

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL REVIEW No. 5 OF 2020**

(Arising from Misc. Land Application No. 37 of 2019)

BIN KULEB TRANSPORT COMPANY LIMITED.....APPLICANT

Versus

REGISTRAR OF TITLES..... 1st RESPONDENT

COMMISSIONER FOR LANDS.....2nd RESPONDENT

THE ATTORNEY GENERAL.....3rd RESPONDENT

CARGO STAR LIMITED..... 4th RESPONDENT

RULING

24th July, 2020 - 5th November, 2020

J. A. DE - MELLO J;

A Review has been lodged under **Order XLII Rule 1 (1) (a)** of the **Civil Procedure Code, Cap. 33, R.E 2002**, in which the Applicant has advanced only one ground that;

- 1. That, the court inadvertently under looked the fact that following the striking out of Land Appeal No. 3 of 2017 by Hon. A.F Ngwala J; on 20th June 2019 the leave granted by Hon. I.**

P. Kitusi J (as he then was) in Misc. Land Application No. 86 of 2016 suffered the same consequences and, that extension of time granted could no longer be relied upon hence a fresh application for extension of time to serve a fresh notice of appeal under the application sought to reviewed.

Wherefore, the Applicant finds it worth to pray for **Review** to be allowed to **'extend time within which to serve the Notice of Appeal'** to the first Respondent and, costs in the course.

J. I. Rutabingwa Advocate fends the Applicant whereas; the first to third Respondents are in care of **G. Mseti** learned **State Counsel**. Submitting towards the application, **Counsel Rutabingwa** contends that, unless and, until time is extended to file **Notice of Appeal** against the **Registrar of Title**, following its **Struck Out** for being **Res Judicata** and, hence **'Functus Officio'**. That, the ultimate finding of **Stricking Out** of the Appeal also affected, extension that, lead to commence afresh. Counsel cited the case of **National Micro Finance Plc vs. Oddo Odilo Mbunda, Civil Appeal No. 91 of 2016, Court of Appeal of Tanzania at Iringa**, in support of the above position. 

Resisting the submissions, **Counsel Mseti** for the **1st, 2nd and 3rd** Respondents while citing the case of **Chandrakant Patel vs. Republic, (2004) TLR, 218** which sets out grounds for Review to be; **'error manifested on the face of record and second, the decision must result in miscarriage of justice,** of which in **Misc. Land Application No. 37 of 2019** no such errors are found, and, rightly stated that, Appeal could be preferable. Rejoining Counsel for the Applicant opposes the Appeal in as far as **Order XLII Rule 1(1) (a)** of the **Civil Procedure Code, Cap. 33**, Appeal is not preferred but they chose Review, as he reiterates his stance.

I now address this Application by pointing out that, **Review** is meant to re-examine the judgment with a view to amending or correcting an error which had been inadvertently committed, which if it is not reconsidered, will result into a miscarriage of justice. In a Review, the Court should not sit on Appeal against its own judgment in the same proceedings. I am even mindful of the fact that as a matter of public policy, litigation must come to an end hence the Latin Maxim **'Interest rei publicae ut finis litium'**. See **Chandrakant Joshubai Patel (supra)**

The Applicant claims, while emphasizing that it is Revision and, not otherwise as the proper remedy considering **Striking Out of Land Appeal No. 3 of 2017** and, whose outcome from **Application No. 86 of 2016** granting leave to extend time was granted but, inapplicable other than serving a fresh notice. All in fine, looking at law that, this Court has been moved with that, under **Order XLII Rule 1 (1) (a) (supra)**. It is worthy to note that, the Court has not even been moved properly, as in accordance with **General Laws Revision Notice, 2020, Government Notice No. 140** published on **28th February, 2020** made several changes and, now the law used is **Civil Procedure Code, Cap. 33, R.E 2019** as opposed to **R.E 2002**. **Order XLII Rule 1 (1) (a)** and, **(b)** of the **Civil Procedure Code, Cap. 33, R.E 2002** provides for any person considering himself aggrieved by a decree or order from which an Appeal is allowed, but from which no Appeal has been preferred; to apply for the Review whose tests are, the **discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record**, or for any other **sufficient reason**. Record from what the

order had in **Misc. Land Application No. 37 of 2019**, is that the matter was **Dismissed** as opposed to **Struck Out**. Opting for Revision, is misconceived, as nothing credible as required above, has been advanced by Counsel, that of, error on the face of record. The appellant cited the case of **National Micro Finance Plc vs. Oddo Odilo Mbunda, Civil Appeal No. 91 of 2016, Court of Appeal of Tanzania at Iringa** which provides for the position that, **"Once the Appeal is struck out, the incorporated leave to appeal suffers the same consequences"**

Admittedly and, from the factual setting of this matter, we have a different scenario whereby the Review sought is a result of a dismissal for being **Res Judicata** as indicated on page four (4) of the ruling. Similarly, the Court established that, **Miscellaneous Land Application No. 86 of 2016** is the same with **Miscellaneous Land Application No. 37 of 2019**, with nothing pointing out the errors on material on the face of the decision. Strangely not even attaching a copy of the ruling of **Miscellaneous Land Application No. 86 of 2016** for which this Court could make comparisons. In the case of **Karim Kiara vs. Republic, Criminal Appeal No. 8 of 2006, Court of Appeal of Tanzania, at Dodoma** provides for the principles underlying the Review, that;

“First, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The applicant would therefore be required to prove very clearly that there is a manifest error apparent on the face of the record. He will have to prove further, that such an error resulted in injustice (see Dr. Aman Walid Kabourou vs. The Attorney General and Another - Civil Application No. 70 of 1999- unreported). Second, the decision was obtained by fraud. Third, the applicant was wrongly deprived the opportunity to be heard. Fourth, the court acted without jurisdiction (see C.J. Patel vs. Republic - Criminal Application No. 80 of 2002”

It is evident that, nothing from the above principles have been met or proved to allow the Review. It would be incomplete if the case of **Chandrakant Joshubhai Patel vs. Republic [2004] TLR 218** is not captured on what Review attracts as it held; **“(i) There is a manifest error on the face of the record in that the error is not a mere error of law, it has no dispute, it is clear, obvious, patent etc; the error is not one which can be established by a long drawn process of reasoning on which there may conceivably be two opinions; the error is a good ground for a review and not for an appeal etc.”**

(ii) The applicant was not given the opportunity to be heard.”

In the end and, for reasons afore-stated, I find myself constrained to consider and grant the Application, as I find nothing, neither error on the face of the record nor any reasons, to move this Court in that path.

I hereby dismiss the Application it with costs.

It is so ordered.



J. A. DE- MELLO

JUDGE

5th November, 2020