

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 433 OF 2020**

(From Misc. Land Appeal No. 129 of 2018 of High Court of United Republic of Tanzania, Land Division)

**EVARIST N.K SHIYO.....APPLICANT**

**VERSUS**

**PASTRORY HENRY KABOYA.....RESPONDENT**

**R U L I N G**

*Date of last Order: 11/1/2020*

*Date of Ruling: 30/04/2021*

**MANGO, J:**

The applicant filed a memorandum of review seeking this court to review its decision in Misc. Land Appeal No. 129 of 2018 on the following grounds:

1. That the Hon Judge erred in law and fact to enter in favour of the respondent judgement and decree which was held by fraud;
2. That the Honourable Judge erred in law and in fact to enter judgement and decree in favour of the respondent by considering evidence which was held by fraud;
3. That the Honourable Judge erred in law and fact to enter judgement and decree in favour of the respondent by failure to consider that Plot No. 11 and Plot No. 21 falls under the same plot in dispute;

4. That the Hon. Judge erred in law and fact to enter judgement and decree without considering the rule of adverse possession; and
5. That the illegal decision of Honorable Z.D MANGO dated 12<sup>th</sup> day of June 2020 causes injustice to our client.

The review was argued by way of written submissions. The Applicant had services of Frederick Winson Kitwika, learned advocate while the respondent prosecuted the review application in person.

According to the Applicant's submission and grounds for review as contained in his Memorandum for review, the applicant is aggrieved by the decision of this Court on ground that the same has been based on weak evidence which was fraudulently procured at the trial tribunal. He also questions its legality. Unfortunately, the applicant did not produce any proof regarding the illegality of this court's decision and the allegations of fraud in evidence produced by the respondent during trial.

The law, Order XLII of the Civil Procedure Code [Cap. 33 R.E 2019], provides that review can be preferred upon discovery of new and important matter or evidence which was not within the party's knowledge when the matter was adjudicated, or rectification of apparent error on face of record or any other grounds.

The grounds for review in the application at hand are on illegality of this court's decision which allegedly was based on cooked evidence adduced by the respondent. The ground can be considered to be covered under the any other ground in the cited provision. However, as highlighted above, the applicant did not produce any evidence to prove the alleged fraud in the testimony and evidence produced by the respondent during trial. The Law, section 112 of the Evidence Act, [Cap. 6 R.E 2019] requires whoever alleges existence of facts to

prove such existence. Failure of the Applicant to prove allegations of fraud in evidence produced during trial makes this court incapable of reviewing its decision on basis of mere allegations by the applicant.

In such circumstances, I find the review to be unmeritorious and I hereby reject the same.

Given circumstances of this application I award no costs.



**Z. D. MANGO**

**JUDGE**

**30/04/2021**