

TANZANIA / JUDGMENT

NA TZHC Simon21

COURT
TZHCDECIDED
1 January 2002

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I, , , }] > •, • {, • , IN THE HIGH COURT OF TANZANIA ~ . . ' . . AT DAR ES SALAAM .. f /t;ir, • f .
 ~, MISCELLANEOUS CIVIL APPLICATION . NO. 75 OF 2011 -_ " , HAMAD SHAAM E HA'SSAN
 •~ APPLICANT -.; ~ ~?.. <• VERSUS . ~. ' ,,,L~ .. .: ' . . ST MWAMPEMBA
 SHAMJI';~:~ f~ ~ 1 ~ ~ . RESPONDENT ' t' ND . . HASSAN SHAAME
 HASSAN i 2 RESPONDENT (Original Civil Appeal No. 71 of 2008 of the District
 Court of Ilala at Samora Avenue and Mndaji ya Tal{(Na. 49/2007 Buguruni, R{tmary ;,,... .
 Court)\.. . .

RULING

Rugazia, I. ~: ' The applicant filed an application \ for. ~xtension of time to file ' revision
 proceedings in respect of the decision of the Primary Court ' , ~ _Which was upheld by the
 District Court. The said decision arose from a Matrimonial Cause between the two respondents.
 The said ... decision was that the matrimonial . house be divided equally . However, the
 applicant claims to have an interest in that house in that the second respondent who is his blood
 brother is the one who purchased the said house. According to him, their parents died \ leaving
 behind real property in Zanzibar and ... Kigamboni plus four fishing boats. The two brothers
 sold a clove farm in Pemba and a 1 land at Vingunguti. ~Th~.:~s~ld transaction was executed by
 the second y ' . . . respondent because -t., ~. . ' the elder brother . •. (applicant) spends • much of
 his ' time in Kilwa where 'he conducts '~-~. fishing business. : It was submitted that. the
 disputed house was constructed under supervision of the young brother . but :the -.;... appHcant
 bought , •, . -; -~: . . . -;;J_~\ ; . . windows and doors from Kilwa and, also, . timber, ~md .
 ~ iron sheets from . -;,,_,,,!~ , •_! Buguruni. When the house was ready
 for;;e;ccupation both brothers .. -~: ~_ . . : • . moved in with their families. The applicant's-
 further submission was that the 1st respndent maintains in her counter affidavit that the
 applicant contributed nothing to the construction of the said house. Another fact which was
 pointed out is that the house has a licence of occupancy which is in the names of both the
 applicant and the second respondent. The applicant contended that as he was not a party to the
 matrimonial proceedings he could not take any action; and that he only became aware when the
 said house was being valued. Having become aware at that stage, the applicant asserted, the only
 option 2 ~. :: _- (!..... for him was to file a .f,tevision to this ~ourt snce he could not appeal.

- ...r The applicant's .. counlet\,~ferrecL . me to the case of Attorney . "; General vs:M,aalim . . . , , . . ' Kadau & 16 . Others (1997) TLR 69 where it _ , . was resolved that:~f·persoq \Vflc{is ndt a party to the. proceedings can only file a re~sibn and nof an>·appeal. . . l;be ' : , ··· learned counsel . strenuously argued ' that if. executidn of the. Jowe/ c6urt's · order is to · be effected,it is bound to interfere with the . . . } : · . r~ts of the applicant in ~ . . . ;~>-: ' .. the house he is occupying .. It W,a's\~H\~tefore prayed that the application be aJlow·ed. Finally, the applicant stated that it is a question of fact that if the house is left to be disposed off (sic) the family of the applicant will be rendered homeless. I was therefore urged to halt the sale proceedings until the issue of ownership is resolved. In rebuttal, the first respondent submitted that the application has no merit and that the applicant has nothing to do with the matrimonial home. She made reference to section 79(1) (c) of the Civil Procedure Code, Cap. 33 R.E 2002 which provides for grounds 3 ...,<·_,::·-, '\·- ' ' .. ,. -~:·:·... , f{ . upon which a RevisioB\rn~y be made::_ Sh¢ was bf the vi~w that no grouirds have been esfubit~md by the a;plicani: to move the court to . r.. '!:·! · / . . ~~~ grant the applisation._ ;11 supposed to~:collnter on . th~ ieqsbni" for;·d~lay:~\~o~:file the same .
- 1; ;;;,::}>/ ·: ·: · / , ·:·\·_·'~ . : . ·'!' , ·~ : According to the applicant, reasclns forthef;de.layare because he was . r · , · , . not a party to the',rpatrimonial procee~i_ng: \$::,and, ·also, he spent most : : .. (·. of the time in K.iJW9 where he conducts business. As it is, these reasons are not controverted and they are weighty. On the issue of stay, it is said and again undisputed that the applicant and his family are staying in the house. This being so, any execution is most inevitably bound to have him evicted therefrom. It is for this reason that I proceed to grant a stay pending hearing of the intended application. I also grant the application for extension of time to file revision proceedings. 4

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