

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 275 OF 2021

(Originating from Misc. Land application No. 578 of 2020)

NURU IDRISA WAZIRI (As Administratrix of the Estate
Of the Late ASHA ABDALLAH KANDA).....**APPLICANT**

VERSUS

EFC TANZANIA LIMITED.....**1ST RESPONDENT**

TANZANIA QUALITY

AUCTION MART LIMITED.....**2ND RESPONDENT**

Date of Last Order: 10.11.2021
Date of Ruling 13.12.2021

RULING

V.L. MAKANI, J

This is an application of review by the applicant herein. She is seeking to review of the order of this court in Misc. Land Application No. 578 of 2020 (V.L. Makani, J). The application is made under section 78 and Order XLII Rule 1 of the Civil Procedure Code CAP 33 RE 2019 (the CPC).

The following were the grounds of review by the applicant:

- (a) *That there is an error apparent on the face of record, in holding that, the applicant failed to account each day of delay in which the court*

should take judicial notice of Misc. Land Application No. 5 of 2019 which was struck out.

(b) That the applicant was denied her rights to file a rejoinder due to the fact that the 1st respondent did not serve a reply of the written submission to the applicant,

The applicant is praying for the ruling of the High Court to be quashed and set aside, costs of the application be provided and any other relief(s) the court may deem just and fit to grant.

With leave of the court the application was argued by way of written submissions. The applicant in his submissions which were personally drawn and filed by him, gave a brief background of the matter and said on 17/02/2021 the court directed Misc. Land Application 578 of 2020 to be argued by way of written submissions. He said he was not served with the submissions of the respondent on time and when the matter came for mention before the Deputy Registrar she went on to set a ruling date despite that they raised the issue that they have not been served with the written submissions. He said the court has to accord parties full and fair hearing and he cited the case of **Hussein Khanbhai vs. Kodi Ralph Siara, Civil Revision No. 25 of 2014** and **Magreth Sospeter & 8 others vs. Elesi Minzani & Another, Misc.Land Revision No. 13 of 2016.**

As for the second ground that the applicant failed to account for the delay he said there were cases which were being prosecuted which the court ought to be taken into consideration by the court as the period that the applicant was prosecuting these cases. The said cases which the applicant is alleging to have been prosecuted are Misc. Land Application No. 257 and Land Case No. 105 of 2017 which abated on 26/11/2015. He prayed for the application to be granted.

In submissions in reply, Mr. Cleophas James, Advocate for the 1st respondent submitted that Order XLII Rule 1(b) of the CPC has set the conditions for the grant of an application for review. He also cited the case of **James Kabalo Mapalala vs. British Broadcasting Corporation [2004] TLR 143** where the court stated that the Judge on review does not sit as an appellate court. He said the failure by the applicant to account for delay in filing a case to join a legal representative of the deceased applicant in Misc. Application No. 257 of 2017 is not an error apparent on the face of record but the applicant is trying to challenge the ruling of this court of 10/05/2021. He cited the case of **Godfrey Sayi vs. Anna Siame, Civil Application NO. 190/01 of 2017 (CAT-DSM)** (unreported)

where the Court stated that a decision that is erroneous is no ground for ordering review. He concluded by praying that the application be dismissed.

Mr. James did not argue the second ground of review and subsequently there was no rejoinder submissions that were filed by the applicant.

Order XLII Rule 1(1) (a) and (b) sets out the conditions for an application for review. The said provision states as follows:

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.

According to the above provision, the circumstances under which an application for review can be preferred includes an error apparent on the face of records and discovery of new facts. This was explained in

the case of **Bulyanhulu Gold Mine Limited and 2 Others vs. Isa Limited and Another, Misc. Commercial Review No. 1 of 2018**(unreported) (Hon. Sehel, J as she then was) in defining an error apparent on the face of record cited the case of **East African Development Bank vs. Blueline Enterprises Tanzania Limited, Civil Application No. 47 of 2010** whereby the Court of Appeal cited with approval the case of **Chandrakant Jashbhai Patel vs. Republic [2004] TLR 218** which adopted the reasoning in MULLA 14th Edition pp 2335-36 and stated:-

"An error apparent on the face of the 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 on which there may conceivably be two opinions...A mere error of law is not a ground for 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..."

Elaborating further Hon. Sehel, J (as she then was) went on to say:

"It is follows then that an apparent error on the face of the records envisaged under Order XLII Rule 1 (1)(b) of CPC must be obvious one that strikes in the eyes immediately after looking at the records and it does not require a long drawn process of reasoning on points where there may be possibly two opinions. It is an error which is patently clear and self-evident such that it does

not require any extraneous matter to show its existence and which no court would leave it to remain on records."

In the present application the first ground does require the review of this court as there is no apparent error on the face of the record. The claim that the delay was accounted for is a matter to be dealt with on appeal. Equally, the issue that the applicant was not served with written submissions is not an error on record as the allegation that the applicant requested the Deputy Registrar to file rejoinder submissions is not on record. And apparently on the alleged mention date when the matter was set for ruling, the records show that the applicant was absent and so he cannot claim rights which he had waived. Nonetheless, the grounds of review as presented are intended to invite this court to reopen the determination of the said application. In other words, the applicant wants to use the back door to argue his appeal which is a novice idea as the court is already *functus officio*. I subscribe to the case of **Godfrey Sayi** (supra) where the Court of Appeal stated:

"We have times and again stated and wish to restate today, that review is not an alternative to an appeal where a discontented party can re-open the matter for the Court re-hearing. In other words, the court will not sit as a Court of Appeal from its own decision..."

For the reasons above, the application for review lacks merit and it is hereby dismissed with costs.

It is so ordered.

V.L. Makani

**V.L. MAKANI
JUDGE
13/02/2021**

