

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. APPLICATIONS NO. 188 OF 2022

ALBERT THOMAS MWANGAMA APPLICANT

VERSUS

PILY MWAKASEGE RESPONDENT

RULING

Date of Last Order: 03.06.2022

Date of Ruling: 09.06.2022

A.Z.MGEYEKWA, J

The applicants have brought this application against the respondent praying that his court be pleased to review and/or set aside its ruling and orders issued on 25th March, 2022. The applicant's application is brought under Order XLII Rule 1 of the Civil Procedure Act Cap. 33 [R.E 2019].

When the matter was called for hearing on 15th May, 2022, the applicant appeared in person and the respondent had the legal service of Ms. Kabibi Kamugisha. The respondent's counsel prayed to argue the application by way of written submission. By court consent the applicant filed his written submission on 24th May, 2022 and the respondent's counsel filed a reply

on 27th May, 2022 and the applicant filed his rejoinder on 03rd June, 2022. This court thanks both parties for their concise and focused submissions.

In his submission, the applicant began narrating the genesis of this application which I am not going to record in this application. He contended that the applicant has filed an application for review and that there are some errors featured in the application. He stated that the purpose of the review is to pray for this court to allow the applicant to file additional evidence necessary in supporting his previous application for an extension of time. He stated that the power of this court in entertaining an application for review is justified under the provision of Order XLII (2) of the Civil Procedure Code Cap.33. He added that his prayer to file additional evidence is governed under Order XLII Rule 1 (1) (b) of the Civil Procedure Code Cap. 33 which states that:-

“1.-(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 judgment to the court which passed the decree or made the order.”

He went on to submit that this Court in granting an extension of time to file an appeal out of time is justified under the provision of Section 38 (1) of the Land Disputes Courts Act, Cap. 216. The applicant's counsel continued to submit that this Court has discretionary power to grant an extension of time but the applicant has to state good reasons. Supporting his submission he cited the case of **Tanga Cement Company Ltd v Jumanne Masanawa & Another**, Civil Application No.6 of 2001 HC (unreported). He added that the applicant was searching for legal Aid services as was stated under paragraph 7 of the affidavit. He went on to submit that on 18th February, 2021 he succeeded to meet Edward Peter Chuwa, learned counsel who spent 4 days and on 6th September, 2021 he filed the application before this court.

He added that there are issues of illegality in the decision of the District Land and Housing Tribunal for Mkuranga since he was not given right to call witnesses. To fortify his submission he cited Article 107A (2) (d) of the Constitution of the United Republic of Tanzania, 1977. He added that the applicant fell sick in April, 2021 to date and attending treatment at Mabula Hospital in Mbeya Region. The applicant went on to submit that sickness

is a good ground for extension of time. To buttress his submission he cited the case of **Jehangir Abdulrasul v Balozi Ibrahim Abubakar & Bibisohia Ibrahim**, Civil Application No. 79 of 2016 CAT at Dar es Salaam.

In conclusion, the applicant urged this court to grant the application based on the reasons stated above and for each party to bear his/her own costs.

In reply, Mr. Sweya, learned counsel from the outset contended that the applicant's application for review is baseless and lacks legal stand. He argued that the applicant on 25th May, 2022 file additional list of documents while the information was never reflected in the application for extension of time nor the application for review. He valiantly argued that the information is an afterthought soliciting ground or extension of time and the same are filed un- procedurally since the respondent has no room to the respondent by way of counter-affidavit. He urged this Court to expunge the application from the court record.

Mr. Sweya went on to submit that the applicant's submission is couched in support of an application for an extension of time thus this court is *functus officio* to determine the application. He urged this court to disregard the applicant's application. He claimed that the applicant is claiming that there are errors on the face of the record while his application

falls short to warrant the applicant's prayer. Mr. Sweya went on to submit that the law governing review is Order XLII Rule 4 (1) of the Civil Procedure Code Cap.33 whereas the applicant is required to show:-

1. That there is a 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
2. That there is a mistake or error apparent on the face of the records; or
3. That there is any other sufficient reason.

Mr. Sweya continued to argue that the application at hand is misconceived in trying to invoke a review on the ground as it falls short to establish legal principles. The applicant invokes this Court's jurisprudence in the case of **Colletha Salustian Mutayoba & Salustian David v Maria Kasambala**, Misc. Land Case Application No. 668 of 2020 HC Land Division at Dar es Salaam (unreported). He added the phrase 'apparent error in the face of the record' as one of the grounds of review is established in the case of **Collethat Salusand** (supra).

Mr. Sweya did not end there he submitted that a judgment of the final court is final and a review of such judgment is an exception. To fortify his position he cited the case of **Deogratias Ndemasi Tarimo v Avic Coastal Land Development (T) Ltd**, Land Review No. 334 of 2021 HC

Land Division at Dar es Salaam (unreported). Mr. Sweya went on to submit that this court was correct to disregard the applicant's application for an extension of time since the applicant's ground that he was searching for legal aid is not a sufficient ground to move this court to grant his application. He added that the applicant's contention that this court did not afford him an extension of time, thus he opted for review claiming that there was an error on the face of the record is misconceived and baseless.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the applicant's application with costs.

In his rejoinder, the applicant had nothing new to add. He reiterated his submission in chief.

I have carefully considered the submissions of the applicants' counsels and the respondent's counsel and do find that the application is based on the fact that the learned Judge granted a relief that was not prayed. The application is for review for which no appeal lies, and is governed by section 78 (1),(b), and Order XLII of the Civil Procedure Code, Cap.33 [R.E 2019]. Order XLII (1), (b) of the Civil Procedure Code Cap.33 [R.E 2019] illustrates the grounds for review as follows:-

(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.

The applicant has submitted that there is an error apparent on the face of the record as expounded in their grounds of review and they believed that there are sufficient grounds for this court to review its earlier orders as prayed. On this side, the respondent's Advocate 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.

I have scrutinized the applicant's application and noted that in his written submission he has departed from his claims that there is an error on the face of the recorded and started raising grounds for appeal. The applicant has failed to show the self-evident error or omission on the part of the court. The Court of Appeal of Tanzania in the case of **Vitatu and Another v**

Bayay and Others, Civil Application No. 16 of 2013 (unreported). In this case, it was 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 a 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].*

The above cited authority provides a nuanced exposition of what constitutes a manifest error on the face of the record. I am in accord with Mr. Sweya, 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.

In his written submission, the applicant was defending his grounds for extension of time trying to convince this court that he adduced sufficient grounds for extension of time. In my considered view, the applicant's application for review is misconceived. As long as he thought that another Judge could have taken a different view of the matter suffice to be a ground for appeal and thus, they are certainly not good grounds for review. Blessing the review on these two grounds would be tantamount to this court sitting appeal on its judgment which is not legally permissible.

In the upshot, I proceed to dismiss the application for lack of merit. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 9th June, 2022.


A.Z.MGEYEKWA

JUDGE

09.06.2022

Ruling delivered on 9th June, 2022 in the presence of the applicant and Mr. Sweya, and Ms. Kamugisha, learned counsels for the respondent.



A.Z.MGEYEKWA

JUDGE

09.06.2022