

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 18 OF 2021

(Arising from Kahama District Court, Civil Application No. 7 of 2006)

MICHAEL MAGOMBA APPLICANT

VERSUS

1. GIDU SHABAN

2. MARY STEPHANO

3. BIJA AUCTION MART



.....RESPONDENTS

RULING

25th April & 22nd September, 2023.

S.M. KULITA, J.

The applicant in this case is seeking for extension of time to file revision against the decision of Kahama District Court in Civil Application No. 7 of 2006 which was decided on 28TH July, 2006. The 1st respondent resists the application stating that it has not accounted for each day of delay and that there is no sufficient cause for the grant of the said application.

The background of this case in upshot is that, somebody Suzana Marco, as the wife to the Applicant herein, unsuccessfully lodged the

Objection Proceedings at Kahama Primary Court claiming that the house that was sought and ordered to be attached and sold by the 1st and 3rd Respondents was a matrimonial property in which she had an interest. Prior, the Objector's husband namely Michael Magomba, who is the Applicant herein was the Judgment Debtor in the original case, Civil Case No. 95 of 2004 Kahama Urban Primary Court, had been ordered by the said court to pay the Decree Holder, one Mary Stephano (2nd Respondent herein) a total sum of Tsh. 1,100,000/= being the money he was indebted by the said person (Decree Holder), Mary Stephano (2nd respondent), but Michael Magomba (Applicant herein) never executed it.

Regarding the Applicant's default to settle the said debt, his house located on Plot No. 135 Block B Kahama Town Council was attached by the 3rd Respondent (Bija Auction Mart). It was the compliance of the decision of the trial court in the execution proceedings for the Civil Case No. 95 of 2004, upon the application by the Decree Holder, Mary Stephano. The said house was auctioned to the 1st respondent (Gidu Shabani) through the public auction conducted by the said Court Broker (Bija Auction Mart), the 3rd Respondent.

Aggrieved with the Primary Court's decision in execution of the decree, the Applicant's (Michael Magomba's) wife, one Suzana Marco

appealed at Kahama District Court via Civil Appeal No. 7 of 2006. The District court quashed and set aside the proceedings and decision of Primary Court with regard to the execution order.

Now, the applicant has approached this Court seeking for extension of time to file application for revision against order of the District Court in the Civil Case No. 7 of 2006.

The matter was argued through written submissions. While the applicant is represented by Mr. Paul Kaunda, Learned Advocate, the 1st respondent is represented by Mr. Pastory Byengo Learned Advocate. The 2nd and 3rd respondents were absent without notice, hence the matter proceeded *ex-parte* against them.

In his submission Mr. Kaunda submitted that the application is for the extension of time to file revision for the Civil Appeal No. 7 of 2006 Kahama District Court. He said that the gist of the application based on two grounds; the applicant could not have filed revision in time because he had been bedridden since 2004, suffering from Acute Paralytic as it can be seen under paragraph 6 of the applicant's affidavit. He averred that the applicant had extensive list of medical crisis and reports from different hospitals mathematicising such practitioner sufferings. He said that the applicant cannot walk to date. He uses to move with the assistance of the

wheel chair. He sought for this court to refer the report authored by the Medical Officer In-charge for Kahama Municipal Hospital dated 14/03/2021 attached in the Applicant's pleadings for easy of reference.

Mr. Kaunda also alluded that the application has not been strictly opposed by the 1st Respondent herein. He said that the counter affidavit just transpires a general denial. He argued that, it has been a practice of this court that general or evasive denial is as good as admission. He added that, as the 1st respondent does not dispute that the applicant is bed ridden since then, it is a sufficient ground for extension of time.

The second ground based on the gist of illegality. On this, the Counsel stated that the trial court, Kahama Urban Primary Court, in the Civil Case No. 95 of 2004 and Civil Case No. 65 of 2005 entertained the cause of action which arises from a registered suit property, to wit Plot No. 135 Block "B" Kahama Town Council. He said that, since section 18(1) of the Magistrates' Court Act prohibits the Primary Court to entertain matters involving the registered properties, the Applicant herein intends to challenge the decision of Kahama District Court in Civil appeal No. 07 of 2006 for ignoring to nullify the execution proceedings while the same involves land matters.

Mr. Kaunda referred this court to the decision made in the case of **The Principal Secretary, Ministry of Defence & National Service V. Devram Valambhia [1992] TLR 235** in which it was held that when there is an illegality on the impugned decision, that alone is enough ground for extension of time. He averred that, as in this matter there are such illegalities as well, he prays for the application to be granted.

In the reply thereto, Mr. Pastory Byengo, Advocate prayed for the 1st Respondent's counter affidavit to be adopted and form part of his submission.

He started arguing that the report on the Applicant's sickness mentions one Marco Magomba and not Michael Magomba who is read in the application. He further argued that, there is no proof that the applicant was actually admitted in hospital. He added that the statement of the hospital that the applicant has been sick of Hypersentic clocks, for more than 12 years in that 2021 when he was examined, implicates that the said sickness was not there before 2009. The counsel averred that, as the impugned decision of the District Court was delivered in 2006, it means the Applicant had an ample time of 3 (three) years to 2009 to file the said intended Revision. He thus contended that, the applicant's current sickness cannot be a good ground for extension of time.

As for the 2nd ground that the Primary Court had no jurisdiction to deal with the registered land as per section 18(1) of the Magistrates' Court Act, Mr. Pastory Byengo, Advocate argued that, what had been done by the Primary Court was just execution of the already decided matter. He said that, what had been done was not entertaining the case. It just dealt with the attachment of the said landed property which was not the subject matter in the original case. He averred that, what had been done was lawful. He thus distinguished the case of **VALAMBHIA (supra)** cited by Mr. Kaunda, Advocate for such scenario. He concluded by praying for the application to be dismissed with costs.

In rejoinder Mr. Kaunda reiterated what he had stated in his submission in chief. He however added that, according to the law, the Primary Court had no jurisdiction on matters arising from the registered land properties. On the issue of discrepancy of names, to wit, Marco and Michael he said that, it is just a minor error in typing, but they all reflect the same person who is the Applicant herein, Michael Magomba.

I have earnestly gone through gone through the pleadings and submissions of both parties to the application. It is settled law that, applications of this nature are used to be granted upon the applicant

showing good cause for the delay. Authorities for this point are innumerable. See the Court of Appeal cases namely;

1. **Tanzania Coffee Board v. Rombo Millers Ltd, Civil Application No. 13 of 2015,**
2. **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa), Civil Application No. 4 of 2014,**
3. **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another, Civil Application No. 412/04 of 2018** and
4. **Tanzania Bureau of Standards v. Anitha Kaveva Maro, Civil Application No. 60/18 of 2017 (all unreported).**

to mention a few. The issue to be determined is whether there is/are good cause(s) for this court to grant the application.

Starting with the issue of Applicant's sickness as a ground for extension of time. Basically, it is among the genuine grounds, if the same is proved and found relevant. According to Mr. Kaunda the applicant could not have filed revision in time because he had been bed ridden since 2004, suffering from Acute Paralytic. He averred that, the applicant had extensive list of medical crisis and reports from different hospitals mathematicising such practitioner sufferings. He sought for this court to

refer the report authored by the Medical Officer In-charge for Kahama Municipal Hospital dated 14/03/2021 attached in the Applicant's pleadings.

According to the said hospital's report dated 14/03/2021 the applicant has been sick of Hypersentic clocks, for more than 12 years by that 2021 when he was examined. This implicates that the said sickness was not there before 2009, as the impugned decision of the District Court was delivered in 2006. It means that, by that time the Applicant had an ample time of 3 (three) years from that 2006 to 2009 to file the said intended Revision, before the alleged sickness attacked him.

In that sense, therefore, sickness was not a ground for the Applicant not to file the application in time. That delay of 3 years is in-ordinary and in his submission the applicant's counsel never counted for each day of delay which is among the things to be regarded in the extension of time.

In the case of **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, Civil Application No. 3 of 2007 (unreported)** the Court of Appeal emphasized the need of accounting for each day of delay within which certain steps could be taken in dealing with the matter. In the said case the court held;

"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

This was also held in **Esiyo Nyarumero and Nikiri Nyarumero VS. Republic, Criminal Application No. 11 of 2015, CAT at DSM** (unreported) cited by the Respondent's Counsel.

Thus, the current sickness of the Applicant is not a good ground for him not to file the intended application within the prescribed time.

As for the ground of illegality, I have the following observation; According to the annexures in the pleadings, the Civil Case No. 65 of 2005 Kahama Urban Primary Court reflects objection proceedings by the wife of the Applicant herein namely Suzana Marco who was resisting against an order for sale of the suit house made by the Primary Court on 10/03/2004 through a Civil Case No. 95 of 2004 in which her Husband (Marco Magomba) who was the Defendant in that case admitted the claim of Tsh. 1,100,000/= presented before the said court by Mary Stephano, the 2nd Respondent herein.

Upon failure in the said application (Civil Case No. 65 of 2005), Suzana Marco appealed at Kahama District Court through Civil Appeal No. 7 of 2006 whose decision was that the Primary Court had no jurisdiction

to entertain the said objection proceedings for the reason that the issue was a land matter, the argument which I actually find fatal, as the involvement of the landed property, a house located on Plot No. 135 Block "B" Kahama Municipality is that, it was attached regarding order of the executing court, Kahama Urban Primary Court via Civil Case No. 65 of 2005 in the cause of executing the decree for the decision of that court in the Civil Case No. 95 of 2004, delivered on 10/03/2004 which was not a land matter, but ordinary civil case.

Otherwise, I find no illegality for what had been done by the trial and executing court, Kahama Urban Primary Court in entertaining the execution proceedings involving the house located on Plot No. 135 Block "B" Kahama Municipality. It did so in determining the application for execution of the decree.

As for the decision of the District Court in Civil Appeal No. 7 of 2006, I actually find it not worthy on its findings that, execution involved the landed property, hence it was wrong for the Primary Court to entertain. Actually the Primary Court had the jurisdiction to deal with it, as it was not trying the case on merit, but execution of decree of the ordinary civil case.

However, upon considering the fact that, a long time has passed, almost 20 years, since the delivery of the decision which declared the 2nd Respondent the Decree Holder in the original case, Civil Case No. 95 of 2004, which was followed with the execution proceedings (via Civil Case No. 65 of 2005) that led to the attachment and sale of the Applicant's house by the 2nd Respondent, through the Court Broker (3rd respondent) who then sold it to the 1st Respondent, I find entertaining of the execution case afresh by nullifying the attachment and sale of the house, can lead to complexity of the matter. Be it noted that according to para 5 of the Applicant's affidavit, the Applicant herein was evicted from the said house regarding failure of the objection proceedings at the Primary Court. Therefore, currently the said house can be within the hands of the 3rd party one Gidu Shabani (1st Respondent), if he has not transferred it to somebody else by sale or whatever.

This issue of time lapse being too long, about 20 years, and the fact that the person who currently owns the said house being a puzzle, whether it is the 1st Respondent or somebody else, will invite a lot of complexities if the application is granted. The said complexities that may happen include the possibility of further transfers of the said property to another or other person(s) after the 2nd Respondent had sold it to the 1st

Respondent. Also, possibility of developments being done over the executed premise by the successor owner(s). Further, the fact that the Applicant does not dispute that he was actually indebted by the 2nd Respondent and that he had not settled the said debt, thus, what happened was possible. As well the fact that the Applicant and his family were evicted from the said house since 2005, impliedly they had an alternative premise to live and they still use the same todate as their current residential premise.

For the above said reasons, it is my considered view that the wrong finding of the District court that the executing court conducted the execution on the matter that it had no jurisdiction, has nothing to do in this matter, as allowing the appeal at this stage, whereby a long period of about 20 years has passed, is likely to cause more chaos than justice to the parties herein and others in case the executed house has been further transferred after the same being purchased by the 1st Respondent. Not only that but also the same might have been renovated or restructured at costs by the one who holds it now, who is obvious a bonafide purchaser.

Be it noted that extension of time is entirely in the discretion of the court to grant or refuse it. It can only be granted where there is/are sufficient cause(s) for that purposes. This is a position of the law according

to **section 14(1) of the LAW OF LIMITATION ACT [Cap 89 RE 2019]**. The same standing point was held in the case of **YUSUF SAME AND ANOTHER V. HADIJA YUSUF, Civil Application No. 1 of 2002, CAT at DSM (unreported)**. In the case of **TANZANIA REVENUE AUTHORITY V. TANGO TRANSPORT CO. LTD, Civil Application No. 4 of 2009, CAT at Arusha (unreported)** it was held that not only good reasons for delay which are considerable, but also balance of convenience and existence of arguable case.

My view on the application at hand is that, as the decision of the trial court in Civil Case No. 95 of 2004 was against the Applicant herein, and that the property which was attached to fulfil the execution of decree was the house which was owned by him (applicant), I find no prejudice on either party to the case. It is my considered view that, allowing the applicant to appeal will be an issue of welcoming unnecessary complexities on the matter as narrated herein before. I thus find an order for extension of time not convenient to be granted, hence rejected.

In upshot, the application is hereby dismissed. No order as to costs.




S.M. KULITA
JUDGE
22/09/2023

