

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MASSATI, J.A., ORIYO, J.A., And MMILLA, J.A.)**

**CIVIL APPLICATION NO. 186 OF 2008**

**STEPHEN MAFIMBO MADWARY .....APPLICANT**

**VERSUS**

**1. UDUGU HAMIDU MGEZI  
2. SIMON HAMISI SANGA**

}

**..... RESPONDENTS**

**(Application from the decision of the High Court of Tanzania  
at Dar es Salaam)**

**(Ihema,J.)**

**dated the 6<sup>th</sup> day of August, 2003**

**in**

**Civil Revision No. 49 & 98 of 2008**

**RULING OF THE COURT**

9<sup>th</sup> February , 2015 & 29<sup>TH</sup> January, 2016

**ORIYO, J.A.:**

The applicant, Stephen Mafimbo Madwary, has, through the services of Mr. Herbert H. Nyange learned advocate, lodged a notice of motion under section 4(3) of the Appellate Jurisdiction Act, 1979, as amended by Act No 17 of 1993, moving the Court to revise the proceedings, ruling and order of the High Court of Tanzania, Dar es Salaam District Registry, dated 6/8/2003,

(Ihema J, rtd), in Civil Revision No. 49 of 1998. The grounds for the revision as stated in the notice of motion are as follows:-

*" The said proceedings, ruling and order are tainted with illegalities and improprieties in that they were knowingly procured by the fraud and misrepresentation of the applicant and that the ruling and order sought to be impugned purported to nullify previous High Court decisions on the administration of the estate of Hamidu Mgeni as well as in respect of the ownership of the property given against the respondent on 20<sup>th</sup> September 2001."*

Appearing before us at the hearing of the application were Mr. Herbert Nyange, learned counsel for the applicant and Mr. Cornelius Kariwa, learned counsel who appeared for the respondents.

Mr. Nyange took us through the protracted history of the property in controversy from 1989 when one Mwinyihamisi Hamidu Mgeni, was appointed to administer the estate of his late father, Hamidu Mgeni. Apparently due to some

misunderstandings among the beneficiaries of the estate, the matters reached the courts and in High Court Civil Appeal No. 7 of 1992, the late Rubama J, as he then was, heard the parties and made the following order on 2/7/1992:-

*" I accordingly order that the administrator of the estate proceed to sell the house by public auction and then divide what is obtained in accordance with the dictates of the Holy Quran. Any of the inheritors of the estate could take part in the bidding should he so find himself in that position."*

The sale of the property and the registration of the Certificate of Title in the joint names of the applicant and his wife, did not mark the end of squabbles among the beneficiaries; hence Civil Revision No. 49 of 1998 before Ihema J. (rtd.). By the Court's Ruling dated 6/8/2003, the application for revision was dismissed and the learned Judge reiterated the former order of Rubama J., that

*"the administrator of the estate proceeds to sell the house by public auction and divide the proceeds thereof according to the dictates of the Holy Quran. Any of the inheritors of the estate could take*

*part in the bidding should he so find himself in that position”.*

The learned High Court judge further directed that:-

*“the District Court of Ilala at Kisutu  
**supervise** the implementation of the  
order of this Court.”*

We have highlighted the word supervise because some quarters had misinterpreted the court order to mean that the District Court at Kisutu was ordered to sell the property in question.

The revisional powers of the Court are derived from section 4(2) and (3) of the **Appellate Jurisdiction Act**, 1979. Starting with section 4(2) thereof, it states:-

*“ The Court of Appeal shall, in addition to any other powers, conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the Court from which the appeal is brought.”*

Section 4(3) states:-

*“ Without prejudice to subsection (2) the Court of Appeal shall have the power,*

*authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High court. "*

Invoking the Court's revisional powers, in terms of section 4(2) and (3) of the Appellate Jurisdiction Act, we have been unable to find anything wrong to revise in the impugned order/proceedings of Ihema, J, as he then was.

However, we have noted some irregularities in the sale, in that the property in question was sold twice. Initially it was sold to and registered in the name of the applicant and his late wife. Subsequent thereto it was sold to the second respondent in an auction ordered by the District Court of Kisumu. However, it would be inappropriate for the Court to interfere at the state reached.

In the circumstances, we direct that the file be remitted to the High Court to investigate into the matter and make appropriate orders.

In the result, save for the observation we have made regarding the sale of the property, the application for revision is dismissed.

**DATED at DAR ES SALAAM** this 22<sup>nd</sup> day of December, 2015.

S.A. MASSATI  
**JUSTICE OF APPEAL**

K. K. ORIYO  
**JUSTICE OF APPEAL**

B. M. K. MMILLA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original

E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

