IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., MWAMPASHI, J.A. And MURUKE, J.A.)

CIVIL APPLICATION NO. 500/01 OF 2022

LIM HAN YUNG.....1ST APPLICANT
LIM TRADING COMPANY LIMITED.....2ND APPLICANT

VERSUS

LUCY TRASEAS KRISTENSEN .....RESPONDENT

(Application for Review from the Judgment of the Court of Appeal Tanzania at Dar es Salaam)

(Mkuye, Levira and Mwampashi, JJA.)

dated the 28th day of June, 2022
in
Civil Appeal No. 219 of 2019
.....

RULING OF THE COURT

24th April & 24th May, 2024

MKUYE, J.A.:

Before us is an application for review predicated under section 4(4) of the Appellate Jurisdiction Act, Cap 141 and Rule 66(1) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules). The applicant, seeks to have the Judgment of the Court dated 28/6/2022 by Hon. Mkuye JA, Levira, JA and Mwampashi, JA, in Civil Appeal No. 219 of 2019 reviewed.

The brief facts leading to this appeal go thus:

This matter emanates from a dispute which arose between the parties over ownership of a house located at Kawe Beach Area built on

Plot No. 2001 identified by Certificate of Title No. 119505. It is common ground that prior to the dispute the 2nd applicant had a contractual arrangement with the respondent negotiated on its behalf by the 1st applicant, in which, the latter leased the suit property to the 2nd applicant at monthly rent of USD 700.00. Then, at one point, the respondent expressed her willingness to offer for sale the suit property to the 2nd applicant at a procuring consideration of USD 450,000.00 and the 2nd applicant showed interest to purchase it.

It appears that the sale arrangement in respect of the suit property between the parties was reduced into a written contract made on 10/7/2013, however, just as the contract was about to be concluded by payment of the purchase money, something unusual happened. According to the respondent, while at a local bank at Mlimani City, in the company of the 1st applicant and his counterpart who at that time had in their possession a bag containing money for payment of the contract price, they were invaded by armed robbers who made away with the money.

It is after this incident that a misunderstanding between the parties to this appeal arose as the 1st applicant maintained that he was the lawful owner of the suit property relying on the sale agreement executed on 10/7/2013. On the other hand, the respondent maintained

that in the absence of consideration, the suit property had not changed hands and was, therefore, her lawful property.

The respondent then, instituted civil proceedings in the High Court seeking a declaratory order that the 2nd applicant was in breach of contract of the lease agreement; an eviction order against the 2nd applicant; a perpetual restraining order on the applicants from interfering with the suit property; special damages of TZS 185,000,000.00 and general damages to the tune of TZS 1,000,000,000.00.

Before hearing could proceed, on 30/11/2016, the High Court upon the respondent's prayer which was not objected to by the applicants' counsel ordered for an amendment of the plaint and that it be filed within seven days. It was further ordered that the WSD to the amended plaint be filed in accordance to the law and the matter was scheduled to come up for mention on 15/3/2017.

On the date scheduled for mention, it transpired that the applicants had not yet filed their WSD and efforts by the applicants' advocate to get extension of time to file it proved to futile. Instead, the trial judge ordered for hearing to proceed *ex-parte* against the applicants due to failure by the applicants to file WSD within the time set by law. The respondent then proceeded to prove her case *ex-parte* and she

emerged successful in the suit vide *ex-parte* judgment delivered on 18/8/2017.

The High Court found that the respondent was the lawful owner of the suit property based on the certificate of title Exh. P1 and land rent receipt Exh. P2 as per section 2 of the Land Registration Act, Cap 334 R.E. 2002, and that the applicants had no title deed blessings for such move.

Aggrieved, the applicants filed Miscellaneous Land Application No. 762 of 2017 seeking for an order to set aside the *ex- parte* judgment but the High Court dismissed it with costs for want of merit.

Still aggrieved by the decision of the High Court, the applicants appealed to this Court on nine grounds of appeal. The Court having heard and considered the arguments from both sides it raised three issues for determination, that is; **one**, whether there was any concealment by the respondent of the existence of Land Case No. 17 of 2015. **Two**, if the 1st issue is answered in the affirmative, whether the concealment was vital and relevant fact. **Three**, whether the concealment had any effect to the application by the respondent to prove her suit *ex-parte* and also to the decision of the High Court on the *ex-parte* judgment.

In its decision, the Court observed that the answers to the raised issues were in the negative, in the sense that, there was no concealment and neither was Land Case No. 17 of 2015 related to Land Case No. 45 of 2015 since in the former case the cause of action was ownership whereas the latter involved breach of contract.

It should also be noted that at pages 2-3 of the impugned Judgment the Court, in relation to the applicants' failure to file their WSD to the amended Plaint, which was basically the background of the matter, stated that:

> *"... According to the record of appeal, on 30/11/2016 while it was ordered by the High Court that the amended Plaint be filed within seven (7) days, the written statement of defence was ordered to be filed in accordance with the law, that is within 21 days. On 13/3/2017, the appellants had not filed their written statement of defence as ordered by the High Court and when the appellant's counsel orally applied for extension of time within which to file the defence, the application was refused followed by an order for the suit to proceed ex-parte as against the appellants under* ***Order VIII rule 14 (1) of the Civil Procedure Code [Cap 33 R.E. 2002, now R.E. 2019] (henceforth "the CPC").***

[Emphasis added]

Then at page 12 of the said Judgment, the trial Judge observed among undisputed facts that the *ex-parte* judgment that was sought to be set aside resulted from the *ex-parte* proof of the respondent's claims in Land Case No. 45 of 2015 upon the applicant's failure to file WSD to the amended plaint.

Regarding the applicants' complaints during the hearing that they were not appraised by their former advocates on the order by the court to file their WSD, it was observed that the abstract from the applicants' affidavit indicated that they were well aware of the on goings in court, hence, the trial court could not be faulted.

In impeaching the Judgment of the Court, the applicants have predicated their application on five grounds as shown in paragraphs 1 (a) to (d) and 2 as follows:

1) *The Judgment of the Court is based on manifest error of the face of the record resulting in the miscarriage of justice to wit:*

(a) *Having held that the declaration by the High Court (Land Division) at Dar es Salaam (Mzuna J:) in Land Case No. 45 of 2015 to the effect that the Respondent is the lawful owner of the property was not key to that case (Land Case No. 45 of 2015) and the finding that the property belonged to the respondent was not against the whole world and in*

particular not against the plaintiff in Land Case No. 17 of 2015 without nullifying such a declaration the ***Court erred in law and in fact for leaving such a declaration on a relief which was not sought to stand.***

(b) *By its finding that Land Case No. 17 of 2015 and Land Case No. 45 of 2015 are not interrelated, the* ***Court erred in law and in fact for not considering that in both cases the matter in dispute is a landed property situated on Plot No. 2001 Kawe Beach Area fully described under Certificate of Tittle No. 119505.***

(c) *Having held that the appellants ought to have made follow-ups on their case to their Advocate,* ***the Court erred in law and in fact for failure to rule that the appellants were not given the correct information by their former counsel which resulted to their failure to file their written statement of defence.***

(d) *Having ruled out that, there was no concealment of the pendency of Land Case No. 17 of 2015,* ***the Court erred in law and facts for failure to rule out that there was*** *concealment and such concealment was material in relation to Land Case No. 45 of 2015.*

2. *The failure of the Court to properly* ***determine the grounds of appeal in Civil Appeal No. 219 of 2019 deprived the applicants their right to be heard.***

[Emphasis added]

The application is supported by an affidavit deponed by Novatus Michael Muhangwa, leaned advocate for the applicants. On the other

hand, the respondent has filed an affidavit in reply deponed by Mr. Richard Karumuna Rweyongeza, also learned advocate.

At the hearing of the application, the applicants were represented by Mr. Jamhuri Johnson, learned advocate whereas the respondent had the services of Mr. Robert Rutaihwa, also learned advocate.

In the affidavit in support of the notice of motion, the deponent from paragraph 3 to 29 has basically given a narration of sequence of events from when the 2nd applicant leased the suit property from the respondent and purported sale of the same to her; the filing of Land Case No. 17 of 2015 by the applicants seeking for a declaration that she was a lawful owner of the suit property and Land Case No. 45 of 2015 in which the respondent's claim against the applicants was on breach of lease contract; the applicants failure to file their WSD to the amended plaint and their failure to appear in court leading to the respondent to be allowed to be heard *ex-parte*. The applicants averred further on how their application to set aside an *ex-parte* Judgment proved futile and the dismissal of their appeal by this Court for lack of merit.

Expounding on the grounds of review, particularly on the ground of a manifest error on the face of the record, Mr. Johnson contended that, it was wrong for the Court to cite Order VIII rule 14 (1) of the Civil Procedure Code, [Cap 33 R.E 2002 now R.E. 2019] while the law when

the order for filing the WSD was made was different from the one cited. It was the learned Counsel's contention that, it was an error to cite the CPC as Cap 33 RE 2019 which came after the order by the High Court was made. However, it should be noted that this issue was neither raised in the notice of motion nor in the affidavit in its support. It just came from the bar.

Mr. Johnson went on to submit in relation to the 2nd ground of review that the applicants were denied the right to be heard, because Land Case No.45 of 2015 was related to Land Case No.17 of 2015 in which the subject matter was ownership of the same suit property.

In the affidavit in reply, the respondent's averment is generally to the effect that, apart from the narration of the sequence of events, the applicants have failed to raise grounds fit for review save that they seem to have a different opinion from that of the Court which considered and determined every complaint. For instance, the issue of different causes of action in Land Case No.17 of 2015 and 45 of 2015, he argued, was considered by the Court and made a finding that the cases were different. Besides that, the Court also observed that most of the issues raised in the appeal related to the Land Case No. 17 of 2015 which was still pending.

As regards the issue that the applicants were not aware of what was going on in court in ground no.1 (c), it was averred that the Court considered it and made a finding that they were aware through their advocates and if not, they ought to have made follow ups. It is further averred that, generally, there was no error on the face of the record constituting a ground for review.

In elaboration, Mr. Rutaihwa, after having adopted their affidavit in reply and list of authorities to form part of the submission, prefaced by reiterating that the jurisprudence behind review is as provided under Rule 66 (1) (a) to (e) of the Rules and that in such a case the Court is called upon to look at its decision itself and not otherwise. He added that, in exercising its review jurisdiction, the Court does not deal with another appeal.

On the complaint relating to the citation by the Court of Order VIII rule 14 (1) of the CPC [Cap 2002 now 33 R.E. 2019], he argued that it is not an error on the face of it. In any case, he contended that it did not feature neither in the notice of motion nor affidavit in its support and that if the applicants hold a different opinion, it does not amount to an apparent error on the face of the record.

It was submitted further that, the applicants seem to invite the Court to appreciate the grounds of review from outside the Court's

decision which is not proper. To support his argument, he referred us to the case of **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority** (Civil Application No. 570 of 2023) [2024] TZCA 133 (23 February 2024), where it was stated that:

> *"Review jurisdiction is impossible to exercise outside the judgment or order of the Court complained of. Thus, the applicant's complaint surrounding his reliance on the case of* ***Pasmore and Others*** *(supra) which was not referred to anywhere in the impugned judgment of the Court, in the context of section 4 (4) of the AJA and rule 66 (1) of the Rules, has no substance under the law".*

As regards the issue of negligence on the part of the advocate complained about, the learned advocate was of the view that such submission would have been suitable at the hearing of the appeal and not at this stage of review. At any rate, he contended that such issue was determined by the Court finding that the advocate was informing his clients on what transpired in court citing the affidavital information from the affidavit in support of the application ***"that the lawyers were at all times updating the clients on what was going on in court".*** It was the learned advocate opinion that, the applicants were inviting the

Court to sit on a second appeal, more so, looking at the manner the grounds are couched.

In relation to the 2nd ground on the denial of the right to be heard, Mr Rutaihwa contended that much as it did not feature in the affidavit as it came from the bar, it was inviting the Court to go beyond its jurisdiction by looking outside the impugned decision as it makes reference to Land Case No.17 of 2015 which is yet to be heard and determined. This was wrong, he argued. At any rate, he submitted that when the Court considered the subject matter which was failure by the applicants to file their WSD, it reasoned that Land Case No.17 of 2015 did not justify their failure to file their WSD.

It was Mr. Rutaihwa's further submission that, even the language used in crafting the grounds of review depict that, although the issues complained of were considered and determined by the Court, the applicants are not satisfied with the decision and thus they are bringing an appeal in disguise.

In this regard, Mr. Rutaihwa urged the Court to find that the application is devoid of merit and prayed that the same be dismissed with costs.

In rejoinder, Mr. Johnson argued that the issue of right to be heard was stated in the notice of motion and not stated in the affidavit. He insisted for the application to be granted.

We have examined the rival submissions from both sides and we, think, the issue for this Court's determination is whether the decision sought to be impugned meets the threshold of being reviewed because of a manifest error on the face of the record resulting in the miscarriage of justice and denial of the right to be heard by the applicants.

The jurisdiction of this Court to review its decisions or orders is provided for under section 4 (4) of the AJA. The parameters under which it can exercise its powers are set out under Rule 66(1) (a) to (e) of the Rules which provide as follows:

> *"66 (1) The Court may review it 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; or*

(e) the judgment was procured illegally, or by fraud or perjury".

In our case, the applicants have predicated their complaint under paragraph (a) and (b) of Rule 66 of the Rules relating to existence of a manifest error on the face of the record resulting in the miscarriage of justice and deprivation of a right to be heard.

The phrase *"manifest error on the face of the record"* was amplified in the case of **Chandrakant Joshubhai Patel v. Republic** [2004] TLR 218, to which we subscribe, as follows:

> *"An error apparent on the face of the record must be such as can be seen by one who writes or 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 it is apparent on the face on the record when it is obvious and self-evident and does not require an elaborate argument to be established...".*

See also: **Nguza Vikings @ Babu Seya and Another v. Republic**, Criminal Application No. 5 of 2010 (unreported); **Maulid Fakihi**

Mohamed @ Mashauri v. Republic (Criminal Application No. 120/07 of 2018) [2019] TZCA 376 (4 November 2019).

From the above quotation, it is clear that a manifest error on the face of the record entails an error which is apparent or obvious in the record which does not require a long-drawn process to discover it.

We have closely examined and considered the grounds falling under paragragh 1 (a) to (d) and we are in agreement with Mr. Rutaihwa that they do not fit to be grounds for review rather are grounds of appeal. This is so because, **one**, the manner in which they are crafted depict that the applicants are not satisfied with the decision of the Court. The use of the phrase "*erred in law and fact...*" clearly indicate their dissatisfaction from the Court's decision. **Two**, much as the counsel for the applicants has not made any elaboration in the affidavit or his oral submission, we find that all the matters raised were determined by the Court.

For instance, the issue of declaration by the High Court in Land Case No. 45 of 2015 that the respondent was the lawful owner of the suit property was not key to that suit and that it did not affect Land Case No. 17 of 2015, we think, there was a misinterpretation by the applicants on the impact of such observation of the Court. We say so because, in our view, such observation was a mere elaboration which could be

interpreted either way, that is, either the center of controversy in Land Case No. 45 of 2015 was not related to ownership of the suit land; or that in any case, the decision in Land Case No. 45 of 2015 is not binding to Land Case No. 17 of 2015 which involved breach of the Sale Agreement.

For that matter, we think that even the applicants' proposition that the Court ought to have nullified the decision in Land Case No. 45 of 2015 is misguided because, the appeal before this Court had nothing to do with impeaching the merits of the decision of the High Court in Land Case No. 45 of 2015 as the Court had not been called upon for that purpose. Neither was it availed with that matter before it, which can be interpreted as an attempt by the applicants to bring a new matter not dealt with by the Court. In any case, we find that this is a ground of appeal as it does not meet the threshold of being a ground for review.

With regard to ground no. 2 (paragraph 1 (b)) relating to interrelationship between Land Case No. 45 of 2015 and 17 of 2015 because in both cases the matter in dispute is the landed property situated in Plot No. 2001 Kawe Beach Area described under a Certificate of Title No. 119505, there was no elaboration from the applicants' counsel. On his side, Mr. Rutaihwa contended that the Court discussed it and found that two cases had two different causes of action.

Indeed, we agree with Mr. Rutaihwa that this issue was discussed by the Court. We note at page 16 of impugned of judgment that, the Court posed a question as to whether concealment of the existence of another case could be a ground for setting aside the *ex-parte* judgment entered for failure to file WSD. While agreeing with the finding of High Court, the Court found that, although the two cases were in respect of the same property, they were different as they were based on two different causes of action. While the subject matter in Land Case No. 45 of 2015 was on breach of Lease Agreement, Land Case No. 17 of 2015 was on breach of Sale Agreement and therefore could not be a ground fo setting aside the *ex parte* judgment.

There is no gainsaying, therefore that, since the Court was appraised of the fact that the two cases involved the same land, and came to the conclusion it made, an attempt to fault the Court along those lines, is a clear indication that the applicants are testing the wisdom of the Court. All in all, this also amounts to ground of appeal in disguise.

In relation to the 3rd ground (paragraph 1 (c)), the applicants' complaint is that the applicants were not given a correct information by their former advocate on what was going on in court which resulted into their failure to file their WSD. Although there was no elaboration from

the applicants, the learned counsel for the respondent submitted that such ground could have been suitable at the appeal stage but not in review; and that the same was determined by the Court that the appellants (applicants) were well informed on what was going on in court as they had even averred in their affidavit.

On our part, we agree with Mr. Rutaihwa that this issue was determined by the Court as shown at pages 21-22 of the impugned decision. The Court found that the applicants were aware of what was going on in court including an order that required them to file WSD and for *ex-parte* proof of the claim by the respondent. This was also confirmed from the applicants' own affidavit in support of the application for setting out the *ex-parte* judgment before the High Court in which they averred in paragraphs 11 and 14 thereof to the effect *that "while the two suits were pending in court, the lawyers from Lloyd Advocates were updating the 1st applicant on the state of affairs regarding the pendency of the two cases...".*

In our view, looking at the complaint, it is crystal clear that the applicants seem to be dissatisfied with the decision of the Court on that aspect, which is not allowed in review. When the Court was faced with akin scenario in the case of **Muhsin Mfaume v. Republic** (Criminal

Application No. 43/01 of 2020) [2021] TZCA 318 (19 July 2021) it was stated that:

> *"The mere fact that the applicant is not happy with the judgment of the Court would not amount to a ground of review. As we stated in* ***Blueline Enterprise Tanzania Llmited v. East African Development Bank,*** *Civil Application No. 21 of 2012 (unreported), a court will not sit as a court of appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision. We also subscribe to an unreported decision of the Appellate Division of the East African Court of Justice in* ***Angella Amudo v. The Secretary General of the East African Community,*** *Civil Application No. 4 of 2015 in which it observed that it would be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard."*

The same applies to ground no. 4 (paragragh 1 (d)), which faults the Court for failure to rule out that there was concealment of the pendency of Land Case No. 17 of 2015 which was material in relation to Land Case No. 45 of 2015. In view of our discussion in ground no. 1 (d), we think, it suffices to say that, this is a ground of appeal which is

intended to invite this Court to sit on appeal which is not allowed - (See also: **Peter Ng'homango v. Gerson M.K. Mwangwa and Another**, Civil Application No. 33 of 2022) [2007 TZCA 162] (27th July, 2007).

We are mindful that during the hearing of the instant application, in relation to the first ground on manifest error on the face of the record, Mr. Johnson came with another dimension of complaint based on the Court's reference to Order VIII rule 14 (1) of the CPC Cap 33, R.E. 2002 now R.E 2019 as being the provision that was envisaged by the High Court when it ordered the filing of WSD to the amended plaint. We note at page 29 of the record of review that the High Court, on 30/11/2016 upon application by the respondent to amend the plaint granted the application and ordered as follows:

> *"1. Mention on 15/3/2017.*
>
> *2. Amended plaint to be filed within seven days.*
>
> *3.* ***WSD to the amended Plaint be filed in accordance to the law.***
>
> *Sgd*
>
> *30/11/2016".*
>
> [Emphasis added]

As it is, it appears that time when the order was made, the law which was referred to could be the old law as per Revised Edition 2002 that is, before it was amended in 2019.

On one hand, we agree with Mr. Rutaihwa that this ground was neither reflected in the notice of motion nor in the affidavit in support of the application. It just came from the bar. On the other hand, since it touches a matter of law, we think we need to address it. Our perusal of the impugned judgment of the Court has revealed that the Court observed that the *ex-parte* judgment that was sought to be set aside was a resultant of the *ex-parte* proof of the respondent's claims in Land Case No. 45 of 2015 as per "*Order VIII rule 14 (1) of the CPC after the applicants had failed to file a written statement of defence to the amended Plaint.* Indeed, the said Order VIII rule 14 (1) of the CPC was cited as Cap 33 R.E. 2002 now R.E. 2019.

We asked ourselves if such issue amounts to a manifest error on the face of the record occasioning any miscarriage of justice to the applicants but we have found that it does not. We say so because, citing the provision the manner it was cited did not mean that the High Court applied the provisions of rule 14 (1) as they stand now in R. E. 2019. The citation shows that it recognized the law as it was cited by then but again acknowledging its citation after 2019 revision. Even looking at the

gist of the provision before the amendments of 2019, it suits the circumstances under which the order was made by then. In this regard, we find that the applicants' complaint is baseless.

In relation to ground No. 2, the applicants' grievance is on failure by the Court to determine the grounds of appeal in Civil Appeal No. 219 of 2019 and that it denied the applicants' their right to be heard. As was submitted by Mr. Rutaihwa, there was no affidavital information to support this ground save for Mr. Johnsons' oral submission which based on the decision of Mzuna J, in Land Case No. 45 of 2015 as shown at pages 82-83 of the record where the court reproduced the evidence of the respondent. On his part, Mr. Rutaihwa, apart from opposing it as it is not supported by affidavit, he invited the Court to disregard any submission which invites the Court to go outside the jurisdiction of the Court by looking at the impugned judgment and not somewhere else.

Indeed, according to section 4 (4) (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 read together with Rule 66 (1) of the Rules, which are the enabling provisions, the Court is mandated to review its own decision or rather judgment or order. It does not entail to review or look at extraneous matters from outside the purview of the matter impugned. Therefore, as rightly submitted by Mr. Rutaihwa, any attempt to invite the Court to look outside the impugned judgment or order is not

proper as the Court would be exercising the jurisdiction it does not have - (See: **Jireys Nestory Mutalemwa** (supra)).

Be it as it may, we have endeavoured to look at the impugned judgment, particularly at page 8 of the judgment, so as to satisfy ourselves whether there were grounds of appeal which were left unattended and we have observed that the applicants appeal consisted nine grounds of appeal. However, because of resemblance of the grounds of appeal the Court decided to cluster them into two limbs. The first limb consisted of grounds 1 to 6 based on concealment of pendency of Land Case No.17 of 2015 when allowing the respondent to prove her claim *ex-parte*; and the 2nd limb consisting of grounds 7, 8 and 9 relating to justification for failure to file WSD by the applicants. So, the Court discussed and determined the appeal along those lines and we may wonder why this issue arose in such circumstances.

In any case, looking at the manner this ground is brought, like the proceeding grounds, it is a clear indication of the applicants' expression of their dissatisfaction with the decision of the decision of the Court by way of an appeal in disguise which is prohibited by law – See: **Chandrakant Joshubhai Patel v. Republic** (Criminal Application No.8 of 2002) [2003] TZCA 37 (29 April 2003), **Peter Ng'homango** (supra). This Court cannot entertain those grounds because to do so would

amount to the Court sitting in appeal against its own decision which is not proper – See: **Tanganyika Land Agency Limited and 7 Others v. Manohar Lal Aggrwal** (Civil Application No. 17 of 2008) [2013] TZCA 37 (5 August 2013).

Now, looking at the application before us, generally, it is clear that what the applicants are seeking the Court to do is to sit on our judgment and re-hear the appeal with a view to arriving to a different opinion from the former one, which is not allowed. In the case **Patrick Sanga v. Republic** (Criminal Application No. 8 of 2011) [2013] TZCA 473 (5 August 2013) when the Court was confronted with akin scenario, it stated thus:

> *"The review process should never be allowed to be used as an appeal in disguise. There must be an end of litigation, be it in civil or criminal proceedings. A call to re-assess the evidences, in our respectful opinion, is an appeal through the back door. The applicant and those of his like who want to test the Courts legal ingenuity to the limit should understand that we have no jurisdiction to sit on appeal over our own judgments. In any properly functioning justice system, like ours, litigation must have finality and a judgment of the final court in the land is*

final and its review should be on exception. That is what sound public policy demands".

As hinted earlier on, what is discernable in the applicants' application is nothing but the invitation to the Court to re-hear the appeal which is against the public policy to the effect that litigation must come to an end.

This application is, therefore, misconceived. In the event, we hereby dismiss it with costs.

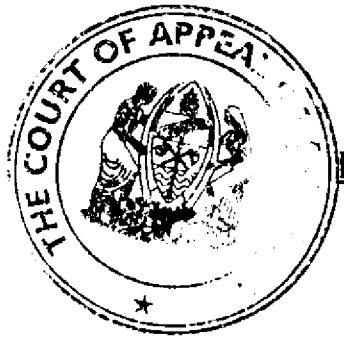
DATED at **DAR ES SALAAM** this 23rd day of May, 2024.

R. K. MKUYE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

The Ruling delivered this 24th day of May, 2024 in the presence of Ms. Fatuma Mlonja, learned Counsel for the Applicants and Mr. Protace Kato Zake, learned Counsel for the Respondent is hereby certified as a true copy of the original.



W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL