

# **IN THE HIGH COURT OF TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO 48 of 2010**

**MAHAMOUD M. MADENGE.....APPLICANT**

**VS**

**VICTOR SUNGURA TOKE.....RESPONDENT**

## **RULING**

Date of last Order: 14-04-2011

Date of Ruling: 09-06-2011

### **JUMA, J:**

The applicant Mahamoud M. Madenge filed this Chamber Summons on 28<sup>th</sup> April, 2010. He would like this court to allow him to file out of time, an application for revision of judgment of the District Court at Kinondoni (Civil Appeal No 75 of 1995) dated 20-03-1998 and decree therefrom of the same court dated 29-08-2001. He would also like this court to stay the execution of the judgment of the District Court at Kinondoni (Civil Appeal

No 75 of 1995) dated 20-03-1998 and decree therefrom of the same court dated 29-08-2001 pending final determination of this revision proceedings. The applicant would also like the respondent Victor Sungura Toke to pay the costs of this application. On 14 September 2010 the respondent filed his own counter affidavit opposing the application and contending that the application for enlargement of time is without merit because the applicant has not accounted for the inordinate delay to seek the revision order of this court.

Before this court could settle down to hear the application, the applicant on 3rd November 2010 filed a Notice of Preliminary Objection. In this objection, the applicant contended that the counter affidavit which the respondent filed on 14 September 2010 is incurably defective for containing extraneous matters in the form of legal conclusion. On 14 April 2011 this court dismissed that objection.

The affidavit which the applicant affirmed in support of his application summarizes the background facts leading up to this application. According to his affidavit, the applicant claims that around 1986 he acquired a parcel of land at Mbezi Luguruni

along Morogoro Road. Nine years later in 1995, the respondent filed a suit at Manzese Primary Court to claim the same plot of land. The decision of the primary court was delivered on 5th September 1995 and it went in the applicant's favour. The applicant continued with the occupation of that parcel of land till sometime in 1996 or 1997 when he sold that land to nine different people. Some of these new owners went on to build their respective houses over their purchased parcels of land. The applicant contends that he did not know that there was a further appeal which had been filed to challenge the decision of the Primary Court of Manzese which had awarded him ownership over the disputed land on 5 September 1995.

This version of events as narrated by the applicant was opposed by the respondent. On 14 September 2010 the respondent filed his own counter affidavit to oppose the application and contending that the application for extension of time should be rejected because the applicant has not accounted for the inordinate delay to seek the revision by this court.

The hearing of this application proceeded by way of written submissions. The submissions on behalf of the applicant were

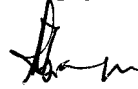
drawn and filed by Destiny Law Attorneys. Replying submissions by the respondent were drawn and filed by Sylvester Shayo & Co Advocates. Both in the affidavit he filed in support of this application and also in his submission, the applicant reiterated the reasons why he could not file this application within the prescribed period. According to the applicant, it was only on 30<sup>th</sup> March 2010 when he learnt of the existence of the judgment of the Kinondoni District Court (Civil Appeal Number 75 of 1995) which had reversed the judgment of the Primary Court of Manzese. That he learnt this decision of the district court when he was served with summons from Manzese Primary Court for execution of the judgment of the district court.

The main question for my determination is whether the applicant has furnished sufficient reasons to justify an extension of time to file an application to revise the decision of the Kinondoni District Court in Civil Appeal No. 75 of 1995. From the submissions made by the two learned counsel appearing for the applicant and the respondent; and looking into the material available on record, I do not agree with the applicant that he became aware of the judgment and decree of the District Court on 30<sup>th</sup> March 2010 when he was allegedly served with

summons from Manzese Primary Court. Records confirm that the applicant was fully aware of the appeal by the respondent against the decision of Manzese Primary Court. I have seen the affidavit which was affirmed by the applicant on 1<sup>st</sup> August 2003, and which the applicant filed at the district court of Kinondoni. This affidavit confirms that the applicant was fully aware that there was an appeal to contest the decision of the primary court which had awarded him ownership over land in 1995. This appeal at the Kinondoni District Court was scheduled for hearing on 14<sup>th</sup> June 1996. In this affidavit of 1<sup>st</sup> August 2003 the applicant had affirmed that he could not attend that hearing of the appeal because he was suffering from malaria. The affidavit further shows that the applicant was surprised when on 22<sup>nd</sup> July 2003 he was served with an order of the district court requiring him to vacate the disputed plot.

In my opinion, the applicant has not advanced sufficient reason to justify any extension of time. He was fully aware that there was an appeal seeking to overturn the decision of the Primary Court of Manzese. He did not follow up on the decision of the district court and lodge his appeal within the prescribed period.

From the foregoing, for want of sufficient reasons, the application before me is without merit and is hereby dismissed with costs. It is ordered accordingly.



I.H. Juma

**JUDGE**

**09-06-2011**

Delivered in Court Chambers in the presence of the Respondent Victor Sungura Toke.



I.H. Juma

**JUDGE**

**09-06-2011**

