

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICANT. NO. 324 OF 2019**

*(Arising from Civil Appeal No. 5 of 2009 in the District Court of Ilala at Samoara avenue  
and Probate Cause No. 24/1989 in the Primary Court of Buguruni at Ilala District)*

**KHAMIS SOUD ABUSHIRI.....1<sup>ST</sup> APPLICANT**

**KHADIJA SAID LUZIRO**

*Administratrix of the estate of the late*

**MASENGA SAID LUZIRO).....2<sup>ND</sup> APPLICANT**

***VERSUS***

**JOSHUA LEONARD.....1<sup>ST</sup> RESPONDENT**

**ROBERT JOSHUA**

*Administrator of the estate of the late*

**LEONARD S. BARAKA.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of last Order:** 22/07/2020

**Date of Ruling:** 16/10/2020

**MLYAMBINA, J.**

The instant Application is for extension of time for the Applicants to file revision against the decision of the District Court of Ilala at Samora Avenue delivered on 23<sup>rd</sup> November, 2010 in respect of *Civil Appeal No. 5 of 2009* as per Honourable Kinyange, R.M. The Applicant is made under *Section 14 (1) of the Law of Limitation Act*

*Cap 89 (R.E. 2002)* and it is supported with an affidavit of Khamis Soud Abushiri and Khadija Said Luziro, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively.

Paragraph 2 up to paragraph 10 of each of the supporting affidavit lays down the reasons under which the Applicant is brought. For clarity, I will reproduce the said paragraphs in extensor starting with that of Khamis Soud Abushiri and Khadija Said Luziro, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively. Paragraph 2 up to paragraph 10 of each of the supporting affidavit lays down the reasons under which the Applicant is brought. For clarity I will reproduce the said paragraphs in extensor, starting with that of Khams Soud Abushiri.

2. That, by a sale agreement dated 25<sup>th</sup> May, 2012, I bought house commonly known by its Residential Licence as Land No. ILA/BUG/KSN8/5 located at Buguruni Kisiwani from the 2<sup>nd</sup> Respondent herein at a consideration of Tshs 70,000,000/=.

*Copy of the sale agreement is hereto attached and marked annexure "AA" to form part of the affidavit.*

3. That, having purchased the suit property as described above, the 2<sup>nd</sup> Applicant handed over to me the Residential Licence which was registered in the name of Masenga Said Luziro and other documents evidencing ownership. On top of the said

documents, I was put in possession of the suit property which I have already developed.

4. That, I transferred the property into my name. As such, a Residential Licence in respect of the property was issued. *Copy of the sale agreement is hereto attached and marked annexure "AA" to form part of the affidavit.*
5. That, of recent the 2<sup>nd</sup> Respondent has demanded from me vacant possession of the suit premises on the ground that sale of the suit premises by 1<sup>st</sup> Respondent to the late Emasenga Said Luziro was nullified by the Primary Court of Buguruni on 21/11/2008 in *Probate No. 25 of 1989*.
6. That, I demanded from the 2<sup>nd</sup> Respondent documents of title giving him right of ownership and on 15/05/2019 gave me decisions of the Primary Court in Probate Cause No. 24/1989 dated 21/11/2008 and 22/08/2014 as well as Judgment of the District Court of Ilala dated 23/11/2010. *Copies of which are attached and collectively marked annexure "CC" to form part of the affidavit.*
7. That, I asked the 2<sup>nd</sup> Respondent if he was notified of the Proceedings in *Probate Cause No. 24 of 1989* challenging sale of the house to him by the 1<sup>st</sup> Respondent way back in 2008 and the appeal in the District Court of Ilala in *Civil Appeal No.*

05/2009 and if yes why was the information not disclosed to me at the time of sale and the 2<sup>nd</sup> applicant confirmed to me that he was not involved in the said Proceedings and was not aware of the said decisions.

8. That, before buying the property from the 2<sup>nd</sup> Applicant in 2012 I made official search and found that the property was registered in the name of the late Masenga Said Luziro and there was no any caveat whatsoever registered or any encumbrance attached to the property. *Copy of a letter dated 6/12/2012 is hereto attached and marked annexure "DD" to form part of the affidavit.*
9. That, I am the bonafide purchaser for value of the suit property without any notice.
10. That, decisions of the Primary Court of Buguruni and that of the District Court of Ilala as stated in the preceding paragraphs are tainted with illegality.

The reasons in the affidavit of the 2<sup>nd</sup> Applicant are as follows:

1. That, on 05/04/2005, the late Masenga Said Luziro bought House No. P/TXX2003 which is currently described based on the Residential Licence as Land No. ILA/BUG/KSN8/5 located at Buguruni Kisiwani Dar es Salaam from the 1<sup>st</sup> Respondent who is also known as Makenga Leonard and prior to the said

sale the late Masenga Said Luziro conducted search and found that there was no encumbrance attached to the property. *Copy of the affidavit confirming sale is hereto attached and marked annexure "A" to form party of the affidavit.*

2. That, having bought the aforesaid house, the late Masenga Said Luziro took possession and continued to occupy the same uninterruptedly until his demise on 12/04/2012.
3. That, I was appointed as administratrix of the state of the late Masenga Said Luziro by the Primary Court of Ilala on 21/05/2012 in *Probate No. 39 of 2012. Copy of letters administration is hereto attached and marked annexure "B" to form part of the affidavit.*
4. That, by sale agreement dated 25/05/2012 I sold house no. ILA.BUG/KSN8/5 to Khamis Sound Abushiri. *Copy of the sale agreement is hereto attached and marked annexure "D" to form part of the affidavit.*
5. That, having sold the disputed property to the 1<sup>st</sup> Applicant as stated above, myself and all other beneficiaries rendered vacant possession of the suit premises and until the time of sale there was nobody claiming ownership of the house

6. That, the 1<sup>st</sup> Applicant approached and told me that on 15/05/2019 one Amani Leonard acting on behalf of Joshua Leonard demanded from him vacant possession of the suit premises and handed over to him decision of the Primary Court dated 21/11/2008 in *Probate Cause No 24 of 1989*. *Copy of which is hereto attached and marked annexure "E" to form part of the affidavit.*
7. That, the 1<sup>st</sup> Applicant also gave me decision to the effect that Primary Court's decision was upheld by the District Court of Ilala (Honourable. Kinyage, RM) on 23/11/2010 in *Civil Appeal No. 05 of 2009*. *Copies of the Judgment and Decree in Appeal are hereto attached and collectively marked annexure "F" to form part of the affidavit.*
8. Further that on 22/08/2014, the Primary Court of Buguruni ordered that the Residential Licence in respect of the disputed property be changed to read the 2<sup>nd</sup> Respondent's name. *Copy of the decision is here to attached and marked annexure "G" to form part of the affidavit.*
9. That, I confirmed to the 1<sup>st</sup> Applicant who asked me why such information was not disclosed to him at the time of sale that neither the deceased Masenga Said Luziro nor myself has ever been involved in any proceedings at the Primary Court leading

to nullification of the sale or any appeal to the District Court of Ilala as stated in the preceding paragraphs.

The Application was not resisted by the 1<sup>st</sup> Respondent through his Counter Affidavit and Written Submissions. The Applicant in his submission stated *inter alia* that:

The seller of the afore said house was the 1<sup>st</sup> Respondent herein who sold the house at Tshs 13,500,000/= immediately after the sale, the purchaser, the late Masenga Said Luziro, was put in possession by the vendor and continued to occupy the suit premises uninterruptedly for Seven (7) years until he met his death on 12/04/2012.

The 1<sup>st</sup> Respondent in his submission told the Court that the above facts stated by the Applicant are well known to him because the 1<sup>st</sup> Respondent was the one whom he used to own the suit property and he sold to one Masenga Said Luziro at the tune of Tshs 13,500,000/= and such house had no any encumbrances that existed at that time.

I have considered the affidavits, Counter Affidavit of the 1<sup>st</sup> Respondent and the written submissions of the Applicants and of the 1<sup>st</sup> Respondent. I have taken note that the 2<sup>nd</sup> Respondent never Responded to the Application. I have further taken note that

there is no dispute the 1<sup>st</sup> Applicant bought the suit property from the 1<sup>st</sup> Respondent.

Indeed, there is no dispute that the Applicants were not parties in *Civil Appeal No. 5 of 2009* before the District Court of Ilala at Samora Avenue. Therefore, the revision proceedings would be the proper avenue for the Court to consider the interests of both sides including of the Applicant. In the case of **Bank of Tanzania v. Said A. Karinda and 30 Others** and **The Attorney General**, Civil Revision No. 74 of 1998 (unreported) the Court of Appeal of Tanzania held:

*...the applicant not being a party to the proceedings, had no right of appeal irrespective of whether the matter was appealable. The revision process was therefore, the avenue available to the applicant to come to the Court.*

I find it is in the interests of justice to grant this Applicant for three reasons. **One**, the Applicants were not parties to the impugned decision. **Two**, the Applicants were not aware of such decision. **Three**, the applicant bought the suit property for value.

In the upshot, the Application is granted as prayed. The Applicants are given 21 days to file revision proceedings. Costs shall follow events.





**Y. J. MLYAMBINA**

**JUDGE**

**16/10/2020**

Ruling delivered and dated 16<sup>th</sup> October, 2020 in the presence of the 1<sup>st</sup> Applicant in person and in the absence of the 2<sup>nd</sup> Applicant and both Respondents.



**Y. J. MLYAMBINA**

**JUDGE**

**16/10/2020**