



The application is supported by the affidavit of Ms. Hamida Sheikh, learned Advocate. Paragraphs 2,3,4, and 5 are relevant for our decision in this matter and we hereby reproduce them as under:-

- " 2. That, the applicant was an objector in objection proceedings filed in the Resident Magistrate's Court to challenge the sale of a house on Plot No. 113 Block "A" Temeke, Dar es Salaam a sale which was conducted with the Order of the Court, and the present respondent was the 4<sup>th</sup> respondent in the said application.*
- 3. That, after the inquiry, the Resident Magistrate's Court found for the applicant, and the respondent who was not satisfied with that finding, decided to challenge the decision by way of an appeal.*
- 4. That, subsequently, the respondent filed an appeal to the High Court of Tanzania to challenge the decision of the Resident Magistrate's Court on objection proceedings and the appeal was registered as Civil Appeal No. 274 of 2001.*

5. *That, the Respondent had no right of appeal and the Court was not competent to entertain it but the High Court went ahead and heard the parties on appeal. The said appeal was in a judgment by Madame Justice Oriyo (as she then was) delivered on 29<sup>th</sup> day of December, 2005"*

The applicant was represented by Mr. Richard Rweyongeza, learned Advocate and the Respondent was represented by Alhaj Said El-Maamry learned Advocate.

The central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.

According to Mr. Rweyongeza, the application for revision is intended to correct the error committed by the High Court in allowing an appeal which was filed by Respondent who was not a party to the suit in the Resident Magistrate's Court. Mr. Rweyongeza stated that, the Respondent was the objector in an objection proceedings filed in the said

court and was challenging the sale of a house on plot No. 113 Block A Temeke. Mr. Rweyongeza further stated that, though the Respondent had no right of appeal, the appeal was entertained and allowed by the High Court. Mr. Rweyongeza submitted that, this was a serious irregularity and the proceedings in the High Court were null and void. He made reference to the provisions of Order 21 Rule 57 – 61 of the Civil Procedure Code Cap 33 R.E. [2002].

Mr. Rweyongeza submitted that, where there is any illegality in the proceedings, that by itself constitutes sufficient reasons to grant extension of time. He brought to the attention of the Court the case of **Paul Juma v Diesel & Auto Electric Services Ltd and others** CA, Civil Application No. 54 of 2007 (unreported).

On his part, Mr. El-Maamry opposed the application. He conceded that the Respondent was not a party to the original case. Mr. El-Maamry submitted that, the applicant did not pursue his right diligently. The delay was inexcusable and that proceedings must come to an end. He stated

further that the issue of illegality was never raised before the High Court. According to him the applicant failed to take appropriate steps.

After taking in consideration what has been stated in the affidavits filed by both the respondent and the applicant and the submissions made by Counsel, we would like to make the following observations. Rule 8 of the Court of Appeal Rules 1979 confers the Court with wide discretionary powers to grant extension of time where there are special circumstances.

In the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 182 it was stated as under:

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".*

The position was reiterated in **VIP Engineering and Marketing Limited and Three Others v Citibank Tanzania Limited**, consolidated Civil Reference No. 6,7 and 8 of 2006 CA (unreported) where it was stated thus:

*"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time"*

In view of the fact that there is an alleged illegality on the procedure followed in respect of a decision arising from an objection proceedings, we find it appropriate to allow the application on the basis of this point so that the issue may be considered.

For the reason stated here in above, the application is granted. The application for extension of time to file an application for revision must be

filed within a period of fourteen (14) days from the date of delivery of this Ruling. Costs will be in the cause.

It is so ordered.

DATED at DAR ES SALAAM this 5<sup>th</sup> day of July 2010.

M.S.MBAROUK  
**JUSTICE OF APPEAL**

B.M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

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

  
J.S. MGETTA  
**DEPUTY REGISTRAR**