IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. APPLICATION NO. 307 OF 2015
(Originating from Civil Case No. 112 of 2005)
BETWEEN

FRANK K.G. MUNISI.....APPLICANT

VERSUS

1. NATIONAL INSURANCE OF TANZANIA LTD
2. CONSOLIDATED HOLDINGS CORPORATION .....RESPONDENTS

RULING

Date of last Order: *20/09/2019*
Date of Ruling: *07/10/2019*

MLYAMBINA, J.

This is an application for review of the decision of this Court (Mugasha, J- as she then was) dated 29th April, 2015. The Applicant seeks for review of the said ruling to an extent that:

1. *The delay way back from inception of the suit in question ten years ago was as a result of frequent change on the trial judges amounting to five in number where the reassignment from one judge to another had considerable consequences in terms of time and absence of a forum to make relevant request for extension or departure from the scheduled fast track.*
2. *Cessation of existence of parties, to wit, Presidential Parastatal Sector Reform Commission followed by*

consolidated holdings corporation and finally the Treasury Registrar took over in June, 2014 and arrangements for taking over and handling of the matter in Court again left the case pending in Court for a long time which neither parties to the suit was to blame and during the period of transition the parties lacked forum to address the Court on the circumstance of expiry of the fast track schedule whenever the previous one expired.

3. *All the parties to the suit were not at issue and there had not been any objection on the application for departure and grant of new fast track schedule as addressed by the plaintiff's counsel.*
4. *Decision of Honorable Mugasha on 29th April, 2015 robbed plaintiff of his right.*
5. *The plaintiff attended court accompanying his advocate or himself or was represented by advocate all the time.*
6. *It is in record that, second defendant defaulted appearance in Court most of the time, in spite of been served by the Court process server.*
7. *Plaintiff kept track of his driver who moved to Uyole Mbeya and ensured service of summons to him.*

Wherefore the Applicant sought for the Court ruling and order dated 29th April, 2015 be reviewed accordingly in line with the setting of fast track schedules and suit that was struck out be heard and determined on merit for the purpose of substantive justice.
The application has been made under ***Section 78 (A) and order XLII Rule 1 of the Civil Procedure Code Cap 33 (R.E 2002).***

To start with the relied upon ***Order XLII (1) (B) of the Civil Procedure Code (supra).*** It provides that:

> *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.*

Therefore, **Order XLII (1) (b) of the Civil Procedure Code** (*supra*) is very explicit that a court can only review its orders if the following four grounds exist:

a) *There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the Applicant at the time the decree was passed or the order was made; or*

b) *There was a mistake or error apparent on the face of the record; or*

c) *There were other sufficient reasons; and*

d) *The application must have been made without undue delay.*

When facing similar application, the Court of Appeal of Tanzania at Dodoma in **Criminal Application No. 04/2007** observed that review would be carried out when and where the following grounds exists:

> *First, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The Applicant would therefore be 6 required to prove very clearly that there is a manifest error apparent on the face of the record. He will have to prove further, that such an error resulted in injustice. Second, the decision was obtained by fraud. Third, the*

Applicant was wrongly deprived the opportunity to be heard. Fourth, the court acted without jurisdiction.

The Court of Appeal of Tanzania in **Criminal Application No. 4/2007** went further to quote its own earlier decision in **Tanzania transcontinental Co. Ltd Vs Design Partnership Ltd Civil Application No. 762 of 1996** in which it established that the list or grounds for review is not exhaustive and emphasized that:

The court will not readily extend the list of circumstances for review, the idea being that the court's power of review ought to be exercised sparingly and only in the most deserving cases, bearing in mind the demand of public policy for finality of litigation and for certainty of the law as declared by the highest court of the land.

It follows therefore that the Court or Tribunal discretion powers for review can only be exercised where there is apparent error on the face of the record. Before invoking such power, it is the overriding duty of the Tribunal to take into consideration the public concern of bringing litigation to their end. Again, what amounts to apparent error on the face of the record has to be interpreted from case to case. In **Chandrakhant Joshibhai Patel V. R** (2004) TLR, 218, it was held that an error stated to be apparent 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 reading on points on which may be conceivably be two opinions"(Also see **Muyadi v. Industrial and Commercial Development Corporation and Another** (2006) I EA 243).

The Respondents have raised one important legal issue namely.

"The application is bad in law as the application for review cannot be a substitute to an appeal.

It was the Respondent's submission that it is a settled law a review is not and should not be synonymous to appeal. In support, the Respondent cited the case of **Oswald Masatu Mwizambi v. Tanzania fish processor Ltd** CAT Civil Review Application No. 5 of 2013 where the court held under page 4 by citing the case of **Issa Said v. R, Criminal** Application No. 7 of 2015 and **Rajabu Taratibu v. R.** Criminal Application No. 7 of 2015 where the Court stated that, an application for review is not meant to challenge the merits of the earlier decision of the Court or rather an appeal on a second bite.

It was the Respondent's view that the Applicant's submission that "*the circumstances which occurred were beyond the Applicants control, the Court was harsh to strike out the suit without clearing the long period of time this case has taken*" on this and all other grounds are meant to correct the decision of the earlier decision by reviewing it.

The Applicant in his written submission in support of the application and in opposing the preliminary objection has insisted for this Court not to be obsessed with technicalities for failure to meet procedural rules.

I have had time to go through the entire records, I noted true that there was no application made by the Applicant whether written or orally for the Court to depart or amend the scheduling order contrary to **Order VIIA Rule 4 of the Civil Procedure Code Cap (33 R.E 2002.)** As such, there been no any application been made for more than two years from the expiry date rendered any subsequent application for departing from scheduling order time barred in terms of part III item 21 of the schedule in the Law of **Limitation Act Cap 89 (R.E 2002).**

In the light of the foregoing, the decision of my learned sister Honorable Judge Mugasha (as she then was) dated 29th April, 2015 was proper as the life span of Civil Case No. 112 of 2005 had

expired and no any amendment to the scheduling order was made to the Court within 60 days. If the Applicant was aggrieved with such order had the right to appeal. There is no discovery of new evidence, no any error on the face of the record or any order been obtained by fraud.

In the end result, I find this application is bad in law as properly objected by the Respondents. Therefore, the application is dismissed with cost.

Y. J. MLYAMBINA
JUDGE
07/10/2019

Ruling delivered and dated this 07th day of October, 2019 in the presence of the Applicant in person and in the absence of the Respondents.

Y. J. MLYAMBINA
JUDGE
07/10/2019