**Registered Trustees of Korea Evangelical Church v Yum Yun Hwa and**

**another**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of ruling:** 23 December 2003

**Case Number:** 80/03

**Before:** Ramadhani, Mroso and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Appeal – Record of appeal – Application seeking injunction pending revision of proceedings –*

*Record of appeal incomplete – Whether application incompetent and to be struck out.*

*[2] Court of Appeal – Injunction – Procedure – Whether Court of Appeal may entertain application*

*brought under rule 3 – Whether rule 9(2)(b) appropriate.*

**Editor’s Summary**

The High Court had granted an application of the first respondent Yum Yun Hwa administratrix of her late husband that the properties of her late husband be collected and handed over to a court broker. The applicants were aggrieved by the process of collecting the properties and filed an application in the High Court objecting to the collection. Their application was dismissed and the applicants moved to the Court of Appeal seeking an injunctive order against the respondents pending the hearing and determination of revision proceedings at the Court of Appeal. The application was made under rule 3 of the Court Rules. The respondents raised a preliminary objection to the application on grounds that the application had been filed under wrong provisions of the law and that the orders sought were unmaintainable in law. The respondents contended that the application ought to have been made under rule 9(2)(*b*) of the Court Rules after filing of an appeal and not under rule 3. Further, the respondents argued that the application was incompetent since the revision proceedings had not been annexed and there was therefore no basis upon which the application was predicated.

**Held** – The application was not incompetent for failure to be brought under rule 9(2)(*b*) since it was not seeking stay of execution but was rather seeking injunctive orders. Since injunctive orders were not provided for under the rules, the application was properly brought under rule 3. There was no evidence of existence of the revision application upon which the injunctive orders were sought. The record of appeal was therefore incomplete and the application incompetent and would be struck out with costs. Preliminary objection sustained.

**No cases referred to in ruling**