IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 606 OF 2015

THE ATTORNEY GENERAL ..... APPLICANT

VERSUS

WAFANYABIASHARA SOKO DOGO KARIAKOO COOPERATIVE SOCIETY LTD .....1ST RESPONDENT

RHINO AUCTION MART CO. LTD

AND COURT BROKERS.....2ND RESPONDENT

VUKA TITUS TODDY .....3RD RESPONDENT

KARIAKOO MARKET CORPORATION.....4TH RESPONDENT

Date of last Order: *13/02/2018*
Date of Ruling: *06/04/2018*

RULING

ARUFANI, J.

The applicant, Attorney General filed the instant application in this court seeking for an order of extension of time to file in this court an application for revision of the execution proceedings originating from Civil Case No. 289 of 2003 of the District Court of Ilala at Samora. The application is made under section 17 (1) (a) and (2), 6 (a), 8 (1) (f) of the Office of the Attorney General (Discharge of Duties) Act No. 4 of 2005, Section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2002], Section 68 (e) and 95 of the Civil Procedure Act [Cap 33 R.E 2002], Section 2 (3) of the Judicature and Application of Laws Act, [Cap 358 R.E 2002].

a general damages. The suit was heard ex parte and the first respondent was awarded all the prayer he made to the trial court.

In the course of execution of the decree of the trial court the first respondent sought to attach and sell plots Nos. 107, 108 and 109. After the application for execution being granted the trial court appointed the second respondent to sell by auction the property of the fourth respondent to satisfy the decree passed in favour of the first respondent. The court issued an attachment warrant and proclamation of sale of the Plots Nos. 107 and 109, Block D Tabata area in Ilala Municipality.

The learned State Attorney argued that, they are seeking for extension of time to apply for revision of the execution proceedings of the trial court because there were serious illegalities involved in the sale of the said plots of land. He stated that, the said illegalities are depicted in Paragraphs 9, 10, 11, 12, and 13 of the affidavit of Mr. Sylvester Anthony Mwakitalu filed in this court to support the application. He argued that, the warrant of attachment was not fixed on conspicuous part of the property as required by Order 33 (2) and (3) of the Civil Procedure Code, Cap 33 R.E 2002. He stated that, the deponent stated in his affidavit that, the proclamation of sale included Plots Nos. 108 and 109 which do not belong to the judgment debtor and no notice was issued and served to the judgment debtor or published after the proclamation of sale being issued. He stated further that, the sale was conducted prior to the expiration of thirty

days contrary to Rule 4 of the Court Brokers and Process Servers (Appointments, Remuneration and Discipline) Rules.

The learned State Attorney explained that, in the said execution proceedings the property worth Tshs. 800,000,000/= was sold at the price of Tshs. 121,500,000/= to discharge a principal claim of Tshs. 2,500,000/=. He also stated that, there was no Certificate of Appointment of the Court Broker was issued as provided under Rule 8 of the Court Brokers and Process Servers (appointments, remuneration and Discipline) Rules. He submitted that, the above mentioned illegalities render the whole execution proceedings to be incompetent and abuse of the law and procedure and are supposed to be corrected. He submitted that, the question of illegality as a reason for granting extension of time has been adequately dealt in different cases by or courts.

He referred the court to the cases of **CRDB Bank Ltd and Serengeti Road Service**, Civil Application No. 12 of 2009, CAT at DSM (Unreported), **Principal Secretary, Ministry of Defence and National Service V. Devram Valambia**, [1992] TLR 182 and **Kashinde Machibya V. Hafidhi Said**, Civil Application No. 48 of 2009 (Unreported) decided by the High Court. He stated it was established in the above cases that, when the point at issue is one alleging illegality of the decision being challenged, that by itself constitute sufficient reason to grant extension of time so that if the alleged illegality is established, the court can take appropriate

measures to put the matter and the record right. Finally he prayed the court to base on the above stated reason to grant the order sought in the chamber summons.

Mr. Francis A. M. Mgare, learned counsel for the third respondent started his submission by raising a point of law that, the provisions of the **Office of the Attorney General (Discharge of Duties) Act No. 4 of 2005** (hereinafter referred to as Act No. 4 of 2005) upon which the application is made does not give the applicant an automatic right to appear and represent the Public Corporation at any stage of the proceedings or execution before the court in which by law the Attorney General's right of audience is provided. He contended that, before the applicant appear and represent the Government or any Public Corporation in any proceeding or execution before any court is supposed to comply with the provisions of section 17 (2) (a) and (b) of the Act No. 4 of 2005 which requires the applicant to notify the court of its intention to be joined to the proceedings.

He argued that, apart from the notice the applicant was supposed to satisfy the court the public interest or the public property involved in the proceedings the applicant is praying to be joined and to comply with section 17 (2) (b) of the Act No. 4 of 2005. He submitted that, since the applicant has failed to comply with the mandatory requirements provide in the above provisions of the law, then it cannot enjoy the right of appearance and representation of

the Government interest in the court as provided for under section 6 (a) and 8 (1) (f) of Act No. 4 of 2005. He submitted that, section 17 (2) (a) and (b) of the above Act is quoted in mandatory terms by the use of the word **"shall"** which under section 53 (2) of the Interpretation of the Laws Act, Cap 1 R.E 2002 means mandatory or must. He stated that, in the light of the above stated reason the applicant has no locus standi to file the present application in court and invited the court to dismiss the application with costs.

The learned counsel for the third respondent responded to the submission of the applicant by stating that, the position of the law in respect of whether or not to allow the application for revision out of time is that, the court is required to consider whether or not there is sufficient reason not only for the delay, but also sufficient reason for extending the time to entertain the revision out of time. To support his argument he referred the court to the case of **R. V. Yona Kaponda and 9 others** [1985] TLR 85. He stated that, the only reason assigned by the applicant for application to be granted is that there are illegalities in execution proceedings namely the warrant of attachment was not fixed on the conspicuous part of the property sold as required by Order XX 33 (2) and (3) of the Civil Procedure Code, Cap 33 R.E 2002.

The learned counsel argued that, there is no such a provision of the law in the CPC or the same does not exist and submitted that, as the applicant's complaint is basin on none existing provision of

the law then the application is misconceived and unfounded in law. He contended that, even if it will be taken for the sake of argument that the learned State Attorney intended to refer to Order XXI Rule 33 (2) and (3) of the CPC still the said provision of the law does not apply in our case as the decree issued in favour of the decree holder was not about joint possession of the property, but was about payment of the contractual money which the first respondent was claiming from the fourth respondent. He stated that, the execution which was sought and granted to the third respondent as a bonafide purchaser is that he went to take possession of the property he bought in a public auction ordered by the court.

As for the issue that the proclamation of sale included plot No. 108 and 109 Block D Tabata which do not belong to the judgment debtor the learned counsel for the third respondent stated that, the third respondent bought the property on Plot No. 107/D Tabata only and not otherwise. He submitted that, if Plots Nos. 108 and 109/D Tabata belonged to other persons than the judgment debtor why the applicant is placing herself into the shoes of those persons instead of leaving them to challenge the execution proceedings themselves.

He argued in relation to the issue that the notice was not served to the judgment debtor after the proclamation of sale being drawn nor was it published as required by Rule 4 of the Court Brokers and Process Servers (Appointment, Remuneration and Discipline) Rules (Hereinafter referred to as the Court Brokers Rules) that, the said

Rule talks of issuing a notice of fourteen days to the judgment debtor to comply with the court order. He submitted that, the judgment was issued with notice of fourteen days and the tenants who were in the purchased property were given fourteen day notice to vacate from the property. He submitted further that, Rule 4 does not provide for publication of the proclamation of sale and stated the law was complied with by the second respondent.

With regards to the issue of value of the property the learned counsel for the third respondent submitted that, the rule cited to support the same has no relevancy with the complaint of the applicant. He stated that, the cited rule talks of the fees, charges and allowance payable to the Court Broker in execution of the warrant of attachment, eviction etc. He argued that, though the counsel for the applicant stated the Court Broker's charges were contrary to Rule 12 of the Court Brokers Rules but no figure was mentioned to substantiate the applicant's complaint. He stated that, the applicant's complaint on value of the property has no basis because there is no valuation report was made to show the property sold has the value of Tshs. 800,000,000/=.

As for the issue of certificate of appointment of the Court Broker the learned counsel stated that, Rule 8 of the Court Broker Rules does not requires a court Broker before being assigned a warrant of attachment or any execution process to show the certificate of appointment. He said the Court Broker was appointed by the

Incharge of the trial court who was satisfied he had a valid certificate and business licence. The learned counsel for the third respondent submitted that, though the illegalities mentioned by the applicant and discussed at length by him will be subject of the discussion if the application will be granted but to their view are not illegalities but shire negligence and lack of seriousness on the part of the fourth respondent to fail to defend the corporation.

The learned counsel for the third respondent argued that, when the Court of Appeal of Tanzania was determining the case of **Tanzania Harbours Authority V. Mohamed R. Mohamed**, [2003] TLR 77 it commented on the point of illegality made earlier in the case of **Valambia** referred in the submission of the applicant that, the court did not say the time must be extended in every situation where there is an illegality. He said in the case at there is no illegalities to warrant the grant of the order sought and said the case of **Valambia** and that of **Hafidhi Said** are distinguishable from the present application both in fact and the law enunciated therefrom. He said in the referred cases there was illegalities while in the application at hand there is no illegalities in the execution proceedings.

The learned counsel referred the court to the case of **Badru Issa Badru V. Omary Kilendu & Another,** Civil Application No. 164 of 2016, CAT at DSM (Unreported) which pointed out other guiding factors to be considered in an application for extension of time to be

the length of delay, the reasons for the delay, the degree of prejudice to the respondent and chances of the applicant's intended appeal to succeed. The learned counsel addressed each of the above mentioned factor and stated that, the delay of the applicant of 12 years from when the decision of the trial court was made is inordinate and there is no reason for the delay stated by the applicant. He argued that, as stated in the case of **Bank of Tanzania V. Said Marinda & others**, Misc. Civil Application No. 67 of 2003 (unreported) each day of delay need to be accounted for.

He argued in relation to the issue of the degree of prejudice that, the third respondent will be highly prejudiced if the present application will be granted because as a bonafide purchaser he should not, after the issuance of the certificate for sale, loose his title to the sold property by subsequent reversal or modification of the decree. He fortified his argument by referring the court to the case of **Omari Yusufu V. Rahma Ahmed Abdilkadri** [1987] TLR 169. He stated that, the third respondent will be highly prejudiced than the applicant who has stepped into the shoes of the fourth respondent who as a legal entity has throughout defended its interest over the property and the applicant is coming again through the backdoor to defend it under the pretence of defending public interest.

He submitted in relation to the ground of chance of success that, sufficient reason must relate to inability to take particular step in time which has not been revealed in the case at hand. He referred

the court to the case of **Martha Daniel V. Peter Thomas Nko** [1992] TLR 364 which was cited with approval in the case of **Mugo and Another V. Wanjiru and Another** [1970] EA 481 to support his submission. Finally he prayed the court to dismiss the application with costs for lack of merits. The learned State Attorney rejoined the submission of the learned counsel for the third respondent by reiterating what he principally argued in his submission in chief and prayed the application to be granted as sought in the chamber summons.

After considering the rival submission from both sides the court has found proper to start dealing with the point of law raised by the counsel for third respondent in his submission that, the applicant has no locus standi to file the present application in this court. I have find it pertinent to state at this juncture that, this point of law was supposed to be raised before the parties being allowed to engage into arguing the application on merit because the same is not the point relating to the jurisdiction of the court to entertain the matter which can be raised at any time.

However, the court has carefully read the provisions of section 17 (2) (a) and (b) of the Act No. 4 of 2005 upon which the learned counsel for the third respondent based the point of law he has raised and come to the view that, it is proper for the clarity purposes to quote the said provision of the law in this ruling. The provisions states as follows:-

"17 (2) in the exercise of the powers vested in the Attorney General with regards to the provisions of subsection (1) the Attorney General shall:

(a) Notify any court, tribunal or any other administrative body of the intension to be joined to the suit, inquiry or administrative proceedings and,

(b) Satisfy the court, tribunal or any other administrative body of the public interest or public property involved".

To the view of this court the proper interpretation of the above provision of the law is that, the notice required to be given by the Attorney General to the court, tribunal or any other administrative body is the notice to join the suit and not notice to seek for revision of the suit or proceedings which has already been determined as it is in the instant application. The court has arrived to the above interpretation after seeing that, revision of a suit or proceedings can be sought by any person with interest to the suit or proceeding, notwithstanding the fact that he was not a party to the suit or proceeding. The court has found as provided under section 79 (1) (c) of the Civil Procedure Code revision can be done by the court suo moto upon discovering the subordinate court has exercised its jurisdiction illegally or with material irregularity, for the purpose of correcting the discovered illegality or irregularity.

For the purpose of further clarification it is to the view of this court proper to have a look on what the term "revision" connotes. The meaning of revision the applicant intend to file in this court if the application for extension of time to file the same will be granted, will requires the court to look again carefully and critically the proceedings or decision or order of the trial court for the purpose of being satisfied the proceedings and decision or order made by the trial court is correct, legal and proper and if it is not, to correct or improve the same. The above meaning is supported by the meaning of the term revision given in the book by C. K Takwani, titled **Civil Procedure with Limitation Act**, 1963, 7th Edition at Page 588 where while quoting different meaning of the term "revision" he stated as follows:

> *"According to the dictionary meaning, to "revise" means "to look again or repeatedly at"; "to go through carefully and correct where necessary", "to look over with a view to improving or correcting". "Revision" means "the action of revising, especially critical or careful examination or perusal with a view to correcting or improving".*

In the light of the meaning and purpose of the revision the applicant intends to file in this court if the order for extension of time to file the same will be granted is to the view of this court that, it cannot be said the applicant has no locus standi to file the present application in this court because the applicant is not intending to seek to be joined in the execution proceedings as provided under

section 17 (2) (a) and (b) of the Act No. 4 of 2005 but to beseech the court to look and examine critically the execution proceedings of the trial court to be satisfied in is tented with the alleged illegalities. In the premises the court has found the point raised by the learned counsel for the third respondent that the applicant has no locus standi to file the present application in this court has no merit.

Back to the merit of the application at hand the court has found that, as rightly submitted by the learned State Attorney and the learned counsel for the third respondent, in deciding whether or not to grant extension of time sought by the applicant under section 14 (1) of the **Law of Limitation Act** Cap 89, R.E 2002 the court is required be satisfied by the applicant that, she was prevented by reasonable and sufficient cause to lodge in court the intended application within the required period of time. The above finding of this court is supported by what has been stated by the Court of Appeal of Tanzania in many cases and one of those cases is the case of **Allison Xerox Silla V. Tanzania Harbours Authority**, Civil Reference No. 14 of 1998 (Unreported) where it was stated that:-

> *"... Where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay; other considerations, such as the merit of the intended appeals, would come in after the applicant has satisfied the court that, the delay was for sufficient cause."*

Although the term sufficient cause stipulated under section 14 (1) of the Law of Limitation Act is not defined in the said Act but there are various decisions of this court and the Court of Appeal of Tanzania which states what it means. One of the decided case which defined it is the case of **CRDB (1996) Limited V. George Kilindu** Civil Application No. 162 of 2006, CAT at DSM (Unreported) where it was stated inter alia that:-

> *"What amount to sufficient cause has not been defined but from cases decided by the court it includes among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."*

That being the meaning of the phrase "sufficient cause" which the applicant was supposed to furnish to the court before the application for extension of time is granted, the court has carefully gone through the affidavit filed in this court to support the chamber summons and the submission filed in this court by the learned State Attorney to support the application and come to the finding that, as rightly submitted by the learned counsel for the third respondent the applicant has not advanced any reason caused them to delay to file in court the application for revision of the execution proceedings of the trial court within the time provided by the law.

In addition to that the applicant has not stated anywhere as to when the execution proceedings intended to be revised was commenced and ended or when they became aware of the execution proceedings intended to be revised for the purpose of enabling the

court to gauge and see if the delay is inordinate or not. The court has found the learned counsel for the third respondent stated in his submission that, if it will be assumed the applicant is referring the date of execution to start from 15th day of August, 2003 when the judgment and the decree were issued by the trial court, then the applicant has delayed for 12 years and there is no explanation advanced for such inordinate delay.

The only reason advanced to this court by the applicant for grant of extension of time to apply for revision of the execution proceedings of the trial court as deposed in the affidavit sworn by Mr. Sylvester Anthony Mwakitalu and filed in this court to support the application is that, there are illegalities in the execution proceedings of the trial court intended to be revised if extension of time will be granted. The court has considered the illegalities alleged are in the execution proceedings of the trial court as submitted by the applicant and deposed in the affidavit filed in court to support the chamber summons and come to the finding that, as submitted by the learned counsel for the third respondent some of the alleged illegalities are premised from non-existing or wrong provision of the law.

Though it is not the duty of this court to determine the merit of the alleged illegalities in this application but the court has found as the counsel for the third respondent has submitted on the stated non-existence or wrong citation of the provision of the law upon which one of the illegality is based it is proper for this court to say

something on the said point. The court has found as rightly submitted by the learned counsel for the third respondent Order XX Rule 33 (2) and (3) of the Civil Procedure Code which the applicant stated it requires a warrant of attachment to be fixed on conspicuous part of the property to be attached is not in existence in the above referred statute. Despite the fact that the learned State Attorney stated in his rejoinder that, there was a typing error and they intended to type Order XXI Rule 33 (2) and (3) of the Civil Procedure Code but still the provision of the law intended to be cited is not providing for what the learned State Attorney is alleging. The court has found the said provision of the law is providing for the mode of delivery of possession of an immovable property to a decree holder and attachment of an immovable property which is in joint possession while in the execution proceedings in the trial court was not about delivery of immovable property to the decree holder or delivery of the property which is in joint possession to the decree holder but delivery of the immovable property to the bonafide purchaser.

Notwithstanding the above observation the court has found as there are other points of law listed by the applicants as illegalities they think are existing in the execution proceedings of the trial court which they intend to be put right, the court has found as rightly stated by the learned counsel for the third respondent those points will be subject of discussion at the hearing of the application for revision. The duty of the court at this juncture is to determine if the

alleged illegalities can be a sufficient ground for granting extension of time to the applicant to file in the court an application for revision of the execution proceedings of the trial court out of time.

As demonstrated earlier in this ruling, the applicant while basin on the decision made in the cases of **Devram Valambia** applied with approval in the case of **CRDB Bank Ltd** and **Kashindye Machibya** (Spura) he submitted that, the alleged illegalities are sufficient reason to grant extension of time they are seeking from this court. The court has considered the submission of the learned counsel for the third respondent who submitted there is no illegality in the proceedings the applicant intends to be revised and come to the finding that, the issue as to whether the alleged illegalities are in existence or not is not supposed to be determined by this court at this stage but in the application for revision if extension of time will be granted.

The court is in agreement with the learned counsel for the third respondent that, as stated in the case of **Tanzania Harbours Authority** (Supra) it is not in every situation where is alleged there is illegality to be rectified the time must be extended. However, after seeing in many cases illegality has been used as a ground for granting extension of time and after seeing one of the illegality alleged by the applicant is existing in the execution proceedings intended to be revised is that the property of the fourth respondent was sold far below its actual value it is to the view of this court proper for the alleged illegality and others to be examined by the court through its

revisionary powers so that if the alleged illegalities will be established the proceedings can be put right. The argument by the learned counsel for the third respondent that there is no valuation report adduced before this court to substantiate the same will be dealt in the application for revision and not in the application at hand.

The above finding of this court is getting support from the cases of **CRDB Bank Ltd, Devram Valambia** and **Kashine Machibya** cited in the submission of the applicant where it was stated that, where extension of time is sought on allegation of illegality of the decision to be challenged, that by itself constitute sufficient reason to grant an extension of time. The similar position was observed by the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company Limited V. Board of Registered Trustees of Young Women Christian Association of Tanzania,** Civil Application No. 2 of 2010 (Unreported) where it was stated inter alia that, if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged it can be a reason for granting an order for extension of time.

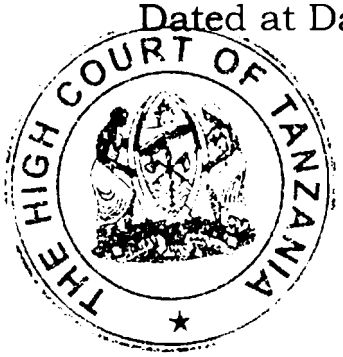
The court has considered the argument advanced to this court by the learned counsel for the third respondent that, if the application will be granted the third respondent who is a bonafide purchaser of the property in dispute will be highly prejudiced and failed to see how he will be prejudiced. The court has found so after

seeing the third respondent is a party in the instant application and he will also be a party in the intended application for revision where he will be having a right to defend his rights. If it will be found there is no illegality in the impugned proceedings his rights as a bonafide purchaser will not change but if there will be any illegality the court will put the record right.

Since under section 17 (1) (a) of the Act No. 4 of 2005 the Attorney General has right of audience in proceedings of any suit which it consider to be of public interest or involves public property and as the applicant was not a party in the matter when it was decided by the trial court the court has found proper to grant the applicant extension of time so that they can be heard on the alleged illegalities. The court has found if the application will not be granted the applicant will be denied right of audience stated in the above referred provision of the law which as stated in Article 13 (6) (a) of the **Constitution of the United Republic of Tanzania**, 1977 referred in the case of the **Attorney General V. the Board of Trustees of the Cashewnut Industry Development Trust Fund and Another**, Civil Application No. 73 of 2015 CAT at DSM (Unreported) is a fundamental right. Although the fourth respondent was a party in the trial court but still the applicant's right of audience under the above provisions of the law in the matter determined by the trial court has not been affected.

In the final result the court has found that, although the applicant has not advanced any reason for delay to institute the application for revision within the prescribed period of time, but under the circumstances of the application at hand the court has found the points of illegalities alleged by the applicants are involved in the execution proceedings of the trial court are sufficient to move this court to exercise its discretionary powers to grant the application of the applicant. In the upshot the applicant is granted extension of time to file in this court an application for revision of the execution proceedings of the trial court and the same to be filed within thirty days from the date of this ruling. The court is making no order as to costs in this matter.

Dated at Dar es Salaam this 6th day of April, 2018



I. ARUFANI
JUDGE
06/04/2018

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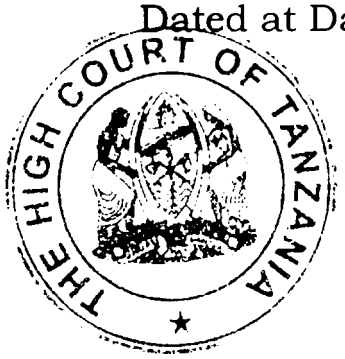
Dated at Dar es Salaam this 6th day of April, 2018



I. ARUFANI
JUDGE
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