

DECIDED
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3. .. ready to pay the first instalment on 13/4/95, shs. 2,500,000/- followed a monthly instalment of shs 300,000/- w.e.f. July 1995. Plaintiff: I have no objection. I pray the remaining balance be paid on interest. Both parties have consented for the Payments on instalment as shown above. The same to be fulfilled as prayed. Sgd. D.D. Malamsha -DM 10/4/95 I certify that this is a true copy of the original. Sgd D.D. Malamsha., DM 11/4/95: 1 Mr. Byabusha tells me that there is no consent of anything there

and, that is why he is, appealing against the ruling of the trial Court

- ruling which is dated 26/1/95. I will not interpolate, on the matter there is no need. The proceedings I have quoted above, have ended into consent orders: The law provides, that there cannot be an appeal against consent orders, unless there is an allegation (and it must be a serious allegation) that the consent orders were obtained by fraud. In fact, the consent orders given on 10/4/95, even go further to give modalities for the payment. It was payment by instalments. Again, the law has it that an order providing for payment by instalment is not appealable (see the case of *£. [2] i. d. So. 9*; Haji DSM Civil Appeal No 30 of 1967 -- not aware if reported: George CJ, was interpreting Order 20 Rule 11 of Civil Procedure Code 1966) If I may go back to say something more on consent orders, In *Hirani v. Iassam* (1952) 1 XLX EAC 131 there is a passage from Seton on Judgments and Orders, 7th Edition Vol 1; page 124 which, the Court of Appeal for Eastern Africa has approved. The passage says: "If an order made in the presence and with the consent of Counsel is binding on all the parties to the proceedings or on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the Court or if the consent is given without sufficient material facts, or in misapprehension or in ignorance of material facts or in general for a reason which would enable the court to set aside an agreement." Finally, the Civil Procedure Code 1966, in Section 7(J), (3) provides as follows: It says that No appeal shall lie from a decree passed by the Court with the consent of parties. After saying that I am of the settled view that the appeal by Mr Byabusha is not tenable at law. It is struck out as incompetent in law. It is struck out with costs. SGD. J. E.C. M1. SANJHE 12th October 1995 JUOOE Appellants: Mr Byabusha - absent I. Respondent: present in person. Now, I want to make the following observations about review, and these are observations made by R.D Ag. 3. Iwala, in 11 Tit. Q. v. - a Q. mmezti: i, - 3rd edition: The author says: "It is well settled that the power to review is not an inherent power of a judicial officer but such a right can only be conferred by statute. If so, 5. A review is practically the hearing of an appeal by the same officer who decided the case; 1. The judge cannot set aside an order made by another Judge of the same court, although it may be wrong; 1. A court is not entitled to review its order without notice to the other side. 11 ll - Discovery of fresh evidence is not ground for review in second appeal; An error of law is not sufficient reason - Any other sufficient reason must be taken except as is with the clauses proceeding. a 11 -- The person who wants review should at least prove strictly the diligence he claims to have exercised. And also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive nearly conclusive of the matter. The application for review cannot succeed on the ground of discovery of new and important matter or evidence which after exercise of due diligence, could not be produced at the time of passing the decree. 11. II The ground for review must be something which existed on the date of the decision of decree and not subsequent to the date of the decree." A court has jurisdiction to decide wrongly. 11 Incorrect interpretation of law is not an apparent mistake on the face of the record. a

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- n_ An error of law is .IlQi sufficient reason. for granting review 1 . "-- A party ought not to be allowed in review to raise a case which was never raised at the trial .and on which no evidence was adduced" ii - --Ground for review must be in existence on the date of review" ,
11 - When appeal is preferred review is out of question and the parties' procedure is to apply . to the appellate court to admit additional evidence" n - When an application for review is ordered, the judgment sought to be reviewed is not set aside, but only held in suspense until the case has been re-heard. 11 . It is, however, important to know exactly what in law is review and what in law is a revision. The two are not interchangeable nor similar. Now, in the instant application before me, a review would only lie to me if there is an error apparent on the face of the record in my ruling dated 12/10/95 I see none in the record. If by way of postscript: The gist of my ruling made on 12/10/95 is that there could not be an appeal from the proceedings of the lower court, as on 10/4/95 both parties had recorded a consent settlement. And that if that was so, then there could be no appeal unless there is strict proof that the consent order was arrived at by fraud. That is the fact, and one would expect that this hard fact communicated to Tarime District Council by its advocate. It may not be out of place if I could quote some observations made by Mr Mark Bomani, the Chairman of the Legal Task Force in a speech Mr Bomani was presenting the Report of the Task Force to the Minister of Justice and Constitutional Affairs on 15th March 1996. In saying something about advocates and the unpalatable aspect of their work, he said: ~ \ , \ . '\ , \ • I 7. ' ' '-.....I ' - If " ""~-. ' l-.. . ,, ' ... ,) if:
- 7 - Advocates have to remember that they are officers of the Court, firstly so, their main duty is to advance the cause of justice! Their responsibility to their clients comes second. Advocates must advise their clients. ' ' fr~L2!12-E.C?...\$if~v.e t:_he~~q√i2e t);tat ~ey think t~Lli~ t()_h~ (o ~ supplied) Having said all that,I have said, I am satisfied that this application is devoid of any merit. f ' It is dist;is~~costs. ,,,,~, ~ . \Jl. }_ j; ; . ----,-.... . ~. . ,_. •~!~/_...f;::~l• .. • r> Is.: :;~ ~ i~). b? i~"'';/~~' . , , ~, \" 'l-' ;it_..1.' ~.... . ' ' ,,1_-;:- / . . _____,,,' i >4->I~ ~ "0 ,• .l;-1; \ • •;ii;~-!(-!). , r . !¥;&-~, i~};l / ~i . : -,/'"i ~ -. .. , .
- ,, i ,,,,; ...-:, , T !,T MWANZA JO i:J. CO MASANGIIE 16th May 199 ,, . ~ 4 " 1 /(,~j_ . . JUIXiE \>~ / I -- Parties: Absent:.,.,.,.,., , . ,,:/- ~ \, / - " ,

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