

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA**

AT MUSOMA

CIVIL REVIEW NO. 04 OF 2021

(Arising from PC Matrimonial Appeal No. 01 of 2021 in the High Court of the United Republic of Tanzania in the sub registry of Musoma)

PELAGIA KOKUHIRWA HERMAN..... APPLICANT

VERSUS

JAPHETI MTANI WANG'UBA..... RESPONDENT

RULING

4th and 14th February, 2022

F.H. MAHIMBALI, J.:

This is an application for review predicated under Section 78 and order XLII Rules 1 and 3 of the Civil Procedure Code [Cap. 33 R.E. 2019]. The applicant is seeking this court to review its own decision in PC Matrimonial Appeal No. 01 of 2021 delivered on 27th October, 2021. In that decision, considering the battle on division of the two matrimonial properties (houses) involving these parties as spouses, whereby one property is located in the urban centre of Musoma – Nyakato and the other in the rural – Majita - Suguti, I made the following order: The house at Nyakato falls into the hands of the wife - Respondent at 2/3 percent share (now applicant) and the respondent at 1/3 percent share, and the house at Suguti, the appellant (now respondent) enjoys 2/3 percent share division and the respondent gets

1/3 share division. That division criteria have taken into account the extent of each party's contribution to the acquisition and development of the said matrimonial properties as per evidence in record. It was also clarified that each party depending on his/her financial position/capacity is at liberty to buy out the other so long as his or her percentage is concerned.

Now, through her memorandum of review, the applicant (wife - spouse) is challenging the decision of this court armed with three grounds, namely:

- (a) That, the Honourable appellate Judge erred in law and fact whereby the order for the division of the matrimonial property is not clear and is ambiguous as it is stated at page 13 that , "**the house at Nyakato falling into the hands of the respondent at 2/3 percent share and the respondent at 1/3 percent share**".
- (b) That, it has not been specified who will buy the other party in the order of the division of matrimonial property delivered.
- (c) That, the modality of how each party will get the awarded percentage has not been specified in the order and whether

valuation of the property will be made and who will be responsible.

On the other hand, the respondent contested this application in his reply to the memorandum of review by putting the applicant into strict proof.

When this matter came up for hearing, both parties were present and unrepresented. They both asked the court to adopt their memorandum of review and the reply as part of their submissions. They had nothing further to add.

Submitting in support of his grounds of review, the applicant stated that the order for the distribution of matrimonial property is not clear and it is ambiguous, the order has not specified who will buy the other party in the order of the division of matrimonial property delivered, also the modality of how each party will get the awarded percentage is not stated and whether valuation will be made and who will be responsible for the valuation.

The respondent vehemently disputed these grounds.

Having gone through the rival submissions of the parties. The court will now determine if this application has merits.

It is settled law that for the court to grant application for review, certain grounds have to be met. These grounds have been ruled in plethora of case laws. For instance, in the case of **Masudi Said Selemani v The Republic**, Criminal Application No.92/107 of 2019 at page 5- 6 held;

"The Court has powers to review its own decisions. Rule 66 (1) of the Rules provides thus: - The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds;

- a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice ; or*
- b) A party was wrongly deprived of an opportunity to be heard*
- c) The court's decision is a nullity ; or*
- d) The court had no jurisdiction to entertain the case ; or*
- e) The judgment was procured illegally or by fraud or perjury".*

In the case of **Transport Equipment Ltd v. Devram P. Valambhia**, Civil Application No. 18 of 1993, the Court of Appeal of Tanzania held that;

"The court has inherent jurisdiction to review decision and it will do so in any of the following circumstances to wit, where there is a manifest error on the face of the record which resulted in miscarriage of justice, or where

the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard”.

Also, in the case of **Chandrakant Joshubhai Patel v Republic**[2004] TLR 218, the court made it explicit;

that a decision is erroneous in law is no ground for ordering 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 [at page 225].

The law is settled that review is for addressing irregularities and not challenging the merits of the case. In this present application the applicant alleged the above-mentioned grounds as grounds for review before this court. She has not shown the court what is an error on the face of the record in that decision. For an application of review to succeed, there must established an apparenterror on the face of the record which is so patent that no tribunal could have overlooked it on the one hand. On the other hand, such error must have resulted in the miscarriage of justice. See; Chandrakant**Joshubhai Patel v Republic**(supra).

As stated earlier, the applicant’s application does not show the manifest error on the face of the record. The argument that the division

of matrimonial property is not clear and is ambiguous is itself not clear. The court's decree is clear and unambiguous in my clear reading. The order that

"The house at Nyakato falls into the hands of the wife - Respondent (now applicant) and the respondent at 1/3 percent share, and the house at Suguti, the appellant (now respondent) enjoys 2/3 percent share division and the respondent gets 1/3 share. That division criteria have taken into account the extent of each party's contribution to the acquisition and development of the said matrimonial properties as per evidence in record". It was also clarified that *"each party depending on his/her financial position/capacity is at liberty to buy out the other so long as his or her percentage is concerned".*

From the above precepts, what remains is the execution of the court's decree by the desiring party. How the per cents of 2/3 and 1/3 shares of the matrimonial properties will be known is through execution process in which the valuers will be involved. During the execution process of the Court's order, the executing court will do all that is necessary for the attaining of justice of the case.

Furthermore, as another reason for the ground of review, the applicant ought to have shown how the decision of this court was attained by fraud and how she was deprived the right to be heard. It is

the holding of this court that this application for review has not established anything sensible for this Court to review its decision. In essence the application lacks merits.

Digesting the intent of the current application, I find nothing as sensible. The right course for the applicant in my view ought to have been an appeal other than review. As rightly said by the Court of Appeal in **Ngasa s/o Nhabi Vs. Rep**, Criminal Application no. 2 of 2014I where it was clarified that:

"An application for review is by no means an appeal in disguise whereby an erroneous decision can be reheard and corrected".

This means that mere dissatisfaction with the court's judgment can not be the sole basis for seeking review but appeal. In the instant matter, if the applicant is dissatisfied with the decision of this Court on the percentage of division of matrimonial properties as done, the right course is an appeal to Court of Appeal but not challenging it at the back of the review application.

In fine, the application is dismissed and is devoid of any merit. There is nothing worth reviewable as prayed. Otherwise, the applicant if dissatisfied by that decision had a right of appeal against it.

Considering the fact that this matter involves spouses in a matrimonial conflict, I order no costs. Each party shall bear own costs.

It is so ordered.

DATED at MUSOMA this 14th day of February, 2022.




F.H. Mahimbali

Judge

14/02/2022