

# IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATIONS NO 35 AND 36 of 2012

**ANNA LUBUVA.....APPLICANT**

**VS**

**DAVID ELINGARA MARO.....RESPONDENT**

**Last Order:** 10-08-2012

**Ruling:** 22-10-2012

## **RULING**

**JUMA, J.**

This Ruling relates to two chamber applications seeking two distinct prayers. In the first prayer, Ms Anna Lubuva is asking this Court to stay the eviction order which was issued by the Resident Magistrate Court of Dar es Salaam on 6<sup>th</sup> March 2012. In the second prayer she would like this Court to extend time to enable her to lodge an application to set aside what she has described in her applications as "an *ex parte* judgment" of this court. That High Court decision (by Mapigano, J.) had been entered against her almost thirteen years (13) ago on 21 December 1999.

The dispute between Ms Anna Lubuva and Mr. David Elingaria Maro centred on ownership of Plot Number 272 Block B in Mikocheni Dar es Salaam. It was the respondent Mr. Elingaria Maro who set the judicial process rolling in 1991 when he filed his suit at the Resident Magistrate's Court at Kisutu. He wanted the trial court to declare him as the lawful owner of the disputed plot. His suit, RM Civil Case Number 90 of 1991 was dismissed on 27 January 1995. Aggrieved, Mr. Elingaria Maro filed his appeal to this court and his Civil Appeal Number 147 of 1995 was allowed on 21<sup>st</sup> December 1999 when Mapigano, J. (as he then was) found that the judgment of the trial Resident Magistrate's Court was contrary to the weight of evidence that was on the record of the trial Resident Magistrate's Court. Justice Mapigano declared Mr. Elingaria Maro the lawful owner of the disputed Plot Number 272 Block B in Mikocheni Dar es Salaam. It is apparent from the pleadings; Ms Lubuva did not immediately prefer an appeal against the decision of this Court.

Sometime in March, 2012, which was more than a decade after the High Court had declared him the rightful owner of the disputed plot, Mr. Elingaria Maro went back to the Resident Magistrate Court at Kisutu. This time he wanted to execute the Judgment of the High Court. As his mode of execution, Mr. Elingaria chose the eviction of Ms Lubuva and demolition of structures that are on the Plot

Number 272 Block B in Mikocheni Dar es Salaam. Ms Lubuva made attempts at the subordinate court to stop the execution from taking place. These attempts were all denied, and hence these two applications before this Court.

In her applications, Ms Lubuva did not attach any copy of the *ex parte* proceedings presided by Justice Mapigano, from which this Court can deduce that the judgment subject of these applications was entered *ex parte*. From the pleadings, it is clear that Ms Lubuva's prayer seeking the intervention by this Court to stay her eviction and demolition of structures on the Mikocheni plot, is predicated on the outcome of her prayer that seek an extension of time to enable her set aside the Judgment of the High Court. Since it is the judgment of the High Court that forms the basis of the orders of the Resident Magistrate Court allowing the execution to proceed, I shall first have to deal with an application for extension of time.

To move this court into granting her an extension of time, Ms Lubuva has employed section 14 (1) of the **Law of Limitation Act, Cap 89**. Under this provision, Ms Lubuva has to show reasonable or sufficient cause to justify an extension of the period of limitation. What constitutes reasonable or sufficient cause cannot be laid down

by any hard and fast rules but it is a matter of judicial discretion based on facts before the court concerned.

Ms Lubuva's grounds for extension of time can be gleaned from paragraphs 6 to 9 of the affidavit which she swore in support of her application. Ms Lubuva is suggesting that she was not aware that the 27<sup>th</sup> January 1995 decision of the Resident Magistrate's Court which was initially in her favour, was appealed against and the appeal succeeded. Ms Lubuva averred that she and her entire family relocated to London on 27 December 1997 when her husband was appointed a Military Attaché at the Tanzanian High Commission Office in London. And while in London, Ms Lubuva sold the plot to one Mrs. Mary R. Munga and formal transfer was carried out. The family returned back from London on 15<sup>th</sup> October 2002.

In his counter affidavit to oppose the extension of time, Mr. Elingaria Maro pointed out that Ms Lubuva was fully aware of the High Court Civil Appeal Number 147/1995 which was filed shortly after the conclusion of the original suit at the Resident Magistrate's Court because she was still in the country. Further, Mr. Elingaria Maro pointed out the High Court Civil Appeal No. 147 of 1995 which declared him the legal owner was not heard *ex parte* and there was no *ex parte* judgment to be set aside. Mr. Elingaria Maro pointed out that between 1995 and 1997 when she left for London;

Ms Lubuva was represented by Advocate Mkatte in the High Court Civil Appeal Number 147/1995.

From the submissions of Jamhuri & Co. Advocates (for the applicant) and C&M Advocates (for the respondent), I have to determine whether the applicant Ms Lubuva has shown reasonable or sufficient cause to justify an extension of the period of limitation to enable her to overturn a thirteen years (13) old judgment of this court. The Court of Appeal in the case of **Aluminum Africa Ltd Vs. Adil Abdallah Dhiyebi (Civil Appeal No.6 of 1990)** restated the law that it is the duty of an applicant who is seeking an extension of time to account for every day of delay. Ms Lubuva has to the satisfaction of this court account for the delay between 21<sup>st</sup> December 1999 when Justice Mapigano declared Mr. Elingara Maro to be the legal owner of the disputed plot; and early March of 2012, when Mr. Maro applied to execute the judgment of this Court.

I should perhaps point out that there is nothing in the judgment of Mapigano, J. (as he then was) suggesting that Ms Lubuva was not aware that the decision of the Resident Magistrates Court at Kisumu was subject of an appeal. The judgment of Mapigano, clearly suggests that learned Advocates who were respectively representing Ms Lubuva and Mr. Elingara Maro, were duly notified that the judgment in Civil Appeal No. 147/1995 was

scheduled to be delivered on 21<sup>st</sup> December 1999. Ms Lubuva must have known that a decision of a Court of Resident Magistrate which went to her favour was not final and conclusive because the respondent had further appeal to the High Court and the Court of Appeal before ownership of disputed land could be conclusively settled. I do not think it is possible to accept the explanation that by the time Ms Lubuva left for London with her family on 27 December, 1997, she had not made any follow-ups about possible appeal against the decision of the Resident Magistrate's Court.

It seems to me that being outside the country is not sufficient reason to explain the delay because there is evidence from her affidavit that she followed up on that disputed plot. If Ms Lubuva could still manage to transact the sale of the plot of land in Tanzania to Mrs. Mary R. Munga while she was in London, she should surely have found out that the judgment of the Resident Magistrate's Court had been reversed following an appeal. It is my finding that Ms Lubuva had an opportunity to know that the decision of the subordinate court was not final but was potentially open to further appeal in High Court and the Court of Appeal.

For the foregoing reasons, I find no reason to determine the second prayer that is seeking a stay of the eviction order of the Resident Magistrate Court of Dar es Salaam. Otherwise the prayer

seeking a stay of the eviction order of the Resident Magistrate Court of Dar es Salaam and the one seeking an extension of time to enable the applicant to lodge an application to set aside the 21 December 1999 judgment of this court, are both dismissed in their entirety for failure to fully account the delays. Respondent shall have the costs of both applications.

It is so ordered.

**DATED at DAR ES SALAAM this 22<sup>nd</sup> day of October, 2012**



**I.H. Juma  
JUDGE**

Ruling is delivered in the presence of Mr. Ndelwa, Advocate for the Respondent Mr. Ndelwa also holds the brief of Mr. Msefya Advocate (for the applicant). The Respondent is also present in person.



**I.H. Juma  
JUDGE  
22/10/2012**