IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

LAND REVIEW NO. 5 OF 2020

DR. DAMASI MAHINDU SIMBU.....APPLICANT

VERSUS

JOHN LEONARD NJIKU.....RESPONDENT

(Arising from the Judgment of the High Court of Tanzania, Dodoma)

Dated 18th day of June, 2014

In

Land Case Appeal No.01 of 2011

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RULING

1st March&6thMay,2022

MDEMU, J:.

This is an application for review. In the memorandum for review, the Applicant wants this court to review its decisions (Mziray,J.) dated 18th of June, 2014. He was permitted in an application for enlargement of time for review which was Application No.61 of 2020. Briefly, the Applicant sued the Respondent in the District Land and Housing Tribunal at Singida for recovery of 33 hectors. It was in Land Application No. 26 of 2009. He was successful partly as he was awarded a portion of land used for grazing and the

remaining portion for agriculture and residential purposes was allocated to the Respondent.

The Respondent appealed. There was also cross appeal by the Applicant. It was decided in the appeal by this Court that, the Respondent is entitled to 15 acres and the Applicant his is 33 hectors. It was ordered that if the 15 acres are within 33 hectors, then be deducted and the remaining be the property of the Applicant. No further appeal was ever preferred. The Applicant moved execution processes and in the process, thought a review of the judgment relevant, hence the instant application on the following grounds:

1. *That, the Applicant and the Respondent John Leonard Njiku had land case appeal No.1/2011, No.51/2019 and Miscellaneous land Application No. 61/2020 in this honorable court.*
2. *That, land case appeal No.1/2011 contains serious in executable errors hidden from the discovery of executing tribunal's chairperson, leave alone of the Applicant.*

3. *That, the court in appeal case No.1/2011 omitted to demarcate properties decreed to the parties in dispute from each other.*
4. *That, the court omitted to appoint 12 families all descendants of Njiku occupiers of 15 acres adverse possession land.*
5. *That, the court omitted to declare the Respondent a trespasser on the land he is occupying since, 2005.*
6. *That, the court omitted to state the amount of costs for the suit incurred by the Applicant to be paid by the Respondent.*
7. *That, in judgment, land Case Appeal No.51/2019 the inexecutable error was discovered by the court's own motion.*
8. *That, the Applicant believes this application for review, if not granted, merits of the suit shall not be reached and justice shall be denied.*

On 1st of March, 2022, parties appeared in person for hearing of the application for review. They simply reiterated what is in the grounds for

review and the reply thereto for the Applicant and Respondent respectively. I will therefore abstain from reproducing the said submissions. Essentially, review is a creature of the statutes as per Order XLVII Rule 1 and section 78 of the Civil Procedure Code, Cap. 33. The Court of Appeal in **Karim Kyara vs. R. Criminal Appeal, No. 4 of 2007** (unreported), made the following observation regarding powers of the court on review:

> *The Principle underlying review is that the Court would have not acted as it had if all circumstances had been known. Therefore, review would be carried out when and where it is apparent that-*
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> *First, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The Applicant would therefore be required to prove very clearly that there is a manifest error apparent on the face of the record. He will have to prove further that, such an error resulted in injustice (see* ***Dr. Aman Kabourou vs. the Attorney General and Another, Civil Application No.70 of 1999****(unreported). Second, the decision was obtained by fraud. Third, the Applicant was wrongly*

deprived the opportunity to be heard. Fourth, the Court acted without jurisdiction (see ***C.J. Patel vs. R, Criminal Application No.80 of 2002****)*

Given the above legal principles for review, In the instant application, the main complaint is that, the decree cannot be executed because the judgment never specified the starting point for counting fifteen (15) hectors of the Respondent and thirty-three (33) hectors of the Applicant. To resolve this complaint, one have to revisit the evidence on record. This would include the need to ascertain if the trial tribunal visited the *locus in quo*.

I am aware that it is not mandatory for the court or tribunal in this matter to conduct a visit to the *locus in quo* as stated in **Sikudhani Said Magambo and Kirioni Richard vs. Mohamed Roble, Civil Appeal No.197 of 2018** and **Bomu Mohamed vs. Hamisi Amiri, Civil Appeal No.99 of 2018** (both unreported). However, circumstances of this case permits the need as it would have helped the trial tribunal to exactly know the boundaries of fifteen (15) hectors of the Respondent and thirty-three (33) hectors of the Applicant or if the fifteen (15) hectors of the Respondent is within the thirty-three (33) hectors of the Applicant. Again, the Applicant stated that 33 are hectors and not acres. To my knowledge measurement

units as acres and hectors if applied lead to different results in terms of size. Now, which measurement was used is a matter of evidence.

Apparently, if for example it is noted that there is no evidence to that effect, that would connote to order additional evidence including making an order that the trial tribunal should visit the *locus in quo*. Doing this, for sure would be ultravires and exercising powers of this court sitting on appeal or revision. Since this court had already exercised its appellate jurisdiction, the Applicant won't have redress he was seeking to this court. The Court higher to this have the jurisdiction. On that account, the application fails and is accordingly dismissed with costs.

It is so ordered.

Gerson J. Mdemu

JUDGE

06/05/2022

DATED at **DODOMA** this 6th day of May, 2022

Gerson J. Mdemu

JUDGE

06/05/2022.