



passed or where there is a mistake or error which is apparent on the face of the record or for any other sufficient reason. The case of National Bank of Commerce V Cosmas Muhoji [1986] TLR 127 refers.

The question which has to be asked and answered is whether there is a discovery of new and important evidence, or an error or mistake apparent on the face of the record or any other sufficient reason.

The review was argued by written submissions. The applicants though they appeared in person were assisted by Mr. John Wallace Daffa, the Learned Advocate from the Legal and Human Rights Centre and the respondent were represented by Chidowo, Learned State Attorney although in the written submission the Learned State Attorney who draw the same has not disclosed his / her name. It is important for the author of any document which is filed in court to disclose his/her name rather than giving just a signature. I hope this remark will be taken care of in future for easy of court's reference.

In their submission the applicants referred to paras 4, 5, 6, 7, 8, 9 and 10 of the plaint and said that the suit is founded on ownership of the plot and not on tortious trespass and so the compensation which is prayed for is just a resultant of the encroachment. This point is emphasized through out the submission. They contended that given what was averred in the plaint, which established that the suit is founded on ownership of the land, the limitation period is 12 years and so the suit was filed within time. They prayed that the review be allowed. The case of Ramedhani Nkongole V Kasiam Paulo [1988] TLR 56 was cited to support the assertion that the right to sue for an encroachment does not arise however long land stays uncultivated until it is encroached upon.

In reply, the Learned State Attorney focused his attention on the provisions of the ~~law~~ dealing with a review. That is Section 78 and Order XLII. The Learned State Attorney prayed that the review be dismissed because none of the grounds which permit granting a review have been proved.

In reply, the applicants submitted that the reply by the State Attorney was filed out of time without leave of the court and so the same should be dismissed. They also reiterated their earlier submission that the suit is founded on the ownership of the land and not on the tort of trespass. On the grounds for granting an application for review, the applicants emphasized the ground on apparent error and other sufficient cause.

Let me pause here and ask whether on the submissions made by the parties to this review the grounds for granting the review have been established.

After having gone through the memorandum for review and the submissions I am satisfied that the grounds for granting a review have not been established.

Starting with the ground on a mistake or error which is apparent on the face of the record, I do not see any. If there is any problem, it might be associated with failure to grasp the facts pleaded and come out with what the applicant say should have been the decision of the court. In this respect, it is a question which is associated with competency but cannot be, associated with a mistake or error which is apparent on the face of the record. A mistake or error must be so reflected on the face of the record.

As regards discovery of new and important evidence which was not within the applicants knowledge, none has been shown in these review proceedings.

Is there any sufficient reason? I do not see any. It may also be of interest to point out that what the applicants have drawn and labelled a memorandum of review is not, strictly speaking, a memorandum of review. It is a memorandum of appeal which has been erroneously labelled a memorandum of review. The grounds given are purely grounds for an appeal and not grounds for review. The applicants have persued an appeal in a wrong forum. This court has no jurisdiction to entertain an appeal against its own decision. Changing the title of the document which was filed in court by labelling it a memorandum of Review while it is, strictly speaking, a memorandum of appeal, does not help the applicants.

The application for review has no merit. It is dismissed. No order for costs.



N.P. Kimaro

JUDGE

8/05/2002