

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 519 OF 2022

*(Originating from the Probate and Administration Cause No.76 of 2016 and orders of
this Honourable Court issued on 3rd June 2020 and 22nd July 2022 by Honourable
Ebrahim and J.L. Masabo madam Judges respectively)*

ALLEN MOLLEL.....APPLICANT

VERSUS

ANTONY DAVID MTAVANGU.....RESPONDENT

RULING

Date: 13th & 28th February, 2023

MWANGA, J.

The applicant has lodged an application 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. E2019]. The order sought is for this Honourable Court be pleased to extend time within which to file review out of time.

The application is supported by an affidavit deposed by Allen Mollel and the same was opposed by the respondent who filed a Counter Affidavit sworn in by Mr. Antony David Mtavangu.

According to paragraphs 2, 11, 12 and 13 the applicant deposed that, this court had appointed the applicant and respondent as joint administrators of the late EVA DAVID MATAVANGU. At paragraph 3 the applicant deposed further that, he alone exhibited inventory and the respondent filed an application for extension of time within which to exhibit inventory.

The applicant's deposed further that, there is an order of the court dated 3rd June, 2020 stating that the inventory should be filed by both administrators as it contravened the law. He is also deposed that, the order of this court dated 3rd September, 2021 expunging both the inventory and accounts of the estates of the late EVA DAVID MATAVANGU was also illegal as it based on illegal order of this court of 3rd June, 2020 before Hon. Ebrahim, J. It is the applicant's submission that, there is an illegality which requires this court to keep the record legally clear.

In his counter affidavit, Anthony David Mtavangu deposed that, the inventory filed by the applicant was rejected but extension of time within which both administrators to file inventory by the respondent was granted.

At paragraph 5 the respondent deposed that, the order for extension of time was for both administrators to file the inventory within six months from 3rd June, 2020. He finally stated that, there was no any irregularities whatsoever in the earlier proceedings by this honorable court.

In their written submission to this court, the respondent submitted that, the grant of extension of time is discretion of the court upon showing a good cause. It was the counsel submission that, he has not accounted for each day of delay and the illegality so claimed has to be shown on the face of record requiring court to take care. He contended that, from paragraphs 1 to 14 of the applicant's affidavit there is no single fact showing that, the he accounted for each day of delay. He cited the case of; Elfazi **Nyatega and 3 others Vs Caspian Mining Ltd, Civil Appeal No. 44/08 of 2017(Unreported)** which provided that, in application for extension of time, the applicant has to account for every day of the delay. At page 11 of the judgment the Ho. Justice Mwarija J. proceeded to hold that;

'The applicants have not done so in this case. As a result, there is no material upon which the court can exercise its discretion.'

The counsel also came up with the submission that, the decisions of the court could only be challenged by way of an appeal and not review if the applicant had found out that the decisions were erroneously made. Further that, there was no illegality subject of review committed by the court in its decision dated 22nd June, 2022 in Probate and Administration Cause No. 76 of 2016 as what the court did was to interpret the law under Section 104 of the Probate and Administration of Estates Act, Cap. 352 R.E 2019 according to the facts availed to the court.

I have careful given consideration to the arguments for and against the application herein as advanced by the learned counsels. The central issue for determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.

The guiding principles regarding the issue at hand were deliberated in various cases that the Court has a discretion to extend time upon demonstration of a good cause by the applicant but such discretion must be exercised according to rules of reason and justice. See the case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010. What amounts to good cause, has been explained by case law in the

case of **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2012. A rightly cited by the counsel, Mr. Dafa in the case of **Sebastian Ndaula Vs Grace Rwamafe**, Civil Appela No. 4 of 2014 (Unreported) quoted with approval in the case of **Elfazi Nyatega and 3 others Vs Caspian Mining Ltd**, Civil Appeal No. 44/08 of 2017(Unreported):-

'The position of this court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of delay of delay: See Bariki Israel Vs Ther Republic, Criminal Application No. 4 of 2011(Unreported)'

In referencing to the above, in the case of **Dar es Salaam City Council Vs. Group Security Co. LTD**, Civil Application No. 234 of 2015 CAT at Dar es Salaam, the Court held that: -

" ...the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for every day of the delay."

In light of the above authorities, the account for every day of the delay is a must, not optional. It is on record that, the applicant filed application for review on 22nd June, 2022, however, the applicant's application was struck out on 26th December 2022. That means the applicant was required to account for each day of delay from 22nd June 2022 to 26th October,2022

which is the 21 days of delays. Therefore, I agree with the argument of the counsel Mr. Dafa that the applicant has failed to account certain period of delay.

As to the question of illegality of the decisions raised by the applicant, the same is guided by the authorities in **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (supra) and **Jeremia Mugonya Eyembe Vs Hamisi Selemani**, Civil Application No. 440/08 Of 2020. In the case of **Jeremia Mugonya Eyembe Vs Hamisi Selemani** (Unreported)(supra) the court held that;

'Admittedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in accordance with the principle in the Principal Secretary Ministry of Defence and National Service vs. Devram Valambia, (1992) TLR 185. However, for illegality to be the basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court. [See for instance, Lyamuya Construction Company Ltd vs. Board of the Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)].'

In **VIP Engineering and Marketing Limited and Two Others Vs Citi Bank Tanzania Limited**, Consolidated Reference Nos. 6,7 and 8 2006 (Unreported), the court held further that not every error committed by a court amount to illegality.

I have revisited the order of the court by Justices Masabo, J. and Ebrahim, J within which the applicant is seeking extension of time to file review. The ruling by Masabo, J. dated 22nd July, 2022 reads;

"since there was a court order by Ebrahim, J. that the inventory and final account be filed by both administrators, the same is lawful and it has to be complied with. The Hon. Judge expunged from the record inventory and final account filed by co-administrator".

The Hon. Judge was reflecting on non-compliance of another High court decision by Ebrahim, J. dated 3rd June, 2020 which was held that;

"I extend time to allow the applicant to file inventory in terms of section 104 of the Probate and Administration of Estates Act, Cap. 352 R.E 2019. I further order that, the inventory filed by co-administrator be rectified to include all the prerequisite information that have been left out. For purpose of clarity BOTH administrators should file the inventory within six months from today".

Based on the above decisions, the applicant contended that, there is illegality which requires this court to grant extension of time within which to

file review of the two decisions. On his part, Mr. Dafa learned counsel refuted such claim stating that there is no illegality. The counsel added that, what the court did was to interpret the law under Section 104 of the Probate and Administration of Estates Act, Cap. 352 R.E 2019 according to the facts availed to the court. It was his further submission that, the appropriate remedy to be pursued by the applicant was appeal against such decision and not review.

I entirely agree with the learned counsel Mr. Dafa that no illegality in the decisions of the high court regarding the matter. There were already some facts as put forward by Hon. Masabo, J. that the co-administrators have failed to agree on distribution of the house located Bunju. Therefore, the interpretation given by the Judge was that both co-administrators shall file the inventory and final account.

For the foregoing, the applicant had failed to advance sufficient reason(s) to explain the delay in filing the intended application within time to warrant the exercise of court's discretionary power and to show any illegality committed in the two court's decisions.

Therefore, this application is devoid of any merit and it is hereby dismissed. Being a probate cause, I issue no order as to costs.

Order accordingly.



H. R. MWANGA

JUDGE

16/03/2023

ORDER: Ruling delivered in Chambers this 16th day of March, 2023 in the presence of the applicant in person and Advocate Juventus Katikila for the respondent.



H. R. MWANGA

JUDGE

16/03/2023

