

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 100/01 OF 2017

GRAND REGENCY HOTEL LIMITED.....APPLICANT

VERSUS

- 1. PAZI ALLY**
- 2. FATUMA ALLY**
- 3. SAUDA ALLY**
- 4. JUMANNE ALLY**
- 5. REHEMA ALLY**
- 6. IDD ALLY**

.....**RESPONDENTS**

(Application for Extension of Time within which the Applicant to
lodge Revision Application from the decision of the
High Court at Dar es Salaam)
(Muruke,J.)

dated 21st day of October , 2011
in
Revision No. 13 of 2010

RULING

31st October & 20th November,2017

LILA, J.A.:

Grand Regency Hotel, the applicant, by way of a notice of motion filed on 24/2/2017 under Rule 10 and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), seeks to move the Court to extend time within which to lodge an application for revision. The application is supported by an affidavit sworn by Dr. Hans Aingaya Macha, the managing Director of the applicant.

The grounds for delay raised by the applicant are, briefly, that he was not a party to High Court Revision Application No.13 of 2013 and that he was condemned unheard.

The application is resisted by the respondents through an affidavit in reply, reply written submissions and Mr. Katemi's oral submissions. Three reasons fronted by the respondents are that the case before the High Court was a probate matter and the applicant not being a family member could not be joined, two, there is no violation of the right to be heard as the applicant's interests were not affected by the High Court ruling as the same did not adjudicate on who owns the house and lastly, that, the applicant knew the existence of the matter since 2014 when he was sued in Land Case No. 264 of 2014

At the hearing of the application, Mr. Daniel Ngudungi learned advocate, appeared for the applicant and Mr. Alphonse Katemi, learned advocate, appeared for the respondents.

Arguing in support of the application, Mr. Ngudungi, prayed the Court to adopt both the written submissions filed in court on 14/8/2017 and the affidavit as part of his submission. He further contended that the applicant was not a party to Revision application Number 13 of 2013

which was before the High Court (Muruke,J.) and that he was denied the right to be heard. He said, in its ruling, the high Court quashed the District Court and Primary Court decision and declared that the house on Plot No. 35 Block "E" not subject of the probate case. The went on to submit that the applicant was a *bonafide* purchaser of such house in a public auction conducted on 23/3/2008 by order of the Buguruni Primary Court in "Mirathi Namba 398 of 2006. In view of that, Mr Ngudungi contended, the applicant's interests were not only touched but affected as the High Court orders has the effect of dispossessing him ownership of the house. He said as the applicant was not heard by the High Court it means that he was condemned unheard which is a violation of the principles of natural justice which requires a party be heard before he is condemned. He concluded by saying that amounted to an illegality which is good cause for extending time to file an application for revision. In support of his contentions he referred the Court to its decisions in **VIP Engineering and Marketing Limited and Two Others Vs CITIBANK Tanzania Limited**, CAT, Consolidated Civil references No. 6, 7 and 8 of 2006 (unreported) and

The Principal Secretary ministry of Defense and National Servises Vs Durvam P. Valambhia (1992) TLR 387 (CAT).

Mr. Katemi, in resisting the application prayed that the reply written submissions filed in court be adopted as part of his submissions. He refuted the contention that the applicant was not heard in the High Court. He said the matter before the High Court originated from the Primary Court and was a probate matter and the applicant being not a member of the deceased family could not be made a party to those proceedings. He further said the High Court decision did not make an order against the applicant as it quashed the Primary Court proceedings on the issue of ownership of the house. He added that the interests of the applicant can be taken care by the now pending proceedings against the administrator. He insisted that, on those bases, there was no any legal necessity for the applicant to be involved in the proceedings before the High Court. He added that currently there is a pending matter in the High Court (Land Division) Land Case No. 293 of 2015 where the applicant is the defendant and respondents are the plaintiffs claiming for land ownership in which the applicant, after being duly served, filed a

counter-claim. He said, the applicant was aware with the case since 2014 when Land Case No. 264 of 2014 was instituted but filed the present application on 24/2/2017, after three years. For this reason, the respondent contends that no good reason is given for such delay and, instead, the delay is a deliberate one. He accordingly urged the Court to dismiss the application with costs.

In rejoinder, Mr. Ngudungi restated the cardinal principle that where the interests of a certain person are at issue he should be heard. He urged the Court to grant the application's so that the irregularities, if any, in the lower court proceedings can be corrected for the benefit of both sides.

I have given due consideration to the respective affidavits, written submissions and Orral arguments by counsel for both sides.

Comprehensively considered, it is not in dispute that the applicant was not a party in Civil Revision No. 13 of 2010 which was before the High Court. It is also not seriously disputed that the applicant bought a house on Plot No. 35 Block "E" Likoma street in a Public auction

conducted following an order by the Buguruni Primary Court in Mirathi No. 398 of 2006. The parties are also at one that the High Court, in Revision Application No. 13 of 2010 (Muruke, J) made the following order:-

" This court having found all the illegalities, listed, caused by Trial Court determining ownership of the house in plot No. 35 block E. Likoma Street without jurisdiction. By the power conferred by section 43(2) 44(1) (a) and (b) of the magistrate court act cap 11(R>E. 2002) section 79(1) 95 of the Civil Procedure Code. Cap 33 R.E. 2002 do hereby quash all the proceedings of the trial court i.e Buguruni Primary Court in relation to ownership of the house in plot No. 35 block E Likoma Street, Kariakoo, with subsequent orders thereto Misc. Civil Application Number 23 of 2007 of Ilala district court cannot also stand, because it is based on the quashed proceeding of the

ownership of house in plot No. 35 block E. Likoma Kariakoo".

Read closely, it is plainly clear and actually it is not disputed that the High Court order quashed all the proceedings of the trial Court (Buguruni Primary Court) in relation to ownership of the house in Plot No. 35 Block "E" Likoma Street, Kariakoo with subsequent orders. This is the house the applicant contended that he bought in a public auction in compliance with the order by Buguruni Primary Court. It is obvious, therefore, that the applicant's alleged interests and rights in the house (ownership) were affected by the High Court order in a matter he was not a party and was not accorded opportunity to be heard. The Court has in a number of occasions pronounced that where a certain party's rights and interest have been affected and was not a party to the case the remedy is to access the Court by way of an application for revision **(See Ahmed Ally Salum Vs Ritha Bashwali and Another, Civil Application No. 21 of 1999, Ms NBC Ltd V. Salama Abdalla and Another, Civil Application No. 83 of 2001 CAT, Dar es Salaam Registry, Dominic Nkya and Another Vs Cecilia Mvungi and Two others,**

Civil Application No. 3 "A" of 2006, CAT, Dar es Salaam Registry and **Mgeni Seif Vs Mohamed Yahaya Khalfani**, Civil Application No. 104 of 2008, CAT, Dar es Salaam Registry (All unreported). As the applicant was late in filing the application for revision he has rightly filed the present application.

Having indicated that the applicant was justified to file the present application, let me also, at this juncture, categorically state that this is not the appropriate forum for the parties to argue whether the applicant's alleged rights and interests were really affected by the High Court decision, how and to what extent. The reason is an obvious one that these are substantive issues to be determined by the Court in the application for revision to be filed in case this application is granted. In the present application the Court is only concerned with whether the applicant has showed good cause for delay (See Rule 10 of the (Rules)). I am fortified in that position by the Court's decision in the case of **The Regional Manager – TANROADS Lindi Vs DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CAT (unreported) where the Court stated that:-

"...It is now settled that a Court hearing an application should refrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on the substantive issues before the appeal itself is heard. Further to prevent a single judge of the Court from hearing an application by sitting or examining issues which are not his/her purviews".

The Court is able to determine substantive issues in an application for revision because it has wide powers when considering the decision of the High Court in the course of satisfying itself as to the correctness, legality or propriety of any finding, order or any decision made thereon and as to regularity of any proceedings of that Court (**See Mehar Singh T/A Thanker Singh Vs Highland Estate Ltd & 2 others**, Civil Application No. 155 of 2011, CAT, Dar es Salaam Registry (unreported).

As alluded to above, the present application is for extension of time. The applicant has raised, as a reason for delay that he was

condemned unheard by the High Court in Revision Application No. 13 of 2010 which act amounted to an illegality constituting good cause for delay. There is a plethora of Court's decisions to the effect that a denial of the right to be heard would vitiate proceedings. **(See Eco Tech Zanzibar Limited Vs Government of Zanzibar, 2002)**, Civil Application No. 1 of 2007, (unreported) and **DPP Vs Sabina Tesha & 2 Others** (1992) T.L.R. 237. In another case of **Mbeya Rukwa Auto Parts Transport Limited Vs Jestina George Mwakyoma** (2003) T.L.R. 251 the Court stated:-

" In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law and declares in part:

" Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na mahakama au chombo kinginecho kinachohusika, basi mtu huyo

*atakuwa na haki ya kupewa fursa ya
kusikilizwa kwa ukamilifu"*

As the High Court considered and quashed the proceedings of the Buguruni primary court in relation to the house which the appellant allegedly bought in a public auction ordered by such court it is apparent that the rights and interests of the applicant were considered and determined in High Court Revision application No. 13 of 2010 in his absence. On the above authority, the applicant had a right to be heard. This was his legal right. It was violated. In the case of **VIP Engineering & Marketing Limited and 2 Others Vs Citi Bank Tanzania Limited** (supra) the court stated that:-

" it is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay".

It should be noted that the Court referred to the then Rule 8 of the Tanzania Court of Appeal Rules, 1979 which is now Rule 10 of the Rules.

In the present application it is undisputed that the applicant was denied the right to be heard by the High Court. That was an illegality which alone constitutes good cause for delay.

In the circumstances the application is granted. The applicant is given thirty (30) days within which to file an application for revision.

It is so ordered

DATED at **DAR ES SALAAM** this 16th day of November, 2017

S.A. LILA

JUSTICE OF APPEAL

I certify that this is a true copy of the original



(A.H. Msumi)

DEPUTY REGISTRAR
COURT OF APPEAL