

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 351 OF 2020**

**FLORA VENANCE MWINGIRA** ..... **APPLICANT**

**VERSUS**

**GEOFREY P. KACHENJE** ..... **RESPONDENT**

(Originating from the Decision of the High Court of Tanzania at Land Division Land  
Appeal No. 233 of 2017 dated 28<sup>th</sup> May 2019)

**RULING**

**Date of Last Order: 09/09/2021 &  
Date of Ruling: 05/10/2021**

**MSAFIRI, J**

The present Application for review is against the decision of this Court in Land Appeal No. 233 of 2017. There are three documents accompanying this Application among them are, memorandum of review brought under XLII Rule 3 of the Civil Procedure Code Cap. 33 R. E 2019, chamber summons made under Section 41, 42 and 51 of the Land Disputes Court Acts, 2002 Cap. 216, Section 78 (b), Order XL Rule 1 (a) (b) and Order XL11 Rule 2 of the Civil Procedure Code Cap. 33 R.E 2019 supported by the affidavit of the applicant. The memorandum of Review is accompanied by eleven grounds and the Chamber summons is accompanied by three prayers that;

- 1. That, the Honourable Court be pleased to Review its decision and entire records of the proceedings of the High Court of Tanzania ( Land Division) at Dar es Salaam in Land Appeal No. 233 of 2018 dated 28<sup>th</sup> May 2019 before Hon. Maghimbi, J. and vacate its dismissal order thereby issuing appropriate orders.*
- 2. Cost of the application*
- 3. Any other order (s) and Relief(s) the Court may make.*

The facts giving rise to this Application is that, the applicant filed an appeal to this Court against the decision of the District Land and Housing Tribunal of Kinondoni in Misc. Land Application No. 411 of 2016 praying for a declaration that she is a lawful owner of the suit piece of land and vacant possession of the same. When the matter came for hearing, the respondent raised a preliminary objection on point of law that the matter is res judicata since the issue of ownership has already been determined by Manzese Primary Court in Civil Case No. 79 of 2002 and Revision No. 44 of 2002 between Aloyce Emmanuel Massawe against Venance Florian Mwingira who is now the deceased. The Tribunal sustained the preliminary objection and dismissed the matter.

Being aggrieved by the trial Tribunal, she appealed to this Court via Land Appeal No. 233 of 2017. When the matter came before this Court as an Appeal, the Court observed that the appellant lacks locus standi to sue on behalf of the late Venance Florian Mwingira since the appellant sued on her personal capacity instead as being Administrator of Estate of late Venance Florian Mwingira. The appeal was dismissed and the decision

before the trial Tribunal were quashed and set aside. Aggrieved, the applicant has filed this Application.

By order of the Court, this matter was argued by way of written submission. On the date of filing submission, the applicant was unrepresented while the respondent was represented by Advocate T.A Hyera.

In her submission, the applicant argued that there is an ambiguity on the order of this Court therefore the applicant cannot decide how to proceed forward, as to whether to Appeal to the Court of Appeal or go back and file correct proceedings having requisite locus standi in the subordinate court. She remains in dilemma. In her view, having quashed the impugned decision and order, such order ought to have been replaced by a proper and appropriate order of the High Court.

She further submitted that the locus standi and abuse of Court process are no longer proper preliminary points of law. The Court has not said anything in respect of the authorities that locus standi and abuse of Court process that require evidence are no longer taken to be pure points of law.

On reply, Advocate Hyera argued that the decision of the High Court is correct and truly the applicant lacked the necessary locus standi to file the Application before District Tribunal on her personal capacity in respect of her late father. There is no manifestation of error on the face of record that calls for review, there is no ambiguity that was created by the judgment in appeal and decree to put the Applicant on cross road as alleged. He cited the decision of the Court of Appeal in the case of

**Tanzania Transcontinental Co. Ltd Vs. Design Partnership, Civil Application No. 62 of 1992 (Unreported)**

In his opinion there is no illegality, procedural unfairness or irrationality that call for review of its decision by honorable Court. Therefore, this application is devoid of merit.

The present application has been brought under section 78 (1) (a) and (b) read together with Order XLII Rule 1 (a) and (b) and 2 of the CPC, Rule 2 which illustrates to whom the application for review may be made. Order XLII Rule 1 (a) of the CPC, provides as follows:

*"Any person considering himself aggrieved 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 record, or for any 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. "[**Emphasis mine**]"*

The provision further provides under Order XLII Rule 2 of the CPC, as follows:

*“A party who is not appealing from a decree or order may apply for review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for review. ”*

From the position above based on grounds of review under this Application I see no hope of granting this Application. The procedure for review is known under the Civil Procedure Code that review is allowed when the matter is unappealable. The applicant has raised herein above the point of review that by setting aside the decision of District Tribunal and also dismiss the Appeal for want of locus standi is subject to review. That the Court moved itself wrongly and the same has created the ambiguity on what steps to take. In my opinion these points are worthy to be entertained on appeal since the said grounds are appealable and not being subjected to review. **There is no error apparent on face of records committed by this Court subject to review.** It is on appeal where the court could investigate whether the order of this Court was correct or not and whether the applicant had mandate to institute the matter in her personal capacity.

Borrowing from Mulla, The Code of Civil Procedure, Soleil Paul and Anupam Srivastava, 16th Edition, Volume 4 at p. 4105,

**“Review is mainly for the purposes of correcting an error on the face of record.”**

From the above cited provision it is clear that the criteria for review extends to the following circumstances:

- (i)** when there is 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
- (ii)** On account of some mistake, or error apparent on the face of the record, or
- (iii)** 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 Court which is manned by human beings can make wrong decisions. Under the circumstances those wrong decisions which fall within the ambit of the three pointed out criterions above can be corrected by way of a review. What a court cannot do under review is to correct incorrect interpretation of the law since that is not an apparent error on the face of record or in other words it can be said that error of law is not good ground for granting a review.

The applicant submitted that there is error on face of record that the Hon. Judge made an order to quash and set aside judgment and decree of the trial Tribunal while actually there was no judgment and decree but Ruling and Drawn Order which is the ordinary outcome of a decision in respect of preliminary objections raised before the trial Tribunal. Much as agree that there was such an error but I find that it was just a slip of the pen



by the Hon. Judge which can be corrected by leave of the court. I find further that this error is not fatal and does not in any way cause injustice to the applicant and hence is not subject for review.

The Hon. Judge in the impugned decision, did not find merit on the appeal before her as it was put by the applicant in her submission, but has moved suo motu to determine whether the matter was proper before the trial Tribunal and before the Court. Having said that, this Court see no reason to Review the wise and highly thoughtful decision of Hon. Maghimbi, Judge in Land Appeal no. 233 of 2017. This Application is hereby dismissed for want of merit with costs.

It is so ordered.

Dated at Dar es Salaam this 05<sup>th</sup> of October, 2021.

  
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**A. MSAFIRI**

**JUDGE**

