

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

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 668 OF 2020

COLLETHA SALUSTIAN MUTAYOBA 1ST APPLICANT

SALUSTIAN DAVID 2ND APPLICANT

VERSUS

MARIA KASAMBALA RESPONDENT

(Arising from the decision of the High Court Land Division at Dar es Salaam in Misc.
Land Application No. 509 of 2019)

RULING

Date of Last Order: 27/09/2021 &

Date of Ruling: 25/10/2021

A. MSAFIRI, J.:

The applicants calls for review of the decision of this Court in Misc. Land Application No. 509 of 2019 dated 19th October, 2020 whereas the Ruling subject to this review was in respect of the application for extension of time so as to apply for Review from the judgment of this Court in Land Appeal No. 51 of 2015, the Court dismissed the Application. Now the Applicants are applying for review against the Ruling on extension of time to file review. The Application is made under Order XLII Rule 1(1) and Section 95 of the Civil Procedure Code Cap 33 R.E 2019. The applicants are calling for review against the whole decision on the following grounds;

1. *That, this Honourable Court erred in law and fact by failing to consider the evidence of the Applicants.*

Therefore, the applicants prays for the judgment and decree for the following orders;

- i. *That, this Honourable Court be pleased to review its decision in Misc. Land Application No. 509 of 2019 before Hon. S. M. Maghimbi, J and give order for an extension of time to file Review.*
- ii. *Any other order(s) as the Honourable Court deems proper and just to grant.*

The review was argued by way of written submissions. Parties adhered to the scheduled ordered by the Court. The applicants enjoyed the service of Tanzania Women Lawyers Association (TAWLA) whereby one Lightness Raimos draw in gratis the submission in chief while the learned advocate F.A.M.Mgare draw and filed submission on reply for respondent.

In her submission to support the Application, Ms. Lightness stated that, based on section 14 of the Law of Limitation Act Cap. 98 R.E 2019, the applicants has shown sufficient causes as to why they were late to file application for review and the reasons were out of their personal capacity. She cited the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Limited, Civil Application No. 96 of 2007**, Court of Appeal of Tanzania at Dar es Salaam.

In reply Mr. Mgare stated, that this Application should also be dismissed on the sense that, the applicants has not established the base

upon which this Court can invoke its power of review since the Application is against Order XLII Rule 1(1) of the Civil Procedure Code, Cap. 33 R.E 2019. He argued that the applicants came up with the submissions supporting application for extension of time instead of establishing grounds for review. That this court cannot determine the grounds for extension of time as they have already been determined by this court so the court is functus officio. He urged that the application should be rejected under Order XLII Rule 4(1) of the Civil Procedure Code (supra). He referred this court to the Court of Appeal's case of **Abdalla Bakar Abdulrahaman vs. Maryam Moh'd and Mrajis wa Nyaraka** (2005) TLR 225. He prayed the Application be dismissed for lack of sufficient grounds for Review.

Having gone through the submission and the Memorandum of this Review, I shall start by reiterating the criteria for review in this Court which was set in the case of **Transport Equipment Ltd. vs. Devram P. Valambhia**, Civil Application No. 18 of 1993, Court of Appeal of Tanzania (unreported), whereas a full bench of seven Justices of Appeal considered the Court's 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".

Furthermore, Order XLII Rule (1) (1) of the Civil Procedure Code (supra), under which this application has been preferred provides as follows;

Rule 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.**"(emphasis is mine).*

The logic behind the review, is acceptance of human fallibility. Mistakes or errors must be corrected to prevent miscarriage of justice, since justice is above all. Neither the rules of procedure nor technicalities of law can come in its way. Rectification of an error stems from the fundamental principle that justice is above all. It is exercised to remove an error and not to disturb finality.

The applicants herein have raised ground that the Court has erred in law and fact in evaluating the evidence of the applicants of which they need this court to have its ruling and order reviewed. From the face of it the applicants wishes for this Court to reevaluate the evidence adduced before the Court in respect of the Ruling in Misc. Land Application No. 509

of 2019 for extension of time which was dismissed for want of sufficient causes. According to Ms. Lightness' submission, the applicants has adduced sufficient reasons before it capable of being warranted with extension of time but this Court disregarded the said reasons. In my humble view these reasons and the ground of this Review on evaluation of evidence of the applicants are appealable and do not reflect apparent errors on the face of record as required by the Law. Furthermore, from the submissions by the applicants, it is not established whether there is a discovery of any new evidence which needs to be considered on review. The submissions on the applicants' side simply reiterates what was submitted before this court during the hearing of Application No. 509 of 2019 and as I have pointed earlier, the reasons are for appeal purposes which this court cannot determine because it will be functus officio.

Having said all that, I am satisfied that there is no apparent errors on the face of the Ruling in Misc. Land Case Application No. 509 of 2019 dated 19th October 2020 and the applicants have failed to establish grounds for reviewing the said Ruling. The Application is hereby dismissed accordingly. Each party to bear its own costs.

It is so ordered.

Dated at Dar es Salaam this 25th of October, 2021.



A. MSAFIRI

JUDGE

