IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: NDIKA, J.A., FIKIRINI, J.A., And KIHWELO, J.A.)

CIVIL APPLICATION NO. 562/17 OF 2018

ABDALLAH THABIT HUWEL ..... APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF MOVIMENTO POPULAR DE LIBERTACAO DE ANGOLA (MPLA) ..... FIRST RESPONDENT

HAMISA MOHSIN ..... SECOND RESPONDENT

OMAR SALUM MOHAMED MOHSIN ..... THIRD RESPONDENT

PETER KUMBUKA CHOKALA (As the administrator of the Estate of the late RITA KAMULI CHOKALA) ..... FOURTH RESPONDENT

MOHAMED IKBAL HAJI ..... FIFTH RESPONDENT

(Application for leave to join Civil Revision No. 1 of 2018 from the proceedings of the High Court of Tanzania, Land Division at Dar es Salaam)
(Mgaya, J.)

Dated the 3rd day of September, 2015
in
Land Case No. 326 of 2009
.....

RULING OF THE COURT

16th August & 13th September, 2022

NDIKA, J.A.:

The applicant, Mr. Abdallah Thabit Huwel, moves this Court in this matter to join him as a party to Civil Revision No. 1 of 2018, which was commenced by the Court *suo motu* following a complaint lodged and brought to the attention of the Honourable Chief Justice by Ms. Hamisa Mohsin, the second respondent herein. The motion is supported by three affidavits deposed separately by the applicant, his advocate Mr. Mbuga Jonathan and

his son Mr. Mohamed Abdallah Huwel. Opposing the application, the fourth respondent filed three separate affidavits in reply, all of which were sworn by Mr. Patrick Segeja Chokala while the fifth respondent made two distinct affidavits in reply and had his advocate, Mr. John Ignace Laswai swore a further affidavit in reply.

Briefly stated, the setting in which this matter has arisen is as follows: the Registered Trustees of Movimento Popular de Libertacao de Angola (MPLA), the first respondent herein, instituted a land suit (Land Case No. 326 of 2009) in the High Court, Land Division at Dar es Salaam against the second respondent as the first defendant along with Mr. Omar Salum Hassan Mohamed Mohsin, Rita Kamuli Chokala and Mohamed Ikbal Haji as the second, third and fourth defendants respectively, now the third, fourth and fifth respondents correspondingly. The first respondent principally sought a declaration that it was the lawful owner of landed property described as Plots Nos. 11, 12, 12A and 67Q located at Kurasini, Dar es Salaam held under Certificates of Title No. 186103/5, 186103/7, 186103/8 and 186103/9. In essence, the first respondent claimed that it acquired the title to the land in dispute through a sale agreement executed in 1974 between it and one Mr. Mohamed El-Lemki, the administrator of the estate of the previous owner, the late Nassor El-Lemki.

According to a joint written statement of defence attributed to the second and third respondents, the two respondents rebuffed the first respondent's claim in no uncertain terms. At the core of their defence was an assertion that the property in dispute, described as Plots Nos. 11, 12, 12A and 67Q located at Kurasini, Dar es Salaam, was held under Certificate of Title No. 186100/40 in the name of late Hassan Mohsin since 1938 and that following his death the second and third respondents managed the property as joint administrators of the deceased's estate. On the whole, they claimed that the alleged sale and transfer of the property to the first respondent in 1974 was illegal.

Similarly, through their respective written statements of defence, the fourth and fifth respondents rejected the first respondent's claim and went on to raise rival claims of title to the property in dispute. For the fourth respondent, it was asserted that the said Rita Kamuli Chokala was the lawful occupier of the property having bought it on 20th December, 2002 from its previous occupier, Mr. Salum Mohamed Hassan Mohsin, at the price of TZS. 69,000,000.00. On the other hand, the fifth respondent averred that he purchased the property in dispute on 11th March, 2009 from the second respondent and Mr. Hemed Saleh Hassan Mohamed acting as joint

administrators of the estate of the late Hassan Mohsin, the purchase price being TZS. 188,000,000.00.

Having tried the matter, the trial court (Mgaya, J.) entered judgment dated 29th December, 2015 in favour of the fifth respondent who it adjudged the lawful owner of the property in dispute under Certificate of Title No. 186100/40. Thus, the court ordered, in terms of sections of 71 and 99 (1) of the Land Registration Act, Cap. 334 R.E. 2002, that the register of titles be rectified accordingly so as to reflect the fifth respondent as the owner of the property.

While it is not clear what happened in the aftermath of the delivery of the aforesaid judgment, it appears that the second respondent was bemused by the trial proceedings. As hinted earlier, she lodged a letter, which was brought to the attention of the Honourable Chief Justice. In her complaint, she alleged that she was neither a party to the land suit in the trial court nor was she ever served with the first respondent's plaint. Perhaps more tellingly, she denied to have engaged an advocate named Mr. Edward P. Chuwa who purportedly represented her at the trial. Acting on this complaint, the Honourable Chief Justice directed the opening of revisional proceedings in terms of section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 for the purpose of calling for and examining the record of the proceedings

of the trial court in Land Case No. 326 of 2009 so that the Court could satisfy itself as to the correctness, legality or propriety of any order made and as to the regularity of the said proceedings. On that basis, Civil Revision No. 1 of 2018, the subject of the instant application, was opened on 12th July, 2018 the parties therein cited either as "applicant" or "respondent" only for the sake of convenience.

In seeking to join as a party to the pending *suo motu* revisional proceedings, the applicant lodged the present application on 11th December, 2018 under rule 4 (2) (a) to (c) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules"). The application is based on four grounds which we paraphrase as follows:

1. That the applicant is the lawful owner of Plot No. 368, Kurasini, Dar es Salaam formerly known as Plots No. 11, 12, 12A and 67Q constituting the same property the fifth respondent was adjudged by the trial court the lawful owner thereof in Land Case No. 326 of 2009 whose proceedings are the subject matter in the pending revisional proceedings before this Court.
2. That the applicant was denied an opportunity to be heard on the dispute before the trial court despite the second, third and fifth respondents being aware of not only his claim of title but also the

fact that he was and remained in occupation of the property in dispute.

3. That allowing the applicant to join the pending revisional proceedings will obviate the need for him to institute a separate application for revision after seeking and obtaining extension of time to do so. The joinder prayed for will, therefore, save costs and time and obviate inconvenience and that it will allow the Court to determine the matter once and for all.
4. That the trial court's judgment is fraught with an illegality in that it declared the fifth respondent the lawful owner of the property in dispute without any documentary proof of the alleged title.

In his supporting affidavit, the applicant avers that he purchased the property in dispute (then described as Plots No. 11, 12, 12A and 67Q located at Kurasini) from Mr. Salum Mohamed Hassan Mohsin at the price of TZS. 60,000,000.00 vide a sale agreement dated 4th June, 2004 and that the said property was subsequently renumbered in 2006 as Plot No. 368 under Certificate of Title No. 186100/40. He avers further that since then he has been in occupation of the property even though by October, 2009 he was yet to be issued with a certificate of title in his name when the fifth respondent approached him in an unsuccessful attempt to purchase the

property from him. On 4th November, 2018, he allegedly learnt from his son, Mr. Mohamed Abdallah Huwel, of the existence of the trial court's judgment in the fifth respondent's favour, which at that point was already the subject of the aforesaid pending revisional proceedings. Acting on advice from his counsel, Mr. Jonathan, he lodged the present application on 11th December, 2018 instead of seeking leave of the Court to file a separate application for revision out of time.

In their respective affidavits in reply, the fourth and fifth respondents denied the applicant's claim of title, each of them asserting to be the lawful owner of the property in dispute. The fifth respondent particularly faulted the applicant for taking no action in the matter timeously despite having actual or constructive knowledge of the trial proceedings.

At the hearing of the application, Mr. Jonathan appeared for the applicant whereas Ms. Genoveva Kato and Mr. Thomas E. Rwebangira, both learned counsel, stood for the first respondent. Furthermore, while Mr. Abdul Aziz and Mr. Stephen Mosha, learned advocates, represented the second and fourth respondents respectively, the fifth respondent had the joint services of Mr. Killey Mwitasi and Ms. Stella Manongi, learned advocates.

Given that the third respondent defaulted appearance having been served with the notice of hearing vide publication in the *Mwananchi* newspaper of 10th August, 2022, we ordered the hearing to proceed in his absence in terms of rule 63 (2) of the Rules.

It is also necessary to state that ahead of the hearing, we granted Mr. Mosha's unopposed prayer in terms of rule 57 (3) of the Rules that Mr. Peter Kumbuka Chokala, the newly appointed administrator of the estate of the late Rita Kamuli Chokala, be made and cited as the fourth respondent in the place of the previous administrator, Mr. Patrick Segeja Chokala, who had passed away.

At the beginning of the hearing, the parties addressed us on a point of preliminary objection raised by the fifth respondent, three other points of objection having been abandoned. The said point was to the effect that:

> *"the application is hopelessly time-barred as per rule 65 (4) of the Tanzania Court of Appeal Rules, 2009."*

Mr. Mwitasi began his argument by referring us to rule 65 (4) of the Rules prescribing sixty days as the limitation period for a revision initiated by a party. His essential submission was that by lodging the present application on 11th December, 2018, which was about 121 days after the pending *suo motu* revisional proceedings were opened on 12th July, 2018, the applicant

was out of time by over sixty-one days. He argued further, in the alternative, that even if it were assumed that the time scale prescribed under rule 65 (4) of the Rules was not applicable to the application of this nature, then the sixty days limitation should apply as the default limitation period for any application for which no specific limitation period is prescribed other than an application for extension of time. For this proposition, he relied on a decision of a single Judge of the Court in **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Application No. 226/01 of 2017 (unreported) referring to the earlier decision of the Court in **Bank of Tanzania v. Said A. Marinda and 30 Others**, Civil Reference No. 3 of 2014 (unreported). On that basis, he urged us to find that the applicant could not have lodged the instant application without having sought and obtained an extension of time.

Mr. Rwebangira disagreed with his learned friend. He briefly posited that the application was duly lodged on 11th December, 2018, about a month after the applicant had become aware of the existence of the pending revisional proceedings on 4th November, 2018. Messrs. Aziz, Mosha and Jonathan associated themselves with Mr. Rwebangira's submission.

Mr. Jonathan added that **Tanzania Rent a Car Limited** (*supra*) was incomparable because it did not concern *suo motu* revisional proceedings. He, then, argued that if the application was subject to any limitation period,

such period must be reckoned from the moment the applicant became aware of the pending revisional proceedings. To support that argument, he referred us to **Salim Lakhani and 2 Others v. Ishfaque Shabir Yusufali (As Administrator of the Estate of the Late Shabir Yusufali)**, Civil Appeal No. 237 of 2019 (unreported) for the proposition that the right of action begins to run when one becomes aware of the transaction or act complained of.

In a brief rejoinder, Mr. Mwitasi argued that the fact that the applicant became aware of the revisional proceedings rather belatedly was only a ground for seeking extension of time. As regards the principle in **Salim Lakhani** (*supra*), he countered that it was applicable to the accrual of causes of actions in respect of transactions or acts complained of for the purpose of institution of civil actions. However, he acknowledged that generally there was no time limitation to the Court's exercise of its discretion.

We have dispassionately examined the record and considered the contending submissions of the learned counsel for the parties. The sticking issue for our determination is whether the application was lodged within time or not.

Ahead of dealing with the issue at hand, we wish to make two observations. First, since the pending revisional proceedings were initiated by the Court *suo motu*, it is obvious that rule 65 (4) of the Rules upon which Mr. Mwitasi based the preliminary objection is inapplicable. To be sure, the said provision prescribes sixty days as the limitation period for a party-initiated revision reckoned from the date of the impugned decision. For clarity, we extract the said provision thus:

> *"**65**.-(4) 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."*

It is evident that while institution of a party-initiated revision is time-bound, the Court's power to commence revisional proceedings on its own accord, as is the case in the instant matter, is not.

Secondly, it is logical and fitting to emphasise that the appearance and participation of any parties in *suo motu* revisional proceedings is not automatic but it is a matter of the Court's discretion as stated by rule 65 (6):

> *"**65**.-(6) Where **the application is initiated by the Court on its own accord, the Court shall have discretion to summon the parties** and shall*

grant the parties an opportunity to address the court." [Emphasis added]

We think that the phrase *"the parties"* above must be interpreted broadly to mean and include not only the persons who were actually the parties to the proceedings before the High Court from which revision is commenced but also any persons who could be directly affected by the revision even though they were not parties to the impugned proceedings. Depending on the circumstances of the case, the presence of both categories of persons could be critical in effectually and completely adjudicating upon and settling the questions involved in the revision. But the bottom line is that it is the Court which must decide, in exercise of its discretion, whether or not to summon and hear the parties.

We now advert to the issue whether the application was lodged timeously.

While we agree with Mr. Mwitasi that the Rules do not provide a specific time limitation for lodging an application of this nature, we do not agree with him, with profound respect, that the sixty days default limitation, as expounded by the Court in **Tanzania Rent a Car Limited** (*supra*) and **Said A. Marinda and 30 Others** (*supra*), would apply in every application for which no time scale is prescribed.

Furthermore, the special circumstances of this matter militate against application of such a technical default rule on the following grounds. First, as hinted earlier the institution of *suo motu* revisional proceedings is not time-bound, we see no reason why an application for leave to join such proceedings should be treated differently. It must be stressed that the present application is not for instituting new proceedings but for joining existing proceedings.

Secondly, the decision whether to summon the parties and afford them a hearing in a revision is within the unfettered discretion of the Court. As rightly conceded by Mr. Mwitasi, there could not be any time limitation in the Court's exercise of its unconstrained discretion under rule 65 (6) of the Rules.

Thirdly, the applicant, who has asserted that he was oblivious of the trial proceedings, must be credited for lodging this matter with promptitude on 11th December, 2018, which was about thirty-eight days after he learnt of the trial proceedings, the judgment in the fifth respondent's favour and the pending revisional proceedings. We, therefore, find no merit in the preliminary objection, which we hereby dismiss.

We now turn to the substance of this application; whether the applicant should be granted leave to join the pending revisional proceedings.

In his oral and written submissions in support of the application, Mr. Jonathan revisited the four grounds upon which the matter was based, which, we have reproduced herein above. He basically contended that the applicant was the lawful owner of the property in dispute adjudged by the trial court to be the fifth respondent's property; that the applicant was not heard on the suit because he was neither impleaded in it as a party nor was he notified of its existence; and that to avoid an array of unnecessary proceedings it would be proper that he be heard in the revisional proceedings.

While Messrs. Rwebangira, Aziz and Mosha successively and unreservedly conceded to the application, Ms. Manongi fervently resisted the matter. The core of her argument in opposition was that the joinder prayed for would result in the broadening of the scope of the issues framed by the Honourable Chief Justice for the pending revision. She buttressed her argument upon the statement of principle in **Abdullatiff Mohamed Hamis v. Mehboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017 (unreported) that parties to a *suo motu* revision must confine their submissions within the four corners of the direction of the Honourable Chief Justice upon which revisional proceedings were commenced.

In a brief rejoinder, Mr. Jonathan urged us to grant the application as he reiterated his contention that the applicant has shown that he has an interest in the property in dispute.

On our part, we uphold, as we must, Mr. Jonathan's submission on the issue at hand and find merit in the application. In view of the fact that the applicant claims to have bought the property in dispute on 4th June, 2004; that the said property is in his occupation since then up to the present time; and that the said property was the subject of the rival claims of title by the first, fourth and fifth respondents in the impugned proceedings and the judgment before the trial court now the matter for the pending *suo motu* revision, we are of the settled view that the applicant has established that he has sufficient interest in the proceedings entitling him to be heard on the framed issues in the revision.

We would also recall that Mr. Rwebangira conceded, rightly so in our view, that the applicant, on the basis of his alleged interest in the property in dispute, ought to have been joined in the suit but that the first respondent did not implead him as a defendant because it was not aware of his competing claim of title. We are also at one with Mr. Jonathan that allowing the applicant to join the pending proceedings would obviate the possibility of a multiplicity of applications being instituted and that it will enable the

Court to effectually and completely adjudicate upon and settle all the issues involved. It is significant that the fifth respondent has not suggested that he would suffer any prejudice should the application be granted. We should also state that we do not share Ms. Manongi's fear that the joinder prayed for will unduly broaden the scope of the issues framed for the revision. Her concern is merely presumptuous and speculative at this stage.

In the final analysis, we grant the application and order that the applicant, Abdallah Thabit Huwel, be joined in Civil Revision No. 1 of 2018 as the sixth respondent. We make no order as to costs.

DATED at **DAR ES SALAAM** this 12th day of September, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Ruling delivered this 13th day of September, 2022 in the presence of Mr. Stephen Mosha holding brief for Jonathan Mbuga for the Applicant and Mr. G. Kato for 1st Respondent, Mr. Abdulaziz for 2nd Respondent, Stephen Mosha for 4th Respondent 3rd and 5th Respondents are absent is hereby certified as a true copy of the original.

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL