

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO 20 OF 2020**

(Arising from Civil Appeal No. 9 of 2014 in the District Court of Ilala)

**KHAMIS SOUD ABUSHIRI.....APPLICANT**

**VERSUS**

**HAMISA ALLY SHABANI.....1<sup>st</sup> RESPONDENT**

**KURUTHUM ALLY SHABANI.....2<sup>nd</sup> RESPONDENT**

**ALLY RASHIDI HASSAN (As administrator  
of the estate of the late ALLY SHABANI) .....3<sup>rd</sup> RESPONDENT**

**RULING**

24<sup>th</sup> November & 16<sup>th</sup> December 2020

**AK. Rwizile, J**

This application originates from Probate Cause No. 23 of 2013 of Buguruni Primary Court, where Abdul Ally Shaban (now deceased) was appointed an administrator of the estate of the late Ally Shabani on 23<sup>rd</sup> January 2013. Later, on 27<sup>th</sup> October 2013, the same court gave a ruling dismissing the application for revocation of the administrator advanced by Hamisa Ally Shaban and Kuruthum Ally Shabani beneficiaries of the same estate, who are now the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively. Among the issues complained of was that the administrator's action of selling the house without their consent and for having administered the estate contrary to their agreement. Being aggrieved by the said decision of the trial court, they appealed to the District Court.

Upon hearing, the District Court allowed their appeal. The appointment of Abdul Ally Shaban (now deceased) was revoked and sale of the house nullified on ground that he had exceeded his powers for selling the house without consent of the beneficiaries (1<sup>st</sup> and 2<sup>nd</sup> respondents). The decision of the court prompted this application by the applicant who bought the house subject of distribution in probate cause No. 23 of 2013. This application therefore is for revision brought under section 44(1)(b) of the

Magistrate Courts Act, [ Cap 11 R.E 2019] where the applicant is praying for the following orders;

- 1. That the honourable court may be pleased to call for and examine the records of proceedings in relation to civil appeal no. 9 of 2014 in the District Court of Ilala at Samora avenue so as to satisfy itself as to the legality, propriety and correctness of the decision dated 13.08.2014 as per Hon. Hassan, SRM and revise the same*
- 2. Costs be provided for*
- 3. Any other order(s) and/or relief(s) which this honourable court shall deem just and proper to grant.*

The application is supported by an affidavit of the applicant, where it was averred that in 2013, he bought a house No. BG/KSW/6/8 which is located at Buguruni Kisiwani, Dar es Salaam from Abdul Ally the administrator of the estate of late Ally Shabani. He averred further that in 2017 he received a notice requiring him to vacate the premises within 14 days. The District Court had revoked the grant of letters of administration. He averred further that he has filed this application because he was not made party to the appeal which took away his rights in the house. So, he said he was denied his right to be heard.

All facts were disputed by the respondents in their joint counter affidavit. It was stated therein that, Abdul Ally sold the said house to the applicant not in his capacity as an administrator rather, his own capacity as if that property was his personal property. It was stated further that the applicant was not made party to the Civil Appeal No. 9 of 2014, because he was not party to Probate Cause No. 23 of 2013 at the Primary Court. It was averred further that, this application is out of time, and as stated in the notice of the preliminary objection, since the applicant filed this application on 14<sup>th</sup> January 2020, it is time barred.

At the hearing the applicant was represented by Mr Ogunde learned advocate, while the respondents appeared in person. This application was argued by written submission where by the preliminary objection and the main application were argued together.

When supporting this application Mr. Ogude submitted that, it was wrong for the Ilala District court to hear appeal No. 9 of 2014 without notifying the applicant since the appeal nullified the sale that affected his rights in the property. He said that, he was supposed to be notified and be made a party to the appeal. He added further that, the District Court had discretion to order the applicant to be joined as a party to the appeal to afford him the right to be heard. He argued further that he is a bonafide purchaser who should not lose his tittle to the property. To support this argument, he cited the case of **Peter Adam Mboweto vs Abdallah Kulala and Another** [1981] TLR 335. It was his submission further that, failure to afford an interested party a hearing, affects the proceedings. This, he said was decided in the cases of **Bank of Tanzania vs Said A. Marinda & Another**, Civil Application No. 74 of 1998, **Highland Estate Ltd Vs Kampuni ya Uchukuzi Dodoma & Another**, Civil Application No. 183 of 2004 (unreported), **Tang Gas Distributors Limited vs Mohamed Salim Said and 2 others**, Civil Application No. 68 of 2011(unreported) and **Claude Roman Shikonyi Vs Estomy A. Baraka & 4 others**, Civil Revision No. 4 of 2012 (unreported). According to him the decision of the District Court should be quashed for being null and void.

Mr Ogunde argued, this application was filed within time as was ordered by the court. He said, the applicant was given 14 days to file an application. It was on 31<sup>st</sup> December 2019. He submitted that he filed this application electronically on 10<sup>th</sup> January 2020 at 17:22:17. He referred this court to annexure AA and to Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018. He added that, when the same was filed electronically, the applicant waited for admission by the Registrar. He said the same was admitted on 14<sup>th</sup> January 2020 and it was the same day when fee was paid by the application. He therefore prayed for the preliminary objection to be overruled, and the application be allowed with costs.

Disputing the application, the respondents submitted that according to the sale agreement, it is shown that the applicant bought the house from Abdul Ally in his personal capacity but not as administrator of the estate. They added that this is due to the fact that there is no any phrase in the agreement mentioning that the house was property of deceased estate. It was submitted further that; the applicant was not

supposed to be party of the appeal because he was not party to the original proceeding at the primary court. The respondents asserted further that; the applicant is not a bonafide purchaser as he claimed and that the cases cited are distinguishable.

It was argued that, since the applicant bought the house from Abdul Ally in his personal capacity and the agreement did not mention the deceased's name, this disqualified the applicant from being the bonafide purchaser. It was added that, according to annexure B the applicant had not acquired a good title to the property. They prayed for this application to be dismissed for want of merits with costs.

When submitting on preliminary objection, the respondents argued that this application is time barred. It was to be filed within 14 days from 31<sup>st</sup> December 2019. It was added that when counting, 14 days lapsed on 13<sup>th</sup> January 2020. Filing of this application was on 14<sup>th</sup> January 2020 which is out of time. It was argued as well that, the applicant cannot take refuge under Rule 21(1) of Judicature and Application of Laws (Electronic Filing) Rules, 2018, since the court had given time to file the same. Therefore, the applicant prayed, this application be dismissed with costs.

When re-joining, the learned advocate submitted that, the fact that the suit land was sold to the applicant by Abdul Ally in his capacity as the administrator of the estate of the late Ally Shabani has never been in dispute. He submitted, this point cannot be raised in this court. He added that, since the applicant bought the property from the administrator of the estate, he therefore acquired a better title.

It was submitted further on preliminary objection that, 14 days to file this application lapsed on 14.01.2020 when counting from 31.12.2019. It was his argument further that, the respondents misdirected their minds on the interpretation of the phrase 'unless a specific time is set by the court' as per Rule 21(1). According to him, the same refers to days not hours.

He was of the view that, if the court had time apart from East Africa time, then the respondents' argument could have made sense. He asserted that the court did not set another time apart from the usual time, therefore the application was submitted electronically on 10.01.2020 at around 17:22:17 before midnight which is within time.

Having considered the records of appeal and the rival submissions of the parties. I propose to determine the preliminary objection raised by respondents before going to the merit of this application. It was alleged by the respondents that this application is time barred since it was filed out of time. It is in record that, the applicant was given 14 days from 31.12.2019 to file this application. It is also apparent that this application was filed on 14.01.2020. I hold the same view with the respondents that, the 14<sup>th</sup> day is 13.01.2020. Since the wording of this court was that, filing of the application be within 14 days from the day of the ruling. Counting starts from the day of the ruling. Depending on the foregoing analysis, the respondents asked this court to dismiss this appeal for being time barred. However, the application was filed electronically on 10.01.2020 as per annexure AA which shows on item number 6, day and time it was submitted in court. The Judicature and Application of Laws (Electronic Filing) Rules, GN No. 148 of 2018 under rule 21(1) provides as follows;

*A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East Africa time, on the date it is submitted, unless a specific time is set by the court or it is rejected.*

The above is so clear that, a document shall be considered to have been filed the day when it is submitted through the electronic filing system.

It has been shown by the applicant that he filed this application electronically on 10.01.2020 as per annexure AA. It is my considered view that the same was filed within time under Rule 21(1) of GN No. 148 of 2018. Therefore, the preliminary objection raised has no merit.

Going back to the merits of this application, this application was made under section 44 (1) (b) of MCA, which for easy reference states;

*44.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*

*(a).....*

*(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has*

*been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit*

I have to admit that revision is the only way, a stranger to the suit like the applicant, can access the court. Powers of revision can also be traced under section 79 of the Civil Procedure Code [Cap 33 R.E 2019] which states as follows;

*79.-(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-*

*(a) to have exercised jurisdiction not vested in it by law;*

*(b) to have failed to exercise jurisdiction so vested; or*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.*

*(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.*

*(3) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act*

In this application the applicant complained that he was not made party to the Civil Appeal No. 9 of 2014 since its decision affected his right in the property. He said he was denied his right to be heard. It is in record that, the District Court revoked the letters of administration granted to Abdul Ally and declared the sale null and void. I must say, since the impugned decision affected the applicant, it is my considered view that he properly filed this application. In the case of **Tang Gas Distributors Limited vs Mohamed Salim Said and 2 Others**, Civil Application for Revision No. 68 of 2011 at page 21-22, Court of Appeal observed that, no decision has to be made by any court of justice, body or authority entrusted with the power to determine rights and duties that have to adversely affect the interest of any person without first giving him a hearing according to the principles of natural justice.

The District Court revoked the letters of administration for the reason that, he sold the property (house) of the deceased without the consent of the beneficiaries. With

respect, this was not proper. In my view, when the administrator is appointed by the court, he or she steps into the shoes of the deceased as the representative as stated under rules 5 and 6 of the fifth schedule to the Magistrates Court Act. He has powers to act in the manner he thinks fit for the interest of the deceased's estate.

He therefore, needs no consent from the beneficiaries on how to administer the estate unless the same is under trust. This is what the law states clearly under the provisions of rule 2 (g) of the fifth schedule to the Magistrates Court Act.

On this point, this application has merit, and I share the view of the applicant that the court went into the powers of the administrator of the estate. But on the second place, the District Court ruled out, that the probate cause was tainted with other irregularities, such that citation rules were not complied with. On this point, I agree with the decision of the District Court. Therefore, partly this application has merit, only on the fact that there was no justification of revoking the appointment of the administrator because of failure to get consent from beneficiaries. But it was right to revoke the same for failure to comply with rules as to citation. His final decision cannot be faulted. The application is partly allowed to the extent explained. No order as to costs.

**AK Rwizile**  
**JUDGE**  
**16.12.2020**

Delivered in the presence of Mr. Korosso holding briefs of Mr. Ogunde for the applicant, the respondents are in person.

**AK Rwizile**  
**JUDGE**  
**16.12.20**

 Recoverable Signature

X

Signed by: A .K .R W I Z I L E

