

**IN THE HIGH COURT OF TANZANIA
(DAR -ES -SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

REVIEW NO. 16 OF 2020

(From the decision of this court in PC Civil Appeal No. 96 of 2020)

GERIDA EGINO KAPINGA..... APPLICANT

VERSUS

LUSEKELO NELSON MWAKATIKA..... RESPONDENT

RULING

10th June & 26th July 2021

ACK. Rwizile, J

The applicant once lived with the respondent as husband and wife. Before separation, they had lived under presumption of marriage since 2003 to 2007. They then separated for a while before living together again in 2010 to 2019. Lastly, they decided to part ways. They were however blessed with two issues. Misunderstandings that led to total separation started in 2018. This time the respondent is alleged to have forced the applicant to move out of their matrimonial house. As she refused, she then petitioned Kawe Primary Court for custody of their children and division of the assets jointly acquired. The trial court upon full trial, divided their property (a house) to the ration of 60% and 20% to the respondent and applicant respectively.

On appeal by the respondent, the District Court however assessed the amount of contribution and raised it to 40% share of the value of the house and placed custody of all children to her. The respondent appealed to this court where her share was reduced to 30%. The decision was made on 24th November 2020. Seemingly, the applicant was not satisfied with the decision. She has filed this application advancing one ground of review coached in terms that;

That there is a discovery of a new and important matter or evidence which after the exercise of due diligence, the court failed to analyze that the applicant was employed in pharmacy shop selling medicine and not house wife and she contributed equal as the respondent in acquisition of matrimonial properties especially the house at Salasala.

She therefore prayed that the judgement and order dated 24th November 2020 be quashed and set aside with costs while restoring the decision of the District Court of Kinondoni.

Before me, parties were not represented, but agreed to argue their case by written submissions. The applicant who received legal aid from the Women's Legal Aid Centre submitted extensively on how the property was acquired. According to her submission, the matrimonial assets are subject of equal division as per section 114(3) of Law of Marriage Act. She therefore asked this court to refer to the case of **Lawrence Mefu vs Germana Mtefu**, Civil Appeal No. 214 of 2014 (HC), unreported, the court cited article 13(1) and Article 9(f) of the Constitution of the United republic of Tanzania, as well as article 15 of the Convention on elimination of all forms of Discrimination

Against Women as to have prevented discrimination against women and asked for restoration of the 40% as the district Court did.

On his party, the respondent argued that there is no evidence that proved the applicant is entitled to the share given to her as per section 114(3) of the LMA. According to him, the case of **Bi Hawa Mohamed vs Ally Seif** [1983] TLR 32, clearly shows that there must be evidence to prove the extent of contribution. It was submitted further that the evidence by the applicant did not prove, she is entitled to the share, she is claiming. This court was therefore asked to dismiss the application with costs.

Having considered the submissions, it is apparent that an application for review is filed under section 78 of the Civil Procedure Code. It states thus;

78.-(1) Subject to any conditions and limitations prescribed under section 77, any person considering himself aggrieved-

(a) by decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Code, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

But in order to apply the above provisions successfully, the applicant has to pass through the tests provided for under order XLII of the CPC, which explicitly may be referred as;

- i. There must be a discovery of new and important matter or evidence that was not in the knowledge of the applicant, or
- ii. There is an apparent error on the face of the record, or
- iii. For any other sufficient cause

Discerning from the above, a new point discovered must have not been in the knowledge of the applicant when the cases was heard. I think, basing on the principle of finality of litigation the above must be strictly shown, for the application to succeed. Reiterating the criteria for review, the Court of Appeal, in the case of **Transport Equipment Ltd. vs Devram p. Valambhia**, Civil Application No. 18 of 1993, (unreported), held that ;

"...the court has the inherent jurisdiction to review decisions and it will do so in any of the following circumstances to wit, where there is a manifest error on the face of the record which resulted in miscarriage of justice, or where the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard..."

From the above principles as enunciated in the law and court decisions, it is important to note, if the application at hand has complied with the same. With due respect, it has not. The applicant asked this court to analyse evidence and come out with a different decision. In actual fact, she asked this court to go through its decision and evaluate evidence that she was employed in a pharmacy and so had contributed more than what it has been decided by this court before.

This is not proper. The applicant has not shown a discovered new evidence or point in issue that was not stated in her appeal. She has not shown there is an apparent error on the face of the record. Above all, in appeals, there is no new evidence is needed, unless the court so finds and directs so. From the foregoing, I hold that this application is meritless and should be dismissed as I hereby do. Since the application is from a legal aided person, I make no order as to costs.



Recoverable Signature

X

Signed by: A.K.RWIZILE

A. K. Rwizile
JUDGE
26.07.2021