IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., SEHEL, J.A. And GALEBA, J.A.)

CIVIL APPLICATION NO. 163/17 OF 2019

SHAMIM SHAHA.....APPLICANT

VERSUS

1. **IBRAHIM HAJI SELEMANI.....RESPONDENT**
2. **THE COMMISSIONER FOR LANDS.....RESPONDENT**
3. **THE ATTORNEY GENERAL.....RESPONDENT**

[Application for Review of the Judgment of the Court of Appeal of Tanzania at Dar es salaam]

(MMILLA, MWANGESI, MWAMBEGELE JJJ.A)

dated the 28th day of February, 2019
in
Civil Appeal No. 134 of 2015

.....

RULING OF THE COURT

2nd & 11th November 2021

GALEBA, J.A.:

This application made under Rule 66(1) (a) of the Tanzania Court of Appeal Rules 2009, (the Rules), is for review of the judgment of this Court (Mmilla, J.A, Mwangesi, J.A, And Mwambegele J.A) dated 28th February, 2019. It all started by the applicant suing the respondents in the High Court of Tanzania, Land Division, at Dar es salaam in Land Case No. 128 of 2007 for among other reliefs, a declaration that she was the lawful owner of the land located on Plot No. 666 Block "F" Tegeta Kinondoni in Dar es Salaam (the disputed property)

because she was the administratrix of the estate of her husband, the late Ramadhani Mwinyi, the original registered owner. The other orders sought were, as against the second and third respondents, that the alleged revocation of her husband's ownership of the disputed property was unlawful and as against the first respondent, an eviction order from the property and issuance of perpetual injunctive reliefs restraining him from trespassing on the disputed property and erecting thereon any permanent structures. The applicant prayed further for general damages and costs of the suit.

The respondents' case or defence in the High Court was that, as the late Ramadhani Mwinyi, the previous owner of the disputed property during his lifetime breached development conditions, his ownership of the disputed property was revoked by His Excellency the President on 16th August 2002 and later, on 1st March 2005, land ownership was granted and title vested unto the first respondent.

Based on the strength of the defence case, the plaintiff's case was dismissed with costs on 26th February 2014. Her appeal to this Court did not succeed, it was dismissed with costs on 28th February 2019. This application is moving this Court to review the latter decision of our own.

As indicated above, this application has been brought under Rule 66(1) (a) of the Rules. The application is based on two grounds which are, that:

> *"1. The decision/judgment of the Court has manifest errors material on the face of the record that have resulted into miscarriage of justice to the applicant because:*
>
> *(a) The Court did not apply in favour of the applicant the principle of overriding interest over the land in dispute and erred in maintaining justice in favour of the first respondent who did not prove by documentary evidence that he was once allocated land and that the land was doubly allocated.*
>
> *(b) The Court erred in believing the allegations by the counsel for the first respondent and the State Attorney for the second and third respondents that the land in dispute was allocated to the first respondent at the initiative of the Ministry of Lands itself without any documentary proof or otherwise of the alleged double allocation of the land to the first respondent.*
>
> *(c) The Court, despite express admission by the second and third respondents' witnesses that they never tendered the essential receipt of the alleged registration posting of the alleged Notice of Revocation continued to make errors in believing*

that the alleged Notice of Revocation was transmitted.

(d) *The Court erred in believing and holding on the misleading allegation by the respondents that the applicant was notified and never responded to defence exhibit D2, a document that is a Certificate of Revocation absolute and not a Notice of Revocation.*

2. *And on further grounds the applicant shall advance during the hearing."*

The notice of motion was supported by the affidavit of Mr. Godfrey Ukwong'a, learned advocate, which affidavit was countered by two affidavits in reply of the first respondent and of one Alice Mtulo for the second and third respondents. In support and in resisting the application, the applicant and the respondents had lodged written submissions pursuant to Rule 106(1) and (7) of the Rules respectively.

At the hearing of the application, Mr. Ukwong'a appeared for the applicant and the first respondent was represented by Mr. Issa Mrindoko, both learned advocates. Teaming up for the second and third respondents, were Mr. Gerald Njoka, learned Senior State Attorney assisted by Ms. Alice Mtulo learned Senior State Attorney and Ms. Kause Kilonzo learned State Attorney.

Mr. Ukwong'a informed us that his written submissions were sufficiently elaborate on the manifest errors patent on the judgment and requested us to consider the submission, as it is, in determining the application in the applicant's favour. He therefore, neither made any oral arguments to explain his submission, nor did he raise or argue any new ground as envisaged in ground two of his notice of motion. He however, reserved his right to rejoin should there arise any point that required clarification from oral submissions of counsel for the adverse parties. Unlike Mr. Ukwong'a, the respondents' counsel opted to utilize their right under Rule 106(10) (a) of the Rules to clarify their submissions at the hearing.

In explaining his earlier filed written submission, Mr. Mrindoko submitted generally that all the grounds put forth by the applicant to support the application are grounds of appeal disguised in a review application. He submitted that the grounds advanced are moving the Court to re-assess the evidence which he contended, this Court cannot legally do. He stressed that all the grounds were raised on appeal and were exhaustively dealt with in the impugned judgment. He argued that the alleged errors are not apparent on the face of the record and they cannot be revealed without engaging into a prolonged process of reasoning which could result into more than one points of

view or opinions. He contended that there is no issue pointed out by the applicant as an error on the face of the record as required by law. He implored us to dismiss this matter with costs.

Objecting to the application for the second and third respondents, was Ms. Kause Kilonzo. Her attack to the application was for the single reason that the application revealed no apparent error on the face of the record. She contended that all grounds raised as errors were considered by this Court in the impugned judgment and they were all conclusively resolved. She emphatically submitted that the position of this Court is that, if a point is raised on appeal, addressed and resolved, no party is allowed to come back to challenge the decision on the same point. On this position she cited to us the case of **Mirumbe Elias @ Mwita v. R,** Criminal Application No. 4 of 2015 (unreported). She beseeched the Court to do away with this application by dismissing it with costs for want of merit.

In rejoinder, Mr. Ukwong'a had no contest with the fact that the grounds raised as errors in this application were addressed and fully resolved by the Court on appeal. His only concern, he pointed out to us, was that when the Court was considering the points, it committed terrible errors of law, to use his terminology, which errors, he stressed were apparent on the face of the record.

He did not cite to us any authority, not only in his written submission, but also in his oral address before us, to support the position that the issues raised and resolved by the Court on appeal can still be raised and argued on review before the Court, even if what is challenged is how the appeal was handled.

We will then examine the arguments of parties, but before we get there, we think, coherence and logic demand that we start with the law and the basic principles guiding this Court when called upon to review its own decisions. The law relevant for our discussion, in terms of this Court's jurisdiction in matters of review, is section 4(4) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] (the AJA), but as to the benchmarks or criteria necessary for exercising the jurisdiction, the appropriate Rule is Rule 66(1) of the Rules which provides that:

> *"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."

[Emphasis added].

We added emphasis above because the present application is not predicated on all five paragraphs of Rule 66(1) but only on Rule 66(1)(a), which states that one of the necessary conditions for this Court to observe when called upon to review its own decision is that there should be a manifest error on the face of the judgment sought to be reviewed resulting into the miscarriage of justice.

As for the principles necessary to guide us, in the recent past, although it was in a criminal case, the Court in the case of **Mirumbe Elias @ Mwita (supra)** in a simple and understandable language summarized some principles governing exercise of review jurisdiction by the Court in the context of Rule 66(1) of the Rules. The Court observed:

> *"...**ONE**, the principle underlying a review is that the court would not have acted as it had, if all the circumstances had been known... **TWO**, a judgment of the final court is final and review of such judgment is an exception... **THREE**, in review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same...**FOUR**, the review should not be utilized as a backdoor method to unsuccessful litigants to re-argue their case... **FIVE**, the*

*power of review is limited in scope and is normally used for correction of a mistake but not to substitute a view in law... **SIX**, the term 'mistake or error on the face of the record by its very connotation signifies an error which is evident **per se** from the record of the case and it does not require detailed examination, scrutiny and clarification either of the facts or the legal exposition... **SEVEN**, a 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."*

We fully subscribe to the above principles and we will apply some of them in resolving the present application. It is significant, we think, to add that for us to invoke the powers of review under section 4(4) of the AJA and Rule 66(1)(a) of the Rules, three circumstances must coexist, **one**, there must be an error in the decision of the Court, **two** the error must be on the face of the record such that it does not require any prolonged argument or painstaking search or analysis of law or evidence to uncover or expose it and **three** such error must have culminated into a miscarriage of justice. Thus, for purposes of this application and for the errors that Mr. Ukwong'a submitted to be terrible, to qualify investigation and review of this Court, they must be clear of obscurity as indicated above. Having described the character of the errors that qualify to kick

start the jurisdiction of this Court under the law upon which this application is premised, we will then proceed to see whether, the errors, if any, are on the face of the record to merit our attention.

We will very briefly describe all the four errors and then discuss each of them, starting with the first. **The first error**, according to Mr. Ukwong'a, is that the Court was supposed to hold that the documents establishing that there was double allocation to the first respondent and Mr. Matern Lumbanga over Plot No. 394 Block "C" Tegeta Kinondoni District were supposed to be tendered, but the Court erroneously did not hold so. He was complaining that the Court did not consider that double allocation was not proved at the High Court level. He was therefore inviting us to review the evidence, assess it and if possible, fault this Court for not having stated its position on the issue of double allocation. The alleged error, that is failure to state that there was no proof of double allocation at the trial, does not qualify to be an error on the face of the record in the context of Rule 66(1)(a) of the Rules, because to understand the applicant's complaint in relation to that issue, one needs to read the evidence of witnesses particularly that of the first respondent and DW2, Carlos Mbingamno, the land officer, and analyse it. That invitation, with respect, we decline to honour, for on

review, this Court does not have jurisdiction to do all that Mr. Ukwong'a wanted us to do.

The alleged **second error**, was the fact that the grant and allocation of the disputed land to the first respondent was not proved to have been on the Ministry of Land's own initiative. This calls for this Court to perform a function of the first appellate Court, namely, to re-consider and re-evaluate the evidence and come up with our own findings on the complaint. We must re-state our position in this respect, and do that even at the risk of being repetitive of ourselves, that for an error to qualify as one on the face of the record, for purposes of review, it must be self-evident and notable at a glance from the record. It is one that does not require a detailed perusal and examination of documents, scrutiny or clarification of the facts or legal materials to uncover the error. The error should be patent and not oblique or obscure behind facts of the case or the law applicable. If an error is not self-evident and its detection requires prolonged debates and long processes of reasoning, it cannot be treated as an error on the face of record. This is, what we think, is the law in relation to the subject of review in the context of Rule 66(1)(a) of the Rules. Thus, the alleged second error, if any, is not apparent on the face of the record sufficient to unlock this Court's review jurisdiction.

The third and the **fourth errors**, Mr. Ukwong'a in his submissions at page 5 contended that, although the Court had opportunity to analyse the record of appeal and the relevant exhibits, it did not analyse exhibit D2 which exhibit, the Court maintained, was a notice to show cause. Counsel further complained that the Court committed an error by believing that the notice of revocation was transmitted to the applicant's husband, while the receipt used to pay postage or transmission fees was not tendered in the trial court. With due respect to counsel for the applicant, like we have just observed in respect of the first and second errors, these complaints call for this Court to re-evaluate, re-consider and re-assess the evidence on record and see whether that receipt was tendered or it was not. That function, this Court cannot perform. We maintain that view with a backing of this Court's observation from the case of **Patrick Sanga v. R,** Criminal Application No. 8 of 2011 (unreported), where we stated that:

> *"There must be an end to litigation, be it in civil or criminal proceedings. A call to re-assess the evidence, in our respectful opinion, is an appeal through the back door. The applicant and those of his like who want to test the Court's legal ingenuity to the limit should understand that we have no jurisdiction to sit on appeal over our own judgments. In any properly functioning justice system like ours, litigation must*

have finality and a judgment of the final court in the land is final and its review should be exceptional. That is what sound public policy demands."

That is the message, among others, we desire that the applicant and her counsel do not miss from this ruling, for their move in this matter is to have this Court to re-assess the evidence that was considered by this Court on appeal, a move with which, we have clearly declined association.

Further, Mr. Ukwonga was in agreement with counsel for the respondents, that all points raised by him in this application, were considered by the Court on appeal and they were all conclusively answered. Nonetheless, he impressed on us to re-consider the manner this Court dealt with the appeal, for he argued, the Court when dealing with the complaints in the appeal, it committed the errors he was complaining about. Respectfully, we decline to do that, and our reason is simple and straight forward. It is because both statutory and case law do not permit this Court to investigate the manner the same Court approached an appeal with a view to correct it. That would be an appeal, which we cannot legally handle. In that view, we obtain support from the case of **Angella Amundo v. The Secretary General of the East African Community,** Civil Application No. 4 of 2015 (unreported), where this Court observed:

"As long as the point is already dealt and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction: ***Kamlesh Varma v. Mayawati & Others,*** *Review Application No. 453 of 2012."*

On the same aspect, see also **Majid Goa @ Vedastus v. R,** Criminal Application No. 11 of 2014 (unreported). The point we want driven home in relation to the above observation from the case of **Angella Amundo (supra)**, is that the admission by counsel for the applicant that all the errors the applicant is complaining about, were discussed and determined by the Court, denies him lawful mandate to argue anything in this application for review in favour of the applicant.

In totality, we did not find in this application any error of law on the face of the record, fit for this Court to exercise its review jurisdiction. All grounds were communicating grievances on why the Court believed evidence from the adverse side and decided on some other issues without there being evidence in place. The position of this Court is that as long as the complaints require employment of labour and efforts to dig into the evidence in order to unearth and discover the validity of the complaint, such matters are not errors of law within the meaning and context of Rule 66(1)(a) of the Rules.

For the above reasons, this application lacks merit and we hereby dismiss it in its entirety with costs.

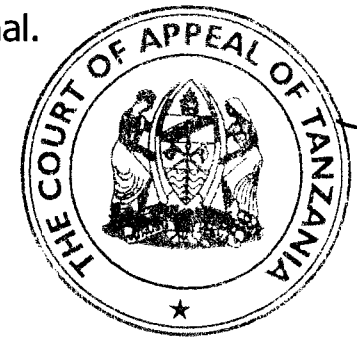
DATED at **DAR ES SALAAM**, this 10th day of November, 2021

R. K. MKUYE
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

The Ruling delivered this 11th day of November, 2021 in the presence of Mr. Godfrey Ukwonga, learned counsel for the Applicant, Mr. Felix Chakila, learned State Attorney for the 2nd and 3rd Respondent and Mr. Issa Mrindoko, learned counsel for the 1st Respondent, is hereby certified as a true copy of the original.



E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL