

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE APPLICATION NO. 754 OF 2022**

BETWEEN

JACOB NEHEMIA MUSHI..... APPLICANT

VERSUS

THUWEBA OMARY KILEMBA..... RESPONDENT

RULING

Date of last Order: 20/2/2023


Date of Ruling: 28/02/2023

A. MSAFIRI, J.

This is an application for Review of the decision of this Court in Misc. Land Application No. 357 of 2022.

In the said Application, the current applicant was also the applicant and had filed for an extension of time to file appeal out of time against the decision of the District Land and Housing Tribunal (the District Tribunal). After hearing of the application, the same was dismissed with costs for lack of good and sufficient causes.

After dismissal, the applicant has instituted the current application seeking for Review on the following grounds; *Alls.*

1. That, there is an error apparent on face of record on the account that, it is the legal position that; illegalities and irregularities are sufficient cause for an extension of time and it can be raised at any stage of the case, the Hon. Judge erred to dismiss the Applicant's application while the decision of Ward Tribunal in Application No. 123 of 2017 and the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Appeal No. 38 of 2018 contained illegalities and irregularities.
2. That there is an error apparent on face of record on the reason that the Applicant had shown in the application that; he was suffering from diabetes and Hypertension and attached a medical report which was not challenged; the Hon. Judge erred to have dismissed the applicant's application without considering the sufficient cause of illness.
3. That there is an error apparent on face of record on the reason that the Applicant had shown in the application that he was not served with a summons to appear before District Land and Housing Tribunal for the determination of his case upon remitted (sic) from the High Court of Tanzania (Land Division), Hon. Msafiri, J. erred in law to dismiss the application. 

He prayed for this Honorable Court to review its own order dated 20th October 2022 and allow the application, costs to be borne by the respondent.

The application was heard viva voce whereby the applicant was represented by Mr. Francis Munuo, learned advocate while the respondent was represented by Mr. Salum Salum with Ms. Hakme Pemba, learned advocates.

In support of the Application, Mr. Munuo prayed to consolidate grounds No. 1 and 3 and argue them together. He submitted that the applicant believes that there are issues that this Court did not consider. Had the Court considered them, it wouldn't have reached to the said decision.

Mr. Munuo contended that position of the Court was wrong taking into account that there was an illegality on the point that the applicant was not served with summonses to appear before the District and Housing Tribunal when the matter was remitted from the High Court.

Mr. Munuo was of the opinion that the appeal from the District Tribunal inherited the illegalities and irregularities from the trial Tribunal. And that as the illegalities raised may lead to the decision of trial Tribunal to be a nullity, then the appellate Tribunal decision may have also stemmed from a nullity

Alls.

proceedings. To buttress his point, he referred this Court to the case of **Amos Robare @ James vs. Republic**, Criminal Appeal No. 401 of 2017.

On the 2nd ground, Mr. Munuo submitted that, it is the law that sickness may be a ground for granting of extension of time. He argued that in the decision being challenged for Review, the Court agreed that the applicant was hospitalized from December 2020. Hence, the Court should not have ruled that sickness was not proved as ground for extension of time. He prayed for the application to be granted.

Ms. Pemba, vehemently contested the application and submitted that, the law requires an application for Review to be based on grounds that there is an error apparent on face of record, and that the error complained of must be apparent not one which would detain a person through a long process of reasoning.

She submitted further that, on grounds No. 1 and 3 of the review, in the decision challenged for review, the Court ruled that illegalities and irregularities are good cause for extension of time but cannot be raised at any time by a person. *Adls.*

Ms. Pemba argued that the Court was right in its findings that the alleged illegalities originated from Ward Tribunal. Hence the Court did not error but it decided in accordance with the law.

On the issue of summons, Ms. Pemba argued that, the Court at page 5 of its ruling subjected to review, stated clear its findings that the summons were duly served and accepted by the applicant's Attorney.

On the ground No. 2 of the review, Ms. Pemba stated that, the Court stated clearly in its Ruling that the applicant failed to relate his sickness and his delay to appeal on time as the medical report attached did not specifically show the time by which the applicant was sick and failed to account for each day of delay.

She submitted that, they are of the view that the applicant is just showing dissatisfaction as there is no error committed by this Court. She pointed that the grounds for review are subject to be grounds for appeal as the applicant is inviting this Court to determine the case again.

She referred this Court to the cases of **Melkizedeck Fanuel Kileo vs. Janeth Joseph Kileo**, Misc. Land Application No. 735 of 2020, High Court

Alle

Land Division, Dar es Salaam. She prayed for the Court to dismiss the application with costs.

In rejoinder, Mr. Munuo mostly reiterated his submissions in chief and prayers.

Having heard the submissions from the parties and considered them and the authorities referred to this case, it is no dispute that this Court is empowered under Section 78 of the Civil Procedure Code Cap. 33 R.E 2019 (the CPC), to receive and entertain an application for review of its decision.

The criteria to be considered are provided under Order XLII proviso to Rule 1 of the CPC which provide for the scenarios upon which the Court may review its decision.

The Court may review its decision when;

- i. There is a discovery of new and important matter or evidence which after exercising due diligence, was not within the knowledge of the applicant/person aggrieved or could not be produced by the applicant at the time when the decree was passed or order made,

or; *And*

- ii. On account of some mistakes or error apparent on the face of the record, or for any sufficient reason, desires to obtain review of decree passed or order made against the applicant, may apply for review of judgment to the Court which passed the decree or made the order.

In the application at hand, the applicant is basing on the second criteria where it is claimed that there are mistakes or error apparent on the face of record of the decision which is subject for review.

The pertinent issue here is whether this application has merit.

It is trite law that, when basing on criteria of error on the face of record, such an error must be obvious and easily identifiable by anyone reading the decision.

In the case of **Maulid Juma Bakari @ Damu Mbaya vs. the Republic**, Criminal Application No. 63/01 of 2020, CAT at Dar es Salaam which was referred to me by the counsel for the respondent, the Court of Appeal quoting their decision in the case of **Chandrakant Joshubhai Patel vs. Republic** [2004] TLR 218, it ruled thus; *Accl-*

*"An error on the face of the record must be such as can be seen by one who runs 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 opinions.**" (Emphasis added)*

Guided by the hereinabove principle, and having gone through the grounds for review in the application at hand, I fully subscribe to the submissions by the counsel for the respondent that the grounds lodged by the applicant are not fit for review but are the grounds for appeal.

The said grounds for review does not relate to an error or mistake which are apparent on the face of the decision subject for review, but instead, the applicant have raised grounds that requires this Court to re-determine the evidence in the record while this Court has already heard the previous application, determine the evidence available on record and came up with decision.

Looking at the grounds for review and submissions by the counsel for the applicant, it is clear that the applicant is moving the Court to re determine

Alls

Misc. Land Application No. 357 of 2022 on which the current applicant was seeking for the extension of time to file appeal out of time.

On the said application, the applicant forwarded two reasons for delay, first one was that of sickness of the applicant and the second reason was existence of illegalities. This Court, in its ruling, deliberated on the two reasons/grounds advanced by the applicant and decided that they were not sufficient for extension of time.

Mr. Munuo, counsel for the applicant in the current application has again raised similar grounds as grounds for review, arguing that there are issues that this Court did not consider.

Mr. Munuo then went on to argue on the Court's failure to consider that the illegalities alleged by the applicant, stemmed from the trial Tribunal and the appellate Tribunal inherited such irregularities. He also argued that the fact that the Court accepted the Medical Report of the applicant, should have been sufficient for the Court to grant extension.

Here, I am sorry to say that Mr. Munuo is twisting what actually this Court deliberated on the ground of sickness of the applicant which was advanced in Misc. Application No. 357 of 2022. In a nutshell, the counsel for *Alle*

the applicant is forcing the Court to re-evaluate or revise its own decision and this is unacceptable.

In the case of **Chandrakant Joshubhai Patel (supra)**, it was held further thus;

"...A mere error of law is not a ground of review.....

That a decision is erroneous in law, is no ground for ordering review..."

It is my finding that, as pointed by the counsel for the respondent, the applicant is expressing his dissatisfaction with the decision of this Court which is subjected for review. In the circumstances, the remedy available was for the applicant to lodge an appeal instead of the review since the remedy of appeal is available.

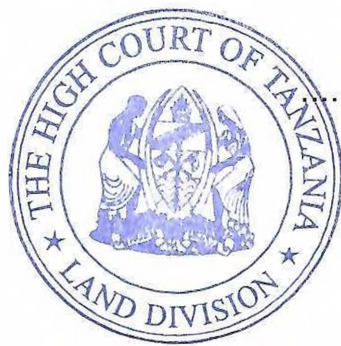
The applicant is trying to turn this Court into an appellate court of its own decision. The review is not an appeal avenue open to the unsatisfied party with the decision of the Court. (see the case of **Maulid Juma Bakari @ Damu Mbaya vs Republic (supra)**).

In the light of the above analysis, I find that the applicant has failed to show apparent errors on the face of record as what was submitted basing

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on three grounds of appeal are long arguments which needs re-determination of the grounds for extension of time which was presented before the Court in the previous application.

In upshot, I find the application to have no merit and I dismiss it. I make no order for costs.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written over a horizontal dotted line.

A. MSAFIRI
JUDGE
28/02/2023