

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL APPLICATION No. 12 OF 2019
(Arising from the Probate and Administration No 1 of 2015 of the District Court of Kishapu which determined the Probate Appeal No. 4 of 2014)

MABETE MASELE.....APPLICANT
VERSUS

MASENG'WA LIFA.....RESPONDENT

EXPARTE-RULING

19th April & 24th May, 2021

MKWIZU,J:

This is an application for extension of time within which to lodge Revision out of time against the decision in Probate Cause No 1 of 2015 of Kishapu District Court and Probate appeal No 4 of 2014 in the district court of Shinyanga. The application is by way of a chamber summons made under section 14 (1) of the Law of Limitation Act (Cap 89 R:E 2002) supported by the applicant's own affidavit dated 22nd August, 2019.

The parties have a long history. For a better understanding of the nature and background of this application, I find it is necessary to give a brief background facts as follows: The Isungang'holo primary court appointed

respondent, Masengwa Lifa , an administrator of the estate of the late Holo d/o Madito in probate cause No 4 of 2014. The applicant, who is said to be the deceased husband sucessfull appealed to two different District courts. He filed a Probate appeal No 4 of 2014 before the Shinyanga district court. This appeal was allowed. In its decision, the trial court's decision was quashed and the orders therein were set aside. The appellant was appointed administrator of his wife's estate and ordered to collect the deceased properties, and accordingly divide them to the deceased heirs. This decision was delivered on 15/7/2015.

Appellant later filed another appeal in Kishapu District court registered as Probate and Administration cause No 1 of 2015. He was also successful in this second appeal but with a different order. The Kishapu District Court allowed the appeal, appointed the appellant an administrator of the complained estate . It was however found that, the estate land was already sold to different people and therefore the Kishapu District Court directed applicant to take from eight different buyers the portion of the sold land . This decision was delivered on 5/1/2016.

On 29/2/2016 applicant filed in this court Misc. Probate Application No.2 of 2016 for revision of the proceedings and judgment in Probate No. 1 of 2015

of the Kishapu District Court for being res judicata,. The application was however, on 19/6/2019 struck out for being defective

Still on his toes to pursue his rights, applicant has come to this court for extension of time so that he can lodge an application for Revision out of time .When the matter was called on for hearing, the applicant appeared in person but the respondent with reasons known to himself made no appearance which led to the exparte hearing.

Essentially, applicant prayed to adopt his affidavit in support of application and had nothing substantial to add. Having considered the application and its supporting affidavit, the issue detected is only whether the application has shown good cause for extension of time to file an application for Revision.

The reasons for the delay advanced in the affidavit is that the court did not timely supply the applicant with a copy of the ruling following the court Ruling dated on 19th June, 2019. This infers a technical delay after he had filed in time the first revision application which was struck out for technicalities. Applicant said, he was served with a copy of the ruling on

10th July, 2019 .

Lagally, Revision is filed within 60 days after the delivery of the challenged decision. In this case, Probate and administration appeal no 1 of 2015 was delivered on 5/6/2016. The sixty (60) days time started to run from that date. As deposed in his affidavit, applicant on time filed the application but for the reasons explained in the court's order dated 19th June 2019 was struck out. After that order applicant was already out of time but had an option of seeking for enlargement of time to file afresh his struck out application as he did.

Now, in this application what applicant is required to do is to give sufficient reasons as to why he was late to file his revision application. One of the reasons adduced, in his affidavit is a technical delay. He delayed while perusing the struck out application and that he was not supplied with the ruling on time.

My carefully reading of the applicant's affidavit, the time from 5/6/2016 to 22nd August, 2019 is well accounted for. Applicant averred further that between 5/6/2016 he was perusing the struck-out application and from 10/7/2019 to 22nd August, 2019 when he filed the present application, he was looking for a the legal assistance. It is a trite law that in an application

for extension of time each day of the delay must be accounted for. Applicant has , in a way managed to account for the time of delay.

There is however another serious issue/ illegality on the proceedings which need to be attended by this court on appeal. As hinted herein, applicant had pursued two appeals in two different district courts emanating from one decision of the primary court.

The two-District court had arrived at the same conclusion but gave a conflicting directives which makes execution of the deceased administration difficulty. I think, though this reason was not precisely raised in the affidavit, I think it is in the interest of justice to allow this application so as to have the records corrected. On this, the court is guided by the decision in **Lyamuya Contraction Company Ltd vs Board of Registered Trustees of Young Woman's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) where the court gave factors to be taken into account when the court is to decide an application for extension of time. It observed that:

- a. "The applicant must account for all the period of delay*
- b. The delay should not be inordinate*
- c. The applicant must show diligence and not apathy negligence or*

sloppiness in the prosecution of the action that he intend to take.

d. If the court feel that there are other sufficient reasons, such as existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged" (Emphasis added)

That said, the application is allowed. The intended revision to be filed within 60 days from the date of this ruling. No order as to costs.

Order accordingly.

Dated at Shinyanga this 24th day of May, 2021

