

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 465 OF 2022

*(Originating from the High Court of Tanzania, Dar es Salaam District Registry in Civil
Case No 156 of 2019)*

MONEY EXPERTS LTD..... APPLICANT

VERSUS

SAMNA (T) INVESTMENT LTD.....1ST RESPONDENT

SAMWELI SULE NAKEI..... 2ND RESPONDENT

SHAMSA SALIM HAMDUNI.....3RD RESPONDENT

RULING

23rd & 31st March, 2023

BWEGOGGE, J.

The above named applicant has filed an application in this court praying for a review of the Civil Case No. 156 of 2019 disposed of on 16th July, 2020.

This application is brought under s. 95, 96 and Order XLII, rule 1 of Civil

Procedure Code [Cap. 33 R:E of 2019] and supported by an affidavit of Rajesh Kumar Shivji Aggawal, the principal officer of the applicant.

In substance, the relevant prayers made by the applicant are as thus:

- 1. This court to make a review of the order given in Civil Case No. 156 of 2019 by removing the incorrect citation namely, Civil Case No.152 of 2019 and insert the correct citation namely, Civil Case No. 156 of 2019.*
- 2. This court to make review on the decree extracted from the said order given in Civil Case No. 156 of 2019 above mentioned by adding reliefs allowed in clear and concise words to make it effective and executable.*
- 3. This court to make a review on the above-mentioned case by adding the coram that all the defendants were absent.*
- 4. This court to make review on the above-mentioned case by inserting the title of the order to read "**exparte judgment**" instead of "**order**"*
- 5. Any other relief this court deems fit to grant.*

The affidavit filed hereto entails depositions that the applicant filed Civil Case No. 156 of 2019 in this court which was heard exparte in favour of the plaintiff, the applicant herein. The order and decree were issued on 16th July, 2020. On 15th March, 2021 the applicant filed an application for execution of the above order and decree whereas the presiding judge

pointed out five errors on the face of the order and decree as follows: **First**, the title of the judgment reads "**Order**" instead of "**Exparte Judgment.**" **Second**, the coram doesn't show that the defendants were absent. **Third**, the case number was written as 152 of 2019 instead of 156 of 2019. **Fourth**, the decree doesn't show the exact amount awarded to the decree-holder; and, **lastly**, the decree doesn't show the exact costs awarded. On those grounds, the presiding judge instructed the applicant to seek an amendment of the order and decree. Hence this application.

The applicant herein was represented by Mr. Davis Rweyemamu, learned advocate. The respondents absconded to appear before this court; hence, the application herein was heard exparte. The applicant's counsel argued her application by written submission.

In substantiating his first prayer, the counsel submitted that, the case number on the impugned order is cited as Case No. 152 instead of Case No.156 of 2029. That this is a clerical error made by this court as the pleadings filed by the applicant bear correct citation. Therefore, the applicant prayed that the case number be rectified as the said error is cured by section 96 of the Civil Procedure Code (henceforth CPC). The cases of **Stanley**

Runyoro vs Ms Compass Construction Co. Ltd, Civil Appeal No. 31 of 2020; **Jewel & Antiques (T) Ltd vs National Shipping Agencies Co. Ltd** (1994) TLR 107 and **Vallabhidas Karsandas Raniga vs Mansuklal Jivraji & Others** (1965) E.A 700 were cited to bring the point home. On the above premise, the counsel prayed that the citation namely, Civil Case No. 152 of 2019 be substituted by inserting the correct citation namely, Civil Case No. 156 of 2019.

In respect of the second prayer, the applicant submitted that, the impugned decree doesn't indicate reliefs granted namely, damages, interest at the court's rate, cost and, or any other reliefs granted. That those defects have made the decree worthless as it is not executable and it is difficult for the applicant to enjoy the fruits of the judgment. The counsel opined that the court's order is contrary to the provision of Order XX, rule 6(1) of the CPC which indicates that the decree must agree with the judgment and specify the reliefs granted in line with that rule of procedure. That the trial judge ought to provide orders for specific damages, interest, order as to costs and damages, as required by section 30 of the CPC. He, therefore, prayed the said decree be reviewed pursuant to Order XLII, rule 1 of the CPC.

And, in respect of the third prayer, the counsel submitted that this court be pleased to review the impugned order by indicating in the coram that all the defendants were absent as the impugned order was entered in absence of all the defendants as it is indicated in the 2nd and last page of the same.

Lastly, in validating the fourth prayer, the counsel submitted that, the impugned order was entered in favor of the applicant in the absence of the respondents pursuant to Order VIII, rule 14(1) of the CPC. The said order ought to be titled "**judgment**" because the applicant in her plaint prayed for judgment. That though in principle judgment signed and issued by the court cannot be altered, the provisions of Order XX, rule 3 and Order XLII, rule 1 of the CPC allows review of the decision entered by the court in exceptional circumstances such as on account of some mistakes or error apparent on the face of the record. The counsel cited the case of **James Kabaro Mapalala vs British Broadcasting Corporation** [2004] TLR 143, among others, to bolster his point.

The issue for determination is whether the application herein is merited.

At the outset, this court subscribes to the submission by the applicant's counsel in that this court has the jurisdiction to make amendments on clerical

or arithmetical mistakes occasioned in the judgments, decrees or orders as it is embodied in section 96 of the CPC. For clarity, I find it pertinent to reproduce the relevant provision *verbatim* as under:

“Section 96: Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.”

See also the decided cases in this respect, inter alia, **Jewels & Antiques (T) Ltd vs National Shipping Agencies Co Ltd** (supra); **William Getari Kegege vs Equity Bank and Ultimate Auction Mart** (Civil Application 24 of 2019) TZCA 185 and **Sebastian Stephen Minja vs Tanzania Harbours Authority**, Civil Application No. 107 of 2000 CA (unreported).

I have scrutinized the court records and the impugned order. I have ascertained, as rightly submitted by the applicant’s counsel, that the citation of the case number which appears in the order is numerically different from that inserted in the decree. Likewise, the coram in the impugned order indicates that only the 1st defendant was absent whereas there is no record entered in respect of the 2nd and 3rd defendants. However, the last page of

the impugned order, it is in the record that the judgment was entered in favour of the plaintiff in the absence of the defendants. Therefore, the arguments made by the applicant's counsel in substantiating the 1st and 3rd prayers aforementioned has substance. It is patently obvious that the anomaly identified above, are mere clerical mistakes curable under the slip of the pen rule under section 96 of the CPC afore reproduced. Likewise, it is the rule of law that *"a litigant should not be allowed to suffer through the mistake of an officer of the Court connected with the administration of justice and that Courts have a duty to ensure that Court records are true and that they represent an accurate record of the proceedings."* See the cases of **VIP Engineering & Marketing Limited vs Societe Generate De Surveillance (S.A) & Another** (Commercial Case No 16 of 2000) TZHC Com.D 29; and **William Getari Kegege vs Equity Bank and Ultimate Auction Mart** (supra) in this respect.

I now proceed to discuss the 2nd and 4th prayers brought to the attention of this court. In the 2nd prayer, the applicant prayed this court to review the decree extracted from the order by adding reliefs which were not provided for. It was argued that the decree delivered doesn't contain reliefs awarded namely, damages, interest, and costs which renders the decree worthless

and inexecutable. And, in the 4th prayer, the applicant prayed for a review of the impugned order by inserting the title "**Exparte Judgment**" in lieu of the word "**Order.**" Unarguably, the decree can only be rectified to make it agree with the judgment, as provided under Order XX, rule 6 of the CPC. However, the rectification has a limited scope. In the case of **William Getari Kegege vs Equity Bank and Ultimate Auction Mart** (Civil Application 24 of 2019) TZCA 185 the superior court clarified as follows:

It is the rule of law that the order of the court can subsequently be coerced so that it conforms with the judgement. A judgment cannot be corrected ...by bringing into the judgment a new matter which does not appear naturally to have been in the contemplation of the Court when the judgement was being written." See also the same view in the case of **Sebastian Stephen Minja vs Tanzania Harbours Authority** (supra) in this respect.

In the same vein, the provision of Order XLII, rule 1 of the CPC enjoins this court with power to review its judgment, upon the application, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. Likewise, the power enjoined to this court is not without limitation. In the case of **James Kabaro Mapalala vs British**

Broadcasting Corporation, the apex Court held:

*"In an application for review, the judge is not sitting as an appellate Court. In that situation, **if the judge is satisfied that the tests for review laid down under Order XLII, rule 1 are met, it is expected of him to grant the application by effecting the relevant and necessary rectification and corrections sought in the judgment** which in warranting circumstances, may be varied as a result of the new and important matters discovered."* Emphasis mine.

Having explored the law and principles guiding this court in respect of the prayers made for review of the impugned order and decree of this court, I find it pertinent to reproduce the relevant impugned order for ease of scrutiny as thus:

*"**Court:** By Order VIII, rule 14 (1) and in absence of the defence., Judgment is entered in favour of the plaintiff....Decree in that spirit is issued forthwith accordingly."*

It is the above-reproduced order which the counsel for the applicant is praying this court to enter the title "**Exparte Judgment**" and issue a decree indicating the damages, interests and costs awarded, of which, in fact, were not granted. I need not state that the impugned order doesn't fit to be

termed as a judgment in terms of the provision of Order XX, rule 4 of the CPC.

Being mindful of the dictates of the provisions of Order XLII, rule 1 of the CPC and the principles in the cases of **William Getari Kegege vs Equity Bank and Ultimate Auction Mart (supra)** and **James Kabaro Mapalala vs British Broadcasting Corporation (supra)** revisited above, I have arrived at the conclusion that there is no judgment upon which the enjoined power of review may be exercised. Likewise, I am of the settled view that the proposed alterations of the decree are diametrically opposed to the contents of the impugned order. Therefore, the prayers made before this court are patently untenable.

That said, I find the application for review in respect of errors occasioned in the citation of case number and coram of the court dated 16th July, 2020 with substance. Otherwise, I find the prayers for the review of the decree and impugned order manifestly misconceived and untenable. The application is partly allowed. For clarity, I hereby enter orders as under:

1. The incorrect citation of the case namely, **Civil Case No. 152 of 2019** be substituted with the correct citation namely, **Civil Case No. 156 of**

2019.

2. The coram of the court dated 16th July, 2020 be rectified to indicate the absence of the defendants in conformity with the order of the court.
3. The prayer for alteration of the decree extracted to cater for reliefs namely, damages, interest, and costs which were not provided for is untenable. In the same vein, the prayer for inserting the title "**Exparte Judgment**" in lieu of the word "**Order**" in the impugned order is likewise, unmaintainable.

DATED at DAR ES SALAAM this 31st day of March, 2023.



A handwritten signature in blue ink, appearing to read "O. F. Bwego", is written over the printed name.

O. F. Bwego

JUDGE