

TANZANIA / JUDGMENT

19980401 TZCA Dar es Salaam

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(Co.D ;\~. ~ J.L...ct.l,J.. • T :) •.

- ~ .Ir. • 1 , ~ I. " ! - - - - - SADBUDIN " ? . i EGEJI 4 • • • f. e • • • f I • • t f p ~ - ~ D (\ ~ . T ~ T , 11 " , : r " T •
- • - - - - - ; to , , , - - ' l . 1 . J .) _ , ; , , • - { Application for Revision from the Decision of the High Court of Tanzania. at Dar es Salaam : 1) I dated. the 11th day of February ; 1996 . in Civil Case No. 224 of 1996 , , , • w w • i u • c LUBUVA, Comme-N ~ 1 the appli ~ i : i ; his a , : r ; i . lic : ! ~ o : , , 1 . .. t . r l e Cou _ rt (, : is reqUes ~ ed for an oi - r ... er of 11 rc _ , - : . . si . 011 of th , ~ liigh Cour ~ deci 5 . h 6 Il . and remit the . ca ~ . - to . t ~ : e . E ; li , _ t l C ; : ur ~ ~ r trial on ment . s 11 (sic) (pr ~ sum . ably " : me : - its) . erred in . e . nt e rt ai - ' l . ing ~ ' l - ie suit . wti en 7 . " : ? . . 5 t : i 1 ; ; ~ 2 . rre a . 1 T . e awl ; . cat . : . 1 . on is su . ppo ~ - = > y an c . : . ff : : . rfa , y : ! . ~ - - d ~ , oeed to QY , , , ' Mr . T . C . . Kapinga . 1 a . ounsel to th : : : . : . 9 ~ llic : : . n . • t - s : Ce . . n . t in th . e . Legal and . Trc . 1 . ~ ~ tee ~ ~ se . rvfccc Dc ~ ~ i ; _ ; ~ ; : le : 1 : t , = ~ ~ . a counter : \ . ~ . ; ' ! ' then , a notic ~ j of . preli . Jni . " larJ objection ~ Nas fil , : : d ; _ 1 . . 71 d " ? . X : : " J . . le 100 of the Court's Ru . les , 1979 , The prelinj _ nary ~ 1 Jj ~ : - i : 1 tior : sough ~ to 2
- 3. The 2 . pplicatio ! . is • ti . : - ne - b , , ; ; _ r ; , ~ : : d , 1 Vhen the application was called on for hcari ... ~ 1 : Cr , D . Kesaria raised tl' : e preliillinary obj . ; ; ct : l . on . I . : 1 : he ligl : lt of the affidavits filed and the submissions ty t ; ; e l ~ ar . ned counsel : for both : 9 arti : : s on the preli : - iin , : : l : 7 objection 9 the matter . The jud ; ~ ent in : favou : : . ~ of th . 2 res ~ : 1 ondent in this application in I - : i . 6 1 : Ccu : : ' t Civil Case : Tc . ' 244 . Ji ; ; 99 ~ L was delivered on 6 , 2 . : 1996 , In terms of t : : e provisi , Jr . s c ~ ~ Order T - T Rule 1 of the learned trial judge 1 It , is apr , , ren ; ; r ; l' , ~ t Si : : ~ e tl' : e time When the judgment wa 8 delive : rec : 1 apa : : . r , : : : " r ~ , : : : s ; e rili : lg of Application Ho , 4 : , or 1996 1 for stay o ~ e : cecu tion of the decision dated 6 , 2 1 1990 , no atter , 1 pt : i ; ; , J , s : ciac l , : : to file an ap !) Qal to this Colu - t 1 nn , 9 f 4 . . ' 19c ; 7 .
- ' / of this application , was deli' v - : , : : , : l . . • " / ~ C 1 • ' 1 : : i . 3 is ThE ; central issu . e res : pondent wa : : ; of the settled V7 - ! 3 W ~ ~ is inco ~ petent 3 Court with the l 2 cJ . ve o : ~ he High , - : ; curt . : : o : . 1 r : : t 2 r , , in this case , Mr , . Kesaria . we : t on i : i his submission 1 the : eight of t appeal was ! 1 . 0 t exercised . instead , this o . } 9 licat : . on for revision has been : filed . This ~ he urged 1 i 3 an isp : - oper use of the revisional powers of the Court , ~ ' he reason he said 1 was t : ha t under t ... 11 ~ AP : Pella t : e Ju : - isdictior . Act 1 1979 1 the powers of revi 3i : m were not mea : . 1 . t to ~ . be used as an alternative to the al ; pellate , jurisdi ! ; ti , : n of the court . Furthenno : ce , i . 1 r . ~ (esaria - tated 1 ~ ~ " m ... : : . - ~ ? 1 o q 60 . , , , , J ... J . • , / • ... _ , , / , , , , when the decision • vas deliv - ered , the applicant did . n . ot extension of tiwe in which to see : : leave to

appeal. In was all aouse of the court proce3s fol' the 3.;;,J.::cs.::1.v to Kesa .,;)' ..L. a nra,n:>D J; JV 'o.,,, 'l. ... 4-hi:, \J • ,,,,,,.....7; -,-,+,i o-... •_,,.,J!-'--~C.,,\>- v 1... it was JJ.o.p.elessly tim~carred, In suppcc.~t o::: :us submissions, Mr. K.esar:La :refer.red us to the dee is:: .:,;s J:;:' :h.~3 Court in: 1t Ha.la.is .Pz-0,,Chemi.e In.du.st.r.ies Ltcl. v, ..:1ell3. AG, Civil Appli.cation N'o, 19 of "1'09~,; 2• ~.1oses J\lwaki oete v The Edi tor of Ui:ur.1. and. Tvvo Others, Civil APPLication:.. No. 8 or' 1994; 3• Transport Eo_uiprne:a.t Liw.ited v. D&v~ P. Valambhia 7 Ci ,ril Applicai;ion No • .:6 o:" 1994, 4- Mr. ?ilaira., learnec3. cov..21s81 :for th-2 r,2:::pon(:;2nt, • strongly oppo:::ec7.. t~ie p::~li.:linary ojecti-'J"; PrQCedu;::e Code, 1966, it was a cons2m; jur~::~ent. In that si tuatio~ he ,,,J.,;1..int-s?..ir.~, the d.e.c.-isiorr ;,i,a.s !!.Ct open to 1996 when he tool~ over the condyct' of the ca:~e a.YJ.d 0,ec.ame aware of the error il'l. the jufepen-ti. he _r;1~s1..1.ed ~tl:..e matter pl'OI!lptly "oy way of r2visi-"n and not by way ..~f a.-;:rpeal, Fu~nnore, the c:har~ of aa.-..rccat.ss ha.--:dl:i.r.:;5 c.ase which accou...""lted f9" the time lost in pur~::~,g :n.2. tt e .r Relyin,, on the decision Indy,if}es. Ltd• (supra) Mr, Maira urged th2. t o¢,/rt us fits on all fo.u~s wit..~ proposi~ion that Court can be invoked as an al "t;er:ia ti vc to the ::~l)ft~lla:~_2 juris- dicti~J¼ On ~e. ~ e r hand, L1r. f:aira :-v::.. ~od t::e Court: to 4eal, wi t-1. the matter on revisic:1. suo :::.ct; in. ~.~?..oe the Cou~ ~omes to the view that it was not :Jrop;:: rl.Y moved to exer~i - " ...,0 e its revisi-onal J~u~1~sdi~ct1• ~n.... () T1:is is:~:: order to do justice in the ca;3e, :Mr. T,1aira p.oi:,-:::~:~l out. 5 We have closely and a.n.xiousl;-/ given con sidt?I'a tion to these submissions. •,re will first de;l ::::t:, the j_ssume o:f hesitation in stating S~2.t w~ a~e properly sovec1, in this applicati,JrL It is to ':~ 1 ~ o1)serv~d ! that the m.atte... :l,?..s been filed iil1 this Court oy ;:,., notice 1 of motion unde1~ Sectio.:1. 4 (2) of the App 1?..ll2. te J1_~;-i3diction Act, 1979, Sub-sectLms 2 and 3 of Sect:io:r, 4- of the Act as amended by Act No. : 7 of 1993i vests tb~ Court with powers of revision for 1)U!'poses of :J.!ld i~1c:..dent::1l to the hearing and dete:~lIlination of any appeal. 'That is 1 the revisionaJ. jurisdictio;1 is exercised in th.: cou"!Je of heati.flg an appeal in rega::'d. to an aspect in the appeal in which no appeal has been :preferred.. I::1 tlle ,;natt<:::r before the Court, no appeal was instituted. 3..nd sc. the rs'rision2.l p.DWers cannot '-oe invoked :for pur}>'.Jses :,;~ a.:~:~d i~cide:ntal to the deynni.nation of a..". appeal • i~:::~. :~: w2!..i :-Lt be::: ore the Court• It :follows therefore t~1.2.~:: 'j;~::; ~:: ~)L. ~:ti;~m has 'oe;~n filed cy notice ~f ~ic-+;i.Jrr '___id.t:~:::~. _- _ ; :.'lS:T.~=-=:lble :3ection of the law, Consequently 1 as the Cou:::'t wa-; not prcperly On the othe:r hand 1 gran-ced ~.~ ... - ---- - ~ ~-~:"\ u ... ;,~ - app 'J- J;"• ,v,;;; - ---,oved ,,,,cile~" st1 ""~:~,, ~,,~,,~ - ' ,,,,~nT>-ia-+~:~ily \,I ,~.J. ~ - .. V - ., •,J J h • - • - : • ';;, - ,,, ,~i- ' ,_,, ... 'r.r-r-+; on ~..J ,,, J - ... 4 of the Act, what are tl:e cir:::u:~stances that woul.d v,arrant the exercise of the Court 1 :: strongly contended th2.t the change of 3.lvoc;ttes in the handling of the case is 91.uficient reason ::unounti..-rig to 6 under sub...:sectioi"! (3) c:' Jection 4- o :~ :he A~:) the Court , stated inter ali~: . (i) ' (ii) Except 1.mder exceptional circu:-c:3tartces, a party to r_:::roceedings in the Ei,,h Court can."1ot iilvoke! the revisional uiurisdiction of the Court as an alternativ-e to :~he appeJ.la te jurisdictil)n of ,;;;he C'ou:r~. 'Nith great rezpect to Tilr. Mair:?,. ~tle do ~h)t think that a change a:f ~ounsel in the cond~::~t o:: t::,2 :-<2spondent' s to the appealJ.2..~e jurisdiction. _:::~--:::s ~-= ::;c o >:::~.1.1.:cse 1 in the first place, B.nd 'NC re 'i sought to be

revised for ins ti~:-: ~_2;- "-~ _: __);Je:-:-L. due tc, the inadvertence 7 la::d ty and. o:r la
 psi:: on : ; :-~s ::3.rr,)f th1:: 1 respond.But' s C.OU..'1.Sel wb.o had t'::!e c:on:2:lc; JI 1;>5
 case 1..mtil conduct of the case 1 became aware of the erro1~ in t::c: clsci:::io!:1, th? subj •?
 ct of this application• too that counsel's inadverten<>J; i:1.actio~~ •)r which goes to the ver-J
 root of trie matter i::; a seriou.s matter amount ;,na- J. b t() 1""8'!'.'ll. ,. 0 -- 0 ~""\ 0 • c-
 c:-,:::,cc,-,; , -'~ +rr-i __, __ _ of ,~ounse.l.. in our view, would not constitute su:f::icien 1:
 reason to war:tant the e:xercis:: of the 9ourt:-~1n--somewhat simil2.r situation involving
 la.xi ty and lapse on the part o:!' cotmsel, i1.1. t::e G2.se of Kighoma Alli Ifulii.i'7.a v Abas
 Yusuf rtwin,'a;e.mrw. Ci:::r:'!..l c..r a.u: o awaao •ziO> •r 11 Sufficient r~ason ha~ ~en
 ccnside :rod I iri a 11UIJ.oer of cases. Sometimes a sli 0 ht lap::;e cy an ad-..rocate :::li;:::-f";
 be overlooked., bu.t not a lapse cf J. fu.nd2ne~1t,i1.1 nat::;_re like the :lon.-sup~ly of any
 supporting evidence for an appli:a~i;ior: for enlargement of time. :, - In anoth~r ce.se 1
 Institute _of :?illa...:ce ::,Ianag~mer2t v Simon - the C*4 agai:l state.a. 2.s :follows: C only
 v1her9 the :ii stake invol res ,1 ::linor ~r slight lapse 1 out not wher9 i:s involves a ~ of
 a- :iun.,dan~n::t.al natur0. :, In ~.his case, it he.a.t.s our ~ag,ina.tioE tllo.t T,Ir. Tuiaira urges
 us ta a.ccept that cow-i.sal' s failure to i:-ij_ ~i:3.t8 the iilst.ituticn of an appeaJ. for i3. p8riad
 of ; 1. :::oTths sine! 0 the delivery of the t-1.dgment on 6,2,1996 w::ls s, slight 3 , ----.---- ..
 Chemie case warra:-,,-~iil,,_; the cou:::-t>s exersise of its t revisional povier::; • . had
 valiantly u~::sed that as the decision of 6, 2.199G was made under Order 'l:l ~culB I of the Ci
 ril ?rocedurc Code, 0 it was a consent ,jnd~ent i:i which c~~se, he stressed 1 it was not ap-
 p.ealla bl e, blocked 'by law in which case in his vie :r, tl:c :n.2.tte:::- could 1 only oe brougM;
 up to ~his Court 'by W3.J Q:f :te;vision, ,7i th the applicarit deemed i~ un.necessarJ to
 take :::1.ny step3 Maira stated 1 the ::~atter has now been l8dged i:1 the Court seeking
 ~....sion. '7e. :find this su:::irnissic.n a~ctise but with rws~t, arB unatJ.e ~o acce}t i-:, This
 13 :f'o:r the obvious reason that if, as urged by :::r. :::2.L:~::~, the d:-:cision for w'!uch
 revision is sought was a cor~se:::"c .j1..dgo~nt 1 t.he matter would fall i.h:der sectioi1 5 (2)
 (':-.. ; (i) c::' the .\p!)ellate Ju..risd.ict.i.on Act I T'979', LTI ~ it- l,":."~--ri de::: : -
 N~twithstaruiing the su119ecti.on (1) •

- (a) e~r,t with the leav8 of tl1e High Court, no lie against, 1 - lie to the cour~ wi t+1 192.~re of the
 High (,;())1.tr'.; 'Ii th a little dili,~:::c8 o:'. t";2 p2.rt of counsel 1 this wou.ld ~hav.e been
 obvious. As it >.i~Jpc:1ec. in this ca,;e 1 :-:o ,_,-,Jpe.e.l was ground raised tha~c the appeal
 process we.s :l:::cl,>:> by law is to our ruin.l~s 1 1..ntenable. If a..11.ythi1lg c:::~t :ll : _ t
 is a fu-rther reflection on co1.L'lSel I s ae;iligeY-tcc. --'Ie reject this ground.. Finally, we will
 deal with the q_uestic,"!}. o:::' :_imitation. Granted th.at the application for revision wD.s p-
 r::~rperly founded in lar, 1 still v,e think 1 it would oe re:::-:,~;? ::-ed incompetent, I(esari2.
 that the application is time~barred. Under the provisions of se,;tior: 3 and paragraph 21 of
 the First Schedule to t~:2 T,-:::1 of Limitation Act, 1971 1 the application sho1.:_ld. ~a'TC
 been filed, within two n~ont,h,s (60 day3) fros tl:2 d~:te of its delivery on 6,2,1996, The :
 applicat:i.0~1 the delive:r-J of the decision 1 This 1 in. ou.r :::01121,Jered opinion is ver"J
 filUch ~ o~ tirn.e. Tl:is ,;rc1.u:d alo~e, we thi:k would 'be suffic:i..en-6 to dispose o:f -,~h:L.s
 ap!)lication. Be'fore concludi:~J.g this :m.atter- 1 're 'N::;_s]~i ;;o observe that Ur. Maira's al

tert1.ati Ye plea froo the b:-:r that t}1c Court · may wish to deal v;i th the ~ r ,011 rev:'!::::ion
suc; :motu is equally unfotm.ie-d, Tb.a ma:t:te.r is al'eJ.~:~ ".):":c:-r:- -i,h:2. Ir- :,. 10 It
has .. 1 \.: . .~. , -· in -'--Y,o V.1. ... - :;_c: sustained. th.is 1st r\pril, ', . ~ci98 . ~
~ .,:_ .J It_; ff IW1AIJI-Ii'~SI J. LUJ3UV.A "2::cs OF APPEL1 !!::: is a ti. ue copy of the
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