

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 419 OF 2022

(Arising from the ruling in Misc. Civil Application No. 17 of 2022 of Resident Magistrate's
Court of Dar-es-Salaam at Kisutu)

(E. R. Rwehumbiza, PRM)

SURAFU SOSPITA APPLICANT

VERSUS

YAHAYA MUSSA IBUMA 1st RESPONDENT

FATUMA IDD IBUMA 2nd RESPONDENT

RULING

Date: 12 & 15/12/2022

NKWABI, J.:

This application has been brought under a certificate of utmost urgency. The chamber summons is preferred under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019 and section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019. It is supported by the affidavit of the applicant.

The following orders are sought by the applicant:

- (a) Extension of time within which the applicant may apply for revision against the ruling of the Resident Magistrate's Court of Kinondoni in Misc. Civil Application No. 17 of 2022 dated 21/07/2022.
- (b) Costs be provided for.

- (c) Any other order(s) and/or relief(s) as the Honourable Court may deem just and fit to grant.

The genesis of the matter is that Sudi Iddi Ibuma fell mentally sick. The respondents sought and obtained an order ex-parte for management and administration of estate of the ailing Sudi. The trial court heard the ex-parte application and granted it. It was during the implementation of the management and administration, that the applicant became aware of the orders of the trial Court. She unsuccessfully sought an injunction order against the respondents. Then this application followed. Her main arguments for this application are that though she is the wife of Sudi, she was neither consulted nor involved in the ex-parte application. She points out of an illegality that the respondents were granted the application while she, as a joint owner of the properties of Sudi, was not heard (not consulted and not involved).

In the joint counter-affidavit, the respondents disputed the averments in the affidavit. The fact that the applicant is the wife of Sudi, is unknown to the respondents, so they averred.

When the matter was called up for hearing, the applicant was represented by Mr. Simon Mpina, learned counsel. The respondents were represented by Mr. Elia Mwingira, also learned counsel. The application was argued by way of oral submissions.

In submission in chief, the counsel for the applicant submitted that the applicant was not aware of Misc. Civil Application No. 17/2022 which was filed in the trial court. The application was heard ex-parte and granted. Only to come to learn about it from a tenant.

He also insisted that the applicant though the legal wife of Sudi, she was not consulted leading to illegality as pointed out in paragraph 14 of the affidavit. She has the best interest of the estate of Sudi as she is a joint owner by being the wife of Sudi. He prayed the application be granted.

In reply submission, the counsel for the respondents argued that there is no any illegality in the proceedings and ruling of the trial court. He also argued that the applicant was aware of the application, that is why she filed Misc. Civil Application No. 29 of 2022. In his view, it was falsehood for the applicant to claim that she was not aware of the application. He cited **Regional Manager Tanroads Kagera v. Ruaha Concrete Co. Ltd**, Civil Application

No. 96 of 2007 and **Lyamuya Construction Co. Ltd v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 both decisions of the Court of Appeal of Tanzania. He prayed the application be dismissed for want of merit. The applicant has filed to account for each day of the delay and there is no any illegality, pressed Mr. Mwingira. He prayed for costs to the respondents.

In rejoinder submission, the counsel for the applicant refuted that there is any falsehood while arguing that, by the act of the respondents disputing that she is the wife of Sudi, then that proved that they could not involve her. He also insisted that they have pointed out the illegality and prayed the application be granted.

In my view, I think that the position has already been established by the Court of Appeal of Tanzania on how the alleged illegality may be ground for extension of time. That was in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where it was ruled that:

"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that 'of sufficient importance' and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process."

See also **Omary Ally Nyamalege (As the Administrator of the estate of the late Seleman Ally Nyamalege) & 2 Others v. Mwanza Engineering Works**, Civil Application NO. 94/08 of 2017 (CAT) (unreported).

Certainly, in the counter-affidavit, it is claimed by the respondents that they do not know if the applicant is the wife of Sudi. In the circumstances, I agree with the submission of the counsel for the applicant that that is proof that the respondents did not involve the applicant in the matter. To me, that

appears an illegality apparent on the face of the record of sufficient importance. On the part of the respondents, it may as well amount to falsehood employed by the respondents to get the management and administration order. The falsehood if any may have curtailed her right to be heard on an estate that she may have interest in it. In the premises, a revision is necessary to look into the matter. For avoidance of doubt, that she filed an application that crumbled does not mean that she was involved and was aware of the presence of proceedings of the impugned application. She could have been aware of the application after being informed by the tenant.

That said, I find that the applicant has demonstrated sufficient cause for extension of time. It appears that there is an apparent illegality on the face of the record which is of significant importance of which the applicant needs to address the Court to determine it if she will be able to establish it from the proceedings, ruling and drawn order of the trial court dated 21st July, 2022. The applicant has, time for filing the intended application for revision extended for thirty days (30 days) from the date of this ruling. As this is a family matter, I order that each party shall bear their own costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 15th day of December, 2022.

