

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**PC. CIVIL APPEAL NO. 30 OF 2021**

*(Arising from Civil Revision No. 6 of 2020 at Sengerema District Court originating from Civil Case No. 35/2015 at Nyakaliro Primary Court)*

**JENIFA CHAYA.....APPELLANT**

**Versus**

**JUMAMOS BUSANYA..... 1<sup>ST</sup> RESPONDENT**

**TOBIAS BUKOLI.....2<sup>ND</sup> RESPONDENT**

**KALIBAGUNLA LUCHANGANYA.....3<sup>RD</sup> RESPONDENT**

**RULING**

**27<sup>th</sup> August & 15<sup>th</sup> September, 2021**

**RUMANYIKA, J**

The appeal is with respect to decision of the district court of Sengerema (the lower court) dated 10.05.2021, where, with respect to Civil Revision No. 6 of 2020 the latter sustained a time-bar preliminary point of objection (the p.o) with regard to execution of a decree in Civil Case No. 35 of 2015 of Nyakaliro PC. Jenifa Chaya (the applicant) having had objected but she lost the battle.

Essentially the 3 grounds of appeal would boil down to and they revolve around a point as under;- that the lower court's resident magistrate erroneously found and held that the subsequent revision was time barred.

When, by way of audio teleconference the appeal was called on 27/08/2021 for hearing, Mr. Julius Mushobozi learned counsel appeared for the appellant. The respondents appeared in person except Kalibagunla Luchaganya (the 3<sup>rd</sup> respondent) who was, through mobile No. 0784303716 duly notified but he entered no appearance. By court order of 27/08/2021 therefore, the latter's appearance was dispensed with. For avoidance doubts therefore Jumamos Busanya and Tobias Bukoli (the 1<sup>st</sup> and 2<sup>nd</sup> respondents) respectively they appeared in person. I heard the parties through mobile numbers 0767 934 787, 0757 338 060 and 0784 303 716 respectively.

In a nutshell, but arguing the 3 grounds together, Mr. Julius Mushobozi learned counsel submitted that had the lower court's learned resident magistrate computed the time from January – 1<sup>st</sup> December, 2020 (not from 27/11/2019 to 1<sup>st</sup> December, 2020) as he did, the latter would not have held that the application for revision was lodged after expiry of 12

months limit much as the cause of action arose not from the date of attachment but, in this case from the date of sale of the plot. That is it.

Whereas the 1<sup>st</sup> respondent had no submissions to make, the 2<sup>nd</sup> respondent just conceded to the appeal.

At least it was an undeniable fact that with regard to the objection proceedings the applicant lost the battle on 27<sup>th</sup> November, 2019 and, according to records she lodged Civil Revision No. 06 of 2020 on 01.12.2020 ie exactly a year and 5 good days by simple mathematics.

On that one the learned resident magistrate is on record (at page 3 of the typed order) having had held;-

... A quick perusal on the trial court record reveals that, the trial court decision was delivered on 27<sup>th</sup> day of November, 2019 ... That is to say twelve months elapsed on 27<sup>th</sup> day of November, 2020. ... **Since the Applicant's case was presented for filing on 8<sup>th</sup> day of December, 2020 almost one week after the expiration of twelve months it is clear that it is out of time.** (the underline is mine).

The provisions of S. 22(4) of the Magistrate's Court Act Cap. 11 RE. 2019 read thus;-



**mume wake halitambui, na mume wake  
alishamtelekeza hayupo.... hatambui mali nyingine  
aliyonayo, mdeni mhukumiwa ...**

Then the court held;-

**... Ushahidi uliyotolewa na mleta pingamizi Jenifa  
Chanya unaonyesha kuwa lengo lake na mdeni  
mhukumiwa ambaye ni mumewe ni kuchelewesha  
utekelezaji usiendeleo haki yake... Hivyo basi  
Mahakama kwa kuzingatia sababu hizo za msingi  
lilikuwa sababu lengo lake ni kuchelewesha utekelezaji ...**

Meaning that, notwithstanding the applicant's objection as spouse having a share in the plot now sought to be attached and she had not consented to any one of the previous contracts between her husband (the judgment debtor) and the decree holder, the objection proceedings were simply dismissed. What a point of illegality and denial of right to be heard?

Now that, unless she was the judgment debtor's guarantor or in this case there was prior spousal consent which is not the case here, the applicant was not to blame just as the latter she was, for whatever reasons

not duty bound to produce the judgment debtor or disclose the husband's personally acquired property.

It follows therefore, where a judgment debtor was proven "judgment proof" and or, as the case may be at large, until such time, the decree holder was very unfortunate. Execution of the decree at hand was next to impossible to say the least.

As said, the application for revision was time barred yes, but sufficed the point of illegality herein above demonstrated. The applicant is granted extension of time suo moto. For that reason only, shall I quash decision of the lower court and, with immediate dispatch remit the records to the District court with the direction that the said Civil Revision No. 06 of 2020 be determined on merits at the earliest possible opportune. The appeal is allowed with costs here and at the two courts below. It is so ordered.

Right of revision explained.



**S.M. RUMANYIKA**

**JUDGE**

**12/09/2021**

The ruling is delivered under my hand and seal of the court in chambers this 15/09/2021 in the absence of the parties.



  
**S.M. RUMANYIKA**

**JUDGE**

**15/09/2021**