IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MKUYE, J.A, SEHEL, J.A. And MWAMPASHI, J.A.)

CIVIL APPLICATION NO. 228/20 OF 2021

JOVET TANZANIA LIMITED..... APPLICANT

VERSUS

COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY (TRA)..... RESPONDENT

(Application for review from the decision of the Court of Appeal of Tanzania at Dar-es-salaam)

(Mkuye, Kwariko And Levira, JJ.A.)

dated the 30th March, 2021
in

Civil Appeal No. 217 of 2019

.....

RULING OF THE COURT

28th April, & 11th August, 2023

SEHEL, J.A

The applicant, Jovet Tanzania Limited, is inviting this Court to review its decision in Civil Appeal No. 217 of 2021 that dismissed the applicant's appeal with costs. The application is made under the provisions of section 4 (4) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and Rule 66 (1) (a) and (b) of the Tanzania Court of Appeal of Rules, 2009 as amended (the Rules) and it is supported by an affidavit of Braysoni Shayo, learned

advocate of the applicant from BRASS Attorneys. On the other hand, the respondent resisted the motion by filing an affidavit in reply duly sworn by Hospis Maswanyia, the respondent's legal counsel.

Briefly, the facts relevant to the present application are such that; the applicant, a sole agent of Bavaria was licenced to import and supply Bavaria beverages (the goods) in the United Republic of Tanzania. Between the month of September and November, 2014, the applicant imported the goods and stored at the bonded warehouse no. 570 (the bonded warehouse) pending payment of assessed duties and taxes. That bonded warehouse belonged to Modern Holding (EA) Ltd. On 2nd May, 2015 Modern Holding (EA) Ltd wrote a letter to the respondent seeking for an extension to warehouse the goods which was granted through TANSAD Reference Number TZDL – 14 – 1135887. Since the goods were stored for a long period of time, they started to develop flakes. Hence, the applicant wrote a letter to Tanzania Food and Drugs Authority and Kinondoni Municipal Council requesting inspection of the goods for destruction. After few days, the respondent reminded the applicant to pay the assessed custom duties and taxes of the goods. Having received the reminder letter, the applicant wrote a letter to the respondent seeking permission to declare the goods

abandoned as per section 56 of the East Africa Community Custom Management Act (EACCMA) so that they may be destroyed and thereafter the applicant could apply for remission of the custom duties and taxes. The respondent declined to allow abandonment on account that the goods were examined and complied with all requirements before they were cleared to the bonded warehouse thus import duties and taxes had become payable. Accordingly, the respondent required the applicant to pay the assessed custom duties and taxes.

Dissatisfied, the applicant unsuccessfully appealed to the Tax Revenue Appeals Board (the Board) and to the Tax Revenue Appeals Tribunal (the Tribunal). Following the dismissal of its appeal, the applicant appealed to the Court on the following three grounds of appeal:

> *"1. The Board erred in law to hold that the applicant's abandonment of goods without permission of the respondent was not valued and is not supported by the law.*
> *2. The Tribunal erred in law by holding that no abandonment of the goods and remission of duties and taxes by operation of the law for goods overstayed in the bonded warehouse if the goods are not commercially viable.*

3. The Tribunal erred in law by holding that, the appellant was liable to pay taxes and duties on the goods in dispute as they were not abandoned."

After hearing the submission of the counsel for the parties on the three grounds of appeal, the Court observed that the parties were at variance on whether the goods were abandoned and then determined each and every ground of appeal.

On the first ground of appeal, the Court revisited the provisions of sections 56 and 16 (3) of the EACCMA as well as Regulation 143 of the East African Community Customs Management Regulations, 2010 (the Regulations) and observed that the Commissioner has discretionary powers to permit abandonment of warehouse goods. However, the Commissioner may impose conditions on the permit for the abandonment of goods. The Court further observed that the Commissioner refused the applicant's application for abandonment vide a letter dated 5th January, 2016. At the end, it held that the applicant did not apply and get the Commissioner's permission to abandon the goods and the cited provisions of law do not suggest that there was abandonment of goods by operation of law or voluntarily by the owner.

It is pertinent to point out here that the applicant also contended in this ground of appeal that the refusal by the Commissioner to re-warehouse the goods, in terms of section 57 of the EACCMA, the goods were treated as abandoned. Having revisited the provision of section 57 of the EACCMA, the Court concurred with the Tribunal that such provision of the law relates to sale by public auction of the commercially viable goods which have not been re-warehoused and the distribution of the proceeds of the sale whereas in the applicant's case the goods were not commercially viable. At the end, the Court dismissed this ground of appeal.

In respect to the second ground of appeal, the Court found that the complaint was based on facts while section 25 (2) of the Tax Revenue Appeal Act, Cap. 408 (the Act) confers appellate jurisdiction to the Court on matters involving questions of law only. Despite making such observation, the Court went further to consider the ground and concurred with the concurrent findings of the two lower tribunals that although the law empowers the Commissioner to permit abandonment of goods subject to conditions as may be imposed by the Commissioner and since the Commissioner refused the applicant's request to treat the re-warehoused goods as abandoned, there was no abandonment of goods.

For the third ground of appeal, the Court concurred with the Tribunal that the applicant was liable to pay taxes and duties as the goods were not abandoned.

Still not satisfied with the outcome of its appeal, the applicant has now approached the Court again by way of review on two grounds. **One**, the decision of the Court was based on errors of law on the face of the record resulting into miscarriage of justice to the applicant. **Two**, the applicant was wrongly deprived an opportunity to be heard before the Court when it held that the applicant's second ground of appeal raises pure factual matters which the Court had no jurisdiction to entertain. After filing the application, the applicant filed the written arguments as required by Rule 106 (1) of the Rules. Similarly, the respondent filed the reply submissions as per the provisions of Rule 106 (7) of the Rules.

On the date when the application was called on for hearing, Mr. Braysoni Shayo, learned advocate appeared for the applicant, whereas, Mr. Hospis Maswanyia, learned Senior State Attorney appeared for the respondent.

Upon taking the floor, Mr. Shayo adopted the notice of motion, the supporting affidavit and written arguments. He then highlighted the alleged

errors apparent on the face of the judgment of the Court by referring us to several pages of the Court's decision.

First, he referred us to page 11 of the judgment and contended that the Court picked a wrong issue when it said that *"the crucial issue for our determination is whether goods under consideration were abandoned."* He submitted that the parties were not disputing on the issue of abandonment but rather they were wrangling on payment of custom duties and taxes for abandoned goods and it was for that reason, he said, no witness was called by either party to testify on points of facts. He contended that the issue which the parties were at variance before the Board was on payment of custom duties and taxes for abandoned goods as correctly reflected at page 4 of the judgment of the Court. He added that if the Court had considered the full legal effect of the letter dated 5th January, 2016 it could have discovered that the condition imposed by that letter for the respondent to accept the abandonment of the goods was illegal and the refusal had no legal effect.

Secondly, he referred us to page 18 of the judgment and contended that the Court erred in law when it held that the issue argued by the applicant in the appeal was new issue not raised before the Board while it

was the same issue. He pointed out that the issue before the Board was whether the applicant was liable to pay custom duties and taxes in respect of abandoned goods and the issue before the Court was whether there is any law which empowers the Commissioner to charge duties and taxes on goods that are still in the customs control. To him, these issues are one and the same because, he said, the liability of the applicant to pay custom duties and taxes in respect of abandoned goods which were still in the bonded warehouse is the same thing as to ask whether the respondent has legal power to levy or charge custom duties and taxes on the goods which were destroyed while still in the customs control (bonded warehouse).

Lastly, on the alleged apparent error, Mr. Shayo adverted us to page 19 of the judgment where the Court held that the applicant was liable to pay custom duties and taxes. He profusely argued that the holding is against the express statutory provisions of the law which bars the respondent to impose taxes for goods which are still under customs control, that is, not yet crossed the custom frontiers. In reliance to his submission, he cited to us the provisions of sections 56 and 57 of the EACCMA, sections 47 and 48 of the Customs (Management of Tariff) Act, Cap. 403 and item 5.8.2 (a) of the

EAC Customs Valuations Manual – A Guide to the Customs Valuation of Imported Goods in the East African Community.

On the ground that the applicant was deprived of an opportunity to be heard, Mr. Shayo referred us to page 16 of the judgment where the Court said that in terms of section 25 (2) of the Act, it had no jurisdiction to hear and determine grounds raising pure factual matters. The learned counsel argued that the issue whether the second ground of appeal raised factual or point law was raised by the Court, *suo moto,* while composing a judgment. He added that the record is clear that the Court did not give an opportunity to the parties to address it on that issue.

With the above submission, Mr. Shayo urged the Court to allow the application with costs.

In his reply submission, Mr. Maswanyia adopted the affidavit in reply and written arguments in opposition of the application. He informed the Court that he will make the reply submission in the same manner submitted by counsel for the applicant.

Responding to the argument that the Court picked a wrong issue, the learned Senior State Attorney argued that the issue whether the goods were

abandoned or not was central before the Board, Tribunal and the Court. To cement his argument, he took us through pages 3, 4, 5 and 7 of the judgment where the Court summarized the facts and issues which were before the Board and the Tribunal. He also referred us to the first and second grounds of appeal which were raised and argued before the Court during the hearing of the appeal.

Responding to the argument that the issue before the Board and the Court was one and the same, the learned Senior State Attorney supported the observation made by the Court. He contended that the issues were different as the issue *'whether the applicant was liable to pay custom duties and taxes in respect of the abandoned goods'* and *'whether there is any law which empowers the Commissioner to charge duties and taxes on goods which are still in the customs control'* are covered under different provisions of law, that is, sections 56 and 57 of the EACCMA respectively. It was therefore his submission that the two issues were not the same.

Responding to the complaint on the finding of the Court, the Senior learned State Attorney argued that the complaint that the Court erroneously interpreted the provision of the law does not amount to an error apparent on the face of record as it invites the Court to re-hear the arguments already

considered by the Court on appeal. Nonetheless, he went further by responding that as the gist of the dispute between the parties was whether the goods were abandoned or not, the Court held that the applicant was liable to pay custom duties and taxes because the goods were imported while fit for human consumption and only expired after the applicant had failed to pay the assessed taxes in time.

Lastly, Mr. Maswanyia responded to the complaint that the parties were not accorded the right to be heard on the issue raised by the Court. At the outset, the learned Senior State Attorney readily conceded that the Court stated at page 16 of its judgment that it had no jurisdiction to determine matters of fact in terms of section 25 (2) of the Act, but he argued that the statement was an *obiter dictum* because, he reasoned, the Court went ahead to determine the second ground of appeal on merit as it can be gathered at page 17 of the judgment. In that respect, he contended, there was no right that was abrogated.

At the end, the learned Senior State Attorney impressed upon the Court to dismiss the application with costs.

When asked by the Court, whether the goods crossed the border, he replied that they were still in the bonded warehouse.

Mr. Shayo re-joined that as the learned Senior State Attorney conceded that the goods did not cross border, the Commissioner had no authority under the law to impose taxes and duties on goods that have not yet crossed the border controls. He further contended that, if the goods were found unfit for human consumption, the respondent ought to have made an order of re- exportation of goods but not to impose taxes on uncleared goods. He therefore reiterated his earlier submission and urged the Court to allow the application with costs.

We have carefully examined the grounds raised by the applicant in the notice of motion together with the supporting affidavit and submissions of both parties and noted that the applicant pegged his application for review under sub-rule (1) (a) and (b) of rule 66 of the Rules where he alleged that the judgment of this Court dated 30th March, 2021 was based on manifest error on the face of the record that resulted into a miscarriage of justice and that the applicant was wrongly deprived of an opportunity to be heard. Therefore, the issue that stands for our determination is whether the

grounds raised by the applicant fits perfectly within the ambit of review envisaged under the provisions of Rule 66 (1) (a) and (b) of the Rules.

We shall start with the complaint that there is an apparent error on the face of the judgment. Mr. Shayo argued that since the Court started with a wrong footing when it said, at page 11 of its judgment, that *"the crucial issue for our determination is whether goods under consideration were abandoned"* then that is an error apparent on the face of record. In essence, this complaint is not a ground for review, so to speak. A patent, manifest and self-evident error does not require elaborate submission for it to be established as it was done by Mr. Shayo. In trying to impress upon the Court to find that there was manifest error, Mr. Shayo travelled through the record that were before the Board, then the Tribunal, the memorandum of appeal and the letter dated 5th January, 2016 to drive home his argument that the issue before the appeal was not about abandonment of goods but rather whether the applicant had to pay custom duties and taxes on abandoned goods.

Here, we wish to echo as to what entails manifest error. In the case of **Chandrakant Joshubhai Patel v. The Republic** [2004] T.L.R. 218, the Court adopted the excerpts from MULLA, 14th Edition and said that:

"An error apparent on the face of the record must be such that 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.... A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is not ground for ordering review.... 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..."

With the above definition, we find the complaints under grounds 1.2 and 1.3 are misconceived. We therefore dismiss them.

We now turn to the complaint that the Court erred in holding that the issue before the Court was different from the one raised before the Tribunal. Going by the submission of Mr. Shayo, it is clear that the applicant is not satisfied with the findings of the Court, and that, it now wants us to exercise our review jurisdiction to alter the findings we made in the appeal. It be understood that the purpose of review is to correct errors and not substitute a view. With that in mind, we are satisfied that we have no jurisdiction to entertain the applicant's invitation otherwise we will be sitting in appeal

against our own decision, which is highly improper. The Court emphasized this point in the case of **Chandrakant Joshubhai Patel v. Republic** (supra) wherein it referred to the decision of the Supreme Court of India in the case of **Thungabhadra Industries Ltd. v. State of Andhra Pradesh** (1964) S.C. 1372 that:

> *"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent errors."*

Ground 1.7 also fails.

In the same vein, the complaint that the Court condemned the applicant to pay custom duties and taxes for the goods which were still in the bonded warehouse amounts to dissatisfaction of the Court's decision. The issue as to whether the goods were abandoned or not was raised in the appeal, heard and thoroughly determined by the Court. To bring again the same complaint in the application for review is a total misconception of the underlying principle governing review. The primary purpose of review is to address irregularities of a decision which has caused injustice to a party and not the merits of a decision. We are therefore satisfied that, grounds 1.1, 1.4, 1.5 and 1.8 are baseless.

Lastly, we turn to the complaint that the applicant was denied a right to be heard on the issue raised by the Court when it was composing the judgment without giving parties a right to address it on that issue. Mr. Shayo contended that the Court declared the second ground of appeal raised factual issues which it had no jurisdiction but parties were not invited to address it. We need not be detained much on this because the record is clear that after having stated that in terms of section 25 (2) of the Act, the Court had no jurisdiction to entertain ground raising pure factual matters it went further to determine it. This is clearly reflected in the judgment of the Court where at page 16 it said:

> *"However, the above position of the law notwithstanding, we have observed the following in relation to this complaint...."*

We are therefore firmly of the view that such statement was made by passing. It was an *obiter dictum* as the ground was later on fully considered and determined by the Court. Accordingly, we find that grounds 1.8 and 2 are devoid of merit.

At the end, we are of the settled position that, the applicant in this application has failed to sufficiently demonstrate before us any justifiable

reason for us to review our judgment. Consequently, we are constrained to dismiss this application with costs.

DATED at **Dar es Salaam** this 10th day of August, 2023.

R. K. MKUYE
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 11th day of August, 2023 in the presence of Mr. Bivery Lyabonga, learned counsel for the applicant and also holding brief of Mr. Hospis Maswanyia, learned advocate for the respondent, is hereby certified as a true copy of the original.

S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL