IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: SEHEL, J.A., KENTE, J.A. And MASOUD, J.A.)

CIVIL APPLICATION NO. 429/01 OF 2022

HOOD TRANSPORT COMPANY LIMITED ..... APPLICANT

VERSUS

EAST AFRICAN DEVELOPMENT BANK ... . RESPONDENT

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

(Mwarija, Sehel, And Fikirini J.J.A.)

Dated the 21st day of June, 2022

in

Civil Appeal No. 262 of 2019

RULING OF THE COURT

6th & 20th February, 2024

KENTE, J.A.:

On 21st June, 2023, this Court delivered its judgment in Civil Appeal No. 262 of 2019 upholding the decision of the Commercial Division of the High Court which had ordered the applicant herein namely, Hood Transport Company Limited to pay the respondent East African Development Bank a total of USD 776,282.98 being unpaid rental arrears, accrued interest and penalties, following the applicant's breach of a lease agreement entered into by the parties herein on 22nd October,2007. In that agreement, the respondent had leased its seven

buses (make Scania Marcopolo Torino, Model F41HB4X 2220) to the applicant.

By this application, the applicant seeks to have the said decision by this Court reviewed on the grounds that it was based on a manifest error on the face of the record resulting into a miscarriage of justice as the Court failed to rule on ground number three of the grounds of appeal which faulted the trial court for expunging paragraphs 7, 9, 10 and 11 of the applicant's witness statement. Moreover, in the second ground of review, the applicant claims that, this Court erred when it failed to hold that the rejection of documentary exhibits by the trial court was erroneously made by the trial Judge before the said exhibits were tendered in evidence.

The facts giving rise to the case before the trial court and subsequently to the appeal to this Court were briefly to the following effect: On 22nd October, 2007, the parties to this application entered into a lease agreement whereby the respondent leased its seven buses to the applicant. However, in the course of making monthly payments of the hire charges, the applicant defaulted thereby prompting the respondent to successfully institute the earlier mentioned suit.

After hearing the parties and being satisfied that the case against the applicant had been made out and further noting that indeed, the applicant was in breach of the lease agreement, the trial court entered judgment in the respondent's favour as stated earlier.

Dissatisfied with the decision of the trial court, the applicant vainly appealed to this Court, hence the present application.

In his affidavit in support of the application, Mr. Magafu learned advocate who also appeared before us to represent the applicant deposed that, during the hearing of the appeal the third ground of appeal, was argued by the applicant's counsel to the effect that the trial judge misdirected herself in expunging some paragraphs of the applicant's witness statement, and that, she wrongly applied Rule 53 of the High Court (Commercial Division) Procedure Rules (GN 250 of 2012) (hereinafter the Commercial Court Rules). The affidavit also discloses that, Mr. Magafu verily believed that the Court did not pronounce itself on that particular complaint. He went on contending in his supporting affidavit that, he believed that failure to rule on that ground was a manifest error on the face of the judgment which resulted into a miscarriage of justice. Elaborating, Mr. Magafu averred that, as a result

of the said error, the applicant has been unduly saddled with a new debt amounting to USD 1,1139,640.40 arising out of the lease agreement which was, however, fully serviced by the applicant as would have been proved through the expunged paragraphs in the witness statement.

At the hearing of the application on 6/2/2024, the applicant was represented by Mr. Majura Magafu, learned advocate while the respondent's case was advocated for by Mr. Gabriel Mnyele, learned advocate. Notably, both counsel had in terms of Rule 106 (1) and (8) of the Tanzania Court of Appeal Rules, 2009 (hereinafter the Rules) filed written submissions each in support of his respective position in this application. Although the applicant did not make any specific prayer in the notice of motion, our understanding was that, and this was reflected in Mr. Magafu's brief oral arguments which he presented with emotional intensity urging us to allow the application, quash and set aside the judgment and decree of this Court and in lieu thereof, direct the Court to recompose another judgment canvassing among other grounds, ground number three which was allegedly not decided by the Court in its impugned decision. In essence, therefore, at the hearing of the application, Mr. Magafu's arguments mirrored the material contents of his supporting affidavit.

Submitting in reply, Mr. Mnyeie took pains to make a clear exposition of the law regarding the principles required to govern the Court when dealing with any application of the present nature. Among others, the cases of **Abdi Adam Chakuu v. Republic,** Criminal Appeal No. 2 of 2012 and **Karim Ramadhan v. Republic,** Criminal Appeal No. 25 of 2012 (both unreported) were cited to underscore the established principle that, the review jurisdiction of this Court should not be invoked so as to be used as an appeal in disguise. It was also submitted that, it is only an error on the face of the record the existence of which should not be disputed, which will support review and, on this point, Mr. Mnyele referred us to some of our earlier decisions including the cases of **Chandrakant Joshubhai Patel v. R.** [2004] T.L.R. 218 and **Austack Alphonce Mushi v. Bank of Africa Limited & Another**, Civil Application No. 644/06 of 2021 (unreported).

Moving forward, Mr. Mnyeie contended that, looking at the impugned judgment of the Court, the two grounds of review advanced by the applicant are neither manifest nor ascertainable on the face of the judgment. Based on the foregoing argument, it was submitted that the applicant's written submissions extending from page 2 to page 5 are nothing but a long chain of arguments. As a consequence, the learned

counsel concluded that, this by itself, brings this application into question.

Turning to the specifics of this application, Mr. Mnyele submitted that, the grounds advanced by Mr. Magafu in support of the application were not tenable at law. With regard to Rule 53 of the Commercial Court Rules, quoting from page 13 of the impugned judgment, the learned counsel submitted that, the third ground of appeal was well canvased and determined by the Court. He also referred to pages 10,11,12,13 and 14 of the type-written judgment to insist on the argument that, indeed in its judgment, the Court went into and finally resolved the third ground of appeal, of course, depending on where the law and the truth lay.

There are two issues to resolve in view of the facts and arguments relating to this application. Firstly, is whether there are any errors on the face of the judgment of the Court which is sought to be reviewed and secondly, if the said errors, if any, had resulted into a miscarriage of justice.

We would like to begin our consideration of this application by stating, but without commenting on the merits or demerits of this application at this point that, just like in any other application for review,

the present application presents an almost unsurmountable challenge to the applicant. This is so, because, as a general rule, in an application for review, the hands of this Court are more or less tied in a strait jacket. The Court has very little wriggle room, if at all, with respect to the grounds and circumstances under which it is allowed to review its own decision.

In the same vein, we have in the past held, on several occasions that, the review jurisdiction of this Court as provided for under Rule 66 (1) of the Rules, was not intended for the aggrieved parties to reopen their grievances and that the said provisions must be invoked sparingly and only in the deserving and rarest of cases. This position is what was quite eloquently stated by this Court in the cases of **Patrick Sanga v. Republic,** Criminal Application No. 8 of 2011 and **Eliya Anderson v. Republic,** Criminal Application No. 2 of 2013 (both unreported). In the first cited case, the Court had the following to say, of which we must warn all litigants who come before us to seek for review, thus:

> *"The review process should never be allowed to, be used as an appeal in disguise"*

Needless to say, the above approach which we have always taken is founded in the appreciation expressed by the Court in the same case 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 backdoor. 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 an exception."*

In the case of **Eliya Anderson** (supra) in which the same issue regarding the herculean task cast upon the applicant in an application for review arose again, it was once again held, but in short terms, that:

> *"A judgment of the final court is final and a review of such judgment is an exception."*

As it can be seen from these two decisions and many others which we can hardly cite here, this Court has never wavered in its consistent position regarding the rule that, the review jurisdiction of this Court should never be allowed to be used by the aggrieved parties as an

appeal in disguise. That is what we have stated on numerous occasions as to become settled law which we are obliged to hold in high esteem.

Coming to the application now under review and as we have already indicated earlier in this ruling, the question is whether or not the applicant has demonstrated that there is a manifest error on the face of the record which resulted into a miscarriage of justice. Put in other words and for the sake of brevity, we are enjoined to determine albeit very briefly the question as to whether or not, the Court had canvassed the third ground of appeal in its judgment.

We wish to point out here that, we shall not belabour or rehash on the second limb of the applicant's complaint which, faults the Court for allegedly the failure to uphold the applicant's complaint that rejection of documentary exhibits was made before they were tendered in evidence. In this connection, we need to emphasize here, as we did in **Karim Ramadhan** (supra) that, it is not sufficient for purposes of paragraph (a) of Rule 66 (1) of the Rules, for the applicant to merely allege that the decision of the appellate Court was based on manifest error on the face of the record if elaboration of those errors disclose the grounds of

appeal rather than manifest errors on the face of the decision sought to be reviewed.

We are alive to the fact and there is no dispute between the parties that, before this Court, the applicant had presented five grounds of appeal one of which being ground number three which faulted the trial Judge for expunging some paragraphs from the applicant's witness statement which the applicant contends that, it was yet to be adopted as part of the evidence before the court.

We have thoroughly gone through the judgment of the Court and discerned as did Mr. Mnyele that, indeed, the third ground of appeal which was in relation to the interpretation of Rule 53 of the Commercial Court Rules was well and fully canvassed by the Court in its judgment. A perusal of the said judgment reveals that the Court particularly pronounced itself on the third ground of appeal when it observed (at page 13 of the typed judgment) that:

> *"Similarly, his (Mr. Magafu's) argument that the expunging of paragraphs should have come after the witness statement's admission rather than before has no basis. This is because the witness statement becomes and forms part of the record*

upon admission, thus could not be challenged after its admission."

Moving forward, but still on the same point, the Court went on observing at page 14 that:

> *"Reverting to the appeal before us, we find that the trial judge acted accordingly after being satisfied with the status of the intended to be relied on documentary evidence as being in-admissible. It is our firm view that, the appellant was neither denied the right to be heard nor did the trial judge misdirect herself when she expunged the controversial paragraphs. We find these two grounds lacking in merit and accordingly dismiss them."*

It must be recalled that, the above-quoted finding was made by the Court in respect of the applicant's second and third grounds of appeal which were considered and determined together.

The net effect of the above discussion is that, as it can be seen, contrary to the applicants' complaints, the third ground of appeal was considered along with the second ground and finally determined by the Court. Given the circumstances, we would, on a balance of probabilities, accede to Mr. Mnyele's argument that the appellant's complaint is

intrinsically a ground of appeal rather than a disclosure of manifest errors on the decision of the Court. In this regard, it goes without a hitch that, this application is unfounded and we thus dismiss it with costs.

DATED at **DAR ES SALAAM** this 19th day of February, 2024.

B. M. A. SEHEL
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Ruling delivered this 20th day of February, 2024 in the presence of Mr. Elinas Kitua, learned counsel for the applicant and Mr. Gabriel Mnyele, learned counsel for the respondent is hereby certified as a true copy of the original.

O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL