

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVIEW NO. 593 OF 2022**

(Arising from the Ruling and Order of the Court by Hon. A. Z Mgeyekwa, J  
dated 28<sup>th</sup> August, 2022 in Land Case No. 101 of 2022)

**IMTIAZ HUSSEIN BANJI ..... APPLICANT**

**VERSUS**

**DILSHAD HUSSEIN BANJI ..... RESPONDENT**

**RULING**

*Date of Last Order: 21.11..2022*

*Date of Ruling: 24.11..2022*

**A.Z.MGEYEKWA, J**

The applicant has brought this application under section Order XLII Rule 1 (a), (b), (2) and sections 78 (1), (a), (b), (2), and 95 of the Civil Procedure Code, Cap. 33 [R.E 2019]. They are praying that the Honourable Court be pleased to review and/or set aside its ruling and orders issued on 26<sup>th</sup> August, 2022.

When the matter was called for hearing on 8<sup>th</sup> November, 2022, the applicant was represented by Mr. Mwaiteleke, learned counsel while the respondent enjoyed the legal service of Mr. Muhudhiri, learned counsel.

A brief background of the review goes as follows; the applicant instituted a Land Case No. 101 of 2022 against the respondent claiming that he is the lawful owner of the suit landed property which was registered by the Registrar of Titles in the name of the respondent. The suit has encountered an impediment, the respondent has demonstrated his resistance by filing a Written Statement of Defence and raised a preliminary objection claiming that the suit is bad in law as it contravenes the provision of section 102 of the Land Registration Act, Cap. 334 [R.E 2019]. This Court determined the preliminary objection, the same was sustained and the suit was struck out with costs.

Aggrieved by the decision of this Court the applicant lodged the instant review containing six grounds as follows:-

1. The Ruling and order of the Honourable Court has errors on the face of the record in entertaining the objection as to time limitation of the suit under Section 102 (1) of the Land Registration Act, Cap 334 R.E 2019 as if it was an appeal from the decision of the Registrar of Titles, which was not.

2. That the Ruling and order of the Honourable Court has errors on the face of the record in holding that parties who have any grievances in land matter involving registered land are to settle the matter at the Registrar of Titles and not at the Court. The Registrar of Title has no jurisdiction to entertain disputes over land matters whose adjudication is set out under the Land Disputes Courts Act, 2022 R.E 2019.
3. The Ruling and Order of the Honourable Court has errors on the face of the record in that it erred in law and in fact in not holding that the role of the Registrar of Title under Section 102 (I) of the Land Registration Act, Cap 334 R.E 2019 is limited to dealing with corrections and/or matters in respect the Land Register and not determine ownership in a land dispute.
4. That the Ruling and Order of the Honourable Court has errors on the face of the record in that in rectifying the Land Register, the Registrar of Titles no ownership over such registered land as the same is granted by the President through the Commissioner for Lands as provided by the Land Act, Cap 113 R.E 2019.
5. The Honourable Court erred in holding that the Plaintiff contention was the transfer of the property in dispute while the main dispute between the parties was on the ownership of the land in dispute and hence the reliefs in the suit.

6. That in the alternative, the Honourable Court erred in treating the suit as if an appeal from the decision of the Registrar of Titles under Section 102 (I) of the Land Registration Act, Cap 334 R.E 2019 and hence dismissing it as being time barred. The Court ager holding that disputes over registered land have to be referred to the Registrar of Titles and not to the Court and since the matter was not determined on merits, ought to have proceeded to strike out the suit for want of jurisdiction.

In his submission, Mr. Mwaiteleke began to narrate the genesis of the application which I am not going to reproduce. Submitting on the ground of the review, Mr. Mwaiteleke submitted that the application is brought under Order XLII, Rule 1 (1) (b) of the Civil Procedure Code Act, Cap. 33 [R.E 2002] whereas the applicant being aggrieved by the Ruling and Order of this Court seek a review. Starting with the first ground for review, he contended that the applicants have filed an application for review and that there are some errors featured in the application. He argued that the ruling has apparent errors on the face of records in that this Court invoked section 102 (1) of the Land Registration Act as if there was a Registrar of Titles' decision in which the applicant had to file an appeal.

Mr. Mwaiteleke submitted that section 102 of the said Act to apply, one had to first read section 101 of the Land Registration Act to give effect to

section 102 of the same Act. To support his submission he cited the case of **Olam Tanzania Ltd & 3 Others v Selemani S. Selemani & 4 Others**, Consolidated Civil Revisions No. 2, 3, 4, 5 & 6 of 2010 whereby the Court of Appeal of Tanzania was dealing with revisions of the decisions of the High Court that had ruled that the District land and Housing Tribunal had no jurisdiction to entertain land disputes, this Court decision was revised and quashed.

He contended that in terms of section 101 of the Land Registration Act there must be a decision in writing for one to lodge an appeal in terms of section 102 of the Land Registration Act. He went on to submit that the applicant did not invoke section 101 to be penalized under section 10 (1) (a), (b) of the Land Registration Act. He asserted that going through the entire Plaintiff in the main suit, there is no any complaint or reference to any decision of the Registrar of Titles.

He stressed that the word 'transfer' used in paragraph 7 of the Plaintiff cannot bring in provisions of sections 101 and 102 of the of Land Registration Act, the same referring to the disposition of the property in dispute between parties. The learned counsel for the applicant continued to submit that the entire Plaintiff reveals that the applicant is pleading a

dispute between him and the respondent in respect of ownership of the suit property and the Registrar of Titles is nowhere involved.

As to the second ground, the counsel submitted that the Ruling and Order of this Court contain errors on the face in holding that parties who have any grievances in a land matter involving registered land need to settle the matter at the Registrar of Titles and not lodging the suit at the High Court. It was his submission that this holding is erroneous and was reached inadvertently by this Court. He stated that the Registrar of Title has no original jurisdiction to entertain disputes over land matters.

Mr. Mwaiteleke did not end there he stated that the jurisdiction by courts to determine and adjudicate cases over land matters is set out under the Land Disputes Courts Act, Cap 216 [R.E 2019]. He added that under section 167 of the Land Act, Cap. 113, the exclusive jurisdiction to hear and determine disputes, actions, and proceedings concerning land is vested to the High Court and the Registrar of Title is not one of them. To buttress his contention he cited the case of **National Bank of Commerce Ltd v National Chicks Corporation Ltd & 4 Others**, Civil Appeal No. 129 of 2015.

Submitting on the third ground, the counsel argued that the ruling and order of this Court has errors on the face of the record in that it erred in

law and fact in not holding that the role of the Registrar of Titles under section 102 (1) of the Land Registration Act, is limited to deal with corrections and or matters in respect to the land register and not determine ownership in a land dispute. He stated that the applicant was suing for relief among others a declaratory order that this Court be pleased to declare the Plaintiff the lawful owner of the suit landed property and the Certificate of Title issued was invalid.

The counsel for the applicant contended that the pleaded facts and reliefs clearly show that the suit was revolving around ownership of the property in dispute and this Court under section 167 of the Land Act has the power to adjudicate the issue of ownership of landed property.

Arguing for the fourth ground, the counsel for the applicant referred this Court to paragraph 7 of the plaint, the applicant pleaded that:-

*“The plaintiff is stranded as he is not aware of the transfer of the property from him to the Defendant and now the Defendant claims to be the true owner of the landed property mentioned above.*

To bolster his submission he cited the case of **Exim Bank (T) Ltd v Agro Impex (T) Ltd & 2 Others**, Land Case No. 20 of 2008.

With respect to the fourth ground, he contended that in the alternative, this Court erred in treating the suit as if was an appeal from the decision of the

Registrar of Titles under section 102 (1) of the Land Registration Act and hence dismissing it for being time-barred. He stated that the matter was not determined on merit it ought to have proceeded to strike out the suit for want of jurisdiction instead of dismissing it. To support his submission he cited the case **Ngoni Matengo Cooperative Union** [1959] E.A 577.

To sum up, the counsel for the applicant urged this Court to review the ruling based on the grounds of review raised by the applicant.

In response, the respondent was brief and straight to the point. He submitted that the applicant's application falls out of the scope of review instead the applicant is appealing against the aforesaid decision through a back door under the umbrella of review. The respondent stated that there are several decisions from this Court and from the higher court as to how a review should be. For purpose of clarity, he insisted this Court to the wisdom of this Court in **Lukolo Company Ltd v Bank of Africa Ltd**, Civil Review No. 14 of 2020 (unreported) and **Chandrakant Joshubhai Patel v Republic** [2004] TLR 218.

The respondent argued that the applicant is seeking for this Court to review its decision and by thoroughly going through the applicant's submission one will agree that in arguing his grounds of review, the applicant's first and second ground of review is to the effect that this Court misconstrued and failed to invoke section 101 and 102 of the Land



Registration Act, Cap. 334 and in the second ground he is challenging the validity and power of the Registrar of Title in handling disputes. The respondent strongly opposed the applicant's counsel submission by stating that nothing in his submission shows any error that is apparent on the face of the record instead all of his submission amounts to an appeal and all his grounds are subject to stiff elaboration and opinion hence falls out of scope of review. To fortify his submission, he cited the case of **Chandrakant Joshubhai** (supra).

The respondent continued to submit that in the alternative, it is proper for this Court to invoke sections 101 and 102 of the Land Registration Act, Cap. 334, the Plaintiff in the main suit specifically under paragraphs 6 and 7 of his Complaint clearly stated to have contracted the office of Registrar of Title and has made numerous efforts to obtain a Certificate of Title over the disputed land but unexpectedly in 2018, the Registrar of Title issued the said Certificate of Title to the respondent.

The respondent went on to submit that reading the Complaint it is clear that he was aware of the decision of the Registrar of Title since 2018 in which he was aggrieved by his decision hence he could have lodged an appeal against the decision of the Registrar of Title within 90 days from the date of that decision, he added that for reasons known by himself the applicant instituted a fresh suit on 22<sup>nd</sup> April, 2011 a lapse of four years contrary to

the mandatory requirement of section 102 of the Land Registration Act, Cap. 334.

In conclusion, the respondent stressed that the review is devoid of merit, therefore he urged this Court to dismiss the same with costs and confirm the decision of this Court.

In his rejoinder, Mr. Mwaiteleke reiterated his submission in chief. Stressing that there are errors on the records are on the face of the record, obvious and patent mistakes, not something that can be established long drawn process of reason on points on which there may conceivably be two opinions.

Mr. Mwaiteleke stated that he has no quarrel with the re-statement of the law on the two cited cases of **Lukulo Company Limited** (supra) **Chandrakant Joshubhai** (supra), however, in his view the same are distinguishable. He insisted that there is no decision done by the Registrar of Titles in 2018, thus, the decision is not appealable under sections 101 and 102 of the Land Registration Act, Cap. 334 but must be challenged by way of a suit as done by the applicant. Ending the counsel for the applicant prayed for this court to grant the application and restore the suit with costs.

I have carefully considered the submissions of the applicants' counsels and the respondent and do find that the application is based on the fact

that this Court Ruling has errors on the face of the record in entertaining the objection of time limitation of the suit under section 102 (1) of the Land Registration Act, Cap. 334. The applicant also claimed that this Court erred in holding that the parties who have any grievances in a land matter involving registered land are required to settle the matter at the Registrar of title.

The application being for review for which no appeal lies is governed by section 78 (1), (b) and Order XLII of the Civil Procedure Code, Cap.33 [R.E 2019]. For ease of reference I reproduce section 78(1), (b) of the Civil Procedure Code, Cap.33 [R.E 2019] as hereunder:-

*“ 78 (1) Subject to any conditions and limitations prescribed under section 77, any person considering himself aggrieved: -*

*(b) by a decree or order from which no appeal is allowed by this code, may apply for a review of judgment to the court which passed the decree or made the order and the court may make such order thereon as it thinks fit.”*

Besides, Order XLII (1), (b) which illustrates the grounds for review provides that:-

*(1) Any person considering himself aggrieved-*

*(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 5 judgment to the court which passed the decree or made the order.*

Certainly, from these facts and submissions, I am called upon to determine whether the first three grounds of review manifest an apparent error on the face of the record and to warrant the prayer for review.

Expounding on the grounds of review, the applicant's counsel contended that, there is an error apparent on the face of the record and they believed that there are sufficient grounds for this court to review its earlier orders as prayed. On this side, the respondent strongly opposed the application for the main reason that the application does not constitute an error apparent on the face of the record', thus, the same does not merit the prayer for review.

Luckily, as it will appear from the submission by both counsels, 'manifest error on the face of the record' as a ground for review has been broadly canvassed by a plethora of authorities from the Court of Appeal. Starting with the case of **Vitatu and Another v Bayay & Others**, Civil Application No. 16 of 2013 (unreported). The Court of Appeal of Tanzania held that:-

*"Taking a leaf from case law, a manifest error for purposes of grounding an application for review must be an error that is obvious, self-evident, etc., but not something that can be established by a long-drawn process of learned argument: Chandrakant Joshughai Patel v. Republic, [2004] TLR 218. The decision of the Court of Appeal of Kenya in National Bank of Kenya Limited v Ndungu Njau [1997] eKLR can as well provide us with a persuasive guide when it stated:-*

*"...A review may be granted **whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.**"*

*[Emphasis added].*

Equally in the case of **National Bank of Kenya v Ndungu Njau**, Civil Appeal No. 2111 of 1996, the Court of Appeal. The Court of Appeal held that;

*“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evidence and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceed on an incorrect expansion of the law”.*

All these authorities provide a nuanced exposition of what constitutes a manifest error on the face of the record. When the above exposition is applied to the three grounds of review expounded in the memorandum of review and the submission thereto, it becomes apparent, as argued by the applicant that the applicant has failed to demonstrate that the ruling sought to be reviewed was based on a manifest error on the face of the record. Therefore, in my considered view, the said grounds are not sufficient grounds for review instead the same make good grounds for appeal. Considering the review on these two grounds would be tantamount to this court sitting appeal on its judgment which is not legally permissible.

It is worth noting that, the argument that the application for review should be entertained as no appeal lies against the order sought to be reviewed, is with respect, a lucid misdirection on the law as section 78 (1), (a) & (b)

and Order XLII of the Civil Procedure Code, Cap.33 [R.E 2019] through which this application was preferred specifically caters for non-appealable orders.

The upshot of the above is that the applicant has failed to demonstrate that there is a mistake or error apparent on the face of the record and/or any sufficient reason to enable this court set aside its decision based on the above grounds for review.

Regarding the alternative ground, I subscribe to the submission made by Mr. Mwaiteleke that the suit was not heard on merit hence the same was required to be struck out instead of being dismissed. Therefore, I hereby correct the court order to read, Land Case No. 101 of 2022 is struck out.

In the upshot, the application is partly been allowed to the extent explained above. No order as to the costs.

Order accordingly.

DATED at Dar es Salaam this 24<sup>th</sup> November, 2022.



Ruling delivered on 24<sup>th</sup> November, 2022 via video conferencing whereas Mr. Seni Malimi, learned counsel for the applicant was remotely present.



AK

A.T. MGEYEKWA

JUDGE

24/11/2022