

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

CIVIL REVISION NO. 720/01 OF 2022

**DANIEL GODWIN URIO..... APPLICANT
VERSUS**

DANIEL GEORGE BWANALI.....1ST RESPONDENT

OKULY ELIUFOO MURO.....2ND RESPONDENT

**(Application for extension of time to lodge an application for revision
from the decision of the High Court of Tanzania at Dar es Salaam)**

(Rwizile, J.)

dated the 26th day of November, 2020

in

Civil Appeal No. 138 of 2020

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RULING

15th & 23rd November, 2023

MWANDAMBO, J.A.:

This ruling relates to an application for extension of time to lodge an application for revision from the decision of the High Court (Rwizile, J.) made on 26 November, 2020 in Civil Appeal No. 138 of 2020. That appeal was between the first and second respondent largely over distribution of matrimonial assets following an unchallenged decree of divorce made by Kawe Primary Court.

To the extent relevant to this application, the High Court dismissed the first respondent's appeal from the decision of the District Court at

Kinondoni which had made a division of a house on Plot No. 285 Block 'G' at Madale between the parties to that appeal. That house appears to be registered in the applicant's name. Since the applicant was not a party to the proceedings before the High Court and the courts below it, he could not have appealed against that decision but to challenge it by way of revision. However, he was late in filing the application for revision within the time prescribed by rule 65 (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules). He has thus filed the instant application under rule 10 of the Rules for enlargement of time within which to do so.

The notice of motion founding the application is predicated upon four grounds together with averments in the applicant's own affidavit. Briefly, the applicant avers that, he is the owner of the house subject of the division in matrimonial proceedings having purchased it from the first respondent vide sale agreement executed on 29 April, 2017 followed by registration in his name on 29 September 2019. He avers further that, he was not aware of any proceedings that gave rise to the division of the property until 27 June 2022 when time to seek revision had already lapsed, hence the instant application. The respondents did not file any affidavit in reply.

At the hearing of the application, Mr. Amin Mohamed Mshana, learned advocate, appeared for the applicant. The respondents were absent. According to the affidavit of the Mambuli Iddi; the process server affirmed on 18 October 2023, service of the notice of hearing is shown to have been made on Augustino Law office on 11 October 2023. Under the circumstances, I granted Mr. Mshana's prayer to proceed with hearing in the respondents' absence pursuant to rule 63 (2) of the Rules.

In his address, Mr. Mshana urged me to grant the application primarily because the applicant was denied right to be heard in a matter involving his house which constitutes sufficient reason for extension of time. However, he was at great pains explaining away the delay from the moment the applicant became aware of the decision sought to be challenged on revision. All the same, Mr. Mshana argued that in view of the fact that the applicant's house was decreed as a matrimonial property followed by an order for its division between the respondents, that constituted an illegality in the said decision. The learned advocate urged that, that amounted to denial of the right to a hearing in a matter that had the effect of depriving the applicant's right to his lawfully acquired house.

Upon examination of the notice of motion and the averments in the founding affidavit, it is glaring that the applicant has not accounted for the delay from 27 June 2022, the date on which he became aware of the impugned decision to 27 August 2022 when 60 days lapsed. Neither has he succeeded in accounting for the delay after the lapse of 60 days. Ordinarily, I would have dismissed the application. However, guided by the well settled principle underscored in the Court's decision in **Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387 reiterated in many of its decisions, notably, **Lyamuya Construction Company Limited v. Board of Trustees of Young Women's Christian Association of Tanzania (YWCA)**, Civil Application No. 2 of 2010 (unreported), I will grant the application. The principle holds that, where the decision sought to be challenged involves illegality of sufficient importance, the Court should extend the time. It was stressed in **Lyamuya** that, such an illegality must be apparent and not one which can be established by long drawn process or arguments.

The fact that the division of a house registered in the applicant's name was decreed to be a matrimonial property and divided between

the respondents is very apparent in the judgment of the High Court on appeal from the District Court. That aspect is too glaring to require any argument to discover it. Therefore, I cannot agree more with Mr. Mshana that there is indeed an illegality in the impugned decision warranting exercise of discretion in the applicant's favour as prayed for in the notice of motion.

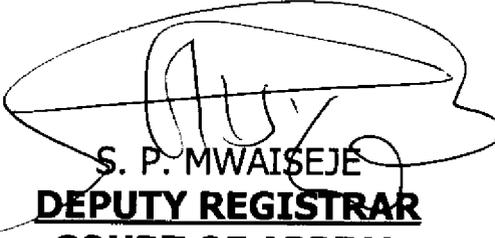
In fine, I grant the application and extend the time for filing the application for revision. The applicant is ordered to file his application not later than 60 days from the date of this order. Costs shall abide the outcome of the intended application. It is so ordered.

DATED at DAR ES SALAAM this 21st day of November, 2023.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of November, 2023 in the presence of Mr. Rochus Assenga, learned counsel for the Applicant and in the absence for the Respondent, is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL