IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: LUANDA, J.A., MMILLA, J.A. And MKUYE, J.A.)

MZA CIVIL APPLICATION NO. 4 OF 2015

PETER NG'HOMANGO.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

(Application for Review from the Decision of the Court of Appeal of Tanzania at Mwanza)

(Msoffe, Oriyo And Mmilla, JJJ.A)

Dated the 13th day of January, 2015
in
Civil Appeal No. 66 of 2014
.....

RULING OF THE COURT

13th & 14th December, 2017.

LUANDA, J. A.:

When this application for review came for hearing, the Court wished to satisfy itself as to whether the Court was properly moved to entertain the said application. We posed that question because the Notice of Motion cited Rule 66 (1) of the Court of Appeal Rules, 2009 (the Rules) without citing the specific paragraph indicating the basis of the applicant's complaint. However, he also cited Rule 4 (2) (b) and (c) of the Rules.

We wish to state from the outset that Rule 4 (2) (b) and (c) of the Rules will only come in aid if there is no specific Rule governing the matter under discussion. Since in this case there is a specific rule governing review, the citation of the said Rule is superfluous. Back to the point raised.

The applicant, who was unrepresented, told the Court that the citation was proper as the powers of review of the Court are provided under Rule 66 (1) of the Rules. The citing of Rule 66 (1) of the Rules without more is enough. He cited five cases of this Court namely, **Ghati Mwita vs. R.,** Criminal Application No. 3 of 2013; **Kija Nestory @ Junyamu vs. R.,** Criminal Application No. 14 of 2014; **Joseph s/o John vs. R.,** Criminal Application No. 22 of 2014; **Mirumbe Elias @ Mwita vs. R.,** Criminal Application No. 4 of 2015 and **SGS Societe Generale De Surveillance SA and Another vs. VIP Engineering and Marketing Ltd. and Another,** Civil Application No. 25 of 2015 (All unreported) where he said the Court entertained the application for review without citing paragraph (a) – (e) of Rule 66 (1) of the Rules. He prayed that his application be entertained.

On the other hand, Mr. Castuce Ndamugoba, assisted by Ms. Dorcus Akyoo, Senior State Attorney and State Attorney respectively who appeared for the Hon. Attorney General said in terms of Rule 48 (1) of the Rules the Court was not properly moved. The Court is properly moved only when the grounds of the review have been shown. As to the cases referred, he said the cases are distinguishable from this one.

In his rejoinder the applicant reiterated his position and added that if the Court refused his application on that ground, then that is a double standard.

Rule 66 (1) of the Rules empowers the Court to review its judgment or order. However, those powers are exercisable only when the grounds enumerated in paragraph (a) – (e) are/is indicated in the Notice of Motion. The need to indicate as to which ground among the five in the Notice of Motion is to enable both the adversary party as well as the Court to know the basis of the applicant's grievances. The idea behind is to do away with surprises. Indeed, that asunder it is a legal requirement as provided under Rule 48 (1) of the Rules as correctly submitted by Mr. Ndamugoba. It must be complied with. The Rule reads:-

"48.-(1) Subject to the provisions of sub-rue (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion supported by affidavit. It ***shall cite the specific rule under which it is brought*** *and state the ground for the relief sought."*

[Emphasis ours].

There are a number of decisions of this Court which emphasized the need to cite the specific rule to any application. Non-citation and/or wrong citation renders the application incompetent. (See **China Henan International Co-operation Group vs. Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005; **Harith A. Jina vs. Abdulrazak J. Suleiman** [2004] TLR 343, **NBC vs. Sadrudin,** Civil Application No. 20 of 1997; **Rutagatina C. L. vs. The Advocates Committee and Another**, Civil Application No. 124 of 2006; **Dismas Bunyerere vs. R.,** Criminal Application No. 169 of 2013 and **Charles Rubaka vs. The Minister of Labour Youth and Culture**, Civil Application No. 36 of 2013). In the case of **Dismas** the application merely cited Rule 66 but did not cite sub-rule and paragraph. This Court said:-

"It is now trite law that a mere citation of an enabling provision without indicating its sub-section or sub-rule renders the application incompetent. In the instant application for Review the applicant cited Rule 66 of the Rules as an enabling provision without citing its sub-rule and paragraph. That surely amounts to non-citation which renders the application incurably defective."

The cases cited by the applicant are distinguishable to the present case. Because in those cases nobody querried/raised the issue of non-citation; whereas in the present case non-citation has been raised. Once a matter before the Court is raised, it must be resolved. This is what happened in the present case.

In the circumstances of this case, therefore, having said that non-citation as an issue, the present application is incompetent for non-citation.

That said, we are of the considered view that the Court was not properly moved. The application is struck out with no order as to costs.

It is so ordered.

DATED at **MWANZA** this 14th day of December, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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

E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL