

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

CIVIL REVISION NO. 36 OF 2019 (*Arising from Misc. Civil Application No. 195 of 2014 Kisutu RM's Court*) **AND CIVIL REVISION NO. 37 OF 2019** (*Arising from Misc. Civil Application No. 194 of 2014 Kisutu RM's Court*) **CONSOLIDATED IN THE CIVIL REVISION NO. 36 OF 2019**

(Origin Civil Case No. 408 of 2003 Kisutu RM's Court delivered on 31/3/2004)

DAVID GARETH HUGHES..... APPLICANT

VERSUS

UNITED BANK OF AFRICA LTD.....RESPONDENT

RULING

Date of last order: 5/8/2021

Date of Ruling: 22/02/2022

S.M. KULITA J;

This is a Ruling for **CIVIL REVISION NO. 36 OF 2017** and **CIVIL REVISION NO. 37 OF 2017** which have been consolidated into the **CIVIL REVISION NO. 36 OF 2017**. While the Civil Revision No. 36 of 2017 arises from the Resident Magistrate's Court of Dar es Salaam at Kisutu in the Civil Application

No. 195 of 2014, the Civil Revision No. 37 of 2017 arises from Civil Application No. 194 of 2014 of the same court, Kisutu.

These two applications originate from the *Ex-Parte* Judgment for the Civil Case No. 408 of 2003 Resident Magistrate's Court of Dar es Salaam at Kisutu delivered on 31/3/2004 in which the Plaintiff, **United Bank of Africa** (Respondent herein) successfully sued the Defendant, **David Gareth Hughes** (Applicant herein) whereby the Respondent was awarded a total sum of USD. 51,994.04 being the claims for recovery of loan and overdraft facility extended to the applicant by the Respondent.

In order to challenge the execution of decree for the *Ex-Parte* judgment of the Civil Case No. 408 of 2003 the Applicant lodged a Misc. Civil Application No. 194 of 2014 at Kisutu Resident Magistrate's Court, seeking for extension of time to set aside the said *ex-parte* judgment. As well the applicant lodged a Civil Application No. 195 of 2014 at that same court, Kisutu, seeking for stay of execution for the decree of the Civil Case No. 408 of 2003. In both cases the applications by the applicant were in vein, hence these applications of which this court decided to consolidate them into a Civil Revision No. 36 of 2017.

In both applications, Revision No. 36 and No. 37 the applicant prays for this court to call and examine the records in proceedings and ruling delivered on 24/08/2017 for the Civil Application No. 195 of 2014, and that dated 21/08/2017 which is for the Civil Application No. 194 of 2014.

In his submission Advocate for the Applicant Mr. Felix Edward Makene from Kings Law Chambers stated that upon the Civil Case No. 408 of 2003 being decided *ex-parte* on favour of the Respondent on the 31/3/2004, the execution was then conducted on 21/11/2004 whereby the Motor Vehicle with Registration No. T 600 ADA make Toyota Land Cruiser which was secured for loan by the applicant was auctioned by the Respondent at the unreasonable price of USD. 40,000 as compared to the real value of the vehicle.

The Applicant's Counsel averred that the decree sum for this matter as per the *ex-parte* judgment for the Civil Case No. 408 of 2003 being USD. 51,994.04, the implication is that the applicant's liability to the bank (Respondent) was not fully discharged as the selling price (USD. 40,000) is insufficient to meet the claimed sum of USD. 51,994.04. The Applicant's Counsel alleged that the declaration that the applicant is still indebted incriminates him.

The Counsel, Mr. Makene further submitted that that scenario plus other grounds including the fact that the contract between the applicant and the bank was *void ab initio* and the fact that the Advocate who was representing the Defendant at the trial court (the Applicant) recused to represent him while the matter was on progress also moved the Applicant to lodge the said application to set aside the said *ex-parte* judgment (Misc. Civil Application No. 194 of 2014 Resident Magistrate's Court of Dar es Salaam at Kisutu) and the application for stay of execution (Misc. Civil Application No. 195 of 2014 Kisutu). He said that among the reasons for filing application for stay was that the applicant was not involved in the execution proceedings and that the Misc. Civil Application No. 194 of 2014 would be nugatory if another execution is conducted to fulfil the alleged decreed balance.

The Counsel, also alleged that the contract between the Applicant and the Respondent was illegal as they conducted a search in the Revenue Authority (TRA) in respect of the motor vehicle that was secured for loan but later on auctioned and noticed that the owner is somebody else, not the Applicant, hence fraud elements.

The Counsel concluded by praying this court to revise the decisions of the trial court in the said the Misc. Civil Applications No. 194 and 195 of 2014.

In the reply thereto, Advocate for the Respondent, Ms. Angela Paul from East African Law Chambers submitted that the crucial issue for these applications No. 136 and 137 of 2017 is whether the trial court, Kisumu Resident Magistrate's Court erred in law to dismiss the Misc. Civil Applications No. 194 and 195 of 2014. The counsel submitted that the applicant had failed to show reasonable and sufficient cause for his inordinate delay of more than 10 years to refer his applications before that Court.

She further stated that in the Misc. Civil Application No. 194 of 2014 the Applicant sought for extension of time to file application to set aside *ex-parte* Judgment and decree for the Civil Case No. 408 of 2003 delivered way back on 31/03/2004. She further stated that in the Misc. Civil Application No. 195 of 2014 the Applicant prayed for stay of execution for the said *ex-parte* judgment for the said Civil Case No. 408 of 2003.

Ms. Angela Paul, Advocate submitted that in his decision delivered on 21/08/2017 the presiding Resident Magistrate at Kisumu rightly dismissed both applications for the reason that the Applicant failed to show sufficient causes for the inordinate delay of more than 10 years to apply for setting aside the *ex-parte* judgment in which he could also applied for stay of execution.

It is the submission of the Respondent's counsel that in the Misc. Civil Application No. 194 of 2014 which was for leave so that the Applicant can apply for the court to set aside the *ex-parte* judgment the Applicant admits at para 3 of the affidavit that he was served with the summons to file a defence and appear before the court on the scheduled date, but he failed to do so. The counsel submitted that the Applicant was therefore aware of the Civil Case No. 408 of 2003 and its outcome but did not bother to know and challenge its findings, that is, the *ex-parte* judgment and decree which led to the attachment and sale of the motor vehicle.

The counsel, Ms. Angela Paul cited section 14 of the Law of Limitation Act [Cap 89 RE 2002] stating that extension of time is granted upon the applicant showing sufficient and reasonable cause of delay of which the Applicant has failed to establish.

As for the issue of stay of execution which was sought at Kisumu through Misc. Civil Application No. 195 of 2014 the Respondent's Counsel submitted that it was overtaken by event due to failure of the application to set aside the *ex-parte* judgment in the Misc. Civil Application No. 194 of 2014.

For the above submissions, Advocate for the Respondent prayed for the Applicant's applications for Revision to be dismissed with costs.

The matter before me are applications for Revision against the decision of Kisumu Resident Magistrate's Court in Misc. Civil Applications No. 194 and 195 of 2014, originating from the decision of that same court in Civil Case No. 408 of 2003 delivered on 31/03/2004. While in the Misc. Civil Application No. 194 the applicant, David Gareth Hughes was seeking for leave to set aside the *ex-parte* judgment for the Civil Case No. 408 of 2003, in the Misc. Civil Application No. 195 the said applicant was seeking for stay of execution pending determination of the said Misc. Civil Applications No. 194 of 2014 (the application to set aside the *ex-parte* judgment for the Civil Case No. 408 of 2003).

It is undisputable that the period that had passed before the Misc. Civil Applications No. 194 and 195 had been lodged at Kisumu from the date that the Civil Case No. 408 of 2003 was decided on 31/03/2004 by the Resident Magistrate's Court of Kisumu, was about 10 (ten) years and there was no justifiable cause for all that long delay. According to Part 3 of the 1st Schedule to the Law of Limitation Act [Cap 89 RE 2002] at item 5 the prescribed period for setting aside the *ex-parte* judgment is 30 days. Failure to do so

within that prescribed time, under section 14(1) of the Law of Limitation Act [Cap 89 RE 2002], the applicant has to establish sufficient cause for the court to extend time for him to apply for leave of the court to set aside the *ex-parte* judgment.

The records transpire that in the Misc. Civil Application No. 194 of 2014 which was for extension of time to set aside *ex-parte* judgment, the Applicant admits at para 3 of the affidavit that he was served with the summons to file a defence and appear, but failed to do so. It means the applicant was aware of the Civil Case No. 408 of 2003 and its outcome but did not bother to know and challenge its findings which was the *ex-parte* judgment and decree. The said judgment and decree led to the attachment and auction/sale of the motor vehicle which had been secured for loan. Under that circumstances the lower court was right to dismiss the Misc. Civil Application No. 194 of 2014.

It has been stipulated under section 14(1) of the Law of Limitation Act [Cap 89 RE 2002] that the extension of time should be granted only when the applicant gives sufficient reasons. The said section provides;

*"Notwithstanding the provisions 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” (emphasis is mine)

Extension of time is entirely the discretion of the court upon the applicant showing sufficient reason for the court to do so. This was also the view of the Court of Appeal in the case of **Benedict Mumelo vs Bank of Tanzania, Civil Appeal No. 12 of 2002, CAT at DSM**, in which it was held;

"An application for extension of time is entirely in the discretion of the court to grant or refuse it, and the extension of time may be granted where it has been sufficiently established that the delay was with sufficient cause"

As the applicant had failed to establish sufficient reason for the trial court to exercise its discretion to warrant extension of time, it was correct for the trial court to dismiss the applications.

From the aforesaid analysis the application for Revision No. 37 of 2017 which originates from Misc. Civil Application No. 194 of 2014 Kisutu (leave to apply for extension of time to set aside *ex-parte*

judgment) must fail due to the applicant's failure to show sufficient cause for delay. As for the Civil Revision No. 36 of 2017 which arises from the Misc. Civil Application No. 195 of 2014 Kisutu (application for stay of execution), it is overtaken by event regarding failure of Civil Revision No. 37 of 2017.

In upshot both applications, Civil Revision cases Nos. 36 and 37 of 2017 are hereby dismissed with costs.



S.M. KULITA

JUDGE

22/02/2022

