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

MISC. LAND APPLICATION NO. 137 OF 2021
(Originating from Misc. Land Application No. 131 of 2019)

SALUM MOHAMED SALUM (suing as the Administrator & Legal Personal Representative of the Estate of the late MOHAMED SALUM).....**APPLICANT**

VERSUS

SAIWAAD ABDULLAH
@ SAIWAAD ABDALLAH.....**RESPONDENT**

Date of Last Order: 15.03.2022
Date of Ruling: 11.04.2021

RULING

V.L. MAKANI, J

The applicant has moved this court under sections 78 ,95, 96, and 97 of the Civil Procedure Code, Cap 33 RE 2019 (the **CPC**), Order XLII Rule 1 (1) a, b and (2), and Order XLII, Rule 2 and 3 of the CPC and section 2 and 5 and part III of The Judicature and Application of Laws Act Cap 358 RE 2019 (CAP 358). He is applying for this court to review its decision in Misc. Land Application No.131 of 2019 dated 22/02/2021 on the following grounds:

1. *That the Honourable Court or judge mistakenly an apparently on the face of records erred in law and facts in not discovering that the absence of date of extraction and issue of decree contradicts the validity of judgment or date of certification of*

judgment and no competent appeal can be filed or preferred to the High Court of Tanzania with defects.

2. *The honourable Court or Judge mistakenly and apparently on the face of records erred in law and facts in shifting the duty of the Court/Tribunal to the applicant as regards certification, issue and extraction of judgment and decree or decision in general.*

3. *That the honourable court or judge mistakenly and apparently on the face of records erred in law and facts in not discovering that the applicant accounted for the delay and what happened was beyond his control as regards court process and administration*

4. *That the honourable court or judge mistakenly and wrongly applied the law and discretion. Alternatively, the honourable court or judge mistakenly made a decision per in curium or forgetfulness of the law.*

The applicant prayed for the decision in Misc. Land Application No.131 of 2019 be set aside or be vacated and extension of time be granted to the applicant to appeal and any other order the court may deem fit to grant.

At the hearing of the application, the applicant was represented by Mr. Mtatiro, Advocate the respondent was represented by Mr. Dionis Msemwa, Advocate.

Submitting in support of the application Mr. Mtatiro said that the decision contradicts the judgment of District Land and Housing Tribunal for Temeke (the **Tribunal**) and this court refused to accept that the decree of the Tribunal was extracted on 12/03/2019. He said the decree follows judgment and the judgment was certified on 12/04/2018 therefore the decree could be extracted from there. He said in practise the decree will have three dates, that is, the date of delivery, date of extraction and date of issuance of the decree. The date of decree of the Tribunal was handwritten date extracted on 12/03/2019. There is no date of issue or supply. That this court refused to accept the date of 12/03/2019 therefore there is no decree before the court. He said removal of the date means there is only the date of delivery of the decision which is 23/02/2018. That the judgment of the Tribunal was ready for collection on 12/04/2018. He said if the decree remains without the date of extraction there will be no decree. That the duty of extraction of the decree lies to the court and not the part. He insisted for this court to review its decision and vacate its order.

He further said this court agrees that Misc. application No.131 of 2019 was lodged on 12/03/2019 and was admitted on 18/03/2019. That

the decree used was the one extracted on 12/03/2019 which shows that it was not out of time (45 days). The reasons for delay were accounted for because what is looked at is the decree not the judgment. That this court made an oversight of what is to accompany an appeal. Counsel relied on the case of **Leila Mohamed vs Hassan Rashid Juma, Civil Appeal No.190 of 2020, James Kaboro Mapalala vs. BBC [2004] TLR 143** and Order XLII rule 1 (1) of the CPC for circumstances to be considered on review. He insisted that the decision can be varied basing on errors apparent on the records or sufficient cause which the court finds that it is not the mistake of the applicant. He prayed for the application to be granted.

In reply Mr. Msemwa said, Counsel for the applicant has relied on the court practise on extraction of the decree. That on the same practise, the date of extraction is the same date of issuance. That the defect highlighted by this court in Misc. Application No.131 of 2019 was the handwritten insertion of the date of extraction of the decree. That it was the duty of the applicant to supply the records of the Tribunal if he was of the opinion that there was an error. He said the applicant could also help the court with receipt of when he paid for the judgment and decree which could prove the date when he was

supplied with the copies. He insisted that the whole issue is in the records of the Tribunal and if there is no records it will be difficult for this court to grant the prayers by the applicant.

In rejoinder Mr. Mtatiro said that it is for the court to bring the records of the Tribunal and not the applicant. That dates can be inserted by handwriting and that is the dates of extraction or issuance.

Having considered submissions from both parties, the main issue for determination is whether this application for review has merit. According to Order XLII Rule 1 of the CPC a person may apply for review of a decision in the following circumstances:

> *(a) On discovery of new and important matters or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed order made; or*
>
> *(b) On account of some mistake or error apparent on the face of the record; or*
> *(c) For any other sufficient reason.*

The applicant has preferred three grounds of review in this application. However, going through those grounds and submissions

by Mr. Mtatiro they are centred on a ground or claim by the applicant that this court refused that the decree of the Tribunal in Land Application No.268 of 2012 was extracted on 12/03/2019. Instead, the court maintained that it was extracted on 12/04/2018. Applying Order XLII Rule 1 (a), (b) and (c) of the CPC, there is no error apparent on the face of the records, neither any new matter or evidence which could have not be produced by the applicant when the decree was passed. I say so because the court's reasoning was very clear that the judgement in Land Application No.268 of 2016 together with the decree was contained in a single document, having 11 pages in sequence/order. And in that respect, it is considered to have been extracted in a single day and certified in the very same day. Otherwise, it wouldn't have been contained in a single document numbered serially. And if the applicant herein was of different view, then he should have produced the receipt showing the date which he alleged to have paid for and collected the document. To the contrary the applicant could not do so, and even in this application so as to prove the court wrong and show that there was an error the applicant has not produced the receipt which would have cleared him and asserted that he collected the said decree on 12/03/2019. There was indeed a lot of uncertainties unsafe for the court to rely upon the

handwritten decree and it was the duty of the applicant herein to clear those uncertainties, but he failed to do so.

Mr. Mtatiro also said that if the court did not consider the date when the decree was extracted then there is no decree before the court. With due respect to learned Counsel, the decree was filed by the applicant himself and what is at issue is the date of extraction which deemed to be the date of collection of the decree and which according to the court has a lot of uncertainties. In that regard, Mr. Mtatiro's argument that there is no decree is misplaced.

According to the case of **James Kaboro Mapalala** (supra) a decision of the court may be varied by way of review on the basis of an error apparent on the records or mistakes or sufficient cause which the court finds is not the mistake of the applicant. However, according to the arguments set forth by Mr. Mtatiro, I don't find any error apparent on record or any mistake thereof. The applicant would have, as pointed out by Mr. Msemwa, assisted the court if he would have brought evidence (specifically the receipts) of when he at least paid for the decree so that the court would have been able to gauge the date when the same was collected. The semantics of date of delivery,

date of extraction and date of issuance is not helpful because what the applicant is claiming is that the court mistakenly set the date of decree to be 28/2/2018 but on the contrary he does not have proof to the contrary to clear the doubt by the court? And since there is none, then one cannot say that there is an error or mistake by the court to be cured by review.

In the result this application has no merit, and it is hereby dismissed with costs.

It is so ordered.

V.L. MAKANI
JUDGE
11/04/2022