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

**CIVIL APPLICATION NO. 536/17 OF 2017**

**FATMA HUSSEIN SHARIFF ..... APPLICANT**

**VERSUS**

1. **ALIKHAN ABDALLAH** (As the Administrator of the Estate of Sauda Abdallah
2. **KHALID ADAM HAJI**
3. **HUSSEIN MADIBWALA**
4. **HUSSEIN SEMDOE**

**..... RESPONDENTS**

**(Application for Extension of Time to apply for revision against the judgment of the High Court of Tanzania (Land Division) at Dar es Salaam)**

**(Mutungi, J.)**

**dated the 29th day of June, 2015**
**in**
**Land Case No. 203 of 2005**

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## RULING

8th & 24th February, 2021

**LEVIRA, J.A.:**

The applicant, FATMA HUSSEIN SHARIFF was the plaintiff in Land Case No. 203 of 2005 in the High Court of Tanzania (Land Division) (Mutungi, J.); wherein she sued the respondents for vacant possession of the suit premises situated at Plot No. 1 Block 24, Chanika Urban, Handeni District in Tanga Region among other claims. As it turned out, she lost

the suit as it was dismissed by the High Court on 29th June, 2015. Aggrieved by that decision, the applicant lodged a notice of appeal with intention to challenge that decision on 3rd July, 2015 and submitted a letter to the Registrar of the High Court applying for certified copies of judgment, decree, proceedings and other relevant documents for appeal purposes. The said copies were supplied to her on 23rd March, 2017 according to the Certificate of Delay issued by the Registrar.

Later the applicant filed Civil Application No. 223/17 of 2017 for extension of time to apply for revision against the judgment of the High Court. The applicant did not lodge the intended appeal instead on 15th November, 2017 she filed a notice of withdrawal of the Notice of Appeal and applied to the Court for extension of time to apply for revision against the judgment of the High Court in Land Case No. 203 of 2015. Through her counsel, the applicant applied again to withdraw the said application for extension of time. On 6th November, 2017 the Court (Mwangesi, J.A.) granted the prayer and in terms of Rule 58(3) of the Rules, the application was marked withdrawn and the applicant was given twenty one (21) days to lodge a fresh application. This application was filed on 22nd November, 2017.

At the hearing of this application, the applicant was represented by Ms. Hamida Sheikh, learned advocate, the second respondent was represented by Mr. Twaha Taslima and the first respondent appeared in person unrepresented. The third and fourth respondents' legal representatives did not enter appearance. According to the last order of the Court (Mkuye, J.A.) of 20th June, 2019, substituted service on the third and fourth respondents was effected through Uhuru and Guardian newspapers of 12th June, 2019 and thus she ordered hearing of this application to proceed under Rule 63(2) of the Rules. As already stated, none of them appeared and thus the hearing of the application proceeded in their absence.

The application is opposed by both the first and second respondents. Ms. Sheikh adopted the applicant's notice of motion, supporting affidavit and the written submissions to form part of her oral submission.

She went on submitting that the reasons for delay to file this application are stated in the applicant's affidavit. The main reason being that the applicant obtained the copies of proceedings and other essential documents late although she had filed the statutory letter to obtain the

same within time as per paragraph 3 of part III of the supporting affidavit. She offered a clarification that, the impugned judgment was delivered on 29/6/2015 and the applicant applied for those essential documents on 3rd July, 2015 but was supplied with the same on 23rd March, 2017.

The learned counsel submitted further that the applicant filed the application for revision within time (sixty days); however, they prayed to withdraw it and they were granted leave to refile within twenty one (21) days, which they complied. According to her, the applicant was not negligent as it was not possible to file application for revision without being supplied with the copy of the impugned judgment and proceedings. She supported her arguments with the decisions of the Court in **VIP Engineering and Marketing Limited v. Mechmar Corporation (Malaysia),** Civil Application No. 163 of 2004; **National Housing Corporation and the Board of Trustees of the Parastatal Fund v. Ms. Property Bureau (Tanzania) Ltd,** Civil Application No. 181 of 2006 and **The National Housing Corporation v. Etienes Hotel**, Civil Application No. 10 of 2005.

Ms. Sheikh went on arguing that, the applicant is applying for extension of time to lodge revision because of the illegalities in decision of the High Court. She strongly argued that in the circumstances of this case, revision is the best option than appeal that is why the applicant is making this application.

In reply, Mr. Abdallah, the first respondent expounded what is stated in his affidavit in reply and argued that he was not supplied with a copy of the letter to the Registrar applying for copies of the impugned decision and the proceedings. He added that the applicant withdrew her notice of appeal and therefore, it will not be just for this application to be granted. He concluded by arguing that it is not true that the applicant was supplied with those documents by the Registrar out of time.

On his part, Mr. Taslima adopted the second respondent's affidavit in reply, written submissions against this application and the list of authorities he filed to form part of his oral submission. Briefly, he argued that the applicant has failed to state the reasons for the delay as required by the law. It was his further argument that this application in not tenable as the applicant was supposed to appeal instead of the intended revision. He thus prayed for the application to be dismissed with costs.

In rejoinder, Ms. Sheikh stated that Rule 90(2) of the Rules requires an appeal to be filed within 60 days and the letter requesting for the copies of the impugned decision and proceedings to be served on the other party. However, she argued that, she did not serve the first respondent with the copy of said letter because the applicant is applying for revision and not an appeal. According to her, had it been that the applicant intends to appeal, it could be a must to serve the first respondent but the applicant's intended application does not fall under Rule 90(2) of the Rules, therefore the letter to the Registrar is not important under the circumstances of this matter.

Regarding the argument by the counsel for the second respondent that the intended application for revision is not tenable as the applicant was supposed to appeal against the decision of the High Court, Ms. Sheikh stated that, since this is an application for extension of time, it is not proper to discuss about the merits of the intended application for revision.

Finally, the learned counsel prayed for this application to be granted with no order as to costs.

Before determining the merits or otherwise of this application I wish to make the following observations: **One,** as it can be traced from the above background of this application that having been aggrieved by the decision of the High Court in Land Case No. 203 of 2005, the applicant lodged Notice of Appeal on 3rd July, 2015. The said notice is attached in paragraph four of part III of the supporting affidavit as Annexure "A3" found at page 19 of the record of the application. According to the same paragraph of the supporting affidavit, the said notice was withdrawn as per the withdrawal notice attached as Annexure "A3" (a) found on page 21 of the record of application. The said withdrawal notice was filed on 15th November, 2017.

**Second,** the applicant states under paragraph 9 of part III of the supporting affidavit that the first application for revision was filed within sixty (60) days of obtaining certificate of delay and the proceedings but, the same was withdrawn on 6th November, 2017 with leave to refile it within twenty one (21) days as per Annexure "A4" attached under paragraph 10 of part III of the supporting affidavit. However, it can be noted that the order of the Court (Exhibit "A4") was delivered on 6th November, 2017 as stated above before the withdrawal of the notice of

appeal. The question that follows is how was it possible that the application for extension of time to file revision was lodged before the withdrawal of the notice of appeal? It is also doubtful whether the current application is the outcome of the order of the Court of 6th November, 2017.

In the light of the above observations, I now revert to determine this application. The application at hand is made under section 4(2) and (3) of the Appellate Jurisdiction Act Cap 141 of 2002 and Rules 10, 4(2)(a)(b) and (c) of the Tanzania Court of Appeal Rules (the Rules).

Rule 10 of the Rules provides that the Court may grant an application for extension of time upon good cause being shown by the applicant. In the current application, the applicant's reason for delay to file revision was due to the fact that she obtained copies of the impugned judgment and the proceedings after the expiry of sixty (60) days within which she could file her application for revision. She attached the Certificate of Delay issued by the Registrar on 23rd March, 2017 annexed as Annexure "$A_2$" to paragraph 3 of part III of the supporting affidavit.

However, unexpectedly, while responding to the first respondent's argument that he was not served with a copy of the letter to the Registrar

requesting for those copies, the counsel for the applicant stated that it was not necessary for the said copy to be served on the first respondent and even for the applicant to make such application to the Registrar because the applicant does not intend to appeal. Therefore, she insisted, the applicant is not covered under Rule 90 (1) of the Rules.

Apart from the reason for delay, the counsel for the applicant stated that the decision of the High Court subject of the intended application for revision is tainted with illegalities worthy for consideration under revision than appeal. She therefore responded to the argument raised by the counsel for the second respondent regarding the tenability of this application to the effect that, since this is an application for extension of time such issue cannot be raised now. While the first respondent and the counsel for the second respondent were of the view that the applicant has failed to advance good cause to justify her application, the counsel for the applicant argued firmly that good cause has been shown and thus prayed for the application to be granted.

In regard to the reason for delay advanced by the applicant, it is my observation that the impugned decision was delivered on 29th June, 2015

and the current application was filed on 22nd November, 2017 more than two years later. Rule 65(4) of the Rules provides that:-

> *"Where the revision is initiated by a party, the party seeking the revision* ***shall lodge the application within sixty days (60)*** *from the date of the decision sought to be revised."* [Emphasis added]

Basing on the above provision, it is quite clear that for filing her revision application after a lapse of more than two years the applicant acted out of the prescribed time (sixty days). Although the applicant was issued with Certificate of Delay, her counsel argued that it was not necessary. For the sake of argument, even if she had not stated so and assuming the first respondent was supplied with a letter to the Registrar requesting for those documents, the Certificate of Delay under consideration excluded dates from 3rd July, 2015 to 23rd March, 2017 when the requisite copies of proceedings, judgment and decree were ready for collection.

As I stated earlier, the current application was filed on 22nd November, 2017 more than eight (8) months later while the law provides for only 60 days. At any rate, the applicant has failed to give reasons for

the delay from when she was supplied with the said copies to the date of filing the current application. In the cause of her submissions, the applicant tried to state the sequence of events, stating the measures she took from when the judgment was delivered to the filling and withdrawing of the notice of appeal. I am of the considered opinion that all what stated by the applicant as reasons for delay to file application for revision do not fall squarely within 'good cause' in terms of Rule 10 of the Rules. The reason is simple, the path which the applicant has decided to take is of her own choice and it cannot be said with certainty that it falls squarely within what is referred to as 'good cause' although there is no single definition of the term good cause (See **Benedict Mumello v. Bank of Tanzania,** Civil Appeal No. 12 of 2002). Changing gear in the midway does not justify what would otherwise be considered as insufficient. On one hand, it has to be emphasised that the applicant was required to state, which she failed, the reasons for the delay to lodge the intended revision.

However, on the other hand, much as it might be a valid argument that merits of the intended application for revision cannot be discussed in this application for extension of time to file revision, Rule 65 (1) requires for the grounds of revision to be stated by the applicant. The applicant

herein states in paragraphs 5 and 6 in part III of the supporting affidavit that the application for revision intends to challenge the error and illegality committed by the High Court in awarding the respondents for their own wrong doing; and that, the High Court Judge dismissed the suit for being time barred while it was in fact not time barred.

It is important at this juncture to determine the tenability of this application as rightly raised, in my view, by the counsel for the second respondent. It is settled position that where a party has a right of appeal, the avenue for revision is not open to him. The purpose of this condition is to prevent the power of revision being used as an alternative to appeal. (See **Transport Equipment Ltd v. Devran P. Valambhia** [1995] TLR 161; **Halais Pro-Chemie v. Wella A.G** [1996] TLR 269; **Dismas Chekemba v. Issa Tanditse,** Civil Application No. 2 of 2010 and **Felix Lendita v. Michael Long'idu,** Civil Application No. 312/17 of 2017 (both unreported).

In the current application, it is clear as earlier on indicated that the applicant was the plaintiff in Land Case No. 203 of 2005, which is subject of the intended revision. Being aggrieved by the decision of the High Court, the applicant filed a notice of appeal which she later

withdrew. The counsel for the applicant has not stated any special circumstance which led the applicant to resort to revision instead of appeal. The only ground she relied upon is that the impugned decision is tainted with an illegality, which, in my considered view, could also be a ground of appeal.

It should be noted that, for illegality to be considered as a good cause for extending time, it has to be on point of law of sufficient importance and it must be apparent on the face of record and not one that would be discovered by a long drawn argument or process. (See **Principal Secretary, Ministry of Defence and National Service v. D.P. Valambhia** [1992] TLR 187; **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported).

All in all, as intimated earlier, without going into the merits of the intended revision, I find it appropriate to state that the applicant being the party to the proceedings of the High Court had a right to appeal against the impugned decision if she was not satisfied with it. There is nothing on record indicating that the appeal was blocked by judicial process. Therefore, I find that since the aim of this application is to

facilitate the filling of revision, which in my view, sought to be preferred as an alternative to appeal, the intended application will certainly be improper. I must conclude that the current application is misconceived.

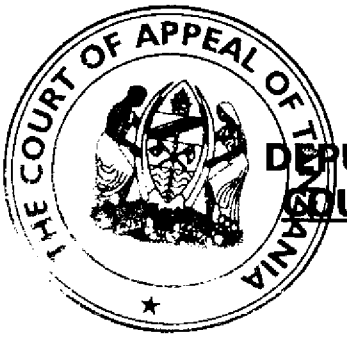
In the result, the application fails and it is accordingly dismissed. As the matter was instituted and prosecuted on legal aid, each party to bear its own costs.

Order accordingly.

**DATED** at **DAR ES SALAAM** this 22nd day of February, 2021.

M. C. LEVIRA
**JUSTICE OF APPEAL**

The ruling delivered this 24th day of February, 2021 in the presence of Mr. Yusufu Sheikh, holding brief of Ms. Hamida Sheikh learned Counsel for the Applicant and 1st Respondent in person Mr. Twaha Taslima, learned advocate for the second Respondent; third and fourth Respondents absent is hereby certified as a true copy of the original.




S. J. KAINDA
**DEPUTY REGISTRAR**
**COURT OF APPEAL**