

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**LAND REVIEW NO. 01 OF 2022**

*(Arising from judgment of the High Court in Land Appeal No. 43 of 2020, Originating from Land Application No. 17 of 2016, District Land and Housing Tribunal for Kilosa)*

**MELIKISEDEKI LIGAZIO .....APPLICANT  
VERSUS**

**ANTHONY LUCIAN ..... RESPONDENT**

**RULING**

*Last Court Order on: 22/08/2022  
Ruling date on: 09/09/2022*

**NGWEMBE, J.**

The applicant Mr. Melikisedeki Ligazio instituted this application seeking this court to review its own decision in Land Appeal No. 43 of 2020 which was delivered on 15<sup>th</sup> July 2021. The purpose of this application is to correct an error alleged to have manifestly apparent on the face of this court's records. In moving this court, the applicant cited **Order XLII, Rule 1 (1)(a) of The Civil Procedure Code, [Cap 33 R.E. 2019] (hereinafter referred as CPC).**

Tracing the genesis of this application, originated from Land Appeal No. 43 of 2020 before this Court, whereby the applicant was appealing against the decision of the District Land and Housing Tribunal for Kilosa in Land Case No. 17 of 2016. The dispute involved ownership of five (5) acres of land at Dodoma Kipekenya village, Masanze ward,



Kilosa district within Morogoro region. It was decided in the respondent's favour by declaring him as rightful owner of the suit land.

The relevance and essence of this application is premised on the background going back to year 2006 where the applicant claimed to acquire a piece of land by clearing an unoccupied bushland. Thereafter he grew maize and sesame. In year 2008 the respondent came and cleared the neighbouring bushland and thereafter he claimed the applicant's plot of land as well. The story of the respondent contended to have owned the said land from year 1993 calmly and undisturbed. This contentious versions gave birth to a dispute that landed to Masanze Ward tribunal, which decided in favour of the respondent.

The marathon in the corridors of courts and tribunals never stopped. The applicant herein after being aggrieved with the decision of the Ward tribunal, appealed to the District Land and Housing Tribunal for Morogoro in Land Appeal No. 52 of 2009. In 19<sup>th</sup> August 2010, the District Land tribunal quashed the decision and proceedings of the Ward tribunal for being nullity on the ground that, the Ward tribunal was not properly constituted as per the dictates of law. Proceeded to order for a fresh case before itself, as the conduct of the trial Ward tribunal was stained. Judicial notice is taken that at that time, Kilosa District had no Land Tribunal. As a result, the dispute remained undetermined for years.

In year 2016 the applicant herein, filed Land Application No. 17 of 2016 before the District Land and Housing Tribunal for Kilosa. The verdict of that application was pronounced on 29/03/2019. The judgement was on the effect that the applicant herein was declared a trespasser and the respondent was again declared the rightful owner of the suit land. Still offended, he preferred an appeal to this court in Land Appeal No. 43 before Land Division at Dar es Salaam. Madam Judge





Maghimbi – J, preceded over the appeal, but did not determine it on merits, instead she nullified the whole proceedings and judgement of the trial tribunal for Kilosa because it was *res judicata* as the dispute was determined by Masanze Ward tribunal. Thus, Kilosa District Land and Housing Tribunal had no jurisdiction to try the same dispute afresh.

Consequently, this application for review, whereby the applicant invited this court to review its own decision, by advancing one ground that there are *errors on the face of record* of this court before Maghimbi J. In his memorandum of review, he raised two grounds of review: -

- a) *That the appellate court erred in law and facts to declare Land Appeal No. 43 of 2020 res judicata whilst the previous decision of Morogoro District Land and Housing Tribunal in Land Appeal No. 52 of 2009 had quashed the decision of Masanze Ward Tribunal and ordered the matter to be tried afresh.*
- b) *That, the appellate court erred in law by delivering a decree which contradicts with the orders of court delivered in the judgment of Land Appeal No. 43 of 2020.*

Unfortunate in this application both parties were unrepresented and the matter before this court is purely clothed with legality. Thus on 28/07/2022 when the matter was called for hearing, parties successfully asked this court to allow them to proceed by way of written submissions. Therefore, each party complied with the scheduling dates of filing their written arguments.

The applicant's written submission was *drawn gratis* by Ms. Irene Felix Nambuo of Legal and Human Rights Centre. Sets out the background and addressed the grounds seriatim. Commencing on the first ground, she cited the case of **Ottoman Bank Vs. Ghani [1971]**



**HCD 69** in which the doctrine of *res judicata* was enshrined. It was ruled among others, for a matter to be *res judicata*, there should have been a former suit in which the issue alleged to be *res judicata* has been decided. Distinguished that doctrine with the matter at hand, that this application was not decided on merit, but the Ward Tribunal's decision was nullified and a fresh trial was ordered. That being the case, the doctrine of *res judicata* would not arise.

Arguing on the second ground, the applicant stated that, there was a contradiction between the judgment and its decree. The judgment stated that the matter was *res judicata* and quashed the trial tribunal's decision, while the decree indicates that the appeal was allowed. He justified his application for review by citing the case of **Vitatu and another Vs. Bayay and others, Civil Application No. 16 of 2013** together with other persuasive precedents to the effect that, a review may be granted when the court considers that there is necessity to correct apparent error or omission on the face of record.

He pointed out that, the judgment to be reviewed must have an error manifest on the face of the record. Insisted by referring this court to the case of **Charles Barnabas Vs. R, Criminal Application No. 13 of 2009**. Rested by a prayer that this court may allow this application for review.

In turn, the respondent submitted strongly on the merits of the dispute itself by defending that, he proved ownership before the Ward tribunal and other facts irrelevant to this application. But generally, he defended this court's decision in Land Appeal No. 43 of 2020. Further argued that in all the tribunals, he won and the decisions were not challenged at all on appeal. To him, the High Court was correct to find the matter was *res judicata*.





Pointed out that, the dispute in Land Appeal No. 52 of 2009 did not involve the present parties, but involved *Melikisedeki Ligazio Vs. Ansigar Komba and Selina Mkinga*. Therefore, he prayed this application be dismissed forthwith with costs.

In brief rejoinder, responded on proof of ownership before the trial tribunal as argued by the respondent.

In considering this application, fundamentally, there is one question to be answered, that is, whether the application has merit to be determined by this court. Undoubtedly, this court possesses mandate to make orders for review upon application and good cause being shown. Section 78 (1)(a)(b) read together with **Order XLII**, Rule 1(1)(a) of CPC is clear on those powers of this court. The law provide certain circumstances upon which review may be preferred. The rule is quoted hereunder: -

**Order XLII, Rule 1.- (1)** *"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 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**, desires to obtain a review of the decree passed or order made against*



*him, may apply for a review of judgment to the court which passed the decree or made the order."*

The error apparent on the face of the record, which in this application include the first ground. It has been interpreted by the courts in denotative meaning. It should be glaringly patent without any elaborate arguments. The case of **Vitatu and another Vs. Bayay and others** (supra) cited by the applicant, is among the precedents which made a cross cutting interpretation of what constitutes grounds for review. Having referred to its previous decision in **Chandrakant Joshubhai Patel Vs. Republic [2004] TLR 218** and a persuasive decision by the Court of Appeal of Kenya in **National Bank of Kenya Limited Vs. Ndungu Njau [1997] eKLR** the Court of Appeal of Tanzania ruled: -

*"The **first** discernible guidance from above decision is that, an error on face of the record must be self-evident without the need for elaboration by arguments. **Second**, a decision of the Court is not open for review simply because a different panel of the same Court may reach a different conclusion on the same facts. **Third**, a decision of the Court is not open for review because the Court misinterpreted the provision of the law."*

The above, which is squarely relevant to both rules of procedure before the High Court and the Court of Appeal, remains to be a yardstick for review. In the case of **National Bank of Commerce Ltd Vs. Nurbano Abdallah Mulla, Civil Application No. 207/12 of 2020** with more amplified spirit by, the Court of Appeal in the case of **Tanganyika Land Agency Limited and 7 Others Vs. Manohar Lai**





**Aggrawal, Civil Application No. 17 of 2008 (unreported).**

Expounded review in respect of error on the face of record, as follows.

*"An error must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points which there may conceivably be two opinions, that a decision is erroneous in law is no ground for ordering a review. Thus, the ingredients of an operative error are that; **first**, there ought to be an error; **second**, the error has to be manifest, on the face of the record, and **third**, the error must have resulted in miscarriage of justice."*

In respect to this application, the specific question to be answered is whether the complaints raised by the applicant in the first ground constitute a manifest error on the face of the record envisaged by section 78 (1) (a) and Order XLII, Rule (1)(a) of CPC. It is necessary, to examine the decision by the District Land and Housing Tribunal for Morogoro in Land Appeal No. 52 of 2009 and that of the District Land and Housing Tribunal for Kilosa in Land Application No. 17 of 2016.

Briefly, Land Appeal No. 52 of 2009, between *Melkisedek Ligazio Vs. Ansigar Komba and Selina Mkinga*, originated from Masanze Ward tribunal where the applicant claimed that Ansigar Komba and Selina Mkinga, local leaders, dispossessed his land of 1½ acres, part of his farm. Upon dispossessing him they gave it to the respondent Anthony Lucian, who was not a party to that case. At the end the applicant lost that case. Then he appealed to the District Land and Housing Tribunal, at appeal the District Land tribunal held: -

*"In the event, the Masanze Ward Tribunal proceedings and decision are hereby quashed. I would have remitted the*



*matter to be heard afresh by a properly constituted Ward Tribunal, however, regarding the conduct of Masanze Ward Tribunal, towards the appellant as I have pointed above, I am of the view that justice won't be done to the appellant. I therefore direct the appellant to file a fresh application in this tribunal against the respondents and the said Anthony Lucian."*

As was pointed earlier, the applicant filed a fresh application against *Anthony Lucian* as directed. The case was registered as Land Application No. 17 of 2016 whose decision did not amuse him. Thus appealed to this court which ended up with the following decision.

*"I need not be detained much by this appeal because of the reasons I will elaborate. I have noted that during trial there was undisputed evidence that the dispute at hand had been referred to the Ward Tribunal and finally determined where the respondent claimed to have emerged a winner there. This fact should have moved the tribunal to see if it had jurisdiction to determine a matter which had already been determined by another tribunal. Owing to that fact, I find the application at the tribunal to have been res judicata as the matter had already been determined by the Ward Tribunal and was never challenged, at least according to the records of this appeal. The decision of the tribunal is therefore nullified."*

Following the principles discussed earlier and applying them to this case, it is obvious, this court mistook on the fact that the said Ward Tribunal's decision and proceedings were actually quashed in Land Appeal No. 52 of 2009 before the District Land and Housing Tribunal for Morogoro. The appeal presented before this court was emanating from



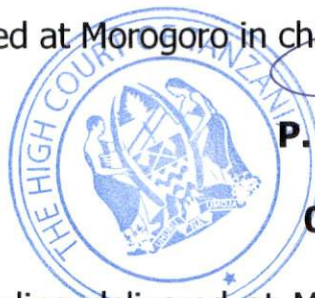


Land Application No. 17 of 2016 decided by Kilosa District Land and Housing Tribunal. There was no applicability of the doctrine of *res judicata*. In this point alone I am satisfied, there was an error manifest on the face of record and resulted in miscarriage of justice for the applicant's appeal being not heard on merit.

Therefore, this application succeeds on the first ground and thus, allowed. Considering the second ground may not change the already arrived conclusion. Accordingly, this court invoke its powers under the cited provisions of law and review its own decision in Land Appeal No. 43 of 2020, which nullified the District Land and Housing Tribunal's decision. The nullified proceedings and subsequent decisions are restored. The Applicant's appeal should proceed on merit as expected. Each party to bear his own costs.

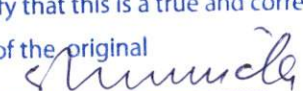
**I accordingly Order.**

Dated at Morogoro in chambers this 6<sup>th</sup> day of September, 2022.

  
**P. J. NGWEMBE**  
**JUDGE**  
**06/09/2022**

**Court:** Ruling delivered at Morogoro in Chambers on this 06<sup>th</sup> day of September, 2022, **Before Hon. S. J. Kainda, DR** in the presence of the applicant and respondent in persons.

**SGD. HON. S.J. KAINDA**  
**DEPUTY REGISTRAR**  
**06/09/2022**

I Certify that this is a true and correct copy of the original	
	
Deputy Registrar	
Date	9/9/2022 at Morogoro