IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MAKAME, J.A., RAMADHANI, J.A., And LUBUVA, J.A.)

CIVIL APPLICATION NO. 33 OF 2002

PETER NG'HOMANGO ..... APPLICANT
VERSUS
1. GERSON M.K. MWANGWA]
2. THE ATTORNEY GENERAL].....RESPONDENTS

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

(Makame, J.A., Ramadhani, J.A., And Lubuva, J.A.)

dated the 27th day of December, 2001
in
Civil Appeal No. 10 of 1998

RULING OF THE COURT

15 February, 2006 & 31st July, 2007

LUBUVA, J.A.:

This is an application for review. By notice of motion the Court is moved to invoke its inherent powers to review its decision of 27th December, 2001 in Civil Appeal No. 10 of 1998.

From the outset it is to be observed that this matter has had a chaquered and protracted history which, in part, explains the delay in disposing it. For an easy appreciation of the sequence of events leading to the application we think it is desirable to set out its

historical background briefly. After the Court's decision on 27.12.2001 the applicant filed Application No. 33 of 2002 seeking review of the decision. Thereafter, Application No. 118 of 2003 was filed seeking to amend the notice of motion. It took sometime before the application for the amendment of the notice of motion was heard and determined on 20.8.2004. On 23.1.2006 the 2nd Respondent, the Attorney General, filed a notice of preliminary objection which was overruled on 25.11.2005 and the matter was to proceed to hearing the main application for review.

On 15.2.2006 the matter came on for hearing. The applicant appeared in person while the respondents were represented by Mr. Ngwembe, learned Senior State Attorney. Apparently, in the proceedings before the High Court in this matter the applicant was also unrepresented. At the commencement of the hearing of the application the applicant applied for leave to conduct the proceedings by written submissions. It was ordered that the written submissions were to be filed according to the time schedule given by the Court. The written submissions and the rejoinder were duly completed on

14.3.2006. In this sequence of events, this ruling is based on a 58-pages written submissions by the applicant, 14 pages written response by the respondents, and 9 pages rejoinder by the applicant.

The grounds for the application are premised on 22 alleged instances of manifest errors on the face of the record which resulted in miscarriage of justice. In his lengthy and detailed written submissions, the applicant elaborates on these grounds. In most of them the complaint is that the Court either did not consider some material evidence or fact of the matter or that the Court erroneously decided on some aspect of the matter without jurisdiction. For instance, in ground **one** it is stated that the Court did not consider the entire historical background of the matter in a chronological sequence of events. Grounds 18 to 20 relate to the complaint that the Court did not award damages as a result of failure by the Court to consider material evidence. In ground 21 it is complained that the Court wrongly placed the burden of proof on the applicant regarding falsity of statements. Lastly, in ground 22 it is alleged that the Court

acted without jurisdiction by finding that the first respondent's utterances was defamatory of the applicant.

In support of the application, the applicant has referred to a list of 39 authorities. These authorities range from decisions of the Court and other courts in other jurisdictions, statutes and commentaries by the distinguished authors **Chitaley** and **Mulla** with regard to Order 47 Rule 1 of the Indian Civil Procedure Code which is the equivalent of the Tanzania Civil Procedure Code, 1966, Order 42 Rule 1 (hereinafter the Code). Specifically he referred to **Mulla** on the Code of Civil Procedure 13th Edition Volume II pages 1671 and 1672 and Chitaley, the Code of Civil Procedure 2nd Edition pages 2821.

With regard to the Court's decisions, the applicant heavily relied in his submissions on the elaboration by this Court on the principle underlying the Court's review jurisdiction in the cases of **Transport Equipment Ltd. Versus Devram P. Valambhia,** Civil Application

No. 18 of 1993 and **Chandrakant Joshubhai Patel V Republic,** Criminal Application No. 8 of 2002 (both unreported).

On the basis of these authorities, the applicant strongly urged that this is a fit case in which the Court could invoke its inherent review jurisdiction to review its own decision. The applicant further maintained that this being the highest court in the land it has the power to correct by way of review errors committed by the Court which could otherwise be corrected on appeal or by way of revision. In the instant case, it was the applicant's view that the Court committed the errors, subject of the application, when the Court either failed to consider certain aspects of the evidence or the case or took into consideration extraneous matters. This is the basis of the errors manifest on the face of the record, the applicant insisted.

For the Respondents, Mr. Ngwembe, learned Senior State Attorney, responded in written submissions as well. First, he said the lengthy submissions by the applicant on the 22 grounds on which the application seeking review is based are irrelevant. In elaboration, he

said that from the submissions by the applicant it is clear that the grounds for seeking review have nothing to do with the alleged errors manifest on the face of the record of appeal.

According to Mr. Ngwembe who also had appeared in the High Court during the hearing of the appeal, some of the grounds such as grounds 1 and 2 are the same which had been raised at the hearing of the appeal in this Court. In that situation, Mr. Ngwembe further submitted, the applicant is in effect trying another bite, as it were, for a further appeal under the guise of a review application. This, the learned Senior State Attorney emphasized, should not be allowed because the Court cannot sit in appeal against its own decision.

Furthermore, Mr. Ngwembe went on in his submission, to allow an appeal from the Court's previous own decision would be contrary to the cardinal principle that there has to be finality to litigation. He pointed out further that this is so for the simple reason that once the Court entertains the hearing of appeals from its own decision there would be no end to litigation because each loosing or dissatisfied

party would wish to appeal. This, Mr. Ngwembe urged, is neither desirable nor is it in the interest of justice.

In support of his submissions, Mr. Ngwembe also referred the Court to its decision in **Transport Equipment Ltd.,** and **Chandrakant Joshubhai Patel** (supra). He urged the Court to dismiss the application which he insisted had no merit at all.

From the notice of motion and the submissions by both the applicant and Mr. Ngwembe, learned Senior State Attorney, for the respondents, it is generally agreed that the application is grounded on the alleged fact that there are errors manifest on the face of the record. In this light we think it is desirable first to deal with the issue whether infact there are errors manifest on the face of the record in Civil Appeal No. 10 of 1998. In addressing the alleged errors in relation to the various instances cited, one thing clearly emerges, namely that the applicant heavily relies on two sources of authorities. First, the commentaries of the distinguished authors **Mulla** and **Chitaley** on Order 47 Rule 1 of the Indian Civil Procedure Code

which is the equivalent of order 42 Rule 1 of the Code in Tanzania. Second, the Court's decision in the cases of **Valambhia** and **Chandrakant Joshubhai Patel** (supra) regarding the principle underlying the Court's inherent jurisdiction to review its decision.

At this juncture, it is pertinent to point out at once that from the massive references made to the commentaries by the learned authors **Mulla** and **Chitaley** on Order 47 Rule 1 of the Indian Civil Procedure Code, the equivalent of Order 42 Rule 1 of the Tanzania Code, it is apparent that the applicant has been labouring under the misapprehension that the Code of Civil Procedure in Tanzania applies in this Court. This is not correct. It is common knowledge that the proceedings in this Court are governed by the Appellate Jurisdiction Act, 1979 and the Court of Appeal Rules, 1979 and not otherwise. However, it is hardly necessary also to point out that in appropriate circumstances, the Court is not precluded from drawing inspiration from relevant provisions of the Code. For instance in **Halais Pro-Chemie V Wella A.G.** (1996) TLR 269 the Court made a similar observation with regard to the application of the Law of Limitation

Act, 1971 to the effect that although this Act does not apply to the Court the Court could draw inspirations from the Act.

That it is now settled that the Code, does not apply in this Court also seems to be well known to the applicant. This is evident from his written submissions in which among other things he stated:-

> Although the above provisions in the Civil Procedure Code, 1966 for review and revision concern the High Court and subordinate courts, it is only fair and proper to assimilate them in this Court because they deal with the same thing and provide the appropriate and effectual principles in the subject matter... The underlying policy is that human beings are basically the same even if they are subjected under different authorities.

Such being the legal position in which the applicant forthrightly concedes as can be seen from the extract above, it would follow that the applicant's submissions in support of the alleged errors manifest on the face of the record, based on the provisions of the Code are, in

our view, misconceived. The applicant's novel argument that the provisions of the Code should be applied in this Court because they deal with the same thing and that human beings are same is untenable. The Court being a creature of statute which provides for the Court's jurisdiction and the applicable rules, we are unable to accept this attractive but novel submission on this point.

In the circumstances, we shall examine the merits of the application in the light of the guiding principle underlying the Court's review jurisdiction as established by the Court in **Valambhia** (supra) and later on elaborated in **Chandrakant Joshubhai Patel** (supra) where the Court expressed what an error apparent of the face of the record means in these terms:

> An error is apparent on the face of the record when it is obvious and self evident and does not require an elaborate arrangement to be established.

On this, the explanation by the learned author **Mulla,** Civil Procedure Code of India, 14th Edition at pages 2335 – 36 on what constitutes manifest error on the face of the record is relevant: In part it is stated:

> 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 established by a long drawn process of reasoning ...

In the instant case the issue is whether the 22 instances advanced in this application are errors manifest on the face of the record. For instance, the following grounds read:

> 1. That the Court did not consider the entire historical background of the matter in chronological sequence of events.

2. That the Court did not consider the material evidence for the applicant his submissions in the High Court as well as in this Court regarding the whole case.

3. That the Court erroneously omitted to consider the evidence and submissions to the effect that the redundancy letter was the natural consequence of the complained statements.

4. That the Court erroneously omitted to deal with the facts and evidence in the verified unsworn affidavit which it properly received on 1st August, 2000.

5. That the Court mistakenly decided on ground No.2 of appeal which the applicant had dropped under the direction of the same Court, thereby condemning the applicant unheard.

8. That, the Court omitted to deal with the substance and gist of each of the complained statements.

9. That, some of the applicant's evidence, submissions and authorities were wrongly applied by misinterpretation and misapprehension.

Similarly, grounds 6, 7, 10 to 18 relate to complaints of dissatisfaction that the Court either omitted to deal with or dealt with certain aspects of the evidence of fact erroneously etc. In grounds 19 and 20 the applicant is dissatisfied with the Court's decision in not allowing general and specific damages which were covered under grounds 10 and 11 of the memorandum of appeal in this Court. Under ground 21, the applicant alleges that the Court wrongly placed the burden of proof on the applicant regarding the falsity of the statements. Finally ground 22 concerns the complaint that contrary to the trial judge's finding and without being moved by any of the parties the Court erroneously found the utterances by the 1st Respondent was defamatory of the applicant.

From these instances, the question is whether these are errors on the face of the record. With respect, we do not think that these are errors, let alone errors manifest on the face of the record. As correctly submitted by Mr. Ngwembe, learned Senior State Attorney, these are nothing but grounds of dissatisfaction with the Court's decision of 22.12.2001 in Civil Appeal No. 10 of 2001. Dissatisfaction with the Court's decision, however strongly the party may feel, is not sufficient ground for invoking the Court's inherent jurisdiction to review its decision.

It is no gainsaying that no judgment, however elaborate it may be can satisfy each of the parties involved to the full extent. There may be, errors or inadequacies here and there in the judgment. But these errors would only justify a review of the Court's judgment if it is shown that the errors are obvious and patent. This point the Court emphasized in **Chandrakant Joshubhai Patel** (supra) in which the Court referred to the decision of the Supreme Court of India in the case of **Thungabhadra Industries Ltd. Versus State of Andhra**

Pradesh, (1964) S.C 1372 in which the Indian Court stated inter alia:

> **A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent errors.**

Closer home within East Africa, the same point was underscored by the Uganda High Court in the case of **Balinda V Kangwamu** (1963) EA 557 when it was observed:

> A point which may be a good ground of appeal may not be a good ground for review although it may be a good ground for an application for review and an erroneous view of evidence or of law is not a ground for review though it may be a good ground for an appeal.

It is common knowledge that the course open for a dissatisfied party is the appeal process and not to resort to the review jurisdiction as

the applicant is urging the Court to do. Here, it is patently clear that the applicant is intent on trying his luck in a further appeal to the Court against its decision of 27.12.2000 under the guise of a review. This is easily gleaned from the various grounds extracted above in which the application is grounded. We are firmly of the view that such an application the Court cannot entertain because to do so would amount to the Court sitting in appeal against its own decision, which is highly improper. Furthermore, it would also open the flood gate to dissatisfied parties trying their luck after the appeal is decided against them. In **Dr. Aman Walid Kaborou Versus 1. The Attorney General And 2. Azim Suleiman Premji,** Civil Application No. 70 of 1999 (not yet reported) the Court re-emphasized this point when in part, it stated:

> We shall therefore in future not look kindly to applications for review in which in reality only amount to trying one's luck. This approach has a tendency of unnecessarily taking up the Court's valuable time and even raising false hopes in the minds of clients.

In this case as said before, we are unable to see any error manifest on the face of the record. If anything at all, we are increasingly of the view that the application in reality amounts to trying one's luck. Here, unlike in **Dr. Aman Walid Kaborou's** case (supra) the question of raising false hopes on the part of the client does not arise. As the applicant has all along been conducting the case, he is to blame himself for falsely raising his own hopes in this matter.

On hindsight we are inclined to say that the applicant's hopes were based on his own misconception of the Court's review jurisdiction. Initially the applicant having set out correctly the guiding principles relating to the Court's review powers, it is curious that he advanced the foregoing instances as errors manifest on the face of the record. From our close and minute examination of each of these grounds, we are unable to find that the alleged errors are obvious and self evident which could be established without long drawn and elaborate argument.

All in all therefore, we are satisfied that all the 22 instances of alleged errors manifest on the face of the record do not constitute justification for the Court's exercise of its review jurisdiction. The application, being devoid of any merit is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 27th day of July, 2007.

L.M. MAKAME
JUSTICE OF APPEAL

A.S.L. RAMADHANI
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

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

THE COURT OF APPEAL OF TANZANIA

(S.M. RUMANYIKA)
DEPUTY REGISTRAR