

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: OTHMAN, C.J., LUANDA, J.A., And KAIJAGE, J.A.)**

**CIVIL REVISION NO. 13 OF 2014**

**PASKALI ARUSHA.....APPLICANT**

**VERSUS**

**MOSSES MOLLEL..... RESPONDENT**

**(Application for revision from the Ruling of the High Court of Tanzania  
at Arusha)**

**(Moshi, J.)**

**dated 2<sup>nd</sup> day of May, 2014  
in**

**Misc. Land Application No. 161 of 2013**

-----

**RULING OF THE COURT**

29<sup>th</sup> October, & 3<sup>rd</sup> November, 2014

**OTHMAN, C.J.:**

Before the hearing of the application, the Court raised a point of law, *suo motu*, whether or not the application for revision made under Rule 65 of the Court of Appeal Rules 2009 (the Rules) was competent.

The applicant, a lay person and who was unrepresented could not say much on the point raised. He implored the Court to consider

that he was indigent and could not avail himself the services of an Advocate in this matter, which originated in Land Case No. 51 of 2008 in the District Land and Housing Tribunal for Manyara Region at Babati.

The High Court, (Moshi, J.) had on 02/05/2014 dismissed his application for leave to appeal to the Court of Appeal as, (a) he had not cited the correct enabling provision of the law, namely, section 47(1) of the Land Disputes Court Act, Cap 216 R.E. 2002 and (b), for not having raised any arguable or *prima facie* case that warranted resolution by the Court of Appeal, in his application for leave to appeal.

On his part, Mr. John Lundu, learned Advocate for the respondent submitted that the application for revision should have moved the Court under section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and not Rule 65 of the Rules, as the applicant had erroneously done. The application, he submitted, was not proper before the Court, incompetent and should be struck out.

Mr. Lundu also pointed at another defect that the application suffered. He submitted that as the High Court Judge had refused the

applicant leave to appeal to the Court, the proper course to have been taken by the applicant was not to file an application for revision as he had done, but to come to the Court by way of a fresh application for leave to appeal. He relied on **Rajabu Dendego and Hamisi Mageta v. Kambala Village Council**, Civil Application No. 27 of 2010, (CAT, unreported), which had in turn relied on **National Bank of Commerce v Star Transport Co. Ltd** (1997) T.L.R. 293. He invited the Court to strike out the application.

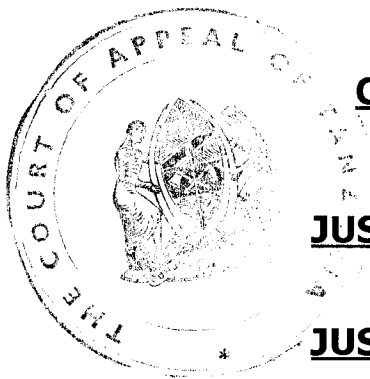
Having considered the matter, in our respectful view, this application under Rule 65 could not have properly moved the Court to exercise its revisional, "authority and jurisdiction", which is expressly conferred upon it by section 4(3) of the Appellate Jurisdiction Act. The application is therefore incompetent for having cited the wrong enabling provision of the law (See: **The National Bank of Commerce v. Sadrudin Meghji**, Civil Application No 20 of 1997; **Almas Mwinyi v. National Bank of Commerce and Another**, Civil Application No 88 of 1998, CAT, unreported).

This should be sufficient to dispose of the application.

We are conscious that the applicant is a lay person. If he wishes to pursue his rights, it is open for him to do so, provided he complies with the law by lodging first and foremost, an application for an extension of time within which to file a fresh application for leave to appeal to this Court (See, **Rajabu Dendego's** case). He may also wish to seek legal aid from one of the Legal Aid Organizations or the Tanganyika Law Society.

All considered, we hereby struck out the application. No order as to costs.

**DATED** at **ARUSHA** 31<sup>st</sup> day of October, 2014.



M.C. OTHMAN  
**CHIEF JUSTICE**

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

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

  
F. J. KABWE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**