IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CIVIL APPLICATION NO. 602/08 OF 2017

VICTOR RWEYEMAMU BINAMUNGU ..... APPLICANT

VERSUS

1. **GEOFREY KABAKA**
2. **FARIDA HAMZA (Administratrix of the Deceased Estates of HAMZA ADAM ..... RESPONDENTS**

(Appeal from the Decision of the High Court of Tanzania at Mwanza)

(Maige, J.)

dated the 14th day of June, 2017
in
Land Appeal No. 155 of 2016

.....

RULING

5th & 10th June, 2020

KITUSI, J.A.:

The present applicant alleges that he is a purchaser of a house on Plot No. 246 Block U along Pamba Road in the City of Mwanza. The house was allegedly sold by public auction in execution of a decree that had been issued in favour of the first respondent. It is alleged that subsequent to the purchase of the house by the applicant, the second respondent successfully challenged the execution proceedings in Civil Appeal No 155 of 2016, at the end of which the High Court, Maige J,

nullified the sale. It is the applicant's contention that he was not a party to those proceedings, and he was therefore not given a hearing.

He intends to apply for a revision, so he applies for extension of the time within which to do so. In the affidavit that has been taken by the applicant, he explains the reason for the delay in applying for revision. It is that he only became aware of the appeal proceedings and order nullifying the sale on 2nd August, 2017 when he was served with notice of eviction. He filed Civil Application No. 26 of 2017 for revision but on 4th December, 2017 it was struck out for being time barred.

The second respondent resists the application and has demonstrated her resistance by an affidavit in reply which chiefly avers, under paragraph 3, that the applicant's affidavit does not disclose the cause for the delay.

At the hearing of the application all parties entered personal appearance without legal representation. The applicant adopted the contents of the affidavit as well as the written submissions which he had earlier filed, and so did the second respondent. The first respondent did not resist the application, which I think is natural, him being the holder

of the decree whose execution underlies the intended application for revision.

The second respondent had earlier raised points of Preliminary Objection although she was unable to address them when she was invited to. The said points which must have been drawn by a lay hand given their tone, challenge the following;

i) The supporting affidavit for being defective.

ii) The certificate of urgency for being defective.

iii) Lack of locus standi on the part of the applicant.

As intimated above, the second respondent did not shed light on these points when it was her time to argue them. She simply referred to her written submissions. It turns out that the written submissions attack the affidavit, the Certificate of Urgency and the applicant's locus standi for referring to the applicant as Victor REYEMAMU Binamungu instead of Victor RWEYEMAMU Binamungu. She added that the applicant is not competent to apply for revision because he was not a party in the proceedings that he indents to challenge.

The applicant and the first respondent did not, earnestly, address these points. The applicant submitted that the difference in names is a typing error which he urged me to disregard.

First of all, the fact that the applicant did not feature as a party in the proceedings intended to be revised, rather than being a hindrance, does qualify him to make that application because it is settled law that such a person may not impugne the decision otherwise than by revision. See the case of **Amani Mashaka (applying as Administrator of the estate of Mwamvita Ahmed deceased) v. Mazoea Amani Mashaka and 2 Others,** Civil Application No. 124 of 2015 (unreported). In that case the Court quoted the following passage from its earlier decision in **Mgeni Seif v. Mohamed Yahaya Khalfani**, Civil Application No. 104 of 2008 (unreported);

> *"...because she was not a party to the said suit, but she is contesting ownership of the house in dispute, not having a right of appeal, the only avenue for the applicant would be revision".*

Secondly the issue of the names is, in my view, designed to get a mountain out of a molehill, because the applicant's argument that it is a typing error makes sense and as the Court's eye is more fixed on

substantive justice than technicalities, the second respondent's contention on the names can hardly find purchase. More so when two of the three names are correct, and the third only misses a syllabe. Consequently, I find the points of preliminary objection lacking merit and overrule them.

I now turn to the application. Rule 65 (4) of the Rules requires an application for revision to be filed within sixty days of the decision. The decision intended to be revised was delivered on 14th June, 2017. Since the applicant contends that he became aware of the decision on a later date, the duration of the delay will have to run from that date, and the account for the delay will be similarly assessed.

In the affidavit, paragraph 6, the applicant alleges that he became aware of the decision on 2nd August, 2017 but in his written and oral submissions he maintained that it was on 15th July, 2017. Be it as it may, he first applied for revision which was however struck out on 4th December 2017 on account of time limit. This period from the date of the decision intended to be revised to the date of striking out Civil Application for revision No. 26 of 2017, is what has acquired the name of technical delay which cannot be blamed on the applicant. There are many decisions on that position such as, **Ally Ramadhani Kihiyo v.**

The Commissioner for Customs and the Commissioner General Tanzania Revenue Authority, Civil Application No. 29/01 of 2018 (unreported) **Kabdeco V. Wetco Limited,** Civil Application No. 526/11 of 2017 (unreported)]. **Salim Lakhani and 2 Others V. Ishfaque Shabir Yusufali (As an Administrator of the Estate of the Late Shabir Yusufali),** Civil Application No. 455 OF 2019 (unreported).

I am disposing of this matter on the basis of the foregoing principle, that is the period from 14 June 2017 when the impugned decision was rendered, to 15th July or 1st August 2017 when the applicant became aware of that decision, constitutes actual delay. However, that period has been accounted for because the applicant was not aware of the decision. The period thereafter to 4th December 2017 when the application for revision was struck out, constitutes technical delay which should not be blamed on the applicant. The applicant lodged this application on 11th December, 2017, barely seven days later. In my conclusion the applicant has made a case for extension of time because he has accounted for the actual delay and took prompt steps in pursuing the matter. The rest of the period was merely technical delay.

Consequently, I grant the application. I order the applicant to file the intended application for revision within sixty (60) days from the date of delivery of this order. I order costs to be in the main course.

DATED at **MWANZA** this 9th day of June, 2020.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 10th day of June, 2020 in the presence of applicant and respondents in person is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL