

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CIVIL APPLICATION NO. 11 OF 1995

BETWEEN

HADIJA AHMED KARIE APPLICANT

AND

ISSAE HAMIS MFINANGA RESPONDENT

(Application for Review from the
Judgment of the Court of Appeal
of Tanzania at Dar es Salaam)

(Ramadhani, Mnzavas, And Mfalila, JJJA)

dated the 6th day of July, 1995

in

Civil Appeal No. 4 of 1995

RULING OF THE COURT

MNZAVAS, J.A.:

This is an application by notice of motion supported by affidavit seeking for review of this Court's decision in ISSAE HAMISI MFINANGA vs HADIJA AHMED KARIE - CIVIL APPEAL NO. 4 OF 1995. In para 1 of his notice of motion Mr. Maira, learned counsel for the applicant argues that this Court's decision has apparent errors on the face of the record in that "the Court failed to impound the unstamped document and require the respondent to pay the appropriate stamp duty plus penalties then admit it".

In para 2 the learned counsel says that "their lordships erred in law and in fact by not ordering the property to be valued so that the applicant (former respondent) is compensated for any unexhausted improvements.

In para 3 of the notice of motion the learned counsel says that the Court erred in law in omitting to consider the consideration paid and received by the applicant.

In support of the application Mr. Maira referred the Court to page 4 of the judgment of the Court where we said ..., "despite the categoric finding of the trial judge that the document was inadmissible and that it could not be acted upon he proceeded and acted upon it." When the Court told the learned counsel that the above statement by the Court did not amount to a decision on the admissibility or otherwise of the unstamped document and that it was only an observation by the Court that the trial judge had said the document was inadmissible but acted on it; Mr. Maira referred us to Section 46(1) of the Stamp Duty Act, 1972 in support of his argument that the Court should have impounded the unstamped document and require the respondent/applicant to pay the appropriate stamp duty.

In rebuttal Mr. Kalunga, learned counsel for the respondent/appellant argued that he did not see any error apparent in the judgment of this Court which called for the Court to exercise its powers of review. He asked the Court to adopt his arguments in his counter-affidavit. He argued that there was not a single error on the face of the record entitling the Court to exercise its powers of review under sub-section (3) of Section 4 of the Appellate Jurisdiction Act, 1979. It was Mr. Kalunga's submission in para 4 of his counter-affidavit that the grounds raised in applicant's "notice of motion are only fit to be raised on "appeal" and not on "review". The circumstances as to when this Court may exercise its powers of review were narrated by the full bench

of this Court in Civil Application No. 18/93 - TRANSPORT EQUIPMENT
v. DEVRAM P. VALAMBHIA:

- They are (1) Where one of the parties was
condemned unheard;
- (2) Where there was a manifest error
on the face of the record which
had resulted in miscarriage of
justice;
- (3) Where the Court had no
jurisdiction to entertain the
case; and
- (4) Where a judgement was procured
by fraud.

After hearing submissions by both parties and after our close
scrutiny of the judgement of this Court we are not persuaded by
Mr. Maira's argument that this Court decided the case on the
admissibility of the evidence. In other words we did not allow
the appeal on the grounds that judgement of the High Court was
based on admissible evidence. We only observed in our judgement
that the learned judge said the document was inadmissible but
acted on it.

With respect to the learned advocate for the applicant we
see no error apparent on the face of the record entitling us to
invoke our powers of review. As for Mr. Maira's submission that
it would cause an injustice to the applicant if the respondent
was to keep both the land and the purchase price - Shs. 500,000/=
paid to him; we would advice Mr. Maira to take the necessary steps
to recover the money.

In the event we agree with Mr. Kalunga, learned counsel for the respondent that the application is based on a wrong premise and we accordingly dismiss it with costs.

DELIVERED this 23rd July 1996 before the parties.

JUSTICE OF APPEAL

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