

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 588 OF 2017

(Original Misc. Application No. 686 of 2015)

M/S AIRPORT PROPERTIES LIMITED.....APPLICANT

VERSUS

THE REGISTRAR OF TITLES.....RESPONDENT

R U L I N G

3/5/2018 & 22/6/2018

MZUNA, J.:

In this application the court is being asked to review its decision in Misc Land Application No. 686 of 2015 dated 9th September 2016 before Hon. Mkuye, J (as she then was).

The grounds for review as per Memorandum of Review read as follows:-

1. The Honourable trial Judge when she ruled out that the Petition of Appeal was not accompanied with the order or decision appealed against, did not consider that the notice of rectification of land register issued by the Registrar of Titles, declaration in support of an application for rectification of the land Register and cancellation of survey Plan "D" 833/2 were attached to the application and to

the appeal as **annexure "C"** which is an error apparent on the face of record.

2. The Honourable trial Judge when she held that the Petition was not accompanied with the order or decision appealed against, did not consider the notice of transfer under Petition of Appeal as **annexure "B"** issued by the Registrar of Title and which was not complied with by the said Registrar of Titles by registering the Applicants interest and went on to effect of rectification of the land Registrar, an act of which was subject to appeal.
3. The Honourable trial Judge when held that the Petition of Appeal was not accompanied with the order or decision appealed against did not consider that the act of rectification of the land Registers an administrative function of recording an entry in the land registered such entry can be proved by making official secret and given the official record report duly signed by the Registrar of Titles showing the status of the land Register in a particular property and the said official search report was attached to the applicant and the Petition of Appeal as **annexure 'E'**.
4. At a time of considering as to whether additional evidence should be allowed or not, it was premature for the court to determine the validity of appeal without giving chances to the parties to address to that issue raised *suo moto* by the and the appellant was condemned unheard.

In view of the above grounds, Mr. Rwebangira the learned counsel who represented the applicant invited the court to correct those said errors which according to the applicant are errors apparent on the face of record.

The respondents, The Registrar of Titles and the Attorney General were represented by Mr. Mwitasi, the learned Senior State Attorney. He did not oppose to the application.

Arguing in support of the application, Mr. Rwebangira said that as per the ruling in application No. 686 of 2015 the Judge ruled beyond the submission since the parties were condemned unheard. The learned counsel was of the view that had the parties been given chance to address the court they would have informed the court that that order appealed was annexed to the petition of appeal.

To bring the point home, Mr. Rwebangira referred this court to the decision of the Court of Appeal of Tanzania in the case of **Mabibo Beer Wines and Spirit Ltd v. Lucas Malya a.k.a Baraka Stores and Another**, Civil Application No. 160 of 2008, which emphasized the need for "The party to be heard before adverse action or decision is taken against such party".

The learned counsel further underscored that the court condemned parties unheard since it was immature for the Judge to decide whether the appeal was competent or incompetent at the application stage.

Mr. Rwebangira thus prayed for the court to set aside the ruling and order in Misc. Land Application No. 686 of 2015 and to proceed to determine whether the applicant should be allowed to adduce additional evidence which was not decided by my learned sister Hon. Mkuye J (as she then was).

On his party Mr. Mwitasi, learned Senior State Attorney conceded that there was an error on the face of record committed by the trial Judge since those documents were attached to the Petition of Appeal.

He further contended that indeed the trial judge went beyond the issue which was addressed. In support of his submission, the learned State Attorney referred the court to the decision of the Court of Appeal of Tanzania in the case of **Peter Nghomango v. Attorney General**, Civil Appeal No. 114/2011 which emphasized the principle that raising a point without involving parties is fatal.

Pursuant to the provision of Section 78 of the Civil Procedure Code, Mr. Mwitasi invited this court to review the said decisions since there is no

appeal which has been preferred. In the premise, he urged the court to allow the application.

This court has the following to say. This court is enjoined with powers to review its decision as provided for under Section 78 read together with the provisions of Order XLII Rule 1(b) of the Civil Procedure Code, Cap 33 RE 2002. It can do so in any of the following circumstances:-

First, there should not be an appeal filed by the party concerned; Second, there must be a discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or; Third, on account of some mistake or error apparent on the face of record on.

The Court of Appeal had the occasion to say about the three principles in the case of **African Marble Company Limited (AMC) v. Tanzania Saruji Corporation (TSC)**, Civil Application No. 132 of 2005, CAT at Dar es Salaam (unreported), which cited with approval the decision in the case of **Transport Equipment Ltd. v. Devram P. Valambhia**, Civil Application No. 18 of 1993, Court of Appeal of Tanzania (unreported) where a full bench

of seven Justices considered the Courts power to review its decisions and held that –

“The court has the inherent jurisdiction to review decisions 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.”

(Underscoring mine).

In our case, it is argued that there is an error apparent on the face of the record and further parties were not given chance of hearing. So a review should be issued otherwise the court would not have acted as it did had all the circumstances been known.

At page 3 of the said ruling, it was so said that the copy of the decision, order of the Registrar of Titles was not accompanied in the Petition of the Appeal hence renders the application unmaintainable and incompetent as was found that it emanates from the appeal which is incompetent for want of copy of decision sought to be appealed against. That is the gist of this application for review.

It is argued that there was need for the parties to be given the opportunity to address the court on that point of the incompetence of an appeal before the court could decide the matter on merits.

Reading the above reasons together with the grounds showing relevant annexures were annexed thereto, is not to my view an error on the face of the record. It shows these are fresh facts which I cannot be in a position to know if they existed at the time when the Hon. Judge made such the impugned order. Sometimes it happens parties mention annexures but never annex them. It was upon the applicant to prove that this case does not fall in that category. That has not been proved.

To do otherwise, I find amounts to deciding an appeal or another look which is not allowed in law. It was held in the case of **Paulo Lema v. Wilson Chuma** [1989] TLR 130 that:-

“The Judge...**is not entitled to take another look at his own decision...**” (Emphasis mine).

In other words, Judge cannot correct his own decision. Exception to that rule is covered under the decision in the case of **Transport Equipment Limited v. Deuram P. Valambhia** [1998] TLR 89, 96.

Consequently the ruling and order emanating from Misc Land Application No. 686 of 2015 cannot be reviewed as prayed for the reasons above stated. Application for review is accordingly dismissed with no order for costs.

It is hereby so ordered.



M. G. Mzuna
M. G. MZUNA,
JUDGE. 22/6/2018