IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MWANZA

AT MWANZA

HIGH COURT CIVIL REVIEW NO. 05 OF 2020

YUKO'S ENTERPRISES (E.A) LTD ..... APPLICANT

versus

REGIONAL ADMINISTRATIVE SECRETARY
OF GEITA REGION.....RESPONDENT

RULING

6th & 12th July, 2021

RUMANYIKA, J.:

Pursuant to judgment, decree and orders dated 30/10/2020 wherein, against RAS Geita and for that matter the Attorney General (the 1st and 2nd respondents) respectively, with respect to claims of some hundred million shillings being damages for breach of contract on merits Yuko's Enterprises (EA) Ltd (the applicant) lost the war and battle. Aggrieved, but only by way of review under Order XLII rule 1(1)(a) and S.78(1)(a) of the Civil Procedure Code Cap. 33 RE. 2019 the applicant is just back.

If rephrased, essentially the points/grounds for review would read as follows:-

That the court erred in law and fact in holding that as between the applicant and 1st respondent there wasn't contractual relationship despite of Exhibit "P1".

Messrs M.G. Kunju and S. Yungo learned counsel and state attorney appeared for the applicant and the respondents respectively.

In a nutshell, Mr. M.G. Kunju learned counsel submitted that had the presiding judge took cognizance of the fact between the parties the ingredients of a contract set forth in Section 10 of the Law of Contract Act Cap. 345 RE. 2019 were all met and considered, the former would have arrived at a different finding and conclusion. According to evidence the applicant having had fully performed but the 1st respondent only partly performed. We pray that the court decide it in the applicant's favor the learned counsel further contended.

Similarly briefly, Ms. Sabina Yongo learned counsel submitted that the application was devoid of merits therefore liable to be dismissed the court having had correctly and sufficiently considered all the documentary evidence but also correctly discounted it all. That alternatively, the application actually was misplaced because as opposed to an appeal, essentials of an application for review were; manifest error on the record, discovery of new facts or where the impugned decision was reached at

ignorantly of the law but the instant application it wasn't a fit case because the ground raised it was only suitable for an appeal (case of the **Attorney General v. Mwahezi Mohamed (An Administrator of the estate of the late Dolly Maria Eustace) and 3 Others**, Civil Application No. 314/12 of 2020 (CA) unreported. It sounds to us that the instant application is an appeal in disguise. We humbly submit and pray that the application be dismissed with costs the learned counsel further contended. That is all.

Looking at all fours of the ground set forth, the pivotal issue is whether the application is tenable at law however strongly aggrieving the impugned decision might be much as, with unbroken chain of authorities it is settled law that unless the legal process otherwise required, an application for revision, or, in this case review it wasn't alternative of or an appeal in disguise or a second bite nor it was challenge on merits of the impugned decision (see the cases of **Halais Pro-chemie vs. Wella AG (1996) TLR 269 and Dismas Chekemba v. Issa Tanditse,** Civil Appeal No. 2 of 2010 (CA) unreported and **Charles Barnabas v. Republic,** Criminal Application No. 13 of 2009 (CA) unreported.

The ambiguity free criteria for review read thus; **(a)** there is manifest error on the face of the record resulting to miscarriage of justice or **(b)** the

party was deprived of an opportunity to be heard **(c)** The impugned decision is a nullify **(d)** the court had no jurisdiction or **(e)** the judgment was procured illegally, by fraud or perjury (case of the **Hon. Attorney General v. Mwahezi Mohamed** (as administrator of the estate of the late Dolly Maria Eustace & 3 Others (supra)) the highest fountain of justice cited Rule 66 (1) of the Court of Appeal of Tanzania). But none of the above stated 5 criteria was met in the instant application.

It being for the reason of improper evaluation of evidence or something, however aggrieving on the party to the case the decision might be, it was not even a sufficient ground for review but appeal nor it was a ground for review but only of appeal even where the presiding judge had proceeded on an incorrect exposition of the law and reached at an erroneous conclusion of law (see the persuasive case of **National Bank of Kenya Ltd vs Ndungu Njau** (1997) eKLR. It would have been a different scenario if, for instance, be it an oversight or something the presiding judge had held that there was no copy of written contract or it was there but not readily traced, and, for that reason the applicant pleaded misapprehension of the evidence or discovery of the new material fact which is not a case here.

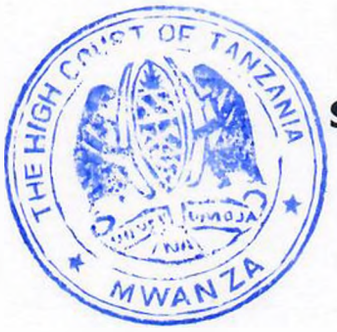
Moreover, it is trite law and general rule that only the very presiding judges heard the subsequent application for review it means therefore, if through back doors appeal was brought to him, dangers of one overruling himself would not have been ruled out, or, if determined by fellow judge, the possibilities of one overruling judge of the same level as the case may be what abrogation of the doctrine of precedent!

One more point in passing, I should also clear myself here that like an application for review it border lined an appeal which is not true, despite my several and repeated interventions and guidance during the hearing, with greatest respect Mr. M.G. Kunju learned counsel wasn't bothered.

In the upshot, the devoid of merits application is dismissed with costs. Should the need persist, of course subject to the law of limitation, the applicant may wish to appeal against the judgment and decree. It is so ordered.

S.M. RUMANYIKA
JUDGE
08/07/2021

The ruling delivered under my hand and seal of the court in chambers this 12/07/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
12/07/2021