IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 133 OF 2002
In the Matter of an Intended Appeal

ABBAS SHERALLY]
MEHRUNISSA ABBAS SHERALLY] ..... APPLICANTS
VERSUS
ABDUL SULTAN HAJI MOHAMED FAZALBOY .... RESPONDENT

(Application for extension of time to file application for revision from the decision of the High Court of Tanzania at Dar es Salaam)

(Luanda, J.)

dated the 16th day of August, 2002
in
Civil Case No. 17 of 1990

R U L I N G

MROSO, J.A.:

On 24th March, 1995 the respondent Abdul Sultan Haji Mohamed Fazalboy who was then plaintiff, obtained a decree of the High Court in Civil Case No. 17 of 1990 against the National Housing Corporation, which was the defendant in that case. The decree was in the following terms, which were granted:–

(i) (A) Declaration that the plaintiff is the legal Tenant-purchaser in respect of the suit premises

(ii) Payment (to the plaintiff decree-holder) of all rent collected by the defendant (judgment-debtor) from Mrs. Eva Muttahagarwa

(iii) Payment of Interest on decretal amount at the court's rate

(iv) Any other relief (s) that this honourable court may deem fit and/or .....

Two years later, upon application by Fazalboy (decree-holder) for execution of a decree allegedly dated 29th July, 2002 "for Eviction of Judgment Debtor its agents, assignees from the suit premises .....", the High Court (Luanda, Judge) ordered on 16th August, 2002 that execution be effected as prayed. The respondents in the application were shown as The Registrar of Buildings and Another.

On 5th November, 2002 Rhino Auction Mart Company Ltd. and Court Brokers who were armed with an eviction order came to the premises which the present applicants occupied with a view to evicting them from therein and "put the decree-holder in possession". The applicants were not party to the proceedings in the High Court Civil Case No. 17 of 1990 which resulted in the decree being sought to be executed. Furthermore, although the eviction order made

reference to a decree dated 15th February, 2002, there was in fact no decree of such a date.

The applicants felt aggrieved by the eviction order and the execution process against them but since, as already stated earlier, they were not party to any proceedings which led to a decree entitling the respondent to an order of eviction, they could not appeal and they considered that the only option was to apply for revision of Luanda, J's order of 16/8/2002. But such application was not made in time.

The applicants claim that they were not aware of Luanda, J's order until on 5th November, 2002 when the Court Brokers came with a view to evicting them. For that reason they have made the present application to this Court under Rules 3 and 8 of the CAT Rules, 1979, to be granted leave to apply out of time for revision of the High Court proceedings and consequent orders in Civil Case No. 17 of 1990.

The grounds in the Notice of Motion for the application are ten in number but I may say immediately that most of them are unnecessary at this stage because they appear to be grounds for the envisaged revision proceedings, if extension of time to apply is

granted. Unfortunately, because of those premature grounds a lot of unnecessary arguments and submissions by both sides consumed time during the hearing of the application. It has to be underscored, therefore, that the only issue before me is whether it will be appropriate to allow the applicants to apply for revision after the normal time for doing so had expired.

At the hearing of this application Mr. Kesaria and Mr. Marando learned advocates appeared for the applicants and the respondent respectively.

Although the respondent in his counter-affidavit said that he had been the registered owner of the suit premises since May, 1986, it appears that claim was contested until on 24th March, 1995 when the High Court declared him the legal tenant-purchaser thereof, as against the National Housing Corporation. On the other hand, the second applicant claimed she had been a tenant of the National Housing Corporation since 1991. Since the High Court declaratory decree of 24th March, 1995 was not challenged on appeal, there can be no doubt that if the second applicant had considered herself a tenant of the National Housing Corporation, she could no longer

properly continue to consider the National Housing Corporation as her landlord after the 24th March, 1995. The question then might be, did she become a tenant of the respondent after that date?

Mr. Marando argued that the applicants have all along been trespassers on the suit premises or, at best, tenants on sufferance with all the consequential legal implications.

As earlier indicated in this ruling the issues whether the applicants were tenants of anyone, or whether they were trespassers or tenants on sufferance are not properly before me. It may be that at the end of the day they might be proved to be mere trespassers with no rights at all to be given notice. But it is apparent that prior to 24th March, 1995 at least the second applicant was entitled to believe that she was a lawful tenant of the National Housing Corporation. If that was the case, there might be a presumption that the new landlord repossessed the premises and took over the tenants in it until their tenancy was properly terminated. These are all tentative presumptions subject to proof either way. But since there is no decision yet regarding the status of the applicants, are they not entitled to be heard before they are evicted from therein, if

at all? So, the question at this stage, in my considered view, is whether the applicants have a valid excuse for the delay to apply for revision of Luanda, J's order of 16th August, 2002.

It is established law that application for revision must be made within 60 days of the date of the decision sought to be revised. See **Halais Pro-Chemie v. Wella A.G.** [1996] TLR 269 and **NBC Holding Corporation and Another v. Agricultural and Industrial Lubricants Supplies Ltd. and 2 Others,** Civil Application No. 42 of 2000 (unreported).

Mr. Marando has argued that it cannot be true that the applicants were not aware of Luanda, J's order until on 5th November, 2002, which was some 71 days after the order. According to him the applicants at least knew way back in 1997 that the respondent was claiming to be the owner of the suit premises. This is evident from a written statement of defence dated 6th February, 1997 in a suit by the respondent against the applicants. Apparently, the suit never ended in a decision.

It can be said, however, that this document, the copy of written statement of defence, which is of 1997, is not proof that the

applicants therefore knew of Luanda, J's decision of 16th August, 2002 earlier than on 5th November, 2002. At any rate, in respondent's counter-affidavit it is stated in paragraph one (1) thereof that he admitted the contents of paragraphs 1, 2, 3, 4, 5, 7, 8, 11, 12 and 13 of the applicants' affidavit. Now, paragraph 13 of the applicants' affidavit says –

> 13. We have been made aware of the existence of the 16th August, 2002 High Court Order only on 5th November 2002 and after the period within which to apply for Revision to this Hon. Court had expired.

It seems plain, therefore, that the respondent does not in fact dispute the claim by the applicants of late knowledge of the order. As a result of that order against the National Housing Corporation the applicants were threatened with eviction without first being heard.

The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the

party been heard, because the violation is considered to be a breach of the principles of natural justice. For example, in the case of **General Medical Council v. Spackman,** [1943] A.C. 627, Lord Wright said:–

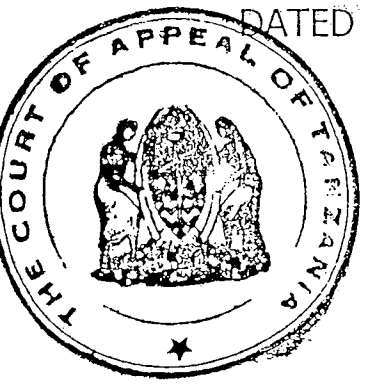
> If principles of natural justice are *violated* in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.

That principle of the law was followed with approval by the Court of Appeal of Eastern Africa in the case **Hypolito Cassiano De Souza v Chairman and Members of The Tanga Town Council** [1961] E.A. 377 and by this Court in **D.P.P. v. I. Tesha and Another** [1993] TLR 237.

In the case at hand I hold that until the applicants are adjudged by a competent tribunal to be trespassers or tenants on sufferance, they should be given opportunity to be heard before they are evicted from the suit premises. The reason for the delay to apply for revision is valid and undisputed and I allow the application for extension of time. The applicants should apply for revision of

Luanda, J's ruling and consequent eviction order within 14 (fourteen) days of this ruling. They will get their costs.

DATED at DAR ES SALAAM this 17th day of November, 2005.



J. A. MROSO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. M. RUMANYIKA)
DEPUTY REGISTRAR