IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA

FIRST INSTANCE DIVISION

(Coram: Audace Ngiye, DPJ; Charles O. Nyawello & Charles Nyachae, JJ)

APPLICATION NO.7 of 2019

(Application for review arising from **Reference No. 10 of 2016**)

M/S QUICK TELECOMMUNICATION SERVICES

(REPRESENTED BY JAMES ALFRED KOROSSO).....APPLICANT

VERSUS

THE ATTORNEY GENERAL OF
THE UNITED REPUBLIC OF TANZANIA.....RESPONDENT

21st MARCH 2022

RULING OF THE COURT

A. INTRODUCTION

1. This is an Application by M/S Quick Telecommunication Services ("**the Applicant**") seeking a review of the Judgment of the First Instance Division of the East African Court of Justice dated 3rd July, 2019 in **Reference No.10 of 2016** filed against the Attorney General of the United Republic of Tanzania. The Application is brought by a Notice of Motion under Rules 21(1), (2), (4), 72(1), (2), 73(1), (2) and 83 of the East African Court of Justice Rules of Procedure, 2013 (**"the Rules"**).

2. The Applicant is a Tanzanian legal person represented by its Managing Director, Mr. James Alfred Korosso and its address of service is: M/S Quick Telecommunication Services, c/o Old Plaza Cinema Building, Ground Floor, Opposite Moshi Bus Park, P.O. Box 10205, Moshi, Tanzania.

3. The Respondent is the Attorney General of the United Republic of Tanzania ("**the Respondent**") who is sued in the capacity of the Principal Legal Advisor of the Government of the United Republic of Tanzania. His address for service of this Application is Attorney General's Chambers, 20 Kivukoni Road, P.O. Box 71554,11492 Dar Es Salaam, Tanzania.

4. The background to this Application is that the Applicant sued the Respondent before this Court over **Land Civil Case No.19 of 2012** and many other events linked to the latter including intimidations and harassment. The Applicant took issue with the way the Judges Ethics Committee of Tanzania handled his case, following alleged irregularities committed by the trial Judge, Fatuma Massengi.

Further, the Applicant's Manager alleged that the Respondent's actions had caused their business to collapse, and much suffering was caused to him, the Applicant's business partners, the company staff and their extended families.

5. In our now impugned Judgment, we dismissed **Reference No.10 of 2016** in its entirety. All the Applicant's prayers were not granted because no violation of the Treaty was found against the Respondent.

6. It is this same Judgment that the Applicant now seeks the Court to review.

7. The Application was filed under a certificate of urgency. Unfortunately, due to constraints on this Court's activities, the Application to certify the instant Application as urgent was overtaken by effluxion of time and was therefore not entertained by this Court. Application No. 7 of 2019 was therefore heard *inter partes* and was not certified as urgent.

8. The Application was heard on 15th September, 2021. The Applicant was represented by Mr. James Alfred Korosso. Messrs. Stanley Kalokola and Charles Ntaye, State Attorneys, represented the Respondent.

B. APPLICANT'CASE AND SUBMISSIONS

9. The Applicant's case is as stated in his Notice of Motion and his supporting Affidavit filed on 1st August 2019.

10. In support of the instant Application, the Applicant relied on the following grounds spelt out in the Notice of Motion:

i) The Judgment of the Court in terms of orders in result of issues (c) and (d) or issues No. 3 and 4 drawn in the Judgment delivered on 3rd July, 2019 was reached at with concealment of critical facts that form the Applicant's Reference;

ii) The Judgment of the Court in terms of orders in result of issue No. 4 drawn at paragraphs 63, 64, 65, 66, 67 and the conclusion of the Judgment were drawn from a detrimental, deleted and substituted Reference which are not the Applicant's right claims filed in that Court on 5th December,2016;

iii) The trial Court substituted the Applicant's claim or charge;

iv) The trial Court erred as witnessed in paragraph 3, the Court was expected to adjudicate only on the point of facts placed before it, and upon examining the Applicant's annexed evidence attached to the Reference and the submissions submitted in the Court;

v) The trial Court adjudicated on a negative Applicant's purported case partial, with malice and intent to refuge the Respondent;

vi) The Applicant is suffering gross violation and breach of his rights to fair trial, right from the High Court of the United Republic of Tanzania, the Judges Ethics Committee members and now the EACJ Court;

vii) The trial Court intentionally neglected or refused to observe and consider the Applicant's final written submissions and the Applicant's reply to the Respondent's written submissions, filed respectively to support the Applicant's case;

viii) The Respondent's Preliminary Objections filed as a defense to rebuttal the Applicant's Reference is bad, contrary to the record set by the Appellate Court on the appropriate procedure to be adopted when Courts are faced with Preliminary Objections;

ix) The Respondent did not file any defense or any affidavit in reply to the Applicant's claims, contrary to Rules 43 and 44 of the Rules;

x) The trial Court erred when drawing the Applicant's case to the Judgment sheet, detrimented, deleted and completely substituted most of the Applicant's claims in the Reference before drawing its Judgment;

xi) The Court erred by drawing its Judgment from a concocted claim purported by the trial Court to be that of the Applicant and renamed the same as the Applicant's case; refer to both the said Judgments and the Applicant original claims in the Reference found at page 39, to page 49 and page 50 to page 77;

xii) The trial Court erred by drawing its findings and Judgment from a defective Respondent's written submissions and its list of authorities filed in Court on

the 13th November, 2018, which are all based on a bad preliminary objection as submitted above;

xiii) The trial Court erred intentionally by failing to indicate in the introduction of the Applicant's case, what Articles of the Treaty and Rules is the Applicant case brought under, and further the Court failed to adjudicate on the Applicant written closing submission at paragraphs 1 to 10 on the powers vested upon article 4(1) and (2) of the Treaty;

xiv) The trial Court erred by adjudicating selectively the Applicant's case and its written submissions, avoiding Article 4(1) and (2) plus the submissions in support of; leaving the Applicant case hanging;

xv) The trial Court erred by failing to observe that the Applicant is an entity owned by the East African citizens, whose rights are protected by the provisions of the Treaty;

xvi) The Court erred by not observing that the Applicant and its proprietor have suffered immense violation of their fundamental rights as provided for by international conventions ratified by the EAC Treaty including the African Charter on Human and Peoples' Rights, which further forms part of the EA Treaty objectives, principles and obligations now stipulated in, among others Articles 5, 6, 7 and 8;

xvii) That there is absolutely no prejudice to be suffered by the Respondent should this Court review the said

orders so as to protect the rights of the Applicant and the Rule of law;

xviii) That it is evident at the Google network, the record of the Applicant's core facts in his Reference have been avoided and not placed in that record;

xix) It is only the concocted Judgment of the Court drawn from substituted facts from the Applicant's Reference that is fully shown there at the said Google network; and

xx) The costs of and incidental to this Application abide the result of the case.

11. The Applicant prayed also for an order staying prosecution and execution of Judgment in **Barclays Bank Tanzania LTD vs. Quick Telecommunication Services and James Alfred Korosso, CIVIL CASE No.07 of 2017** at the Resident Magistrate Court of Moshi, pending the determination of this Application but this prayer was subsequently withdrawn by the Applicant.

12. The substance of the Applicant's Affidavit was to bring to this Court's attention the fact that the Court erred by failing to perform its mandate, which was to adjudicate on the claims brought to it as they are, and to rule on whether the Judge (Massengi) cheated on the date of Judgment or not, considering the Applicant's evidence attached to its Reference and submissions.

13. To further buttress his argument that this Court should grant the orders sought, the Applicant submitted that the source of the error in the Judgment of the Court arises from the substitution of the

Scheduling Conference Notes of 15th March of 2018 by one purported to have been held on 6th June 2017.

14. He further asserted that none of the evidence was filed by the Respondent to rebut the Applicant's pleaded facts. So, the case was determined without the rebutting affidavits from the Respondent side, and the Court did not consider the Applicant's submissions filed on the 6th June 2017. That the Court only utilized his submissions to determine the framed issues from (a) and (b). When it came to issues (c) and (d), it abandoned all his submissions. None of the submissions were regarded by this Court in its determination of the Judgment causing his rights to be infringed.

15. To sum up his submissions, the Applicant contended that **Reference No.10 of 2016** was rightly and competently before the Court and the Court be pleased to restore it and grant the orders as prayed therein.

C. RESPONDENT'S CASE AND SUBMISSIONS

16. The Respondent opposed the Application and the orders sought through a Replying Affidavit sworn on 4thJune, 2021 by Daniel Nyakiha, State Attorney in the Office of the Solicitor General. The Respondent contended that the review sought does not comply with the requirements of Article 35 of the Treaty and Rule 72 of the Rules as the Applicant would like the Court to believe.

17. In light of the foregoing, the Respondent, during oral hearing, submitted that the principle underlying review is that the Court would not have acted the way it did, if all the circumstances had been known. He argued, therefore, that a review would be carried out when there is a manifest error on the face of the record.

18. It was argued for the Respondent that the Applicant was trying to fault each and everything starting from the proceedings before the domestic court, the Judges' Ethics Committee and the Judgment of this Court. For the Respondent, this makes the Application a mixed grill and cannot be entertained under review. He added that this Court has demonstrated consistently as to what should the Applicant do in an application of this nature and invited us to seek an inspiration from our judgment in the case of **Christopher Mtikila vs. Attorney General of the United Republic of Tanzania and Others, EACJ Application No.8 of 2007** in which this Court highlighted on the controlling provision for an application for review and what constitutes the grounds for a review.

19. The Respondent referred us also to the case of **Angella Amudo vs. The Secretary General of the East African Community, EACJ Application No.4 of 2015** in which the Appellate Division of this Court was cautious and alerted itself on not allowing parties to reopen proceedings under the umbrella of review. The Appellate Division was informed by the public policy that there must be an end to litigation.

20. Learned Counsel for the Respondent submitted that the errors stated in the Application do not fall within the grounds upon which an Application for review may be preferred. It is further stated that the alleged grounds are grounds of appeal and not review as there was no error on the face of the record committed by the Court or discovery of new evidence by the Applicant.

21. He further submitted that the way the Judgment was reasoned, drafted and how the Applicant's case as well as the Respondent's

case were reflected, could be just a ground for appeal but not a review. Also, on the alleged cheating by the Judges within the domestic court, this allegation cannot be entertained in an application for review because the Court is interested in reviewing its own Judgment and not the judgment before the domestic court. That, this Court exercising its review powers, is not a proper forum to review a judgment of the domestic court whether the allegation has merits or not.

22. On the question of the date of the Scheduling conference notes and the way it was reflected in the Judgment, Counsel for the Respondent contended that it does not constitute per se the kind of mistake or fraud on the basis of which a judgment can be reviewed. To him, a mistake on the date cannot occasion an injustice to the Applicant. That, even the Applicant himself has not pointed out how the difference on the date of the scheduling conference notes occasioned an injustice to him.

23. In the same vein, it was the Respondent's submission that the Applicant has not shown any of the grounds for review as enumerated by the law, and, that the grounds presented before this Court lack substance as they are grounds of what would appear to be another disguised Reference against the decision of this Court delivered on 27th June, 2018.

24. Finally, the Respondent suggested that all the relief sought by the Applicant are contrary to Rule 72(1) and (2) of the Rules and prayed for costs and any other order the Court might deem right and just to grant.

D. COURT'S DETERMINATION

25. Having given due consideration to the Application for review and the parties' submissions, it appears to us that the only issue for determination in this case is whether the Applicant has established any of the grounds to warrant an order of review of **Reference No. 10 of 2016**. It should be noted that the powers of this Court to review its judgments are elaborated in Article 35(3) of the Treaty read together with Rule 72(1), (2) & (3) of the Rules. We reproduce the pertinent provisions thereof below for ease of reference:

> Article 35(3):
>
> **An application for review of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given, but which fact, at the time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake, fraud or error on the face of the record or because an injustice has been done.**
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> Rule 72 (1), (2) & (3):
>
> **(1) An application for review of a judgment under Article 35 of the Treaty shall be made in accordance with this Rule.**

(2) A party who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the judgment was passed or the order made, or on account of some mistake, fraud or error apparent on the face of the record, or because an injustice has been done, desires to obtain a review of the judgment or order, may apply to the Court to obtain a review of the judgment without unreasonable delay.

(3) The Court shall grant an application for review only where the party making the application under sub-rule (2) proves the allegations relied upon to the satisfaction of the Court.

26. To qualify for review under the above quoted provisions, an application needs to fulfil any or all conditions specified therein. The Applicant must adduce discovery of some new set of facts/evidence which was not within the knowledge of the party and the Court at the time of the delivery of the judgment. The impugned judgment must evince some mistake, fraud or error that is manifest on the face of the record; or, alternatively, the judgment, as is, must have given rise to a miscarriage of justice.

27. The grounds for the instant Application were largely limited to a mistake or error of law apparent on the face of the record; and only tangentially touched on the element of injustice. Nothing at all was raised regarding discovery of new facts or of fraud.

28. Of the 20 grounds listed by the Applicant, a hefty number of them raise allegations of error or mistake apparent on the record.

29. All the grounds raised are far too linked and repetitive to examine one by one. Nonetheless, individually and collectively, they all evince one defining characteristic: dissatisfaction and aggrievement by the Applicant of the Court's particular findings, views, opinions, conclusions, interpretations and decisions on the numerous points now raised as grounds of the prayer for review. They all seek to overturn the Court "erroneous" views on these points, and to transform them instead into the "correct" views desired by the Applicant.

30. The Applicant's grievance is that **"the Judgment of the Court in terms of orders, in result of issues c and d or issues 3 and 4 drawn in the Judgment delivered on the 3rd July 2019 was reached at with concealment of critical facts that form the Applicant's Reference"**.

31. It was the Applicant's further argument that the trial Court erred by drawing its findings and Judgment from a detrimental, deleted and substituted Reference which are not the Applicant's claims or charge; and that the trial Court erred by drawing its findings and Judgment from a defective Respondent's written submissions which are based on a bad Preliminary Objections. It did also submit that the trial Court intentionally neglected or refused to observe and consider the Applicant's final written submissions and the Applicant's reply to the Respondent's final written submissions filed respectively to support his case. It was also the Applicant's contention that the Trial Court erred by failing to observe that the

Applicant is an entity owned by East African Citizens whose rights are protected under the provisions of the Treaty and International Conventions including the African Charter on Human and Peoples' Rights. In his view the Trial Court erred intentionally by failing to indicate in the introduction of the Applicant's case, what Articles of the Treaty and Rules under which the Reference was brought and that the Applicant is suffering gross violation and breach of his rights to a fair trial from the High Court of the Respondent State, the Judges Ethics Committee and now this Court.

32. Consequently, the Applicant's contention is apparently that the Judgment of the Court was entered in error apparent on the face of the record.

33. Conversely, it was the Respondent's contention that the Court paraphrased and summarized the case of each party as presented in their pleadings and submissions. He further stated that if the Applicant misunderstood the Judgment, he was supposed to apply for interpretation of the said judgment before the Court as per Rule 82 of the Rules. In his view, the Judgment was based on the analysis of the law and evidence which parties adduced before the Court as presented in the pleadings and submissions. In addition, the alleged errors do not fall within the grounds upon which application for review may be preferred. On the contrary, the alleged grounds are grounds of appeal and not review as there was no errors on the face of the record committed by this Court. Therefore, it is the Respondent's contention that if the Applicant was aggrieved by the findings of the Court, he had a right to appeal before the Appellate Division of the East African Court of Justice.

34. It was also the Applicant's contention that the Court erred by discouraging the Applicant and the entire general public from exposing scandalous acts committed by people with authority in our society, by awarding the Respondent costs without observing that this suit is in the mutual interest of the East African Public. Further, he contended that this Court erred by not noticing and observing that the cheating of the date of Judgment by Judge Fatuma Massengi and the Judges Ethics Committee members assessing to the cheating of the said Judge, constituted dishonesty, lack of accountability and transparency which all among others constitute contravention of Article 6(d) and 7(2) of the Treaty and the Judges oath of office.

35. Now, the central question for consideration and decision is whether or not the grounds relied on by the Applicant in seeking the review of the Judgment are valid grounds to make out a case justifying the review of the impugned Judgment under the provision of Article 35 of the Treaty.

36. On the issues of the so-called concealment of facts that form the Reference, the alleged substitution of the Reference and defective Respondent's written submissions which were allegedly based on bad Preliminary Objections or his other multiple allegations, we do not think that those grounds had any substance. We completely failed to understand what the Applicant wanted us to do.

37. We note also that the Applicant at one point unconsciously admitted the weakness of his arguments. Mr. Korosso averred in his affidavit in support of the Notice of motion, on page 21, as follows:

"5. that the Court framed 4 issues to be determined by the Court which were:

a. ***Whether this Court has jurisdiction to hear and determine the Reference;***
b. ***Whether the Reference is properly before the Court;***
c. ***Whether the acts or decisions complained of by the Applicant, if proved, contravene Articles 6(d) and 7(2) of the EAC-Treaty; and***
d. ***What remedies are available to the Parties.***

6. That, further to paragraph 5 above, issues (a) and (b) were granted positively in favor of the Applicant, while issues (c) and (d) were ruled against the Applicant and awarded to the Respondent costs of the Suit.

7. That, it is in that circumstance as witnessed at paragraph 6 above, that the Applicant got aggrieved and has filed this Application for review of the said Judgment on issues (c) and (d)."

38. We are of the well settled view that the 3 paragraphs we have quoted above encapsulate the problem with this Application.

39. We must state forthwith that issues (a) and (b) are precisely related to what the Applicant qualified as bad Preliminary Objections, the third one having been abandoned by the Respondent. The Court's conclusion was effectively that those objections were baseless and unfounded. With regard to issues (c) and (d), it is clear that the Applicant is aggrieved by the decision of the Court for the only reason that they were not decided in his favor.

40. It does not stand to reason, therefore, that after having admitted that the decision of the Court was based on the issues which were agreed upon by the parties, the Applicant later contended that his case was substituted by a fake one. Even if the Applicant's grievances were well-founded, the appropriate recourse to remedy them would not be a review of the impugned Judgment. Rather, it would be a substantive appeal against that Judgment because the matters now raised go well beyond an error on the face of the record. They entail a substantive challenge of the merits of the Court's decision.

41. In oral submissions highlights, and in apparent supplementation of the Applicant's position on that issue, we understood the Applicant to say that the Scheduling Conference held on the 15th March 2018 was substituted to one purported to have been held on 6th June 2018 in the Judgment. On that premise, it was the Applicant contention that the Court used a fake one. With respect, we are unable to agree with the notion that an error relating to the date of the scheduling conference or an omission of the same in a judgment can affect it, where the issues raised in the Scheduling Conference are well reflected and decided as is the case in the impugned Judgment. In fact, scheduling conferences are supposed to accord parties an opportunity to narrow down issues to be considered at the time of hearing. And, the Court was only duty bound to make a decision based on the issues which were agreed upon by the parties. As such, it cannot be considered as an error on the face of the record.

42. In relation to the issue as to whether or not the Court intentionally neglected or refused to observe and consider the Applicant's reply

to the Respondent's final written submissions, we find it to be a mere assertion that injustice has been committed but no proof was advanced by the Applicant. The Applicant, instead of seeking the correction of a mistake or an error on the face of the record, which he has failed to demonstrate, he is looking for a substitute view.

43. In relation to the issues as to whether or not the Court failed to observe that the Applicant is an entity owned by East African citizens or to indicate in the introduction of the Applicant's case what Articles of the Treaty and Rules under which the Reference was brought, we find this assertion strange. We should quickly point out that as the Applicant was heard and his case determined, is that the Court was in essence satisfied that the Applicant was rightly before us as prescribed by Article 30 of the Treaty and that his case was brought under the appropriate provisions of the Treaty and the Rules.

44. On the issues related to the alleged cheating of the date of judgment by Judge Fatuma Massengi and the subsequent violation and breach of his rights to a fair trial, we do not think those grounds had any substance. The Court properly addressed the matter. Each party was given an opportunity to address the Court on the issues and a decision was reached at by this Court within its jurisdiction under Articles 27 and 30 of the Treaty. Further, the Court held that:

> **"Nonetheless, considering the case at hand, we are persuaded by the Respondent's argument and supporting authority that the legal course of action was for the Applicant to file a case before the High Court of Tanzania if he was not satisfied by the decision of the**

Judges Ethics Committee. Having failed to do so, it cannot claim that due process of the law was not followed and that Articles 6(d) and 7(2) were violated by the Respondent. In the result therefore, Issue No. 3 is answered in the negative.

....

With regard to prayer (d) that Court declares unprofessional and null the Ruling of the Judges Ethics Committee delivered on 4th October 2016 ..., we decline to grant the prayers as per our findings on Issue No. 3".

45. On the issue of costs awarded to the Respondent, the pertinent question to ask in this Application is whether this Court will be exercising its discretion judiciously in declining to award costs to the successful party. It goes without saying that the general rule is that costs follow the event. This means that the costs of an action are usually awarded to the successful party. However, any award of costs is at the discretion of the Court. Rule 111(1) of the Rules provides that costs in any proceedings shall follow the event unless the Court for good reasons otherwise order.

46. Similarly, we are cognizant of this Court's Appellate Division's position in the case of **Hon. Margaret Zziwa vs. The Secretary General of the East African Community, EACJ Appeal No. 2 of 2017**, where it was held that:

"The Court entirely agrees with the postulation of the principles governing the award for costs by the Constitutional Court of South Africa in the case of Clive Ferreira and Others V. Powell Olives M. Levin & Others

***(Supra)*. If we may paraphrase it in our own words, the principles are these: costs are in the discretion of the court; in exercising such discretion, the court bears in mind that costs follow the event and that a successful party may only exceptionally be deprived of costs depending on the particular circumstances of the case such as the conduct of the parties themselves or their legal representatives, the nature of the litigants, the nature of proceedings or the nature of the success. Those are guiding principles to the court deciding at first instance on whether to award costs".**

47. In the impugned Judgment, costs were not pleaded or framed as an issue for trial. In addition, the conduct of parties or their representatives that might incline a court to deny costs to a successful party would not be conduct which was material to the case at trial and which therefore was expected to have been pleaded. It is conduct which manifests itself in the course of litigation. Therefore, we are of the firm view that the Court exercised its discretion judicially in allowing costs to the Respondent.

48. In any event, it is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing of the matter and reconsideration of the issues decided by the Court and a fresh decision of the case.

49. Indeed, in **Independent Medico Legal Unit vs. Attorney General of the Republic of Kenya, EACJ Application No. 2 of 2012(Arising from Appeal No.1 of 2011)** it was held that:

"But here, again, even if the Appellant's grievances were well-founded, the appropriate recourse to remedy them would not be a review of the impugned judgment. Rather, it would be a substantive appeal against that judgment because the matters now raised go well beyond the face of the record. They entail a substantive challenge of the merits of the Court's decision. On this, the law is clear: what may be a good ground, even an excellent ground, for appeal, need not be a valid ground for review".

50. We adopt the above reasoning in this decision in as far as it is relevant to the issue at hand.

51. From the Notice of motion and the submissions before us, it is clear that the Applicant is seeking a review of the Judgment on the ground of an error apparent on the face of the record. Surely, this is one of the permissible grounds for review under Article 35(3) of the Treaty and Rule 72(2) of the Rules. But we wish to make it absolutely clear, as we articulated in paragraph 48 above, that a review of judgment is not granted as a matter of absolute right upon mere assertions of "mistake or error apparent on the face of the record". On this we find it very instructive to return to the illuminating judgment of the Court in **Independent Medico Legal Unit** (Supra) as cited in paragraph 49.

52. Indeed, in this Application, the Applicant contended that it was an error on the part of this Court to decide that there was no violation of the Treaty.

53. There is a clear distinction between a mere erroneous decision and an error apparent on the face of the record. While the first can be corrected by an appellate court, the latter can only be corrected by the trial court in its review jurisdiction.

54. Further, an error apparent on the face of the record as would justify an application for review has to be self-evident. It must be an obvious and patent mistake and not something which can only be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. Indeed, the case of **Independent Medico Legal Unit** (supra) defined an error apparent on the face of record as follows:

> "...
>
> **As the expression 'error apparent on the record' has not been definitively defined by statute, etc, it must be determined by the Court's sparingly and with great caution.**
>
> **The 'error apparent' must be self-evident; not one that has to be detected by a process of reasoning.**
>
> **No error can be said to be an error apparent where one has to 'travel beyond the record' to see the correctness of the judgment – see paragraph 2 of the *Document on 'Review of Jurisdiction of the Supreme Court of India' (supra).***
>
> **It must be an error which strikes one on mere looking at the record, and would not require any long drawn process of reasoning on points where there may conceivably be two opinions – *see Smti Meera Bhanja v. Smiti Nirmala Kumari (Choundry) 1995 SC 455*.**

A clear case of 'error apparent on the face of the record' is made out where, without elaborate 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 opinions entertained about it – *see* *Thugabhadra Industries Ltd v. The Government of Andra Pradesh 1964 AIR 1372; 1164 SCR (5) 174* ; also quoted in *Haridas Das v. Smt. Usha Rani Banik & Ors, Appeal (civil) 7948 of 2004*.

In summary, it must be a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish–*see* *Sarala Mudgal v. Union of India M. P.Jain, page 382, vol. I*.

Review of a judgment will not be considered except where a glaring omission or a patent mistake or like grave error has crept into that judgment through judicial fallibility – see Document: '*Review Jurisdiction of Supreme Court of India*' (supra)."

55. We find no reason to depart from that principle in the present Application.

56. In the above cited case, it was also held as follows:

"...

The review jurisdiction of the Court cannot be exercised on the ground that the decision of the Court was erroneous on merit. That would be in the province of a Court of Appeal.

A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier.

A review proceeding cannot be equated with the original hearing of the case.

The purpose of the review jurisdiction is not to provide a back door by which unsuccessful litigants can seek to re-argue their cases.

The parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case or new versions which they present as to what should be a proper apprehension by the Court of the legal result. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted – *see* ***Hoystead v. Commissioner of Taxation (LR 1926 AC 155 at 165)***.**

A power to review is not to be confused with appellate power which may enable an appellate court to correct all manner of error committed by a subordinate court".

57. From those principles, it is clear that indeed not every error or mistake in a judgment will justify a review. An error which has to be fished out and searched will not suffice. It should be something more than a mere error.

58. Therefore, a review may be granted whenever the Court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter neither is the fact that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion a proper ground for review.

If the court reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, the court would be sitting in appeal on its own judgment which is not permissible in law. See **Angella Amudo** (Supra).

59. In the matter before us, we have carefully perused the Application for review and the well-argued submissions filed by both parties. It is our considered view that the Applicant has not satisfied the requirements for grant of the orders sought. It should be noted that the grounds for review are very specific as discussed herein. The Applicant herein has not demonstrated that he discovered new and important matter or evidence which was not within his knowledge, neither that there was an error apparent on the record.

60. In addition, the Court's intervention is not being sought to correct self-evident errors or mistake on the part of the Court, apparent on the face of the record, which do not require elaborate argument in order to be established. What the Applicant is asking this Court to do is to reverse a decision taken on basis of what he considers to be an incorrect exposition of the law and an erroneous conclusion on a matter on the basis of alleged misconstruing the law or improper exercise of discretion.

61. In a nutshell, we are of the firm view that if this Court were to exercise its power of revision on the foregoing basis it would have assumed appellate powers, which would be erroneous.

E. CONCLUSION

62. In the final analysis and for the reasons given above, this Application is dismissed in its entirety.

63. On the costs of the Application, Rule 111(1) of the Rules provides that "**Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order**". The Applicant has failed in all claims against the Respondent and shall therefore bear costs of the Application.

64. It is so ordered.

Dated, delivered and signed at Arusha this 21st day of March 2022.

Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE

Hon. Justice Dr Charles O. Nyawello
JUDGE

Hon. Justice Charles Nyachae
JUDGE