

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB - REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE

CIVIL APPEAL NO. 269 OF 2021

*(Arising from Misc. Application No. 35 of 2021 and Matrimonial Appeal No. 62 of 2020,
at Kinondoni District Court originated from Matrimonial Cause No. 78 at Kawe Primary
Court)*

WANDETI SITA WANDETI.....APPELLANT

VERSUS

TUMAINI NKENJA SEMU.....RESPONDENT

JUDGEMENT

Date of last order: - 15/12/2022
Date of judgment: - 16/12/2022

OPIYO, J.

The appellant appeals to this court on two main grounds as follows:

1. That the district court erred in both law and facts in dismissing the application for review while there was no evidence as to existence of two plots at Mbopo area to be divided between the appellant and respondent.
2. That, the district court erred both in law and facts for deciding the application for review in favor of the respondent by upholding equal division order.

The gist of the matter is upon conclusion of the matrimonial appeal no. 35 of 2021 of Kinondoni District Court. After the appeal, the appellant filed



Misc. Civil Appl. No 35 of 2021 at the same court praying for review of the decision its decision in Matrimonial Appeal No 62/2020 putting forward two ground similar to the two he has raised in the instant appeal. The same was dismissed for lack of merits resulting to current appeal.

In the course of composing a judgment, this court noted that having the grounds for review before trial court similar with the grounds of appeal before itself possess serious irregularity. Review is a remedy which is so limited in its application as it is only amenable in special circumstance including decision based on a manifest error on face of records, a party wrongly deprived of an opportunity to be heard, courts decision being a nullity, courts lack of jurisdiction or judgement was procured illegally (see the case of **Majid Goa@ Vedasto v. R (2017) TLR 290**). The grounds of review in Misc. Civil application No 35/2021 which are also subject of this appeal do not fall under the above special circumstances. These grounds were actually asking the same court to determine appeal on its own decisions. The grounds are actually grounds of appeal which are not fit for review. In the above case it was held that:-

*"The scope of the court's power of reviewing its own decision is
Which aims at ensuring that the court does not sit on appeal against
its own decision in the same proceedings"*

In my view, the application for review was wrongly entertained as it was incompetently brought before the court. The applicant did not advance enough grounds to warrant a review. Appellant was supposed to appeal to this court on the these grounds against Matrimonial Appeal No 35/2021,



not filing Misc. Civil No. 35/2021 for its review before the same Court on the grounds not fit for review but appeal. The District court for Kinondoni erred in entertaining purported application for review which was tantamount to appeal on its own decision. The same court is incompetent to determine the matter in which the claim is on dissatisfaction with its own decision. That will amount to becoming an appellate court for its own decision in terms of **Majid Goa's** case (supra). Also in the case of **Rweyemamu V. G.M (KCU) Ltd (2017) TLR 322** it was the Court of Appeal had a view that

"a mere fact that the applicant is not happy with the conclusion of the court would not amount to a ground of review. And even if it would be proved that the decision was wrong, an erroneous decision is not a ground for review."

As all the grounds were not fit for review as they were based on alleged erroneous decision of the same court's decision, it was wrong for the court to determine the same and make a decision on the same as it did. This appeal arising from a purported application for review, is therefore misplaced and not worth of consideration. It is therefore struck out. The appellant was to appeal, from matrimonial appeal No 62 2020 to this court not from incompetent application for review, Misc. Civil Appl No. 35/2021 both before Kinondoni District Court.




M.P. OPIYO
JUDGE
16/12/2022