

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: Msoffe, J.A., Kimaro, J.A., And Mbarouk, J.A.)

CIVIL APPLICATION NO. 154 OF 2007

PHILLIP CHUMBUKA.....APPLICANT

VERSUS

MASUDI ALLY KASELE.....RESPONDENT

(Review from the decision of the Court of Appeal of Tanzania)

(Mroso, Msoffe, Kaji, JJJ,A.)

dated 12th September, 2007

in

Civil Reference No.14 of 2005

RULING OF THE COURT

13 May & 9 June, 2011

KIMARO, J.A.:

In a notice of motion filed under Rule 3(2) (a) of the Court of Appeal Rules, 1979 the applicant is asking the Court to review the decision of this Court made in Civil Reference No 15 of 2005. The main ground for filing the application is that the Court erred in law and in fact in dismissing the reference without taking into consideration the circumstances which underlined the causes for the delay to file the appeal when the applicant

had real and substantial complaint against the respondent. Civil Reference No. 14 of 2005 was challenging the decision of a single Judge for dismissing the reference on the ground that the applicant did not show where the Judge went wrong. Dissatisfied with the decision of the Court in the reference the applicant has filed this application for review.

In the case of **Transport Equipment Limited V Devram Valambhia** [1998]T.L.R. 89 it was held that:

“The Court of Appeal has limited inherent Jurisdiction to review its decisions when such decisions are a nullity, or when a party is wrongly deprived of opportunity to be heard and there is also an inherent jurisdiction in the Court to review its own decision whenever such decisions are based on a manifest error on the face of the record resulting in a miscarriage of justice.”

In dismissing the application for reference the Court cited the case of **Daudi Haga V Jemitha Abdon Machafu** Civil Reference No. 1 of 2000 (unreported) and held:-

"It is an accepted principle that in a reference the full Court considers what was presented and argued before the single judge and see whether the learned judge was right or wrong.

...We have carefully considered her decision. Indeed the applicant's arrest by the police three years after the decision to be appealed against and the unsubstantiated allegation that his advocate at the time was mentally confused when he filed the application in the High Court, cannot be said to be sufficient grounds for extension of time. There is nothing to fault the decision of the learned single Judge. This reference lacks merit."

(Emphasis added.)

It is from the above holding that the applicant had to tell the Court how the decision entitles him to seek for a review. He had to tell the Court which error is manifest on the face of the record, how he was denied an opportunity to be heard, and what makes the decision of the Court a nullity.

The affidavit of the applicant filed in support of the application does not show that the judgment sought to be reviewed is suffering from any of the grounds listed in the case of **Transport Equipments Limited** (supra). Instead, the applicant has listed other factors not relevant to the application for review. They were not even relevant factors for allowing an application for a reference. In paragraph 2 of the affidavit the applicant deposes that he was denied the right to be heard but he did not say how he was denied that opportunity. In paragraph 3 he says the circumstances for the delay were not taken into consideration, in paragraphs 4 and 5 he says the bad health condition of his advocate, the late Yusuf Mtenya, was not taken into consideration, in paragraph 6 the applicant says his arrest by the police was not considered and lastly is ignorance of procedure. But as we have shown, the Court looked at the reasons he gave when he filed the application for extension of time, and was satisfied that the single Judge considered all grounds and arrived at a right decision. The Court saw no fault in the decision.

In another case of **Chandrakant Joshubhai Patel V R** [2004] T.L.R 218 the Court held that:

(1)The Court of Appeal has inherent jurisdiction to review its decision and it will do so in any of the following circumstances (which are not necessarily exhaustive):

(a) where the decision was obtained by fraud.

(b) where a party was wrongly deprived of the opportunity to be heard.

(c) where there is a manifest error on the record, which must be obvious and self evident and which resulted in a miscarriage of justice.

(ii) Consideration of additional evidence by the Court of Appeal in a manner contrary to the established principles does not, even if correct, constitute an error which will ground an application for review.

(iii) Failure or omission by an appellate Court to draw an adverse inference or any inference from non-disclosure of evidence at the trial is a non-direction which may be a good ground for appeal, where further appeal lies, but cannot be a good ground for review.”

Rule 66 of the Court of Appeal Rules, 2009 governs an application for review. Rule 66(1) provides:

The Court may review its judgement or order, but no application for review shall be entertained except on the following grounds:

- (a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or*
- (b) A party was wrongly deprived of an opportunity to be heard;*
- (c) The court's decision is a nullity; or*
- (d) The court had no jurisdiction to entertain the case; or*
- (e) The judgment was procured illegally, or by fraud or perjury.*

All the grounds listed in Rule 66(1) of the 2009 Rules are what the cases of **Transport Equipment Limited** (supra) and **Chandrakant Joshubhai Patel** (supra) and others not referred to, said are relevant for consideration in an application for review.

The applicant in this application has totally failed to show that there is any ground for the Court to grant the application for review. It is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 2nd day of June, 2011

J. H. MSOFFE
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

M. S. MBAROUK
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL