

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

AT DAR ES SALAAM

REVIEW NO. 08 OF 2021

(Arising from the Ruling of the High Court in Misc. Land Application No. 45 of 2020, Kakolaki J,
dated 08/04/2021)

ALPHONCE MLEKIA.....APPLICANT

VERSUS

SAMWEL LIGAMBA.....RESPONDENT

RULING

Date of last Order: 14/12/2021.

Date of Ruling: 04/02/2022.

E.E. KAKOLAKI, J

This is a ruling in respect of the application for Review of the decision of this Court in Misc. Land Application No. 45 of 2020 dated 08/04/2021, striking out the said application for being incompetent. Briefly in that application the applicant had applied for extension of time within which to file the application for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 06 of 2019, in which during its hearing upon being prompted by the court to address it on its competence, counsel for the

applicant conceded that the same was incompetent as it was supposed to be for extension of time for filing the application for certification that point of law is involved and prayed the court to strike it out in which it did. That concession was not resisted by the counsel for the respondent who pressed for costs of the application which the court granted. It turned out that the matter which was appealed against to this court in Land Appeal No. 06 of 2019 emanated from District Land and Housing Tribunal for Kilombero, and not the Ward Tribunal in which this court believed before. It is from that fact the applicant has preferred this application seeking the court's indulgence to rectify that error by setting aside its order of striking out the application and restore it for its determination on merits.

The application proceeded by way of written submission as both parties were represented. While the applicant had the services of Ms. Donatila Teendwa Antoni learned advocate, the respondent enjoyed representation of Mr. Kelvin Tadei Luambano learned advocate. Submitting in support of the application Ms. Antoni contended that this court misdirected itself to believe that the matter subject of the application originated from the Ward Tribunal and therefore it was improper to apply for extension of time to file application for leave to appeal to the Court of Appeal instead it ought to be extension

of time within which to file an application for certification that a point of law is involved in the decision sought to be impugned. She thus prayed the court to allow the application by setting aside the order that strike out the application on the reason of incompetence and restore it. Mr. Luambano challenged the application raising two grounds. One that, there is no new fact which was not in the applicant's knowledge when the decision was entered as per the requirement of Order XLII(1) of the Civil Procedure Code, [Cap. 33 R.E 2019] as he is the one who conceded and submitted that the application was incompetent, hence no good cause for review is demonstrated by the applicant as he seeks to benefit from his own wrong. Secondly, he argued the application is incompetent as it is preferred in contravention of section 78(2) of the CPC, clearly stating no application for review shall lie against the decision not determined to its finality. He said in this matter the application was not decided to its finality thus does not qualify to be considered for review. He prayed the court to dismiss the application with costs. In her rejoinder submission Ms. Antoni , on the notion of applicant's concession on the incompetence of the applicant, she argued the applicant was prompted by the court to so address the court and if the submission was wrong then the court was duty bound to decide the matter

in accordance with the law and not on the basis of applicant's submission. She relied on the case of **John Magendo Vs. N.E Govan** (1973) TLR 60. As to the argument that the application contravened the provision of section 78(2) of CPC, she countered the decision subject of this application was not interlocutory but rather determined to its finality as there remained no pending application in court. She added if the respondent wanted to pursue this point he should have raised it as a point of objection but not to bring it through back door. Otherwise she reiterated her earlier submission in chief.

I have dispassionately considered the rival submissions by both counsels for the parties. It is the law that, this court has inherent jurisdiction to review its own decision where there is a manifest error on the record, which must be obvious and self-evident and which resulted in a miscarriage of justice. See the case of **Chandrakant Joshubhai Patel Vs. R** [2004] T.L.R 218. Now whether the decision in Misc. Land Application No. 45 of 2020 was determined to its finality is the first issue to be determined by this court. It is Mr. Luambano's assertion that the same was not determined on merit thus not finally decided hence incapable of being reviewed as per the requirement of the section 78(2) of CPC. I don't find merit in this submission as the mere fact that this court made decision on the matter by striking it out suffices to

make it finally determined as the issue as to whether the same was competent before the court or not was conclusively determined by declaring it incompetent. And further to that there was no pending matter before this court to render the decision interlocutory one hence qualified for review under section 78(2) of the CPC which provides thus:

(2) Notwithstanding the provisions of subsection (1) and subject to subsection (3), no application for review shall lie against or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.

Next for determination is whether the applicant has demonstrated good ground for review. Upon consideration of the above narrated submission by both parties, it is uncontroverted fact that the decision subject of the application in Misc. Land Application No. 45 of 2020 before this court emanated from the District Land and Housing Tribunal and not the Ward Tribunal as this court believed, the fact which erroneously made the court to believe that the application before it was incompetent. It is also undisputed fact that, despite the fact that counsel for the applicant inadvertently and incorrectly conceded to the incompetence of the said application this court had a duty to decide the matter not basing on weakness of applicant's

submission but in accordance with the law as it was stated in the case of **John Magendo** (supra). In this case the court held:

"If follows therefore that, even where a party to court proceedings does not effectively advance his/her argument sin addressing and the issue before the court, the court will still be obliged to decide the issue according to the law, and not according to the weakness of the arguments advanced by the party."

As this court believed and relied on the admission of the advocate for the applicant that the case subject of the application before it in Misc. Land Application No. 45 of 2020, was originating from the Ward Tribunal and therefore improperly preferred before it while in fact is was vice versa, I find the application is meritorious as it was arrived in ignorance of that fact it was originating from the District Land and Housing Tribunal for Kilombero District. That being the position I am in agreement with Ms. Antoni that, the application for extension of time within which to file an application for leave to appeal to the Court of Appeal in Land Appeal No. 06 of 2019 which was finalised by this court, was properly made before this court. I therefore allow the application by setting aside the decision of this court in Misc. Land

Application No. 45 of 2020, which struck it out and order that the same is restored to proceed with its hearing on merits.

I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 04th day of February, 2022.



E. E. KAKOLAKI

JUDGE

04/02/2022.

The Ruling has been delivered at Dar es Salaam today on 04th day of February, 2022 in the presence of the applicant in person and Ms. Asha Livanga, Court clerk and in the absence of the Respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

04/02/2022

