IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWAMBEGELE, J.A., FIKIRINI, J.A, And MAKUNGU, J.A.)

CIVIL APPLICATION NO. 255/01 OF 2019

DR. MUZZAMMIL MUSSA KALOKOLA..... APPLICANT

VERSUS

THE MINISTER OF JUSTICE AND

CONSTITUTIONAL AFFAIRS.....1st RESPONDENT

THE CONSTITUTIONAL REVIEW COMMISSION.....2nd RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3rd RESPONDENT

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

(Mugasha, Ndika, Kwariko, JJ.A.)

dated the 19th day of February, 2019
in
Civil Application No. 183 of 2014
.....

RULING OF THE COURT

15th July & 2nd August, 2022

FIKIRINI, J.A.:

In this application, the applicant, Dr. Muzzammil Mussa Kalokola, is asking this Court to review its decision in Civil Application No. 183 of 2014, dated 19th February, 2019. The application is predicated on Rule 4 and Rule 66 (6) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit deposed by the applicant.

In the notice of motion lodged, the applicant's eight (8) complaints he would wish this Court to look into are paraphrased as follows:-

1. *That, the applicant was denied the opportunity to defend his case.*
2. *That, the learned State Attorney misled the Court in how the limitation period was to be computed.*
3. *That, the Court failed to observe the requirement and entertained extraneous matters under Rule 8 of the Rules.*
4. *That, the Court decision was based on the manifest error on the face of the record.*

   (i) That, the respondents' counsel misled the Court.

   (ii) That, the Court failed to appreciate that sections 7, 18, 19 and 21 of the Law of Limitation Act, Cap. 89 R.E. 2002 are similar to the contents in Rule 8 of the Rules.

   (iii) That, computation of the time limitation as provided under Rule 8 of the Rules, are to be taken care of by the Registrar.

   (iv) That, the Court directed the applicant to consider Rule 10 of the Rules instead of Rule 8 of the Rules he preferred especially Rule 8 (c) of the Rules on the computation of time for lodging an application.
5. *That, the application was not time-barred as claimed, requiring the filing of an application for an extension of time.*

6. *That courts cannot challenge the validity or effectiveness of the legislation except to interpret the law.*

7. *That, the applicant was deprived right to be heard.*

8. *That, the Court punished him with costs while he was not the one who failed to compute the period for filing his application, and by so doing condoned the Registry's laxity in performing its obligation.*

The facts leading to the present application can be briefly stated as follows: that the applicant applied for the prerogative orders of certiorari, mandamus, and prohibition, against the respondents, namely, the Minister of Justice and Constitutional Affairs, the Constitutional Review Commission, and Attorney General, alleging numerous violations of the Constitution of the United Republic of Tanzania in Miscellaneous Civil Application No. 2 of 2014 before the High Court of Tanzania at Tanga. Among the complaints was the process of the Constitutional review being carried out under the Constitutional Review Act, Cap. 83 R. E. 2014, in an endeavour, to obtain a new Constitution. The respondents raised a preliminary objection that the petition was defective for non-citation of enabling provisions of the law, leading to the petition being struck out.

Dissatisfied with the decision, the applicant approached this Court vide Civil Application No. 183 of 2014, seeking revision under sections 4 (3) and (5) and 7 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 [now R.E. 2019] (the AJA) and Rules 4, 65 (3), and (7) of the Rules. The application was struck out for being time-barred, hence the present application for review.

At the hearing of the application on 15th July, 2022, the applicant was absent despite being duly served. Ms. Vivian Method learned Senior State Attorney, assisted by Ms. Narindwa Sekimanga and Mr. Ayoub Sanga both learned State Attorneys appeared for the respondents. Since the applicant was served but defaulted appearance and had filed a written submission in support of his application, we ordered the hearing to proceed under Rule 106 (12) (b) of the Rules.

Taking up the floor to address us, Ms. Method aside from adopting, the affidavit in reply filed by the respondents sworn by Ms. Method and all the authorities listed in the list of authorities filed, she contended that from the grounds of review listed only three grounds were within the ambit of Rule 66 (1) (a) and (b), whereas the rest which are 2nd, 3rd, 5th, 6th and 8th

could not be placed under any of the categories hence not tenable grounds for review.

Submitting on the 1st and 7th grounds on the right to be heard which fall under Rule 66 (1) (b) of the Rules, Ms. Method disputed the assertion, contending that the applicant was present at the hearing of his application. She referred us to pages 3, 4, 5 and 7 of the ruling of the Court, whereby the Court acknowledged the applicant's presence at the hearing of the Civil Application No. 183 of 2014. She thus urged us to dismiss the complaint that the applicant was declined the right to be heard.

Regarding the complaint that there was an error on the face of the record as per Rule 66 (1) (a) of the Rules, Ms. Method submitted that no error has been pointed out as complained in the 4th ground and its sub-paragraphs that qualifies for review. At this juncture, she invited us to take inspiration from the case of **The Honourable Attorney General v. Mwahezi Mohamed (as Administrator of Estate of the late Dolly Maria Eustace) and 3 Others**, Civil Application No. 314/12 of 2020 (unreported), which is amongst the cases which defined what amounts to an error on the face of the record.

As for the rest of the grounds, Ms. Method contended that what the applicant did was to list his grievances showing his dissatisfaction with the decision, the practice abhorred by the Court in application of this nature. In cementing her proposition, she cited to us the case of **Abdiel Reginald Mengi & Another v. Jacquline Ntuyabaliwe Mengi & 6 Others**, Civil Application No. 618/01 of 2021 (unreported).

Concluding her submission, she argued that even if the Court's decision could be erroneous, those cannot be the grounds for review. On that note, she urged us to dismiss the application with costs.

We intimated earlier in this ruling that the applicant had filed his written submission according to Rule 106 (1) of the Rules. We have thoroughly gone through the filed written submission, and what can be gathered from his written submission is that the applicant was mainly protesting the Court decision contending that it denied him the right to be heard on his application for revision. Instead, the Court dealt with a preliminary objection which was neither raised by the applicant nor any of the respondents. The applicant went on to submit that whereas the applicant contested the issue, Ms. Alicia Mbuya, learned Principal State Attorney supported the Court's raised concern, that the record before the

Court was incomplete for missing a copy of the lower court proceedings, ruling and an order extracted from the said ruling. The applicant perceived the approach taken by the Court as unjustifiable, denying him the right to be heard. He thus prayed for this Court to review its decision which struck out his application for revision for being time-barred.

Before us, the issue for determination is whether the grounds for review raised by the applicant fall within the ambit of Rule 66 (1) of the Rules which governs review. But before we proceed, we want to clarify two issues: one, on citation of Rule 66 (6) of the Rules, upon which this application is pegged, and two, on what transpired before the Court, the resultant decision being subject of this application for review.

This application has been taken out under Rule 66 (6) of the Rules. Rule 66 (6) of the Rules deals with what should follow upon grant of application for review filed under Rule 66 (1) of the Rules. It could have in the past been said that this Court is not properly moved. However, in the advent of Rule 48 (1) of the Rules which deals with forms of application and in particular its proviso, we find this Court seized with jurisdiction to grant the order sought. For ease of reference the provision of Rule 48 (1) is reproduced:

"48.- (1) Subject to the provisions of sub-rule (3) and to any other rule allowing the informal application, every application to the Court shall be by notice of motion supported by affidavit and ***shall cite the specific rule under which it is brought*** *and state the ground for the relief sought:*

Provided that where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored *and the Court may order that the correct law be inserted."* [Emphasis added].

We have thus considered the present application in terms of Rule 66 (1) of the Rules.

Also, in our perusal of the ruling of the Court, dated 19th February, 2019, we have noted that while the applicant in his written submission dwelt on submitting on a dialogue between the Court and the parties on the incompleteness of the record before it, but ultimately there was no any decision in that regard. It was therefore not correct for the applicant as reflected in his entire submission to indicate that the Court raised the issue on the propriety of the record before it, insinuating sidelining his application for revision. From our scrutiny on page 3 of the Court's ruling, it is evident that there was a notice of preliminary objection raising two

points. The point on time limitation was the only point argued and determined, striking out the application for revision styled as Civil Application No. 183 of 2019 for being time-barred.

In short, the applicant's submission was not in support of the order he was seeking for this Court to review.

Now turning to the application itself, we wish to start by echoing the position stated in our previous many decisions such as **Chandrankat Joshubhai Patel v. R** [2004] T.L.R. 218, **Patrick Sanga v. R,** Criminal Application No. 8 of 2011, **Karim Ramadhani v. R,** Criminal Application No. 25 of 2012, **Ghati Mwita v. R,** Criminal Application No. 3 of 2013 and **Omary Makunja v. R,** Criminal Application No. 22 of 2014 (all unreported), that the Court has power's review its own decision.

Those powers are derived from section 4 (4) of the AJA and 66 (1) of the Rules, and are restrictive in scope considering that litigation must come to an end. The parameters within which those powers can be exercised have been stipulated under Rule 66 (1) (a) to (e) of the Rules. That Rule provides:

> *"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 a miscarriage of justice;

(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."

From the above-reproduced provision which established the grounds upon which a review can be entertained, the Court has developed some principles to be observed in exercising those powers. For instance, in **Chandrankat Joshubhai Patel** (supra), having examined several Indian decisions the Court stated:-

> *"An error 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 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 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].

The Court can therefore only review its decision to correct an error or omission which is manifest on the face of the record and has occasioned a miscarriage of justice.

Out of the eight (8) grounds raised by the applicant only the 1st, 4th and 7th grounds as already stated above can be considered relevant for review. The 1st and the 7th grounds on the right to be heard under Rule 66 (1) (b) and the 4th ground on the existence of manifest errors on the face of the record under Rule 66 (1) (a) of the Rules.

Compliance with Rule 66 (1) (a) on the error on the face of the record, requires that an alleged error has to be pointed out. Listing complaints after being dissatisfied with the decision of the Court is not sufficient. In the case of **Karim Ramadhani** (supra) which was referred to in the case of **Hon. Attorney General** (supra) referred to us by the respondents, the Court underscored the obligation to comply with Rule 66 (1) (a) of the Rules stated:-

"...***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 on these errors discloses grounds of appeal rather than a manifest error on the face of the decision...."* [Emphasis added]

Equally erroneous decisions cannot be a sufficient ground for review, as articulated in the case of **Abdiel Mengi & Another** (supra), referred to us by Ms. Method. And also, minor errors here and there, cannot justify a review. See: **Peter Ng'omango v. Gerson A. K. Mwanga**, Civil Application No. 33 of 2002 (unreported).

Based on the above decisions and guided by them we are of the considered opinion that in the instant application, the applicant has failed to disclose any error on the face of record as alleged in the 4th ground items (i) to (iv).

Likewise, the applicant has failed to describe with clarity warranting a review that he was denied the right to be heard as claimed on the 1st and 7th grounds. Going by the record and particularly on page 3 of the Court decision sought to be reviewed, it is evident that the applicant was present in Court and was allowed to address the Court on the preliminary objection which was being argued on that day. Of course, that is not what his application was all about but the Court in conducting its business and as

practice demands once there is a preliminary objection, that has to be determined first.

There is a long list of our decisions that a preliminary objection is heard first before the application or appeal before the Court. This includes **Shahida Abdul Hassanali Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999, **Bank of Tanzania Ltd v. Devram P. Valambhia**, Civil Application No. 15 of 2002, **Thabit Ramadhan Maziku and Kisuku Salum Kaptula v. Amina Khamis Tyela and Mrajis wa Nyaraka Zanzibar,** Civil Appeal No. 98 of 2011 and **Issa Mahamoud Msonga v. Zakaria Stanslaus and 2 Others**, Civil Appeal No. 21 of 2019 (all unreported), mentioning a few.

On that note, it is thus not correct for the applicant to say he was not afforded the right to be heard, simply because the Court entertained hearing of the preliminary objection instead of his application for revision.

The rest of the grounds were in our view grounds of appeal rather than grounds for review fitting description under Rule 66 (1) (a) to (e) of the Rules. We therefore discarded them.

In the upshot, and for the foregoing reasons, we are satisfied that the applicant has failed to present any ground fitting the description or

meeting the conditions stipulated under Rule 66 (1) (a) to (e) of the Rules, compelling us to review this Court's decision in Civil Application No. 183 of 2019. The application is thus dismissed with costs.

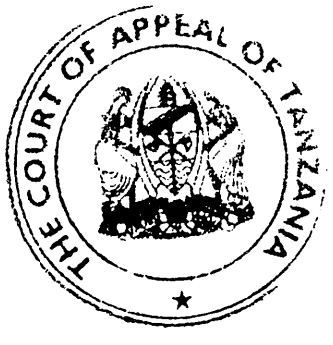
DATED at **DAR ES SALAAM** this 30th day of July, 2022.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 2nd day of August, 2022 in the absence of the Applicant and Ms. Narindwa Sekimanga, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL