IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

LAND REVIEW NO. 02 OF 2020

SYLIVIA SOMOE SELEMANI..... APPLICANT

VERSUS

KELEINE LUPEMBE.....RESPONDENT

(Application from the Judgment of the High Court of Tanzania at Dodoma)
Dated 26th day of October, 2017
In
Land Case Appeal No. 60 of 2016

RULING

10thMay&3rdJune,2022

MDEMU, J:.

The Applicant one Sylivia Somoe Selemani filed this application seeking a review of the judgment of this Court in Land Case Appeal No. 60 of 2016 on account that, there are errors material in a judgment and decree which require determination by way of review. The ground is that this Court erred to order the Applicant to pay the Respondent two million as general damages while the Respondent was the one who was supposed to pay the Applicant. Furthermore, there was only one Respondent in the said land Appeal Case No. 06 of 2016. This application is made under section 78, 96 and Order XLII of the Civil Procedure Code, Cap. 33.

The background of this application as gathered from the record is briefly as follows: The Applicant filed an application before District Land and Housing Tribunal of Dodoma vide Application No. 17 of 2015 against the Respondent and one Edward Vincent who was the second Respondent to be declared a lawful owner of the suit land located at Ngototo within Kongwa District. The District Land and Housing Tribunal declared the Applicant the lawful owner of the suit land and awarded her a quantum of damages for her destroyed crops. Aggrieved by such a decision, the Respondent appealed to this court. His appeal was partly allowed in which it was ordered that the first Respondent to pay two million shillings as general damages to the Respondent. It is from that confusion on who was to pay who this application for review has been filed.

At the hearing, the Applicant appeared in person whereas Ms. Joanitha Paul, learned Advocate represented the Respondent. In her submissions, the Applicant stated that, all cereals in the disputed "shamba" was hers. She cultivated the land and planted the said cereals. In the judgment, the said cereals were given to the Respondent. There is no dispute that the land is hers. Therefore, she prayed that what was decreed in the District Land and Housing Tribunal be executed as decreed therein.

In reply, Ms. Joanitha Paulo submitted that, there was only one Respondent. But in the trial and in this Court proceedings and judgment, first Respondent is mentioned. She said therefore that, what requires correction is identification of parties. She added that, the title first Respondent should not be used. She said further that, there was only one Respondent one Sylivia who was ordered to compensate the Respondent.

As to costs and compensation, she stated that, the Court considered the evidence on record and appeal was allowed partly on cereals which were in the land. As to ownership, she said that, the Applicant is the owner. In rejoinder, the Applicant insisted that, she planted and grew crops which in return the Respondent asked someone to harvest.

That being submissions from both parties, the issue to be determined is whether this application has merits. It is trite law that, powers of this Court to review its decision is provided under Order XLVII, Rule 1 and Section 78 of the Civil Procedure Code, Cap 33 which is reproduced as hereunder:

"Any person considering himself aggrieved: -

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred, or

(b) By a decree or order from which no appeal is allowed,

and who from a discovery of a 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 mistaken or error apparent on the face of record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of the judgement to the court which passed the decree or made the order".

It is further provided under the provisions of section 78 of the Civil Procedure Code that:

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 judgement to the court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

The above cited provisions were clarified in the case of **Karim Kyara vs. R, Criminal Appeal No. 4 of 2007** (unreported) where the Court of Appeal stated the following: -

"The principle underlying review is that; the court would have not acted as it had if all the circumstances had been known. Therefore, review would be carried out when and where it is apparent 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 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 v. R, Criminal Application No. 80 of 2002****)".*

Given the foregoing legal position, powers of the court on review are only exercisable where one of the following exists: **One**, there is new discovery of issue which were not to the knowledge of the Applicant and the Court at the time when the decision sought to be reviewed was passed. **Two**, the decision was obtained by fraud. **Three**, a party was not given right to be heard and **four**, the Court acted without jurisdiction.

Back to the case at hand, as said earlier, the case was filed against two Respondents in the trial Tribunal namely Keleine Lupembe who was the first Respondent and Edward Vicent who was the second Respondent. After a full trial, the Applicant was declared the owner of the suit land. The first Respondent on the other hand was restricted to interfere with peaceful occupation of the land of the Applicant herein. Equally, the Applicant was to be compensated on the crops she failed to harvest due to the dispute. When the Respondent appealed to this Court, the appeal was partly allowed. At page 8 through 9, part of the judgment reads as hereunder:

"I have carefully examined the Appellant's application at the trial tribunal and found nothing is mentioned of the

loss of sunflower seeds by the 1st respondent's acts. I therefore find merit in this ground and allow it.

However, I find the appellant was affected by the 1st respondent's encroachment on her parcel of land and she deserves some relief. As stated in ***Tanzania Saruji Corporation vs. African Marble Co. Ltd (2004) TLR 155 P. 157(CAT)***

> ***The position is that, general damage is such as the law will presume will be the direct, natural or probable consequence of the act complained of. The defendant's wrong doing must therefore have a cause, if not the sole or particularly significant, cause of damage.***

In view of the above statement, I find that, the first respondent acts disturbed the peaceful occupation and further disrupted the appellant's farming activities on her parcel of land. In the result and for the above reasons, I partly allow the appeal. I accordingly order the first respondent to pay the appellant 2 million shillings as

general damages. I further order the respondent to have her costs".

From the foregoing position of this court and as parties submitted, it is not disputed that the Applicant herein was declared the lawful owner of the suit land and that, an injunction order was issued against the Respondent herein from interfering with peaceful occupation of the suit land. Again, going by the record, encroachment or trespass to the Applicant's land by the Respondent lead to damages suffered by the Applicant herein. There was no way, under the circumstances, the Applicant herein to compensate the Respondent anything arising out of the said land dispute.

Given the above analysis of facts, it is apparent that, there was improper identification of the parties in the impugned judgment as properly observed by the leaned Advocate. The Applicant was treated as the Appellant instead of the Respondent. It was the Respondent herein who was the first Respondent at trial tribunal and is the one appealed against the decision of the DLHT to this court. Therefore, paragraph two of page 8 of the judgment is accordingly reviewed and should read as follows: -

*I have carefully examined the **Respondent's application** at the trial tribunal and found nothing is mentioned of the loss*

*of sunflower seeds by the **Appellant's act.** I therefore find merit in this ground and I allow it.*

On the third paragraph at page 8 of the judgment, the same is reviewed and should read as hereunder:

*However, I find the **Respondent** was affected by the **Appellant's** encroachment on her parcel of land and she deserves some relief.....*

Furthermore, in the first paragraph of page 9 of the judgment, the same is reviewed such that:

*In view of the above statement, I find the **Appellant's** acts disturbed the peaceful occupation and further disrupted the **Respondent's** farming activities on her land.*

Finally, is the last paragraph of page 8 of the judgment which is corrected as hereunder as it was the Appellant in the appeal to the DLHT, now the Respondent who was to compensate the Applicant Tanzanian shillings two (2) million as general damages:

*In the result and for the above reasons, I partly allow the appeal. I accordingly order the **Appellant** to pay the*

Respondent *2 million shillings as general damages. I further order the Respondent to have her costs.*

I have also considered submissions of Ms. Joanitha, learned Advocate that errors were firstly committed at the trial tribunal where there was only one Respondent. With due respect to the learned counsel, this is not correct. The record is so clear that at the trial DLHT there were two Respondents. In the end result, the application has merits in the above context and I accordingly allow it. I do not prescribe costs.

It is so ordered.

Gerson J. Mdemu
JUDGE
03/06/2022

DATED at **DODOMA** this 3rd day of June, 2022

Gerson J. Mdemu
JUDGE
03/06/2022