IN THE COURT OF APPEAL OF TANZANIA
AT TANGA

(CORAM: LILA, J.A. SEHEL, J.A. And LEVIRA, J.A.)

CIVIL APPLICATION NO. 314/12 OF 2020

THE HON. ATTORNEY GENERAL .... APPLICANT

VERSUS

1. **MWAHEZI MOHAMED (as administrator of Estate of the late Dolly Maria Eustace)**
2. **DESPINA NTEPI SPYRATOS**
3. **MELINA MARIA EUSTACE**
4. **ENOCK MAJERE SIMWANZA**

................RESPONDENTS

(Application for Review of the decision of the Court of Appeal of Tanzania, at Tanga)

(Mziray, J.A, Mwambegele, J.A. And Kerefu, J.A.)

dated the 26th day of February, 2020
in
Civil Appeal No. 391 of 2019

....

RULING OF THE COURT

23rd September & 22nd October, 2020

LEVIRA, J.A.:

The applicant, the HON. ATTORNEY GENERAL lodged this application for Review on 27th April, 2020 by way of a Notice of Motion made under section 4(4) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) and Rules 4(2)(b), 48(1), 49(1) and 66(1) (a) and (c) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant is seeking order of

the Court to review it's decision in Civil Appeal No. 391 of 2019 which was delivered on 26th February, 2020. The applicant claims to have noticed an error on the face of record resulting into miscarriage of justice in the impugned decision of the Court. Therefore, the application is predicated on five grounds as follows:

(a) *That the Court gave rights of ownership of land to a non-citizen contrary to the law;*

(b) *The court did not rule out on the issue of abandonment of the landed property by the Respondents and time limitation for claim of ownership;*

(c) *The Court did not consider the act by the Respondents abandoning the land leased to them by the Government/Applicant for more than 5 years without paying rent and more than 12 years without claiming for possession.*

(d) *The Court did not consider and rule out of the fate of the development made by the Government/Applicant on the abandoned land for more than 40 years.*

(e) *The Court erroneously interpreted section 37 of the Law of Limitation Act. Cap 89 R.E 2019 to the effect that the non-compliance of the procedures set out thereto extinguished the rights acquired by the*

Government through adverse possession after abandonment of the land by the Respondents.

The applicant prays among others for an order of the Court restoring to the Government (the applicant) the landed property described as plot No. 77 Block KB XVI with Certificate of Title No. 130526/18 situated at Raskazone area in Tanga Region (the disputed land). The application is supported by an affidavit sworn on 24th April, 2020 by GABRIEL PASCAL MALATA, the Solicitor General who at paragraph 4 of his affidavit reproduced the grounds of review quoted above.

On their part, the respondents did not file affidavit in reply, but on 27th July, 2020 they filed a joint written submissions in opposition to the application.

The background of the instant application is to the effect that, the applicant sued the Respondents in the High Court of Tanzania, at Tanga vide Land Case No. 18 of 2016 seeking a declaration that, it is a lawful owner of the disputed land and that the Respondents were trespassers in the said land; mesne profit at the rate of Tshs. 5,000,000/= per month from July 2011 to the date of vacant possession, general damages to the tune of Tshs. 800,000,000/=, costs and any other reliefs.

The applicant claimed to have acquired the disputed land by adverse possession in 1970's after being abandoned in 1971 by the Government of Cyprus to whom the disputed land was relinquished by its previous owner, one Mrs. Dolly Maria Eustace. As a result, the disputed land remained without occupier for many years and without land rents and property tax being paid. The Government/Applicant acquired it in 1970's and used the same for Public interest and as a residence for Cuban and local doctors who worked for Bombo Hospital. The applicant had since effected significant renovation and rehabilitation in that land.

The applicant's contentions were opposed by the respondents who argued that, the disputed land was registered in the names of the second and third respondents who inherited the same in 2009 from the late Dolly Maria Eustace who owned it since 1963. Upon full trial, the High Court dismissed the plaintiff's (the applicant's) case in its judgment delivered on 2nd May, 2018. Dissatisfied, the applicant appealed unsuccessfully to the Court and hence the current application for review.

At the hearing of this application, Mr. Gabriel Pascal Malata, learned Solicitor General, Ms. Alice Mtulo, and Mr. Stanley Kalokola, both learned

State Attorneys appeared for the applicant. The respondents had the services of Mr. Mustapha Akunaay and Warehema Kibaya, both learned advocates.

Mr. Malata adopted the contents of the supporting affidavit and the written submissions. He then submitted generally on the key issues in respect of grounds number two to five in support of the application to the effect that, this application is predicated under Rule 66(1)(a) and (c) of the Rules as the applicant discovered manifest error in the record leading to injustice. According to him, the record of review includes, proceedings, orders and judgment of the High Court, together with the decision of the Court sought to be reviewed. He referred us to the **Black's Law Dictionary** 10th Edition Published by Bryam Banner at page 660 where the term "manifest error" is defined to mean an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in record.

In the instant application, he said, the evidence adduced before the High Court and the controlling law, that is, the Law of Limitation Act (supra) need to be considered in determining this application because they

were also considered by the High Court and the Court to arrive to the impugned decision.

He stated that, there was no dispute that the disputed land was abandoned for more than 30 years ago. He referred us to page 7 of the decision of the Court and argued that, the challenge addressed therein was failure to comply with the procedure of revocation of the right of occupancy under sections 44 – 50 of the Land Act, Cap 113 R.E 2002 (the Land Act) or even acquiring the said abandoned land under section 51 of the same Act. Mr. Malata also referred us to page 13 of the Court's decision and argued that the Court made reference to the evidence of DW2 (second respondent) who narrated how the disputed land was transferred to them. However, he said, the disputed land was under the Government's ownership for about 40 years now and since the respondents failed to develop it for 12 years, their right shifted to the applicant as it used the land and made renovations. In this regard, his main argument as reflected in the applicant's written submissions was that the main contentious issue regarding abandonment of the disputed land was not decided neither by the High Court nor this Court.

Firmly, he submitted that, the Government is now required to comply with section 37 of the Law of Limitation Act (supra) to register the disputed land which it acquired through adverse possession. He referred us to the Indian book titled ***"Law of Adverse Possession"*** 13th Edition, Lexis Nexis Butterworths, Wadhwa authored by M. Krishnaswami as he insisted that, the Government can acquire land through adverse possession.

Mr. Malata also cited the decision of the Court in **Bhoke Kitang'ita v. Makuru Mahamba,** Civil Appeal No. 222 of 2017 and **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 Others,** Civil Appeal No. 193 of 2016 (both unreported) in which principles governing adverse possession were stated to cement his arguments.

The learned Solicitor General insisted that, since the issue of abandonment was proved during trial that the respondents did not do anything on the disputed land; and that the applicant possessed it for almost 40 years, the right of the respondents extinguished after lapse of 12 years. It was his emphasis further that, the right of a person who abandoned his land cannot be revived. He made reference to pages 10 –

12 of the impugned decision and said that, the Court relied on section 37 of the Law of Limitation Act (supra) to highlight two things; **one** that, the respondents' right over the disputed land extinguished after the lapse of 12 years. **Two**, the Government (Applicant) was supposed to comply with that provision to register the said land. However, it was his argument that section 37 of the Limitation Act (supra) was wrongly invoked by the Court.

Mr. Malata submitted further that, after the right of the respondents ceased, the Government acquired the land through adverse possession. So, it instituted a suit as a plaintiff against the respondents claiming adverse possession. He sought inspiration from the decision of the Supreme Court of India in **Ravinder Kaur Grewal & Others v. Manjit Kaur & Others;** Civil Appeal No. 7764 of 2014, at page 34 which based on Article 65 of the India Limitation Act, 1963, wherein Arun Mishra, J. was of the opinion that once the right, title or interest is acquired through adverse possession, it can be used as a sword by the plaintiff as well as a shield by the defendant. In the circumstances, he once again stated that, the Government acquired the disputed land through adverse possession and mere failure of the applicant to follow the procedure under section 37 of the Limitation Act (supra) does not in itself vitiate the substantive right

acquired by the applicant through adverse possession. He thus urged us to review and modify the judgment by declaring the applicant the rightful owner of the disputed land.

Submitting specifically on the first ground of review, Mr. Malata stated that the Court erred by declaring a Greek National as owner of the land in dispute contrary to section 20 of the Land Act (supra). According to him, the second respondent stated clearly in his evidence during trial that he is a foreigner, Greek born in Kenya; so it was wrong to declare him the owner of the disputed land, he insisted. However, Mr. Malata acknowledged that the issue concerning citizenship of the second Respondent was not raised and determined neither by the High Court nor by the Court. Unexpectedly, despite that acknowledgment, he left this issues for us to decide.

Mr. Malata concluded his submission by stating that, the Government (the Applicant) is the rightful owner of the land in dispute under adverse possession as the right of respondents ceased after lapse of 12 years of abandonment of the said land. He therefore urged us to grant the application with costs.

In reply, Mr. Akunaay was very brief as he submitted that, according to the Notice of Motion, supporting affidavit and the submissions both oral and written, the grounds raised by the applicant are rather for appeal than review in terms of Rule 66(1) of the Rules. He submitted further that, the first ground of application is a new ground challenging the decision of the Court on a matter which was not placed before it. He thus argued that, the applicant is coming through the backdoor to appeal against the decision of the Court. Mr. Akunaay invited us to compare the applicant's submissions with the decision of the Court in **Chandrakant Joshubhai Patel v. Republic**, [2004] TLR 218.

Mr. Akunaay stated further that he was unable to respond to the submissions by the learned Solicitor General because all what he submitted were irrelevant to the application for review. Besides, he said, all the authorities referred by Mr. Malata were irrelevant except the case of **Chandrakant Joshubhai Patel** (supra).

Mr. Akunaay added that, this application is an abuse of Court process because the grounds raised are for appeal and they do not meet the requirements of Rule 66(1) of the Rules. Therefore, he urged us to dismiss this application with costs.

In rejoinder, Mr. Malata stated that the Court is allowed to go through what transpired in the High Court that is why at page 12 of the impugned decision, the evidence adduced during trial was referred. In addition, he said, the Court at review stage can examine the Judgment of the High Court (trial Court), the evidence and Judgment of the Court. He insisted that the word "manifest error" requires the Court to go through the evidence and decide on points or grounds raised. He thus, reiterated his position and prayed for the application to be allowed with costs.

We have respectfully considered submissions of the counsel for the parties, written submissions, the record of review, the grounds of review and supporting affidavit. We think, before determining the merits of review, we should determine first whether the grounds for review raised by the applicant are fit for review. We noted earlier on that the applicant claims that the impugned decision of the Court is fit for review on account of "manifest error" on the face of record resulting in miscarriage of justice.

As indicated above, the application is made under various provisions of the law including section 4(4) of the AJA and Rule 66(1) (a) and (c) of the Rules. In terms of section 4(4) of the AJA, the Court has jurisdiction to review its own decision in any case as a way of guarding against

miscarriage of justice; particularly, whenever there is manifest error on the face of record. Review as a remedy is limited in scope as a matter of policy that litigation must come to an end. Therefore, the Court Rules provide for five grounds on which the Court should review its decisions under Rule 66(1)(a) to (e) as follows:

> *"66 – (1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds –*
>
> *(a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;*
>
> *(b) A party was wrongly deprived of an opportunity to be heard;*
>
> *(c) The court's decision is a nullity; or*
>
> *(d) The court had no jurisdiction to entertain the case;*
>
> *(e) The judgment was procured illegally, or by fraud or perjury."*

The applicant's arguments in this application are based on sub rules (a) and (c) of Rule 66(1) of the Rules, implying that, there is a manifest error on the face of record rendering the impugned decision of the Court a nullity. At this juncture, we think, it is prudent to restate what it means by

the term "manifest error on the face of record." In **Chandrakant Joshubhai Patel** (supra) the Court stated that:

> *"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 estabiished by a long drawn process of reasoning on points on which there may conceivably be two opinions ....*** *A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review .... It can be said of an* ***error that it is apparent on the face of the record when it is obvious and self evident and does not require an elaborate argument to be established ....*** " [Emphasis added].

See also the decision of the Court in **Tanganyika Land Agency Limited and 7 Others v. Manohar Lal Aggrwal,** Civil Application No. 17 of 2008 which was quoted with approval in **Maulidi Fakihi Mohamed @ Mashauri v. Republic,** Criminal Application No. 120/07 of 2018 and **Nguza Vikings @ Babu Seya and Another v. Republic**, Criminal Appeal No. 5 of 2010; (all unreported).

The excerpt above is very clear that the term "manifest error on the face of record" signifies an error which is evident from the record and it

does not require scrutiny, arguments and/or clarification either of facts, evidence or legal exposition. In other words, a "manifest error on the face of record" also signifies a plain error.

As it is indicated above, in the current review Mr. Malata relied on the definition of the term *"manifest error"* provided in the Black's law dictionary which is similar to *"an apparent error on the face of the record"* to argue that, the record referred includes the evidence adduced during trial, the controlling law, the decisions of the trial and appellate court(s) which include the impugned or final decision of the Court as indicated in paragraph 14 of the supporting affidavit. For clarity, under paragraph 14 of the supporting affidavit, it is deposed as follows:

> *"That, the Applicant has attached to this application the* ***proceedings, rulings, orders, decree and judgment in support of the application for review."*** [Emphasis added].

We think, we should pause here and refresh our mind on what record is referred in an application for review. Rule 66(1) of the Rules is very clear that, the Court may review its **"judgment" or "order",** which means, for the Court to determine application for review all it needs to have before it

is the impugned decision and not the evidence adduced during trial or decisions of subordinate court(s) as submitted by Mr. Malata. We need to emphasize here that, the record referred in review is either the **"judgment"** or **"order"** subject of review. In this regard, we decline the invitation by Mr. Malata who persuaded us to re-evaluate the evidence adduced during trial and the judgment of the High Court to search for an error. We do not agree with his argument that, since the decision of the trial court was based on the evidence fronted during trial and the same was referred by the Court on appeal, we are bound to assess and reevaluate the entire evidence on the record of appeal, which we say, was unnecessarily attached in this review application. It must be noted that as the complaint of the applicant is that the judgment of the Court contains errors apparent on the face of record, it is his duty to show the said errors from the respective judgment. Thus, the applicant cannot compel the Court to fish out the errors from the record of appeal instead of the judgment which comprises the facts, the law and the reason for the decision. It is in this regard that in **Karim Ramadhani v. Republic,** Criminal Application No. 25 of 2012 (unreported) the Court stated categorically that, an error complained of in review must be on the face of the **decision** as follows:

*"... it is not sufficient for the purposes of paragraph (a) of Rule 66(1) of the Rules, for the applicant to merely allege that the final appellate decision of the Court was based on the '**manifest error on the face of the record'** if his elaboration of these errors disclose grounds of appeal rather than **manifest error on the face of the decision**...."* [Emphasis added].

We will be guided in the deliberation by the above position of the law in that review is by no means an appeal in disguise where by an erroneous decision is reheard and corrected. (See **Tanganyika Land Agency Limited and 7 Others (**supra)).

The next issue for our consideration is whether the applicant's grounds raised in the Notice of Motion and expounded through both oral and written submissions disclose any apparent error on the face of the record. In determining this issue, we prefer to start with the **fifth** ground in which the applicant's claim is based on erroneous interpretation of section 37 of the Law of Limitation Act (supra). In his oral submission before us, Mr. Malata argued that the above section was improperly **invoked by the Court**. We note that, the issue regarding improper invocation of section 37 of the Limitation Act was not one of the grounds

for review and also was not raised before the Court during hearing of the appeal. We wish to note further that, the matter concerning non-compliance of the procedures set out under that section and the right of ownership acquired through adverse possession were raised and determined by the Court at page 11 to 12 of the impugned decision. We shall let the relevant part of the decision of the Court to speak for itself hereunder:

> ***"Similarly, in the case at hand, the appellant cannot claim ownership over the suit property by an adverse possession without following the legal procedure entailed under section 37 of the Limitation Act.*** *It is important to note that, in their submission before the Court,* ***both Messrs. Lukosi and Musetti had since conceded that the appellant has not complied with the prescribed procedures and has not even followed procedures stipulated under sections 44 – 51 of the Land Act for revoking or acquiring an abandoned land.*** *We even find the appellant's case to be a misconception of both facts and law, as in law one cannot claim to have acquired ownership over the land simultaneously through a*

transfer and adverse possession." [Emphasis added].

The above excerpt bears evidence that the issue raised by the applicant in the fifth ground of the application was decided by the Court in appeal. Reference to section 37 of the Limitation Act by the Court was due to the appellant's concession. We fail to see what the applicant claims to be a manifest error on the face of the record and /or the alleged improper invocation of the above provision of the law. We should emphasize that, the final decision of the Court once pronounced, cannot be appealed against under the umbrella of review. Matters relating to interpretation of the law and adverse possession are matters which require evidence and long drawn arguments; as such, they do not disclose apparent error on the face of record. It is impossible for someone who runs and reads to see that a certain provision of the law was rightly or wrongly interpreted and / or that a party to a case owns land under adverse possession. In the circumstances, we find that the applicant has failed to show the manifest error on the face of record. Hence, the fifth ground in the Notice of Motion is not fit for review.

In the **fourth** ground, the applicant complains that the Court did not consider and rule the fate of development made by the Government/Applicant on the abandoned land for more than 40 years. We wish to state that, we made a thorough perusal of the impugned judgment and find that, the Court dealt with the issue of abandonment of the disputed land at pages 11 -13 of the record of application as it can also be seen in the above quoted part of the judgment. At page 13 the Court endorsed the decision of the High Court having been satisfied that the applicant wrongly invoked the doctrine of adverse possession on the alleged abandoned land. Mr. Malata insisted in his submission that, after the right of the respondents ceased the Government acquired the land through adverse possession and that the right so acquired can be used as a sword by the plaintiff as well as a shield by the defendant. In support of his argument, he sought inspiration from the decision of the Supreme Court of India in **Ravinder Kaur Grewal & Others** (supra) as earlier on indicated. We had an opportunity to go through that decision but we found that it is distinguishable from the circumstances of the current matter. Apart from being from a foreign jurisdiction, the said decision based on Article 65 of the India Limitation Act, 1963 to opine that once the right,

title or interest is acquired through adverse possession, it can be used as a sword by the plaintiff as well as a shield by the defendant. It is very unfortunate that in our country, we do not have a similar law.

However, since the Court considered the issue of alleged abandoned land in dispute and gave it's decision, we find that the applicant is trying to challenge the decision of the Court on account that it was not right in an unacceptable way. We are settled in our mind that at any stretch of imagination, dissatisfaction of a party by the Court's decision is not and cannot be a ground of review. This, we say, is not an apparent error on the face of record. The applicant's claim in the fourth ground falls squarely under what ought to be a ground of appeal, which the law bars the Court to sit on appeal on a matter it has already finally decided. In **Peter Kidole v. Republic,** Criminal Application No. 3 of 2011 (unreported) when the Court was dealing with almost similar issue as the one at hand had this to say:

> *"A careful analysis of the application reveals that the applicant did not disclose the grounds for review as required... **The applicant is merely asking the Court to revisit evidential, legal and factual matters. This is synonymous with asking the Court to sit on appeal***

against its own decision*. This is not acceptable as the circumstances for review are clearly set out in Rule 66(1) of the Court Rules."* [Emphasis added].

Also in **Karim Kiara v. Republic,** Criminal Application No. 4 of 2007 (unreported) the Court quoted with approval what was stated in **Lakhamshi Brothers Ltd v. Raja and Sons** [1966] 1 EA 313 as follows:

> *"In a review the court should not sit on appeal against its own judgment in the same proceedings. In a review,* ***the Court has inherent jurisdiction to recall its judgment*** *in order to give effect to its manifest intention on what clearly would have been the intention of the court had* ***some matter not been inadvertently omitted.****" [Emphasis added].*

In the light of the above decisions, we find that the applicant has failed to show any error on the face of record which might be inadvertently omitted by the Court while determining the issue concerning the alleged abandoned land. We only see that the applicant is merely inviting us to sit on appeal against our own decision which we are not ready to accept as our duty is to determine if there is a manifest error which the applicant has

shown. Therefore, the fourth ground of the application is not fit for review as well.

We shall combine the **second and third** grounds because they are related. In these grounds, the applicant is alleging that the respondents abandoned the disputed land for almost 40 years without claiming for the same and thus time barred them from claiming for recovery of the same. We wish to observe that, at page 5 of the impugned decision of the Court the issue of abandonment of the disputed land was argued as follows:

> *"Mr. Musetti further argued that during the trial PW1 and PW3 clearly testified that* ***the suit property was abandoned by the Government of Cyprus and occupied by the Government of Tanzania Since 1971****. He said, in 1975 and 1998 the suit property was leased to Cuban and Tanzania doctors and then later rented to the International School of Tanga. He further argued that the appellants' witnesses also testified that, the Government had occupied the suit property for about forty (40) years and had renovated and rehabilitated it to a greater extent. He then argued that, it is a principle of the law that* ***when one occupies a deserted land for a long time,*** *his occupation should not be disturbed." [Emphasis added].*

At page 10 – 11 of the Court's judgment the said ground regarding abandoned land was determined as follows:-

> *"In our opinion, the trial Judge correctly applied the doctrine of adverse possession, because unlike in an unregistered land, the adverse possession over the registered land is not automatic.* ***We have as well observed that the appellant claimed adverse possession only by asserting that he had been in occupation of the suit land over forty (40) years. This assertion is incorrect as we have decided in the case of Registered Trustees of Holy Spirit Sisters Tanzania*** *(supra) cited to us by Mr. Musetti at page 24 that ..." [Emphasis added].*

Therefore, we are of the considered opinion that, since the ground concerning abandonment of the disputed land was raised and decided by the Court, it cannot be raised again as a ground of review. The applicant was bound to show the manifest error on the face of our decision concerning abandonment. In **Elia Kasalile & 17 Others v. Institute of Social Work,** Civil Application No. 187/18 of 2018 (unreported) when the Court was confronted with an akin issue, the Court borrowed a leaf from a persuasive decision of the Court of Appeal of Kenya in **National Bank of**

Kenya Limited v. Ndungu Njau [1997] eKLR which provides a guide on review applications as follows:

> *".... A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self – evident and should not require an elaborate argument to be established.* ***It will not be sufficient ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.*** *Misconstruing a statute or other provision of law cannot be a ground for review.*
>
> *In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision of the matters in controversy and exercised his discretion in favour of the respondent.* ***If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review.*** *Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law.* ***An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it."*** *[Emphasis added].*

We fully subscribe to the above decision and equally hold that, even if the applicant was not satisfied with the final decision of the Court, which we think was properly decided, our legal system does not allow the Court to sit in appeal of its own decision. That apart, the second and third grounds raised by the applicant herein do not disclose any apparent error on the face of record to deserve the Court's attention in review and thus, flawed.

Regarding the **first** ground of review that, the Court gave right of ownership of land to non-citizens contrary to the law, Mr. Malata submitted firmly that the Court declared Greek Nationals as owners of the land in dispute at page 13 of the impugned judgment contrary to section 20 of the Land Act. We had an opportunity to peruse the referred page but we could not find such a declaration. The only part relating to ownership reads as follows:

> *"It is on record that DW1 and DW2 ably narrated how the suit property was transferred to them. They tendered the Grant of Probate, the Deed of Transfer (exhibit D4) and the results of the official search (exhibit D5) conducted in 2013 which proved that they are*

registered owners of the suit property. The testimonies of DW1 and DW2 were corroborated by CW1, the Registrar of Titles who confirmed that according to the land register entries DW1 and DW2 are the duly registered owners of the suit property. The respondents have proved their case on the balance of probability, a standard required in civil cases."

The above excerpt gives a clear picture that the issue of citizenship was not raised as a ground of appeal by the applicant and determined by the Court as admitted by both counsel for the parties. The Court could not decide on the issue which was not dealt upon by the High Court or raised by the parties. In our considered opinion, this ground was raised as an afterthought and therefore it does not qualify to be a ground of review. It should be understood that, when the Court sits in review, it cannot go beyond its decision to determine matters raised out of context. Otherwise, to allow a new ground at this stage, it will be like re-opening a new trial through the back door. Besides, since this ground is new, it illuminates

nothing in the record of application resembling what is referred as an apparent *"error on the face of record"* and hence, misconceived.

Having scrutinized all the purported grounds of review, we have no doubt to hold that none of them deserves to be termed as ground of review. We agree with Mr. Akunaay that the grounds raised by the applicant deserves to be grounds of appeal rather than review. We are thus settled that all the five grounds are unfit for review as we have amply demonstrated in our deliberation above. In **Chandrakant Joshubhai Patel** (supra), the Court stated that *"while an appeal may be attempted on the pretext of any error, not every error will justify a review".* It has to be well understood that merits of a final decision of the Court cannot be challenged through review. In **Charles Barnabas v. Republic,** Criminal Application No. 13 of 2009 (unreported) the Court stated that:

> *"The primary purpose of a review is not to challenge the merits of decision. A review is intended to address irregularities of a decision which have caused injustice to a party .... **One**, a review is not an appeal. It is not "a second bite," so to speak. As it is, it appears the applicant intended to "appeal" against the aforesaid decision through the back*

door. Our legal system has no provision for that. ***Two,*** *with the coming into force on 1/2/2010 of the Tanzania Court of Appeal Rules, 2009, Rule 66(1) thereof sets out the grounds for review.*

Before we conclude we wish to observe as indicated above that, the Notice of Motion is also pegged under paragraph (c) of sub rule (1) of Rule 66 of the Rules which implies that the impugned decision of the Court is a nullity. *A decision is nullity if it is so defective on its face that it is not the type of decision that its maker would have wished it to be; or if on its face it fails to include an element which means that it cannot be given effect.* (www.lexology.com - library visited on 15/10/2020). However, it is very unfortunate that the counsel for the applicant has also failed to show how the impugned decision of the Court is a nullity.

For the reasons stated above, we find that the applicant has failed to show any manifest error on the face of record leading to miscarriage of justice and/ or that the said decision is a nullity. We respectfully observe that all the five grounds raised by the applicant intended to re-argue the appeal, which is not allowed under the law governing review. *The power of the Court in exercising its review has to be used sparingly and only in the*

most deserving cases, bearing in mind the demands of public policy for finality of litigation and for certainty of the law as declared by the highest court of the land. (See **Tanzania Transcontinental Trading Company v. Design Partnership Limited** [1999] TLR 258). In the circumstances, the only option we have is to dismiss this application, as we accordingly do with costs.

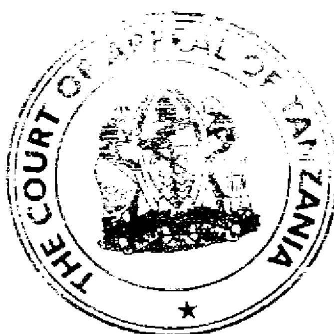
DATED at **DAR ES SALAAM** this 19th day of October, 2020.

S. A. LILA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The ruling delivered this 21st day of October, 2020 in the presence of Ms. Lilian Machage, and Ayubu Sanga, both learned State Attorneys appeared for the Applicant and Ms. Levina Kagashe, hold brief of Mr. Mustafa Akunaay, learned Counsel for the Respondents, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL