IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: LILA, J.A., KOROSSO, J.A. And KITUSI, J. A.)

CIVIL APPLICATION NO. 46/08 OF 2018

DENIS T. MKASA ..... APPLICANT

VERSUS

1. **FARIDA HAMZA (Administratrix of the Estate of the Late HAMZA ADAM)**
2. **GEOFREY KABAKA** ..... **RESPONDENTS**

(Appeal from the judgment and decree of the High Court of Tanzania at Mwanza)

(Maige, J.)

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

.....

RULING OF THE COURT

8th & 18th June, 2020

KITUSI, J.A.:

This application for revision is made by a Notice of Motion drawn under section 4 (3) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002] and Rule 65 (1) of the Tanzania Court of Appeal Rules, 2019 (The Rules). It seeks to have the proceedings and decision of the High Court (Hon. Maige, J.) dated 14th June, 2017 revised. As usual, the application is supported by an affidavit of the applicant.

There are two respondents. The first is Farida Hamza, acting as the administratrix of the estate of the late Hamza Adam. She resists the application by an affidavit in reply along which she has raised a Notice of Preliminary Objection. The second respondent is Geofrey Kabaka. This one is in total support of the application, so he did not file any affidavit in reply.

A bit of history needs to be told to help appreciate how the parties got here. It is this; the second respondent was a tenant in Hamza Adam's house along Pamba road in the city of Mwanza. He was running a business of used automobile spare parts within those rented premises. At some point, the landlord demanded the second respondent to give vacant possession of the premises, but he could not get it. He opted to lock the second respondent's shop, which only gave the said second respondent cause of action against his landlord. He sued at the District Land and Housing Tribunal (DLHT) of Mwanza where he was awarded damages of Tshs 100,000/= per day, being loss of daily income from his business. This decree opened a can of worms, we would say, as we shall later see.

From the record which we have been asked to call for, examine and revise, we have stumbled into more information. Hamza Adam appealed to the High Court in Land Appeal No. 29 of 2013 before Sumari, J. who reduced the award of Tshs 100,000/= to Tshs 20,000/=. This was on 22nd January, 2015 but the said Hamza Adam had already died since the 3rd of August, 2014. After obtaining letters of administration of her husband's estate, Farida Hamza, the present first respondent, stepped in.

Subsequent to the judgment of the High Court by Sumari, J., the second respondent went to the DLHT to execute the decree which according to records, had soared up to Tshs 1,468,347,392/=. A number of landed properties belonging to Hamza Adam's estate were sold in a public auction conducted in execution of that decree. When the first respondent presented before the DLHT an application to set aside the sale the said DLHT refused to admit it and went ahead to declare the sale absolute. The first respondent applied for revision of that order of the DLHT. The High Court, Bukuku J, in Land Revision No. 10 of 2015 nullified the proceedings and order of the DLHT that led to the sale, on account of irregularities in the proceedings before that Tribunal and

lack of pecuniary jurisdiction. That was on 1st December, 2015. It is relevant to note that in that Land Revision, the respondents were one Yusuph Salehe Banyanga, who was referred to as the purchaser, Wassa Royal Auctioneers & Court Broker who had conducted the sale, and the present second respondent, the decree holder.

However, there seems to have been another set of execution proceedings involving the same decree (amounting to Tsh 1,468,347,392/=) before the same DLHT vide Misc. Land Application No. 130 c of 2008. At the instance of the second respondent on 17th February, 2016 the DLHT issued an order of execution of that decretal sum which resulted in yet another sale of properties of the estate of the late Hamza Adam. The first respondent appealed against the execution order vide Land Appeal No. 155 of 2016, High Court, Maige, J.

After hearing the parties in the said Land Appeal No. 155 of 2016, the learned Judge noted that the subsequent execution order and sale was made in total disregard of the order of Bukuku, J. which had said that the DLHT had no pecuniary jurisdiction to deal

with that execution. He therefore applied the High Court's revisional powers under section 43 (1) (b) of the Land Disputes Courts Act to revise the DLHT's order of execution in Misc. Land Application No. 130C of 2008. It is these latter proceedings and order which the present applicant moves us to revise.

At the hearing of this application all parties appeared without the benefit of legal representation. In his affidavit and submissions, both written and oral, the applicant narrated the following brief story; on 9th May, 2016 Wassa Royal Auctioneers and Court Brokers conducted a public auction in execution of the order of the DLHT in Misc. Application No. 130C of 2008. He attended the auction after reading about it on media. During the auction he purchased houses on Plot No. 41 and 42 and 19 Block B II Mkuyuni area within Mwanza City. In the aftermath, on 14th September, 2017 the second respondent informed him that the High Court in Land Appeal No. 155 of 2016 had nullified the sale. The applicant resorted to this application, complaining that he being a bona fide purchaser of the properties at the auction, was condemned by the nullification order, unheard.

The second respondent was in full support of the application, and clearly stated his reason for doing so. He submitted matter- of - factly, that his stakes are high because he is the one who received the proceeds of the sale so he criticized the High Court for not joining the applicant in Land Appeal No. 155 of 2016.

The first respondent was more bent at prosecuting the points of preliminary objection which she had earlier raised and on which she presented written submissions. However, we decided to proceed with hearing of both the application and the points of preliminary objection so as to enable us dispose of the application in the event the points of preliminary objection are to be overruled. The points of objection when paraphrased are;

1. *The application is out of time because it has been filed out of the 60 days prescribed under the Rules.*
2. *That the applicant cannot apply for revision because he was not a party in Land Appeal No. 155 of 2016.*
3. *The application is bad in law for omitting to attach or include proceedings of the lower Tribunal and the High Court.*

4. *The application violates the provision of Rule 12 (4) of the Rules, therefore it is bad in law.*

Being a lay person, the first respondent made little clarifications when she took the floor. In the affidavit in reply, the first respondent repeatedly referred to the fact that the execution order dated 17th February, 2016 issued by the DLHT was quashed and set aside by the High Court. In her written submissions she stated that the provision of Rule 65 (4) of the Rules requires an application for revision to be made within 60 days of the delivery of the decision sought to be revised. She then pointed out that this application was filed 47 days after the delivery of the ruling. She cited the case **National Bank of Commerce V Sandrudin Meghji** [1998] TLR 503 in which it was stated that the period for applying for revision is 60 days after delivery of the decision sought to be impugned. That was as far as the first point of preliminary objection is concerned.

On the second ground of objection the first respondent submitted that since the applicant was not a party in Land Appeal No. 155 of 2016, he cannot address the Court on the issues in that appeal. The case of **Peter Mabimbi V The Minister for Labour**

and Youth Development & 2 others, Civil Application No. 4 of 2005 (unreported) was cited. The applicant and the second respondent did not address this point, appearing to be more concerned with other issues, we think. We have decided to deal with this point right away because it is straightforward. The revisional jurisdiction of the Court is actually for parties, like the present applicant, who are barred by law from appealing. See a number of our decisions such as **Mgeni Seif v. Mohamed Yahaya Khalfan,** Civil Application No. 104 of 2008, recently cited in **Victor Rweyemamu Binamungu v. Geofrey Kabaka and Farida Hamza (Administartrix of the Deceased Estate of Hamza Adam),** Civil Application No. 602/08 of 2017 (both unreported). Since the applicant was not a party to Land Appeal No. 155 of 2016, and as he wishes to assail the decision in that case, he can only do that through revision. This point of objection is misconceived, we think, so it is overruled. Similarly, the fourth point of objection on which even the first respondent who raised did not make any useful submission. For us we understand the point to criticize the record for not being numbered in terms of Rule 12 (4) of the Rules. Given the contemporary jurisprudence of the land,

which discourages over indulgency in technicalities, we find this point to be of no consequence.

As for the third ground, the first respondent maintained that it is incumbent upon the applicant to make available to the Court copies of proceedings and rulings of the lower courts, otherwise an application for revision will be incompetent. Like in the just concluded points of objection, the applicant and the second respondent did not offer anything in opposition. Again, the law is clear on this area that in an application for revision the applicant bears the duty to prepare the record containing the documents necessary for the Court to decide the issues before it. In **Hamis Hassan Mbwana v. Republic,** Criminal Application for Revision No. 5 of 2013 (unreported), citing another unreported decision in **Chrisostom H. Lugiko v. Ahmednoor Mohamed Ally**, Civil Application No. 5 of 2013, we said;

> *"We are unable to say anything meaningful in relation to Land Application No. 25 of 2007 because we are not seized with all the proceedings relating to the said application. As*

such we cannot step in and make an order of revision over something, we do not have the full picture".

Although the first respondent is not particular about her complaint on this point, but a mere glance at the record shows that the proceedings of the DLHT from which Land Appeal No 155 of 2016 arose are not there, and that is a fatal omission. This point will be sustained as meritorious.

We turn to the first point of preliminary objection. In their somehow identical submissions, the applicant and the second respondent maintained that the application is within time because it has been filed within 6o days after copies of the requisite documents were made available to the applicant.

With respect, the applicant and the second respondent have a misconceived understanding of Rule 65 (4) of the Rules. That provision reckons the time for filing an application for revision, from the date of the decision intended to be revised. That is the clear meaning of that provision but there are also quite a few decisions on that very point, such as **Patrick Magologozi Mongela v. Board of Trustees of the Public Service Pensions Fund,** Civil

Application No 199/18 of 2018 and **Dr. Muzzammil Mussa Kalokola v. The Minister of Justice and Constitutional Affairs and two Others,** Civil Application No. 183 of 2014 (both unreported). Since the decision sought to be revised was made on 14th June 2017, the application for revision should have been filed by 15th August, 2017. The present application filed on 29th September, 2017 was more than 40 days out of time. The first respondent submitted that the application was filed 47 days from the date of the decision but we think she had intended to submit that it was filed 47 days out of the time.

If Rule 65 (4) of the Rules were to be construed in the way the applicant and the second respondent wish us to, then there would be as many limitation periods for filing revision as the number of the applications themselves. There would be no certainty because every applicant would have his own formula for calculating time. In the latter case cited above, we observed that where one's delay is caused by the delay in availing him with the requisite documents, he should first apply for extension of time. This counsel, we believe, may be useful to the present applicant. This

application for revision is out of time as it was filed beyond the sixty (60) days stipulated by the Rules.

This ground and the third point which we have also sustained, would suffice to dispose of the matter at hand, but we feel we are not done yet. During the hearing, we raised two other points out of curiosity and in our quest to achieve orderly conduct of matters in Court. The first is in relation to a document titled *Memorandum of Revision,* whose wording has left us wondering whether what the applicant has in mind is an application for revision or an appeal. Let us reproduce it;

> ***"MEMORANDUM OF REVISION***
>
> ***DENIS T. MKASA,*** *the above-named Applicant* ***appeals*** *to the court of Appeal of Tanzania against the whole of the above-mentioned decision on the following, namely;*
>
> 1. *That the learned Hon Judge of the High court has erred in law in Proceeding on 14/6/2017 to hear and decide land appeal No. 155 of 2016 without first joining the proper party (purchaser) of the House No. 41 & 42 block 'B' II Mkuyuni Mwanza Municipality. (Copy of the document*

evidencing the purchaser of the houses is hereby attached)".

This, we think, is an alien style of moving the Court, unknown in the Rules. For, Rule 48 (1) is clear that applications to the Court shall be by notice of motion supported by affidavit. The applicant has sought to move us by both a notice of motion and memorandum of revision, an unknown and confusing cocktail. More confusing is the fact that in the said memorandum the applicant purports to appeal to the Court. When we put this fact to the applicant, an unrepresented lay person as we said earlier, he appeared to be just as surprised as we were. Our conclusion is that this anomaly is so grievous that even the overriding objective principle would not mend it. For this we would strike out the matter for being improperly before us.

The second and last issue we put to the parties was in respect of the omission to implead the Court Broker. This point is borne out of our taking judicial notice that there are several matters involving the first respondent on the one hand and the second respondent on the other. Obvious from the record of Land Appeal No. 155 of 2016 in which we also came across the decision of Bukuku J. in Land

Revision No. 10 of 2015, there are more than one public auction of the properties and more than one purchaser of those properties in execution of the same decree. So, we asked the applicant to explain why he did not find it necessary to join the Court Broker who conducted the auction. He explained that to him the decree holder is the most important. The same was the second respondent's view although the two conceded later that there are questions that only the Court Broker would be in a position to address.

Perhaps we should not digress further, because the powers of an applicant to join parties in revision may be limited, as the Court held in **Grand Regency Hotel Limited v. Pazi Ally and 5 others**, Civil Application No. 588/1 of 2017 (unreported). And after all, we are only seized of this matter.

In the end, we dispose of the matter as follows. One, the application is time barred, for which we strike it out. Two, it is incompetent for omitting vital documents in the record. Thus, the first and third points of preliminary objection are sustained. We also hold the application to be incompetent for purporting to move us by way of a Memorandum of Revision, which is not envisaged under

the Rules. For those reasons, the application is struck out with costs.

It is so ordered.

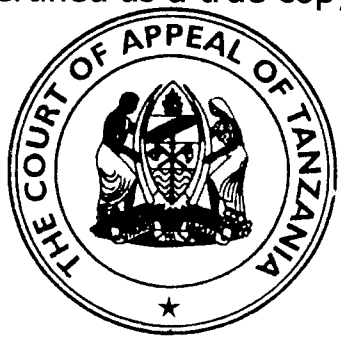
DATED at **MWANZA** this 18th day of June, 2020.

S. A. LILA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 18th day of June, 2020 in the presence of the Applicant and Respondents in person is hereby certified as a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL