IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

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

CIVIL APPLICATION NO. 381/02 OF 2023

DATIVA NANGA..... APPLICANT

VERSUS

JIBU GROUP COMPANY LIMITED.....1ST RESPONDENT

IMMANUEL KOMBE.....2ND RESPONDENT

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

(Ndika, Levira And Makungu, JJA.)

dated the 22nd day of February, 2023

in

Civil Appeal No. 324 of 2022

RULING OF THE COURT

6th & 8th November, 2023

MUGASHA, J.A.:

The applicant is seeking the indulgence of the Court to review its decision in Civil Appeal No. 324 of 2020 handed down on 22/2/2023. The application is predicated on Rule 66(1) (a) of the Tanzania Court of Appeal Rules, 2009. It is premised on the ground that the Court's decision was based on a manifest error on the face of record resulting in the miscarriage of justice. Accompanying the application under scrutiny is the affidavit of Mr. Asubuhi John Yoyo, the applicant's advocate,

In order to appreciate what underlies the present motion, a brief background as gathered from the documents accompanying the application is as follows: The appellant herein was one of the wives of Michael Mollel Saidi Nanga who passed away on 7/12/2014. His son Johannes Michael Mwanga was appointed as the administrator of estate and he distributed to himself a house on unregistered land at Kijenge Ward in Kimandolu which was sold to the respondents. This prompted a successful complaint by the beneficiaries to have the administrator revoked by the Primary Court and later, the High Court appointed the Administrator General to administer the estate of the deceased.

Among the properties distributed to the heirs included the house which was entrusted to the appellant. However, the respondents claimed to have purchased the house in question from the deceased. This prompted the applicant to institute a suit claiming that the land in question belonged to her late husband and it was allocated to her by the Administrator General as the administrator of estate of her late husband. The applicant's claim was dismissed and the respondents were declared lawful owners.

Undaunted, the applicant unsuccessfully appealed to the Court whose decision is a subject of the present review application.

In the course of hearing, the applicant's counsel abandoned three grounds and remained with only two grounds on which the applicant believe that the decision was based on manifest error resulting in the miscarriage of justice. The said two grounds are as reproduced hereunder:

> ***"i)*** *THAT, this honourable court based its decision from an annexure found at page 56 - 60 of the record of appeal, which was never admitted in evidence and never formed part of the trial court records, this Court made a misguided conclusion from the said annexture,* ***declaring the disqualified administrator to have fully discharged his mandate before disqualification, and that Arusha Urban Primary Court had nothing to revoke in respect of the disputed property when it made its order on 15th April, 2011 the declaration that offends and contradicts****, the settled position of the law over the powers of appointing court before official closure of probate cause as clearly couched under*

paragraph ***5, and 11 of the 5th SCHEDULE TO MAGISTRATE COURT ACT CAP 11 OF THE REVISED LAWS OF TANZANIA reading together with rule 10(1) and (2) of the PRIMARY COURT (ADMINISTRATION OF ESTATE) RULES GN 49/1971.***

ii) ***THAT, this honourable court grossly erred*** *in law by failure to appreciate the marked distinction between the circumstance in* ***AHMED MOHAMED AL LAA MAR VS FATUMA BAKARI AND ASHA BAKARI, CIVIL APPEAL NO. 71 / 2021*** *where the court overturned the revocation of administrator made by the High Court and pronounce itself over impossibility to revoke an appointment of administrator who had already filed inventory and closed the probate case in question almost 23 years before application for such revocation, in the case under consideration, the revocation was made by appointing court before formal closure of the case and before filing of inventory, this court misapplied the principle and* ***RATIO DECIDENDI it previously made AHMED MOHAMED AL LAA MAR***

case, henceforth the serious failure of justice."

In amplifying the said grounds, Mr. Asubuhi submitted that given that the Primary Court Order revoking the appointment of the first administrator was not tendered at the trial, it was wrongly acted upon by the Court in the impugned decision at pages 17, 18, 19 and 22 to conclude that the first respondent was a *bonafide* purchaser whose right could not be revoked because he had purchased the property before the appointment of the first administrator was revoked.

Moreover, it was argued that, given that the first administrator of estate was not yet discharged, and since the revocation of the initial appointment was before the closure of the probate cause and before filing the inventory, in the impugned decision, the Court misapplied the principle stated in the case of **AHMED MOHAMEDAL LAA MAR Vs FATUMA BAKARI AND ASHA BAKARIM**, Civil Appeal No. 71 of 2012 (unreported) as the Court held;

"Given the fact that the appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had

already exhibited the inventory and accounts of the High Court, there was no granted probate which could have been revoked or annulled in terms of section 49(1) of the Act."

With this submission, believing that the aforesaid constitute a manifest error on the impugned decision which occasioned miscarriage of justice, Mr. Asubuhi urged the Court to review it.

On the other hand, the application was opposed by the respondents who were represented by Mr. Stephano James, learned counsel. In his brief focussed submission, besides contending that the grounds raised by the applicant are grounds of appeal which fall short of the threshold warranting the Court to invoke the review jurisdiction. He argued that the grounds raised call upon the Court to embark on the analysis, evaluation of the law and its application on the facts which is not tenable in review. He further contended that, given that the Court in the impugned decision considered the propriety or otherwise of including in the inventory by the Administrator General the property which was already sold to the first respondent by the first administrator, on the basis of the sale agreement dated 15/1/2011, it was correctly concluded that the first respondent was a *'bonafide* purchaser having bought the property in

question from the first administrator before his revocation on 15/4/2011. Thus, pertaining to the alleged misapplication of the law, it was argued that besides revoking the appointment of the first administrator, the Primary Court was not mandated to revoke the concluded sale agreement of the property in question which was the gist of the Court's determination in holding that the first respondent was indeed a *bonafide* purchaser. Finally, the respondents' counsel urged us to dismiss the application with costs.

In rejoinder, besides repeating his earlier submission, Mr. Asubuhi contended that, the basis of the sale agreement was the Primary Court order which was not exhibited at the trial. Reiterating his earlier prayer, he urged us to review the impugned decision.

Having considered the rivalling submissions and the record before us, the issue for determination is whether the applicant has made out a case warranting the Court to invoke its review jurisdiction.

The Court is clothed with review jurisdiction under section 4(4) of the Appellate Jurisdiction Act (Cap 141 R.E. 2002) so as to ensure that a manifest injustice does not go uncorrected. In this regard,

according to Rule 66(1) of the Rules the grounds upon which a review can be sought are as hereunder:

"66(1) The Court may review its judgment or order, but bot application for review shall be entertained exception the following grounds: -

(a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or

(b) A party was wrongly deprived of an opportunity to be heard; or

(c) The court's decision is a nullity; or (d) the court had no jurisdiction to entertain the case; or

(d) The jurisdiction was procured ıllegally or by fraud or perjury."

Given the limited scope on which a review of the Court's decision can be sought, it goes without saying that the review jurisdiction is a residual power which can sparingly be invoked on solely the prescribed grounds. Since the applicant contends that the impugned Court's decision was based on manifest error on the face of the record resulting in the miscarriage of justice, this application

hinges on Rule 66(1) (a) of the Rules which will be our focus in the determination of this application. Prior to that, we deem it pertinent to traverse on the principles governing review as established in case law in both within and outside this jurisdiction. In the case of **CHANDRAKAT JOSHUBHAI PATEL Vs. REPUBLIC** (2004) TLR 218 the Court the made the following observation as to what amounts to an error manifest on the face of the record as follows:

> *" It is, we think apparent that there is a conflict of opinion as to what amounts to an error manifest on the face of the record and it is important to be clear of this lest disguised appeals pass off for applications for review. We say so for the well-known reason that no judgment can attain perfection but the most that courts aspire to is."*

As to what errors would justify a review, in the case of **PETER NG'HOMANGO vs GERSON A. K. MWANGA AND ANOTHER**, Civil Application No. 33 of 2002 (unreported) the Court made the following observation having stated thus:

> *"It is no gainsaying that no judgment however elaborate it may be can satisfy each of the parties to the full extent. There may*

be errors of inadequacies here and there in the judgment. But these errors would only justify a review of the Court's judgment if it is shown that the errors are obvious and patent."

Yet, what is an apparent and patent error was discussed in the case **CHANDRAKAT JOSHUBHAI PATEL VS. REPUBLIC** (supra) and the Court adopted the reasoning in **MULLA** 14 Edition at pages 2335 - 36 thus:

"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 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...."

The law also frowns on invoking review jurisdiction as an appeal through the backdoor as underscored in the case of **PATRICK SANGA VS REPUBLIC**, Criminal Appeal No. 8 of 2011 (unreported), as the Court stated:

> *"The review process should never be allowed to be used as an appeal in disguise. There must be an end to litigation; be it in Civil or Criminal proceedings. A call to reassess 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 lime it 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 of the land is final and its review should be an exception. That is what sound public policy demands."*

[See also: **BLUE LINE ENTERPISES LTD, VS THE EAST AFRICAN DEVELOPMENT BANK, (EADB)** Civil Application No. 47 of 2010 and **RIZALI RAHABU V. REPUBLIC**, Criminal Appeal No. 4 of 2011 (both unreported).

It can be discerned from the stated principles that an application seeking review of the Court decision can succeed if: **one**, there is a manifest error on the face of the record in that the error is not a mere error of law; **two**, the error has no dispute, it is clear, obvious and patent, **three**, the error is not one which can be established by a long drawn process of reasoning in which there may conceivably be two opinions; **four**, the error is a good ground for a review and not for an appeal. See: **EAST AFRICAN DEVELOPEMENT BANK VS BLUELINE ENTERPRISES TANZANIA LIMITED** (supra).

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

Having carefully scrutinised, the notice of motion, the affidavit and the lengthy submission of the applicant's counsel, the issue for determination is whether the applicant has made out a case warranting the Court to review its decision. Our answer is in the negative and we shall explain.

In the wake of settled law that an erroneous decision is not a ground for review except where it is manifest in the face of the record and has resulted in miscarriage of justice, on the part of the

applicant, besides stating that errors exist, she fell short of demonstrating if such errors are manifest on the face of record. That apart, it is settled law that an error that it is apparent on the face of the record must be self-evident not requiring an elaborate argument to be established. However, what is proposed by the applicant is not an obvious and patent error because it entails establishing the alleged error by a long process of reasoning on points which may be conceivably two opinions which does not meet the criteria of review. Moreover, the complaint that the impugned decision is based on the annexture which was not exhibited at the trial is a clear invitation on the Court to re-evaluate and re-assess the trial evidence which is not tenable in review. We say so because seeking the re-assessment and re-evaluation of the evidence in the record for finding the error, is tantamount to the exercise of appellate jurisdiction which is not permissible because the Court will not sit as a Court of Appeal from its own decisions. See: **RIZALI RAHABU VS REPUBLIC** (supra) and **MEERA BHANA VS NIRMALA KUMRI CHOUDURY** (1955) SCC India).

Without prejudice to the aforesaid, in the impugned decision in disposing of the 1st and 2nd grounds of appeal at pages 16, 18, 19,

22 relying on the sale agreement, the Court finally and conclusively determined the dispute having been satisfied that the 1st respondent was a *bonafide* purchaser given that he purchased the property in question from the first administrator before his appointment was revoked. Besides, from the submissions of the applicant's counsels on misapplication of the principle laid in the case of **AHMED MOHAMEDAL LAA MAR VS FATUMA BAKARI AND ASHA BAKARI** (supra), the applicant seems to be aggrieved by the Court's decision and is challenging the merits of impugned decision which dismissed her appeal which is untenable because a mere disagreement with a view of Judgment or that one of the parties in the case conceived himself to be aggrieved by the Court's decision is not a ground for review. See: **PETER NGHOMANGO VS GERSON M. K MWANGA & ANOTHER** (supra) **RIZALI RAHABU VS REPUBLIC** (supra) and **DEVENDER PAL SING VS STATE, NCT OF NEW DELHI & ANOTHER**, Review petitions 497, 629, 627 of 2002 (SCC).

In view of what we have endeavoured to discuss it is glaring that as earlier stated, the applicant has not made out a case for review and instead, she was all out to re-open the rehearing of the

appeal which at any stretch of imagination does not fall within the ambit of the grounds warranting the Court to invoke its review jurisdiction. Thus, we find the application not merited and it is hereby dismissed with costs.

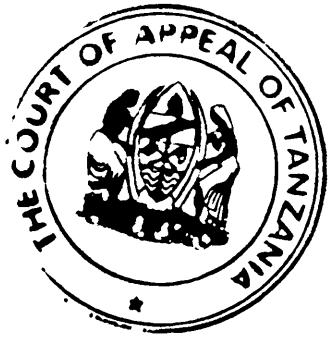
DATED at **ARUSHA** this 8th day of November, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

This Ruling delivered this 8th day of November, 2023 in the presence of Mr. Dereck Andrew, learned counsel for the Applicant and Mr. Stephano James, learned counsel for the Respondent, is hereby certified as a true copy of the original.



A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL