IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: LILA, J.A., SEHEL, J.A., And KHAMIS, J.A.)

CIVIL APPLICATION NO. 135/8 OF 2021

SIMON KICHELE CHACHA..APPLICANT

VERSUS

AVELINE M. KILAWE...RESPONDENT

(Application for Review of the Judgment of the Court of Appeal of Tanzania at Mwanza)

(Mugasha, Wambali, and Sehel, JJ.A)

dated the 26th day of February, 2021

in

Civil Appeal No. 160 of 2018

RULING OF THE COURT

31st October & 10th November, 2023

KHAMIS, J.A.:

We are called upon to determine whether there is an apparent error on the face of the record in the judgment of the Court in Civil Appeal No. 160 of 2018 which involved parties herein. Simon Kichele Chacha, hereinafter to be referred to as the applicant or Chacha, is aggrieved by that decision delivered on the 26th day of February, 2021 hence this application for review.

The application was brought by notice of motion made under section 4 (4) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 (the AJA) and rule 66 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules)

seeking a review for purposes of rectifying the errors alleged to be apparent on the face of the record. The grounds enumerated in the notice of motion were amplified in the applicant's affidavit supporting the application sworn on 12th day of March, 2021, to wit:

i) *The Court mistakenly made a finding that the two lower courts made concurrent findings of the fact that the respondent was avoiding the applicant while the finding of the District Court condemned the respondent, whereas the High Court was silent on it.*

ii) *The Court mistakenly ignored dealing independently with the fact that the respondent had been avoiding the applicant although the District Court made its finding clear that the respondent was so avoiding.*

The background giving rise to this application is that, the parties executed a written loan agreement on 14th May, 2012 through which the applicant was extended a loan of TZS. 2,600,000.00 repayable in three months' time. It was a term of agreement that the loan would attract a 30% interest thereon. The loan was secured by a landed property, a house on Plot No. 579, Block U, Mutex area, Musoma Township, C.T No. 35994.

The applicant repaid TZS. 400,000.00 but defaulted to settle the balance thereof. Subsequently, parties differed on the total outstanding sum with the applicant alleging that the accrued interest cumulating to

TZS. 8,000,000.00 was exaggerated. The applicant who was willing to repay TZS. 2,000,000.00 only as outstanding sum, asserted that, the figure was unreasonably high and could not be raised. His proposal was out rightly rejected by Aveline Kilawe, hereinafter referred to as the respondent or Kilawe.

Determined to resolve the strife, Chacha lodged a complaint in the District Court (also referred to as the trial court), which entered judgment in favour of Kilawe. On appeal to the High Court (also referred to as the first appellate court), the trial court's findings were upheld but the interest rate was reduced from 30% to 5%. In totality, the High Court ordered Chacha to repay TZS. 2,200,000.00 being the principal amount and interest thereon at the rate of 5% per month from September, 2012 to the date of full and final payment.

Disgruntled, Chacha preferred an appeal to the Court, Civil Appeal No. 160 of 2018 which was premised on five grounds of appeal, namely:

1. *That the learned High Court judge erred in law to grant the respondent 5% interest per month from the date of signing the loan contract when the respondent is not the legally authorized and or licenced registered money lender.*
2. *That the learned High Court judge erred in law to condone and or legalize loan contract tainted with illegality of the respondent on*

unauthorized money lender to grant loan upon charge of shylocks exorbitant loan interest.

3. *That the learned High Court judge erred in law when she failed to take into consideration that the respondent used to evade payment of his principal loan money TZS. 2,000,000.00 with interest of TZS. 600,000.00 total TZS. 2,600,000.00 from the appellant with intent to create unnecessary increase of illegal interest and bill of costs.*
4. *That the appellant had paid the respondent TZS. 400,000.00 out of TZS. 2,600,000.00 and is only indebted to the respondent TZS. 2,200,000.00 which the appellant tried to pay the respondent who refused to receive the same for want of taking my collateral house bond.*
5. *That judgment of the High Court was against the provisions of section 24 of the Banking and Financial Institutions Act No. 5 of 2006.*

In determining the appeal, this Court summarized the undisputed facts and found that, there was one contentious issue: whether the order of the High Court requiring Chacha to pay interest on the outstanding sum at the rate of 5% per month was justifiable. In order to resolve the issue, we examined the disputed agreement (Exhibit P1) and applied the principle of sanctity of contract in holding that the agreement had all attributes of a valid contract.

Having analyzed that issue, we concluded that, Chacha was a free agent and of sound mind at the time of execution of the agreement and therefore must adhere and fulfil its terms and conditions. Further, we found that, the High Court's decision to reduce the interest rate from a contractual rate of 30% to 5% per month was sound in law based on the circumstances of the case.

When this application was called on for hearing, both parties were present in person, unrepresented. Since the two of them are laypersons, they did not have much to submit on the application before us other than referring to the already filed documents. Whereas the applicant adopted contents of the affidavit in support of the application, the respondent espoused the substance of the affidavit in reply.

The applicant registered dissatisfaction on the manner this Court handled the allegation on the respondent's avoidance of him when he was ready and about to repay the money. He deposed that, at pages 7, 8 and 9 of the trial court's decision, such alleged behavior was condemned but no similar step was taken by the High Court. He capped that, since that issue featured on record, it was wrong for the Court to avoid addressing it on the ground that the two lower courts had given concurrent findings of facts.

In reply, the respondent contended that, the applicant's dissatisfaction on the way the Court treated factual issues amounted to a ground of appeal as it was not a clerical error to constitute review. He asserted that, the Court made a justifiable finding as the applicant breached the agreement and must be held accountable. Further, he deposed that, the two lower courts did not have concurrent findings of facts on the issue in contest.

Under section 4(4) of the AJA and rule 66(1) and (6) of the Rules, the Court may review its decision *inter alia*, on the grounds that: the decision was based on manifest error on the face of the record resulting in miscarriage of justice; a party was wrongly deprived of an opportunity to be heard; the Court's decision is a nullity; the Court had no jurisdiction to entertain the case; and; the judgment was procured illegally, or by fraud or perjury.

The applicant contended that, there is a manifest error on the face of the record resulting into the miscarriage of justice. An error on the face of the record is one that is self - evident and does not require elaborate arguments to be established. See **Chandrakant Joshubhai Patel v. Republic** [2004] T.L.R 218; **Masudi Said Selemani v. Republic**, Criminal Application No. 92/07 of 2019 and; **Justus Tihairwa v. Chief**

Executive Officer, TTCL, Civil Application No. 131/01 of 2019 [both unreported].

The question to be resolved is whether there is any such mistake or error on the face of the record. The Court's judgment handed down on the 26th day of February, 2021 which is the subject of this review, addressed the contention whether Kilawe had avoided Chacha when the latter was about to timely repay the loan. At page 10 of the typed judgment, we observed that:

> *"Lastly, we do not see the need to venture on the complaint that, the respondent had been avoiding the appellant. This is an issue of fact which was adequately considered and determined by the two lower courts. This being a second appeal, we refrain in interfering with lower court's concurrent findings of fact. We held the same view in **Amratlal Damodar Maltaser & Another t/a Zanzibar Silk Stores v. A.H. Jariwalla t/a Zanzibar Hotel** [1980] T.L.R 31....."*

On the substance of the applicant's averments, he is of the view that, subsequent to execution of the loan agreement, he repaid the sum of TZS. 400,000.00 as the first instalment. Later on, he was willing to repay the balance but the respondent kept avoiding him in order to block the repayment. He believes that, the respondent's conduct was geared to

unjustifiably realize his mortgaged property, a conduct that culminated to the filing of the dispute in the trial court.

The applicant further believes that, the District Court and the first appellate court did not have concurrent findings on the alleged facts and therefore, faults the reasoning of this Court in refraining to address the issue in details. In our view, this assertion is analogous to asking the Court to sit on appeal of its own decision and reverse it. We are also of the opinion that, when a party believes that the Court should have reached a different conclusion or the decision was erroneous in substance, such are matters fit for appeal rather than review whose realm is limited.

In the Kenyan case of **Republic V. Advocates Disciplinary Tribunal & Exparte Apollo Mboya**, Misc. Application No. 317 of 2018 [unreported] it was held that, the process of reasoning cannot be treated as an error apparent on the face of the record justifying an exercise of the power of review. We subscribe to this legal stance which reflects the correct legal position on review and fits the circumstances of this case.

Similarly, in our view, the applicant's prayer entails a re-appraisal of the evidence adduced in the trial court and re-consideration of the issues covered in the impugned decision to establish whether or not the applicant was avoided by the respondent when he was ready and willing to repay the loan. We think, this latitude is taking us beyond the scope of review.

In the circumstances, we find no material to support the assertion that, there exists a manifest error on the face of the record as per the legal dictates for which an order of review may be made. Accordingly, we find no difficulty in concluding that, the applicant has not met the legal threshold for review as required under section 4 (4) of the AJA and rule 66 (1) and (6) of the Rules.

In view of the above analysis, and the conclusions that ensued, it is irresistible for us to thrash out that the application is devoid of merits and thus, must fail. Consequently, we are constrained to dismiss it with costs to the respondent. It is so ordered.

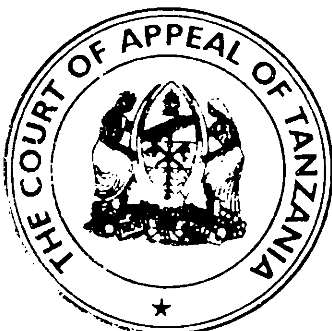
DATED at **MWANZA** this 9th day of November, 2023.

S. A. LILA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Ruling delivered this 10th day of November, 2023 in the presence of applicant in person, unrepresented, and respondent in person, unrepresented, is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL