

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 13 OF 2011

*(Originating from Temeke District Court Misc Civ. Application
No. 15/2011)*

DEAR OMARI MPILI. APPLICANT

VERSUS

FARIDI OMARI MPILI. RESPONDENT

Date of last order: 12/04/2012

Date of Ruling: 17/04/2012

RULING

KARUA, J.

Before me is an application for revision of a Misc. Application No. 15 of 2010 arising from the decision of Temeke District Court. The matter originated from probate cause No. 728 of 2008 of Temeke Primary Court. The application was preferred and argued before me by the

applicant herself, Dear Omary Mpili and she has sworn an affidavit in support of the application. On the other hand, the application is resisted by Mr. Mussa, learned counsel, on behalf of the respondent, Farida Omari Mpili, who in order to defeat the affidavit in support of the application, counter-poised her own.

The applicant and the respondent are blood relatives. They were both sired by Omari Shabani Mpili. The said Omari Shabani Mpili, has passed away. The deceased left behind same properties, including a house described as house No. 736, situate at Tandika Soweto Area. The deceased is also survived by a wife and nine children of whom five are of different mothers, one of them having passed away. Four of the deceased children, including the applicant, are from the same womb.

The applicant and respondent were appointed by the Temeke Primary Court as joint administrators of the estates of their late father. However, the two do not see eye to eye. Scuffle has taken hold in this family. The same revolved around the house. In view of the struggle over the house, the two administrators cannot reason together. The respondent and some of the heirs prefer the house sold and

the proceeds distributed among the heirs. The applicant on the other hand obstructs the sale. She and one of her sisters and their husbands have resided in the house in question for the past ten years. The matter was brought to the attention of the trial court, which in turn ordered that the house be sold by a Court Broker in a Public Auction and the proceeds thereof be distributed to the heirs.

The applicant felt aggrieved and applied for revision before the District Court of Temeke. The District Court sustained the trial court decision. The applicant is again dissatisfied with the reasoning of the District Court and has preferred the current revision proceedings.

I have carefully gone through the lower court's records. I am satisfied that the trial court order which directed that the house in question be sold in view of the existing acrimony among the heirs, was quite proper in the circumstances of this case. In other words, the reason given by the lower courts for the sale of the house which rested on the beneficiaries constantly quarrelling over the house was quite sufficient to dispose the house to avert further squabbles of the heirs over the said house. Otherwise, if the sale order is negated, the house will

continue to be a fine recipe for further conflict of interest between these deceased children.

The applicant asked to be given priority to buy the said house. However that proposal was strongly opposed by the respondent. She was offered that opportunity long ago. The record of the proceeding in the Primary Court is evident. The applicant has no capacity to purchase the house which according to the valuation report tendered, is worth twenty three million seven hundred and ninety thousand shillings. With respect, I tend to agree. Indeed, as correctly pointed out by the respondent, the applicant is the source of other heir's problems and predicaments. The applicant and her sister are taking the advantage of staying in the house by prolonging litigation and enjoying the property with their husbands; while other heirs are left to suffer in the streets. The only remedy to avert further conflicts is to implement the orders of the trial court. Dispose of the house, by way of sale, and the proceeds thereof be distributed to the heirs. The applicant and the other wishing heirs, if any, are not barred to bid at the public auction. In fact, they should even be given priority in case they raise the market price amount and

compensate the other heirs and reclaim the house, before the public auction is conducted.

In fine, I sustain the orders made by the trial court and accordingly dismiss the application which I find to be meritless, with costs. Execution process be carried out as directed by the trial court and upheld by the District Court.



S.V.G. Karua

JUDGE

17/04/2012

DATED AT DAR ES SALAAM

Appearances:

For the applicant: Present in person

For the respondent: Present in Person