

IN THE HIGH COURT OF TANZANIA

AT TABORA

CIVIL REVISION NO. 2 OF 1998

(Being Application to Revise, Tabora District
Court Civil Appeal No. 9 of 1996)

JUMA RAJABU - APPLICANT

V E R S U S

1. TAUSI ALLY)
2. MOHAMED MASONGEZI) - RESPONDENT

R U L I N G

MASANCHE, J.:

This matter was before me early this year and I thought the directions in the judgment delivered on 16th February, 1999, were complied with. The directions were not complied with. The matter has come back to me and I am being asked to review my ruling dated 16th February, 1999. For better appreciation of the unusual matters in this case, I reproduce the ruling of this Court dated 16th February, 1999:
It reads:

"In the High Court of Tanzania

At Tabora

Civil Revision No. 2 of 1998

(Being Application to Revise Tabora District
Court Civil Appeal No. 9 of 1996)

JUMA RAJABU - APPLICANT

V E R S U S

1. TAUSI ALLY)
2. MOHAMED MASONGEZI) RESPONDENTS

R U L I N G

MASANCHE, J.:

Civil Appeal No. 7/96 of the Court of Resident Magistrate Tabora which originated from Civil Case No. 55/96 of the Urban Court of Tabora was or is between Tausi Ally and Mohamed Msongezi. It was, to be exact, a probate matter. Mohamed Masongezi was declared an Administrator of the estate and heir. An objection was raised by a person called Juma Rajabu, but the objection was thrown overboard. Now, Juma Rajabu ^{has} ~~come~~ to this Court (High Court) asking for a revision of an order of the Court of Resident Magistrate confirming Mohamed Masongezi to be an Administrator of the estate of the late Masongezi. The application for a revision is purportedly being made under s. 44(1)(11) of the Magistrates Courts Act.

I have gone through the record, I do not see what can be revised. I do not see any error apparent on the face of the record. And the matter is not coming here by way of appeal, although it looks like an appeal in disguise.

The application is incompetent and it is struck out; with costs. If there is any grievance with any order or ~~a~~ ruling of the Court of Resident Magistrate, it should come here ~~by~~ way of appeal.

J. E. C. Masanche,
Judge.

At Tabora.

16th February, 1999.

Present: Tausi Alli - respondent

Juma Rajabu - applicant

Mohamed Msongezi - respondent."

That was the ruling:

Now, before me now is an application taken by Mr. Kwikima, learned advocate for the applicants, this time asking me not to revise the proceedings but review them. No provision of any law has been cited to back up the application. The application taken by Mr. Kwikima, is, again, not signed by the District Registrar. It however, was presented for filing on 18/3/1999, well over the statutory limitation period for such applications. The application reads:

"Chamber Summons

LET PARTIES CONCERNED attend his lordship the judge in chambers on the day of 1999 at 9.00 o'clock in the forenoon as soon thereafter as practicable.

UPON the hearing of application for the following orders:

- (i) the order dismissing the objection be reviewed.
- (ii) the applicant's house be reinstated to him.
- (iii) the respondent pay costs of the review.

The affidavit of JUMA RAJABU attached hereto as well as facts and reasons to be adduced at the hearing shall be relied upon by Counsel.

Issued under my hand this day of
1999.

.....
DISTRICT REGISTRAR

This chamber summons and application has been taken
out by M. H. A. Kwikima Advocate P.O. Box 280, Tabora,
Counsel for applicant."

"REASONS FOR REVIEW

The applicant, whose objection to the
alienation of his house in a suit to which he was
not party, being aggrieved with the Court order
not to consider his objection and to order him
to lodge appeal instead, seek the review of the
order on the following grounds; that:-

1. The applicant could not appeal as
he was not party to the original
case. Indeed he was puzzled to
receive a Court direction calling
upon him to surrender his tittle
deed. .
2. The objection lodged by the appellant
was due to the fact that his house
was to be seized on a decree which
does not name him the judgment-debtor.
3. The direction ordering him to surrender
his house was made without giving him
opportunity to be heard.

WHEREFOR: The applicant prays that the order dismissing his objection be reviewed so that he retains the house deprived without any or any just cause.

Sgd.:
APPLICANT

VERIFICATION: What is stated above is true to the best of my knowledge.

Dated at Tabora this 18th day of February 1999.

Sgd.:
APPLICANT

Presented for filing this day of February, 1999.

Sgd.

.....
REGISTRY OFFICER"

That application is supported by an affidavit, of one Juma Rajabu which reads, and I quote it in full:

"A F F I D A V I T

I, JUMA RAJABU, Tanzanian citizen of the Moslem faith, of Ng'ambo Road Tabora Municipality solemnly affirm and state that:-

1. I was not party to Tabora Urban Primary Court Deceased Estates Cause No. 9/96.. I only came to know of it when I was served with a Court order directing me to surrender my tittle deed to the respondent Mr Tausi Alli.
2. I then lodged objection in the District Court where the presiding Magistrate dismissed it despite my holding valid tittle and paid rent receipts.

3. I stand to lose my house for no reason
at all and the order dismissing my
objection should be reviewed so that
I retain ownership of my house.

What I have stated herein is true to the best of my
knowledge.

Sgd.:
DEPONENT.

Affirmed at Tabora before me
in my presence this 23rd day
of February, 1999:

Signature:.....

Postal Address.....

Qualification:....."

Now, several matters can be said about this application,
or purported application:

Firstly, the application as I have hinted earlier is
time -- barred. Period for making applications to review
matters is 30 days (see Limitation Act 1971 Part III Item
3.): The ruling of this Court was given on 16th February
1999 and the application was received for filing, here at the
registry, on 18th March, 1999. The application was, therefore
two days late.

Secondly, the applicant, as the reasons for review
suggest, is a stranger to the case that was adjudicated upon
in the District Court. The case in the District Court was
between Tausi Ally and Others and Mohammed Masongezi.
The present applicant, Juma Rajabu, became an objector and
his objection was dismissed by Mwandu Resident Magistrate on
5/5/1998. No appeal was preferred by anyone aggrieved at the
decision of Mwandu, R.M. Instead, an application for revision,

to the High Court was made by Mr. Kwikima, learned advocate on 17/6/98 well over the limitation period of one month.

Actually, what it means is that the High Court could have rejected the application on this ground alone, of limitation.

Thirdly, even assuming that the application by Mr. Kwikima, for a review of the ruling of this Court, dated 16/2/1999, was in time, what would review be for. Here, may I give what an author, R. D. Agarwala, says in The Civil Procedure Code 3rd edition on reviews. He says:

"It is well settled that the power of review is not an inherent power of a judicial officer but such a right can only be conferred by statute".

"A review is practically the hearing of an appeal by the same officer who decided the case."

"A right to review is not an inherent power."

"One Judge cannot set aside an order made by another Judge of the same Court, although it may be wrong."

"A Court is not entitled to review its order without notice of the other side".

"Discovery of fresh evidence is not ground for review in second appeal".

"An error of law is not sufficient reason for granting review".

"The person who wants review should at least prove strictly the diligence he claims, to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, nearly conclusive of the matter. The application for review cannot succeed on the ground of discovery of new and important matter or evidence which after exercise of due diligence could not be produced at the time of passing the decree".

"A Court has jurisdiction to decide wrongly".

"Incorrect interpretation of law is not an apparent mistake on the face of the record".

"An error of law is not sufficient reason for granting review".

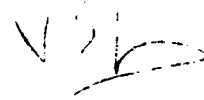
"When appeal is preferred review is out of question, and the party's procedure is to apply to the appellate Court to admit additional evidence."

A review, therefore, will lie, and it is encouraged to lie, when there is a mistake or error apparent on the face of the record. Errors or mistakes apparent on the face of the record, could be many, but could include, a mixture in naming the parties, say where a defendant has been referred to as a plaintiff. Or, where there was a wrong date. Or, where there has been an obvious oversight over a matter in either the proceedings or the judgment. In short, it must be an obvious error which anyone will detect on a mere glance.

So, the purported application before me, even assuming was within time, does not point out what error there is on the face of the record, which needs rectification. For, as I pointed out earlier, a Court has jurisdiction to decide wrongly.

One last point: Mr. Kwikima was to appear to prosecute the "application for a review" before me. He did not turn up. Instead the party himself informed me that he (the party) had abandoned the services of Mr. Kwikima, and that he would conduct the case himself. It would therefore appear to me that gone are the days when Counsels wishing to withdraw from cases would come before the same Court for leave to withdraw. This courteous practice seems to have been abandoned. No Court will compel an advocate continue defending his client. But, certainly, I had thought courtesy and professional etiquette demanded that leave to withdraw from a case should be sought.

This purported application for review is struck out, as incompetent in law. It is struck out with costs.



J. E. C. MASANCHE,
JUDGE.

At Tabora.

21st September, 1999.

Applicant: present.

Respondent: (Both present).