

TANZANIA / JUDGMENT

chacha kiguha others vs general manager african barrick gold ltd 2023 tzca 17827 14 november 2023

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IN THE COURT OF APPEAL OF TANZANIA AT MWANZA (CORAM: LILA. J. A.. SEHEL, J.A. And LEVIRA. J.A.^ CIVIL APPLICATION No. 338/08 OF 2023 CHACHA KIGUHA..... 1st APPLICANT NEEMA CHACHA..... 2nd APPLICANT BHOKE CHACHA (a minor by his next friend CHACHA KIGUHA)..... 3RD APPLICANT KIGUHA CHACHA (a minor by his next friend CHACHA KIGUHA)..... 4TM APPLICANT MOTONGORI CHACHA (a minor by his next friend NEEMA CHACHA).....5TM APPLICANT SURATI CHACHA (a minor by his next friend NEEMA CHACHA)..... 6TM APPLICANT VERSUS GENERAL MANAGER AFRICAN BARRICK GOLD LTD.....RESPONDENT (Application for Review of the decision of the Court of Appeal of Tanzania at Mwanza) (Lila, Sehel, Levira, J3.A) dated the 28th day of November, 2022 in Civil Appeal No. 99 of 2019 RULING OF THE COURT 10th & 14th November, 2023 LILA, J.A: This is an application for review. The applicants, who are members of the same family, have moved the Court by way of a notice of motion taken under section 4(4) of the Appellate Jurisdiction Act (the AJA) and i Rules 66 (1) (a) and (b), (3), (6) and 48(1) and (2) of the Tanzania Court of Appeal Rules, 2009, (the Rules), to review its order dated 28th November, 2022 in Civil Appeal No. 99 of 2019. The notice of motion is supported by two affidavits deposed by Chacha Kiguha (the 1st applicant) and Neema Chacha (the 2nd applicant). As next friends, the 1st applicant also represents Bhoke Chacha (the 3rd applicant) and Kiguha Chacha (the 4th applicant) while the 2nd applicant represents Motongori Chacha (the 5th applicant) and Surati Chacha (the 6th applicant). In substance, the applicants are not happy with the aforesaid order which granted the respondent's prayer to serve them personally with the memorandum of appeal and the record of appeal. Therefore they are now seeking for review of the same and strike out Civil Appeal No. 99 of 2019. In the notice of motion, the applicants have fronted these grounds to be the basis of their application: - "1. That, the application was based on manifest errors on the face of the records resulting in the miscarriage of justice as the Court decided to hear an application to serve us memorandum of appeal for Civil appeal No. 99 of 2019, without giving us the right to be heard, whereas while the applicants were served with summons of hearing of the appeal, but the Court determined the application which

was not served on the party of the applicants herein, hence the decision was reached without applicants herein being heard.

2. That the case which was before the Court was Civil appeal No. 99 of 2019 but the decision which was given on records shows to be Criminal Appeal No. 99 of 2019.
3. That, the applicants were wrongly deprived the right to be heard, for the application which was supposed to be heard in a prepared manner, was heard within appeal and the decision went against its own decision delivered on 13th May, 2022 through Civil Application No. 217/08 of 2019, where it was decided that the records of notice (sic) of appeal was not properly served on our part.
4. That, the decision which was given, was procured by fraud on the part of the respondent herein." Before proceeding any further, we find it apposite, albeit briefly, to narrate the facts, which are uncontroverted by the parties herein in their respective submissions, that triggered institution of this review application. They are to this effect: That the applicants were successful parties in Civil Case No. 9 of 2013 instituted in the High Court of Tanzania (Mwanza Registry), a suit they instituted claiming for various reliefs arising from health problems they sustained from the respondent's activities which amounted to a breach of duty of care. Among other reliefs granted, a colossal amount was awarded as damages to each of the applicants which are, however, not relevant here. Suffice it to say that the decision aggrieved the respondent. The quest to have the appeal heard by the Court is yet to bear fruits as it has met several snags leading to multiple applications being lodged by the respondent before the Court. Both parties agree, too, that the respondent, under Rules 4(2) (a), 48(1) and (2) and 97(2) of the Rules, lodged Civil Application No. 217/08 of 2019 seeking for leave to serve the applicants with memorandum of appeal and record of appeal within time to be set by the Court giving two reasons for failure to do so. One, the applicants were yet to be served with a notice of appeal hence they could not lodge in Court the address for service in terms of Rule 86(1)(a) and (b) of the Rules which also made it impossible for them to be served with memorandum and record of appeal under Rule 97(1) of the Rules and, two, that they tirelessly struggled to serve the applicants with memorandum and record of appeal on their last known address without success. After hearing the parties, the Court, in its decision (Ruling) rendered on 13th May, 2022, dismissed the application holding that as the respondent had failed to comply with Rule 97(1) of the Rules which enjoins the appellant to serve the respondent with a copy of memorandum of appeal and the record of appeal within seven days after lodging in Court such documents, then she could not invoke the provisions of Rule 97(2) of the Rules and that the later Rule, to borrow the words used in the ruling, does not provide that where it becomes difficult or impossible to effect service of the memorandum and the record of appeal under Rule 97(1) then such a party facing difficulty may apply from the Court for orders to effect the service under sub-rule (2) of Rule 97 of the Rules. Finally, the Court held that Rule 97(2) was quoted out of context hence refused to grant the order sought of serving the applicants with the memorandum and record of appeal. It is noteworthy, that the applicants, in the present application, banked their

arguments on the above refusal to assert that the respondent could not, without having first successfully challenged the Court's order in Civil Application No. 217/08 of 2019, once again, re-apply for the same order before the Court sitting on Civil Appeal No. 99 of 2019 and that the Court was wrong to grant such an application. We shall come to this and deliberate on it at a later stage of this ruling. 5 As was the case in Civil Appeal No. 99 of 2019, the 1st and 2nd applicants appeared in person before us and had no representation whereas, Mr. Faustin Anthony Malongo, learned counsel, appeared before us to represent the respondent. Both sides had lodged written submissions which they adopted as part of their arguments before us. Before us, in their respective affidavits in support of the application and in their joint written submission, the applicants, after consolidating grounds 1 and 3, contended that after the respondent was, on 13th May, 2022, refused permission to serve them with memorandum and record of appeal by the Court in Civil application No. 217 of 2019, the Court's decision to entertain and grant an application to serve them with such documents during hearing of Civil Appeal No. 99 of 2019 was wrong and denied them the right to be heard which is a violation of the principles of natural justice. They also contended that the application was entertained due to the fact that the respondent's counsel misled the Court for not disclosing that a similar application was earlier on refused by the Court. Submitting further, they argued that, we quote: - "The applicant(s) being lay person(s) could not easily grasp what the counsel for the respondent herein was addressing the Court, because to our understanding on that particular date he was supposed to inform the Court of the decision of 13th May, 2022 with regard to Civil application 217/08 of 2019, which dismissed the application of serving us with record and memorandum of appeal hence he was supposed to withdraw Civil Appeal No. 99 of 2019 and not come up with an unfounded application and make the Court to determine the matter which was already determined." To cement their arguments, the applicants referred us to the case of *Blay vs Pollard* 1930 1KB 311, EX B 8356 S/SGT Sylvester S. Nyanda vs The Inspector General of Police and the Attorney General, Civil Appeal No. 64 of 2014 and *Said Mohamd Said vs Muhsin Amir and Muharami Juma*, Civil Appeal No. 110 of 2020 (both unreported) which insist on upholding the right to be heard and the consequences of failure to do so. In respect of ground 2, the applicants argued that the decision scheduled for hearing on 28/11/2022 and the records to be served to them were titled Criminal Appeal No. 99 of 2019 which shows that there were manifest errors on the face of the record which need to be reviewed. The applicants, lastly, urged the Court to find that the decision (order) in Civil Appeal No. 99 of 2019 rendered on 28/11/2022 was procured through fraud hence should be nullified giving as a reason that: "...because the application with the same characteristics was dismissed on 13th May, 2022, and counsel for the respondent herein was aware of the said decision but out of fraud and bad intention to mislead this Court he never disclosed the fact that the said application was dismissed by this Court hence this Court had no jurisdiction to entertain the same." The applicants, further, cited section 9 of the Civil Procedure Code (the CPC) which bars entertaining a matter which was already heard and determined hence *res judicata*. In addition to the written submission, in her oral submission before us, the 2nd applicant showed her surprise to see that the respondent relies on a decision in Civil Appeal No. 99 of 2019 which has only three pages as

opposed to their decision in Civil Application No. 217/08 of 2019 which had 18 pages. On our prompting as to what was decided by the Court in Civil Application No. 40/08 of 2019 referred to by the Court in its order in Civil Appeal No. 99 of 2019, which is the subject of the review application, 8 neither of the applicants was able to remember well as they had no copy of it. In turn, Mr. Malongo strongly opposed the application. While he readily admitted that Civil Application No. 217/08 of 2019 was lodged on 30/4/2019 before the applicants were served with the notice of appeal so as to move the Court to order that the applicants be served with the memorandum and record of appeal which was dismissed by the Court on 13th May, 2022, he submitted that the application he lodged on 14/1/2019, seeking for extension of time within which to serve a notice of appeal on the applicants which was registered as Civil Application No. 40/08 of 2019 was granted by the Court. That it was pursuant to the Court's order in Civil Application No. 40/08 of 2019 that the applicants were served with a notice of appeal on 7/11/2019 through their advocate one Febian Mayenga of Right Mark Attorneys. It was Mr. Malongo's deposition in his reply affidavit that before the Court made an order that the applicants be served with the memorandum and record of appeal in Civil Appeal No. 99 of 2019, it satisfied itself that the respondent was granted extension of time to serve the applicants with a notice of appeal by tracing the order in Civil Application No. 40/08 of 2019. Following this, Mr. Malongo submitted, the applicants admitted that they were served with the notice 9 of appeal through their advocate and that it was then when he prayed to be allowed to serve the applicants with memorandum and record of appeal which prayer they did not contest resulting in the Court's uncontested order, the subject of this review application. He added that, it was on account of the applicants being served with the memorandum and record of appeal that applicants lodged the present application. He denied that the Court's order was procured by fraud and that there is manifest error on the face of the record which resulted in miscarriage of justice. He relied on our decision in the case of George Mwanyingili vs Director of Public Prosecutions, Criminal Appeal No. 27/6 of 2019 (unreported) and discounted all the cases cited by the applicants in this respect as being distinguishable and inapplicable in the circumstances of this case. In his further response to the contentions by the applicants that the application to serve the applicants personally with the memorandum and record of appeal was not made formally and the applicants were not accorded the right to be heard, Mr. Malongo submitted in his written submission that the Court has powers to grant the prayer which was made informally when the case was called on for hearing in terms of Rule 48(3)

- (a) of the Rules as reflected in the order. 10 In respect of the order showing it to be Criminal Appeal instead of Civil Appeal, Mr. Malongo acknowledged existence of such anomaly but he was quick to argue that the said error was instantly corrected by the Court it being a typing error and the parties were served with a correct copy which he annexed to the reply submission. It was his view that such an error cannot be held to be an error on the face of the record. Submitting on the contention in the applicants' written and oral submissions that, as lay persons, they could not easily grasp the prayer that was made of serving them with the memorandum and record of appeal, Mr. Malongo argued that the assertion does

not feature in the applicants' respective affidavits supporting the application hence they cannot be heard raising the same in their joint written submissions and orally before the Court as that is against the principles of pleading which provides that parties are bound by their own pleadings. Besides, he submitted, a reading of the order, proves the contrary as it shows that they understood and responded to the prayer by not resisting it. Last to be addressed by Mr. Malongo was the argument that the prayer by the respondent counsel was *res judicata* hence untenable in terms of section 9 of the CPC. He submitted that the CPC does not apply in the conduct of matters in the Court in terms of section 2 of the CPC 11 which categorically defines court as the High Court, courts of resident magistrates and district courts only. Without hesitation, we find Mr. Malongo's submission to be the proper position of the law and we endorse it. In all and on the basis of the above submissions, he refuted the contention that he misled the Court and the contention that the applicants were denied the right to be heard and prayed the application be dismissed with costs. While there was no rejoinder submission from the 2nd applicant, the 1st applicant exercised his right to make a rejoinder by arguing that Rule 97(2) of the Rules obligates the Court and not the parties to ensure that parties are served with memorandum and record of appeal. We have with profound respect, given due consideration to the parties' averments in their respective affidavits and written and oral submissions in this application. As intimated above, before us is an application for review. As our starting point, we should point out clearly that review is an exception to the general rule that a determination of a matter by the Court is final and conclusive, public policy demands that litigations must have an end. The Court underscored that position in the 12 case of Patrick Sanga vs Republic, Criminal Application No. 8 of 2011 (unreported) that: - "The review process should never be allowed to be used as an appeal in disguise. There must be an end to litigation, be it in Civil or criminal proceedings. A call to re-assess the evidence, in our respectful opinion, is an appeal through the back door. The applicant and those of the like who want to test the Court's legal ingenuity to the limit should understand that we have no jurisdiction to sit on appeal over our own judgments. In any properly functioning justice system like ours, litigation must have finality and a judgment of the final Court in the land is final and its review should be an exception. That is what sound public policy demands" In the light of the above, review is primarily intended to address irregularities in the Court's decision which have caused injustice to a party and not to challenge the merits of a decision. In that accord, section 4(4) of the AJA and Rules 66 (1) (a) & (b), (3), (6) and 48(1), (2) of the Rules, vest the Court with power to deal with applications of this nature. The power is therefore not only limited but also restricted. To start with, section 4(4) of the AJA provides: - 13 "(4) The Court of Appeal shall have power to review its own decisions." We need not, therefore, overemphasize that review is limited to the Court's own decision and is restricted to the grounds outlined under Rule 66(1) (a) to (e) of the Rules. In a review application like the present one, the Court is therefore barred from looking at or re-assessing the evidence or considering anything beyond the judgment, order or decision sought to be reviewed. A successful review is, therefore, one in which discloses an error which is apparent on the face of the decision sought to be corrected and which is easily notable without resort to long process of reasoning or elaborate arguments to be

established. (See Chandrakant Joshubhai Patel vs Republic [2004] T.L.R. 218) Having laid down the above legal standpoints, we now proceed to gauge them against the applicants' grounds laid before this Court. According to the notice of motion, the applicants have pegged their grounds under Rule 66(l)(a) and (b) which state that: - "66.- (1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-

- (a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; 14
- (b) A party was wrongly deprived of an opportunity to be heard. The notice of motion shows, as well, another ground, that is ground 4, that the decision of the Court was procured by fraud on the part of the respondent which is a ground of review under Rule 66(l)(e) of the Rules. That sub-rule states: - "(e) the judgment was procured illegally, or by fraud or perjury." The issue for our deliberation is therefore whether the grounds advanced by the applicants are amenable to review. We propose to begin our deliberation with determining the issue raised in the course of the respondent's reply submission that, in the joint submission the applicants raised as a ground of review, that they failed to grasp the nature of the application made by the learned counsel for the respondent when addressing the Court due to their being laypersons which was neither indicated in the notice of motion nor deposed in their respective affidavits hence could not be introduced in the written submissions. The applicants, and in particular the 2nd applicant, maintained that assertion before us. We entirely agree with Mr. Malongo that such ground was wrongly introduced in the submission without it having been first reflected in the notice of motion or averred in the supporting affidavits. It is trite law that 15 notice of motion, affidavits and reply affidavits are, like a plaint and a written statement of defence, pleadings in which one party asserts its claims and reliefs and the other denies, to which both parties and the courts are bound and neither party is allowed to raise a different or fresh case without due amendment being properly made. (See Salim Sai Mtomekela vs Mohamed Abdallah Mohamed, Civil Appeal No. 149 of 2019 (unreported)). As the supporting affidavits which in essence constitutes statements made on oath and which are the basis upon which applications are decided are silent on such fact or ground, hence making it apparent that such fact was not pleaded, it is a new fact hence an afterthought. The rationale is that, in applications, submissions, be they oral or written, are elaborations or explanations on the facts averred in the affidavit or reply affidavit or evidence (documents) already annexed. That ground, too, fits in neither of the grounds provided under rule 66(1) of the Rules. For these reasons, we hereby therefore disregard this ground. Next is the contention that the copy of the order availed to the applicants showed that it was Criminal Appeal No. 99 of 2019 instead of Civil Appeal No. 99 of 2019 hence making it apparent that there was an error occasioning injustice warranting review of the Court's order. We 16 think, Mr. Malongo's submission resolves the issue quite sufficiently. That was, definitely, a clerical or typing error for which the Court is, under Rule 42(1) of the Rules, mandated to correct either on its motion or on application by the parties. As rightly submitted by Mr. Malongo, the Court noted the anomaly and instantly corrected it

and served the parties with copy with correct information as signified by the order the respondent attached in the reply affidavit. It is unfortunate that the applicants remained with the uncorrected copy. All the same, there was no assertion by the applicants that the correction made changed the substance of the order resulting in the miscarriage of justice. More so, that ground does not fit in any of the grounds upon which a successful review application may be laid. It is notable that there is no any judgment which is free from error and it is not every error warrants a review as the Court held in Chandrakant Joshibhai Patel vs Republic(supra) that: - "There will be errors here and there, inadequacies o f this or that kind, and generally no judgment can be beyond criticism. Yet while an appeal may be attempted on the pretext o f any error not every error will justify a review." Even if the error under discussion would not have been corrected by Court, in in our view, it would still fall in the category of orders which do not justify a review because it did not touch on or affect the substance and the Court was quite proper to correct it. Accordingly, we find no merit and reject this ground. In grounds 1 and 3, the applicants are seeking a review of the Court's order dated 28/11/2022 on the basis that they were not accorded the right to be heard. The relevant part of the Court's order under attack is this, we quote: - "It transpired at the outset that the applicant served the respondents with the notice of appeal through their then advocate Mr. Febian Mayenga in compliance with the Court's order in Civil Application No. 40/08 o f 2019. The 1st and 2nd respondents acknowledged service through the said advocate. However, they contended that the said advocate is no longer representing them following withdrawal of his services. In the circumstances, Mr. Malongo prayed under rule 97(2) of the Tanzania Court o f Appeal Rules, 2009 (the Rules) to serve the respondents personally with the memorandum o f appeal and the record o f appeal; a prayer which was not objected to by the respondents, who also admitted that they did not provide their address for service as required under rule 86(1) of the Rules. 18 On our part, we accede to the uncontested prayer by the counsel for the appellant. Consequently in terms o f Rule 97(2) o f the Rules we order the appellant to serve the respondents with the memorandum of appeal and the record o f appeal personally within fourteen (14) days from the date o f this order, we make no order for costs." From the wording of this part of the Court's order, it is aptly clear that the Court was seized with the Court's order in Civil Application No. 40/08 of 2019 granting the respondent extension of time within which to serve the applicants with a notice of appeal before granting the respondent's prayer to serve the applicants with memorandum and record of appeal. We therefore entirely agree with Mr. Malongo's submission in that aspect and endorse it as reflecting to the truth of the matter. However, the applicants have raised two issues which they claimed that they denied them a right to be heard: -

1. That the Court entertained an application for which its (sic) copies were not served on them for an order to serve them with memorandum o f appeal and record o f appeal when it was entertaining an appeal\ and

2. That the Court's order issued contradicted its earlier order issued in Civil Application No. 217/08 of 2019. 19 On the rival side, Mr. Malongo submitted that the prayer to serve the applicants with the memorandum and record of appeal was made informally in the course of hearing which is permissible under Rule 48(3)
- (a) of the Rules which prayer was not resisted by the applicants leading to the order being issued by the Court. As for the second limb, he argued that his application to serve the applicants with the memorandum and record of appeal was refused by the Court in Civil Application No. 217/08 of 2019 because the applicants were yet to be served with the notice of appeal but upon being granted extension of time to serve them with a notice of appeal by the Court in Civil Application No. 40/08 of 2019, he served the notice of appeal to the applicants through their advocate one Mr. Febian Mayanga. He said, as the applicants admitted that service, he applied/prayed to the Court to serve the applicants with the memorandum and record of appeal personally as they had parted ways with Mr. Mayenga, their former advocate which prayer met no resistance from the applicants as per the Court's order. In the circumstances, he argued, the applicants who were present in Court and offered no resistance to his prayer, they were heard and cannot now complain that they were not heard. 20 We, on our part, find no difficulty in resolving the two issues. In the first place, we agree with the applicants that on that day it was the appeal (Civil Appeal No. 99 of 2019) which was set for hearing and not an application. But, as was rightly argued by Mr. Malongo, the applicants were present in Court on 28/11/2022 when Civil Appeal No. 99 of 2019 was called on for hearing and the Court's order vividly shows they were involved in the proceeding and they expressly did not object to the prayers made by Mr. Malongo. Since, in law as expounded above and on the authority of *George Mwanyingili vs Director of Public Prosecutions* (supra) cited to us by the respondent's counsel, in review applications, the Court is restricted to consider its order only, then the order is clear that the applicants were heard before the order was issued. As to why no formal application was lodged the copy of which should have been served to the applicants, the order is clear that the prayer by Mr. Malongo was made orally and informally in Court at the time when the Court had set to hear the appeal. That is allowed under Rule 48(1) and (3) of the Rules. Besides, assuming that we have not disregarded the applicants' contention that due to being laypersons, they were unable to understand the nature of the prayer which Mr. Malongo made to the Court as quoted above, that contention would amount to a concession that they were present in Court and heard the prayer being made but they could not 21 follow it. It was however not disputed that they were present in Court on that day. We do not think this argument holds water as in most cases, in cases involving laypersons, the Court takes time to elaborate to the lay parties on the matter before the Court. We see no reason and nothing was said by the applicants why they did not seize the opportunity to seek clarifications from either the Court or from the learned counsel for the respondent before making a response. All said this ground bears no substance that warrants a review. We reject it. We shall deliberate on the second limb relating to contradictory orders when discussing ground 4 of review touching on fraud on the part of the respondent in procuring the Court's order. Fraud on the part of the

respondent in procuring the Court's order is taken by the applicants as a ground for review. The major contention here is that the respondent's learned counsel hid some information regarding refusal of his application to serve the applicants with the memorandum and record of appeal in Civil Application No. 217/08 of 2019. The applicants appear to think that it was only the counsel of the respondent who had an obligation to advance facts and information relevant and material to the just determination of the case. That is a misconception on their part and as they were present in Court, they had a reciprocal duty to reveal any information to the Court which they did not. They cannot be heard now throwing the blame to the respondents' counsel. Shielding themselves on the allegation of being laypersons do not help as it is trite principle of law that ignorance of law is no valid defence or excuse. Further, to disprove the allegation of dishonest or ingenuity, Mr. Malongo conceded that the said application was dismissed but for the reason that the applicants were yet to be served with a notice of appeal and went further to state that he had earlier on, in Civil Application No. 40/08 of 2019, lodged an application for extension of time within which to serve the applicants with the same which was later on granted by the Court. All the same, we are firm that neither a copy nor any arguments touching on the Court's decision in Civil Application No. 217/08 of 2019 featured when Civil Appeal No. 99 of 2019 was placed for hearing before the Court. The Court's order is silent on the existence of such case. It is a new matter and it is evidence brought up by the applicants in this review application in an attempt to establish fraud. Paying homage to the legal position and our earlier decisions on the jurisdiction of the Court in review applications, this ground is untenable it being not among the matters discussed or deliberated in the Court's order in Civil Appeal No. 99 of 2019. Any recourse to it or having a glance to it amounts to considering matters beyond the order of the Court sought to be reviewed and it will amount to involving the Court in a long process to realise the error. This is not allowed as we stated in *Tanganyika Land Agency Limited and 7 Others vs Manohar Lai Aggrawal*, Civil Application No. 17 of 2008 which was cited with approval in the case of *National Bank of Commerce Ltd vs Nurbano Abdallah Mulla*, Civil Application No. 207/12 of 2020 (Both unreported) that: - "Such an error must be obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points which there may conceivably be two opinions that a decision is erroneous in law is no ground for ordering a review. Thus, the ingredients of an operative error are that first\ there ought to be an error; second, the error has to be manifest on the face of the record, and third, the error must have resulted in miscarriage of justice [Emphasis added] With this proposition of the law, it is beyond the scope of review to consider the Court's decision in Civil Application No. 217/08 of 2019, that is to say, it is a contravention of the provisions of section 4(4) of the AJA. Like any other error justifying review, fraud must be vivid on the decision sought to be reviewed. In the circumstances, the contention that the respondent's counsel failed to disclose that his earlier application to serve the applicants with memorandum and record of appeal was dismissed finds no leg to stand on rendering the contention that the learned counsel procured the Court's order in Civil Appeal No. 99 of 2019 fraudulently misplaced. Consistent with the foregoing position, we can now resolve the second limb of grounds 1 and 3 of review deferred above that this

Court cannot examine the Court's decision in Civil Application No. 217/08 of 2019 so as to investigate whether or not the Court's decision (order) issued in Civil Appeal No. 99 of 2019 contradicted the Court's order issued earlier in Civil Application No. 217/08 of 2019. Not only that the Court's decision in Civil Application No. 217/08 of 2019 does not feature in the Court's order in Civil Appeal No. 99 of 2019, but also contradictions in the Court's decisions is not among the grounds for review under Rule 66(l)(a) and (b) under which the Court was moved or under any of the remaining grounds under Rule 66(1) of the Rules. And, we would add that a review application is not and cannot be used as a forum to reconcile conflicting decisions. We reject this ground, too. Before we conclude, there was an argument by the 2nd respondent that Mr. Malongo relied on a three-page Court's order while the applicants 25 have a Court's order with eighteen (18) pages. Such an assertion seems to suggest that a long decision carries more weight. We would simply hold that number of pages is irrelevant and that all decisions carry equal weight and effectiveness. For the foregoing reasons, the grounds for review are without merit and therefore this application for review fails. We dismissed it and taking all the circumstances of the case into consideration, we order each party to bear own costs. DATED at MWANZA this 13th day of November, 2023. S. A. LILA JUSTICE OF APPEAL B. M. A. SEHEL JUSTICE OF APPEAL M. C. LEVIRA JUSTICE OF APPEAL The Ruling delivered this 14th day of November, 2023 in the absence of the 1st Applicant who was notified through phone number 0767 653416, 2nd Applicant appeared in person unrepresented, 3rd, 4th, 5th and 6th applicant were absent and Mr. Michael Mlekwa Dudu holding brief for Mr. Faustine Anthony Malongo, learned counsel for the Respondent, is hereby certified as a true copy of the original. C. M. MAGESA DEPUTY REGISTRAR COURT OF APPEAL 26

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