

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. CIVIL APPLICATION NO. 62 OF 2021

YOHANA MAGAYANE.....APPLICANT

versus

ANASTAZIA NDAZI.....RESPONDENT

RULING

6th & 12th July, 2021

RUMANYIKA, J

With respect to ex-parte judgment and decree of 23/04/2021 of this court the application is for extension of time within which Yohana Magayane (the applicant) to file an application for review. It is supported by the affidavit of Yohana Magayane whose contents Mr. Beatus Linda learned counsel adopted during audio teleconference hearing on 06/07/2021. Mr. Mwangia learned counsel appeared for Anastazia Ndazi (the respondent). I heard them through mobile numbers 0745384316 and 0757123318 respectively.

Mr. Beatus Linda learned counsel submitted that the reason for delay was that the applicant received copies of the impugned proceedings

judgment and decree say 1 3/30 months late on 26/05/2021 due to prevalence of the Corona Virus pandemic the case having had been determined by way of digital platform therefore beyond human control and the ground for review was that wrongly though, during execution of the decree instead of House No.113/074 House No.013/163 was demolished.

Questioned by the court for more clarification, the learned counsel submitted that the executing court responsible for the demolition of the house it was the District Land and Housing Tribunal (the DLHT) not the High court.

Mr. Mwangia learned counsel did not file a counter affidavit yes, but nevertheless it did not mean that he conceded to the application (**The Editor Msanii Africa News Paper v. Zacharia Kabengwe**, Civil Application No. 2 of 2009 CA (unreported) much as the applicant only intended not, by way of review to challenge decision of this court but with respect to the demolition order execution proceedings and orders of the DLHT and the criteria for review; where the decision was tainted with fraud, right to be heard was infringed, there was manifest error or the record resulting to miscarriage of justice. That in no way the applicant

would have met the threshold. That as there was no good cause the instant application was liable to be dismissed with costs. (see the case of **Nada Panga v. Asha Seif & 2 Others**, Civil Application No. 312/12 of 2020) (CA)) un reported.

The issue is whether the applicant has assigned a sufficient ground for extension of time. Given the prevailing circumstances and reasons one may have had been supplied with copies of the impugned proceedings and judgment so late in the day and the instant application was inevitable yes, but the applicant did not account for the day 7 days. If at all eventually he received the copies on 26/05/2021 and he did not institute the instant application until on 03/06/202. Only for that reason the application is liable to be dismissed and I dismiss it with costs (case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No.3 of 2007 (CA) un reported an out of unbroken chain of authorities.

Without prejudice to the foregoing, also without running risks of jumping into merits of the case, I think the application is misplaced because the impugned demolition order was not issued by this court but the DLHT if anything, if need be the impugned order therefore was, subject to the law of limitation only reviewable by the latter. In other words now

that neither the house(s) nor the demolition order were subject of the appeal arising to the instant application, this court would not have basis upon which to review its own decision or for that reason fault itself. With greatest respect the instant application was but time wastage mostly leading to endless litigation. After all be it here or in the executing tribunal, as admitted by the applicant, if really the house was long ago demolished, unless it served only academic purposes, the application is well over taken by events therefore not tenable **Mafuru Magwega v. Maregesi Munena**, Civil Application No. 6 of 2005 (CA) un reported. It is very unfortunate that the application was preferred and filed in the first place.

The out of place application is dismissed with costs. It is so ordered.

S.M. RUMANYIKA
JUDGE
10/07/2021

The ruling delivered under my hand and seal of the court in chambers this 12/07/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
12/07/2021