IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL REVIEW No. 4 OF 2021

(Arising from the Decision of this Court in Land Case No. 33 of 2016)

BETWEEN

BARRETTO HAULIERS (T) LTD .....APPLICANT

VERSUS

MAHMOOD MOHAMED DUALE.....RESPONDENT

RULING

MRUMA, J.

In law when a court makes its decision it has no powers to revise it. The court is its own apex as well as its own last resort in respect of a disputes lodged in the judicial system. As such, decisions of this Court are considered final and binding as far as the court itself is concerned. Once a court has delivered its decision on a matter, it ceases to be seized of the case and in law it becomes functus officio and cannot re-open it for any purpose whatsoever. Therefore, save by way of review as prescribed under **Section 78(a) and (b) of the Civil Procedure Code [Cap 33 R.E. 2019]**, to correct clerical or arithmetical errors, or errors or mistakes

apparent on the face of the record or the discovery of new and important matters or evidence this Court cannot not re-open or look back into its decision once it is made.

The above position is informed by the principle of finality which is hinged on the public interest policy that litigation must come to an end. Generally this is a doctrine which enables courts to say litigation must end at a certain point regardless of what the parties think of the decision which has been handed down. Before that point is reached parties have rights to be heard (by way of appeals) at least by three different courts. In this way the losing party is able to have the decision reviewed by another independent judge or judges. The court determining the appeal will correct errors by the trial judge and the right to appeal ensures that as far as possible courts arrive at correct decisions.

Review by the same court can also be invoked under the same Section 78 of the Civil Procedure Code because this Court not being the final court has residual jurisdiction to review its decisions to which there is no appeal to correct errors of law that have occasioned real injustice or failure or miscarriage of justice thus eroding public confidence in the administration of justice. However, this is jurisdiction that has to be

exercised cautiously and only where it will serve to promote public interest and enhance public confidence in the rule of law and our system of justice.

It is the aforementioned jurisdiction that the Applicant herein is asking this Court to exercise vide an application presented for filing on 6th April, 2021. In particular, the applicants are praying for the following orders:

> "THAT all the parties concerned appear before Hon. Justice Rwizile in Chambers ....for hearing of an application by the above named applicant for an order of this court to ***"revise"*** its decision in land case in land case No. 33 of (2026?) 2016 against the whole of the decision of Hon. A. R. Rwizile J, dated 3rd of March 2021 .....on the grounds that;.....

The application is premised on the following grounds:

1. That the learned judge erred in for failing to analyse the evidence of the plaintiff who categorically stated the effect of the illegal eviction which was dome by the Defendant;
2. That the learned Judge erred for failure for failure to understand the gist of the case in his final analysis as he dismissed the counter claim which was not part of the case and part of the record and nobody

tendered evidence to that effect and left the Plaintiff's case undetermined by the court;

3. That the learned Judge failed to consider the submissions, reasons and authorities which were cited to support the case and leading to reach to the decision sought to be reviewed;
4. That the learned Judge erred for failing to analyse the evidence and use the exhibits which were tendered by the Plaintiff and his witnesses and his evidence in total which led him to arrive to wrong decision sought to be reviewed;
5. That the learned Judge was biased by relying on the decision of this honourable court by Hon. Teemba J in Land Case No 157 of 2012 which was a different case and with different analysis and led to the wrong decision sought to be reviewed;
6. That the learned Judge erred for failure to award damages irrespective of Applicant being illegally evicted as opined in the said decision by combining special and general damages in one pool and led to the wrong decision sought to be reviewed and;
7. That being aggrieved by the aforesaid decision, the Applicant intends to invite this honourable court to review its decision because will affect him if executed or may necessitate the Applicant to appeal to

the Court of Appeal and leave of this honourable court is required before the Applicant can institute the intended appeal.

A synopsis of the pertinent facts will place the application in context. The dispute between the parties stems from land dispute among family members of one Paul Andrew Sozigwa. It is on record that originally the said Paul Andrew Sozigwa owned a parcel of land described as CT No. 186103/35 Tom Estate located at Kurasini area. Sometimes in 2009 and before he went to Finland for medical checkup Paul Andrew Reuben Sozigwa donated to his son Moses Paul Sozigwa Powers of Attorney to look after his property. What transpired between the father and his son upon father's return from Finland is not relevant to the matter before hand, but it is on record that the said property was at the kernel in a dispute in Land Case No. 157 of 2012 before this court between BARRETTO Haulers (T) Ltd Versus Mohammed Duale. The Applicant lost the suit and this application traces its root in the execution processes of the decree in which the present Applicant was evicted from the property. That decision did not go down well with the Applicant who in turn has a review in this Court.

On their part, the Respondents opposed the application by filing a notice of preliminary objection and submissions in support thereof. They

didn't file any counter affidavit. The gist of the Applicant's preliminary objections is that:

1. That the application for review contravenes Order XLII Rule 3 of the Civil Procedure Code [Cap 33 R.E. 2019]
2. That the Application for review filed by the Applicant is ambiguous in that it doesn't point out to any particular mistake or error apparent on the face of the record in the proceedings, judgment and apparent on the face of the record in the proceedings, judgment and decree in land Case No. 33 of 2016.

At the plenary hearing of the preliminary objection, Mr. Richard Barretto, principal officer of the Applicants appeared for the applicants while Mr. Roman Selasini, advocate appeared for the Respondents. A schedule for filing written submissions was made. Counsel for the Respondent complied but the Applicant didn't. Counsel relied entirely on the written submissions on record.

Submitting in support of the first ground, the learned counsel for the Respondent contended that the format for presenting a review application in court is provided for under Rule 2 of Order XLII of the Civil Procedure Cod. Under that the law provides that the provisions as to the form of

preferring appeal applies mutatis mutandis to application for review, accordingly it is the counsel's submissions that the present application ought to have been brought by way of a memorandum as provided for by Order XXXIX Rule 1(1) of the Civil Procedure Code. The learned counsel argued the court to find that any review which is brought in any other form to be defective.

On the second ground, the learned counsel for the Respondent reiterated that this Court has no residual jurisdiction to entertain the application for review of the judgment in issue. To bolster that line of argument reference was made to this Court's decision of the Court of Appeal in the case of **Chandrakant Joshuabhai Patel Versus Republic [2004] TLR 218**. Drawing further support from the decisions of the Court of Appeal, the applicants' counsel cited **Criminal Application No. 91/07 of 2019 between Godfrey Gabinus @Ndimba & 2 Others Versus The Republi**c. He contend that in those cases the Court of Appeal stressed that the ingredients of an operative errors are first that there ought to be an error, second the error has to be manifest on the face of the record and third the error must be have resulted in miscarriage of justice, I will only add that the error must be an oversight on the part of the court. A deliberate finding of the court cannot a ground of review.

On my part I agree with the learned counsel for the Respondent. Residual jurisdiction of court (i.e. power to revisit its own decision) kicks in first where it is established that significant injustice has occurred due to a decision made by the court and there is no alternative remedy to correct the error. Secondly residual jurisdiction can be called into play where there is evidence of discovery of new crucial evidence which was not tendered but which is so crucial that had the court seen it before, it couldn't have reached the decision it reached. Thus, the impugned decision must be shown to be an oversight on the part of the presiding judge. If the decision if founded on the deliberate findings of the court, invoking residual powers of the court in such circumstances will be tantamount to requesting a court to re-open proceedings in a matter which had already been heard and determine by itself. Here both the court and the judge determining the matter will be functus officio. In my considered view, the judgment in issue fell squarely within that category since it is appealable to the Court of Appeal. All the Applicants needed to establish was that firstly, the existence of exceptional circumstances and/or secondly, that the decision in issue manifests an error(s) on the face of the record resulting in miscarriage of justice. The Applicant had not met both prerequisites.

Looking at the course taken by the applicants in this application, I am convinced that all they seek this Court to do is to set aside the judgment simply because they disagree with same. Had his Lordship Rwizile J, not been transferred to another working station he would have been assigned to hear and determine this review application. Clearly that would amount to him sitting on an appeal against his own judgment which is beyond his mandate. It is also beyond the mandate of a successor judge of this same court. Courts do not review judgments simply because a losing litigant is not satisfied. Courts have no jurisdiction to do so.

That said I find the preliminary objection merited and I sustain it. I find that the application is utterly misconceived. it is hereby struck out with costs.

A. R. Mruma

Judge

Dated at Dar Es Salaam this 11th Day of March 2022.