from saying that the refusal by the High Court to allow Mr. Msigwa to represent him in the case had the effect of defeating the ends of justice and made order 3 rule 2 of the Civil Procedure Code, 1966 inapplicable; in other words

redundant. He said he resorted to application for revision because the substantive case had not been heard and decided.

Mr. Mujulizi remarked that the applicant had not cited the specific sub-section of section 4 of the Appellate Jurisdiction Act, 1979 (the Act) under which the Court is being moved to revise the lower court decision. Even so, he did not pursue this point because he thought that the applicant, being a lay person, might not have appreciated that it was not enough to cite section 4 only without citing sub-section (3) of the section, which was the relevant provision, and that the Court may wish to show leniency in that regard. So, Mr. Mujulizi decided to pursue what he considered was a more substantive defect in the application.

He argued that the decision of the High Court being impugned was appealable under section 5 (1) (c) of the Act which provides for an appeal against such a decision with the leave of the High Court or of the Court of Appeal. Revision could not be resorted to as an alternative to an appeal. He submitted that the application was

therefore incompetent and should be struck out. He did not cite any cases as authority for the submission presumably because he was made aware of the hearing of the application only minutes before he appeared and he had no time to do necessary legal research.

We think there is substance in the submission by counsel. The decision of Bwana, J. was given on 19th September, 2002 before the amendment of section 5 (2) (d) of the Act was done by Act No. 25 of 2002, on 14th December, 2002. The amendment had the effect of barring appeals or applications for revision of a preliminary or interlocutory decision like the one now being sought to be revised. This means, therefore, that the decision could have been appealed against with leave of the High Court or of this Court. But the law is that the applicant could not choose to apply for revision in lieu of appealing. Revision is not an alternative to an appeal.

In **Halais Pro-Chemie v. Wella A.G.** [1996] TLR 269 this Court considered an application for revision of a High Court judgment. After reviewing two of its previous decisions namely:-

**Moses Mwakibete v. The Editor – Uhuru and Two Others** [1995] TLR 134 (CA) and

**Transport Equipment Ltd. v. D.P. Valambhia** [1995] TLR 161 (CA),

it formulated the following legal principles regarding application for revision under section 4 of the Appellate Jurisdiction Act, 1979, as amended by Act No. 17 of 1993:-

> (i) The Court may, on (sic) its own motion and at any time, invoke its revisional jurisdiction in respect of proceedings in the High Court;
>
> (ii) 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;

(iii) A party to proceedings in the High Court may invoke the revisional jurisdiction in matters which are not appeallable with or without leave;

(iv) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process.

The question we need to ask ourselves and answer is whether the application for revision now before us falls under any of the listed legal propositions. We think that clearly it does not fall under any of those propositions. Even item (ii) would not apply because the applicant did not show any exceptional circumstances which would have given him justification to invoke the revisional jurisdiction of the Court in a matter which was appealable. It would follow, therefore, that it is incompetent. This Court would not have jurisdiction to revise the High Court decision in lieu of an appeal. We have no option in the circumstances but to strike it out with costs. We so order.

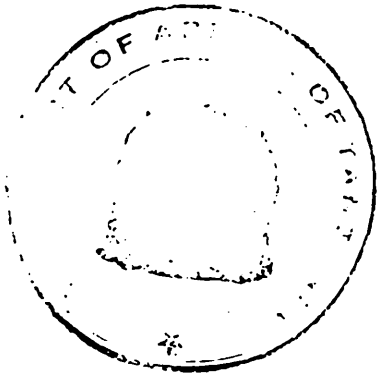
DATED at DAR ES SALAAM this 4th day of December, 2006.

D. Z. LUBUVA
**JUSTICE OF APPEAL**

J. A. MROSO
**JUSTICE OF APPEAL**

J. H. MSOFFE
**JUSTICE OF APPEAL**

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



(S. M. RUMANYIKA)
**DEPUTY REGISTRAR**