

IN THE HIGH COURT OF TANZANIA

(At Dar es Salaam)

Probate and Administration Cause No. 65 of 1991

IN THE MATTER OF THE ESTATE OF THE LATE DAVID VINCENT MGANGA [DECEASED]

AND

IN THE MATTER OF APPLICATION OF LETTERS OF ADMINISTRATION BY THE ADMINISTRATOR GENERAL

AND

IN THE MATTER OF APPLICATION BY THERESIA MAHOZA MGANGA (APPLICANT) FOR LEAVE TO APPEAL TO THE COURT OF APPEAL

RULING

Date of last Order: 09-11-2012

Date of Ruling: 30-11-2012

JUMA, J:

On 20th July 2012, the applicant Therezia Mahoza Mganga filed a Chamber Summons Application in this Court. She was seeking an extension of time to enable her to apply for leave to appeal against the Ruling which my brother Shangwa, J.

delivered on 16 December 2011. That Ruling followed an application by the Administrator General for direction of this Court on how a house belonging to a deceased person should be distributed amongst the heirs and beneficiaries.

The deceased person whose house is at the centre of this application is the late David Vincent Mganga who died at Muhimbili Hospital Dar es Salaam on 3rd July 1985. Seven years later on 29th July 1992, this court (Kyando, J.) acting under the **Administrator General's Act, Cap. 27 R.E. 2002**, granted the Administrator General the responsibility of the administration of the estate of the deceased. The list of potential beneficiaries to the estate was long for the deceased left behind eleven children by different mothers. The mothers of the children are Therezia Mahoza Mganga, Joyce Beatrice Ruhui, Tekero Mwashunda, Mary Mbai, Mary Hiza and Tatu Chongela. The deceased had married the applicant Therezia Mahoza Mganga in accordance with Christian rites. While his marriage to Joyce Ruhui Mganga, was a civil marriage. At the time of his death, Mr. Mganga was living with Tatu Mary Mpembwa whom he married under a customary law marriage. And by the time of his death in 1985,

David Vincent Mganga had already divorced both the applicant (Therezia Mahoza Mganga) and Joyce Ruhui Mganga.

The focus of the dispute amongst the potential heirs and beneficiaries centred on a house the deceased built on plot number 152 Block "R" along Minaki Street of Magomeni, Kinondoni District. The family was squabbling over the house and its rentals. The children born from Christian marriage wanted to block other children from inheritance on ground of their illegitimacy. So much so that on 4th May 2007, the Administrator General filed a chamber summons application to seek for directions of this Court on how the house at the centre of contention should be distributed.

On 16th December 2011, this Court (Shangwa, J.) gave the requested direction by expressing an opinion that the legal heirs to the estate of the late David Vincent Mganga are all those children who used to call him "Baba" (father). He directed that they all deserve a share in the estate of the deceased without exception. Shangwa, J. further directed:

"..... the Administrator General should sell it at the market value and the proceeds of sale should accordingly be distributed as directed herein. This task of selling it should be accomplished within a

period of three months from today. If there is any rent which has so far been collected, it should be distributed by the Administrator General to the deceased's children only within a period of one month from today."[Page 11]

As pointed earlier, the applicant Therezia Mahoza Mganga was not satisfied with the direction given by this Court through Shangwa, J. The applicant would now like first to get an extension of time before applying for leave to appeal to the Court of Appeal. The prayer seeking leave to appeal to the Court of Appeal, which the applicant lodged under section 5 (1) (c) of the **Appellate Jurisdiction Act Cap 141**, is predicated on the applicant having first moved this court by citing appropriate provision to extend time.

Before moving on, I must pause and reflect whether by citing sections 5 (1) (c), 11 (1) of the **Appellate Jurisdiction Act, 1979**; Rules 10, 45 (a) and 47 of the **Court of Appeal Rules, 2009** the applicant has sufficiently moved this court to grant her an extension of time to enable the hearing of her application for leave to appeal to the Court of Appeal. With due respect, section 11 of the **Appellate Jurisdiction Act, 1979** which the

applicant employed, is sufficient to move this court into considering her application for leave. This section states,

11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

It is clear to me that the above cited section 11 (1) of the **Appellate Jurisdiction Act**, equally confers on the High Court jurisdiction to extend time for making an application for leave to appeal or for a certificate on a point of law: see **Josephina A. Kalalu vs. Isaac Michael Mallya, Civil Reference No. 1 of 2010**.

After citing proper provision to move this court, the settled law requires the applicant to disclose sufficient reasons explaining the delay to file a prayer for extension of time. The applicant's grounds for extension of time are that following the 16th December 2011 Ruling of Shangwa, J., she had been following up to obtain a copy of that Ruling and drawn Order.

She obtained copies of the Ruling on 4th April 2012 and the Drawn Order on 22nd June 2012. The applicant's ground that it was the delay to receive copies of the Ruling and Drawn Order of this Court were reiterated by Ms Rwebangira the learned Advocate on 13th September 2012 when this application came up for hearing. Mr. Muhoza, the learned State Attorney who appeared for the respondent Administrator left it to this Court to make its decision because the Administrator General acts as a neutral party in the dispute over the house of the deceased.

From the submissions of the learned Counsel on the application for extension of time, I am satisfied that the applicant has made a full account for the delay to obtain copies of the Ruling and Drawn Order which are prerequisite to lodge an application for leave to appeal to the Court of Appeal. I am of the decided opinion that the requested extension of time should be granted, and I hereby grant the extension sought.

Next, it is important to address the question whether the applicant has satisfied pre-conditions before this court can exercise its judicial discretion to grant her the leave to appeal to the Court of Appeal of Tanzania. Both the Court of Appeal and High Court have through a number of cases shed some light on

when High Court can exercise its judicial discretion to grant leave. After granting the extension Mwalusanya J. (as he then was) in the case of **Simon Kabaka Daniel v Mwita Marwa Nyang'anyi and 11 Others 1989 TLR 64 (HC)** restated the law to the effect that an application for leave to the Court of Appeal the applicant must demonstrate that there is a point of law involved worth the attention of the Court of Appeal. Msumi, J. (as he then was) in the case of **Saidi Ramadhani Mnyanga v Abdallah Salehe 1996 TLR 74 (HC)** restated the law that where a matter raises contentious issues of law it becomes a fit case for further consideration by the Court of Appeal. Again the Court of Appeal through in the case of **British Broadcasting Corporation Vs Eric Sikujua Ng'maryo, Court of Appeal Civil Application No. 138 of 2004** restated that in granting the leave to appeal to the Court of Appeal, High Court should consider whether the grounds of intended appeal raise issues of general importance or a novel point of law or where the grounds of appeal show a prima facie or arguable appeal.

The affidavit which the applicant took out in support of her application contains grounds which she regards as worth the attention and consideration by the Court of Appeal of Tanzania.

All these grounds centre on the decision to include all the children of the deceased as beneficiaries to the estate of the deceased irrespective of whether they were born inside or outside the Christian wedlock.

There are persons with interest in the assets of the deceased who contest the distribution of the estate of the deceased, the administration of the estate of the late David Vincent Mganga cannot come to a close at the High Court without conclusive determination by the Court of Appeal. With potential beneficiaries contesting the direction of this Court on how the estate of the deceased should be distributed, there is a need for the Court of Appeal to give further guidance regarding the law which should guide the distribution of the estate where a deceased person is survived by children by six different mothers; and the mothers of the children were at different times married to the deceased in accordance with Christian rites, civil marriage and customary law rites. It seems to me that the direction issued by this Court (Shangwa, J.) that the legal heirs to the estate of the late David Vincent Mganga are all those children who used to call him "Baba" (father) deserve a share in the estate of the deceased without exception should be

subjected to further consideration by the Court of Appeal to bring the dispute to its final conclusion.

Leave is hereby granted to the applicant to appeal to the Court of Appeal.

**DATED at DAR ES SALAAM this 30th day of November,
2012**



**I.H. Juma
JUDGE**

Court:

Ruling is delivered in the presence of Mr. Kipeche (Advocate) who is holding Mrs Rwebangira's brief for the Applicant. Respondent/Administrator – General is represented by Mr. Muhoza (State Attorney).



**I.H. Juma
JUDGE
30/11/2012**

