IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU

CIVIL REVIEW NO. 5 OF 2023

HAJI MOHAMMED IDDI.....APPLICANT

VERSUS

THE ATTORNEY GENERAL .....1st RESPONDENT
THE CHIEF OF THE POLICE FORCE.....2nd RESPONDENT

(Application for Review of the decision of High Court of Zanzibar, at Tunguu)

(Abdul-hakim A. Issa, J.)

dated 7th day of August, 2023
in
Misc. Civil cause No. 80 of 2022

RULING

26th March, & 11th June, 2024

HAJI, J:

The applicant, **HAJI MOHAMMED IDDI**, lodged this application for Review by way of chamber summon made under Order L 1 (a), 3, 4 (2) (a) (b) of Civil Procedure Decree Cap 8 and Section 3(1) of High Court act No. 2 of 1985. The applicant is seeking an order of the Court to review it's decision in Misc. Civil Cause No. 80 of 2022 which was delivered on 7th August, 2023.

The application is supported by an affidavit of Mohammed Shaaban Omar, the learned Advocate for the applicant. On the other hand, the respondent has resisted the application through counter affidavit deponed by Elias Evelius Mwemdwa, the learned State Attorney for the respondents.

Briefly, the background of the instant application is to the effect that, the applicant was a police officer of the rank of Station Sargent of Police. The applicant was charged in Police Disciplinary Tribunal for the offence of unnatural offence and disclosing investigative information. As such, he was found guilty and discharged from the service on 28th March 2022.

Thereafter, he appealed to the Police Appellate Board on 31st March, 2022 but his appeal was unsuccessful and the same was dismissed on 11th July, 2022. Aggrieved, he filed application for leave to file an application for writ of certiorari, mandamus and prohibition in respect of unfair termination from his employment. The said application was placed before Abdul-hakim A. Issa J, as he then was and the same was dismissed for want of merit. The applicant still aggrieved; he filed this application for Review on the following grounds: -

(a) That there is an apparent error on the face of record. The judge misguided himself by forgetting that the level of showing an

arguable case has to be normal and not going beyond as that step is not far hearing the case on merit.

(b) That, there is an apparent error on the face of record when the honorable judge considering the numbers of paragraphs in the affidavit instead of considering the weightiness of the arguments contained in the affidavit.

(c) That the Honorable judge did not guide himself well on the importance of cases to be heard on merit, as a result he decided to dismiss the application and denied to grant the leave to judicial review.

(d) That there is apparent error on the face of record. It has been shown in the ruling and drawn order a sign that an application for leave to judicial review is like the same as an application for judicial review when these are two different things as a matter of law.

At the hearing before this Court, the applicant was represented by Mr. Mohammed Shaaban Omar, learned advocate; whereas the respondents enjoyed the services of Mr. Elias Mwemdwa, learned State Attorney.

Before the hearing of the application began in earnest, Mr. Mohammed Shabaan, informed this court that he has already filed supplementary affidavit and prayed to the court to include the same to be part of the proceeding. Mr. Elias Mwemdwa, State Attorney for respondent resisted the prayer as the same was filed without leave of the court. This court was in agreement with Mr. Elias Mwenda, and therefore, the supplementary affidavit filed on 15th February, 2024 was rejected for being filed without a leave of the court.

Mr. Mohamed, then proceeded to amplify the grounds of the application. He therefore, adopted the applicant's supporting affidavit to form part of his oral submissions.

Arguing on the merit application, the learned counsel for applicant initially informed this court that the ground for which the application for leave at high court was based on the ground that; firstly, the applicant should have arguable case, secondly, the applicant should show sufficient interest and thirdly the application should be filed within time.

Mr. Mohamed, submitted that the above grounds have been observed as the basic grounds for leave of the judicial review as provided in the case ***Emma Bayo Vs The Minister for Labour and Youths Development &***

2 Others, Civil Appeal No. 79 of 2012. CAT (unreported). However, he argued that the High Court dismissed the application for leave to file application for judicial review without justifiable grounds. He therefore, attacked the High Court decision dated 7th August 2022, on the following complaints: -

Firstly, the High Court Judge error when he opined that the applicant was required to explain everything during the hearing of application for leave of judicial review. In this complaint, Mr. Mohamed submitted that the Honorable Judge was require to look for the chamber summons, affidavit and respective submission of the parties.

Secondly, he faulted the Honorable Judge for limited number of paragraphs in affidavit. Mr. Mohamed submitted that there is no law that requires the specific number of paragraphs in the supporting affidavit. He said that what was require is the contents of the supporting affidavit. He further argued that the judge was required to examined on the weight of the matter in question.

Thirdly, the Judge error when he did not consider the hearing of the application in merit. It was argued by Mr. Mohamed that the act of

dismissing the application for leave is to deprived the applicant's right to be heard.

Fourthly, he faulted the Honorable Judge on failure to distinguish between leave for judicial review and the judicial review itself. He submitted that the Honorable Judge was on opinion that the applicant should explained everything during the hearing of the application for leave something which is contrary to the law. He concluded by submitting that justice should not only be done but it should be seen to be done. In the end, he prayed the application for review to be granted as provided in the chamber summon.

In response, Mr. Elias Mwemdwa, also adopted the counter affidavit to be part of his oral submission. Afterwords, he contended that the nature of the present application has no automatic right to be granted. He said that it is the discretion of the court to grant or reject it after being satisfied with the ingredients submitted to the court. He further submitted that the Order cited in chamber summon gives out essential facts to be considered when applied for the review. It was his emphasis that the application for review is not alternative to appeal. He said, the review is for the mistake in the face of records of the order or decisions. He referred this court to the

case of ***The Hon. Attorney General Vs Mwahezi Mohamed (as administrator of estate of the late Dolly Maria Eustace) & 3 Others***, Civil Application No. 314/12 of 2020, CAT (Unreported). He therefore, was on the view that, the Applicant in this application is appeal to the former decision of the court. He further submitted that the case cited supra, cited rule 66 of the Court of Appeal Rules which reflect the Order L rule 1 (1) of the Civil Procedure Decree.

Mr. Mwemdwa, contended further that the decision of Honorable Abdul-hakim A. Issa, J. as he then was, contained no error in the apparent on the face of record. He said that what was decided by the Honorable Judge was correct and his decision was made under the law and all the parties were given opportunities to be heard. He added that the former Judge examined all criteria for apply for the leave of judicial review and after heard the parties he was satisfied that the applicant failed to meet the test of applying for judicial review. He therefore, argued that when the Judge dismissed the application for leave, he exercised his discretion of not granting the application after he was not satisfied with the reasons submitted before him.

Mr. Mwemdwa, contended that **one** of the reasons submitted was having arguable case. He argued that to have arguable case is not sufficient ground for granting leave. He further argued that one need to establish the prima facies case. **Second**, Mr. Mwemdwa contended that the question the Honorable Judge limited number of affidavits is not error on the face of record.

Third, Mr. Mwemdwa submitted that the fact that the Honorable Judge dismiss the application without considering the merit of the application also cannot stand as an apparent error on the face of record. He argued that it is very wrong to the side of Applicant advocate to think that every application that comes to court need to go in merit even if the same is defective. He said, it is because of that reason, the application in this nature requires leave before going into the merit.

Fourth, Mr. Mwemdwa contended that the Honorable Judge was aware on the nature of application which was before him and the same was proved in page 3 of his ruling. He was on the view that the complaint that he failed to distinguish between leave and judicial review was baseless. Lastly, he submitted that the ruling of the High Court in question did not contain any apparent error on the face of record and all done was

under the court Jurisdiction. He therefore, argued the court to find that the applicant failed to show the apparent error on the face of the record in the High Court Ruling. He asked the court to refer the case of ***Paschal Bandiho Vs Arusha Urban Water Supply & Sewerage Authority***, Civil application No. 384/02 of 2022, CAT (Unreported).

furthermore, it was argued by Mr. Mwemdwa that, what was submitted by Applicant is as if he challenged the High Court decision by way of appeal because the grounds pointed out by Applicant's counsel are suffice for the appeal purpose and this court cannot hear the grounds of appeal for the decision made by the Judge. Therefore, he prayed that the applicant's application for review should not be considered.

In short rejoinder, Mr. Mohamed submitted that, it is true that it is not necessary for the court to grant the application for leave as the matter is discretionary. He argued that the discretionary of the court needs to be exercised judicially. He said, the judge discretion was not exercised judicially. He insisted that he managed to explain the error that derived from High Court decision. After all, he repeated what he submitted earlier.

Before going into the determination of this application, it seems desirable to me, first, to discuss the principles governing the Court's power to review its decision. The Court of Appeal of Tanzania, in the case of ***Hassan Ng'anzi Khalfan v. Njama Juma Mbega and Another***, Civil Application No. 336/12 of 2020, observed the powers of the Court to review its decision thus:

> *"We wish; in the first place, to point out that powers of the Court to review its decision constitutes an exception to the general rule that once a decision is composed, signed and pronounced by the Court, the Court becomes functus officio in that it ceases to have control over the matter and has no jurisdiction to alter or change it Needless to overemphasize that a review is called for only where there is a glaring and patent mistake or grave error which has crept in the earlier decision by judicial fallibility. Simply stated, the finality of the decision should not be reopened or reconsidered so as to let the aggrieved party fight over again the same battle which has been fought and lost. It is obvious therefore that the court's power of review is limited."*

It is therefore, I think, appropriate to recapitulate the provision of Order L Rule 1 (1) which the applicant has, in this application confined his grievance reads: -

"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;

(b) By a decree or order from which no appeal is allowed; or

(c) By a decision on a reference from a subordinate court 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 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."

The above provision is reflected on the grounds raised by applicant that the impugned decision of this court contained the apparent error on the face of record. The question now is; what amounts to a manifest error on the face of the record? The answer to this question was discussed at considerable length by the Court of Appeal of Tanzania in the most celebrated case of ***Tanganyika Land Agency Limited and 7 Others v. Manohar Lai Aggrwal***, Civil Application No. 17 of 2008 (unreported) in which the Court drew inspiration from the Indian decision in ***M/S Thunga Bhadra Industries Ltd v. The Government of Andra Pradesh***, AIR 1964 SC 1372 where it was stated that:

> *"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error...it would suffice for us to say that where without any elaborated argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two options entertained about it, a dear case of error apparent on the face of the record would be made."*

Also, in the landmark case of ***Chandrakant Joshubhai Patel v. Republic,*** [2004] TLR 218, what amounts to a manifest error on the face of the record was fully addressed by the Court of Appeal of Tanzania at page 225, after having adopted from Mulla on the Code of Civil Procedure (14th Ed), pages 2335-2336 the following passage:

> *"An error apparent on the face of 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 on 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 an error 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 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) SC1372]' (Emphasis added)

Thus, this Court is on the view that to constitute a reviewable error, such error must be patent on the record and not one which can be established by a long-drawn process of argument with the potential of two different opinions. In other words, "manifest error on the face of record: signifies an error which is evident from the record and it does not require scrutiny, arguments and or clarification of fact, evidence or legal exposition. See the case of ***The Hon. Attorney General Vs Mwahezi Mohamed (as administrator of estate of the late Dolly Maria Eustace) & 3 Others***, Civil Application No. 314/12 of 2020, CAT (Unreported).

Upon examined the impugned decision of this court, I must confess that, I have completely failed to see any error that qualifies for review in terms of Order L rule 1 (1) of Civil Procedure Decree, cap 8. The finding of decision of the High Court in question, is based on the ground that the reasons given by the applicant in his supporting affidavit was not sufficient to warrant the court granting ,an order for leave to file application for judicial review.

With respect with the learned counsel for applicant, I think, that in any case these complaints by the applicant that there is arguable case, limited number of paragraphs in affidavit, failure to hear application on merit and distinction between judicial review and application for leave, do not fall squarely within the scope of reviewable errors but rather a ground of appeal in disguise which is not acceptable in review.

In the case of ***Karim Kiara Vs Republic,*** *Criminal Application* No. 4 of 2007, (Unreported) the Court of Appeal of Tanzania quoted with approval what was stated in ***Lakhamshi Brothers Ltd Vs Raja and Sons*** (1966) 1 EA 313 as follows: -

> *"In a review the court should not sit on appeal against its own judgment in the same proceedings. In a review, the*

Court has inherent jurisdiction to recall its judgment in order to give effect to its manifest intention on what clearly would have been the intention of the court had some matter not been inadvertently omitted."

In light of the above analysis, I find that the applicant has failed to show any error on the face of the record which might be inadvertently omitted by this court while determining the application for leave to file application for judicial review. I am settles view in my mind that the applicant is merely inviting me to sit on appeal against the decision of this court something which I am not ready to accept.

In view of the foregoing position, it cannot be doubted that the grounds of the application indicated in the chamber summons by the applicant have no merit and therefore fails. That said and done, I find that the application for review is devoid of merit. It is accordingly dismissed with costs.

It is so ordered.

DATED at **ZANZIBAR** this 14th day of June, 2024.

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HAJI S. K. TETERE
JUDGE