IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KISANGA, J.A., MFALILA, J.A., And SAMATTA, J.A.)

CIVIL APPLICATION NO. 4 OF 1995
In the Matter of an Intended Appeal

BETWEEN

MOHAMED HASSAN. . . . . APPLICANT

AND

1. MAYASA MZEE
2. MAYASA MZEE
   Administratrix of the Estate . . . RESPONDENTS
   of the late MWANAHAWA MZEE

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

(KISANGA, MNZAVAS And MFALILA, JJJA)

dated the 23rd day of December, 1994

in

Civil Appeal No. 20 of 1994

RULING OF THE COURT

MFALILA, J.A.:

In this Ruling, we intend to set out briefly the background of these proceedings if only to make their nature clearer. When Mzee Risasi died, his estate was administered by one Mfundo Omari, now deceased, after his appointment as Administrator by the Tanga Primary Court. Part of the estate of the late Mzee Risasi was a house on Plot No. 2 Block 85 central Ngamiani area in Tanga Municipality. The Applicant bought this house and having done so, sued the original two respondents and the Administrator in the Resident Magistrate's Court at Tanga claiming that they should convey to him the house. We say "the original two respondents" because before this application could be finally determined, the second respondent MWANAHAWA MZEE died. Proceedings were initiated whereby her surviving sister the first respondent MAYASA MZEE was appointed Administratrix of her estate. Following this appointment

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we made an order on 4th December 1997 substituting Mayasa Mzee as second respondent in her capacity as administratrix of the estate of her dead sister. He won this suit in the Court of the Resident Magistrate at Tanga, but this judgement was reversed by the High Court sitting at Tanga on the ground that the Administrator had no authority to sell the house to the applicant because his appointment as Administrator was invalid. The applicant successfully appealed to this Court in Civil Appeal No. 20 of 1994. In its judgement, this Court held that the Administrator's appointment was valid and that therefore he lawfully sold the house to the applicant, but added that since the record showed that two sales were executed by the Administrator for the same property at different prices, it was not clear which price should rule, hence the Court ordered a fresh sale at which the applicant would re-bid. If successful, the amount so far paid would be credited to him. If not, the money which he has already paid would be refunded to him most certainly from the proceeds of the new sale, if the previous sum cannot be traced because the Administrator is dead. This is the part of the judgement of this Court which aggrieved the applicant, he therefore sought to have it changed so that he remains the purchaser.

Mr. Semgalawe, learned Counsel, sought to achieve this by filing a notice of motion purportedly under Rules 3 and 40 of the Rules of this Court in which he moved this Court for an order setting aside its order dated 23rd December, 1994 because the Court erred in ordering a new sale of the house by public auction when this was not an issue in the appeal, and that therefore there was need for review.

It was quite clear to us from the outset that Mr. Semgalawe had a very limited understanding of the review jurisdiction of this Court, hence he sought to move this Court by using statutory provisions. We would like to clarify yet again that the review jurisdiction of this Court is not statutory but inherent, hence it was a matter of surprise to us that anyone should move this Court to exercise its review jurisdiction under Rules 3 and 40 of the Rules of this Court. It was therefore open to us to strike out the notice of motion as incompetent. But we decided against this course of action and informally allowed Mr. Semgalawe to move us to exercise our review jurisdiction.

Arguing in support of his application, Mr. Semgalawe submitted that there was an apparent error on the record because the Court referred to two documents evidencing the sale of the house, when there was in fact only one such document. He added that this wrong approach on the part of the Court led the Court to make the order for resale which was not fair to the applicant.

On the other hand, Mr. Magafu learned Counsel for the respondents, argued that this application was devoid of merit as there was no error apparent on the record since the two contradicting documents of sale were part of the record. In the circumstances, he said, the order of re-sale made by the Court was proper and correct.

It is clear from these submissions that Mr. Semgalawe was attacking the judgement and order of this Court on merits. What he was saying in effect was that the judgement and orders of the Court were wrong because they were not part of the appeal before the Court. Virtually Mr. Semgalawe was asking us to sit on appeal of our own decision, because in the exercise of our review jurisdiction, we cannot revisit the merits of our previous decision.

The full Court of this Court put down the circumstances in which it can exercise its review jurisdiction in Civil Application No. 18/93 Transport Equipment vs. DEVRAM VALAMBHIA as follows:

(1) Where one of the parties was condemned unheard.

(2) Where there was a manifest error on the face of the record which resulted in the miscarriage of justice.

(3) Where the Court had no jurisdiction to entertain the case, and

(4) Where the judgement was procured by fraud.

We are satisfied that Mr. Semgalawe's present application does not fit in any of these categories. It was just an attempt to move this Court to review its earlier decisions on merits. This application is wrong as it only puts the time of this Court to improper use. For this reason we direct that before embarking on such a course, Counsel should note, first, that by its very nature this Court will very rarely, exercise its review jurisdiction. Secondly, only those situations falling within any of the above four categories should be a subject of applications for review. On this score we wish to commend Mr. Magafu for the professional stand which he took in Civil Application No. 10/95 in which after noting that it did not fall into any of the four categories, correctly advised his client who had filed the application to have it withdrawn as it had no basis. Mr. Magafu accordingly withdrew the application. This is the kind of professional approach we would like other Counsel emulate.

In the result we are satisfied that no ground has been laid in this application which can enable us to exercise our review jurisdiction. The application being devoid of merit, it is dismissed with costs.

DATED at DAR ES SALAAM this 19th day of March, 1998.

R.H. KISANGA
JUSTICE OF APPEAL

L.M. MFALILA
JUSTICE OF APPEAL

B.A. SAMATTA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(A.G. MWARIJA)
DEPUTY REGISTRAR