IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWAMBEGELE, J.A., KITUSI, J.A. And KAIRO, J.A.)

CIVIL APPLICATION NO. 190/01 OF 2017

GODFREY SAYI ..... APPLICANT

VERSUS

ANNA SIAME as Legal Representative of the late MARY MNDOLWA.....RESPONDENT

(Application for review from the decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Luanda, Mussa and Mugasha, JJA.)

dated the 15th day of February, 2017

in

Civil Appeal No. 114 of 2012

RULING OF THE COURT

9th July, & 5th August, 2021

KAIRO, J.A.:

The applicant, Godfrey Sayi has lodged this application for review by way of a Notice of Motion made under Rules 4(1), 48(1) and 66(1) (a) and (c) of the Court of Appeal Rules, 2009 (the Rules) and section 4 (4) of the Appellate Jurisdiction Act (AJA) [Cap 141, RE 2002] as amended by the Written Laws (Miscellaneous Amendment Acts) (No.3) of 2016. It is supported by an affidavit of Godfrey Sayi; the applicant. The applicant is seeking an order of the Court to review its decision in Civil Appeal No. 114 of 2012 dated 15th day of February, 2017 which dismissed his High Court Civil Appeal No. 44 of 2006. The applicant had

initially raised three grounds for review. However, when he appeared before us to amplify them, he prayed to abandon the 2nd ground and informed us that he will only amplify on the 1st and 3rd grounds of review. After minor amendments with leave of the Court in the notice of motion, the grounds for review now read as follows: -

> *"1.That there is manifest error on the face of the record by affirming the judgment and decree of the High Court in Civil Appeal No. 44 of 2006 dated 27th June, 2007 before Hon. Shangwa, J which revoked title deed No. 50312, the Court was in violation of the doctrine of separation of powers and usurping the President's power, hence resulted in miscarriage of justice.*
>
> *"2.That if your decision remains as it is, it will be against the doctrine of stare decisis.*

In paragraphs 2 and 3 of the affidavit in support of the application, the applicant faults the Court's decision to uphold the judgment of the High Court, which according to him, revoked title deed No. 50312 and ordered resurvey of Farm No. 2243. It is the applicant's deposition in paragraph 4 of the affidavit that if the decision is left to stand and execution proceeds, the Registrar of Titles will direct a resurvey of the

plot in execution of the decree, an action which will make him suffer irreparable loss resulting into miscarriage of justice. On the other hand, the respondent filed her affidavit in reply opposing the application. Generally, the deponent disputes all the grounds relied upon by the applicant arguing them not to be fit for the grant of the prayer for review. She further deposed that the applicant will not suffer any loss or damage as a result of the execution since the applicant had never bought any plot or land which he claims to own.

When he appeared before us for hearing, the applicant was represented by Mr. Christian Rutagatina, learned counsel while the respondent had the legal services of Mr. Hashim Mtanga, also learned counsel.

Mr. Rutagatina adopted the contents of the supporting affidavit and the written submission he had filed earlier on as part of his oral address before us. He amplified the grounds of review to the effect that the Court's decision upholding the judgement of the High Court which revoked title deed No. 50312 and order resurvey of Farm No. 2243 constitutes a manifest error on the face of record resulting into miscarriage of justice. He further submitted that despite being aware

that the Court can overrule its previous decision, that cannot be the case in the matter at hand. He went on to submit that the said decision of the High Court is not proper but to his dismay the said decision was later upheld by the Court in Civil Appeal No. 114 of 2012 as depicted at page 10 of the Court's decision and dismissed the applicant's appeal at the end of the day. Mr. Rutagatina argued that the Court's decision was given *per incuriam* because it did not consider its earlier decision in a similar case of **Mbeya-Rukwa Autoparts Transport Ltd V. Jestina George Mwakyoma** [2003] T.L.R 251 wherein the decision of the High Court to revoke the title deed and granting it to another person was held to be void for violating the doctrine of separation of powers.

Mr. Rutagatina argued that by confirming what he termed to be an illegal and void decision of the High Court in Civil Appeal No. 44 of 2006, the Court committed a serious error on the face of the record which we are now invited to review or order otherwise. He insisted that the said decision is contrary to the principle of stare decisis whereby the Court being a final appellate Court is bound by its previous decisions regardless of their correctness. To buttress his argument, he referred us to the learned authors; Sawyerr & Hiller in their book titled **"The**

Doctrine of Precedent in the Court of Appeal for East Africa"; Tanzania Publishing House Dar es Salaam, 1971 at page 3. Mr. Rutagatina thus firmly implored us to follow what we previously decided in the case of **Mbeya-Rukwa Autoparts Transport Ltd** (supra) as per the principles of stare decisis.

In reply Mr. Mtanga prayed to adopt his written submissions filed on 4th day of July, 2017. He began by raising a preliminary point of law to the effect that the review at hand was filed beyond 60 days contrary to rule 66 (3) of the Court of Appeal Rules 2009. However, upon some dialogue with the Court, the learned counsel conceded that the application was filed after the lapse of 59 days, which means well within time. He thus withdrew his objection.

Reverting to the substantive application, Mr. Mtanga submitted that the application does not fall within the scope and purview of Rule 66(1) which prescribes the grounds for review. Regarding the cited book by Sawyerr & Hiller on precedent, Mr. Mtanga argued that the book is not an authority but explorations given by academicians adding that he would have had a different view if the same was a court's decision and invited the Court to disregard it. He concluded by insisting

that the Court's impugned decision cannot be reviewed as it does not fit in any of the prescribed five conditions given in Rule 66(1) of the Rules.

In rejoinder, Mr. Rutagatina insisted that, there was a miscarriage of justice as pointed out in the 1st ground, as such, review is a proper remedy to cure the pointed-out error.

As earlier stated, this application is made under various provisions of the law including section 4 (4) of the AJA and Rule 66 (1) (a) and (c) of the Rules. According to section 4 (4) of the AJA, the Court has jurisdiction to review its own decisions. Rule 66(1) under which this application is predicated provides:

> *"66 (1) the Court may review its judgment or order but no application for review will be entertained except on the following grounds:*
>
> *(a) the decision is 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*

(e) The judgment was procured illegally or by fraud or perjury"

From the wording of rule 66 (1), it is evident that the scope of making review is limited to the above stated five grounds.

Having read the Notice of Motion and heard arguments by the applicant's learned counsel, the application hinges on sub rules (a) and (c) of Rule 66 (1) of the Rules whereby the applicant claims that the impugned decision has a manifest error on the face of it resulting in a miscarriage of justice since it upheld the High Court's decision which after dismissing the appeal before it, ordered revocation of title deed No. 50312 and resurvey of Farm No. 2243. He further faults the Court's decision for contravening the doctrine of stare decisis, rendering its decision a nullity. The issue for our determination therefore is whether the grounds advanced by the applicant satisfy the criteria warranting the review of the Court's decision.

To start with, we thought it is important to restate what it means by the term *"manifest error on the face of record"* as aptly given in the case of **Chandrakant Joshubhai Patel V. Republic** [2004] T.L.R 218 wherein the Court had this to say: -

"an error 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 reasoning on points on which there may conceivably be two opinions ...A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review ...It can be said of an error that is apparent on the face of the record it is obvious and self-evident and does not require an elaborate argument to be established."

It is clear from the quoted paragraph that the term manifest error on the face of record means clear, plain or obvious error from the record which requires neither elucidation nor does it attract arguments. As afore stated, the applicant complains that, the Court's decision which upheld the judgment of the High Court amounts to a manifest error on the face of record. However, going through the impugned decision, we noted that the controversy at the High Court centers on the ownership of the farm in dispute. This is the issue which was appealed against at the Court and finding of the High Court upheld. The High Court after determining the question as to whom the disputed farm belonged between the applicant and the respondent, ordered the revocation of

the title deed and resurvey of the same. To be precise, revocation and resurvey of the farm in dispute were consequential orders and not substantive ones. However, the consequential orders the applicant seems to be aggrieved with, were not appealed against at the Court to enable it deliberate on. In the cited case of **Mbeya-Rukwa Autoparts Transport Ltd** (supra), the question of revocation was brought to Court for its determination, while it is not the case in the matter at hand. This is a point of departure in the two cases. Mr. Rutagatina picked some words from the impugned decision to substantiate his argument on the said error to which we herein reproduce for ease of reference.

> *"the judge revoked the title deed no 30312 of farm No. 2243 and ordered its re-survey...."* (pg 10 of the record of appeal).

With respect we wish to state that the picked words were just a small portion of the paragraph in which the Court was recounting what transpired at the High Court and not determining the consequential orders. Besides, the paragraph is to be read as a whole to get its meaning rather than picking bits and pieces as the learned counsel did. As stated, what the Court upheld was the finding of ownership by the High Court and not revocation or resurvey orders. We thus find his interpretation to be misconceived. We are of the view that what he termed as

errors on the face of record is neither here nor there as it was not considered by the Court in the first place, thus cannot qualify when tested within the benchmarks of Rule 66(1). The pointed-out errors even if they exist, are fit as grounds of appeal rather than grounds for review. In the case of **Karim Ramadhani V. Republic,** Criminal Application No. 25 of 2012 (unreported), the Court was categorical that an error complained of in review must be on the face of the decision. It stated as follows: -

> *"it is not sufficient for the purpose of paragraph (a) of Rule 66(1) of the Rules, for the applicant to merely allege that the final appellate decision of the Court was based on the manifest error on the face of the record if his elaboration of these errors discloses grounds of appeal rather than manifest error on the face of the decision...."*

With respect, therefore, we did not find any apparent error in the impugned decision. We have times and again stated and wish to restate today, that review is not an alternative to an appeal where a discontented party can re-open the matter for the Court re-hearing. In other words, a Court will not sit as a Court of Appeal from its own decision [see **Blue Line Enterprises Ltd V. East African**

Development Bank (EADB), Civil Application No. 21 of 2012] (unreported).

We further wish to make it clear that there is a difference between an error on the face of the record and an erroneous decision. Where established the former warrants review but the latter is a subject of an appeal. Reading Rule 66(1) (a) it is not enough to establish the error on the face of the record, such error must have resulted into miscarriage of justice. However, since we find no established apparent error on the face of the record, it follows that there was no miscarriage of justice.

Mr. Rutagatina has further argued that if the impugned decision if left to stand, it will be against the doctrine of stare decisis which he termed to be an illegality. Our examination on the ground reveals that, the ground is new as was not addressed by the Court. Essentially this ground should have been discussed before by the Court but in the application at hand, neither the doctrine of stare decisis nor precedent were looked at. Besides they are not among the grounds for review under rule 66 (1) of the Rules. Thus, do not qualify as grounds for review as rightly argued by Mr. Mtanga. We however hasten to add that, we do not subscribe to Mr. Mtanga's suggestion that the cited book on

precedent cannot be referred to as an authority. To the best of our understanding, books by learned authors are among the sources of law, and therefore can be cited as reference.

The picking of issues which were not discussed nor determined by Court claiming them to be grounds of review shows that the applicant is inviting the Court to sit on its own decision, which invitation we decline. We are with settled mind that, neither the errors complained of nor the alleged illegality nor stare decisis fall under the ambit of review. The case of **Blue Line Enterprises Limited V. EADB** (supra) when discussing a similar issue of the court re-hearing its own appeal, quoted with approval a paragraph from the Indian case of **Raja Prithuri Chand Lall Chaudhary V. Sukharaj Rai** (AIR 1941 sci) stated:

> *"This Court will not sit as a Court of Appeal from its own decision nor will it entertain applications for review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion, be intolerable and most prejudicial to the public interest if cases once decided by the Court are re-open and re-heard...."*

The stance is geared to ensure conclusion of disputes. The said stance was spelt out in the case of **Patrick Sanga V. Republic;** Criminal

Application No. 8 of 2011 (unreported) wherein the Court insisted that, there must be an end to litigation as a matter of policy.

We thus agree with Mr. Mtanga that the applicant has not made out a case warranting a review. In the circumstances, the only option we have is to dismiss this application, as we hereby do, with costs.

DATED at **DAR ES SALAAM** this 30th day of July, 2021.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Ruling delivered this 5th day of August, 2021 in the presence of Mr. Christian Laurent Rutagatina, learned counsel for the applicant and in absence of respondent despite being dully served is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL