

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KOROSSO, J.A., KITUSI, J.A., And FIKIRINI, J.A.)

CIVIL APPLICATION NO. 102/01 OF 2021

D. N. BAHRAM LOGISTICS LTD.....1st APPLICANT

DAD KARIM B. NURMOHAMED.....2nd APPLICANT

VERUS

NATIONAL BANK OF COMMERCE LTD.....1st RESPONDENT

KAM COMMERCIAL SERVICES.....2nd RESPONDENT

**(Application for Review of Ruling and Order of the Court of Appeal of
Tanzania at Dar es Salaam)**

(Mkuye, Ndika and Mwambegele JJA.)

dated the 4th day of March, 2021

in

Reference No. 10 of 2017

RULING OF THE COURT

2nd June & 6th July, 2023

FIKIRINI, J.A.:

This is an application for review preferred under section 4 (4) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and rules 48 (1) and 66 (1) (a) of the Tanzania Court of Appeal Rules, 2009. The applicants seek this Court to review the decision by (Mkuye, JA,

Ndika, JA and Mwambegele, JA) in Reference No. 10 of 2017, delivered on 4th March, 2021. The notice of motion is supported by an affidavit of Dad Karim B. Nurmohamed, the 2nd applicant and Principal Officer of the 1st applicant and the written submissions in that regard.

The respondents contested the application by filing an affidavit in reply deposed by Desmond Malyi and filed written submissions on 20th May, 2021.

The grounds for review are that:-

1. *That there are manifest errors on the face of the record resulting in miscarriage of justice to the applicants in that:*
 - (i) *That the Court overlooked the fact that the applicants had established the fact the first notice of appeal, which initiated Civil Appeal No. 81 of 2011 was filed in time.*
 - (ii) *The Court did not consider the records of Civil Application No. 449/16 of 2016 that incorporated Commercial Application No. 124 of 2016.*
 - (iii) *The Court failed to consider the records of Civil Application No. 449/16 of 2016 and Commercial*

Application No. 124 of 2016 occasioned injustice to the applicants for relying in the affidavit of Dad Karim B. Nurmohamed.

(iv) That the reproduced part of the said affidavit of Dad Karim B. Nurmohamed was not complete.

On 2nd June, 2023, when this application came on for hearing, Mr. John Ignace Laswai, learned advocate representing the respondents, entered appearance. On the applicants' part, neither they nor their advocate appeared before the Court, despite the fact of notice of service effected on 17th May, 2023.

From the uncontroverted position, Mr. Laswai urged the hearing of the application to proceed in terms of rule 106 (12) of the Rules. Per the cited provision and the fact the applicants had filed written submissions, the Court ordered the hearing to proceed.

Mr. Laswai, in his brief but focused submission, contended that there was non-compliance with the requirement of rule 66 (1) (a) of the Rules and that there was no error apparent on the face of record

calling for a review by the Court. He thus urged the Court to dismiss the application with costs.

Rule 66 (1) (a) of the Rules upon which this application is pegged provides 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."

Therefore, for the Court to review its own decision, the error complained about must be apparent such that a person running and reading could see it. In addition, it is trite law that the referenced error must not require a long-drawn process of reasoning. In the famous case of **Chandrakant Joshubhai Patel v. R** [2004] T. L. R. 218, the Court illustrated when a review could be entertained by stating 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 established by a long drawn process of reasoning on points on which there may be conceivably 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."

The decision was followed in many others to come, as in **Marcky Mhango & 684 Others v. Tanzania Shoe Company Limited & Another**, Civil Application No. 90 of 1999, **Karim Kiara v. R**, Criminal Application No. 4 of 2007, **Tanganyika Land Agency Limited & 7 Others v. Manohar Lai Agrawal**, Civil Application No. 17 of 2008, **Patrick Sanga v. R**, Criminal Application No. 8 of 2011, **Blueline Enterprises Limited v. East African**

Development Bank, Civil Application No. 21 of 2012, **Maulid Fakihi Mohamed @ Mashauri v. R**, Criminal Application No. 120/07 of 2018, **Golden Globe International Services Ltd & Another v. Millicom Tanzania N.V & 4 Others**, Civil Application No. 441/01 of 2018 (all unreported) to mention a few.

In their application, the applicants complained that the Court, in Reference No. 10 of 2017, overlooked that the notice of appeal which initiated Civil Appeal No. 81 of 2011 was timely filed. Despite this fact, the applicants had, however, conceded that the appeal was incompetent for failure to obtain leave of the High Court to appeal. As a result, the appeal was struck out. Consequent to the striking out order, the applicants who had to start all over applied for extension of time registered as Commercial Civil Application No. 124 of 2016 to lodge a fresh notice of appeal. The application was dismissed. Following the dismissal, the applicants unsuccessfully lodged Civil Application No. 449/16 of 2016.

In Reference No. 10 of 2017 preferred, which is the subject of the present application for review, the Court, after pondering on the application before it and referring to the cases of **Fortunatus Masha v. William Shija & Another** [1997] T. L. R. 41 referred in **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006** (unreported), concluded the delay of the applicants was not justified as concluded by the Single Justice hence dismissed the application.

The applicants have invited us to determine again whether or not the notice of appeal, which instituted Civil Appeal No. 81 of 2011, was timely filed, the issue which has already been resolved, is uncalled for. In our view, this invites the Court to re-hear and re-evaluate the evidence. Frankly, the invitation is an appeal in disguise which, by and large, should not be entertained. Moreover, in their affidavit in support of the application, the applicants have not elaborated on the point they would wish the Court to review.

On the remaining parts, which are items (ii) – (iv), the applicants' contention was whether the Court had considered the records in Civil Application No. 449/16 of 2016 and Commercial Application No. 124 of 2016 since they had a feeling that the Court only relied on the affidavit deposed by Dad Karim B. Nurmohamed leaving out annextures. *First and foremost*, upon perusal of the record of the application, we found nothing suggesting that the annextures were not considered. *Secondly*, the applicants have not pointed out in their affidavit in support of any miscarriage of justice occasioned by the alleged failure to consider the said annextures.

Our resolute standpoint is that the Court cannot review anything and everything simply because the applicants are not satisfied with the reasoning and the findings made by the Single Justice and later the Court on Reference. The applicants must visibly indicate and illustrate the error apparent complained about and how the said error has prejudiced them. Failure to do so will undoubtedly

lead to a conclusion that the application lacks merit and deserves dismissal, as we will do in the present application.

We, therefore, dismiss the application for lacking in merit with costs.

DATED at DAR ES SALAAM this 27th day of June, 2023.

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Ruling delivered this 6th day of July, 2023 in the presence of Ms. Hamisa Nkya, learned counsel for the respondents and in the absence of the appellants, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL