IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KIMARO, J.A., MASSATI, J.A. And MANDIA, J.A.)

CIVIL APPLICATION NO. 32 OF 2013

BAHATI JOHN NYARONGA ..... 1ST APPLICANT
ANNA JOHN NYARONGA ..... 2ND APPLICANT
DENNIS OREGO JOHN NYARONGA ..... 3RD APPLICANT
EMMANUEL JOHN NYARONGA ..... 4TH APPLICANT

VERSUS

GEORGE JOHN NYARONGA ..... RESPONDENT

(Application for revision from the Decision of the High Court of Tanzania, at Dar es Salaam)

(Shangwa, J.)

dated the 22nd day of February, 2013
in
Probate Cause No. 4 of 2012

.....

ORDER OF THE COURT

MASSATI, J.A.:

When the application was called on for hearing, Mr. Gabriel Mnyele. Learned counsel for the applicant had two prayers to make. First, he prayed for extension of time to file his written submission under Rule 10 of the Court of Appeal Rules, 2009. Second, which was in the alternative was for this Court to waive the requirements of Rule 106 relating to the filing of written submissions so that he could proceed to argue the application orally. He based this prayer under Rule 106 (19) of the Rules. When the court wanted him to address it on whether or not, it was necessary for him in such an application to have annexed copies of the proceedings or decision sought to be revised, the learned counsel submitted that

in the wording of Rule 65 of the Rules there was no such requirement. When the Court brought to his attention, the existence of one of its decisions, namely **THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND vs LEONARD MTEPA**, Civil Application No. 140 of 2005 (unreported) which ruled contrary to what Mr. Mnyele believes, his reaction was that such a decision was per incuriam, the Court of Appeal Rules. In the alternative he prayed for adjournment so that he could arrange to supply the missing proceedings and/or decisions sought to the revised.

Mr. George Nyaronga, the respondent, appeared in person. His reaction was that after hearing the exchange before the Court and Mr. Mnyele, he was convinced that the application was incompetent.

Having given due consideration to the submissions of Mr. Mnyele and the respondent, we are decidedly of the view that what is decided in the NSSF case is still good law. There we held that:-

> *".....if a party moves the Court under section 4 (3) of the Appellate Jurisdiction Act, 1979, to revise the proceedings or decision of the High Court, he must make available to the court a copy of the proceedings of the lower court or courts, as well as the ruling and it may be added, the copy of the extracted order of the High Court. An application to the court for revision which does not have those documents will be incomplete and in competent. It will be struck out."*

Until such time that this decision is departed from or overruled by this Court, that is the position of the law.

In the present case, the application is made under section 4 (3) of the Appellate Jurisdiction Act (Cap 141 R.E. 2002) and seeks to move this court:-

> *"to call for, examine, and revise, the records of proceedings of the High Court in Probate Cause No. 4 of 2012....."*

But Mr. Mnyele has admitted that he has not attached those records of proceedings. In our view, this was a fatal omission. The effect is that the application is incompetent and it is accordingly struck out. There shall be no order as to costs.

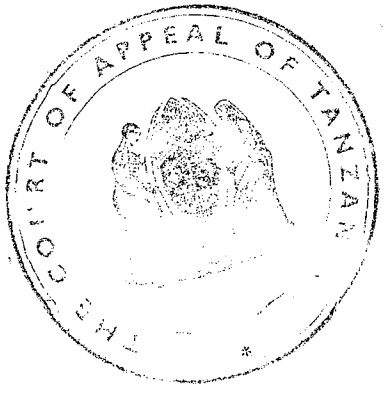
DATED at **DAR ES SALAAM** this 25th day of June, 2013.

N. P. KIMARO
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

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



Z. A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL