

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA SUB - REGISTRY**  
**AT MBEYA**

**PROBATE CAUSE APPEAL NO. 28646 OF 2023**

*(From the Decision of the District Court of Songwe at Mkwajuni in Civil Appeal No. 1 of 2023, Originating from the Decision of Songwe Primary Court at Mwambani in Probate Cause No. 05 of 2023).*

**SYLIVESTER LIBERIO KISANJI.....APPELLANT**

**VERSUS**

**LADISLAUS LIBERIO KISANJI.....RESPONDENT**

**JUDGMENT**

*Date: 4 & 19 of April 2024*

**SINDA, J.:**

The appellant herein is challenging the decision of the District Court of Songwe at Mkwajuni (the **District Court**) that was decided against him.

The brief facts of the case are as follows: the appellant, on 10 July 2023, was appointed the administrator of the deceased estate of one Liberio Andrea Kisanji by the Songwe Primary Court at Mwambani (the **Primary Court**). The respondent objected to the appointment of the appellant before

the same Primary Court, whereby he was unsuccessful. Still aggrieved, he appealed to the District Court, where the court allowed the appeal on reasons that the petition for letters of administration before the Primary Court was time-barred.

The appellant being aggrieved with the decision of the District Court, made this appeal on the following grounds that:

- 1. The Trial Appellate Court erred in law and fact in determining and deciding the objection, which had already been decided by the Songwe Primary Court at Mwambani.*
- 2. The Appellate Court erred in law and fact by failing to notice that the Songwe Primary Court at Mwambani wrongly determined the respondent's objection filed on 25 July 2023.*
- 3. The Appellate Court erred in law and fact in considering the objection to appointing the administrator as an objection to the administrator's revocation.*
- 4. The Appellant Court erred in law and fact to determine the appeal while the matter was not appealable*

- 5. The Appellate Court grossly erred in law and fact in dealing with and extending to criticize the matter in Main Case, Probate Cause No. 05 of 2023 of Songwe Primary Court at Mwambani.*
- 6. The Appellate Court erred in law and fact by deciding in favour of the respondent on grounds not supported by the laws.*

At the hearing, the appellant was represented by Mr. Barnaba Pombona, learned counsel, and the respondent was represented by Mr. Stanslaus Michael, learned counsel. Mr. Pomboma prayed to withdraw the fourth ground of appeal.

On the first ground of appeal, Mr Pomboma submitted that the District Court had decided on the objection, which was already decided by the Primary Court in Probate Cause No. 05 of 2023. He argued that at the hearing of the Probate Cause No. 05 of 2023, the respondent raised an objection to the appellant's appointment as an administrator of the deceased estate. The objection was dismissed, and on 5 July 2023, the Primary Court appointed the appellant as the administrator.

He further added that on 20 July 2023, the respondent filed an objection to the appellant's appointment as the administrator of the deceased estate at

the Primary Court. The Primary Court heard the application as a revocation of the appointment. On 16 August 2023, the Primary Court reached its decision and dismissed the objection.

Mr. Pomboma contended that the appeal to the District Court was regarding the decision of 16 August 2023, which was heard as an application of revocation and not an objection to the appointment. He added that the respondent was to file an application for revocation.

Arguing on the second ground, he submitted that the District Court did not realise that the Primary Court erred in determining the objection, as the application was an objection to the appointment, not revocation.

On the third ground, he said there is no demarcation between an application for objection and an application for revocation. He stated that revocation happens after the administrator is appointed. He added that both the Primary Court and the District Court did not realise that the application before the court was not for revocation but to object to the appointment of the administrator, which had already been done. He argued that the respondent's letter dated 20 July 2023 to the Primary Court clearly stated that the respondent is submitting his objection with respect to the applicant

being appointed as an administrator of the estate and not revocation of the appointment.

Concerning the fifth ground, he argued that the District Court erred in dealing with and extending to criticise the matter in the main case Probate Cause No. 5 of 2023, at the Primary Court. He added that the appeal was in relation to the objection and not the main case. As per the petition, in the District Court records, the appellant was dissatisfied with the decision of Probate Cause No. 5 of 2023 dated 16 August 2023 and not the decision of 10 July 2023.

He further stated that the decision of 16 August 2023 was related to the objection to the appointment as an administrator. Therefore, the District Court was to confine itself to that decision. He added that scrutinising the decision of 10 July 2023 to reach the appeal decision was a mistake by the court.

Arguing on the sixth ground, Mr. Pomboma stated that the District Court erred in law and fact by deciding in favour of the respondent on grounds not supported by the laws. The reason stated was that the application was time-barred, and the appellant was to file for an extension of time before he was

appointed as an administrator. The issue of the application being time-barred was discussed and decided by the court in the main case. He contended that this was not proper, as was already decided in the main case.

In reply to the submission, Mr. Stanslaus argued that it was not true that the objection had already been decided by the Primary Court. He added that it is a settled law that if you are dissatisfied with a decision of the lower court, you appeal to the higher court.

He contended that the appellant's appeal was in relation to the Probate Cause No. 5 of 2023. The objection was that the administrator's appointment was made out of time. The law requires that an administrator be appointed within three years (3) after the deceased's death. He further stated that the court records showed that the deceased died on 1 July 2006. The application for the appointment of the administrator was made in 2023. That is seventeen (17) years after the death of the deceased. He added that in the application reasons as to why the application was filed out of time must be stated. There were no reasons stated as to why the application was filed out of time. The District Court, in the Civil Appeal No. 1 of 2023, explained this and decided to quash the proceedings of the primary court.

He referred to ***Masanja Luponya vs Elias Lubinza Mashili***, PC. Probate Appeal No. 1 of 2020, and ***Magnus Simon Mulisa vs Wilson Simon Mulisa & 3 Others***, Probate Appeal No. 11 of 2022, to support his arguments. He noted that in these cases, the court developed a principle that you should give reasons for filing a probate matter after three years.

In opposition to the second ground, Mr. Stanslaus stated that the District Court noticed the Primary Court's errors and nullified its proceedings as no reasons were given as to why the application was filed out of time.

On the third ground, he submitted that the District Court did not consider the administrator's appointment because it was out of time.

On the fourth ground, Mr. Stanslaus contended that the District Court was proper in nullifying the proceedings of the Primary Court because the Primary Court erred by not considering the objections brought. Mr Stanslaus did not argue on the fifth aground of appeal.

On the sixth ground, he submitted that it was not true that the grounds were not supported by the laws. He argued that the District Court referred to cases that were part of the law.

In rejoinder, Mr. Pombomba said that the respondent advocate did not respond to the grounds of appeal as argued by the appellant advocate.

Mr. Pomboma argued that the authorities regarding the application being filed out of time are only persuasive. He insisted that the objection was already decided at the Primary Court, as shown in the Judgment on 10 July 2023.

On the third ground, he stated that Mr Stanslaus did not explain whether the application was an objection to the appointment of the administrator or revocation.

I have considered the grounds of appeal, the parties' written submissions, and the evidence on record. I shall, therefore, start to deliberate on the sixth ground of appeal that the District Court erred in deciding in favour of the respondent on grounds not supported by the law.

In this appeal, the appellant claims that the District Court ruled that the matter was time-barred while there is no time limit provided under the law.

It is true that there is no statutory provision providing for limitation of time in instituting probate and administration matters in the primary courts. The courts, however, have come up with conflicting decisions.



The first school of thought supports the position that although there is no specific period stated for instituting probate matters, there should be no delays in bringing such matters and there should be a statement explaining why the delay. See: ***Ramadhan Said Abasi Kambuga & 2 Others v. Mbaraka Abasi Kambuga***, Probate and Administration Appeal No. 1 of 2015 (HC at Sumbawanga, unreported).

The other school of thought states that there is no time limit for petitioning for letters of administration in primary courts. See: ***Hezron Mwakingwe vs Elly Mwakyoma***, Probate Appeal No. 03 of 2020 (HC at Mbeya) and ***Majuto Juma Nshauz vs. Issa Juma Nshauzi***, Civil Appeal No. 9 of 2014 (HC at Tabora, unreported). This has been the practice in primary courts, whereby applications of such nature are admitted regardless of time limit.

The above case reveals that no legal provisions or requirements are necessary to date for applying for letters of administration before the primary court once the application is time-barred.

In this matter, the appellant gave sufficient cause in the Primary Court for the delay in instituting the matter.

For the reasons stated above, I find that the sixth ground of appeal has merit and is enough to dispose of this case. The appeal is allowed. There is no order as to costs.

It is so ordered.

The right of appeal is explained.

DATED at **MBEYA** on this 19 day of April **2024**.



**A.A. SINDA**  
**JUDGE**

The Judgment is delivered on this 19<sup>th</sup> day of April 2024 in the presence of the appellant and the respondent, who appeared in person and Mr. Stanslaus Michael counsel for the Respondent.



**A.A. SINDA**  
**JUDGE**