

TANZANIA / JUDGMENT

peter temba ta mahenge timber enterprises vs dar es salaam city council

another 2013 tzhc 2248 18 july 2013

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TZHCDECIDED
18 July 2013

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IN THE HIGH COURT OF TANZANIA [DAR ES SALAAM DISTRICT REGISTRY] AT PAR ES SALAAM
MISC. CIVIL APPLICATION NO. 162 OF 2002 PETER TEMBA t/a MAHENGE TIMBER
ENTERPRISES..... APPLICANT Vs. DAR ES SALAAM CITY COUNCIL__ 1st RESPONDENT
HASSAN IBRAHIM S O B O2nd RESPONDENT Date o f last order 10/6/2013 - Date o f
Judgment - 18/7/2013

JUDGMENT

Shangwa, J. On 6th June, 2005, this court Oriyo, J as she then was gave a judgment in Civil Appeal No. 162 of 2002 in which she ordered that the Applicant should vacate the premises in dispute after being fully compensated. A decree was extracted from the said judgment by the court clerk but it did not tally with the judgment in the sense that it did not contain the provision of full compensation. As a result, the Applicant applied for rectification of the said defect. Oriyo, J as she then found the application to be with merit and granted the same. The following is what she said in her ruling and I quote her in full:- " The decree is amended as follows:-

- (i) Subparagraphs (a) and (b) of paragraph 2 are deleted and replaced to read:-
- (a) The second respondent shall compensate the appellant for the hut that is on the plot allocated to the second respondent. (b)The amount of compensation payable shall be the current replacement cost as assessed by a Government Valuer." In his written submissions, the Applicant submits that another decree was extracted in which the same defect was repeated. He says he made another application for rectification of the same defect and that Mwaikugile, J struck out his application and directed that the proper thing to be done to rectify such an error is to apply for review of the amended decree but as time to apply for review of the said decree has elapsed, he prays for extension of time within which to do so. On the other side, the 1st respondent is opposing this application. She is doing so on the following grounds: First, that the applicant has not shown sufficient cause or reasonable cause to support his application for extension of time. Second, that the applicant filed his application for extension of time having been terribly out of time as he was supposed to file it within 30 days from the date the decree was issued but he filed it six years, four months

and sixteen days thereafter. On these two grounds, counsel for the 1st Respondent has prayed this court to dismiss this application with costs. There is no dispute in this case that under the Law of Limitation Act Cap. 89 R.E. 2002 the period within which an application for review of the decree has to be made in the court of law is 30 days counting from the date when the decree was issued by the court. There is no dispute also that from the time when the decree in issue was issued by this court to the time of filing the application for extension of time to apply for its review, there is a period of many years that has elapsed. However, in my view, the applicant cannot be blamed for having been terribly out of time. This is because between the said period he applied twice for rectification of the defect in the decree but no rectification was made as ordered by Oriyo, J. as she then was. As correctly pointed out by counsel for the 1st Respondent this court is empowered under s. 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2002 to grant extension of time to institute an appeal or application if there is any reasonable or sufficient cause. In this case, counsel for the 1st Respondent Jacqueline Mosha contended that the Applicant has not given sufficient cause for his application for extension of time to file an application for review of the decree in issue. In my opinion, unlike counsel for the 1st Respondent I am of the view that the Applicant has given sufficient cause for his application for extension of time to do so. In which way? That despite this court's order given by Oriyo, J on 7th February, 2006 that the decree should be rectified in order to tally with this court's judgment given by her on 6th June, 2005, no such rectification has ever been effected by the court and that when he made the second attempt to apply for rectification of the decree Mwaikugile, J. struck out his application. According to this court's record, Mwaikugile, J. struck out his second application for rectification of the decree on grounds that this court was functus officio as a similar application had been made and granted. In addition to that Mwaikugile, J. was of the view that the proper course that should have been followed by the Applicant is to apply for review of the amended decree emanating from the ruling of Oriyo, J. as she then was. The Applicant now wishes to follow the said course but as time within which to follow the said course has elapsed, he has come to this court for extension of time to do so. As I have already shown, the Applicant has given sufficient cause for his application. I therefore grant it and order that his application for review of the amended decree which contains a similar defect as the original decree should be filed within two weeks from today. I make no order as to costs. Mention on 2/8/2013. A. Shangwa JUDGE 18/7/2013 Delivered in open court this 18th day of July, 2013 in the presence of the Applicant and Miss Jacqueline Mosha for the 1st Respondent. A. Shangwa JUDGE 18/7/2013

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