

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: LUBUVA, J.A., MUNUO, J.A., And KAJI, J.A.)

CIVIL APPLICATION NO. 132 OF 2005

**AFRICAN MARBLE COMPANY LIMITED (AMC).....
APPLICANT**

VERSUS

**TANZANIA SARUJI CORPORATION (TSC).....
RESPONDENT**

**(Application for review from the Ruling and Order of
the Court of Appeal of Tanzania at Dar es Salaam)**

(Lubuva, J.A., Munuo, J.A., And Kaji, J.A.)

**dated the 19th day of July, 2005
in
Civil Application No. 8 of 2005**

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RULING OF THE COURT**

MUNUO, J.A.:

The applicant, African Marble Company Ltd. (AMC) filed a Notice of Motion under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977, Rules 3 (2) (a) and (b) and 45 (2) of the Tanzania Court of Appeal Rules, 1979, seeking review of the decision and order in Civil Application No. 8 of 2005 on the grounds that -

- a) there were errors of procedure apparent on the face of the record in respect of the Ruling of the Court on the 19.07.2005;
- b) the applicant was not served with a Notice of the Preliminary Objection;

- c) the Court should have overruled the Preliminary Objection;
- d) the hearing of the Preliminary Objection should have been adjourned on the scheduled hearing to enable the applicant to reply to the Reply to the Counter-affidavit of the Presidential Parastatal Sector Reform Commission (PSRC) on the 27th June 2006;
- e) the Order of the Court on the 19th July 2005, be vacated and another Order consistent with the Order of the Court in Civil Application No. 26 of 1989 be made to avoid inconsistency;
- f) Civil Application No. 8 of 2005 be restored for determination on merit;
- g) the first two preliminary objections were unsuitable for determination without a full trial of Civil Application No. 8 of 2005.

The applicant's Managing Director, Mr. Mumba Mabu, deponed to an affidavit in support of the application. The Respondent, Tanzania Saruji Corporation (TSC) was represented by Dr. Nguluma, learned advocate.

In view of chequered history of the matter, we find it pertinent to briefly outline the facts of this case. The present application arises from Civil Case No. 89 of 1987 in the High Court of Tanzania at Dar-es-Salaam in which the applicant sued the Respondent for wrongful detention of machinery and equipment plus damages for wrongfully detaining the same. The High Court ordered the Respondent to restore the machinery and equipment in dispute to the plaintiff, the applicant. The High Court also awarded Shs. 10,000/= nominal damages to the plaintiff who appealed to this Court in Civil Appeal No. 38 of 1987 seeking an increase of the awarded damages. The Court remitted the matter to the High Court for a reassessment of the damages Kaji, J. as he then was, enhanced the general damages to Shs. 150,760,260/20. The Respondent then filed Civil Appeal No. 5 of 1997 to challenge the award of Shs. 150,760,260.20.

Subsequently, the applicant filed Civil Application No. 100 of 2000 moving the Court to review its decision in Civil Appeal No. 38 of 1993, which application was struck out because it was time barred. The applicant then filed Civil Application No. 8 of 2005, once again seeking review of Civil

Appeal No. 38 of 1993. On the 19th November, 2005 the said application was struck out with costs because it was filed out of time. The Court ruled, and we quote in extenso:-

In this application the Court is being moved to review the decision in Civil Appeal No. 38 of 1993 of 9.11.1994, a period of nearly eleven years (11) ago. As just observed the Court having set the time limit of 60 days from the date of the decision which is sought to be reviewed, this application is by any stretch of imagination, inordinately out of time. It is incompetent.

The Court continued:

Even though this ground alone is sufficient to dispose of the matter, we could go further. Granted that the matter was not time barred, still it would not be free from another difficulty. First, as already indicated, in this application the court is being moved to make an order for the inclusion in the judgement of the amount of money to be paid as an alternative if delivery of

the machinery is not effected. This means an assessment of the value of the machinery as damages for the period of its detention has to be made. This aspect, it is to be observed at once had already been done by the High Court (Kaji, J. as he then was) following the order of the Court of 9.11.1994. On appeal to this Court, in Civil Appeal No. 5 of 1997, the matter regarding damages was finally settled -----.

In the event the preliminary objection is sustained. The application being incompetent, it is accordingly struck out with costs.

Dissatisfied with the above decision of the Court, the applicant then brought the present application for review on the grounds stated supra.

Dr. Nguluma, learned advocate for the Respondent, abandoned the Preliminary Objection filed on the 21.10.2005 and argued the Preliminary Objection filed on the 25.10.2005. The later Preliminary Objection states that -

The application for review is fatally incompetent and an abuse of the Court process as it seeks to move the Court to exercise its revisional jurisdiction and or

appellate jurisdiction contrary to the provisions of Rules 4 (1), 4 (2) and 4 (3) of the Appellate Jurisdiction Act, 1979, and Rules 3 (2) (a) and (b) of the Tanzania Court of Appeal Rules, 1979.

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Counsel for the Respondent submitted that the Notice of Motion indicates no apparent error on the face of the record for review considering that Civil Application No. 8 of 2005 which the applicant wants reviewed was struck out with costs because it was time barred. As no apparent errors for review were listed by the applicant, counsel urged us to hold that the purported review is incompetent and thence strike it out with costs.

The applicant maintained that the present application is properly before the Court so it should be determined on merit. He contended that Article 13 (6) (a) of the Constitution confers power on the Court to determine the application on merit. He further contended that Respondent's counsel concocted the Preliminary Objection so it should be overruled with costs.

The issue is whether or not the application for review is, or is not competent.

We shall start by reiterating the criteria for review in this Court,
in the case of **Transport Equipment Ltd. Versus Devram**

P. Valambhia, Civil Application No. 18 of 1993, Court of Appeal of Tanzania (unreported) a full bench of seven justices considered the Courts power to review its decisions and held that -

The Court has the inherent jurisdiction to review decisions and it will do so in any of the following circumstances to wit, where there is a manifest error on the face of the record which resulted in miscarriage of justice, or where the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard.

In the present application the applicant alleged that there are errors apparent on the face of the Ruling delivered on the 19.7.2005 but he did not particularize the said apparent errors. We stated earlier on, that Civil Application No. 8 of 2005 was struck out because it was filed out of the prescribed period of limitation of sixty days. Neither the Notice of Motion nor the affidavit in support of the application disproves that Civil Application No. 8 of 2005 was time barred, which in our considered view, indicates that there is no apparent error on the face of the record and Ruling in Civil Application No. 8 of 2005.

With regard to an error apparent on the face of the

record, Mulla, Indian Civil Procedure Code, 14th Edition Pages 2335 – 36, states that –

An error apparent on the face of record must be such as can be seen by one who writes and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions.

We are satisfied that there is no apparent error on the face of the Ruling in Civil Application No. 8 of 2005 and the applicant listed non to substantiate a need for reviewing the said Ruling. The applicant was accorded a full hearing just like his adversary. Under the circumstances the preliminary objection, though on other grounds, is meritorious. We sustain the preliminary objection. We accordingly strike out the review with costs.

DATED at DAR ES SALAAM this 7th day of
December, 2005.

D.Z. LUBUVA
JUSTICE OF APPEAL

E.N. MUNUO
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

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

(S.A.N. WAMBURA)
SENIOR DEPUTY REGISTRAR