

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA

PC CIVIL APPEAL NO. 34 OF 2020

*(C/F the District Court of Monduli, Misc. Civil Application No.5 of 2019, Originating from
Mto wa Mbu Primary Court, Probate and Administration Cause No. 4 of 2017)*

AISHA BOAY APPELLANT

Versus

MWANAHAMISI ALLY ISAKA RESPONDENT

JUDGMENT

20th May & 6th August, 2021

Masara, J.

Mwanahamisi Ally Isaka (the Respondent herein) petitioned for letters of administration of the Estate of her late father, one Ally Abdallah Isaka at Mto wa Mbu Primary Court (the trial Court). **Asha Boay** (the Appellant herein), who is also the Respondent's mother and the wife of the late Ally Abdallah Boay, entered a caveat objecting the Respondent's appointment as administratrix of the estate of her late husband. After hearing both parties and their witnesses, the trial Court dismissed the petition, holding that the Estate of the late Abdallah Ally Isaka had already been distributed to the lawful heirs; thus, there was nothing to administer.

From the record, it seems there were multiple land cases that were in progress between 2017 and 2018. After the land cases were decided against the Respondent's, due to lack of *locus standi*, the Respondent thought of appealing to the District Court against the trial Court decision; unfortunately, she was out of time. In attempt to have her appeal probed in Court, she filed Misc. Civil Application No. 1 of 2019 in Monduli District Court (herein after the District Court) on 27/2/2019 seeking for extension of time to file appeal in the District Court. On 13/5/2019, the application was struck out for being defective after successful preliminary objections raised by the Appellant. On 10/6/2019, the

Respondent filed Misc. Civil Application No. 5 of 2019 in the District Court, subject of the appeal under consideration. In a ruling delivered on 13/11/2019, the District Court allowed the application, granting her 21 days to file her appeal. The Appellant was aggrieved by that decision, therefore she has preferred this appeal on two grounds of appeal, as reproduced hereunder:

- a) *That, the trial Magistrate erred in law and fact by allowing the Application for extension of time to appeal where no good cause was shown; and*
- b) *That, the trial Magistrate erred in law and in fact by considering reasons for extension of time to appeal which were not raised in the Respondent's Chamber Summons and Affidavit.*

Basing on the grounds above, the Appellant prays that the appeal be allowed by quashing the decision of the District Court with costs. At the hearing of the appeal, the Appellant was represented by Mr. Joshua Minja, learned advocate, while the Respondent obtained pro bono services from Ms. Veneranda Joseph, learned advocate from the Legal and Human Rights Centre. The appeal was argued through written submissions.

In his written submissions, Mr. Minja dropped the second ground of appeal, submitting on the first ground alone. Submitting in support of the appeal, Mr. Minja averred that discretion of the Court to extend time depends on the party advancing good cause for the delay. He contended that the party seeking extension of time must show that the delay was with sufficient cause. He relied on the decision made in the case of ***Lyamuya Construction Company Limited Vs. The Board of Registered Trustees of Young Women's Cristian Association of Tanzania***, Civil Application, No. 2 of 2010 (unreported), which established factors to consider when granting a party extension of time. Mr. Minja asserted that the guidelines set forth in ***Lyamuya's*** case were never considered by the District Court as there was no sufficient cause shown by the Respondent. He further argued that the Respondent did not account for each of the delay citing the case of ***Selemani***

Juma Masala Vs. Sylvester Paul Mosha and Another, Civil Application No. 210/01 of 2017 (unreported), which insisted on accounting for each day of the delay rule.

The learned advocate for the Appellant submitted that the Respondent totally failed to account for the delay since 3/7/2017, the date when the impugned decision was delivered by the trial Court, to 27/2/2019, the date she first attempted to file her application for extension of time. In granting the prayer for extending time to the Respondent, the District Court Magistrate failed to exercise his discretion of extending time judicially, argued Mr. Mosha. He added that the Respondent did not adduce sufficient cause for the delay. In that respect he relied in the decisions made in the following cases: ***Jackob Shija Vs. M/s Regent Food & Drinks Limited and Another***, Civil Application No. 440/08 of 2017 (unreported) and ***Republic Vs. Yona Kaponda and 9 Others*** [1985] TLR 84. He concluded that the Appellant is the mother of the Respondent; therefore, granting her the extension of time sought condoned the fight between the Respondent and her mother in Court. He cited the decision in the case of ***Philipina Wilfred Malisa Vs. Robert Wilfred Malisa***, Civil Appeal No. 12 of 2020 (unreported) to support his assertion. Mr. Minja urged the Court to allow the appeal by quashing the decision of the District Court.

On her part, Ms Veneranda averred that power to extend time is in the discretion of the Court. She stated that there are no particular reasons set out as sufficient cause; it depends on the particular circumstances of each case. She made reference to factors enunciated in ***Lyamuya Construction Company Limited*** (supra) and ***Tanga Cement Company limited Vs. Jumanne D. Massanga and Another***, Misc. Civil Application No. 6 of 2001(unreported). Basing on the decisions above, Ms Veneranda insisted that

the District Court properly exercised the discretion judiciously and considered all the circumstances in granting the Respondent extension of time.

According to Ms Veneranda, the main reason for delay as submitted in the District Court was that the Respondent was involved in two other cases; therefore being a lay person, she failed to engage herself in filing her appeal in time. The learned advocate maintained that all the prerequisites established in ***Lyamuya Construction case*** (supra) were adhered to by the Respondent. She urged the Court to dismiss the appeal with costs and upheld the decision of the District Court.

In a rejoinder submission, Mr. Minja challenged the cases cited by the Respondent's advocate imploring the Court to disregard them since they are neither stamped nor signed. He asserted that the reason advanced by the Respondent for the delay are baseless as they do not amount to sufficient cause. He contended that ignorance of procedure does not amount to sufficient cause as was held in ***Dominic Yohana Vs. Salma Shite***, Civil Application No. 120/03 of 2020 (unreported).

I have strenuously considered the petition of appeal, records of both lower Courts and the submissions made by advocates for the parties. The pertinent issue for determination is whether the Respondent advanced sufficient cause to warrant the extension of time made by the District Court.

Sufficient cause for the delay is a condition precedent in granting applications for extension of time. The Court of Appeal decision in ***Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania*** (supra) provides the essential elements under which a person can be said to have advanced sufficient cause. The question is whether

the Respondent was sufficiently covered by the sufficient cause stated in the above decision.

In the affidavit in support of her application in the District Court, the Respondent stated the reasons that led to her delay in filing her appeal in the District Court under paragraphs 4, 5, 6, 7 and 8. She stated that she was attending other case including Land case that was filed in Majengo Ward Tribunal, whose decision was attached in the application as annexure MAI 2. However, such annexure does not bear the names of the parties, the number of the case and the date it was delivered. Therefore, this will not be helpful in the determination of the appeal at hand. Again, it was deponed under paragraph 5 that there was another case filed in the District Land and Housing for Arusha, annexure MAI-3. In that application, Misc. Application No. 182 of 2017, the Appellant herein applied for extension of time to file her appeal against the decision of Majengo Ward Tribunal dated 16/12/2014. That above application was dismissed on 14/11/2017.

Under paragraph 6 of the affidavit, the Respondent stated that she filed Misc. Application No. 24 of 2018 in the District Land and Housing Tribunal for Arusha, whose ruling was annexed as MAI-4. That ruling was in respect of application for execution of the decision of Majengo Ward Tribunal..The Application was dismissed on 31/7/2018. Under paragraph 7, she stated that she filed Misc. Civil Application No. 13 of 2018 before the District Court, seeking extension of time to file her appeal but it was struck out on technical reasons. She stated that she annexed the ruling as annexure MAI-5, but unfortunately the annexure is not in the record before me.

Under paragraph 8, the Respondent stated that she filed Misc. Civil Application No. 1 of 2019, which was struck out for being incompetent. The ruling of that

application was annexed as MAI-6. The record shows that Application No. 1 of 2019 was filed on 27/2/2019, and it was dismissed on 13/5/2019 after preliminary objection raised by the Appellant's advocate. After it was struck out, it was when Misc. Application No. 5 of 2019 was filed on 10/6/2019.

According to her reply submission, Ms. Veneranda submitted that the Respondent was occupied with other two cases that is what led to her to delay in filing her appeal. She added that the Respondent delayed due to the reason that she is a lay person, therefore ignorant of the procedure. At the outset, and as correctly submitted by the Appellant's learned advocate ignorance of the law has never been featured as sufficient cause in extending time. The case of ***Dominic Yohana Vs. Salma Shite*** (supra) cited to me by Mr. Minja, is instructive in this respect. It was held in that case as follows:

"In the case at hand, as seen above, the only reason brought to the fore by the applicant for not filing the application for leave to appeal to the Court is his inability to come to grips with the procedure for appealing to this Court. This does not fall within the scope and purview of good cause envisaged by rule 10 of the Rules. If the applicant was diligent enough, he should have timely sought to be apprised of the process of appeal to the Court"

The next question is whether the reason that the Respondent was engaged in two cases amount to sufficient cause for the delay. According to the annexes in the affidavit, decision in land case No. 13 of 2014 at Majengo Ward Tribunal was delivered on 16/12/2014. That decision was delivered prior to petitioning for letters of Administration in the trial Court. Misc. Application No. 182 of 2017 was filed by the Appellant herein for extension of time and was decided on 14/11/2017. Misc. Application No. 24 of 2018 was application for execution and was decided on 31/7/2018. It was until 27/2/2019, when the Respondent attempted to seek extension of time vide Misc. Civil Application No. 1 of 2019, which was struck out on 13/5/2019.

From the above analysis, it is apparent that cases that the Respondent relied on were filed in the Land Tribunals. These were purely land matters. A person intending to rely on technical delay as sufficient cause for the delay has to satisfy the Court that cases that failed due to technical reasons were in respect of the decision intended to be appealed against. As the land matters also related to the Appellant, they cannot be detached from the estate, they should be taken to be connected to the estate. Seemingly, the Respondent petitioned for letters of administration in the trial Court. After being heard, the petition was dismissed on 3/7/2017. The Respondent in the trial Court admitted that she had interest in the deceased's estate; however, after her petition was dismissed, she opted to pursue land cases before the Land tribunals.

I am aware that technical delays are excusable and explainable. Reasons leading to the striking out of the case must not be purely on the inaction of the parties and or their advocates. This was the holding of the Court of Appeal in the case of **Paul Martin Vs. Bertha Anderson**, Civil Application No. 7 of 2005 (unreported), where the Court confirmed its previous decisions in **Athuman Rashid Vs. Boko Omar** [1997] TLR 146, **Salum Sururu' Nabahani Vs. Zahor Abdulla Zahor** [1988] TLR 41 and **Abbas Yusuf Mwingamno Vs. Kighoma Ali Malima**, Civil Application No. 7 of 1987 (unreported). In all those decisions, applications for extension of time were dismissed due to the parties or their advocates' inaction and negligence. In that case, the Court held *inter alia*:

*"In the instant case, it is my view that from the facts, the following two aspects are established. First, that the delay in seeking extension of time in which to apply for leave to appeal to this Court out of time for a period of well over 4 years was, to say the least, inordinate. Second, **that the delay was a result of inaction and lack of diligence on the part of the applicant.** These factors, I am satisfied do not constitute sufficient reason to warrant the court's exercise of its discretionary powers to extend the time sought in the application."*(Emphasis added)

I should point out that the period between 27/2/2019 when Misc. Civil Application No. 1 of 2019 was filed and 13/5/2019 when it was struck out is explainable and excusable. I note that in her affidavit, the Respondent was not explicit on the period between 13/5/2019 when Misc. Civil Application No. 1 of 2019 was struck out and 10/6/2019, when Misc. Civil Application No. 5 of 2019 subject of this appeal was filed. The Appellant is of the view that these days ought to have been explained. I agree with her in principle. However, considering the agony and the expenses the Respondent might have incurred pursuing litigation against her own daughter, I would not consider this period to be excessive.

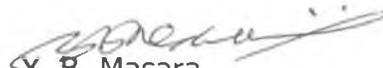
In granting the Respondent extension of time, the District Court held that the Respondent exhibited several attempts in prosecuting her appeal. I have no doubts that the learned District magistrate properly exercised his discretion. I should point out that the fact that this matter involves a mother and a daughter both of them craving to administer their husband and father's estate respectively is rather irking. Unless there are compelling grounds, Courts should not be used to exacerbate family disputes. Administration of estate of a husband should ordinarily vest on the spouse who remain behind. It is unfortunate that the facts before me are insufficient to determine the reasons why the Respondent's petition to administer the estate of her husband was declined. My duty here is limited to only determine whether she advanced sufficient grounds for the delay. I have no hesitation to hold that the Respondent did advance sufficient cause to warrant her extension of time sought. The District Court properly scrutinized the reasons for the delay and exercised its discretion to condone the delay.

In the upshot, this appeal fails for lack of merits. I dismiss it in its entirety. The decision of the District Court granting the Respondent extension of time to file

her appeal is hereby confirmed. Considering this to be a family dispute, I direct that each party bears their own costs before this Court and the Courts below.

Order accordingly.




Y. B. Masara
JUDGE

6th August, 2021.