

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CIVIL APPEAL NO. 60 OF 2012

BITAN INTERNATIONAL ENTERPRISES LTD APPELLANT

VERSUS

MISHED KOTAK RESPONDENT

(Appeal from the decision of the High Court of Tanzania at

Dar es Salaam)

(Chinguwile, J)

Dated the 21st day of August, 2009

In

Land Revision No. 58 of 2009

JUDGMENT OF THE COURT

04th & 16th November, 2015

JUMA, J.A.:

This appeal by BITAN INTERNATIONAL ENTERPRISES LTD traces its genesis back to the Application No. 95 of 2008 which, though still pending in the District Land and Housing Tribunal of Temeke (the Tribunal), was subjected to an application for revision in the High Court Land Division at Dar es Salaam (Chinguwile, J.) in Land Revision No. 58 of 2008. Presently before us is an appeal directed against the ruling of the High Court Land

Division which had sustained a preliminary point of objection against the revision which the respondent, MISHED KOTAK had raised.

Some background is appropriate to understand why with the trial still pending before the Tribunal; the appellant went to the High Court to seek an order of revision, leading up to the instant appeal before us. The respondent and the appellant were respectively landlord and tenant over Plot No. 158, Saza Road of Chang'ombe in Temeke District. Their tenancy agreement begun on 15/6/2005 and rent was agreed at USD 1200 per month. The appellant used the rented premises to produce an alcoholic drink, going by the brand name of GINTAN. During the course of their tenancy agreement some misunderstandings cropped up. The appellant blamed the respondent for unilateral hiking of the monthly rent, from USD 1200 to UDS 1500. He also complained of interferences which affected his enjoyment of the rented premises, including prevention of the factory engineer from entering the rented premises. Finally on 1/4/2008, the respondent closed the factory gates, effectively shutting off the appellant's employees.

So aggrieved was the appellant that he went to the trial Tribunal where he initiated the Application No. 95 of 2008 to seek, "*a permanent*

injunction restraining the respondent landlord from interfering with the operation and activities of the appellant as long as the lease subsists”.

In the Tribunal, the appellant's complaints were disputed by the respondent who filed a written statement of defence which included his own counter claim. The respondent explained its own version regarding who between them is to blame. The source of their dispute according to the respondent, boils down to arrears in rent due from the appellant, and also the increase of monthly rent from USD 1,200 to 1,500.

Together with its application to the Tribunal, the appellant company had also filed a Chamber Application wherein it sought temporary orders pending the determination of the application to direct the respondent, to open the gates to the suit premises so that the appellant may enter and proceed with the production of the alcoholic drink. In addition, the appellant company sought for restraint orders against the respondent, his servants and agents, from interfering with the appellant's quiet enjoyment of the rented premises. The application for interim orders was heard on 10/4/2008 wherein the respondent was ordered to re-open the gates to the suit premises and allowed the appellant with its production without any interference.

Despite the temporary orders which the trial Tribunal issued, several subsequent protracted applications were filed. These included an application where the appellant moved the trial Tribunal to cite the respondent for contempt, the outcome of which is still pending. On his part, the respondent initiated proceedings in the trial Tribunal to attach the appellant's properties which were in the rented premises.

The appellant was aggrieved by the Ruling of the Tribunal Chairman (S.K. Mwandu) delivered on 29/10/2008 on respondent's prayers seeking the attachment of the appellant's properties. The appellant company went to the Land Division of the High Court where it filed Land Revision No. 58 of 2008 to seek for an order of revision. In moving the High Court to exercise its power of revision, the appellant cited the provisions of section 79 of the Civil Procedure Code, Cap 33 (CPC) and section 43 (1) (b) of the Land Dispute Courts Act, Cap. 216 (Land Courts Act). The respondent filed a Notice of Preliminary Objection to contest the competence of the application for revision. Specifically, the respondent faulted the way the appellant company sought the revision by employing section 79 of the CPC together with section 43 (1) (b) of the Land Courts Act. The High Court sustained this point of objection.

In her Ruling, which is at the core of the instant appeal, Chinguwile, J. held that only section 79 of the CPC was needed to vest the High Court with revisional jurisdiction. By citing this applicable provision alongside with section 43 (1) (b) of the Land Courts Act, she added, made the application for revision incompetently before the High Court. According to the learned judge, the appellant should have cited section 43 (1) (b) of Land Courts Act alone.

The appellant has in its memorandum of appeal before us, preferred three grounds of appeal to fault the decision of the High Court:

1.-The learned Judge erred both in law and in fact in holding that citing both section 79 of the Civil Procedure Code, as well as section 43 (1) (b) of the Land Disputes Act, Cap. 216 amounted to a wrong citation of the provisions of law, and continuing to hold the application incompetent.

2.-The learned Judge erred in law and in fact in holding that section 79 of the Civil Procedure Code was inapplicable in the circumstances of the case.

3.-Having found that section 43 (1) (b) was correct provision that ought to have been used, the learned Judge erred in law

and in fact in declining to determine the application under the provisions of the said section, instead striking out the application.

The parties, through their learned Counsel, filed written submissions to expound on their respective positions. When the appeal came up for hearing on 4th November, 2015, Mr. Gabriel Mnyele, learned advocate, appeared for the appellant company. Mr. Joseph Rutabingwa, learned advocate, appeared for the respondent. Mr. Mnyele while adopting what is stated in the written submissions of the appellant invited us to look at two basic issues which he described to be at the bottom line of the grounds of appeal. **Firstly**, whether the learned Judge of the High Court was right to state that only the court on its own motion (*suo motu*) can initiate a revision under section 79 of the CPC, and a party to the revision proceedings cannot invoke this provision. **Secondly**, whether the learned judge was right to have held that by citing an inapplicable provision (section 79 of CPC) together with the applicable provision (section 43 (1) (b) of the Land Courts Act) amounted to wrong citation rendering the application for revision incompetent. Mr. Mnyele urged us to find that both sections 79 of the CPC and 43 (1) (b) of the Land Courts Act either singly or

together, vests the High Court with jurisdiction to determine applications for revision. The learned counsel referred us to the decision of this Court in **Abdallah Hassani vs. Juma Hamis Sekiboko**, Civil Appeal No. 22 of 2007 (unreported) to cement his submission that as long as the appellant in the appeal before us had cited correct provision to move the High Court, the application does not become incompetent by merely also citing inapplicable provision.

Mr. Rutabingwa, the learned counsel for the respondent urged the Court to dismiss the appeal because it was not proper for the appellant to cite both applicable and inapplicable provisions and leave it to the High Court to pick and choose which provision vests the court with requisite jurisdiction. He also faulted the way the appellant cited section 79 of CPC without specifying which of its sub-sections (1), (2) or (3) vests jurisdiction to the High Court to exercise a revision. The learned counsel urged us to find that by citing inapplicable and unspecified section 79 of CPC together with applicable provisions of section 43 (1) (b) of the Land Courts Act, amounted to wrong citation. He supported the Ruling of the High Court to the effect that wrong citation made the application incompetent. To support his submission, Mr. Rutabingwa placed reliance on decisions of the

Court (which he did not identify) which struck out matters on ground of wrong citations.

In his rejoinder, while conceding that indeed the appellant should have specified the exact sub-section of section 79 of CPC that vests revisional jurisdiction in the High Court, Mr. Mnyele hastened to reiterate his position that as long as correct provision was cited, the High Court did not lose its revisional jurisdiction by reason only an extra provision was also cited.

From their submissions, both learned Counsel are on common ground that our determination of this appeal centres on one jurisdictional question. That question is whether the learned Judge was right to conclude that the High Court lacked jurisdiction to exercise its power of revision simply because in moving that court, the appellant cited both section 43 (1) (b) of the Land Courts Act which Chinguwile, J. determined to be applicable together with section 79 of the CPC which the learned judge reckoned to be inapplicable.

On our part, we think the decision of this Court in **Abdallah Hassani vs. Juma Hamis Sekiboko** (supra) which Mr. Mnyele referred to us, articulates the correct answer to the jurisdictional question where a

provision that sufficiently confers jurisdiction in the court is cited alongside inapplicable or superfluous provision. In **Abdallah Hassani vs. Juma Hamis Sekiboko** (supra), the application to the High Court for revision was made under section 44 (1) (a) and (b) of the Magistrates' Courts Act, Cap. 11 read together with section 95 of the CPC. With regard to the subject matter of the revision in the High Court, the Court noted that the applicant should have cited section 44 (1) (b) only. All the same High Court did not lose its revisional jurisdiction only because inapplicable provisions were in addition cited. The Court made the following statement of law which is as apt to the instant appeal before us:

"...We have gone into the details of the provisions of section 44 because we are satisfied that the appellant's application for revision was wrongly entitled. He should have indicated section 44(1) (b) only. Although the court should not be made to swim in or pick and choose from a cocktail of sections of the law simply heaped up by a party in an application or action, in the present situation we are satisfied that citing subsection (a) as well as was superfluous but that this did not

affect competency of the application for subsection (b)
is clearly indicated."[Emphasis added].

In the upshot of the above, the High Court erred in law in striking out the Land Revision No. 58 of 2008. The appeal is allowed and the Land Division of the High Court is ordered to re-hear the Land Revision No. 58 of 2008 without delay so as to allow the District Land and Housing Tribunal of Temeke to conclude the Application No. 95 of 2008 which is still pending. The appellant is awarded the costs of this appeal.

DATED at DAR ES SALAAM this 9th day of November, 2015.

N.P. KIMARO

JUSTICE OF APPEAL

S.A. MASSATI

JUSTICE OF APPEAL

I.H. JUMA

JUSTICE OF APPEAL

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



E.Y. MKWIZU

DEPUTY REGISTRAR
COURT OF APPEAL