

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 533 OF 2023

*(Arising from Misc. Land Application No. 145 of 2023 in the High Court of Tanzania
(Land Division) at Dar es Salaam.)*

PAULO MOSHI SOLOGO..... APPLICANT

VERSUS

JAILY MWANGAMA..... RESPONDENT

RULING

14th September, 2023

L. HEMED, J.

Previously, the Applicant herein, **PAULO MOSHI SOLOGO** had instituted Misc. Land Application No.345 of 2023, seeking for extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Kinondoni in Land Appeal No.132 of 2021. In its decision delivered on 30th June 2023, this court refused the prayer for extension of time and eventually dismissed it. The applicant was aggrieved by the said ruling hence the instantaneous application for review preferred under sections 41(2) and 51 of the Land Disputes Courts Act [Cap. 216 R.E 2016] and section 95 and Order XLII Rule 3 of the Civil Procedure Code, [Cap. 33 R.E 2019]. The grounds for review are as follows:-

1. That, the applicant herein was the Applicant in Misc. Land Application No. 345 of 2023 seeking extension of time to file an appeal against the decision of Hon. L.R Rugarabamu in Land Appeal No. 132 of 2021 dated 22nd December 2022 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala.

2. That, the applicant applied for the extension of time based on the ground stipulated under the affidavit in the support of the chamber summons in Misc. Land Application No. 145 of 2023.

3. That, the High Court in deciding on the merit of the application for extension of time to file an appeal against the decision of Hon. L. R Rugarabamu in Land Appeal No. 132 of 2021 dated 22nd December 2022 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala find the same to lack merit on the reason that the Applicant didn't count for each day of delay.

4. That, after the said Ruling and Drawn order of the High Court, the applicant has discovered new facts and grounds in which they were not brought in the said application, he wish to bring them in the attention of this honourable court so that it can arrive into a different decision or finding.

5. That, the procedures of Locus in quo in the trial Ward Tribunal was not followed and tainted with illegality and the appellate tribunal didn't consider the same...

6. That, the Applicant was not given the right to be heard and tender his evidence in the trial Ward Tribunal."

The application was heard *viva voce* on 14th September, 2023. Both parties appeared in person.

When the applicant was called to submit, he could not submit on the grounds of review. He only prayed for extension of time to appeal against the decision of the District Land and Housing Tribunal for Kinondoni in Land Appeal No. 132 of 2021 dated 22nd December, 2022. In reply thereto, the respondent was of the view that the applicant should be granted leave to appeal out of time but with costs.

Having heard from both parties, the matter for consideration is whether this application has merits? It is imperative to state here that the criteria for consideration in applications like the one at hand are provided

under Order XLII Rule 1 of the Civil Procedure Code (*supra*) thus:

"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.” (Emphasis added)

From the above provisions, application for review can be preferred under two circumstances. The **first one**, is where there is a discovery of new and important matter or evidence which, after exercising due diligence was not within the knowledge or could not be produced by the applicant at the time when the **decree** was passed or order made. This however, applies only for review of judgment and decree. The first circumstance does not apply in application like the one at hand.

The one that suits the matter like the instant case is where there are some mistakes or errors apparent on the face of record. For the applicant to succeed in application for review on allegation of errors or mistakes on record, he is obliged to show the errors or mistakes on the face of the impugned ruling/order. In **African Marble Company Limited (AMC) vs. Tanzania Saruji**

Corporation (TSC), Civil Application No. 132 of 2005, the Court of Appeal of Tanzania had this to say regarding the circumstances of review, that;

*"With regard to an error apparent on the face of record, Mulla, Indian Civil Procedure Code, 14th Edition Pages 2335-36, states that an **error apparent on the face of record** must be such as can be seen by one who writes 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 opinion."*(Emphasis added)

The applicant in his brief submissions, he could not point out the errors or mistakes, which surface on the face of the Ruling of this Court and he has even not attached the copy of the said Ruling to his Memorandum of Review. I have also gone through the grounds for review, I could not find one against the Ruling of this Court in Misc. Land Application No.145 of 2023.

I have also noticed that the applicant in his Memorandum of Review has attached the decision of the Ward Tribunal for Mabwepande in Shauri No.0108/2020. He condemns the said decision for being tainted with illegalities on the ground that the Ward Tribunal failed to observe

the procedures of visiting *locus in quo*. This being an application for Review, the court has only power to ascertain only apparent errors on the face of record of its ruling. This court has no jurisdiction of reviewing decisions of the lower tribunals, the ward tribunal inclusively. The jurisdiction to review decision is vested to the same court, which made and delivered the impugned decision, not otherwise.

In the final analysis, I find the application to have no merits as the applicant has failed to point out errors or mistakes apparent on the face of the ruling of this Court in Misc. Land Application No. 145 of 2023. The attached decision being the one made by the Ward Tribunal, this court finds to have no jurisdiction of reviewing it. In the upshot, I hereby dismiss the entire Application for Review with costs. It is ordered.

DATED at **DAR ES SALAAM** this 14th September 2023.




L. HEMED

JUDGE