IN THE COURT OF APPEAL OF TANZANIA

AT DAR-ES-SALAAM

(CORAM: MUGASHA, J.A., KWARIKO, J.A., And KENTE, J.A.)

CIVIL APPLICATION NO. 256/01 OF 2019

DR. MUZZAMMIL MUSSA KALOKOLA..... APPLICANT

VERSUS

THE MINISTER OF JUSTICE AND

CONSTITUTIONAL AFFAIRS.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

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

(Mugasha, Ndika, Kwariko, JJA.)

dated the 25th day of February, 2019

in

Civil Application No. 245 of 2015

RULING OF THE COURT

2ND & 5th November, 2021

MUGASHA, J.A.:

This is an application for review of the Judgment of this Court (**Mugasha, Ndika, Kwariko, JJA)** in Civil Application No. 245 of 2015 which struck out the applicant's application on ground of being incompetent on account of the applicant's failure making available all the

proceedings of the lower court. The application is predicated Rules 4 and 66 (6) of the Court of Appeal Rules, 2009 (the Rules) and is supported by the affidavit of Dr. Muzzamil Mussa Kalokola, the applicant. In the Notice of Motion, the applicant has raised a ground of review to the effect that the decision to strike out his application on account of incomplete record was based on a manifest error on the face of the record resulting in a miscarriage of justice because, **one,** the requirement of having complete record is not a requirement in an application for revision as what is required are pleadings; and **two,** the pleadings could still be traced by the Court from the impugned Ruling, Drawn Order and proceedings. In this regard, the applicant urged the Court to reverse its earlier decision.

On the other hand, the application was opposed by the respondents through the affidavit in reply sworn by Mr. Victor Kikwasi. To bolster their arguments for and against the application, parties filed written submissions.

At the hearing, the applicant did not enter appearance though duly served with a notice of hearing. Ms. Selina Kapange, learned Senior State

Attorney assisted by Mr. Charles Mtae, learned State Attorney, represented the respondents.

In view of the absence of the applicant who had earlier on filed written submissions we invoked Rule 106 (12) of the Rules and considered that the application was argued vide the written arguments of the applicant. The respondents' counsel adopted the written submissions filed without more and urged the Court to dismiss the application on ground that the applicant has not demonstrated any manifest error as alleged. Basically, while the applicant echoed arguments similar to what is partly contained in the notice of motion and affidavit, similarly, the respondents presented some arguments opposing the application.

Having carefully considered the notice of motion, the affidavits and submissions of the parties, the only point for consideration is whether the applicant has made out a case for reviewing the Ruling of the Court.

The review jurisdiction of the Court is a creature of statute stipulated under the provisions of section 4 (4) of the Appellate Jurisdiction Act [CAP 141 R.E.2019] (the AJA). The provisions of the law regulating review of

decisions of the Court is stipulated under Rule 66 (1) of Rules which provides:

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

From the wording of rule 66 (1) of Rules, it is clear that a judgment/Ruling of the final Court is final and review of such decision is an exception which limits the scope of review jurisdiction. In this regard, mere

disagreement with the view of the judgment cannot be the ground for the invoking the same because as long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment/Ruling in the guise that an alternative view is possible under the review jurisdiction. See - **BLUE LINE ENTERPRISES LTD. VS THE EAST AFRICAN DEVELOPMENT BANK**, (EADB), Civil Application No. 21 of 2012 and **KAMLESH VARMA VS MAYAWATI AND OTHERS**, Review Application No. 453 of 2012) EAC.

In the premises, the review should not be utilized as a backdoor method to unsuccessful litigants to re-argue their case for finding the error, as that is tantamount the exercise of appellate jurisdiction which is not permissible. Thus, the Court will not sit as a Court of Appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision. It would be intolerable and most prejudicial to the public interest if cases once decided by the Court could be re-opened and re-heard. See - **MEERA BHANJA VS NIRMALA KUMARI CHOUDURY** (1955) ISCC India), **BLUE LINE ENTERPRISES LTD. VS EADB** (supra).

Since in this application the applicant is alleging manifest error in the impugned decision, it is settled law that, a mistake or error on the face of the record by its very connotation must be evident ***perse*** from the record of the case and it does not require detailed examination, scrutiny and clarification either of the facts or the legal exposition. If an error is not self-evident and its detection requires a long debate and process of reasoning, it cannot be treated as an error on the face of record. In other words, it must be such as can be seen by one who runs and reads: See: **MULLA,** Commentary on the Indian Code of Civil Procedure, 1908, 14th edition at pp 2335-6, **STATE OF GUJARAT VS CONSUMER EDUCATION AND RESEARCH CENTRE** (1981) a Guj. 233 **STATE OF WEST BENGAL AND OTHERS VS KAMAL SENGUPTA AND ANOTHER,** (2008) 8SCC 612 and **CHANDRAKAT JOSHUBHAI PATEL VS REPUBLIC** [2004] TLR 218.

We shall be guided by the firmly stated legal principles to determine the present application.

As earlier stated, it is the applicant's complaint that the impugned Ruling of the Court is tainted with a manifest error having been struck out

on account of lacking pleadings and which could have been traced in the Ruling and the drawn order.

In order to understand what underlies the impugned Ruling, it is crucial to refer to it. As the Court had to satisfy itself if it was properly moved to invoke its revisional jurisdiction under section 4 (3) of the AJA, parties were required to address it on the propriety or otherwise of the record of the revision which lacked a constitutional petition/pleadings, the notice of preliminary objection and the written submissions in respect of the preliminary objection were not in record of the revision. At the respective hearing, it was the applicant's submission that he had assumed that the High Court could forward the record to this Court. On the said omission, the respondent's counsel moved the Court to strike out the application on ground that it was not competent.

Having considered the submissions of the parties, at pages 5 and 6 of the impugned Ruling the Court stated as follows:

> *"The applicant said he assumed that, the trial court could have forwarded the said missing record to*

this Court. This Court is of the considered opinion that where application for revision has been initiated by a party like the present case, it is the duty of a party to prepare the complete record from the original court before filing the same in court....

Therefore, the law requires a party moving the Court to exercise its revisionai powers to make available all proceedings of the lower court. Now, because part of the material to be revised has not been availed to the Court, there is nothing to be revised as this Court cannot meaningfully invoke its revisional jurisdiction under section 4 (3) of the Act. This renders the application before this Court incompetent and it is hereby struck out..."

In the light of what was decided by the Court as stated above, the follow up question is whether the applicant has made out a case for review on the ground of a manifest error apparent on the face of the record. Our answer is in the negative and we shall, give our reasons.

Although in this application, the applicant has conceded that his application and subject of the impugned Ruling lacked the pleadings/ petition filed at the High Court, he still had misgivings on the same not being a legal requirement and that the pleadings could still be traced from the impugned Ruling, Drawn Order and proceedings. This in our considered view, does not qualify to be a ground of review because the issue on the insufficiency or incompleteness of the record of the revision application was conclusively dealt with by the Court and answered. Therefore, the complaint by the applicant that including the pleadings in the revision application is not a requirement, is in our firm view, the applicant's mere disagreement with the decision of the Court which cannot constitute a ground for invoking review. That apart, it is glaring that, what the applicant believes to be grounds for review, is unfortunately an attempt of utilizing review jurisdiction as a backdoor method to re-argue his failed case which cannot be condoned because the Court cannot sit on its own appeal and besides, it is not compatible with the policy that if cases once decided by the Court could be re-opened and re-heard.

In view of what we have endeavoured to discuss, we are satisfied that the applicant has not made out a case warranting a review of the Court's decision and the application is unmerited. We accordingly, dismiss it with no order as to costs as this matter originates from a public interest litigation.

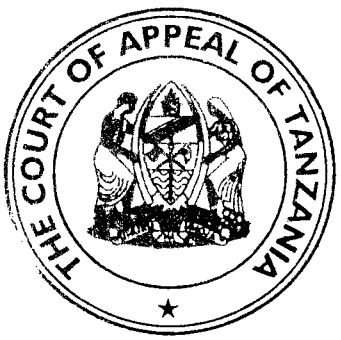
DATED at **DAR ES SALAAM** this 5th day of November, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

This Ruling delivered this 5th day of November, 2021 in the presence of the appellant in person linked via-Video Conference, and Mr. Charles Mtae, learned State Attorney for the Respondent/republic, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL