

IN THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)

CIVIL REVISION NUMBER 33 of 2009

(Seeking to for the Review out of time of the Judgment of this Court in Civil
Revision No. 33 of 2009-Mbise, J.)

HADIJA HAMISI..... 1ST APPLICANT

SULTAN HAMISI..... 2ND APPLICANT

VS

SAMWEL MKWAVI MGHWENO..... 1ST RESPONDENT

VIOVENA AND COMPANY 2ND RESPONDENT

RULING

Date of last Order: 02-09-2011

Date of Ruling: 03-10-2011

JUMA, J.:

By a Chamber Summons filed on 7th January 2011 Hadija Hamisi and Sultan Hamisi (the Applicants herein) are moving this Court under section 14 (1) of the **Law of Limitation Act, Cap. 89**. According to their Chamber Summons, the Applicants are seeking an extension of time within which to apply for the Review of the Judgment and

Drawn Order of this Court which was delivered on 16th April 2010 by Mbise, J.

As suggested earlier, the background to this application seeking an extension of time traces back to the 2nd March 2009 when the Primary Court at Mkuza in Kibaha granted the 1st Respondent (Samwel Mkwavi Mghweno) letters of administration of the estate of the late Mohamed Sultani Tuwaleni. The following day on 3rd March 2009 the Applicants being dissatisfied with the appointment of 1st Respondent as the administrator of the deceased estate sought to revoke that appointment by filing a Petition of Appeal in the District Court at Kibaha. The District Court allowed the appeal and directed the Primary Court to hear afresh the application for grant of letters of administration.

Aggrieved with the decision of the District Court, the 1st Respondent filed Civil Revision No. 33 of 2009 in this Court. This Court (Mbise, J.) restored the decision of the Primary Court pointing out that if the Applicants herein had claims to the property forming the estate of the deceased then the legal avenue available to them is to apply to the same trial primary court which had earlier made such appointment to revoke it. This Court further noted that it was not proper for the Applicants herein to file an appeal to the District

Court. An appeal can only lie in cases where the trial primary court declines to revoke such an appointment without any lawful cause.

Let me begin by revisiting the law governing extension of time for those applying for review of a decree, judgment or order originating from Primary Courts. I am of the opinion that Item 21 of Part III to the 1st Schedule of **Law of Limitation Act, Cap. 89** prescribes sixty days limitation period for an application for Review by the High Court of a decree, judgment or order originating from Primary Court. The relevant provision provides:-

PART III
APPLICATIONS

.....

21. *Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law.....**sixty days.***

Record shows that the Ruling and Drawn Order of this Court (Mbise, J.) in Civil Revision No. 33 of 2009 are dated 16th April 2010. Drawn Order became ready for collection on 5th May 2010 when it was extracted. It was eight months later on 7th January 2011 when the Applicants filed their application seeking an extension of time to enable them to apply for a Review by this Court. The Applicants in

other words filed their application six months beyond the prescribed period of limitation.

The law in Tanzania governing what Courts consider when determining applications for extension of time is now well settled. From the settled principles of law, this Court will seek to know whether the Applicants have *prima facie* shown any reasonable or sufficient cause to explain what occasioned the delay. It is the duty of the Applicants seeking extension of time to account for every day of delay: **Aluminum Africa Ltd vs. Adil Abdallah Dhiyebi (Civil Appeal No.6 of 1990 (CA))**. What constitutes sufficient reasons cannot be laid down by any hard and fast rules. Sufficiency of reasons must inevitably be determined by reference to all the circumstances of each particular case. For purposes of this application, the Applicants must place before this Court material sufficient to move this Court into exercising its judicial discretion in order to extend the time limited by the law. The Applicants have placed before me their joint affidavit, their written submissions and the Ruling and Drawn Order of this Court.

From the totality of materials presented before this Court, the reasons the Applicants have advanced to explain why they could not apply for revision within the prescribed period of limitation are to be

found in paragraphs 8 and 9 of their joint affidavit. The Applicants contend that although they applied for the certified copies of judgment in time, due to administrative reasons the copies were furnished late. They sought legal assistance from Tanganyika Law Society in November 2010 but it was until later in January 2011 when they obtained legal assistance.

Other reasons which the Applicants have advanced to explain the delay are contained in their written submissions wherein the Applicants contend that they heeded this Court's advice by going back to Mkuza Primary Court and on 4th August 2010 Mkuza Primary Court basically allowed the 1st Respondent to continue with the administration of the estate of the deceased in the following words:

"..Hivyo ni maamuzi ya Mahakama hii msimamizi aendeleo na kazi yake, akusanye mali yote ya marehemu agawe kwa warithi halali, afuate wosia wa marehemu wala mtu asimwingilie katika kazi yake, afuate taratibu zinazotakiwa kwa matakwa ya sheria inavyoelekeza."

According to the Applicants, they were awakened by the decision of Mkuza Primary Court of 4th August 2010 and decided to look for the services of lawyers. Legal services were expensive with some legal aid organizations showing reluctance to assist them.

Respondents have in their joint affidavit and written submissions opposed the application for extension of time. Respondents contend that by 23rd April 2010 copies of the decision of this Court (Mbise, J.) were ready for collection from the High Court Registry and the Applicants should not be allowed to contend that they received the certified copies late. The fact that the Primary Court of Mkuza continued with the case after the decision of this Court is, according to the Respondents, a further proof that certified copies of the record were ready for collection early enough to enable the Applicants to apply for the Review well within the prescribed period of limitation.

With due respect, the Respondents are justified to contend that the reasons which the Applicants have advanced are not sufficient to account for the six-month delay in filing their application. The Applicants have not explained when in particular they received certified copies for purposes of their application present application and why the Primary Court of Mkuza could have continued with the hearing of the matter without drawing the attention of the Applicants to the matter before that subordinate court. Records show that the Primary Court of Mkuza received the Ruling and Drawn Order of this Court and proceeded to make its decision on 4th August 2010. This shows that certified copies of the Ruling and Drawn Order were ready for collection well before 4th August 2010. Applicants have admitted

that they were awakened by the decision of Mkuza Primary Court on 4th August 2010 and decided to look for the services of lawyers.

There is another reason why I think the Applicants cannot come back to this Court to seek an extension of time to apply for a Review. In my opinion, after Mkuza Primary Court had implemented the Order of this Court on 4th August 2010, the Applicants cannot come back to this Court to seek for review its Order which has already been acted upon by the subordinate primary court. To allow the Applicants to have that recourse will amount to an abuse of the process of the court with respect to the power of Primary Courts on administration of the estates of deceased which even this Court cannot interfere with lightly under a purported power of Review.

The Applicants should be aware that this Court cannot take away jurisdiction which the **Magistrates' Courts Act, Cap 11** vests on the Primary Courts over the administration of the estates of deceased persons. Rule 8 of the **Primary Courts (Administration of Estates) Rules** gives primary courts wide powers when exercising of the jurisdiction conferred on primary courts by the provisions of the Fifth Schedule to the **Magistrates Courts Act**. It is clear from this law that the estate of the late Mohamed Sultani Tuwaleni does not automatically become the property of 1st Respondent by virtue of his

appointment to be an administrator of that estate. The Primary Court at Mkuza has the power to hear and decide any question raised by the Applicants as beneficiaries relating to the sale, partition, division or other disposal of the property and other assets comprised in the estate of the late Mohamed Sultani Tuwaleni. At this point of the administration of this estate, the remedy available to the Applicants is at the Primary Court of Mkuza. The Applicants are advised to ensure that the 1st Respondent as an administrator of the estate of the late Mohamed Sultani Tuwaleni administers that estate diligently and performs his duties of administration in accordance with the law without any abdication.


In the upshot, the application seeking an extension of time within which to apply for a Review of this Court is found to be without sufficient reasons and is hereby dismissed with costs awarded to the Respondents.



I.H. Juma
JUDGE

03-10-2011

Delivered in the presence of Hadija Hamisi (1st Applicant), Sultan Hamisi (2nd Applicant) and Mr. Frederick Jonathan, Advocate (for the Respondent).



I.H. Juma
JUDGE
03-10-2011

