HALAIS PRO-CHEMIE v WELLA A.G.

COURT OF APPEAL OF TANZANIA

(Nyalali, C.J., Mnzavas and Lubuva, JJA.)

CIVIL APPLICATION NO 19 OF 1995

27 October 1995 – DAR ES SALAAM

(An application to call for and examine the record of the proceedings, judgment and decree of the High Court of Tanzania, Dar es Salaam, Bahati J.)

Civil Practice and Procedure – Revision – When court's revisional jurisdiction may be invoked – Where appellate process has been blocked by judicial process — Decision of High Court dismissing application for extension of time not such a judicial process

Civil Practice and Procedure – Revision – When application must be brought – Application made 10 months after judgment time barred

The applicant applied for revision of a judgment and decree of the High Court. The respondent filed a preliminary objection contending that the application was incompetent as it did not fall within the provisions of section 4(2) of the Appellate Jurisdiction Act 1979. It appeared that the present application was brought ten months after delivery of the judgment sought to be revised and five months after rejection of the application for extension of time.

Held:

(i) The Court could, on 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 could not 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 could invoke the revisional jurisdiction of the Court in matters which were not appealable with or without leave;

(iv) A party to proceedings in the High Court could invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process: the decision of the applicant's application for extension of time to apply for leave to appeal did not amount to a judicial process which blocked the applicant's move. The Court of appeal had concurrent jurisdiction with the High Court to grant extensions of time and it was therefore open to the applicant to come to court to seek extension of time after the High Court had refused it:

A the reliance on the court's revisional jurisdiction was clearly misconceived.

(v) The application was in any event hopelessly time-barred.

Application struck out.

B *Cases referred to:*

1. *Moses Mwakibete v The Editor – Uhuru and two others* [1995] TLR 134 (CA)
2. *Transport Equipment Ltd v D P Valambhia* [1995] TLR 161 (CA)

C *Mr Ngalo* for the applicant.
Mr Uzanda for the respondent.

Nyalali, CJ:

This is an application by Notice of Motion filed by Halais Pro-
D Chemie Industries Ltd, hereinafter called the applicant, requesting the Court, 'to call for and examine the record of the proceedings, judgment and decree of the High Court of Tanzania at Dar es Salaam Misc Civil Appeal No 8 of 1992 in order to satisfy itself as to the correctness of the adjudication in the aforementioned
E appeal and for an order nullifying the entire proceedings in the said appeal on the grounds that the appeal was not properly before the Court and for an order that the respondent pays the costs of this application.'. The respondent to the application is one Wella A G. The application is supported by affidavit deposed to by Colman
F Mark *Ngalo*, learned advocate for the applicant. An affidavit in reply deposed to by *Francis Uzanda*, learned advocate for the respondent, was subsequently filed. Thereafter a preliminary objection was filed on behalf of the respondent stating inter alia that:

G '... the application is incompetent as it does not fall within the provisions of s 4(2) of the Appellate Jurisdiction Act, 1979, No 15 of 1979 as amended by s 2 of the Appellate Jurisdiction (Amendment) Act, 1993, No 17 of 1993, and as such the application be struck out with costs.'

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When the application came up for hearing on 18 August 1995, we heard arguments from both sides concerning the preliminary objection. As at some point of the hearing, learned counsel for the applicant relied on authority which he promised to produce later, we
I decided, at the conclusion of the hearing, to reserve our final decision to a future date to be notified to the parties. We have now

received the authority thus promised. It is *Moses Mwakibete v The Editor—Uhuru and two others* (1). A

From the affidavits filed in this case and the submissions made before us by counsel on both sides, there is no dispute that after the High Court at Dar es Salaam delivered its judgment on 1 July 1994 in Civil Appeal No 8 of 1992 between Halais Pro-Chemie Industries B Ltd and Wella AG, the applicant gave notice of appeal to the Court of Appeal against that judgment. The notice was lodged in the High Court on 11 July 1994 and was filed in this court on 14 July 1994. Thereafter on 9 September 1994, the applicant filed in the High Court an application for extension of time to apply for leave to C appeal to this court as required by law. That application was dismissed by the High Court with costs on 9 January 1995.

On 8 May 1995, that is about 10 months after delivery of the judgment sought to be revised, and five months after rejection of the application for extension of time, the present application was D filed in the court.

The issue before us is whether the present application is competent. Ever since this Court was invested with revisional jurisdiction by the Appellate Jurisdiction Act, 1979 as amended, the issue of competency appears to have been raised and decided upon in at E least two cases. The first one is *Mwakibete's* case, (*supra*). The second one is Transport Equipment Ltd v D P Valambhia (2). In *Mwakibete's* case, this Court stated, *inter alia:*

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> 'The revisional jurisdiction of this Court is provided by the Appellate Jurisdiction Act (Amendment) Act 17 of 1993—s 2(2) and (3). The jurisdiction in ss (2) is exercised either in the course of hearing an appeal or incidental to an appeal. Subsection (3) enables this Court to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality G or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings in the High Court ...
>
> Before proceeding to hear such application on merits this Court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by ss (3) were H not meant to be used as an alternative to the appellate jurisdiction of this Court, unless it is acting on its own motion, cannot properly be moved to use its revisional powers in ss (3) in cases where the applicant has the right to appeal with or without leave and has not exercised that option ...'

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Further on this Court stated:

A 'In our view this Court can be moved to use its revisional jurisdiction under ss (3) only in cases where there is no right of appeal or where there is, it has been blocked by judicial process. Lastly where such right exists but was not taken, good and sufficient reason are given why no appeal was lodged.'

B In the case of *Transport Equipment Ltd* (*supra*) which appears to have been decided without reference to *Mwakibete's* case, this Court stated, *inter alia*:

'The appellate jurisdiction and the revisional jurisdiction of this
C Court are, in most cases, mutually exclusive. If there is a right of appeal then that has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort to the revisional jurisdiction of this Court. The fact that a person through his own fault has forfeited that right cannot, in our view, be
D automatic right of appeal then he can use the revisional jurisdiction after he has sought leave but has been refused. However, the Court may, *suo motu*, embark on revision whether or not the right of appeal exists or whether or not it has been exercised in the first instance.'

We think that *Mwakibete's case* read together with the case of
E *Transport Equipment Ltd* are authority for the following legal propositions concerning the revisional jurisdiction of the Court under ss (3) of s 4 of the Appellate Jurisdiction Act, 1979:

(i) The Court may, on its own motion and at any time, invoke its
F 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
G Court;
(iii) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable 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
H been blocked by judicial process.'

The matter before us clearly does not fall under propositions (i), (ii) and (iii). Does it fall under proposition (iv)? Can it be said that the decision of the High Court dismissing the applicant's applica-
I tion for extension of time to apply for leave to appeal amounts to a judicial process which blocked the applicant's move? We do not

think so. Under the provisions of rr 8 and 44 of the Tanzania Court of Appeal Rules, 1979, the Court of Appeal has concurrent jurisdiction with the High Court to grant extensions of time, and it was thus open to the applicant to come to the Court to seek extension of time after the High Court refused to grant it. Instead of doing so, the applicant now seeks to invoke the revisional jurisdiction of the Court. This move is clearly misconceived. This position is underscored by the fact that the Notice of Appeal is still lying idle in this Court. The present application is obviously incompetent.

There is another basis which renders this application incompetent. As already mentioned, this application for revision was made about 10 months after delivery of the judgment sought to be revised. In our considered opinion, this application is hopelessly time-barred. Under the provisions of s 3 read together with the First Schedule to the Law of Limitation Act, 1971 (Act 10 of 1971), specifically para 21 of the First Schedule, the period within which an application like this one ought to have been instituted is 60 days. By any standard, a 10 months' delay is too late. Obviously this application is not properly before us and we are bound to strike it out with costs and we so order.