IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KWARIKO, J.A., KEREFU, J.A., And MAIGE, J.A.)

CIVIL APPLICATION NO. 310/01 OF 2021

ANSAAR MUSLIM YOUTH CENTRE.....APPLICANT

VERSUS

ILELA VILLAGE COUNCIL..... 1ST RESPONDENT
KIWAWA KONZO.....2ND RESPONDENT

(Application for review from the decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Ndika,Wambali and Sehel, JJ.A.)

dated the 7th day of May, 2021
in
Civil Appeal No. 317 of 2019

RULING OF THE COURT

4th, & 7th October, 2022

KEREFU, J.A.

By a notice of motion taken under section 4 (4) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] (the AJA) and Rule 66 (1) (a) and (b) of the Tanzania Court of Appeal Rules (the Rules), the applicant is applying for review of the decision of this Court in Civil Appeal No. 317 of 2019 dated 7th May, 2021. The application is supported by an affidavit sworn by one Alex Mashamba Balomi, learned counsel for the applicant. It is, perhaps, noteworthy that, the respondents did not lodge any affidavit in reply.

The application is based on the following grounds:

(a) That, the decision of the Court has serious manifest errors on the face of record resulting In the miscarriage of justice as follows:

(i) That, the Court wrongly allowed the appeal, declaring the proceedings, judgment and orders made by the DLHT and the High Court as a nullity, quashed and set aside the decisions with costs;

(b) That, the applicant was wrongly deprived of an opportunity to be heard as follows:

(i) That, since the applicant has a registered Power of Attorney, the decision was based on manifest error on the face of record which resulted into injustice to him.

Before embarking on the merits or demerits of the application, we find it apposite to narrate brief facts leading to this application as obtained from the record of application. It is indicated that, way back in June, 2011 Abubakar Ally Abubakar, claiming to be the principal officer of the applicant, instituted a suit in the District Land and Housing Tribunal for Mbinga (DLHT) in Land Application No. 15 of 2011 against the first and second respondents together with Nyamako Auction Mart & Court Broker who is not a party to this application. In that application, the applicant claimed that she bought a house on Plot No. 70757 with a Certificate of Title No. 280818 situated in Mbinga District (the suit property) through public auction

conducted by Nyamako Auction Mart & Court Broker on 1st August, 2001. It was alleged that the auction was lawfully conducted following a proclamation of sale issued by the then Regional Housing Tribunal for Ruvuma after the first respondent failed to pay the second respondent the decretal sum of TZS. 6,700,000.00 in Land Application No. 35 of 2000 in which an *ex parte* judgment was issued against the first respondent. The first respondent therefore, sought a declaratory order that it was a legal owner of the suit property, an order for vacant possession and permanent injunction restraining the first respondent from conducting any activities at the suit property and general damages at the tune of TZS. 15,000,000.00.

The first respondent challenged the applicant's claim by arguing that the *ex parte* judgment was nullified by the Court of Resident Magistrate of Songea in Miscellaneous Application No. 2 of 2001 due to some irregularities regarding the sale of the disputed house.

Having heard the parties, the DLHT was satisfied that, the sale was nullified and further held that in the eyes of the law, the applicant had no cause of action against the first respondent. It thus, dismissed the applicant's application. As to how the applicant would be able to recover its money paid for the purchase of the suit property, the DLHT ordered the

second respondent to pay the applicant the purchase amount of TZS. 9,912,000.00 plus 7% interest per annum.

Aggrieved, the applicant successfully appealed to the High Court. The first respondent was not satisfied with the decision of the High Court. It thus lodged Civil Appeal No. 317 of 2019 in this Court. At the hearing of the appeal, this Court considered the first ground of appeal which was to the effect that the High Court erred in entertaining the appeal while the applicant had no *locus standi*. Having considered that ground, this Court found that the applicant had no *locus standi* to initiate the proceedings in DLHT. As such, the Court declared the proceedings, judgments and orders made by the DLHT and the High Court a nullity.

Undaunted, and believing that the decision of the Court has manifest errors on the face of record resulting in the miscarriage of justice, the applicant lodged the current application as indicated above.

At the hearing of the application, the applicant was represented by Mr. Alex Mashamba Balomi, learned counsel whereas Mr. Rodgers Francis, learned Senior State Attorney assisted by Ms. Joyce Senkondo, learned State Attorney teamed up to represent the first respondent. The second respondent, though duly served, did not enter appearance. Thus, the

hearing of the application proceeded in his absence under Rule 63 (2) of the Rules.

When invited to elaborate on the above grounds for review, Mr. Balomi commenced his submission by adopting the contents of the notice of motion and the accompanying affidavit. In support of the first ground, he submitted in general terms that there is manifest error on the face of record as the Court erroneously allowed the appeal and nullified the proceedings, quashed the decisions and set aside the orders made by the DLHT and the High Court with costs. To buttress his argument, he cited the case of **Rizali Rajabu v. Republic,** Criminal Application No. 4 of 2021 (unreported).

Having in mind the several pronouncements we have previously made regarding the parameters and the powers bestowed in the Court, under section 4 (4) of the AJA and Rule 66 (1) of the Rules, to review its decisions, we prompted Mr. Balomi to demonstrate specific error(s) in the impugned decision. In response, Mr. Balomi did not have plausible explanation other than to refer us to paragraphs 8, 9 and 10 of the supporting affidavit where he deponed that:

> *"8. That, the applicant is the registered Trustee under the governing law. Before it filed an application in the DLHT at Mbinga, conferred a Power of Attorney to defend and prosecute the matter in court;*

9. That, under the circumstances, the applicant's an Attorney who was not a member of the Board of Trustees was duly mandated by Power of Attorney duly appointed him so to represent the applicant in the lower courts as he did; and

10. That, the Court was under manifest error on face of record in overlooking the mandates and authority delivered from the conferred Power of Attorney which all along was not challenged."

He then argued that, the above paragraphs have clearly demonstrated the error(s) in the impugned decision which he urged us to correct.

On the second ground, Mr. Balomi argued that the applicant who has a registered power of attorney was wrongly deprived an opportunity to be heard, which he said, occasioned injustice to him. To clarify on this point, he referred us to paragraph 11 of the supporting affidavit and cited the case of **Chandrakant Joshubhai Patel v. Republic** (2004) T.L.R. 218 and **Isaya Linus Changula (As Administrator of the Estate of the late Linus Chengula) v. Frank Nyika (As Administrator of the Estate of the late Asher Nyika),** Civil Application No. 487/13 of 2020 (unreported). He finally, urged us to grant the application with costs.

In response, Mr. Francis resisted the application by arguing that the two grounds submitted by the applicant as errors on the face of the record

do not constitute grounds for review to warrant the Court to exercise its jurisdiction to review the impugned decision. He clarified that, to constitute an error apparent on the face of the record, the error complained of should not be discerned from a long-drawn process of reasoning but rather, it should be an obvious and patent mistake. To bolster his proposition, he referred us to our previous decisions in **East African Development Bank v. Blueline Enterprises Tanzania Limited,** Civil Application No. 47 of 2010, **Wambura Evarist & 6 Others v. Sadoki Dotto Magai and Another,** Civil Application No. 127 of 2011 and **Jayantkumar Chandubhai Patel @Jeetu Patel & 3 Others v. The Attorney General & 2 Others,** Civil Application No. 160 of 2016 (all unreported).

He then argued that, in the current application, the grounds of review stated in the notice of motion and the applicant's affidavit are but an attempt to reopen the appeal, as all matters complained of herein, have already been determined by the Court. He argued that the applicant's claim at this stage, is nothing but an afterthought. On that basis, the learned Senior State Attorney urged us to dismiss the entire application with costs for lack of merit.

In his brief rejoinder, Mr. Balomi reiterated what he submitted earlier and urged the Court to find that the two grounds for review are sufficient to invoke its jurisdiction to review its impugned decision.

On our part, having examined the record of the application and submissions made by the parties, the issue for our determination is whether the grounds advanced by the applicant justify the review of the Court's decision.

To start with, we wish to note that the Court's power of review of its own decisions is provided for under section 4 (4) of the AJA whereas the grounds upon which a review can be successfully sought are stated under Rule 66 (1) of the Rules. The said Rule provides that: -

"66 (1) *The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds: -*

(a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or

(b) a party was wrongly deprived of an opportunity to be heard;

(c) the court's decision is a nullity; or

(d) the court had no jurisdiction to entertain the case; or

(e) the judgment was procured illegally, or by fraud or perjury."

For an application for review to succeed, the applicant must satisfy any one of the conditions stipulated under Rule 66 (1) of the Rules. It is only within the scope of that Rule that the applicant can seek the judgment of this Court to be reviewed. Therefore, the next question for our determination is whether the applicants' alleged error is apparent on the face of the impugned decision.

Before venturing in responding to the said question, we find it prudent, at this juncture, to restate the meaning of the phrase '*apparent error on the face of record'* as stated by the Court in **Chandrakant Joshubhai Patel v. Republic** [2004] T.L.R. 218. In that case, the Court adopted from '*Mulla, Indian Civil Procedure Code,*' 14th Edition at pages 2335 to 2336 the following summarized description of that term, that: -

> *"An **error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be estabiished by a long-drawn process of reasoning** on points on which there may conceivably two opinions... **A mere error of law is not a ground for review** under this rule. That a decision is erroneous in law is no ground for ordering review...It can be said **of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established**...".* [Emphasis added].

It is clear from the above authority that for an error to warrant review, it must be a patent error on the face of the record not requiring long-drawn arguments to establish it.

In the instant application, the applicant, in the first ground, is alleging that the decision of this Court has an error on the face of record resulting in a miscarriage of justice. However, in the contents of the notice of motion and the supporting affidavit, the applicant has failed to point out the said errors. Furthermore, in Mr. Balomi's oral submissions before us, it is clear that the applicant's main complaint is her dissatisfaction with the decision of this Court. It is settled that the Court`s power to review its own judgement or ruling is limited and thus, a mere disagreement with the finding of the judgment cannot be a ground for invoking the Court's power to review its decision. In the case of **Tanganyika Land Agency Limited and 7 Others v. Manohar Lai Aggrwal**, Civil Application No. 17 of 2008 (unreported), the Court emphasized that:

> *"For matters which were fully dealt with and decided upon on appeal, the fact that one of the parties is dissatisfied with the outcome is no ground at all for review. To do that would, not only be an abuse of the Court process, but would result to endless litigation. Like life, litigation must come to an end."*

Being guided by the above authorities and having revisited the impugned decision and considered paragraphs 8, 9 and 10 of the supporting affidavit referred to us by Mr. Balomi, we agree with Mr. Francis that the applicant's dissatisfaction with the decision of the Court cannot constitute a ground for review. Thus, the first ground has no merit.

The applicant's complaint under the second ground is to the effect that she was wrongly deprived of the right to be heard. Having perused the impugned decision, we find the said ground together with the oral submission by Mr. Balomi to be misconceived and not supported by the record. We say so, because, at page 6 of the impugned decision, it is clearly indicated that, during the hearing of the appeal before the Court, the applicant was represented by Mr. Ngafumika, learned counsel. However, it may also seem to us that, the applicant miscomprehended the court's decision as she pegged her complaint with the registered power of attorney. For clarity, in considering the applicant's legal capacity to initiate proceedings before the DLHT, the Court at pages 13 to 14 of the impugned decision stated that:

> *"...in law, Ansaar Muslim Youth Centre does not legally exist. As such, any order and/or decree issued in the name of Ansaar Muslim Youth Centre will not be executable because the properties of the Registered Trustees of Ansaar Muslim*

Youth Centre are not vested in the 1st respondent...Principally, the Registered Trustees of Ansaar Muslim Youth Centre is separate legal entity person with its own legal identity distinct from the 1st respondent...We have stated herein that Mr. Abubakar Ally Abubakar who posed as a principal officer of the 1st respondent instituted the application before the DLHT. Mr. Abubakar Ally Abubakar being not a member of the Board of Trustees of the Registered Trustees of Ansaar Muslim Youth Centre had no authority and power to file the application and appeal for and on behalf of the Registered Trustees of Ansaar Muslim Youth Centre...Since the application before the DLHT was filed by a person who had no authority to bind the Registered Trustees of Ansaar Muslim Youth Centre, we find merit in the first ground of appeal."

From the above extract, it is clear that the Court held that the applicant had no legal capacity '*locus standi*' to initiate proceedings in the DLHT, instead, the Registered Trustees of Ansaar Muslim Youth Centre was the one with that capacity. Therefore, the complaint by the applicant to have been denied right to be heard does not arise. As such, we find the second ground devoid of merit.

In totality, we are in agreement with the submission of Mr. Francis that the two issues raised by the applicant herein were adequately considered and decided upon by the Court. Re-opening the same at the

point of review is to sit on appeal of our own decision which is contrary to the spirit of Rule 66 (1).

It is therefore, our respectful view that, since all matters raised by the applicant in this application were adequately considered and determined by this Court, the applicant's dissatisfaction with the finding of the Court cannot be said to constitute an error apparent on the face of record so as to justify a review. In addition, and discouraging litigants from resorting to review as disguised appeals, and underscoring the end to litigation, in **Patrick Sanga v. Republic,** Criminal Application No. 8 of 2011 (unreported), we emphasized that:

> *"The review process should never be allowed to be used as an appeal in disguise. There must be an end to litigation, be it in civil or criminal proceedings. A call to re-assess the evidence, in our respectful opinion, is an appeal through the back door.* ***The applicant and those of his like who want to test the Court's legal ingenuity to the limit should understand that we have no jurisdiction to sit on appeal over our own judgements.*** *In any properly functioning justice system, like ours, litigation must have finality and a judgment of the final court of the land is final and its review should be an exception. That is what sound public policy demands." [emphasis added].*

As intimated above, the application before us does nothing less than inviting the Court to re-hear the appeal afresh which is contrary to the cherished public policy that litigation must come to an end.

In the circumstances, and for the foregoing reasons, we see no merit in the applicant's application to warrant this Court to review its decision. Accordingly, this application fails in its entirety and it is hereby dismissed with costs.

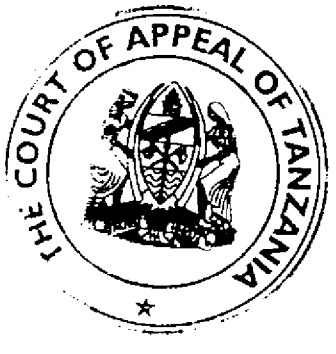
DATED at **DAR ES SALAAM** this 6th day of October, 2022.

M.A. KWARIKO
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Ruling delivered this 7th day of October, 2022 in the presence of Mr. Alex Balomi, learned counsel for the Applicant also holding brief for Mr. Rogers Francis, learned Senior State Attorney for the Respondent is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL