A I agree entirely with the position of the law as expounded herein above. As Mr Mushokorwa has correctly submitted, the learned appellate District Magistrate slipped into error when he denied the respondent his costs after he had dismissed the appeal and there having been no
B just cause for the order which is now being impugned.

Upon the foregoing considerations the appeal is allowed with costs. Consequently, the order by which the appellant was denied costs before the subordinate Court is set aside. Judgment to be delivered
C by the District Registrar.

D

OLMESHUKI KISAMBU *v.* CHRISTOPHER NAIN'GOLA

E

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(Kisanga, Lubuva and Lugakingira, JJ.A.)

F

CIVIL REVISION No. 1 OF 2000

(Application for Revision from the decision of the High Court of Tanzania at Arusha, Munuo, J., dated 3 May 1996, in (PC) Civil Appeal No. 63 of 1995)

G *Court of Appeal – Jurisdiction – Suo motu revisional jurisdiction of the Court of Appeal –Whether the jurisdiction may be invoked where a party forfeits the right of appeal out of his own fault – Section 4(3) of the Appellate Jurisdiction Act 1979.*

H *Court of Appeal – Revisional jurisdiction – May be exercised where the appellate process has been blocked by judicial process – Whether the Court of Appeal Rules amount to a judicial block.*

I The applicant's appeal to the High Court was dismissed and his application to the Court of Appeal for extension of time to serve the respondent with a notice of appeal

was also dismissed. Months later he wrote the Chief Justice soliciting a revision of the High Court decision. The Court of Appeal sat to consider whether this was a case in which the court could properly exercise its *suo motu* revisional jurisdiction.

Held: (i) The court will not proceed *suo motu* where the applicant has the right of appeal, with or without leave, and has not exercised that right;

(ii) Even where there is anything to revise, it is improper use of the discretion under section 4(3) of the Appellate Jurisdiction Act to do so, where a person has, out of his own fault, forfeited the right of appeal;

(iii) Procedural rules of the Court of Appeal do not amount to a judicial process that blocks the appellate process.

Order accordingly

Cases referred to:

1) *Halai's Pro-Chemie Industries Ltd v. Wella* A.G. [1996] T.L.R. 269

2) *Mwakibete v. Editor of Uhuru* [1995] T.L.R. 134

3) *Transport Equipment v. D.P Valambia* [1995] T.L.R. 161

Statutory provisions referred to:

1. Appellate Jurisdiction Act 1979, section 4(3)

2. Civil Procedure Code, section 30

3. Indian Code of Civil Procedure, section 35

Mr Chadha, for the Respondent

ORDER

(Dated 26 October 2000)

Lugakingira, J.A.: The purpose of this exercise is to determine whether a case is made out to undertake a revision *suo motu*. It relates to (PC) Civil Appeal Number 63 of 1995 of the High Court at Arusha in which Olmeshuki Kisambu (herein designated as applicant) was the appellant and Christopher Naing'ola (herein as respondent) was

the respondent. A long and complex story has culminated in this exercise but it may be rendered as follows.

In Civil Case Number 12 of 1994 before the Primary Court at Enaboishu, Arumeru District, the respondent sued the applicant for repossession of an 8-acre parcel of land at Ekenywa Village, Olturumet Ward in that district. The claim was dismissed. The respondent successfully appealed to the District Court, vide Civil Appeal Number 16 of 1995; the applicant then appealed to the High Court vide the appeal stated above but the appeal was dismissed on 3 May 1996.

The applicant was before the High Court represented by learned counsel from the firm of D'Souza Chambers but he elected to go it alone after the decision of the court. He filed a Notice of Appeal on 16 May 1996 but did not serve a copy of it on the respondent. He did not apply for copies of proceedings, judgment and decree and so did not institute the appeal. On or about 16 September 1996, four months after the decision of the High Court, he turned again to D'Souza Chambers for their assistance, but for reasons unexplained, they took time to consider the matter. It was not until 30 July 1997, a year and more after the High Court judgment, that they instituted in this Court AR-Civil Application Number 18 of 1997 seeking extension of time to serve the respondent with the notice of appeal and to process the appeal in accordance with Rule 83. The application came before Lubuva, J.A. who dismissed it on 27 July 1998 for being hopelessly belated.

Once again, the applicant abandoned professional assistance, at least in the formal sense. Four months later he wrote to the Chief Justice soliciting revision of the High Court's decision and contending thus:

> After the ruling of his Lordship Lubuva, J.A., in AR Civil Application Number 18 of 1997 the appeal process was no longer available to me and this is the reason I am praying for remedy by way of revision.

He claimed that he was "blocked by technicalities of procedural rules of the Court of Appeal" to pursue the appeal process. The learned

chief Justice decided to "give him the benefit of doubt" and directed this exercise in order "to decide judicially whether this is a fit case for revison".

The applicant appeared in person when the court sat to consider the matter but had nothing useful to say except to plead ignorance of law and to count on the court's assistance. We had valuable assistance from Mr Chadha who appeared on the respondent's side and made three points: First, that the appeal process had not been judicially blocked; second, that the applicant's complaints to the Chief Justice did not constitute grounds for revision; and third, that the applicant's option after the decision of the single judge was a reference to the court.

We have given these matters adequate consideration and we agree with Mr Chadha. The court's powers to proceed *suo moto* and revise a decision of the High Court derive from section 4(3) of the Appellate Jurisdiction Act 1979, as amended, and come into play where the record reveals incorrectness, illegality or impropriety in any finding, order or other decision of the High Court or irregularity in the proceedings of the court. The subsection has been considered by this Court on a number of occasions and various principles have been formulated to guide the exercise of discretion under the provision. For instance in *Halais Pro-Chemie Industries Ltd v. Wella AG* (1), the court reverted to and consolidated its earlier pronouncement in *Mwakibete v. Editor of Uhuru* (2), *Transport Equipment v. DP Valambhia* (3), and said that the revisional powers conferred by subsection (3) were not meant to be used as an alternative to the court's appellate jurisdiction. Hence, the court will not proceed *suo moto* in cases where the applicant has the right of appeal, with or without leave, and has not exercised that right. However, the court will proceed under the subsection where there is no right of appeal; where the right of appeal has been blocked by judicial process; or where, despite the right of appeal, there exists good and sufficient reason to justify recourse to the subsection.

A In the instant case, it is not in dispute that the applicant had the right of appeal with leave. We do not accept his representation that right was blocked by judicial process; on the contrary, we think his predicament is a consequence of his own error. First, there was that
B inordinate and at times unexplained delay which prompted the dismissal of Civil Application Number 18 of 1997. Second, the decision of the single judge was not final; the applicant could have come by way of reference pursuant to the provisions of rule 57 and ask the court
C to vary or reverse the decision of the single judge. The right under rule 57 is exercisable within seven days of the decision of a single judge, but that is no bar to try out of time with leave. In short, he did not exhaust the avenues to an appeal, but he abandoned the road open
D to him and took to misrepresenting the facts under the guise of ignorance of law. Ignorance of law cannot avail the applicant because he evidently could, when he felt like doing so, obtain professional service. His letter to the Chief Justice, too, has an unmistakable professional touch to it. All in all, it is the applicant's fault that he finds himself
E stranded. Even if there were anything to revise, but there is actually none, it would be an improper use of the discretion under subsection (3) to embark on a revision where a person forfeits the right of appeal out of his own fault.

F We are thus of the settled view that this case does not meet any of the established principles, or any principle, and is not a fit case for revision. We therefore refrain from exercising the discretion. As this was a court-sponsored matter, there will be no order as to
G costs.

H

I