JEWELS & ANTIQUES (T) LTD v NATIONAL SHIPPING AGENCIES CO LTD

COURT OF APPEAL OF TANZANIA

(Makame, Mnzavas and Mfalila, JJA)

REVISION NO 26 OF 1994

December 5, 1994 – ARUSHA

(From the decision of the High Court of Tanzania at Arusha, Munuo, J)

Civil Practice and Procedure – Correction of errors – Clerical and arithmetical mistakes in judgments, decrees and orders, arising from accidental slip or omission – Whether application to correct such mistakes is subject to the law of limitation – Item 21 First Schedule to the Law of Limitation Act 1971 and s 96 of the Civil Procedure Code 1966.

Civil Practice and Procedure – Clerical and arithmetical errors – Application to correct such errors – Application to amend decree so as to include compensation for inflation and devaluation – Whether an application for correction of clerical and arithmetical errors.

Court of Appeal – Revisional jurisdiction of the Court of Appeal – Whether a party may pursue and use the revisional jurisdiction of the Court even after filing Notice of Appeal – Section 4 of the Appellate Jurisdiction Act 1979, as amended by Act No 17 of 1993.

After obtaining judgment and decree in the High Court the applicant applied to the same court for review of the decree 'to correct the errors apparent on the judgment and decree'. The High Court rectified the judgment and decree as prayed. Almost a year later the applicant again applied to the High Court, under s 96 of the Civil Procedure Code 1966, for the decree to be further amended to include 'payment of compensation for inflationary and devaluation element as at the date of settlement in full'. This application was dismissed. The applicant filed a Notice of Appeal against that dismissal and, as the intended appeal could only be made with leave, the applicant also applied for leave to appeal. This application for leave was also dismissed by the High Court. The applicant then applied to the Court of Appeal for Revision. At the hearing a preliminary issue was raised that the application was time barred.

Held:

(i) As per s 96 of the Civil Procedure Code 1966, clerical and arithmetical mistakes may be corrected at any time; applications to correct the same, therefore, are not subject to any limitation of time;

(ii) This application, which seeks to further amend a decree so as to include payment of compensation for inflationary and devaluation elements, is not one for correction of clerical and arithmetical errors envisaged by s 96 of the Civil Procedure Code 1966; this application, therefore, is subject to the law of limitation and in the event it has been made out of time;

(iii) The applicant's right to appeal to the Court of Appeal was effectively blocked when its application for leave to appeal was dismissed; upon that dismissal the applicant became entitled to resort to the revisional jurisdiction of the court of Appeal.

Application struck out

Case referred to:

(1) *Luke Mepaachi Mollel & Ten Others v Losiyo Ngeseyan*, CAT-Civil Appeal No 8 of 1993 (Unreported).

Miss *Bigeye*, for the respondent.

Mfalila, JA, delivered the following ruling of the court:

The applicant company M/S Jewels & Antiques (T) Limited, filed in this court what they called a Memorandum of Revision in which they asked this Court to revise the proceedings, judgment and order of the High Court Arusha in Misc. Civil Application No 57 of 1993. We think it is in the interests of clarity if we set out the background or short history of these proceedings.

The present saga started in 1984 when the applicant company filed Civil Case No 51 of 1984 in the High Court at Arusha against the respondent company claiming damages and various other reliefs for breach of contract involving the shipment of goods to Hong Kong. The case proceeded *ex-parte* and at the end, an *ex-parte* judgment was entered in favour of the applicant, subsequently the relevant decree was drawn up: However, the applicant company appears to have been dissatisfied with the format and content of the decree as according to it the judgment and decree were 'not in consonance with the relief prayers of the applicant in his (sic) plaint and oral evidence in court'. The applicant acccordingly filed in the High Court at Arusha Misc Civil Application No 14 of 1991 in which it applied for a review of the judgment and decree 'to correct the errors apparent on the judgment and decree handed down in Civil Case No 51 of 1984'. The learned judge who heard and deter-

mined Civil Case No 51 of 1984 reviewed the proceedings, judgment and decree in that case and having done so, rectified the judgment and decree as prayed. An order embodying the terms of the varied decree was drawn up. This was on 29 May 1992. The matter ought to have rested there, but this was not to be for a year later on 6 April 1993, the applicant filed yet another application this time under s 96 of the Civil Procedure Code. This was Misc Civil Application No 57 of 1993 in which it made the following prayers:

> 'That the decree in Civil Case No 51 of 1984 dated is further amended to include "payment of compensation for inflationary and devaluation element as at the date of settlement in full".'

In his affidavit in support of this application, the managing director of the applicant company, Mr Komba, stated that this prayer had not been granted in Misc Civil Application No 14 of 1991 due to accidental omission or slip and that this accidental omission has seriously affected the economic future of the applicant. At the conclusion of the hearing of the application, the same learned judge dismissed it saying that the decision on this prayer had not been omitted accidentally or otherwise in Misc Civil Application No 14 of 1991. On the contrary, she said, the Court had made a specific finding by which the prayer was struck off for lack of supporting material. In the circumstances, she said, as far as this matter was concerned she was *functus officio*.

Following this ruling and order, the applicant filed a notice of appeal on 2 July 1993 stating that it intended to appeal against the decision and Order of the High Court in Misc Civil Application No 57 of 1993. As no doubt the applicant could not appeal to this Court against such an order as of right, it filed an application for leave to appeal. This application was heard and dismissed by Mroso J on 29 October 1993. With the appellate avenue to this Court thus blocked, the applicant company filed this application asking this Court to exercise its revisional jurisdiction and revise the ruling and Order of the High Court in Misc Civil Application No 57 of 1993. In the present application for revision, the applicant contends that in the proposed revision, it will be urged among other things that 'Section 96 of the Civil Procedure Code was applicable to this case and that the judge ought not to have refused to grant the relief sought particularly so when she had granted bank interest in the application for review which relief she had not granted in the main suit'.

At the hearing of this application, the respondent company

through its advocates filed a notice of motion raising a prelimary objection that this application was incompetent and that therefore it should be dismissed. In support of this prelimary objection, Miss *Bigeye* learned Counsel for the respondent company, argued a number of grounds.

Her first point was that Misc Civil Application No 57 of 1993 was time barred as it should have been brought within 60 days as provided under item 21 of the First Schedule to the Limitation Act and that therefore the present application being based on a void ruling and order is itself incompetent and should be struck out.

In reply Mr *Komba* managing director of the applicant company said that s 96 of the Civil Procedure Code under which the application was brought does not set down a time limit, it provides that such corrections can be made at any time. This section provides as follows:

> '96. Clerical or arithmetical mistakes in judgements, decress or orders or errors arising therein from any accidental slip or omission may *at any time* be corrected by the Court either of its own motion or on the application of any of the parties.'

But Miss *Bigeye* contended that the phrase 'at any time' should be read to mean 'at any time' within the limitation period.

On our part we are satisfied that the phrase 'at any time' means just that, 'at any time'. Subject to the rights of the parties, there should be no point in limiting the time in which to correct such innocuous mistakes or errors which are merely clerical or arithmetical with absolutely no effect on the substance of the judgment, decree or order. Hence if what was sought in Misc Civil Application No 57 of 1993 was merely to correct clerical or arithmetical mistakes arising from an accidental slip or omission, we agree with Mr Komba that such correction can be made at any time subject as we have indicated to the rights of the parties.

This brings us to Miss *Bigeye's* next point, namely on the status of Misc Civil Application No 57 of 1993. Did that application seek merely to correct clerical or arithmetical mistakes in the judgment and decree handed down in Civil Case No 51 of 1984 so that it was properly brought under s 96 of the Civil Procedure Code?

Miss *Bigeye* contended that Misc Civil Application No 57 of 1993 could not properly be brought under s 96 of the Code because it does not seek merely to correct clerical or arithmetical errors caused by accidental slip or omission, it in fact seeks to alter the main

substance of the judgment and decree in Civil Case No 51 of 1984 hence it is subject to the Limitation Act. A

On his part, Mr *Komba* submitted that the application in Misc Civil Application No 57 of 1993 was properly brought under s 96 hence the applicant was free to bring it at any time.

Section 96, which we have quoted in full, is quite clear in its import. It provides that clerical or arithmetical mistakes in judgments, decrees or orthers arising from accidental slip or omission may be corrected at any time either by the Court on its own motion or on the application of any of the parties. In Misc Civil application No 57 of 1993 the applicant applied for the folowing order that the decree in Civil Case No 51 of 1984 be 'further amended to include payment of compensation for inflationary and devaluation elements as at the date of settlement in full'. This inflationary and devaluation element is calculated at Shs 58,577,888/=. By any description, this cannot be correcting a mere clerical or arithmetical mistake in the judgment and decree in Civil Case No 51 of 1984. If granted, the original decretal amount would be inflated by Shs 58,577,888/=. Indeed the applicant avoided using the word 'correcting' in its application, the wording 'further amended' was used implying that the exercise envisaged involved far more than mere correcting of clerical or arithmetical mistakes. It involved something which was bound to affect in a very profound way the original judgment and decree. Such an application cannot be fitted in s 96. At the lowest it could be an application for review which under item (3) of Part III of the First Schedele to the Limitation Act should be brought within thirty days. Misc Civil Application No 57 of 1993 was filed in Court almost a year after the judgment and decree in Civil Case No 51 of 1984 was handed down. It was therefore quite clearly out of time. It was time barred and the learned judge should not have proceeded to hear it without enlarging the time. As we stated in *Luke Mepaachi Mollel & 10 Others v Losiyo Ngeseyan* – Civil Appeal No 8 of 1993, 'the High Court order based, as it was, on the consideration of the invalid application was itself a nullity and the purported appeal to this Court arising from such a nullity is obviously misconceived and hence incompetent'. Similarly, since the present application arises out of the High Court order in the invalid Misc Civil Application No 57 of 1993; is obviously misconceived and incompetent and on this ground the preliminary objection must succeed.

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Miss *Bigeye* had two other grounds. She said that since the applicant filed a notice of appeal, it cannot at the same time pursue and use the revisional jurisdiction of this Court. We are satisfied I

A that this ground is misconceived. As we have indicated earlier in this judgment, the applicant resorted to the revisional jurisdiction of this Court when the appellate door was blocked by the dismissal of his application for leave.

Lastly, Miss *Bigeye* contended that this Court has no jurisdiction
B to revise proceedings in cases decided before 1 January 1994 when the Court was invested with revisional jurisdiction by the Appellate Jurisdiction (Amendment) Act 17 of 1993. But since we have already sustained the prelimary objection on some other ground, we do not feel it is necessary to make a decision on this point.

C For these reasons we uphold the preliminary objection and strike out this application as being misconceived and incompetent. We also make an order for costs in favour of the respondent.

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