IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA SUB-REGISTRY

AT TABORA

CIVIL REVIEW No. 02 OF 2023

(Originating from Civil Case No. 05 of 2023 in the High Court of Tanzania at Tabora)

IGUNGA DISTRICT COUNCIL ..... APPLICANT

VERSUS

KAHAMA OIL MILLS LTD ..... RESPONDENT

RULING

Date of Last Order: 14/11/2024
Date of Ruling: 29/02/2024 & 19/03/2024

KADILU, J.

This court is moved under Order XLII Rule 1 (1), (b) and Section 78 (1), (b) of the Civil Procedure Code, [Cap. 33 R.E. 2019] to review its Judgment and Decree issued on 06th June 2023 rendered in Civil Case No. 5 of 2023, in which the applicant was the plaintiff whereas the respondent was the defendant. The grounds of the application are that, the court's judgment and decree of 06/06/2023 which require the respondent to pay the applicant TZS. 218,060,856/= upon being paid its debt owed to the Government was an apparent error.

The applicant thinks so because the Government was not a party to the suit, and the respondent did not plead it in its written statement of defence. The applicant prayed for the review of the order by setting it aside, awarding it the costs of the application, and any other reliefs the court may deem just and fit to grant.

A brief history of the matter is that the applicant filed the case in this court against the respondent claiming the payment of TZS. 218,060,856/= being cotton produce cess for the 2018/2019 cotton

season, statutorily payable to it on the purchased crops from its area of jurisdiction. The applicant alleged that for the 2018/2019 cotton season, the cotton price was TZS. 1,200/= per kilogramme (kg) and the respondent purchased and transported a total of 6,057,246 kgs of cotton from various Agricultural Marketing Cooperative Societies (AMCOS) within the jurisdiction of the applicant without paying a statutory 3% of the purchases to the applicant which turned to TZS. 218,060, 856/= cotton produce cess.

The respondent's account is that due to financial difficulties in the 2018/2019 cotton season, it bought only 77.140 kilogrammes of cotton from the plaintiff's jurisdiction worth TZS. 92,568,000/= and not Tshs. 218,060,000/= as alleged by the plaintiff. The respondent added that in the said cotton season, the Government issued directives to local government authorities with cotton produce that they should not take any legal action against cotton purchasers until further directives from the Ministry of Agriculture and the Bank of Tanzania.

After a full trial, the court found that the applicant had established its claim against the respondent so, it ordered the respondent to pay the applicant TZS. 218,060,856/= once its debt owed to the Government is paid. The said order irritated the applicant hence, this application. The hearing of this application proceeded by written submissions whereby the applicant was represented by Ms. Grace N. Mwema, the learned State Attorney, and the respondent enjoyed the legal services of Mr. Simon Gerald Kamkolwe, the learned Advocate. The applicant was ordered to file a submission in chief on 28/11/2023, the respondent was to file a reply on 12/12/2023 and the applicant had to file a rejoinder on 19/12/2023.

The ruling was set to be delivered on 29/02/2024. On that date, the applicant came to court with a complaint letter to the effect that the respondent failed to serve the applicant with a reply as scheduled. For that reason, the applicant prayed to be served with the respondent's reply to be able to file a rejoinder. Since the respondent was absent, the court served the applicant with a copy of the respondent's reply and granted the applicant fourteen days within which to file a rejoinder. The matter was then adjourned to 19/03/2024 for a ruling. Up to 18/03/2024, the applicant had never filed a rejoinder as granted. Therefore, the court composed a ruling without the applicant's rejoinder.

In her submissions, Ms. Grace Mwema stated that the court's order in Civil Case No. 5 of 2021 was erroneous as the trial Judge had ordered the respondent to pay the TZS. 218, 060,856/= upon being paid by the Government which was not a party to the suit and the respondent's claim did not form part of its written statement of defence. According to her, there was no proof in the court's record to show the respondent claimed any amount from the Government. To support her argument, Ms. Grace cited the case of ***Yusufu Hamis & Another v Abubakari Khalid Hjj & 2 Others***, Civil Application No. 575/01 of 2021.

She submitted further that, on pages 13 and 14 the court's judgment, the court ordered the respondent to pay the cotton cess fee amount to TZS. 218,060,856/= to the applicant once the debt owed to it by the Government was paid, the holding which was neither prayed by the respondent in its pleading nor by witnesses' statements. To her, that was an apparent error in the face of the record. She referred to the case of ***Mway Arego Jombo v NMB Bank PLC,*** Civil Application No. 627/08 of 2021 in which it was stated that:

"... parties are bound by their pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored."

She argued that since the respondent did not plead the issue of paying the applicant upon being paid by the Government, the court was supposed to stick to what the respondent stated in the pleadings and not otherwise.

In his reply, Advocate Kamkolwe submitted that the afore-stated ground does not meet the requirement of being a mistake or an error apparent on the face of records for the court to exercise the power of review under the cited provisions of the law. He submitted in addition that what constitutes a manifest error on the face of record resulting in miscarriage of justice, was discussed in the case of ***National Bank of Commerce Ltd v Nurbano Abdallah Mulla,*** Civil Application No. 207 of 2020 in which the court observed 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... it is no ground for review that the judgment proceeds on an incorrect exposition of the law... 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..."

Mr. Kamkolwe argued that the applicant has failed to establish the three ingredients necessary for this court to exercise a review under the cited provisions of the law which were also stated in the case of ***National***

Bank of Commerce Ltd v Nurbano Abdallah Mulla, Civil Application No. 207 of 2020, that *first, there ought to be an error, second, the error has to be manifest on the face of the record, and third, the error must have resulted in miscarriage of justice*.

The Counsel for the respondent also submitted that it is a well-established principle of the law that parties are bound by their pleadings which includes what was stated in the plaint, written statement of defence, together with their annexures and what was proved in evidence. He referred to the case of ***Makori Wassaga v Joshua Mwaikambo & Another*** [1987] TLR 88. He prayed the court to dismiss the application as there is no mistake or error on the face of judgment and decree sufficient to justify this court to exercise its review powers and that the trial judge properly constituted her judgment by considering the parties' pleadings.

Having considered the submissions made for and against the application, I am now in a position to state that, this application is devoid of merit. The applicant had the right to appeal in terms of section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Laws. It should have exercised that right instead of applying for review which under Order XLII, Rule 1 of the Civil Procedure Code, does not extend to challenging any decision of the court on merit but expressly, to errors which are apparent on the face of the record. This is clear from the provisions of Order XLII, Rule 1 of the Civil Procedure Code which stipulates that:

"Any person considering himself aggrieved: -

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him; may apply for a review of judgment to the court which passed the decree or made the order."

In my view, if an error can be seen on the face of the record, such an error would make the entire decision erroneous, which could then only be corrected by way of an appeal, not a review. It should be noted that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. Likewise, the applicant's complaint on the analysis of evidence of the impugned decision of the court is misplaced. What is evident in the applicant's application is its dissatisfaction with the decision of this court.

I have failed to see any manifest error apparent on the face of the record that would justify a review. Neither have I seen any illegality in my judgment that would suggest that it is a nullity, irrational, or improper. Based on the foregoing reasons, the application is dismissed for lack of merit. Given the particular circumstances of the case, I make no order as to costs.

Order accordingly.

KADILU, M.J.
JUDGE
19/03/2024.

The ruling delivered in chamber on the 19th Day of March, 2024 in the presence of Mr. Samwel Mahuma, State Attorney for the applicant.

KADILU, M.J.,
JUDGE
19/03/2024.