

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. APPLICATIONS NO. 361 OF 2022

(Arising from the High Court of Tanzania, Land Division in Misc. Land Appeal
No. 12 of 2022, before Hon. A .Z. Mgeyekwa,J dated 23rd May, 2022)

ZUHURA JUMA KERIA APPLICANT

VERSUS

FESTO OBED SANGA RESPONDENT

RULING

Date of Last Order: 12.08.2022

Date of Ruling: 19.08.2022

A.Z.MGEYEKWA, J

The applicant brought this application against the respondent praying that his court be pleased to review and set aside its Judgement and orders dated 23rd May, 2022. The applicant's application is brought under section 78 and Order XLII Rule 1 of the Civil Procedure Act Cap. 33 [R.E 2019].

When the matter was called for hearing on 12th August, 2022, the applicant was represented by Mr. Godwin Antony Fissoo, learned counsel. The respondent enjoyed the legal service of Mr. Daniel Oduor, learned counsel.

In his submission, the learned for the applicant urged this court to adopt the applicant's affidavit to form part of his submission. Mr. Fissoo stated that they have raised three grounds of review praying this court to review its Judgment and Decree dated 23rd May, 2022 since there is a manifest error on the face of the records that caused injustice to the appellant. Mr. Fisso submitted that this court has jurisdiction under the cited provision of the law to sit and review its judgment and order.

On the first ground, Mr. Fisso0 contended that the applicant has filed an application for review because this court has mistakenly considered the testimony of the first plot which is not the plot in dispute. He stated that in case this court could have properly considered the testimonies of the applicant and her key witnesses on records then it could find that there was an allocation Committee which was involved and the size of the plot is different and the same is located in Malolo. To forty his submission he referred this court to page 11 last paragraph of the impugned judgment.

On the second ground of review, the learned counsel for the applicant contended that this court confused the two names which appeared in the proceedings. He stated that the applicant testified that she acquired the first plot from Mzee Mkwya and the respondent testified that he bought the suit land from Mzee Mkwya. He added that the applicant said that she acquired the second plot after the Chairman had conducted a meeting with elders and Mzee Mkwya was not involved. He stated that the respondent's witness; Tindwa is referred to as Mzee Mkwya, thus, he is the same person. To buttress his contention he referred this court to page 12 first paragraph of the impugned Judgment.

The learned counsel for the applicant went on to argue that if this court could have analysed the evidence properly then it could note that Tindwa testified that he was involved in selling a piece of land that was not in dispute to the appellant. To support his submission he cited the case of **Magoiga Nyangorogoro Mriri v Chacha Moroso Saile**, Civil Appeal No. 44 of 2020. He went on to submit that the testimony of Mzee Ibrahim clearly shows that he sold the suit land to the respondent and the respondent did not dispute and the District Land and Housing Tribunal found that he had no good title to sell the suit land. He urged this court to consider the evidence of Ally Tindwa, Akili, and Irene.

On the third ground, Mr. Fissoo contended that on page 12 of the impugned Judgment, this court found that the Village Government is a necessary party to join the case. In his view, the court's findings constituted a manifest error because there is no Village Government of Mabwepande as submitted by the counsel for the respondent in his submission. In his view, the Village Government of Mabwepande is a nonexistent party.

In conclusion, the learned counsel for the applicant beckoned upon this court to review the impugned Judgment and allow the application.

In response, Mr. Oduor submitted that the only issue for determination is whether the grounds raised in the chamber summons as supported by the applicant's affidavit justifying the review of the impugned decision under Order XLII Rule 1. Mr. Oduor contended that the applicant has failed to adduce sufficient grounds on the face of the record. He added that the apparent error of the record must be that error that is obviously a mistake, not one which takes a long argument to establish it.

The learned counsel for the respondent submitted that a review is necessary only to correct an apparent error or omission which caused injustice. The learned counsel for the respondent went on to argue that looking at the applicant's affidavit, it does not disclose such apparent

errors but he has raised grounds for appeal. Mr. Oduor seeks refuge in the cases of **Chandrakat Joshubai Patel v R** [2004] TLR 218 and **Isaya Linus Chengula (as an administrator of the Estate of the late Linus Chengula) v Frank Nyika**, Civil Application No. 487/13 of 2020.

The learned counsel for the respondent continued to submit that on page 12 of the impugned Judgment the matter is related to ownership of land, thus, this court cannot review the same without analysing the impugned Judgment. He went on to submit that review cannot challenge the merit of the decisions. To support his submission, Mr. Oduor cited the case of **Halmashauri ya Kijiji cha Vilima Vitatu & 15 Others v Bayay & 15 Others**, Civil Application No. 16 of 2013. Mr. Oduor went on to submit that the applicant did not premise its grounds on the impugned Judgment but attacked entirely the Ward Tribunal records which is against the principle of the review.

In conclusion, the learned counsel for the respondent beckoned upon this court to dismiss the applicant's application for review.

In his rejoinder, Mr. Fissoo reiterated his submission in chief. He stated that every case needs to be decided on its own merit. He stressed that the applicant alleges that this court has mixed up the facts of the

respondent's case by mixing the names of Mkwya and Tindwa. Ending, he urged this court to grant their application with costs.

Having considered the submissions made by learned counsels for the parties, I wish to state at the outset that in the exercise of its powers of review, the Court is guided by the laid down principles which emanate from numerous decisions of the courts. In the case of **Angella Amudo v The Secretary-General of the East African Community**, Civil Application No. 4 of 2015 (unreported). In that case, the following principles were stated:-

"(a) The principle underlying a review is that the court would not have acted as it had if all the circumstances had been known....

(b) There are definite limits to the exercise of the power of review. The review jurisdiction is not by way of an appeal. The purpose of the review is not to provide a back door method for unsuccessful litigants to re-argue their cases. Seeking the re-appraisal of the entire evidence on record for finding the error, would amount to the exercise of appellate jurisdiction which is not permissible....

(c) The power of review is limited in scope and is normally used for correction of a mistake but not to substitute a view in law. This is because no judgment however elaborate it may be can satisfy each of

the parties involved to the full extent...

(d) A judgment of the final court is final and review of such judgment is an exception.

(e) In review jurisdiction; mere disagreement with the view of the judgment cannot be ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction....

(f) There is a dear distinction regarding the effect of an error on the face of the record and an erroneous view of the evidence or law. An erroneous view justifies an appeal. Therefore, the power of review may not be exercised on the ground that the decision was erroneous on merit...

(g) It will not be sufficient ground for review that another judge would have taken a different view. Nor can it be a ground for review that the court preceded on an incorrect exposition of the law...,

*(h) **A Court will not sit as a court of appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision.** It would be intolerable and most prejudicial to the public interest if cases once decided by the court could*

be re-opened and re-heard....

*(i) The term 'mistake or error on the face of the record' by its very connotation signifies an error that is evident per se from the record of the case and does not require detailed examination; scrutiny and elaboration of either of the facts or the legal position. If an error is not self-evident and detection thereof requires a long debate and process for reasoning, it cannot be treated as an error on the face of the record. **To put it differently, it must be such as can be seen by one who runs and reads...**" [Emphasis added].*

The above authority will assist me to determine the matter at hand. the applicant is claiming that there is an error apparent on the face of the record as expounded in his grounds of review and he believed that he has adduced sufficient grounds for this court to review its earlier orders and decision. He contended that this court has failed to evaluate the evidence on record and to consider the fact that Tindwa and Mkwaya is the same person.

On this side, the respondent's counsel strongly opposed the application for the main reason that the application does not constitute an error apparent on the face of the record instead the applicant has raised grounds for appeal/ therefore, he insisted that the application is demerit.

Certainly, from these facts and submissions, I am called upon to determine whether the grounds manifest an apparent error on the face of the record and to warrant the prayer for review, 'manifest error on the face of the record' as a ground for review has been broadly canvased in a plethora of authorities from the Court of Appeal.

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: -

"... 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 the law.***

Misconstruing a statute or other provision of law cannot be a ground for review. " [Emphasis added].

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 grounds of review expounded in both the memorandum of review and the submission thereto, it becomes apparent, as argued by Mr. Oduor, that the applicant has failed to demonstrate that the Judgment sought to be reviewed was based on a manifest error on the face of the record.

I fully subscribe to the submission made by the learned counsel for the respondent that the purported applicant's grounds for review are fit grounds for appeal, for example, the issue whether the suit land was allocated by Allocation Committee or not and whether the plots in question were different. This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision.

It is trite law that the Court's review jurisdiction is not intended to be used to challenge the merits of a decision. That legal position was underscored in the case of Julius **Rukambura v Issack Ntwa**

Mwakajila & Another, Civil 27 Application No. 3 of 2004 (unreported).

In that case, the Court had this to say:-

"The fact that the applicant may have been unhappy with the decision or even that the Court was wrong in holding such view cannot provide a basis for review, although had there been a higher appellate tribunal the applicant might want to appeal against that decision." [Emphasis added].

From the matters which have been raised and the supporting submission, there is no gainsaying that the learned advocates for the applicants are challenging the findings of the Court. And there is no gainsaying that the matters raised on grounds of the review do not fall within the scope of Order XLII Rule 1 (b) of the Civil Procedure Code Cap.33 [R.E 2019]. It appears the applicant intends to "appeal" against the aforesaid decision through the back door since our legal system has no provision for that avenue.

Based on the foregoing, I am of the settled view that the applicant's first and second grounds for review have not satisfied the required threshold for review of a decision of the Court based on the above-cited provisions of the law and authorities. I find the first two grounds for review are devoid of merit.

However, I have found that the third ground is a fit ground for review. The order of the court remains intact that the necessary party to join the suit, however, the said necessary party is not the Village Government of Mabwepande because it is a planned area.

In the upshot, the review is partly allowed to the extent that the respective local authority be joined as a party. No order as to costs. Order accordingly.


DATED at Dar es Salaam this 19th August, 2022.




A.Z.MGEYEKWA
JUDGE
19.08.2022

Ruling delivered on 19th August, 2022 via audio teleconference whereas Mr. Godwin Fissoo. Learned counsel for the applicant and Mr. Daniel Oduor, learned counsel for the respondent.




A.Z.MGEYEKWA
JUDGE
19.08.2022