

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISC. CIVIL APPLICATION NO. 44 OF 2019

(Arising from Civil Appeal No. 2 of 2013 of the High Court of Tanzania, at Tabora and Original Civil Case No. 25 of 2011 of Bariadi District Court)

IBRAHIM RAMADHANI APPLICANT

VERSUS

LATIFA LUBAMBE RESPONDENT

RULING

Date of Last Order: 23/07/2021

Date of Delivery: 27/08/2021

AMOUR S. KHAMIS, J.:

The applicant Ibrahim Ramadhani instituted this application seeking an order of this Court to extend time within which to file an application for review of a decree in Civil Appeal No. 2 of 2013 dated 6th day of June, 2014, cost of the application and any other orders that the Court deems fit and just to grant.

The application comes under section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 and supported by the applicant's affidavit affirmed on 13/11/2019.

When the matter was called up for hearing, the applicant enjoyed the service of Mr. M.A Ndayanse, learned advocate, whereas, the respondent was represented by Mr. N.T.N.M Sichilima, learned advocate. With leave of this Court, hearing proceeded by way of written submissions.

Submitting in support of the application, Mr. Ndayanse contended that, on 1st day of April, 2011 the applicant was granted Plot No. 59 Block "L", Kidinda area, Bariadi Urban by the Land Department of the Ministry of Land, Mwanza Sub Registry.

Following a Matrimonial dispute that existed between the applicant and the respondent originally at Bariadi District Court then as an appeal in the High Court; this Court on 24th day of October, 2019 sitting as the 1st appellate Court, delivered. Judgment in which the respondent was declared as the lawful owner of the disputed plot stating categorically that, the applicant (Ibrahim Hassan) did not produce any document to prove his claim.

Mr. Ndayanse agreed that, in the said case, the applicant did not produce relevant documents to convince the Court because the said documents were missing until when they were recovered on 24th October, 2019, more than five years from the date of Judgment.

Mr. Ndayanse contended that, unless the time is extended and the review filed and determined, the applicant stands to suffer irreparable loss as he will have to part away from his valuable plot and a house thereon.

On his part the counsel for the respondent cited, Order XLII Rule (1) (b) of the Civil Procedure Code, Cap. 33, R.E 2002 which provides that: -

“By a decree or order from which no appeal is allowed and who from the discovery of a new and important matter or evidence which after the exercise of due diligence, was not which his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him may apply for a review of judgment

to the Court which passed the decree or made the order”

Mr. Sichilima contended that, immediately after Judgement in Civil Case No. 25 of 2011 of the Bariadi District Court was delivered, the applicant could have traced the said document from the land office where such document was officially prepared and kept.

He added that, if the document was lost or destroyed that, it cannot be produced within reasonable time, it is upon the party as the applicant to give secondary evidence on its content.

Concluding, Mr. Sichilima moved this Court to dismiss the application with costs as the Court has no jurisdiction to review the decree of Bariadi District Court.

The question for determination is whether the applicant has demonstrated good reasons for delay so as this Court may enlarge time for filing a review.

Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2002 to which this application comes under provides that:-

“Notwithstanding the provision of this Act, the Court may, for any reasonable or sufficient

cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application”

The term good cause was well explained in the case of **Osward Masata Mwizarabi vs Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010** where it was held: -

“What constitute good cause cannot be laid down by any hard and fast rule. The term good cause is a relative one and is dependent upon the party seeking extension of time to provide relevant material in order to move the Court to exercise its discretion”

Guided by the above principle, the Court has to determine whether the applicant has advanced good reason for his delay to apply for review of the decree.

I have carefully gone through the record of the application. I wish to state at the outset that when the case was finalized at the Bariadi District Court in favor of the

respondent, that was the right time that the applicant could have applied for review and if delayed, the district court was the proper court to apply for extension of time to file review and not this Court which is an appellate Court.

The High Court being the 1st appellate Court cannot admit documents that ought to be admitted in the trial Court so even if the application could succeed, this Court would not have powers to admit such documents for consideration.

Section 78 of the Civil Procedure Code provides that:-
Subject to any conditions and limitations prescribed under section 77, any person considering himself aggrieved

(b) by a decree or order from which no appeal is allowed by this Code, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit

In my understanding of the record of this application, it is the trial Bariadi District Court that passed a decree against the applicant and this Court through an appeal upheld the decision of the District Court. What the

applicant is intending to challenge is the decree of the District Court.

Having said and done, the application lacks merit hence dismissed with costs.



AMOUR S. KHAMIS

JUDGE

27/08/2021

ORDER:

Ruling delivered in chambers in the presence of Ms. Joyce Nkwabi. learned advocate, holding brief of Mr. T.N.M. Sichilima, advocate for the respondent and in absence of the applicant.

Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

27/08/2021