

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MNZAVAS, J.A., MFALILA, J.A., And LUBUVA, J.A.)

CIVIL APPLICATION NO. 16 OF 1994

BETWEEN

TIMOTHY M. KAARE APPLICANT

AND

MARA COOPERATIVE UNION (1984) LTD.RESPONDENT

(Review of the decision of the Court of Appeal of Tanzania at Mwanza (Mr. Justice Kisanga, Mr. Justice Mnzavas and Mr Justice Mfalila dated August 30, 1993 in Civil Appeal No. 42 of 1992)

RULING OF THE COURT

MNZAVAS, J.A.:

In this application the applicant Timothy Kaare is asking this Court to review its previous decision in TIMOTHY KAARE v THE MARA COOPERATIVE UNION - CIVIL APPEAL NO. 42/1992 in which the applicant lost the appeal.

In support of his application the applicant says in his written submission inter alia:

"Scanning through alleged respondent's Staff Regulation ... clearly shows that it was a draft document verbatim copied from the Parastatal Organization Service Regulations of 1984 and intended to be adopted by the respondent. Since there was no resolution of the respondent's management committee or General Meeting produced in the trial court stating that the said Regulations were authorized to be applicable to members of the respondent's staff nor was the date on which they were to be in force stated therein, the alleged staff regulations were not genuine, nor were they made according to law and therefore inadmissible in evidence ... Under the circumstances,

Your lordships this court arrived at its decision of dismissing the appeal with costs on no evidence. Hence the decision of dismissing the appeal with costs was ultravires and should be reviewed and set aside and the appeal be allowed with costs."

Earlier the respondent through his advocate Mr. Byabusha, learned counsel, had told the Court that the Mara Cooperative Union was under receivership and he applied to the court to have the liquidator substituted for Mara Cooperative Union, the respondent.

The applicant had no objection to the application, and the application was granted.

Arguing in rebuttal to applicant's written submission in support of his application for review of this Court's decision Mr. Byabusha, learned counsel for the respondent/liquidator, submitted that there is nothing in our judgment in Timothy Kaare v The Mara Cooperative Union - Civil Appeal No. 42/92 entitling this Court to review the said judgment.

In support of his argument the learned defence counsel referred us to this Court's Full Bench decision in Civil Application No. 18/93 TRANSPORT EQUIPMENT LTD v DEVRAM P. VALAMBIA - (Unreported)

The East African Court of Appeal in SOMANI vs SHIRNKHANU 1971 E.A. at Page 79-80 stated to the effect that the "Court of Appeal does not have inherent jurisdiction to review its own judgements or orders except in limited circumstances." This was so stated by Spry Ag. P. on Page 80 where he says:

"On the more general ground this Court is not a court of unlimited jurisdiction. It is a creature of statute and enjoys only such jurisdiction as is conferred to it by statute. It has no inherent jurisdiction."

The Court however held that it had limited inherent jurisdiction to review its own decisions where a party is wrongly deprived opportunity to be heard. This Court quoted and followed in VALAMBIAS case - supra the decision of the East African Court of Appeal in Somani's case - supra but added that failure to hear a party is not the only ground upon which the Court of Appeal could review its own decision. The Court could do so in every case where for one reason or another its decision is a nullity.

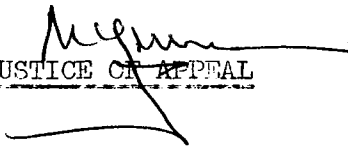
In Valambia's case quoted by the learned defence counsel this Court enumerated four instances where it would be entitled to invoke its limited jurisdiction to review its own judgement or orders. These instances are:

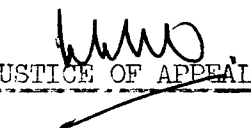
- (1) Where its decision was based on a manifest error on the face of the record as it was in the case of FELIX BWOGI t/a EXIMPO PROMOTION SERVICES vs THE REGISTRAR OF BUILDINGS - CIVIL APPEAL NO. 121/1991 (not yet reported).
- (2) Where a party is deprived of an opportunity of being heard.
- (3) The Court also has inherent power to review its judgements or orders under what is known as the slip rule, to correct accidental errors or omissions.
- (4) It also has inherent limited jurisdiction to review its judgements or orders where a judgement has been procured by fraud of one of the parties. It must however be shown that the successful litigant was a party to the fraud.

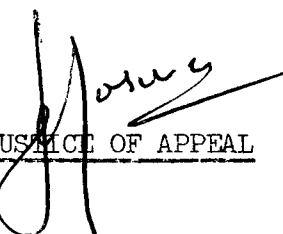
In his reply to the learned defence advocate's submission that there was nothing in this Court's judgement calling for review of the judgement, the applicant argued that there was a manifest error on the face of the record.

We have painstakingly read the record but we have failed to trace any manifest error on the face of the record calling for review of our judgement. In the event we agree with Mr. Byabusha, learned defence advocate that this application has no merit and it is accordingly dismissed with costs.

DATED at MWANZA this 2nd day of December, 1996.


JUSTICE OF APPEAL


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