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LEGAL NEWS

4 June 2024



Principle of Finality of Litigation Reeched by the Court of Appeal in a Controversial Land Dispute

The Court of Appeal of Tanzania (the Court) recently delivered its ruling in Civil Application No. 264/01 of 2022 and dismissed the application for review emanating from the Court's decision in Civil Appeal No.166 of 2019. In this ruling, which involves a dispute over a property for more than two decades, the Court emphasizes on the principles that there is no room to raise new matters at the level of review, and that litigation must come to an end to avail litigants an opportunity to indulge in other productive endeavours.

Background of the Case

The First Applicant in Civil Application No. 264/01 of 2022 was the appellant in Civil Appeal No.166 of 2019, claiming to be the rightful owner of the suit property that was sold in a public auction, and the Second Applicant, acting through the First Applicant, was the highest bidder at a bid price of TZS 105M. Aggrieved by the sale, the first to fifth Respondents instituted a suit against the Applicants before the High Court challenging, among other things, the legality of the sale while they are lawful owners of the suit premises. The High Court ruled in favour of the Applicants and the Respondents appealed to the Court successfully. Consequently, the Court, in the impugned decision, declared the first to fifth Respondents the lawful owners of the property. Convinced that the Court's decision was surrounded by a manifest error on the face of the record and that the same was a nullity, the Applicants lodged an application for review before the Court.

Arguments Raised by Parties

The Applicants argued that the decision of the Court had errors occasioning miscarriage of justice to the Applicants and implored the Court to correct the same by review and thereby protecting the Applicants as bonafide purchasers. Further, the Applicants submitted that the law should protect a bonafide purchaser who purchases a property in an auction ordered by court or in exercise of powers under a mortgage. According to the Applicants, a bonafide purchaser is protected by law and is not affected by reversal or modification of a decree and cannot be blamed for any defect in title of the holder of the property auctioned.

On the part of Respondents, they submitted that the first ground of review was an open ground of appeal as it does not meet the test of

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About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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ground for review under rule 66(1) of the Court of Appeal Rules, 2009 (the Rules). Also, the purported ground for review manifests no error in compliance with rule 66(1) of the Rules. Additionally, the Respondents submitted that matter complained of in the grounds for review were decided and addressed in the impugned judgment and the Applicants were just seeking a second opinion of the Court, which is unacceptable. Moreover, it was argued that the Court had discussed all issues at length and made a decision on the same, hence the Applicants could not be heard on a review of the same issues.

Determination of Issues and Decision of the Court

In determining the points of controversy, the Court raised two issues, namely: (i) whether there is a manifest error on the face of the record and, if so, whether the said error resulted in the miscarriage of justice; and (ii) whether the impugned judgment is a nullity in terms of rule 66(1) (a) and (c) of the Rules.

In its ruling, the Court was on the view that the Applicants wanted the Court to have a second look at the evidence, peruse the record with a view to seeing whether the suit was timely filed. A second look at the evidence disqualifies the point as one for review. The Court made reference to the case of **Patrick Sanga vs. Republic, Criminal Application No.8 of 2011 (unreported)** where it was held that the review process should never be used as an appeal in disguise. The Court observed that there must be an end to litigation, be it in civil or criminal proceedings. A call to re-assess the evidence is an appeal through the back door. Eventually, the Court found no justification in the complaint and declined the invitation to review its previous decision.

Finally, the Court remarked that the Applicants and those who want to test the Court's legal ingenuity should understand that the Court has no jurisdiction to sit on appeal over its own judgments. The Court reechoed the principle that in any properly functioning justice system, litigation must have finality and a judgment of the final court in the land is final and its review should be an exception. The Court, therefore, found no justification in the Applicants' complaint and declined the application for review as the Applicants had no substance to trigger the Court to review the impugned decision.

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