

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

**CIVIL APPLICATION NO. 482/01 OF 2021**

**THE REGISTERED TRUSTEES OF SHADHULIY LIYASHURTIY.....APPLICANT**

**VERSUS**

**MAHAFUDH SALIM OMARY BIN ZAGAR**

(Administrator of the estate of the late **SALIM OMARY**) ..... **RESPONDENT**

**(Application for extension of time to apply for revision of the judgment  
and decree of the High Court of Tanzania at Dar es Salaam)**

**(Kileo, J.)**

**dated the 18<sup>th</sup> day of June, 2010**

**in**

**Civil Case No. 35 of 1982**

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**RULING**

13<sup>th</sup> & 21<sup>st</sup> November, 2023

**MLACHA, J.A.:**

The applicant, The Registered Trustees of Shadhuliy Liyashurty, brought the present motion seeking extension of time to file revision out of time against the decision of the High Court made in Civil Case No. 35 of 1982 on the following grounds;

- 1. That, the applicant was not a party to proceedings in the High Court and therefore has no right to appeal against the decision.*
- 2. That, the judgment of the High Court is tainted with illegality as the suit was preferred against a non-existing person*

*styled as the Registered Trustees of Shadhiliy and judgment was delivered against that non existing person with respect to the property for which the applicant is the lawful owner and occupier.*

*3. That, there are overwhelming chances of success in the intended revision.*

The application was filed under rule 10 of The Court of Appeal Rules, 2009, (the Rules) and is supported by the affidavit of Mr. Mohamood Nurdin Hussein, one of the trustees of the applicant. The respondent filed an affidavit in reply to oppose the application.

As gathered from the applicant's affidavit, the background of the case is as follows: The registered Trustees of Shadhiliy, had a case with Salim Omary, now deceased, Civil Case No. 35 of 1982 at the High Court of Tanzania at Dar es Salaam. The case was in of respect a house located on plot No. 19, Block M, Twiga Street Kariakoo, Dar es Salaam and was decided in favour of Salim Omary. There is evidence of some litigations in between, as we shall see later, involving the same parties. There is also evidence that the house did not shift to Salim Omary. It remained on the hands of The Registered Trustees of Shadhily.

Sometimes on 3/11/2020, the applicant received a summons requiring her to appear before the Deputy Registrar on 19/11/2020 in an

application for execution of the decree of Civil Case No. 35 of 1982. She was shocked because she has never been given a hearing in the case now under execution. Further, the applicant stated that the impugned judgment is tainted with illegality because the Registered Trustees of Shadhily does not exist in law or fact.

At the hearing of the application the applicant was represented by Mr. Edward Peter Chuwa, learned advocate, whereas Mr. Godfrey Okongwa, learned advocate, represented the respondent, Mahafudh Salim Omar Bin Zagar (Administrator of estate of the late Salim Omary).

In his submission, Mr. Edward Chuwa, adopted the notice of motion, the affidavit in support of the application, together with the written submissions earlier on filed and made an oral submission focusing on two points; one, that, the applicant has an interest in the property because she is in occupation of the property for more than 30 years, a fact which is admitted by the respondent in para 15 of the affidavit in reply. That, since she was not a party in the proceedings in the High Court she has no right of appeal. The only remedy available to her is to apply for revision which cannot be lodged unless time is extended. Two, that, the judgment of the High Court has an illegality on the face of it because the case was filed against a non-existing person; The Registered Trustees of Shadhily to justify his point, he referred the

Court to annexure B to the affidavit in reply which is a letter from RITA confirming this fact. That is also reflected in para 6 of the affidavit in support of the application, he said. He also made a reference to an order of the Court made in Civil Application No. 228 of 2019 where advocate Bendera is quoted saying that they have sued a non-existing person.

To support his proposition, Mr. Chuwa cited the following cases: **Halais Pro-Chemie v. Wella A.G** (1966) TLR 269, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 185, **Abdalla Thabit Huwel v. The Registered Trustees of Movimental Popular De Liberanto De Angola (MPLA)**, Civil Application No. 562/17 of 2018, **Attorney Genaral v. Tanzania Ports Authority and another**, Civil Application No.87 of 2016, **Dira Media Company Limited v. Florian Katunzi and Others**, Civil Application No.360/01 of 2018, **Mrs. Mary Kahama (Attorney of Geogia George Kahama) and Another v. H.M.A. Import & Export (T) Ltd and 2 Others**, Civil Application No. 52/17 of 2017, **Registered Trustees of Shadhily v. Mahafudh Salim Omary Bin Zagar**, Civil Application No. 228/01 of 2019 and **Victoria Real Estate Development Ltd v. Tanzania Investment Bank and 3**

**Others**, Civil Application No.225 of 2014 (all unreported). He then prayed for the application to be granted with costs.

Mr. Okongwa objected strongly. He accepted that, illegality is a base for extending the time but, had the view that, the applicant did not establish it. He added that long occupation of the suit property without title has no meaning. Neither is it a ground for extending the time. He went on to submit that the applicant cannot deny The Registered Trustees Shadhily at this moment because she has conducted several litigations under that name. He referred the Court to **Registered Trustees of Shadhily v. Salim Omary**, Civil Appeal No.137 of 2004, **Salim Omary v. Registred Trustee of Shadhily**, Civil Application No. 13 of 2005, **Registered Trustees of Shadhily v. Salim Omary**, Civil Appeal No.89 of 2010 (all unreported).

Like Mr. Chuwa, Mr. Ukongwa had his list of authorities namely; **Wambele Mtumwa Shahame v. Mohamed Hamisi (the Administrator of the estate of the late Asha Juma)**, Civil Application No. 197 of 2014, **Halais Pro-Chemie** (supra), **Salim Omary** (supra), **Attorney General v. Tanzania Ports Authority & Mr. Alex Msama Mwita**, Civil Application No. 87 of 2016, **Victoria Real Estate Development Limited v. Tanzania Investment Bank & 3 others**, Civil Application No. 225 of 2014 and **The Board of**

**Trustees of the Free Pentcostal Church of Tanzania v. Asha Selemani Chambanda & Rashid Selemani Chambanda**, Civil Appeal No. 63/07 of 2023. Based on these authorities he argued the Court to dismiss the application. In his brief rejoinder, Mr. Chuwa, reiterated his earlier submission.

I will now move to examine the grounds for extension of time. Looking closely, I have noted that, the three grounds are pegged around the illegality of the decision of the High Court. I will examine this area in the course of discussing the grounds which will be done together.

Attached to the affidavit is a certificate of incorporation of the applicant issued by the Administrator General of Trustees on 11/1/1967; a summons of the High Court issued on 3/11/2020; a copy of the Judgment of the High Court of Tanzania made in Civil Case No. 35 of 1982 (Kileo J. as she then was) and a letter from the office of the Administrator General of Trustees (RITA) addressed to Capt. Ibrahim M. Bendera dated 18/7/2019. These documents tell the court that, the case was conducted without involving the applicant. She became aware of it at the execution stage. They also indicate that, The Registered Trustees of Shadhily is a non-existing institution.

Attached to the affidavit in reply is a copy of a certificate of occupancy of The Registered Trustees of Shadhiliy, title No. 22925, Plot No. 19, Block M, Kariakoo; a copy of an Official Search showing The Registered Trustees of Shadhiliy as owners of Plot No. 19, Block M, Kariakoo; a copy of an order of this Court made in Civil Application No. 228/01 of 2019; an order of the High Court made in Civil Application No. 633 of 2016; a copy of an eviction order issued by Deputy Registrar of the High Court on 31/8/2016 directing Abdalah Hamza Abeid, Court Broker to evict the Registered Trustees of Shadhiliy from Plot No. 19, Block M, Twiga Street Kariakoo; a copy of the summons issued on 3/11/2020 calling the Registered Trustees of Shadhiliy to appear before the Deputy Registrar in execution of the decree in Civil Case No. 35 of 1982 and copies of the amended plaint and amended written statements of defence in Civil Case No. 35 of 1982 showing The Registered Trustees of Shadhily as parties. They show that the land was formerly owned by The Registered Trustees of Shadhily but ownership shifted to Salim Omary after the decision of the High Court.

The issue now is whether there is an illegality in the decision of the High Court giving base for extending the time. The applicant is claiming to be an owner of the suit land who was denied a right to be

heard. And that, the party who is recorded as judgment debtor does not exist. This is her basis of illegality.

The respondent has expressed doubts in the letters from the Administrator General of Trustees denying the existence of the Registered Trustees of Shadhily and establishing the applicant. He has the opinion that they are forgeries. He has added that, the man who is now behind the applicant, Mahamood Nurdin Hussein as trustee, was the same person who was behind the Registered Trustees of Shadhily and conducted the cases at the High Court and before the Court. Further, the land is held in the name of the Registered Trustees of Shadhily and not the applicant. He does not see any illegality in the decision of the High Court.

Speaking of illegality, the Court had this to say in **VIP Engineering and Marketing Limited & Three Others v. Citibank Tanzania Limited**, Consolidated Civil Reference Nos. 6, 7 and 8 of 2006 (unreported):

*"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now rule 10) regardless of whether or not a reasonable explanation has been given by the*



*applicant under the rule to account for the delay."*

This is also the import of several decisions cited by the parties. That is to say, if illegality is established, the Court has power under rule 10 of the Rules to extend the time regardless whether reasonable explanation for the delay has been give.

Parties are not at issue on the principals involved. The issue is whether the applicant has managed to establish that there is an illegality in the decision sought to be challenged. She is saying yes while the respondents is saying no. She has brought the element of difference on the names. They appear different. The question is whether this difference is real, or it is just a gymnastic created to frustrate the cause of justice.

The applicant is saying that, she has been in occupation of the suit land for more than 30 years and is the lawful owner of the land but she could not attach a copy of the certificate of occupancy in her name. The certificate we have was brought by the respondents as part of annextures to the affidavit in reply. As hinted above, the said certificate is in the name of the Registered Trustees of Shadhily and not he applicant. A copy of the official search from the Ministry of Land dated 8/10/2010 has the same result; that, the owner of certificate of title No.

22925 in respect of Plot No. 19 Block M, Kariakoo is the Registered Trustees of Shadhiliy. This title was nullified by the High Court which proceeded to declare Salim Omary as the owner of the land.

Para 6 of the affidavit in reply state that Mr. Edward Chuwa, now before the Court on behalf of the applicant, appeared before the High Court and the Court prosecuting three applications namely; **Registered Trustees of Shadhiliy v. Salum Omary**, Civil Application No. 633 of 2016 in the High Court, **Registered Trustees of Shadhiliy v. Mahfudh Salim Omary bin Zagar**, Civil Application No. 512/01 of 2018 in the Court of Appeal and **Registered Trustee of Shadhily v. Mahfudh Salim Omary bin Zagar**, Civil Application No. 228/01 of 2019 in the Court of Appeal. He appeared for The Registered Trustees of Shadhily whose existence is now denied. Mr. Chuwa did not dispute this fact in his submissions.

The issue now is whether the applicant is an owner of the land who was never given a hearing in the High Court and whether Registered Trustees of Shadhily is a non-existing entity. The Affidavit in support of the application was sworn by Mahamood Nurdin Hussein as one of the Trustees of the applicant. But this very person signed on the written statement of defence filed in the High Court, in defence of the case which he is now denying, as a principal officer of the defendant

who was The Registered Trustees of Shadhily. He also appeared before the Court in Civil Appeal No. 137 of 2004 (supra) for The Registered Trustees of Shadhily who were the appellant. Evidence to this is in the following paragraph:

*"On his Part Mr. Mahmoud Nurdin Hussein, **a Trustee of the Appellant** conceded to the defects found in the record." (Emphasis added)*

The person named as the appellant in the ruling is The Registered Trustees of Shadhily.

I agree with Mr. Ukongwa that, apart from the difference of names which has been introduced at this stage, the people who were in court for many years, quarrelling over the disputed property, the subject matter of this application are the same. This makes the arguments advanced by the applicant doubtful. With respect to Mr. Chuwa, I think that, the changes of names have just been introduced to frustrate the course of justice.

Further, despite the fact that the applicant is claiming to be the owner of the suit land who have been in occupation of the land for more than 30 years, but she did not file any certificate of occupancy in her name. We don't have any certificate of occupancy, other than what was filed by the respondent which was nullified by the High Court.

In view of the foregoing, I have the opinion that, the applicant has failed to establish good cause to enable the Court to exercise its discretion under rule 10 of the Rules, to extend the time within which to file the intended revision.

That said, the application is found to be baseless and dismissed with costs.

It is so ordered.

**DATED at DAR ES SALAAM** this 17<sup>th</sup> day of November, 2023.

L. M. MLACHA  
**JUSTICE OF APPEAL**

The Ruling delivered this 21<sup>st</sup> day of November, 2023 in the presence of Mr. Edward Peter Chuwa, assisted by Ms. Anna Lugendo, learned Counsels for the Applicant, and Capt. Ibrahimu Bendera, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR  
COURT OF APPEAL**