

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: JUMA, C.J., MWAMPASHI, J.A. And MLACHA, J.A.)**

**CIVIL APPEAL NO. 345 OF 2020**

**ZABRON MFUNGO ..... APPELLANT**

**VERSUS**

**GABASHEKI CONSTANTINE MAGAMBO ..... RESPONDENT**

**(Appeal from the Ruling and Order of the High Court of Tanzania  
at Mwanza)  
(Rumanyika, J)**

**dated the 27<sup>th</sup> day of May, 2019**

**in**

**Land Revision No. 32 of 2018**

.....

**JUDGMENT OF THE COURT**

14<sup>th</sup> & 20<sup>th</sup> February 2024

**MLACHA, J.A.:**

This appeal has its genesis from a ruling of the High Court of Tanzania at Mwanza made in Land Revision No.32 of 2018 (Rumanyika J., as he then was) which quashed and vacated the decision of the District Land and Housing Application for Mwanza (the DLHT for Mwanza) made in Miscellaneous Land Application No. 74B of 2009. The appellant could not see justice in the decision and has come to this Court by way of appeal.

In order to get an easy understanding of the case, we think, it is desirable to give the background facts leading to this appeal. The record

shows that the appellant, Zabron Mfungo, filed Land Application No. 74 of 2009 at the the DLHT for Mwanza against Constantine Majabere Ndarro seeking to enforce a mortgage executed between them on a house on plot No. 20 Nansio area Ukerewe to obtain a loan of TZS. 6,500,000.00. The loan was advanced on 15<sup>th</sup> April 2008 and was to be paid on or before 14<sup>th</sup> July 2008. The loan agreement had a clause which provided for a monthly interest of 30% in case of default and it was dully signed by the parties. One, Adventina Constantine also signed as the wife of Constantine Majabere Ndarro (or simply Mr. Ndarro) to give the spouse consent. Mr. Ndarro did not pay the loan. In view of difference which arose between them, the matter went to the DLHT for Mwanza for adjudication as alluded to earlier. The appellant won the case. Mr. Ndarro was ordered to pay the appellant TZS. 6,500,000.00 with interest as agreed or else the house be sold to realise the amount due.

Mr. Ndarro did not see justice in the decision of the DLHT for Mwanza and appealed to the High Court in Land Appeal No. 74 of 2009 challenging the decision. The High Court (Mruma J.) dismissed the appeal on 6<sup>th</sup> March 2014. A notice of appeal was lodged to the Court on 20<sup>th</sup> March, 2014 and is still pending to date.

While the notice of appeal against the decision of Mruma J. was still pending, Mr. Ndaro filed Revision No.20 of 2015 at the High Court seeking to revise the decision of the DLHT made in Application No. 74 of 2009. A preliminary point of objection was taken successfully and Makaramba J. (retired) dismissed the revision on 18<sup>th</sup> April 2016 reasoning that there could not be a revision in the matter because the problem had already been dealt with in the appeal by Mruma J. Efforts of Mr. Ndaro ended there.

The appellant filed Miscellaneous Land Application No. 74B of 2009 at the DLHT for Mwanza seeking execution of the decree. It is apparent that his application could not be disposed quickly in view of the pending appeal followed by a revision. But later, Agatha Auction Mart was appointed to enforce the decree which had an amount of TZS. 48,750,000.00 being the decretal sum plus interest. They sold the house on 24<sup>th</sup> August 2018 for TZS. 30,000,000.00. Eviction was done on 5<sup>th</sup> February 2019 and the buyer took possession of the house. He was given a certificate of sale on 10<sup>th</sup> September, 2019 declaring the sale to be absolute.

The record shows that while Mr. Ndaro was pursuing the matter in the High Court, the respondent filed Application No. 7 of 2016 on 3<sup>rd</sup> May,

2016 at the DLHT for Ukerewe claiming to be the legal wife of Mr. Ndaru and owner of the house. Apparently (if not a trick), Mr. Ndaru appears as having two wives. Gabasheki requested the DLHT for Ukerewe to nullify the mortgage deed saying her consent as a wife was not obtained. The application was dismissed for want of prosecution on 24<sup>th</sup> April 2018 but she did not seek to set aside the dismissal orders. She instead opted to move to the High Court to file revision No. 32 of 2018 against the appellant and Mr. Ndaru, her husband, seeking to revise the execution which were done in Miscellaneous Land Application No.74B of 2009 and set aside the orders of the DLHT for Ukerewe in Land Application No.7 of 2016. This is the case which was before Rumanyika J.

A preliminary objection was raised which, among other things, questioned the jurisdiction of the High Court to hear the revision as it was believed to be time barred. This ground was not determined by the High Court and is one of the grounds before us as we shall see later.

The High Court revised the proceedings of the DLHT for Mwanza made in Miscellaneous Application No. 74A (which in reality was 74B) and set aside the orders. It was directed that "*Attachment and sale of the house is nullified...the applicant may wish to institute a suit against the*

*second respondent, the alleged second wife and the purchaser."* No finding or order was made on Application No.7 of 2016.

The decision of the High Court did not please the appellant who decided to lodge an appeal before the Court armed with 5 grounds of appeal which can be put as under:

- 1. That the Honourable Judge had no jurisdiction to overrule decisions of the High Court made in Land Appeal No. 74 dated 6<sup>th</sup> March 2014 (Mruma J.) and Civil Revision No. 20 of 2015 dated 18<sup>th</sup> April 2016 (Makaramba J., rtd) on the same subject matter and for which an appeal is still pending before the Court.*
- 2. That the Honourable Judge erred in law and committed an abuse of the court process when he blocked the process of appeal in Land Appeal No. 74 of 2009 through the revision orders.*
- 3. That the Honourable Judge erred in law in making orders in Revision No. 32 of 2018 in favour of the respondent who was a party in Application No. 7 of the DLHT for Ukerewe which was dismissed for want of prosecution on 25<sup>th</sup> April 2018.*
- 4. That the Honourable Judge erred in law in determining Revision No. 32 of 2018 against the decision of the DLHT for Mwanza in Miscellaneous Application No.74A of 2009 only and ignored Miscellaneous Application No.7 of 2016.*
- 5. That, the Honourable Judge erred in law to determine Revision Application No. 32 of 2018 which was filed out of time without leave for extending the time.*

When the appeal was called for hearing, the appellant appeared person whereas the respondent had the services of Mr. Feran Kweka, learned counsel.

At the outset, we thought the appeal could be determined on ground 5 which was also raised as a point of preliminary objection in the High Court but could not be determined. We reframed it and requested the parties to address us. It reads thus:

*“That, the High Court lacked the requisite jurisdiction to entertain the revision for being time barred.”*

The appellant, guided by the Court on what it meant, decided to adopt his submissions filed earlier in terms of Rule 106 (1) of the Rules and leave the matter to the Court. On the issue of limitation of time, the appellant submitted that the judge erred in law to determine revision No. 32 of 2018 and revise decisions of the two applications out of time. He intimated that the High Court had no jurisdiction to hear the revision without extension of time. To amplify his point, he referred the Court to our decision in **Richard Julius Rukambura v. Issack Ntwa Mwakajinga & Another**, Civil Appeal No. 2 of 1998 (unreported) where we stated thus:

*“The question of jurisdiction is of paramount In any court proceedings. It is so fundamental that at any trial stage it can be raised and entertained to ensure that the Court is properly vested with jurisdiction to adjudicate the matter before it.”*

Convinced that the revision was filed out of time, the appellant urged the Court to vacate the decision of the High Court and allow the appeal.

Mr. Kweka started with an approach for an adjournment saying he was not served with the record of appeal; he had the notice of hearing only which he showed to us. When we engaged him on the way he could write the written submission on record without being supplied with the record of appeal, he decided to leave the matter to the Court to be decided on the basis of submissions on record. Reading through his submission, we could not find anything material on the question of limitation. The point was just pointed out as a *non starter* and left aside. Counsel submitted that the decision of the High Court is not based on limitation of time but illegality of the sale of the house. He urged the Court to view the matter from a different angle; that there was no diligent search made before mortgage of the house making the mortgage illegal and the sale *void abinitio*. He made reference to section 8 (2) of the Mortgage Financing (Special Provisions) Act No. 17 of 2008 and section 114 of the Land Act,

Cap 113 which required consent of the wife in mortgages. He urged the Court to dismiss the appeal.

We think we should start with an examination of the relevant law. The relevant law is sections 43(1) of The Land Disputes Courts Act, Cap 216 R.E. 2019 (the Land Disputes Courts Act) read together with item 21 of Part III of the Schedule to The Law of Limitation Act, Cap. 89 R.E.2019 (the Law of Limitation Act).

Section 43(1) (b) of The Land Disputes Acts Act reads as under:

*"43-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court –*

*a) N/A*

*b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, **on application being made in that behalf by any party or of its own motion**, if it appears that there has been an error material to the merits of the case involving injustice, **revise the proceedings and make such decision or order therein as it may think fit**"*

*(Emphasis added)*

The law gives the High Court wide powers of revision over proceedings and decisions of the DLHT where there is an error material to

the justice of the case involving an injustice. It has power to revise the proceedings, set aside the orders and make directions as it can deem fit.

Although section 43(1) (b) of The Land Disputes Courts Act gives the High Court revision powers, it does not provide the limitation period within which to lodge such revision. This takes us to item 21 of Part III of the Schedule to the Law of Limitation which reads:

*"Application under the Civil procedure Code, the Magistrates' Courts Act or **other written law for which no period of limitation is provided** in this act or any other written law" (Emphasis added)*

Opposite to this column we have sixty days. It follows that, the period of limitation provided under item 21 on 'others written laws', which includes the Land Disputes Courts Act, is *sixty (60) days*. This means that Revision No. 32 of 2028 must have been filed in the High Court within 60 days of the decisions of the DLHT sought to be revised. It was also subject to section 14 (1) of the Law of Limitation Act which gives the court power to extend time.

We will now move to examine if the Revision No. 32 of 2018 was filed in line with the law. The High Court was asked to exercise its revisional powers under section 43(1)(b) of the Land Disputes Courts Act to revise the proceedings and set aside the orders made in two

applications: Miscellaneous Application No. 74A of 2009 of the DLHT for Mwanza and Application No. 7 of 2016 of the DLHT for Ukerewe. The subject matter in both applications is the house on Plot No.20 Nansio Ukerewe. The revision was filed on **29<sup>th</sup> October 2018**.

Looking through the record, we could not see Miscellaneous Application No.74A of 2009. What is there is Miscellaneous Application No. 74B which was an Application for execution of the decree of the DLHT for Mwanza made in Application No. 74 of 2009. We think this was a slip of the pen to record 74A instead of 74B. We will refer it as 7B instead of 7A. This application was lodged on 11<sup>th</sup> April 2014 and determined on **19<sup>th</sup> August 2015**.

Application No.7 of 2016 was lodged at the DLHT for Ukerewe by the respondent against Constantine Majabere Ndaru, Adventine Constantine Majabere and Zabron Mfungo on 31<sup>st</sup> May 2016. It sought to nullify the sale on grounds of lack of spouse consent. It was dismissed for want of prosecution on **24<sup>th</sup> April 2018**. No further step was taken to set aside the dismissal order.

Counting through, one may find that Revision Application No. 32 of 2018 was filed after 2 years and six months after the decision in Miscellaneous Land Application No. 74B of 2009. When making

calculations in respect of Application No. 7 of 2016, we could get a gap of 6 months and 15 days. No orders of extension of time were sought and granted by the High Court before filing the revision. It follows that the revision was filed outside the prescribed period of limitation and was illegally before the Court.

We think the revision should have been dismissed by the High Court under section 3 (1) of the Law of Limitation Act if it had considered the preliminary objection on account of it being time barred. In **BARCLAYS BANK TANZANIA LIMITED V. PHYLISIAH HUSSEIN MCHEMI**, CIVIL APPEAL No. 19 of 2016 (unreported), the Court, when considering the consequences of limitation of time, was inspired by unreported decision of the High Court, Dar es Salaam Registry in **JOHN CORNEL V. A. GREVO (T) LIMITED**, CIVIL CASE No. 70 of 1998 (unreported) where it was stated that:

*"However unfortunate it may be for the plaintiff, the law of limitation, on actions, knows **no sympathy or equity**. It is a merciless sword that cuts across and deep into all those who get caught in its web."*

For purpose of stressing on the need to adhere to limitation periods, we wish to reiterate the position held by a single Justice in **M/S SOPA MANAGEMENT LIMITED V. M/S TANZANIA REVENUE**

**AUTHORITY**, CIVIL APPEAL NO 25 OF 2010 (unreported). The Single Justice adopted with approval the following passage from HALSBURY'S LAWS OF ENGLAND which we subscribe. It was stated as under:

*"The courts have expressed at least three reasons supporting the existence of statutes of limitation, namely, (i) that **long dormant claims have more cruelty than justice in them**, (ii) that a defendant might have lost evidence to dispute the stated claim, (iii) that persons with good causes of action should pursue with reasonable diligence.(Halsbury's Laws of England 4<sup>th</sup> Ed. Vol.28 p.266, para 605)"*  
(Emphasis added)

The Court also cited Andrew **McGee in Limitation Periods** (2<sup>nd</sup> Ed.1994) where, he stated:

*"Argument with regards to the policy underlying statute of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as '**statutes of peace**.' The second look at the matter from a more objective point of view. It suggests that a time limit is necessary because with the lapse of time, **proof of claim becomes more difficult, documentary evidence is likely to have been destroyed and***

***memories of witnesses will fade. The third relates to the conduct of the plaintiff, it being thought right that, a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts. ... An unlimited and perpetual threat of litigation creates insecurity and uncertainty; some kind of limitation is essential for public order.***”(Emphasis added)

Taking into consideration what has been stated above, since the revision before the High Court was time barred, that court did not have the requisite jurisdiction to adjudicate on the matter and pronounce a judgment which disturbed the decision of the DLHT which had a blessing of the same court as pointed above.

Before we pen down, we wish to point out, albeit by passing that, reading through sections 38(1) and 41 of the Land disputes Act, we see that there was no logic of giving the High Court jurisdiction to hear appeals and revisions over decisions of the DLHT and provide the appeal period only. We think it is time to call the attention of the legislature to fill in the gap. As the people are already familiar with a period of 60 days borrowed from the Law of Limitation Act, a slight amendment can be made in section 41 to make it the period for filing revisions in the High Court.

Taking into account that the revision was heard out of time, thereby rendering the High Court to act without jurisdiction, the appeal is allowed with cost.

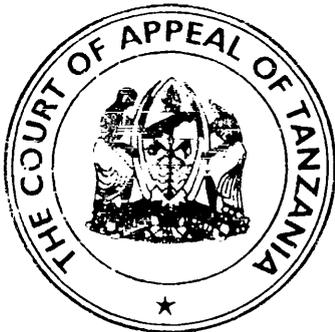
**DATED at MWANZA** this 19<sup>th</sup> day of February, 2024.

I. H. JUMA  
**CHIEF JUSTICE**

A. M. MWAMPASHI  
**JUSTICE OF APPEAL**

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

The Judgment delivered this 20<sup>th</sup> day of February, 2024 in the presence of Appellant appeared in person and in the absence of the respondent, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**