IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM.

MISC. CIVIL APPEAL NO. 19 OF 2011

1. **AHMED SALUM KATUNGUNYA**
2. **ABDALLAH SALUM KATUNGUNYA.....APPELLANTS**

VERSUS;

SEIF SALUM KATUNGUNYA.....RESPONDENT.

JUDGEMENT;

17/04 & 27/04/2012

Utamwa, J.

This is an appeal filed by the two appellants (**Ahmed Salum Katungunya** and **Abdallah Salum Katungunya**) challenging the ruling of Hon. Minde- Senior Resident Magistrate (SRM) sitting in the District Court of Ilala District, at Ilala (the District Court) in exercise of revional jurisdiction in Civil Revision No. 18 of 2010. Various orders of the Primary Court of Ilala District, at Kariakoo (the trial court) were subject of these revisional proceedings before the District Court. The District Court pronounced a ruling dated 10th February, 2011 dismissing the application for revision before it. The two appellants who appeared before the District Court as applicants were aggrieved by the dismissal order, hence this appeal which is vehemently objected by the respondent, **Seif Salum Katungunya.** In this appeal I may be compelled in some instances to make reference to the parties by their first names for the sake of convenience because they are all **Katungunyas** by sir names (apparently they are blood related). Both appellants before me (Ahmed and Abdallah) on one hand and the respondent (Seif) on the other are legally represented by Messrs; **Semgalawe** and **Nyangusu** learned Counsel respectively.

The undisputed brief background of this matter according to the record and submissions by parties can be put thus; back in 1988 the respondent in this appeal

(Seif) was granted letters of administration of the estate of the late **Salum Seif Katungunya** (the deceased) which said estate included house No. 65 located at Sikukuu Street, Kariakoo area of Dar es salaam (the house). In the due course of the administration of the estate, and through the trial court order (see the proceedings of the trial court dated 14/01/1992, by Hon. Chungulu- PCM) the house was apportioned to the heirs of the deceased, the two appellants inclusive, by allocating a room to each of them. Following some misunderstandings among the heirs and the respondent as the administrator of the estate (administrator) various applications were made before the trial court which eventually made three distinct orders which were afterwards the subject matter of the revisional application before the District Court. For purposes of clarity in this ruling I will brand the orders as the first, second and third order respectively.

The first order was titled in Swahili "*Uamuzi*" meaning "*Ruling*", it was made on the 4/8/1994 (by Hon. Katembo- PCM). In effect it judiciously noticed and assigned respect to the previous order of Chungulu-PCM (dated 14/01/1992) on the apportionment of the house among the heirs. The first order further confirmed the apportionment of the Shamba (part of the estate) to the heirs, which said apportionment had been performed by the administrator. The second order had a similar title to the first order; it was made on the 3/10/2008 (by Hon. Mwakasanda- PCM) at the instance of the respondent (Seif) as administrator. This second order directed for the sale of the house and the distribution of the sale proceeds to the heirs. The order was further to the effect that heirs who were not in favour of the sale could compensate those who were in favour of the sale so that each could benefit his share from the sale proceeds. As to the third order, it was dated 25/1/2010 and issued by Hon. Moshi- PCM. This one is not specifically titled as an order though in effect it is one. The same is apparently an expression of the trial court titled "*Mahakama*" in Swahili meaning *"Court"* denying an application that had been made before it by the appellants (Ahmed and Abdallah). There is a dispute by the parties on the effect of this third order to the sale of the house in question. I will latter discuss and make a finding on the actual effect of that order when I will be discussing on the three order one after another.

According to the chamber application and its supporting affidavit filed in respect of the above mentioned revisional proceedings before the District Court, the twin appellants (Ahmed and Abdalla) moved the District Court (under S. 22 of

the Magistrates Court Act, Cap. 11, R. E. 2002) to revise the three orders enlisted herein above. The respondent (Seif) through his Counsel raised a preliminary objection (PO) against the revisional application to the effect that it was not proper for the appellants to move the District Court to cumulatively revise the three orders which had been made by different magistrates, and further that the application was time barred. The District Court then, for various reasons as it will be demonstrated latter dismissed the application before it at the stage of the preliminary objection upon considering its merits, hence this appeal.

Before this court the appellants preferred only two grounds of appeal, to wit;

1. *The District Court erred in law in deciding that the application for revision was time barred.*
2. *The District Court erred in law in supporting the order of sale of the house in dispute when division of assets was completed 12 years ago.*

For these two grounds the appellant's Counsel urged this court to allow the appeal and quash the decision of the District Court with costs. The appeal proceeded by way of written submissions and both sides accordingly filed their respective submissions, hence this judgement.

In his written submissions in chief supporting the appeal the learned Counsel for the appellant adopted an omnibus style, he argued the two grounds of appeal cumulatively to the following effect; that the respondent (Seif) before the District Court raised the PO to the effect that the application for revision before the District Court was time barred. The District Court however, instead of dealing with the PO considered the actual application as evidenced in page 3 of its ruling, and it decided that the respondent (Seif) correctly sold the house as the administrator. The Counsel further argued that the first order divided the estate including the house to the heirs who all conceded to the division, hence the second order (made in 2008) was unlawful because the administrator (Seif) could not sale the house while the division of the estate had already been effected in 1994 by virtue of the first order. The learned Counsel also contended that the magistrate who made the second order could not review the first order being made by another magistrate.

The Counsel for the appellants further argued that, the third order was also unlawful because it resulted into the sale of the house and following the

information by the respondent (Seif) that the two appellants (Ahmed and Abdallah-who had not been in favour of the sale) had failed to compensate the other heirs. He added that the third order was resulted from the second order which was unlawful for want of jurisdiction of the magistrate (Mwakasonda-PCM) who could not order the sale of the house which was in hands of the heirs and not of the administrator. The Counsel for the Appellants also charged that, the third order had the effect of finally concluding the sale of the house in dispute. The Counsel thus asserted that both the second and third orders are subject to revision for, the term "*proceedings*" means under S. 2 (i) of Cap. 11 a suit, an appeal or an application and proceedings under customary law.

In his replying submissions, the Counsel for the respondent also adopted a cumulative approach to the two grounds of appeal. He argued that the challenged orders were made in the presence of the parties and they were informed of their rights of appeal. He further argued that, when the second and third orders were made the administration of the estate had not been finalised as admittedly indicated in the ruling of the District Court now under examination, and it had not been completed even at the time the District Court delivered its ruling on the 10/2/2011. The respondent's Counsel also asserted that in law an administration of estate is complete when the administrator files the final inventory in court, which was not the case in the matter at hand. For these reasons, the Counsel contended, the respondent (Seif) as administrator had powers to move the trial court to sale the house in 2008 irrespective of the fact that the house had been apportioned to the heirs. Furthermore, he submitted that before the second order was made the majority of the 5 heirs had demanded for the sale of the house following the misunderstanding among them, the second order was thus correct in ordering the sale of the house because there was no longer a unit of ownership of the house by the heirs.

Moreover, the Counsel for the respondent submitted that the appellant's learned Counsel has a misconception that the District Court had wrongly found that the revisional application before it was time barred, the truth is that the District Court accepted the appellant's arguments and held that the same was only partly time barred on the ground that the third order, which was the last order was not time barred and it re-confirmed the second order. He also argued that the District Court correctly proceeded to consider the merits of the application and found that

the proceedings of the trial court were correct. It cannot thus be argued that the District Court wrongly dismissed the application because; it was duly heard and decided, submitted the respondent's learned Counsel.

The respondent's Counsel further submitted that this appeal has been overtaken by events because the sale of the house was completed in March, 2009, and the sale proceeds were divided to the heirs and a certificate of title issued in the name of the purchaser one **Ismail Rashid Mkoko**. The respondent's Counsel thus pressed the court to dismiss the appeal with costs.

In his rejoinder submissions, the Counsel for the appellant underscored that the District Court had decided that the application before it was time barred. He added that an application cannot in law be partly time barred, and that the third order did not re-confirm the second order in respect of the sale of the house, instead it (the third order) was an order for sale of the house and it was a final order in respect of that sale. The appellants' Counsel also charged that the fact that the respondent as administrator had not filed the inventory did not in law affect the title of the heirs following the apportionment of the house which made the distribution of the estate complete. An inventory is only meant to inform the court of the performance of the administration of the estate. The Counsel also challenged the argument advanced by the respondent's Counsel that this matter is overtaken by event. The learned Counsel for the appellants thus argued that so long as this matter was not raised in the District Court it cannot be brought at this stage of the appeal.

Upon considering the twin grounds of appeal and the arguments by the parties which were made cumulatively, I feel compelled at this stage, to make lucid the pertinent particulars of the consensus and contention between the parties for the sake of a better understanding of this ruling. In the first place both Counsel are at one that the District Court dismissed the application at the PO stage, which said PO had been raised by the Counsel for respondent (Seif) on the two points of law that the application before it (District Court) was improperly filed and it was time barred. It must also be noted that, though it is apparent that before the District Court the appellants (Ahmed and Abdallah) were complaining against all the three orders, it is plain that before this court the same appellants are not much concerned with the first order because their Counsel argued that it was conceded to by all the

heirs and it was the second and third orders that were irregular for offending the it (first order). The bone of contention between the parties as far as the first ground of appeal is concerned is thus on the decision of the District Court in respect of the time limitation of the second and third orders which related to the sale of the house. The point of contention in relation to the second ground of appeal is on the legality of the decision of the District Court in dismissing the application before it upon finding that the second and third orders were meritorious at that stage of the PO.

Having digested the arguments by the parties, I will now test the appeal. As a plan for accomplishing the task before me, I will test the first ground of appeal and if need will arise, I will test the second one. I now engage the first ground of appeal (i.e. *The District Court erred in law in deciding that the application for revision was time barred*). From the arguments by the parties (narrated above) the issues cropping up from this ground are two as follows; **first**; *what was the actual decision of the District Court in relation to the PO raised by the respondent (Seif) on the ground of time limitation of the application before it*? This being the court of record having supervisory mandate to correct the decision of the District Court, the **second** issue that I must decide will be *whether or not the District Court's decision in respect of time limitation of the application before it was legally correct.*

As to the first issue, I have consulted the written submissions that the parties had made before the District Court and the resulting ruling by it. In his written submissions supporting the PO before the District Court the respondent's Counsel argued (as hinted above) that the application was not tenable by the District Court as it intended to revise different orders made by different magistrates of the trial court, and that the first and second orders were time barred because, they were made by the trial court on the 4/8/1998 and 3/10/2008 respectively, and the application for revision was filed before the District Court on the 25th day of August, 2010, hence 11 years had lapsed from the date when the first order was made and 2 years expired from the date when the second order was pronounced. The respondent's Counsel argued further before the District Court that the two orders had not been challenged prior to the filing of the application for revision before the District Court. He further charged that according to S. 22 (4) of Cap. 11

no proceedings of a primary court can be revised after the expiration of twelve months from the termination of such proceedings in the primary court.

In reply to the respondent's Counsel arguments the appellants' Counsel before the District Court contended that, according to the provisions of S. 22 (4) of Cap. 11 the limitation period of 12 months is computed from *"the termination of such proceedings in the primary court"* and the proceedings before the trial court proceeded up to the date when the third order, as the last order was made (i. e. 25/1/2010). He submitted thus that so long as the application before the District Court was filed on 26/08/2010, only seven months had lapsed from the date the last order (third order) was made, hence the application was in time.

My understanding of the ruling of the District Court, though couched in a kind of English that needs attentiveness to appreciate is that, it totally agreed with the construction of the provisions of S. 22 (4) of Cap. 11 offered by the appellants' Counsel to the effect that the application before it (District Court) was not time barred. This truth is evidenced in pages 2-3 of the typed version of the ruling of the District Court, where it held thus, and I quote the pertinent paragraph for the sake of a readymade reference;

> *"Am (sic) not in different position that (sic) I agree with the applicants that, the plain meaning of the said quoted words from the said provision (sic) mean the same. That the time calculations must be computed form the terminations (sic) of the said proceedings"*

Soon after holding in the terms quoted above, the District Court lamented against the trend of delaying probate matters in primary courts generally and went on to consider the merits of the application, and it ultimately dismissed it as I hinted above.

Had the District Court decided that the application before it was time barred (as the appellants' Counsel tries to suggest before this court) it could not have recorded its finding quoted above and it could not have proceeded to test the merits of the application, instead it could have dismissed the same on the spot. On the other hand, I did not see any suggestion in the District Court's ruling that the application before it was partially time barred as proposed by the respondent's Counsel. The first issue posed above is therefore, answered to the above effect, that

the District Court's decision was in fact that the application before it was not time barred.

Under the circumstances of the case, the appellants could not be expected to complain as they did in the first ground of appeal that the District Court had held that the application was time barred, for its holding was in fact in favour of the appellant's Counsel arguments before it (District Court) as far as the contention in respect of time limitation of the application before it was concerned. In law, a party to court proceedings cannot appeal against a decision which is in his favour. This court (**Munyera, J**, as he then was) in **Mwita Maturubani v. Marwa Chacha Turya, (PC), High Court Criminal Appeal No; 275 of 1992, at Mwanza** held that an appeal to this court against a decision which was in favour of the appellant must be dismissed. I would thus overrule the first ground of appeal for this reason only. However, I still have to decide on the second issue before I make a firm order in respect of this first ground of appeal.

After making the above finding in respect of the first issue I now test the second issue i. e. *whether or not the District Court's decision that the application before it was in time (or that it was not time barred) was legally correct under the circumstances of this matter.* The determination of this issue is crucial because, it is a legal issue directly touching the revisional jurisdiction of the District Court. This view is supported by the wording of the provisions of S. 22 (4) Cap. 11 (quoted herein below) which mandatorily prohibits any District Court from revising any proceedings of a primary court, filed in the District Court after the expiry of 12 months from the date of the impugned decision. In fact S. 22 (4) of Cap. 11 directly relates to the revisional jurisdiction of the District Court because it belongs to PART III of Cap. 11 under the heading of; *Jurisdiction and Powers of, and Appeals, etc., From Primary Courts (Ss 18-39),* it also belongs to sub-heading (b) which is titled; *Appellate and Revisional Jurisdiction of District Courts (ss 20-24),* and the marginal notes for s. 22 are couched as "*Revisional jurisdiction*". This view is enhanced by the fact that the law considers the headings of the Parts, divisions and subdivisions into which a written law is divided as forming part of written laws of this land, see S. 26 (1) of the Interpretation of Laws Act (Cap. 1, R. E. 2002).

The law is also to the effect that, an issue touching jurisdiction is a fundamental issue that can be raised by any party to court proceedings or by the court *suo motu* at any stage of the proceedings. The Tanzania Court of Appeal (TCA) went further and held to the effect that a court of law can raise and determine an issue of jurisdiction even at the stage of composing its decision on a matter before it irrespective of whether or not the parties addressed it (the court) on the issue of jurisdiction, see **Richard Julius Rukambura v. Issack Ntwa Mwakajila and Tanzania Railways Corporation, Civil Appeal no; 3 of 2004, at Mwanza**. The Counsel for both parties in the matter at hand have indeed addressed me on this issue of time limitation, but they were at disparity on what was actually the decision of the District Court on the issue (as I demonstrated herein above), they did not thus have in mind that it (the District Court) in fact decided that the application before it was not time barred, hence they (both Counsel) could not discuss the legality of that decision (that the application was in time). But under the auspices of the legal position just demonstrated herein above, I must raise and determine this issue at this stage for, I cannot pretend to skip such an important point of law touching the jurisdiction of the District Court to entertain that application for revision.

In testing the second issue (which is also under the umbrella of the first ground of appeal) I will discuss the three orders one after another. Before I proceed to inspect the three orders I must debate and make a finding on the construction of S. 22 (4) of Cap. 11 offered by the appellants' Counsel through submissions before the District Court, which said construction the District Court entirely accepted as shown above. The provisions are couched thus, and I paste them for a quick reference;

> *"**S. 22 (4) No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court** and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section"* (the bold emphasis is mine).

It is also pertinent to be clear of the definition of the term "*proceedings*" as far as this matter is concerned. The same is defined under S. 2 of Cap. 11 to *include any*

application, reference, cause, matter, suit, trial, appeal or revision, whether final or interlocutory, and whether or not between parties';

This definition was rightly supported by the Counsel for the appellants in his written submissions in chief before this court.

From the above cited provisions of law, I cannot support the construction offered by the appellants' Counsel before the District Court (which was adopted by the District Court). That interpretation by the Counsel literally meant that in testing time limitation of orders or rulings made by a primary court for purposes of S. 22 (4) of Cap. 11 computation of time in respect of each order or ruling begins from the last order when all the proceedings have been finally completed or closed. My interpretation is different, tha in law and practice all proceedings before a court of law are terminated by a court decision (whether a judgement, order, ruling etc). My firm view is therefore that, computation of time limitation for each proceedings (suit, application etc.) before a primary court [for purposes of S. 22 (4) of Cap. 11] begins when a particular decision (whether a judgement, order, ruling etc.) is made. This means that, in main proceedings (say of a suit or of any other nature), where an application is made whether before or after its final determination and an order or ruling is accordingly made in terminating such application, the computation of time limitation against that order or ruling in respect of that said application will commence rightly from the date of the order or ruling for that application. The computation will not wait until the main proceedings are completed as the Counsel for the appellants wanted to suggest. This is the spirit of S. 2 of Cap. 11 in defining the term proceedings which underscores that proceedings may be *final or interlocutory* and may be in an *application, reference, cause, matter, suit, trial, appeal or revision, whether or not between parties.*

In the matter at hand, the main proceedings before the trial court were in a probate matter for appointment of an administrator, the same was terminated in 1988 when the trial court made its decision appointing the respondent (Seif) the administrator. It follows therefore that each of application before the trial court subsequent to the appointment of the administrator whether by the administrator or the heirs was an independent proceedings, and each of the three orders (at issue) that resulted there from, was an independent decision terminating the respective application as independent proceedings. In my view, it could not matter whether or

not the orders were made before the main proceedings were finally completed (as both Counsel wanted to suggest in their submissions before this court) so long as each of the three orders was an independent termination of its own independent proceedings (application). It is thus my firm conviction that in the matter at hand, the computation of time limitation in respect of the first and second orders could not wait until the third order was made. The construction of S. 22 (4) of Cap. 11 by the Counsel for the appellant was thus a misconception of the law. I will now scan each order after another.

As to the first order, I made a finding above that it is apparent that the appellants before this court are no longer complaining against it by virtue of the arguments by their learned Counsel who put it clear that all the heirs conceded to it and it was the second and third orders that offended the first order. But even if that was not the case, the first order was made on 4/8/1994 by the trial court and the application for revision before the District Court was filed on 26/8/2010, this was after about sixteen (16) years from the date of making the order. No doubt the application before the District Court was long out of time (12 months) as per the provisions of law cited above. The same applies to the send order which was made by the trial court on 3/10/2008. This one was thus made about 2 years before the application for revision was filed in the District Court, 12 months had thus expired from the date of the order, and it was thus also time barred. The computation of time limitation against these two orders cannot commence in 2010 when the third order was made as suggested by the appellants' Counsel for the reasons I adduced above. As I remarked above this computation was a result of a misconception of law or of an ingenious endeavour to rescue the second order (which is relevant to the crux of this mater, i.e. the sale of the house) from the adverse consequences of the statutory time limitation, which said trend is not acceptable under the law.

As to the third order which was made on 25/1/2010, only seven months had lapsed when the application before the District Court was filed as undisputedly submitted by both Counsel. However, as I indicated above the query between the parties is on its (the third order) effect to the core of contention in this matter, i. e. the sale of the house. The appellants' Counsel argument is to the effect that the third order, as the last order in the proceedings was vital in the sale of the house. He argued that it was this order which in fact resulted to the sale and it offended the first order. The respondent's Counsel did not go along with the appellants'

Counsel in this argument. He instead supported the holding by the District Court that the third order was just consenting to the second order, he renovated his argument by contending that it (the third) merely re-confirmed the second order. In addition, and as hinted above, the respondent (before the District Court) had protested against the appellants' style of filing a single application for revision of the three different orders which had been made by distinct magistrates. The District Court however, made a general finding in respect of the preliminary objection to the effect that the application was not time barred and it proceeded to consider its merits as hinted above. The District Court did not thus make a finding on the propriety of the style of filing the application for revision complained of by the respondent in the PO. From the arguments of the parties two sub-issues arise here, **one**; is *what was the legal effect of the third order in the core of this matter, i. e. the sale of the house?,* and **two**; *whether or not it was legally proper for the appellants to file this omnibus revisional application before the District Court against all the three orders cumulatively.*

The two sub-issues can be debated and determined at one time because they are interrelated, I accordingly take them cumulatively. By a keen perusal of the record of the trial court, it is prominent that the third order did not result to the sale of the house as the learned Counsel for the appellants wants to suggest. In fact the house had already been sold before the third order was made, and the appellants thus applied before the trial court to *inter alia* nullify the sale, hence the third order. This fact is manifest in the chamber application that had moved the trial court (filed on 31/12/2009) and the affidavit (Kiapo) deponed by the two appellants supporting the application (dated 30/12/2009), which said affidavit complained, among other things, that the house had been sold at Tshs. 620, 000,000/= following the application by the respondent to the trial court in 2008 (see paragraphs 6, 7 and 12 of the affidavit). It is for this reason that the trial court, when dismissing the application by the appellants through that third order *inter alia* indicated in Swahili, thus;

> *"...msimamizi aliona utaratibu wa kuuza utamaliza matatizo hayo. Pili mahakama inaona kuwa, utaratibu wote umefanywa katika uuzwaji, kwani* ***waliopinga walielekezwa wawafidie wanaotaka nyumba iuzwe na hawakufanya hivyo kwa muda***

waliopangiwa*...ambao hawakuchukua mgao wao fedha ziliwekwa katika akaunti ya mahakama"* (I supplied the bold emphasis).

The quoted Swahili phrase simply meant that the administrator of the estate had found that the sale of the house could resolve the problems that were facing the estate and the procedure of the sale was followed, and further that those (heirs) who were not in favour of the sale had been directed to compensate those (heirs) who were in favour of the sale, but they did not comply with the directives in time, hence their shares of the sale proceeds of the house was in the court account.

From the contents of the chamber application, the affidavit and the resulting third order it is clear that the third order was made after the sale of the house and the appellants in the supporting affidavit are admitting that the sale was made following the application by the respondent to the trial court in 2008 (this was in fact the application which resulted to the second order that ordered for the sale of the house). It follows therefore that the trial magistrate in making the third order only took cognisance of the second order by expressing that *"those (heirs) who were not in favour of the sale had been directed to compensate those (heirs) who were in favour of the sale"*, this was exactly the directive in the second order. In other words, Hon. Moshi-PCM who made the third order was only showing respect to the second order which had been made by his colleague magistrate, Hon. Mwakasonda- PCM who had directed the sale of the house and the compensation by the heirs who were not in favour of the sale to those who were in its favour. The course taken by Hon. Moshi-PCM (in making the third order) was in fact lawful because he did not have the statutory mandate to disobey or revise the second order made by his predecessor magistrate with whom he enjoyed concurrent jurisdiction. It is for these reasons that I am of the settled view that in essence the third order only judiciously noticed the second order that had ordered for the actual sale of the house. In addition the third order underscored to the parties the terms fixed into the second order.

Again, it is clear from the record that upon the appellants been aggrieved by the third order, they accordingly filed a notice of appeal and the actual appeal against it (see paragraphs 5 and 6 of the affidavit sworn by the appellants in support of the application for revision before the District Court). The appellants did not however, indicate any where that they had withdrawn their appeal before filing

the application for revision before the District Court. This gives an impression that the application for revision (against the three orders, the third order inclusive) proceeded before the District Court while the appeal against the same third order remained pending before it. This coexistence of the proceedings of an appeal and revision against the same third order implies another misconception of the law on the part of the appellants, which said trend the law cannot allow. It is trite law now that revisional proceedings are not alternative proceedings to appeals, see the case of **The Tanzania Railway Corporation v. Sudi Katuli & another, High Court Civil Application No. 184 of 2001, at Mwanza** (Masanche, J. as he then was) following **Israel Mwakalabya v. Ibrahim Mwaijumba, High Court Misc. Civil Application No. 21 of 1991, at Mbeya** (Mchome, J. as he then was). It was thus legally improper under the circumstances, for the appellants to file before the District Court, these omnibus revisional proceedings against the three orders (the third order inclusive) while the orders had been made in different dates and others (the first and second orders) were lucidly time barred, and it was more so considering the fact that there was an appeal before the same District Court against the third order as admittedly deponed by the appellants into the affidavit supporting the application for revision before the District Court. As I clued up herein above the respondent's Counsel in his notice of Preliminary Objection (dated 8th October, 2010) against the revision application before the District Court and in his written submissions in support of the PO before that same court, raised this point, that the application was not tenable in law as it intended to revise different orders delivered by different magistrates of the trial court. But the District Court did not make any specific decision in respect of that particular legal point. This was another error by the District Court, it ought to have made a finding in that respect.

For the above reasons I answer the first sub-issue raised above to the effect that the third order had no any legal effect to the sale of the house, it only refrained from nullifying the sale of the house upon judiciously noticing and respecting the second order, which said second order was the actual base of the sale. I am convinced that the third order was indeed in accordance to law. I further hold the second sub-issue negatively to the effect that it was legally improper for the appellants to file the omnibus revisional application before the District Court against all the three orders cumulatively.

Having held that the crux of this matter is the sale of the house which was based on the second order, and having held that the third order was made after the sale of the house and had no any legal effect to the sale, except that it was included into the application for revision before the District Court so as to serve the second order from the consequences of time limitation (which said course was improper in law), and having held that the first and second orders were in fact time barred when the application for revision was filed before the District Court, I am of the view that had the District Court considered the law and all the facts as demonstrated herein above it could not have accepted the appellants' Counsel submissions and hold that the application before it was in time. I therefore, hold the second issue (under this first ground of appeal) negatively to the effect that the District Court's decision that the application for revision before it was in time (or that it was not time barred) was legally incorrect under the circumstances of this matter. The District Court ought to have decided that the application was time barred and upon making such decision it ought to have dismissed the application before it instantly, that is how the law requires.

For the better practice and justice in future I would only remind the District Court and the parties of the value of the law of limitation in civil litigations, which said value the District Court seems to be un-aware of. It has been religiously underscored by courts of law in this land that parties coming to court must indeed abide with the law of limitation; this court in **Tanzania Breweries Ltd v. Robert Chacha, High Court Civil Revision No. 34 Of 1998, at Dar Es Salaam** (Katiti, J. as he then was) following the English case of **R. B. Policies At Lloyds v. Butler (1950) 1 KB. 76, at 81or (1949) 2 ALL ER 226 at 230** remarked to the effect that the reasons why we should have the law of limitation are *inter alia* that, long dormant claims have more of cruelty than justice in them and the person with good cause of action, should pursue his right with reasonable diligence. It was further remarked in that English Case (at pages 229-230) that principles underlying the law of limitation include the following; that those who go to sleep on their claims should not be assisted by the courts in recovering their property, there shall be an end of matters filed in court, and there shall be protection against stale demands. Again, the TCA emphasized the importance of the law of limitation in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another, Civil Appeal No. 79 of 2001** (CAT) by observing that the Law of

Limitation plays many roles including to set time limit within which to institute proceedings in a Court of Law and to prescribe the consequences where proceedings are instituted out of time without leave of the court. I will add here immediately that the reasons why we should have limitation of time in respect of suits are the same as far as revisional proceeding like the one which was before the District Court are concerned. The appellants could not thus be entertained in their ingeniously filed time-barred application before the District Court.

Having decided as above, and following the fact that there was no any cross-appeal against the decision of the District Court by the respondent I exercise revisional powers vested up on this court by S. 29 (b) and 31 (1) of Cap. 11 and I hereby revise the decision made by the District Court which was to the effect that the application before it was in time, instead I hold that the same was time barred as rightly argued by the respondent's Counsel before the District Court. I must add here that, for the serious irregularities pinpointed above the ruling by the District Court cannot be served by the provisions of S. 37 (2) of Cap. 11 which rescues irregular decisions made by a District Court in its appellate or revisional jurisdiction where such decision does not occasion failure of justice.

Upon deciding that the application for revision before the District Court was time barred I also have to decide on the legal remedy for a matter filed in court out of time. Cap.11 does not have provisions that provide for the consequences of filing a revisional application before a District Court out of time, one must thus resort to S. 3 (1) of the Law of Limitation Act, (Cap. 89, R. E. 2002). The applicability of S. 3 (1) of Cap. 89 to this matter is based on the provisions of S. 43 (f) and 46 of the same Cap. 89 which call for the use of Cap. 89 to proceedings the time limitation of which is governed by another statute (like the one at hand the time limitation of which is governed by Cap. 11), but the intention of the legislature was not to entirely exclude the applicability of Cap. 89. The provisions of S. 3 (1) of Cap. 89 are to the effect that a matter filed in court out of time (without leave of court) must be dismissed whether or not a point of time limitation has been raised. This has been the stance of law religiously preached by courts of this land, see decisions of the TCA in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another, Civil Appeal No. 79 of 2001** and that in **Hashim Madongo and 2 others v. Minister for Industry and Trade and 2 others, Civil Appeal No. 27 of 2003, at Dar es salaam**. This court

has also underscored the position in **M/S Concrete Structure v. Simon Matafu, HC Civil Case No. 12 of 1995, at Mbeya** (Lukelelwa, J), **Tanzania Breweries Ltd v. Robert Chacha, HC Civil Revision No. 34 of 1998, at Dar Es Salaam** (Katiti, J. as he then was), **Koja Shia Ithnasheri Jamaat and another v. Modest Rutanyagwa, Civil Appeal No. 19 Of 2007 at Dar Es Salaam.** In the case of **Stephen Masato Wasira** (supra) the TCA held further to the effect that under S. 3 (1) of Cap. 89 the court has only the powers to dismiss proceedings filed out of time and not to strike the same out.

For this reason I hold that the District Court ought to have dismissed the application for revision before it following the fact that it was time barred. For the decision I have made above, and for the same revisional powers vested upon this court, I hold that the application for revision before the District Court remains dismissed for being time barred.

For the above grounds I hold that the first ground of appeal partly succeeds and partly fails because the order by the District Court was indeed wrong as far as the question of time limitation was concerned, in that it was wrong for it to decide that the application before it was in time. This finding is thus based on distinct reasons from those advanced by the appellants' Counsel as demonstrated herein above.

As I hinted above, had the District Court rightly found that the application before it was time barred, it ought not to have proceeded in considering the merits of the application. Now so long as the District Court did not hold so, and so long as I have reversed its decision and I have found that the revisional application before the District Court was time bared and remain dismissed, I also find myself not legally obliged to test the second ground of appeal which touches the merits of the application before the District Court. For this same reason I will not also consider and decide on the concern raised by the respondent's Counsel in his reply submissions that the matter has been overtaken by event for the house being sold to a third party.

For the above cumulative reasons this appeal partly succeeds and partly fails to the extend stated herein above, the decision by the District Court is according revised and the application before the District Court remains dismissed.

I further order that each party shall bear his own costs because the appeal has partly succeeded and partly faile, it is so ordered.

JHK. UTAMWA

JUDGE

27/04/2012.

Date; 27/04/2012.

CORAM; Hon. Utamwa, J.

Applicant; Mr. Semgalawe (advocate).

Respondent; Mr. Nyangusu (advocate).

BC; Mrs. Kaminda.

Court; ruling delivered in the presence of Mr. Semgalawe (advocate) for the Appellants and Mr. Nyangusu (advocate) for the respondent, this 27th day of April, 2012.

JHK. UTAMWA.

JUDGE

27/04/2012.