IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MSOFFE, J.A., BWANA, J.A., And JUMA, J.A.)

CIVIL APPLICATION NO. 130 OF 2013

STANDARD CHARTERED BANK (HONG KONG) LIMITED ..... APPLICANT

VERSUS

1. VIP ENGINEERING & MARKETING LIMITED
2. THE OFFICIAL RECEIVER/PROVISION LIQUIDATOR OF INDEPENDENT POWER TANZANIA LIMITED
3. MECHMAR CORPORATION (MALAYSIA) BERHAD } **. RESPONDENTS**

(Application for a Revision from the Proceedings, Ruling and Orders of the High Court of Tanzania at Dar es Salaam

(Utamwa, J.)

dated the 24th day of April, 2013
in
Consolidated Misc. Civil Cause No. 49 of 2002, 254 of 2003 & 112 of 2009

RULING OF THE COURT

12th September, & 22nd October, 2013

JUMA, J. A:

This is an application for revision made by a notice of motion. The notice of motion is taken out by the applicant, Standard Chartered Bank (Hong Kong) Ltd and is dated 19th July, 2013. The Court is being moved under section 4 (3) of the Appellate Jurisdiction Act, 1979 Cap. 141, Rules 4 (i), 4(2) (a), 4 (2) (b), 4 (2) (c), and 65 of the Tanzania Court of Appeal Rules, 2009. This Court is being asked to examine and revise the

proceedings and orders of the High Court of Tanzania (Utamwa, J.) right from 24th April 2013 in Consolidated Misc. Civil Cause No. 49 of 2002 and Misc. Civil Cause No. 254 of 2003 and Misc. Civil Cause No. 112 of 2009.

The five grounds at the base of the motion may be summarised into the following two major areas of complaints. **First,** the proceedings subsequent to 24 April, 2013 in Consolidated Misc. Civil Cause No. 49 of 2002 and Misc. Civil Cause No. 254 of 2003 and Misc. Civil Cause No. 112 of 2009 are so fraught with such serious inconsistencies and irregularities as to amount to exceptional circumstances going into the root of dispensation within the decision of this Court in **VIP Engineering and Marketing Ltd v. Mechmar Corporation (Malaysia) Berhad of Malaysia**, Civil Application No. 163 of 2004 (unreported). **Secondly**, it is contended that the hearing which the High Court subsequently ordered on 11th September 2013, will not only be fraught with the inconsistencies and irregularities subject of the complaint, but will perpetuate the same.

The facts giving rise to this present application may be briefly elicited from the supporting affidavit sworn to by Joseph Casson, the Managing Director of the applicant Bank. The 2nd respondent, the Independent Power Tanzania Limited-IPTL (under receivership) was incorporated on 1st November, 1994 to build and operate a 100MW independent oil generated

power plant in Tegeta, Dar es Salaam. This plant was designed to supply electricity to the national grid. The capital of the project was financed by a loan that was secured from a syndicate of Malaysian banks. According to Mr. Casson, the benefit of that loan was on 17th August, 2005 assigned to the applicant Bank, who thenceforth became the financier of the IPTL.

On 19th September, 2009, in its capacity as the financier of IPTL, the applicant filed in the High Court an administration petition, Misc. Civil Cause No. 112 of 2009. Concerned that the High Court was delaying to schedule the hearing of this administration petition, the applicant complained to the Chief Justice. This complaint prompted the Court to *suo motu* open a revision proceedings (Civil Revision No. 10 of 2012). On 17/12/2012 the Court revised and set aside rulings and orders issued by the High Court and directed the hearing of the administration petition should be heard by another trial Judge. That is how Utamwa, J. was assigned the matter and made the Rulings and Orders which precipitated the present application for revision.

The application for revision was opposed. The Merchmar Corporation (Malaysia) Berhad (3rd respondent) filed a Notice of Preliminary Objections on 6th August 2013 urging the Court to strike out the Civil Application No. 130 of 2013 for revision. The objection raises two points of law, namely:

(a) The Notice of motion lodged on 19/7/2013 seeking to revise the orders of the High Court dated 3/5/2013 and 7/5/2013 is time barred for contravening Rule 65 (4) of the Tanzania Court of Appeal Rules.

(b) The Notice of Motion is frivolous, vexatious and an abuse of the Court process.

Through learned counsel and representatives, parties appeared before us on 12th September, 2013 when we were able to discuss how to deal with the preliminary points of objection and prayers by Ms. Barke Sehel, the learned Principal State Attorney and by Mr. Godwin Ngwilimi, the Chief Legal Counsel, TANESCO; for the joining of the Attorney General and TANESCO in the present application for revision. We ordered the preliminary objection raised by the 3rd respondent be heard and disposed of first by way of written submissions along the schedule we issued to the parties. The hearing of the main application in the next sessions of the Court is predicated on dismissal of the preliminary points of objection. In the meanwhile, Ms. Sehel and Mr. Ngwilimi were ordered to lodge their respective applications to join.

On behalf of the 3rd respondent, ASYLA ATTORNEYS filed the written submissions in support of the preliminary objections as scheduled on 19th September, 2013. At the very outset of the submissions, the learned ASYLA ATTORNEYS abandoned the second point of objection and so we are left with the objection contending that the application for revision is time barred. On the question of limitation period it was submitted to us that in view of the fact that the applicant Bank filed its motion on 19th July, 2013 seeking to revise decisions of the High Court dated 3rd May, 2013 and 7th May, 2013, the notice of motion is time barred and should be dismissed.

ASYLA ATTORNEYS premised their objection on Rule 65 (4) governing revision initiated by a party. According to this Rule, a party seeking a revision shall lodge the appropriate notice of motion within sixty days from the date the decision subject of revision was made. It was submitted that the sixty-day limitation period for decision of the High Court dated 3rd May, 2013 expired on 1st July, 2013 whereas the limitation period for the decision dated 7th May, 2013 expired on 5th July, 2013. It was submitted that by the time the applicant Bank filed its notice of motion on 19th July, 2013, limitation period had passed for purposes of challenging on revision the decisions of the High Court. In other words, the applicant was eighteen days late for decision of the High Court dated 3rd May, 2013. And was

fourteen days late for the High Court decision dated 7th May, 2013. The ASYLA ATTORNEYS urged us to find that because the applicant Bank had filed the application for revision outside the prescribed period, we should dismiss that application as we did in our decision in **Tanzania Cotton Marketing Board vs. Cogecot Cotton Company S.A. [2004] T.L.R. 132**.

The written submissions filed by ADEPT Chambers on behalf of the applicant, make two distinct contentions. First, the applicant Standard Chartered Bank (Hong Kong) Ltd. contends that its grievance subject of a move for revision is not solely based on orders of the High Court delivered on 3rd and 7th May, 2013, but also includes complaint over what the applicant describes as "total confusion resulting from the way the High Court conducted the proceedings." To support this contention, the learned counsel advocating for the applicant urged us to seek the guide of our own decision in **STANBIC Bank Tanzania Limited vs. Kagera Sugar Ltd**, Civil Application No. 57 of 2007 (unreported). The applicant believes that the cited decision laid down the legal position that where the complaint subject of revision is one of impropriety, inconsistency and irrationality in proceedings generally, the sixty days limitation period prescribed by Rule 65 (4) does not apply to bar applications for revision.

The second distinct contention was made in the alternative and without prejudice to the first. Here, it was contended that the focus of the applicant Bank's grievance is over the High Court's order of 3rd September, 2013. The applicant is in other words implying that from the perspectives of the order of the High Court of 3rd September, 2013, the application for revision is not in fact barred by the prescribed period of limitation.

In the rejoinder submissions which ASYLA ATTORNEYS filed, it was contended on behalf of the 3rd respondent that the applicant Bank is trying, through its written submissions, to distort the facts in its motion. This distortion, we were urged, is designed to take the revision proceedings outside the purview of the preliminary objection grounded on limitation period. While urging us to determine the preliminary point of objection from the perspective of the notice of motion which the applicant filed on 19th July, 2013, the learned Attorneys observed that applicant's motion for revision was specifically seeking *"...Revision of the whole Proceedings and Orders of the High Court of Tanzania (before Utamwa, J.) since 24th April in Consolidated Misc. Civil Cause No. 49 of 2002 and Misc Civil Cause No. 112 of 2009."* They expressed surprise why in its replying submissions; the applicant Bank has surreptitiously shifted its motion to complaints over the Order of Utamwa, J. *"....dated 5th September 2013 transferring the affairs of*

IPTL to Pan Africa Power Solutions (T) Limited in Consolidated Misc Civil Cause No. 49 of 2002 and Misc. Civil Cause No. 254 of 2003 and Misc. Civil Cause No. 112 of 2009."

From submissions of the learned Counsel on preliminary point of objection, we should perhaps hasten to point out that the applicant Bank does not dispute the fact that from perspectives of the Orders of Utamwa, J. dated 3rd and 5th May, 2013 the application for revision was filed outside the sixty days prescribed by Rule 65 (4). However, the applicant Bank contends that because its complaint is predicated on confusion resulting from the way the High Court conducted the proceedings, the application is not bound by the limitation period. We agree with the ASYLA ATTORNEYS that the scope of the present application for revision is restricted within the parameters of the Notice of Motion which was filed on 19th July, 2013. And for purposes of the preliminary objection, the "proceedings subsequent to 24th April 2013" ended with the Orders of Utamwa, J. dated 3rd and 5th May 2013. This Court cannot on the basis of the Notice of Motion journey into what the applicant anticipates from subsequent decisions of the High Court from 11th September, 2013. At any rate, we were not availed with any copy of the proceedings to see for ourselves what Utamwa, J. ordered in September, 2013. This means, there is nothing before us to appreciate

what the applicant Bank described as "total confusion resulting from the way the High Court conducted the proceedings."

Therefore, the present application for revision falls under the purview of Rule 65 (4) prescribing the time limit within which a party initiating a revision proceedings in this Court has to lodge his application. The relevant rule 65 (4) provides:

> *"Where the revision is initiated by a party, the party seeking the revision* ***shall lodge the application within sixty (60) days*** *from the date of the decision sought to be revised" (emphasis added).*

This is not for the first time we are being called upon to deal with the consequences of an application for revision being filed outside the sixty-days which sub-rule (4) of Rule 65 has prescribed as the limitation period. In **Njamba S/O Kulamiwa Vs. The Republic**, TBR Criminal Application No. 4 of 2010 (unreported) we dealt with an objection against an application that had been filed beyond the mandatory period of sixty days prescribed under rule 65 (4) of the Rules. We categorically stated that such a failure to apply for a revision within a mandatory prescribed period is a

fundamental irregularity. This anomaly, we said, rendered any such an application incompetent, we did not dismiss the application but we struck that application out.

It seems to us that the only course open to us is to strike out the present application for revision which was filed outside the prescribed period of limitation. We hereby uphold the preliminary objection and strike out the application. The 3rd respondent is awarded the costs.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of October, 2013.

J.H. MSOFFE
JUSTICE OF APPEAL

J.S. BWANA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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

Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL