

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION FOR REVIEW NO. 429 OF 2023

BETWEEN

ERNEST MAGESA t/a CRUCIAL

ESTATES LIMITED1ST APPLICANT

CRUCIAL INVESTMENT LIMITED 2ND APPLICANT

ERNEST MAGESA 3RD APPLICANT

VERSUS

NIVANCE GODFREY URIO 1ST RESPONDENT

DEVIS GODFREY URIO2NDRESPONDENT

PETER PETER JUNIOR3RD RESPONDENT

RULING

Date of last Order: 17/8/2023

Date of Ruling: 24/8/2023

A. MSAFIRI, J.

The applicants have instituted an application for Review of the Ruling of this Court in Misc. Land Application No. 212 of 2023. The applicant has filed a memorandum of Review on the following sole ground;

That the decision/ruling of this Court contain an apparent error on the face of record which misled the Court to struck out the application, by referring and citing the provision of Section 15(1) of the Arbitration Act (Which is of Act Supplement No.2 of 2020 of 21st

Alle.

February 2020 (inapplicable legislation), instead of Section 15(1) of the Arbitration Act, Cap 15 R.E 2020 (the current and applicable legislation) that was referred to by the applicants.

The applicants therefore prays that this High Court be pleased to allow this application and review its orders dated 27/06/2023.

The application was heard *viva voce* whereby the applicants were represented by Mr. Mganga Paul, learned advocate, Mr. Egbert Milanzi, learned advocate represented the 1st and 2nd respondents, while the 3rd respondent had legal services of Mr. Mlyambebele Mwel, learned advocate.


Mr. Paul was the first to address the Court whereas he submitted that the application is brought under the provisions of Section 78(1) (a), read together with Order XLII Rule (1) (a) of the Civil Procedure Code, Cap. 33 R.E. 2019(the CPC).

He submitted further that, the applicant has discovered an apparent error on the Ruling and Drawn Order which was issued by this Court on 27/6/2023 in Misc. Application No. 212 of 2023. Mr. Paul said that after reading the said Ruling, he discovered that the Act which was referred and acted upon by the Court in its Ruling was Section 15(1) of Act No. 2 of February 2020 which is inapplicable instead of Section 15(1) of Cap. *Act.*

15 R.E. 2020 which is applicable. That, the Revised Edition 2020 made renumbering of the provisions in the Arbitration Act, Cap. 15 whereby Section 15(1) of Arbitration Act, No. 2 of Feb. 2020 is now Section 17 of Cap 15 R.E 2020.

He prayed for the Court to grant this application for Review, vacate its order in Misc. Application No. 212 of 2023 and determine the said application on merit.

In reply, Mr. Milanzi admitted that having gone through the cited Act, it is true that the application was brought under Section 15(1) of the Arbitration Act, Cap 15.

However, Mr. Milanzi argued that, before its ruling on the Misc. Application No. 212 of 2023, the Court gave parties chance to address it on the provision of Section 15(1) of the Act. That the applicants were being represented by Mr. Paul Msomi, Advocate who was holding brief of Mr. Paul Mganga, counsel for the applicant. That, Mr. Msomi admitted that the application was brought under the wrong provision of law. That, since the counsel for the applicants admitted that, it was Mr. Milanzi's view that it is now not proper for the applicant to pray for review on the issue which he had admitted through his counsel. Mr. Milanzi prayed for the application to be dismissed. 

Mr. Mlyambebele also addressed the Court and briefly informed that after reading the provisions of the Arbitration Act, Cap. 15, the 3rd respondent does not contest the application.

In rejoinder, Mr. Paul reiterated his submissions and prayers. He added that, Mr. Msomi who was holding his brief on that day had no instructions to proceed and was not conversant with the application and the proceedings.

Having heard the submissions from the parties, it is not in dispute that this Court under Section 78 of the CPC is empowered to entertain an application for review of its decision and orders. The criteria to be considered are provided under Order XLII Rule 1 of the CPC. This application falls under the criteria of there being some mistakes or errors apparent on face of the record on the said Ruling and or order.

Now the issue is whether there was error apparent on the face of the Ruling in Misc. Land Application No. 212 of 2023. It is clear that the previous Application No. 212 of 2023 was brought under Section 15(1) of the Arbitration Act, Cap. 15 R.E 2020. However this Court erroneously believed that the same was wrong provision and that the Arbitration Act No. 2 of 2020 was the correct provision. *Alle*

Unfortunately, when the Court summoned the parties to address it on the issue on whether the application was brought under the correct provision, the counsel Mr. Sunday Msomi, who was holding brief of Mr. Paul Mganga, advocate for the applicants, readily agreed that the application was incompetent for being brought under wrong provision i.e. Section 15(1) of Arbitration Act, Cap. 15 R.E 2020.

Despite the fact that the counsel who was appearing for the applicant incorrectly conceded to the incompetence of the said application, this Court has a duty to decide the matter not basing not basing on weakness of applicant's submission but in accordance with the law.

The Court, having gone through both cited laws i.e. the Arbitration Act. No. 2 of 2020 (Act supplement) and the Arbitration Act, Cap. 15 R.E 2020, it is satisfied that the applicable law is the Arbitration Act Cap. 15 R.E 2020. Therefore, since the Application No. 212 of 2023 was brought under the provisions of Cap. 15 R.E 202, hence the said application was competent as it was brought under the correct and applicable provision.

That being the position, then the said application was properly brought before this Court.

Alls-

I therefore allow this application by setting aside the decision of this Court in Misc. Land Application No. 212 of 2023 which was struck out on 27/6/2023 and I order that the same is restored to be determined on merit.

Each party shall bear its own costs. It is so ordered.


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A. MSAFIRI
JUDGE
24/8/2023

