THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)

LAND DIVISION

LAND CASE NO. 104 OF 2021

CAMEL OIL (T) LIMITED ..... PLAINTIFF

VERSUS

BAHDELA COMPANY LIMITED ..... DEFENDANT

RULING

Date of Last Order: 30.07.2021

Date of Ruling: 04.08.2021

A.Z.MGEYEKWA, J

The Plaintiffs herein have instituted this land suit on 15th July, 2021 in this Court against the above Defendant praying for the following:-

a) *This Honourable Court to issue a declaratory order that the Defendant is in breach of the agreement entered with Plaintiff on 1st June, 2016;*

b) *This Honourable Court issue an order that Defendant should by paragraph 1 and 14 of the agreement dated 1st June, 2016;*

c) *This Honourable Court to issue an order to stop the Defendant and her agent from the Plaintiff's business;*

d) *That the Defendant to pay the general damages.*

e) *That the Defendant be ordered to pay the cost of the suit; and*

f) *Any other reliefs the Court may deem fit and just to grant.*

On the other side, the Defendant has filed a Written Statement of Defence vehemently challenging the Plaintiffs' claims and he also raised preliminary objections as follows:-

1. *That this Honourable Court has no jurisdiction to entertain this suit being a commercial dispute as per Written Law (Misc. Amendment) Act No. 4 of 2004.*

2. *That the Plaint offends mandatory provision of Order VII Rule 1 (e) of the Civil Procedure Code Cap.33 [R.E 2019] as it does not constitute facts showing when the cause of action arose.*

On 30th July, 2021 when the matter was called for mention, Plaintiff enjoyed the legal service of Mr.Twarah Yusuph, learned counsel whereas Defendant enjoyed the legal service of Mr.Samson Mbamba, learned counsel assisted by Mr. Mussa Mwapongo, learned counsel.

Opposing the case, Mr. Samson was the one who started to kick the ball rolling. On the first limb of the objection, the learned counsel for the Defendant contended that this court has no jurisdiction to determine this suit since the same is a commercial dispute. To bolster his submission he referred this court to section 7 (1) of the Written Laws Act. No. 4 of 2002 which state that all courts shall have jurisdiction in all civil cases except where the jurisdiction is expressly or impliedly. He added that the jurisdiction in land cases is provided for under section 167 (1) of the Land Act No.4 of 1999.

Mr. Samson emphasized that, in the case at hand, the centre piece of controversy between the parties is concerning fuel station whereas, the parties had a partnership agreement. He strenuously argued that it is not

a lease agreement, rent dispute and no any documents is showing that the parties are contesting on land ownership. He further contended that it is all about the question of joint operation of business and division of property. Fortifying his submission he referred this court to the case of **Shirima and Others Express Bus Service v Humphrey Maine Comfort Bus Service** [1992] TLR.

Mr. Samson did not end there, he referred this court to the case of **Shirima** (supra) and questioned the wrong complaint by the Plaintiff in exclusion of the reliefs. He continued to state that in the instant case the wrong which has been addressed by the Plaintiff is the outstanding debt, and Plaintiff's alleges that he is entitled to continue to run the business because he has not recovered his debts.

Insisting, Mr. Samson stated that the issue of jurisdiction is paramount, the first thing to be determined by the court before determining the suit is the jurisdiction of the court. To buttress his position he cited the cases of **Sospeter Kahindi v Mbeshi Mashini**, Civil Appeal No.56 of 2017 and **Tanzania Revenue Authority v Kotra Company Limited**, Civil Appeal No. 12 of 2009. He stressed that this is not a land

matter as per section 167 of the Land Act, No.04 of 1999 and the Plaintiff's reliefs cannot establish the subject matter.

On the strength of the above submission, he beckoned upon this court to strike out the suit with costs for want of jurisdiction.

On his side Mr. Mussa, learned counsel for the Defendant emphasized that the dispute between the Plaintiff and Defendant is well elaborated under paragraphs 6, 7, 8 and 9 of the Plaint and 'annexure Camel 1' which shows that the dispute is a commercial dispute in nature. He stated that the parties agreed to share profit out of the business contract. To support his submission he referred this court to item 1.3 of 'annexure Camel 1'. Insisting, Mr. Mussa contended that the cause of action accrued from the business transaction and not from the ownership of land. He continued contended that the parties divided obligations; the Plaintiff was in charge of business while the Defendant was waiting for share profit based on equal share.

He added that the 50 % shares which were required to be handed over to Defendant was utilized to liquidate the commercial claim against the Plaintiff. It was in his view that the matter is purely a commercial matter

and not a landlord and tenant matter. To substantiate his position he referred this court to GN No.250 of 2012, Item 3, and GN No.4 of 2004.

On the second limb of the preliminary objection, Mr. Mussa contended that as per the Plaint, the Plaintiff claimed that the agreement was for a duration of five years from 1st June, 2016 to 30th May, 2021. He went on to state that the agreement was ending after five years unless the other party has given notice in writing. Fortifying his submission he referred this court to 'annexure Camel 1' Item No. 1.1.4 and 1.1.5. He continued to state that the five years lapsed and the Plaintiff said that the Defendant does not want to continue with the said agreement. Mr. Mussa blamed the Plaintiff for not stating or make any claim to the Defendant upon receiving the said notice. He continued to claim that the Plaintiff did not provide any outstanding instead he came before this court to force the renewal. He insisted that the Plaintiff has not demanded any outstanding, thus, he has no any cause of action. He added that in case the Plaintiff could have replied then he could have a claim.

On the strength of the above submission, Mr. Mussa valiantly contended that the Plaintiff case is in the wrong forum and he has no cause of action and if there is any then the same is prematurely before this court.

Responding, the Plaintiff's Advocate confutation was strenuous. Mr. Twarah came out forcefully and defended the suit before this court as proper and fit case to be decided by the High Court Land Division. The learned counsel for the Plaintiff started by referring this court to the definition of a land dispute as defined under section 3 of the Land Act. He stated that the 'annexure Camel 1' draws attention to how parties came to conclude the contract.

Mr. Twarah continued to submit that the Defendant owes the Plaintiff Tshs. 2,053,143,825/= being outstanding debt arises during the course of their business. He went on to state that the debtor gave the company to the Plaintiff to run the station under terms and conditions that Camel oil had the sole management and the Defendant was required to give 50 % of the operational costs to the Plaintiff. To support his submission he refereed this court to 'annexure Camel 1' paragraph (d) and paragraph 1.6 of the Plaint. It was his view, Camel Oil had the sole management by itself was paying all land taxes and the Defendant used the outstanding amount as rent to allow the Plaintiff to possess the fuel station. He added that the Defendant did not shift business operation but the petroleum substance. He claimed that in accordance with paragraph 1.4 of the contract the land terms of five years were automatically renewable.

Insisting, Mr. Twarah submitted that the matter before this court is concerning land whereas the Plaintiff's interest is on land tenure, he wants to protect it. To support his argumentation he referred this court to the following annexures; Camel 1, Camel 2, and Camel 3. Stressing, Mr. Twarah stated that the dispute is related to eviction from the land since the Plaintiff was in possession of the said land.

On the strength of the above submission, the learned counsel for the Plaintiff stated that the Plaint is clear and the cause of action is also clearly stated.

In his rejoinder, Mr. Samson averred that the Plaintiff is aggrieved after the termination of the contract. He fervently argued that the instant dispute is not related to land ownership, lease of land, or mortgage of land. He submitted that the letter required the Plaintiff to hand over the station which means handing over the business not otherwise. He added that the Plaintiff was given five years of business tenure and not tenure over a piece of land.

Mr. Mussa reiterated his submission in chief and stressed that there is nowhere in the Plaint where the Plaintiff stated that he was paying rent. To support his position he referred this court to section 100 (1) of the Evidence Act, Cap.6 [R.E 2019]. Mr. Mussa went on to submit that the

Plaintiff's Advocate has not challenged the issue of cause of action instead he wants this court to consider that the letter as a cause of action. He valiantly argued that the issue of lacuna is the contract between the parties and the Plaintiff is the one who prepared the said contract.

In conclusion, he insisted that this suit is not related to land matter and does not belong to this court and in case the same is proper before this court then the Plaintiff has come to this court prematurely.

Having digested the learned counsels' submissions and the pleadings before me, I proceed to determine the preliminary objections raised by the Defendant's learned counsels. In determining the first objection, I will find out whether the High Court (Land Division) has jurisdiction over disputes concerning the business transaction. I should start by emphasizing that, the issue of jurisdiction is fundamental and a root of the case. If the court will proceed and determine the matter without the required jurisdiction the entire proceedings will be declared, "*null and void ab initio*".

In order to ascertain whether this is a land matter, I had to peruse the Plaint to find out whether the wrongdoing is related to land matter; the Plaintiff under paragraph 8 of the Plaint is claiming that the defendant purposely communicated to Plaintiff her intention to terminate the

contract. Again in paragraph 13 of the Plaint, Plaintiff claims that the Defendant through his letter dated 14th July, 2021 insisted termination and to remove the Plaintiff's staff and belongings in the Defendant's petrol station.

In the due cause, it is my view that land matters and commercial matters touching 'land' should be dealt with in the Land Division and the Commercial Division of the High Court respectively. In the holding of Kalegeya, J. in the case of **Rashimi Mangaldas Taichura & Others v Lavender Villas Ltd & Others**, Comm. Case No. 197 of 2002 w (supra) in this case the learned judge had this to say: -

> *"... provided that the transaction involving selling and buying, whether for profit or for any other reason, even if it be a sole transaction, is commercial... **What is important is the nature of the centre-piece of the controversy**. The question is who, flowing from the series of these commercial transactions, has a paramount title to the premises. And the alleged flaws and illegalities cannot be separated to form separate actions as indeed there are the veins and blood that make these commercial transactions controverted". [Emphasis added].*

I am in accord with the learned counsels for the Defendant that the Land Act, No. 4 of 1999 invests exclusive jurisdiction of determination of land disputes to the Land Division of the High Court. Section 167 of the Land Act, No. 4 of 1999 is very clear on this and the Act did not repeal the establishment of the Commercial Division nor inhibit its jurisdiction. See the case of **Rashimi Mangaldas** (supra). Moreover, I agree with Mr. Samson that this Court's exclusive jurisdiction has been abrogated by Act section 167 (1) of the Land Act No. 04 of 1999. This Act, indeed, has uplifted the exclusive jurisdiction of the Land Division of the High Court on disputes over land matters.

I have examined closely the Plaint, I am convinced that the dispute is related to commercial matter than land matter. The relationship between the Plaintiff and the Defendants is termed as a contractual relationship. The transactions, from the beginning of the contract agreement is a commercial nature. Therefore, I differ with Mr. Twarah submission that the suit before this court is related to the land matter to the contrary the same relates to commercial matter.

The aim of the Plaintiff and the Defendant, in this case, was *ab initio* not to change ownership of the land. So, what is to be looked upon in determining the jurisdiction of the Court is the *prima facie* intention of the

parties to a transaction. It is worth noting that a business transaction is not a transfer of ownership over the land. All learned counsels in their submission made it very clear that the owner of the petrol station is the Defendant. Therefore, the ownership never changed, thus, the same is not in dispute, rather, what is in dispute is the breach of the business agreement.

The Plaintiff claims that there was no performance of the contract, it is worth noting that the mere fact that landed properties was in dispute will not turn the matter to a land dispute since the ownership did not change. For that reason, I fully subscribe to the learned counsels for the Defendant that the matter is purely commercial in nature and it is an outcome of an unperformed commercial transaction which is far away from the jurisdiction of the Land Division of the High Court. This position is fortified with the holding of Hon. Mziray J (as he then was) in his ruling in the case of **Exim Bank (T) Limited v Agro Impex (T) LTD & Others, Land Case Appeal No. 29 of 2008** where he held as follows:-

> *"Two matters have to be looked upon before deciding whether the Court is clothed with jurisdiction. One, you look at the pleaded facts that may* ***constitute a cause of action****. Two, you look at the reliefs claimed and see as to whether the Court has the power to grant*

them and whether they correlate with the cause of action... The claim therefore against the first defendant is found on a credit facility. On the part of the second and third Defendant the cause of action in founded on a contract of guarantee." [Emphasis added].

Scrutinizing the prayers in the Plaint specifically the third prayer, it state that the Honourable court to issue an order to stop the Defendant and her agents from the Plaintiff business, one can see that the centre piece of controversy between the parties is concerned business transactions disputes. The record is silent whether the matter involves land ownership or trespass, thus, the issue of ownership is not the subject matter neither disposition of land.

In the end result, I see nothing which would give jurisdiction to this Court to entertain this suit. I hold so because.

Addressing the second objection, the cause of action, and the claims in this matter, the cause of action accrued from a purely commercial transaction. It must be understood that any litigation whose cause of action accrued from a transaction or a commercial contract, regardless of its aftermath to landed property, is not a matter of the Land Division of the High Court. It is a result of commercial transactions and it has to be dealt with by the Commercial Division of the High Court, not the Land Division.

The facts are very clear that the cause of action arose after the Defendant issued a notice to require the plaintiff to vacate the petrol station which is a business premises not an ownership claim over a piece of land. With due respect to Mr. Twarah, the issue of land tenure does not arise in this suit. Equally, the issue of eviction from land possession cannot arise since the owner of the fuel station is the Defendant. The tenure in question is business tenure which is related to a commercial dispute.

Moreover, as rightly submitted by Mr. Mussa that the Plaint does not state when the cause of action arose as per Order VII Rule 1 of the Civil Procedure Code Cap.33 [R.E 2019] which state that:-

> *" 1. The plaint shall contain the following particulars -*
>
> *(e) the facts constituting the cause of action* ***and when it arose.*** *" [Emphasis added].*

Applying the above provision of the law in the instant suit, the time when the action arose is not stated in the Plaint which means the Plaint is prepared contrary to the requirement of the law. Therefore, failure to mention when the cause of action arose in the Plaint is fatal, since the court cannot determine the time limit of the suit, whether the suit was within time or not.

For the said reasons I hold that this is not a proper forum for adjudicating this dispute. I, therefore, proceed to uphold the Preliminary Objection on points of law raised by the Defendant's Advocates. In the end result, I strike out this suit without costs.

Order accordingly.

DATED at Dar es Salaam this 04th August, 2021.

A.Z.MGEYEKWA

JUDGE

04.08.2021

Ruling delivered on 04th August, 2021 in the presence of Mr.Twarah Yusuph, learned counsel and Mr. Samson, and Mr. Mussa Mwapongo, learned counsels for the Defendant.

A.Z.MGEYEKWA

JUDGE

04.08.2021

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVIEW NO. 651 OF 2020

(Originating from the decision of Land case No.67 of 2004 dated 27/05/2014 High Court of Tanzania delivered on 11/06/2014)

KHAMIS ALLY KHAMIS ..... APPLICANT

VERSUS

SAIDI A. MBAGA ..... 1ST RESPONDENT

VERONICA KIBWANA as the Administratrix of the Estate Of the late JACOB KIBWANA ..... 2ND RESPONDENT

RULING

Date of last order: 24.08.2021

Date of Ruling: 30.08.2021

A.Z.MGEYEKWA, J

The Applicant was aggrieved with the whole decision of this court in Land Case No. 67 of 2004 before Hon. Mwaimu Judge (as he then was) dated 27th May, 2014. On 16th November, 2011 the applicant lodged the instant application for review before this court. The application is brought

under sections 78, 95, 96 and 97, Order XL Rule 1 (a) , (b) and 2 Rule 2 and 3 of the Civil Procedure Code, Cap. 33 [R.E. 2019] and sections 2 and 5 on PART II of The Application of Laws Act, Cap. 358 [R.E. 2019].

When the application was called for hearing on 29th July, 2021, the applicant appeared in person, unrepresented and the respondent enjoyed the service of Ms. Melania Mashauri, learned counsel. By the court order, the parties argued the appeal by way of written submissions. The appellant filed his submission in chief on 12th August, 2021. The respondent's Advocate filed a reply on 19th August, 2021 and the appellant's Advocate filed a rejoinder on 24th August, 2021. The appellant has come to this Court for review of the decision in Land Case No. 67 of 2004. He raised ten grounds of review as follows:-

1. *That the Honorable court mistakenly and apparently erred in law and facts on the face of records, proceedings, and pleadings and indeed misdirected in its decision in proceeding to entertain and grant orders with wrong and defective parties or wrong names of parties in the citation for adjudication.*

2. *The Honorable court mistakenly and apparently on the face of records erred in law and facts in delivering a fatal and defective decision with two defective decisions with two different dates and*

titles contrary to the law and legal practice. Alternatively, or in other words, the honorable Court mistakenly erred in law and facts on the face of records in not discovering that the decision or Judgment and decree have two different dates and separate titles dated 27/05/2014 and 11/06/2014.

3. *The Honorable court mistakenly and apparently of the face of records erred in law and facts in proceedings with the case and composing a judgment or decision without discovering that the alleged Attorney PW1 SEBASTIAN JACOB KIBWANA was not made or joined as a party to sue or stand on behalf of the plaintiffs (respondents) and no application was made or granted to that effect contrary to the law requirements.*

4. *The Honorable Court mistakenly and apparently erred in law and facts in proceeding with the case without amendments and delivering a fatal decision incapable of appeal and implementation in law.*

5. *The Honorable court mistakenly and apparently and apparently on face of records erred in law and facts in not discovering that the plaintiffs did not testify in court personally or did not prosecute their case and consequently they did not have locus standi or cause of action to sue were not entitled to any relief of the claim.*

6. *The honorable court mistakenly and apparently on the face of records erred in law and facts in not discovering that the decision entered or delivered is fatal and incurably null and avoid by virtue of the nature of dispute and omission to be sued and include MAWAZO V. CHAMWITWI or the seller of the property in dispute as a co-defendant in a suit for recovery of ownership.*

7. *The Honorable Court apparently on the face of records and proceedings erred in law and facts in deregistering plot No.459 Jangwani Beach and declaring the applicant (defendant) to be a trespasser to plot No. 345 Jangwani Beach incapable of execution or operating in a vacuum.*

8. *The honorable court mistakenly and erred in law and facts and indeed misdirected in its decision in proceeding to grant illegal orders with a dead person and wrong person without the amendment of pleadings or inclusion of Attorney and administrator. Alternatively, the honorable Court erred in law and facts in not discovering that the suit abated in law due to time limitation and remedy was dismissal.*

9. *The Honorable Court mistakenly and erred in law and facts in not discovering that the decision in Land Case No. 67 of 2004 is*

ambiguous, defective, contradictory, unlawful, and incapable of appeal and implementation in law by virtue of deregistration, wrong parties, and fatality of the decision and citation of parties.

10. *The Honorable Court mistakenly erred in law and facts in determining Land Cas No.67 of 2004 in total disregard or forgetfulness of the law and procedure applicable of the law and procedure applicable in legal practice.*

In his submission, the applicant pointed out that Land Case No.67 of 2004 contain fatal defects on the names of the parties, as appeared in the judgment. The first plaintiff is SAIDI A. MBAGA and the second plaintiff is JACOB KIBWANA. It was his view that Jacob Kibwana passed away on 14th June, 2008, however, his name was not substituted to that of his administrator until to the finality of the case which was delivered on 27th May, 2014 contrary to the law. He added that the deceased was incapable of suing the respondent.

It was his view that he deceased name was not required not appeared in the Judgment. The applicant further contended that the dates appearing in the Judgment dated 27th May, 2014 is different from the date appearing in the Decree. He added that the Decree is dated 14th June, 2014. The applicant valiantly submitted that the difference of dates is a

fatal defective since the aggrieved party cannot file an appeal before the Court of Appeal without correcting the same.

The respondent did not end there, he submitted that the administrator of the deceased Jacob Kibwana was appointed to take over from where he had ended. He went on to state that in accordance to section 3 of the Law of Limitation Act, Cap. 89 [R.E. 2019], the legal representative is required to be appointed to take over from the deceased within 90 days. It was his view that failure to appoint the administrator means the matter was abated, thus, Veronica Kibwana was not legally joined in Land Case No.67 of 2004 as an Administratrix of the estate of the deceased.

He further stated that also Sebastian Jacob did not apply for joining the case as an Attorney for both plaintiffs who did not come to testify in this court. Insisting, the applicant argued that the plaintiffs abandoned their case. To bolster his position he referred this court to the case of **Kulwa Daudi v Rebeca Spephene** (1985) T.L.R 116. He went on to submit that Order 1 Rule 3 and 10 of the Civil Procedure Code, Cap. 33 [R.E. 2019] was violated for non-joinder of parties in which buyer and seller were to be joined. It was his view that one Mawazo V. Chamwitwi was required to join the case failure to that lead to the nullity of the entire

proceedings and Judgment of the Court. Fortifying his submission he cited the case of **Juma B. Kadala v Laurent Mkande** (1983) TLR 103.

On the strength of the above submission, he beckoned upon this court to set aside the decision of this court for the reason that the law was violated.

In response, Ms. Chihoma, the learned counsel for the respondent contended and disagreed with the applicant on the 3rd, 4th, 6th, 7th, 8th, 9th, and 10th grounds for review on the basis that the mentioned grounds should not be regarded in this application as they contain issues of evidence that have to be determined in appeal. The learned counsel submitted that the applicant is trying to mislead this court by raising grounds of appeal as if this court is an appellate court to decide on its own decision. Shooting from the hip, Ms. Chihoma contended that the applicant is trying to abuse court processes.

The learned counsel for the respondent conceded to the 1st and 2nd grounds for review by admitting the defects on the Judgment in Land Case No.67 of 2004. For ease of reference, I find it apposite to reproduce the excerpt as hereunder:-

"We are of the belief that the name of the second Respondent herein who was the 2nd plaintiff in the original suit, ought to have been substituted with the name of his Administratrix Veronica Kibwana".

Ms. Chihoma continued to submit that the records reveal that on 17th June, 2010 before Hon. Mziray, J (as he then was) specifically on page 47 of the proceedings, allowedn Veronica Kibwana to join as an Administratrix/legal personal representative of the Estate of the late Jacob Kibwana, in Land Case No. 67 of 2004. She added that the changes were not made up to the finality of the suit. As the result, the name of the late Jacob Kibwana appeared in the judgment.

She continued to submit that the above error does not vitiate the decisions since it was human error and oversight, Ms. Chihoma added that this court is empowered to amend its proceedings under sections 95 and 96 of the Civil Procedure Code, Cap.33 [R.E. 2019]. The learned counsel for the respondent was of the view that the Judgment and Decree ought to have appeared as hereunder follows:-

SAID A. MBAGA ..... 1ST PLAINTIFF

VERONICA KIBWANA (As the Administratrix

of the Estate of the Late JACOB KIBWANA..... 2ND PLAINTIFF

VERSUS

KHAMIS ALLY KHAMIS ..... DEFENDANT

Regarding the differences of the dates appearing in the Judgment and Decree, the learned counsel for the respondent submitted that the defects are minor, the same can be corrected by this court. Ms. Chihoma strongly contended that the applicant in the remaining grounds for review is trying to apply for review as the back door to an appeal. Fortifying her submission she referred this court to the case of **Vitatu & Another v Bayay & Others**, Civil Application No. 16 of 2013, Court of Appeal of Tanzania at Arusha (unreported) which ruled out that a review is not to challenge the merits of the decision.

The learned counsel for the respondents went on to submit that a review is intended to address the irregularities of a decision or proceedings, which have caused injustice to a party. Insisting, she argued that a review is not an appeal. To back up her argumentation she cited the case of **Expedito Ngakongwa & Another v Oryx Oil Company Limited** (Labour Review Application No. 01 Of 2019 High Court of Tanzania, Labour Division at Moshi Registry.

On the strength of the above submission, Ms. Chihoma beckoned upon this court to grant only the 1st and 2nd grounds of review and dismiss the

remaining grounds for review since the same are not for grounds for review. She also prayed for costs of the case.

Having heard the submissions of both learned counsels, I should state at the outset that, the issue for determination is *whether the applicant's application for review is meritorious*. I should state from the outset that I am in accord with the learned counsel for the respondent that some of the grounds of review raised by the applicant are not grounds of review. For an application for review to stand, it has to squarely fall within the circumstances encompassed under Order XLII Rule 1 of the Civil Procedure Code Cap.33 which reads:-

> *" 1 (1) Any person considering himself aggrieved-*
>
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
>
> *(b) by a decree or order from which no appeal is allowed, and who, from the 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,* ***may***

apply for a review *of judgment to the court which passed the decree or made the order."*

The law requires that where an application for review is based on the ground that there is an error on the face of the record, the error complained about must be apparent, eye-striking, or self-evident and not one which needs to detain a person through a long process of reasoning on points where there may be two opinions. This was held in the cases of **East African Development Bank v Blueline Enterprises Tanzania Ltd**, Civil Appl. No.47 of 2010, (unreported), the Court of Appeal of Tanzania cited with approval the case of **Chandrakant Joshubhai ' Patel v Republic [2004] TLR 218**, the Court held that:-

"An error apparent on the face of record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points which may conceivably be two opinions... A mere error of law is not a ground of review.... That a decision is erroneous in law, is no ground for ordering review.... It can be said of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established."

Additionally, the error apparent on the face of record must also have occasioned an injustice, and the applicant must prove, very clearly, that, such manifest error occasioned an injustice to him. The learned counsel for the applicant did not prove how the delay in receiving the typing of the impugned Judgment, decree, and proceedings and supply affected the applicants. In the case of **Tanzania Transcontinental Co. Ltd v Design Partnership Ltd**, Civil Application. No.762 of 1996 (unreported), the Court of Appeal of Tanzania observed that:-

> *"... the Court's power of review ought to be exercised sparingly and only in the most deserving cases, bearing in mind the demand of the public policy for the finality of litigation and for the certainty of the law as declared by the highest court of the land."*

Guided by the above authorities, I find that the applicant's grounds except the first and second grounds are inviting this court to reopen the determination of the case. It is noteworthy that a review is not an appeal in disguise whereby an erroneous decision can be reheard and corrected. Thus, the purported grounds for review that appear in the Memorandum of Appeal may be taken up in an appeal. The applicant should not turn this Court to an appellate court where he can seek a rehearing of the already heard and determined facts. In the case of **Halais Pro-Chemic v Wella AG** [1996] TLR 269, the Court held that:-

"The principle of revisional powers conferred on the court is not meant to be used as an alternative to the appellate jurisdiction of the court."

Applying the above holding of the court, I am certain that this court is not moved to use its revisional jurisdiction where the applicant may invoke her rights of appeal to the court. Consequently, the applicant's third, fourth, fifth, sixth, seventh, eighth, ninth and tenth grounds for review are devoid of merits. The same need to be determined by the appellate court.

On the other hand, I have noted that second, grounds of review are related to an error or mistake discovered by the parties. However, the remaining grounds third, fourth, fifth, sixth seventh, eighth, ninth, and tenth grounds requires this court to re-determine the evidence in the record while this court has already gone through court records, analysed the evidence, and came up with a decision.

As to the first grounds, I am in accord with the applicant that the name of the applicant appearing in the plaint was not correct. However the records reveals that the applicant's name Khamis Alhaji appearing in the plaint was already been amended to read Khamis Ally Khamis. As rightly pointed by the learned counsel for the respondent the said errors does

not vitiate the decisions taking to account that this court already corrected the applicant's name to read Khamis Ally Khamis instead of Khamis Alhaji.

With respect to the second ground for review, is related to the name of the second plaintiff appearing in the judgment of this court in Land Case No.67 of 2004. The defects is noticeable and I am in accord with the learned counsel for the respondent that this error cannot vitiate the decision of this court, the same can be corrected. Section 3 of the Civil Procedure Code, Cap.33 [R.E. 2019] provides that:-

> *"3.-(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf,* ***shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit".*** *[Emphasis added].*

It is indisputable fact that in Land Case No. 67 of 2004, Veronica Kibwana, the Administratrix of the late Jacob Kibwana was not included as a party, and the law requires that the administrator who takes over to handle the matter in court. Reading the Judgment and Decree I have

noted that the said changes were not reflected. Thus the same errors which are suitable for review to enable the court to make necessary corrections. As it was well argued by the counsel for the respondent's Advocate that in Land Case No. 67 of 2004 the names of the parties ought to have appeared as follows:-

"SAID A. MBAGA ..... 1ST PLAINTIFF

VERONICA KIBWANA (As the Administratrix

of the Estate of the Late JACOB KIBWANA..... 2ND PLAINTIFF

VERSUS

KHAMIS ALLY KHAMIS ..... DEFENDANT"

And not as it appears in Land Case No. 67 of 2004 as follows:-

"SAIDI A. MBAGA.....1ST PLAINTIFF

JACOB KIBWANA ..... 2ND PLAINTIFF

VERSUS

KHAMIS ALLY KHAMIS..... DEFENDANT"

I have scrutinized the names of the parties, as shown above, it is very clear that the defect on the names of the parties is fatal that needs to be

reviewed otherwise the case will remain dormant with prejudices. Order XX Rule 7 of the Civil Procedure Code, Cap.33 [R.E.2019] provides that:-

> *"7. The decree shall bear the date of the day on which the judgment was pronounced and when the Judge or Magistrate has satisfied himself that the decree has been drawn up in accordance with the judgment he shall sign the decree."*

Applying the above provision, it is clear that the Judgement and Decree have to bear the same date though may not necessarily be issued on the same day and date but must bear the same date of when the Judgement was pronounced. In Land Case No. 67 of 2004, the Judgment and Decree bears two different dates. The Judgement is dated 27th May, 2014 and the Decree is dated 11th June, 2014. However, the Decree contains such a line of which the Judgment was pronounced.

I think for the wave of doubt both the Decree and the Judgement must contain the line that will indicate as to when it was delivered and the date must be the same. As rightly stated by Ms. Chihoma, learned counsel for the respondent that such defects can be corrected by this Court under sections 95 and 96 of the Civil Procedure Code, Cap.33 [R.E. 2019]. Therefore, I proceed to correct the same as follows; the Judgment in Land Case No. 67 of 2004 is hereby corrected by deleting the name of Jacob

Kibwana appearing as the 2nd Plaintiff after his demise and the parties to the suit will appear as follows:-

SAID A. MBAGA ..... 1ST PLAINTIFF

VERONICA KIBWANA (*As the Administratrix*

of the Estate of the Late JACOB KIBWANA ..... 2ND PLAINTIFF

VERSUS

KHAMIS ALLY KHAMIS ..... DEFENDANT

Also, I proceed to correct the date appearing on the Decree dated 11th June, 2014. The date 11th June, 2014 is hereby deleted and the same is hereby replaced by a date of 27th May, 2014 appearing on the Judgment in Land Case No. 67 of 2004.

In the upshot, the application is partly allowed to the extent that the first and second grounds for review have merit and the remaining grounds for review are dismissed. No order as to the costs.

Order accordingly.

DATED at Dar es Salaam this 30th August, 2021

A.Z.MGEYEKWA

JUDGE

30.08.2021

Ruling delivered on 30th August, 2021 in the presence of the applicant and Ms. Melania, learned counsel for respondents.

A.Z.MGEYEKWA

JUDGE

30.08.2021