

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 52 OF 2020

(Arising from the Judgment of PC Civil Case No. 74 of 2017 of the High Court of Tanzania at Mwanza dated 2nd May, 2018 before Hon. Matupa, J.)

FINCA MICROFINANCE APPLICANT

VERSUS

ROBERT MATIKU RESPONDENT

RULING

26 & 30/06/2020

RUMANYIKA, J.:

The application for correction of typographical error or slip of the pen for that matter in the judgment and decree of 02/05/2018 of this court (Matupa, J.) is brought under Section 96 and Order XLIII Rule 2 of the Civil Procedure Code Cap 33 R.E. 2019. It is supported by affidavit of Willbard Kilenzi whose contents were adopted during the hearing by Mr. Willbard Kilenzi learned counsel for Finca Microfinance (the applicants). Mr. Steven Kitare learned counsel appeared for Robert Matiku (the respondent).

Following the global Coronavirus pandemic and pursuant to my order of 20/05/2020, the parties were present online and heard through mobile numbers 0765778634 and 0757422256 respectively;

Mr. Willbard Kilenzi learned counsel in a nutshell submitted that by way of a slip of the pen in PC Civil Appeal No. 74 of 2017 inordinately judge of this court dismissed a no existent decree on appeal with costs much as before Nyamagana district court there had been only application for extension of time within which the present applicant to file appeal wherein also, as it is the case today, the present respondent enjoyed legal aid service of Hope Legal Aid Centre (HOLAC) therefore not only the judge's subsequent order for costs had not been asked for, but also the order was accidentally made. That the corrections sought were never time barred (case of **Jewels and Antiques Tanzania Limited V. National Shipping Agencies Company Ltd** (1994) TLR 107). We shall ask for no costs because the present applicant had and still he enjoyed legal aid service. Mr. Willbard Kilenzi learned counsel further contended and wound up.

Mr. Steven Kitare learned counsel in the beginning, but on a time bar basis he opposed the application. That with respect to application of the nature there was no specific provisions of law that set limitation period but Part III of the schedule to the Law of Limitation Act Cap 89 R.E. 2019 gave a fallback position namely sixty (60) days that the case of **Jewels & Antiques** (supra) was distinguishable because the principle applied only where the corrections were initiated by the court. As for the costs, the learned counsel submitted that whether to grant or not to grant costs all depended on court's discretion. However, in his second breath, Mr. Steven Kitare learned counsel made a paradigm U-turn therefore he conceded to the application.

With the concession of the respondent's counsel, the issue therefore is no longer whether or not the application is time barred nor is it whether the corrections sought are tenable at law.

The brief historical background of the matter will read that having appreciated both the fact and evidence that he had secured a loan of shs. 20.0 million from the applicants but he defaulted and through execution his car was attached, but by its order of 15/05/2017 Mwanza Urban Primary Court (the PC) nullified the order of attachment, public auction and sale of the motor vehicle Registration No. T.936 CJC Toyota Lexus, as he was late in the day, the present applicant applied for extension of time within which one to appeal against decision of the PC successfully on 01/10/2017. Not happy with the order, this time the respondent unsuccessfully appealed to this court but for the subsequent judgment in which, instead of only dismissing the legal aid argued appeal naturally without costs, this court quashed a "decree on appeal" with costs hence the gist of the instant application.

Rightly so in my considered opinion as argued by Mr. W. Kilenzi learned counsel, essentially with regard to the application for extension of time Nyamagana district court had only issued a drawn order (not a decree). If anything therefore, there was no decree to be dismissed leave alone the accidentally made order for costs which one, for the above reasons this court should not have made the orders.

With respect to the time bar and concession of the learned counsel for the respondent, I would increasingly hold that like a point of illegality

sufficiently constituted sufficient ground for extension of time so much so that the court may have put the records right, equally so an application for corrections of typographical, clerical and arithmetical errors as the case may be it intended that by effecting the corrections, courts will keep the records rights short of which any limitation period would render the court records permanently remain bad and confusing.

In the upshot, the application is granted. Each party shall bear their costs the words "...quash the decree on appeal ... and costs" are substituted with the words **dismissal of the appeal without order for costs** and by this ruling, the judgment and decree of this court (Matupa, J) shall read as such.

However, with the above stated clear and undisputed background of the mater, but without running risks of preempting the issues, the fact would remain that now for a couple of 4 years since he defaulted, the respondent had not fully repaid the loan say of shs. 20.0 Million. Perhaps chose to play around it and taking advantage of the cumbersome Civil Procedure hence abuse of the court process much as quietly though, according to records of the PC the respondent admitted the claim but for some economic hardships that may have prevented him from within time complying with the loan repayment schedule. If need be and through private and in house arrangements between them, the respondent may have asked the applicant to extend the loan repayment schedule. It is very unfortunate that the district court did not from the very start invoke its revision powers. The applicants therefore is entitled to, and they may wish to accordingly attach the respondent's property all over again and sell it in

full satisfaction of the balance of the said loan just like the decision and orders of 15/05/2017 of the PC never existed. It is so ordered.

Right of revision /appeal explained.


S. M. RUMANYIKA

JUDGE

28/06/2020

The ruling delivered under my hand and seal of the court in chambers this 30/06/2020 in absence of the parties with notice.




S. M. RUMANYIKA

JUDGE

30/06/2020