IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LILA, J.A. KITUSI, J.A. And MASHAKA, J.A.)

CIVIL APPLICATION NO. 523/01 OF 2018

INTERBEST INVESTMENT COMPANY LIMITED ..... APPLICANT

VERSUS

STANDARD CHARTERED BANK (T) LIMITED ..... RESPONDENT

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

(Mmilla, Mwangesi, Ndika, J.J.A.)

dated the 27th day of September, 2018

in

Civil Application No. 190 of 2015

RULING OF THE COURT

19th July, 2022 & 31st August, 2022

LILA, J.A.:

The applicant was a losing party in Civil Application No. 190 of 2015 in which the Court disallowed her application to strike out a notice of appeal lodged by the Respondent on 15/5/2015. That decision, in her view resulted in miscarriage of justice as it is tainted with errors on the face of the record. She has now moved the Court by way of a notice of motion supported by an affidavit sworn by Mr. Audax Kahendaguza Vedasto, learned advocate, to invoke its powers under rule 66(1)(a) of the Court of Appeal Rules, 2009 (the Rules) so as to review it.

The applicant's contention before the Court was that, upon being aggrieved by the decision of the High Court in Civil Case No. 463 of 2002 dated 16/6/2010, the respondent timeously lodged a notice of appeal on 15/5/2015 after she had obtained leave to appeal. However, up to 22/9/2015, the respondent was yet to file an appeal contrary to the provisions of Rule 90(1) of the Rules which obliges the intended appellant to do so within 60 days of the notice of appeal.

It was further submitted that the Respondent had first filed his appeal which was struck out for being incompetent, however she pointed out that, before the same was struck out, the Respondent had applied for the certified copies out of time and served the Applicant with the said letter out of time, thus she failed to take essential steps.

On another point, she challenged the letter filed in the court on 12/5/2015 and served on her on 18/5/2015, five years after the date of judgement, the letter seeking to be availed with certified copies of the judgment and decree after the first appeal was struck out was uncalled for save for the documents which were missing, this is as per the court's decision on page 9 of the record. It was her view that the Respondent was not entitled to enjoy the exclusion of the days under rule 90(1) of the Rules.

But the Respondent's counsel opposed the application arguing that after her first appeal was struck out, each document related to it, including notice of appeal and the letter for requesting the documents, stood struck out. Therefore, the Respondent had to start afresh the appeal process by obtaining extension of time to do the necessary act in relation to initializing the appeal, including lodging notice of appeal and seeking leave to apply for certified documents out of time.

The Court was inclined to agree with the respondent's position and found no merits in the application by the Applicant in Civil Application No. 190 of 2015, thus dismissed it. The decision aggrieved the Applicant hence the present application for review. In the ruling, the Court observed that the respondent obtained leave for lodging the notice of appeal out of time, lodged the notice of appeal and applied for the copies of necessary documents but was yet to be availed with them until when the application to strike out notice of appeal was filed. Finally, it held that the respondent was not to be blamed for the delay in lodging the appeal and the application was found unmeritorious.

Having gone through the present application, what is gleaned from the record is that, the applicant is asserting that he presented his written submission in support of the application to strike out the notice

of appeal which had two grounds. And that, in his submission, he argued the 1st ground on five different angles and the 2nd ground on two different angles, of which the Court just considered only some of the angles to reach to its decision, leaving other angles untouched and others unresolved. This forms the crux of the present review application. She argues that the Court ought to have considered all the angles in her submissions in reaching at its decision. It is now moving the Court to consider the other angles which it did not consider earlier on and those it left undecided so as to come up with a decision favouring its position, as she believes they were decisive. Those grounds are reflected in her notice of motion as hereunder.

> *"1. That while the Applicant's application for review based on two grounds, which the submission canvassed from 5 different angles (in respect of 1st ground) and 2 angles (in respect of the 2nd ground) the honourable Court conceived the Applicant's case as a case canvassed only in 5 angles, hence skipping two angles of the case which were equally decisive right from the start.*
>
> *2. That while the Applicant's grounds upon which the review was placed were in 7 decisive angles (5 from the first ground and 2 from the seven ground) in its reasoning and ruling, the*

honourable court considered only two angles of the 1st ground and found them insufficient to support the sought order of striking out the notice of appeal at issue and ended there striking out the application with costs without considering 5 others decisive angles on which also the application to strike out the notice of appeal had been pegged."

As it was before the Court when Civil Application No. 190 of 2015 was heard, Mr. Audx Kahendaguza Vedasto, learned advocate appeared before us representing the applicant whereas Mr. Edward Nelson Mwakingwe, also learned advocate, represented the respondent. Both were ready for the hearing of the application. The parties had earlier on filed written submissions in support of their respective positions which they adopted together with the notice of motion and supporting affidavit and reply affidavit to form part of their respective submissions. Besides, the learned counsel of the parties highlighted some few areas of their submissions.

On the whole in the written and oral submissions before us through Mr. Vedasto, the applicant first acknowledged the scope of Court's mandate to review its own decision in terms of Rule 66(1) of the Rules and what is meant by the expression "*a manifest error on the face*

of the record". The applicant's ground of complaint is based on his contention that in her written submission in support of the application for striking out the respondent's notice of appeal on the ground that no essential steps were taken or were taken outside the prescribed period of time (Civil Application No. 190 of 2015), the arguments were in two fronts which were again divided in various angles; while Part A had five (5) different angles numbered as angles A. 1, A. 2, A. 3, A. 4 and A. 5, Part B had two angles namely B. 1 and B. 2. He has extensively elaborated the arguments he advanced in each angle in the written submissions which he wholly adopted without addition but for a reason to be apparent soon, we refrain from reciting them. However, to be specific, Mr. Vedasto's central contention is two-limbed. One; the Court, in its impugned decision considered the five (5) grounds raised in category A only leaving aside all those in category B an omission he considered to be an oversight amounting to an error on the face of the record. Stated differently, the error complained of is an omission to deal with the said angles B. 1 and B. 2. It is his further contention that even those five grounds under category A which were duly considered, only two of them were determined by making findings leaving three of them undetermined making a total of five grounds going undetermined. To

fortify his assertion he referred us to an extract in the Court's impugned decision at page 7 of the record in which it stated that:-

> *"We have carefully gone through his submissions; he has canvassed the matter from five angles on the basis of which he is asking the Court to find and hold that some essential steps in the proceedings have not been taken, thus entitling it to strike out the notice of appeal under focus."*

Of those five complaints (angles) in category A, the applicant had no qualms with the Court's consideration and determination of the first and second angles. She has problems with angles 3, 4 and 5. In the 3rd angle (A. 3) of ground one (1), the complaint is this:-

> *"However, here, the first application for the proceedings after striking out Civil Appeal No.77 of 2010 was submitted on 12/5/2015 and served on the applicant on 18/5/2015, which was over 3 and half years after the decision of the Court of Appeal striking out the first appeal for incompetence. So, having not lodged the appeal by 22.10.2015 when Civil Application No. 190 of 2015 was filed, the respondent could not be heard to say that he was still waiting to be supplied with the proceedings in the enjoyment of the protection granted to it by Rule 90. Thus,*

by not having applied for proceedings within 30 days of the order striking out the first appeal, the respondent, who did not lodge the appeal within 60 days from the date the notice of appeal was lodged, had failed to take a necessary step within time in the prosecution of the appeal, hence warranting the prayed order, an order striking out the Notice of appeal under rule 89.

To the best of our reading of the Court ruling, the Court did not address and answer this third angle of ground 1, negatively or positively. While it agreed with us that the appellant would not be limitless and unguided in re-starting the process but would be 'duty bound to re-file the appeal afresh having in mind the requirements of the Rules of the Court'.

Failure by a court or judge to determine an issue, the applicant argued, is a fatal error leading to injustice and the cases of **Alnoor Shariff Jamal vs Bahadur Shamji**, Civil Appeal No. 25 of 2006 (unreported) and persuasive Kenyan Case of **Kukai vs Maloo** (1990 – 1994) EA 281 were cited to us to support the argument.

Angle 4 of ground one (1) remained yawning seeking for an answer from the Court, the applicant contended too. It involved an issue whether the respondent who had already applied for the requisite

documents for appeal on 18/7/2010 and was supplied with them on 26/10/2010 was still entitled to exclusion of days spent by the Registrar to prepare documents upon another request after the former appeal was struck out. The query is founded on the fact that it does not appeal to sense that if the applicant would still have the documents earlier on supplied then why re-apply and be entitled to the exclusion of days spent by the Registrar in, again, preparing such documents. To the applicant the Court's finding that "*once the appeal is struck out ...that implies the striking out of the record of appeal as a whole*" was insufficient. It is the applicant's view that had this issue been answered, the Court would have realised that such need to re-apply would not arise and the respondent would have been required to lodge the appeal within sixty (60) days from 15/5/2015 which she failed to do hence entitling the striking out of the notice of appeal.

The fifth (5) angle of ground one (1) which was allegedly not answered in the Court's ruling is twofold. One; the arguments in the written submission that the delay in being supplied with written submission is not covered under Rule 90 of the Rules because they are not "proceedings" as they are prepared and supplied to the other party by parties not by the Registrar. A party in need of such documents should apply to be supplied by the party not the Registrar and in case of

any difficult seek the court's assistance. So, the applicant argued that Rule 90 of the Rules applies for documents prepared and delivered by the Registrar only. Two; that the applicant argued in the written submission that the letter to the Registrar requesting for supply of documents did not mention the applicant's written submission as it was for the request of "proceedings, judgment and decree" so there was no justification for the delay in lodging the appeal.

In respect of ground 2, the applicant complains that both the two angles were not addressed. As for angle one (1) also argued as angle 6, the applicant submitted that in the written submission they contended that while the High Court, on 8/5/2015, granted the respondent time to lodge a fresh memorandum of appeal without setting time limit, such time would ordinarily not exceed sixty (60) days hence the applicant was required to do so by 8/7/2015 which she did not. It is the applicant's contention that the delay would have warranted striking out the decree but the Court did not address itself on it.

As for the second angle (also argued as angle 7), it is complained that the applicant argued in the written submission before the Court that the appeal before it could not proceed (no appeal lies to the Court) because the application by the respondent for extension of time within

which to lodge a notice of appeal was defective and incompetent for being omnibus in which it applied for extension of time to file the notice of appeal under section 11(1) of the Appellate Jurisdiction Act and extension of time to appeal under Rule 10 of the Rules and cited two cases to substantiate the point; **Rutagatina v. The Advocates Committee**, Civil Application No. 98 of 2010 and **TTB v. Donatian Mwemezi**, Civil Application No. 97 of 2012 (both unreported).

In conclusion, the applicant submitted that the Court's failure to consider and determine and/or answer the above issues raised in the written submission before the Court in Civil Application No. 190 of 2015 occasioned injustice to the applicant.

Before resting his case, we engaged Mr. Vedasto whether, in this review application, the Court may go as far as considering the submissions by the parties in Civil Application No. 190 of 2015 which culminated in the ruling sought to be reviewed. He was emphatic that the Court can do so bearing in mind the peculiar circumstances of this application that there was omission by the Court to consider certain decisive issues or arguments by the parties to the case which caused injustice. On what seemed to be a good luck on the part of Mr. Vedasto, after a somehow considerable struggle to find an authority supporting

his assertion, ultimately his eyes landed on a quotation from **Mulla on the Code of Civil Procedure** (14 Ed), Pages 2335 – 2336 relied on in the Court's decision in the unreported case of **Edger Kahwili vs Amer Mbarak and Another**, Civil Application No. 21/13 of 2017 that:-

> *"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: State of Gujarat v. Consumer Education and Research centre (1981) AIR GU 223...**where the judgment did not effectively deal with or determine an important issue in the case, it can be reviewed on the ground of error apparent on the face of the record [Basselios v.Athanasius (1955) 1 SCR 520]**...but it is no ground for review that the judgment proceeds on an incorrect exposition of the law [**Chhajju Ram v. Neki** (1922) 3 Lah. 127]. A mere error of the law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review: **Utsaba v. Kandhuni** (1973) AIR Ori. 94. It must further be apparent on the face of the record. The line of demarcation between an*

*error simpliciter, and an error on the face of the record may sometimes be thin. It can be said of an error that it is apparent on the face of the record when it is obvious and self – evident and does not require an elaborate argument to be established [**Thungabhadra Industries Ltd v. State of Andhra Pradesh** (1964) SC 1372]."*
(Emphasis added).

Relying heavily on the excerpt above, Mr. Vedasto was firm that the impugned ruling is wanting of answers on matters above explained hence calling for invocation of the Court's review jurisdiction.

Through an affidavit in reply deposed by one Sylivatus Sylivanus Mayenga, learned advocate for the respondent and through the reply written submissions which were adopted to form part of the submission, the respondent opposed the application. Despite the concession that the Court noted in the ruling that the application contained only two grounds and that the applicant's submissions canvassed in five angles, yet the respondent disputed the allegation that the ruling did not touch on all the grounds or left anything unattended. Instead, he averred that all the applicant's arguments were replied to in the reply submissions and the Court addressed them and the correct decisions arrived at in the ruling.

Elaborating, she submitted that the issue of lodging a notice of appeal within 30 days was discussed by the Court from page 3 to 11 of the ruling and was answered that the defect was cured by the application for extension of time and the grant thereof in Misc. Civil Application No. 463 of 2002.

In respect of the complaint over the respondent re-applying for proceedings afresh, the respondent stated that the Court answered it by stating that it was consequential to the former appeal being struck out which meant everything started afresh and the case of **Dhow Mercantile (EA) Ltd & Others vs Registrar of Companies & Others,** Civil Appeal No. 56 of 2005 CAT (unreported) was cited with approval. But in another angle, the respondent was inclined to a view that questioning the Court's position on the status of the parties' submissions at page 9 of the impugned ruling as being part of the "proceedings" which are requested to be supplied amounts to raising an appeal against the Court's finding which is not within the purview of review but an appeal.

Yet again, the respondent contended that the issue of the application before the High Court for extension of time being incompetent was first raised before the Court instead of objecting it by

way of a preliminary objection before the High Court which the applicant did not do. That, by being granted extension of time to lodge a notice of appeal, then lodgement of a record of appeal and a fresh memorandum of appeal was automatic. In conclusion, on what the phrase 'error on the face of the record' entails, the respondent sought reliance on some excerpts in the Court's decisions in **Kitinda Kimaro vs Anthony Ngoo and Another**, Civil Application No. 79 of 2015 and **Blue Line Enterprises Tanzania Limited vs East Africa Development Bank**, Civil Application No. 21 of 2012 (both unreported).

We are faced with an application for review. By and large, tenacity of this application mostly rests on the scope of the review jurisdiction of the Court. Like the learned counsel of the parties, we are in agreement that review applications by the Court are governed by section 4(4) of the Appellate Jurisdiction Act, Cap. 141 R. E. 2019 (the AJA) and Rule 66 of the Rules. While the former provision vests the Court with the requisite mandate to review its own decisions, the latter provides for grounds on which such applications should be based. Section 4(4) of the AJA reads as hereunder:-

> *"(4) The Court of Appeal shall have the power to* ***review its own decisions" (Emphasis added)***

Rule 66(1) of the Rules, as hinted above, provides for grounds of review that:-

> *"66.-(1) The Court may **review its judgment 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;*
> *(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. (emphasis added)*

We have supplied emphasis on the foregoing part of the two provisions so as to demonstrate and hammer home the settled law that the court's power of review is limited and restricted to "own decisions" and on grounds not other than those stipulated above a position which was underscored by the Court in the case of **Abdi Chakuu vs The Republic**, Criminal Appeal No. 2 of 2012 (unreported) when discussing the scope of Rule 66(1) of the Rules in which it observed that:-

> *"It is apparent from the reading of Rule 66(1) of the Rules governing review; the jurisdiction of the Court is firstly very limited to; "review its judgment or order" and it neither extends to reviewing the charge sheet, the applicant's plea during his trial nor to the record of trial and appellate proceedings. This means, it is out of jurisdictional bounds for an applicant, to ground a motion seeking for a review on complaints based on charge sheet or what may be apparent on the record of proceedings"*

Consistent with the above judicial pronouncement on the restrictive nature of the Court's power of review, the Court has gone further to expound in clear terms that it is only the decision the subject of the review application which should be considered in the determination of a review application. One such situations is in the unreported case of **Rizali Rajabu vs Republic**, Criminal Application No. 4 of 2011, where the Court stated that:-

> *"First, we wish to point out that* ***the purpose of review is to re-examine the judgment with a view to amending or correcting an error which had been inadvertently committed which if it is not reconsidered will result into a miscarriage of justice.***

We are alive to a well-known principle that a review is by no means an appeal in disguise. To put it differently, in a review the Court should not sit on appeal against its own judgment in the same proceedings. We are also mindful of the fact that as a matter of public policy litigation must come to an end hence the Latin Maxim – ***Interestei reipublicae ut finis litium.*** *(See* ***Chandrakant Joshubai Patel v R*** *[2004] TLR. 218;* ***Karlm Karia VR,*** *Criminal Appeal No. 4 of 2007 CAT (unreported)."*

Viewed from this perspective it becomes apparent that in review applications before this Court, the Court is not permitted to travel beyond the decision sought to be reviewed. It thus goes without a mention that the term "record" as applied in Rule 66(1) of the Rules means a record of application comprising of nothing more of the motion [notice of motion and the supporting affidavit(s)] and the decision sought to be reviewed. And, to argue it successfully, the error complained of should be manifest on the face of the decision a phrase consistently interpreted to mean one which is vivid and one which can be noted without a due and long drawn process of arguments or an error so apparent that may be gleaned by one who runs and reads the decision (see **Chandrakant Joshubai Patel vs R** [2004] TLR. 218).

Applying these solid and impeccable principles on review jurisdiction of the Court, we now consider the application before us.

In view of the above position of the law, we, in the first place wish to comment on the nature of the Court record placed before us by the applicant. It contains a number of documents. They include Notice of Motion, supporting affidavit, the decision sought to be reviewed (Ruling in Civil Application No. 190 of 2015) of the present application, Notice of Motion and supporting affidavit in Civil Application No. 190 of 2015, the Court's decision in Civil Appeal No. 77 of 2010 between **Standard Chartered Bank Tanzania Limited vs Interbest Investment Company Limited** (unreported) and the chamber summons, High Court Ruling, drawn order, applicant's written submission in Civil Application No. 190 of 2015 and other documents which appear to have been used either before this Court or in the High Court. Save for the notice of motion and its supporting affidavit in respect of this application and the ruling of the Court sought to be reviewed, the rest of the documents were wholly unnecessary in the record of application and, as we shall show herein below, shall not be relied on. As a way of avoiding any further misconceptions of what constitutes a record for review application, in proper opportunity, the Rules be considered for amendment to provide in clear terms documents which should be

contained in a review application the same it did for appeals in Rule 96 of the Rules.

The mainstay of Mr. Vedasto's arguments is that the Court omitted to consider and make specific findings on certain arguments (he referred to as angles) advanced by the applicant in the written submissions in support of the application for striking out a notice of appeal in Civil Application No. 190 of 2015. He is firm that such an omission is an error apparent on the face of the record and warrants the Court's invocation of its review power but Mr. Mwakingwe is vehemently opposed to that view.

We understand Mr. Vedasto anchored his arguments on the allegation of the Court omitting to consider certain angles as demonstrated above. He viewed this as a peculiar circumstance and belaboured so much to extensively argue on them trying to convince the Court to appreciate his complaint and used such documents to deduce from them the alleged omissions as demonstrated above.

With respect, we are unable to agree with him for three reasons. **One**, having said and held that review jurisdiction is restricted to the Court's decision sought to be reviewed, it was not open for the applicant to include in the notice of motion documents other than the decision

under focus in moving this Court to exercise the review jurisdiction. The Court is barred from looking at them as we clearly pronounced ourselves in **National Bank of Commerce Ltd vs Nurbano Abdallah Mulla**, Civil Application No. 207 of 2020 (unreported) that:-

> *"Again, on the issue of submissions, arguments and authorities filed by the parties not being considered, these are not one of the instances establishing existence of an error apparent on the face of the record and warranting a review. In this regard we find this complaint misconceived and we reject it."*

Two, as we held in **Chandrakant's case** (supra), the error must be apparent and not one which requires a long-drawn process of arguments. As is evident in the written submissions and oral arguments before us by Mr. Vedasto, it was not easy for him to straightaway pinpoint the errors for the Court to appreciate them instead he subjected us to not only long arguments to try to unveil them but he also made reference to the applicant's submissions lodged and authorities referred to before the Court in Civil Application No. 190 of 2015. Such is not the manner an error on the face of the decision should be sought out. An identical situation arose in **Kitinda Kimaro vs Anthony Ngoo and Another** (supra) and the Court was not inclined to

agree that there was an apparent error on that manner of detecting it and it stated that:-

> *"In view of the above, we are disinclined to agree with Mr. Magafu that the impugned decision has a manifest error on the face of it. We are of the view because it would require a long drawn process of learned argument to detect an error, if any, in the impugned judgment. That is perhaps the reason why Mr. magafu spent a considerable time and energy in the 16-pge written submissions as well as at the hearing before us in an attempt to unveil an error, if any, in the impugned judgment."*

Three, we do not think that there existed any omission. Mr. Vedasto showed disagreement that the issue raised by the Court and general consideration of the grounds was sufficient. He was opposed to the Court's observation that he canvassed the application from five (5) angles as he did so from seven (7) angles, five in ground one (1) and two in ground two (2). It is his further complaint that whereas both angles in ground two were not totally considered, even angles 3, 4 and 5 of ground one were not decided. With respect, we are of the decided view that he is not right. The excerpt from the Court's ruling under complaint is this:-

> *"On his part, Mr. Vedasto informed the Court that he had nothing more to add from what he submitted in his written submissions.* ***We have carefully gone through his submissions; he has canvassed the matter from five angles*** *on the basis of which he is asking the Court to find and hold that some essential steps in the proceedings have not been taken, thus entitling it to strike out the notice of appeal under focus." (Emphasis added)*

The first limb of the complaint poses no difficult in being answered. As would be gleaned from the excerpt, the Court's observation that the matter was argued in five fronts (angles) was out of the Court's careful examination of the applicant's submissions. The attack is definitely in the manner the Court comprehended the applicant's submissions. Existence or otherwise of seven and not five angles, to us, sounds better a ground of appeal for we have no way to ascertain it from the impugned ruling hence it is not an error apparent on the face of the record. Even Mr. Vedasto had to resort to the submissions to which the Court, in exercising review jurisdiction, as held above, is precluded from having a glance at. In the circumstances, the Court's observation stands to be correct. The alleged error that the

Court omitted to deal with the angles B. 1 and B. 2 is therefore neither here nor there.

On the failure to make a finding on the three angles of ground one complained of, we think that it is a matter of style rather than an omission. We are inclined to that position bearing in mind that after reflecting on the parties' submissions, the Court drew one issue to guide it in the determination of the application this way: -

> *"We have considered the rival submissions by the parties. The main issue is whether the respondent has failed to take essential steps to institute her appeal."*

Much as is settled law that the Court is enjoined to consider and answer all the issues placed before it, the manner of discharging that noble duty varies. It can do so by dealing with each ground separately or deal with them generally or address a ground which is decisive only. The Court, in the application for striking out notice of appeal opted for the last method. It then considered the submissions by the parties and proceeded to answer it as we shall show herein below.

The complaints allegedly not answered by the Court are three. That the letter requesting for appeal documents was not filed within thirty (30) days of the order striking out the application to strike out the

notice of appeal. This complaint was discussed conjointly with the issue whether there was need to re-apply for requisite documents for appeal purpose and, as rightly argued by Mr. Mwakingwe, in very clear terms at pages 11 and 12 of the ruling, the Court decided both issues that: -

> *"Once again, we do not agree with Mr. Vedasto. The reason is clear that even if the respondent's letter to the Registrar prior to the striking out was lodged and served on the applicant out of time, that situation was cured by the fact that the respondent successfully applied for extension of time in which to still appeal. What matters therefore, is what was done thereafter.*
>
> *Equally important, the law is clear that once the appeal is struck out as it were in this case at hand, that implies the striking out of the record of appeal as a whole. Under such circumstances, the appellant will be duty bound to re-file the appeal afresh having in mind the requirements of the Rules of the Court."*

As if the above was not clear and enough, the Court went further to cite its decision in **Dhow Mercantile (EA) & Others** (supra) to elaborate the stance of the law. The issues before it were lodgement of notice of appeal and why the respondent applied for such documents afresh when he had already been supplied with them before lodging the

appeal which was struck out. The wordings above and the cited case makes it clear that the issue of the notice of appeal being lodged out of time and the justification for re-applying for requisite documents for appeal was that the respondent applied and was granted extension of time and that the appeal process was to start afresh after the former one was struck out. We are of the decided view that the issues were sufficiently answered. It is clear therefore that Mr. Vedasto is not right to assert that the Court did not address and answer those two complaints. It appears that Mr. Vedasto is dissatisfied with that decision and is trying to invite the court to reconsider its finding through the back door which is outside the mandate of this Court in review applications [**see Blue Line Enterprises Tanzania Limited vs East Africa Development Bank** (supra)]

Lastly, we hasten to disagree with Mr. Vedasto that the issue whether the submissions are "proceedings" was not raised before the Court in Civil Application No. 190 of 2015. In that ruling the Court simply observed that the submissions are relevant documents for appeal purposes. The Court was not asked to determine whether or not proceedings include submissions hence did not pronounce itself on that aspect. Mr. Mwakingwe is absolutely right that the ruling does not support Mr. Vedasto's assertion. For the reason that the Court, in review

applications, cannot travel beyond the decision subject of review, we find our hands tied. The complaint cannot be an error on the face of the decision warranting exercise of review jurisdiction.

All said, we are satisfied that the application has not met the threshold for review. Accordingly, it is dismissed with costs.

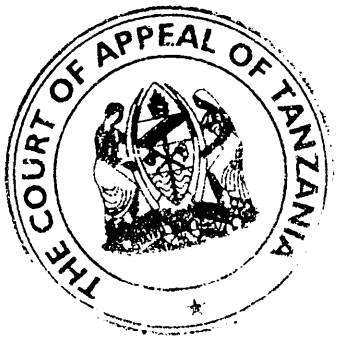
DATED at **DAR ES SALAAM** this 26th day of August, 2022.

S. A. LILA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Ruling delivered this 31st day of August, 2022 in the presence of Mr. Sauli Santu for the Respondent also holding brief of Mr. Audax Kahendaguza, learned counsel for the appellant is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL