

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 3 OF 2008

JAFARI JAMAL.....APPELLANT

VERSUS

ELIS MOSESRESPONDENT

R U L I N G

MWARIJA, J.

In his amended application, the applicant applied for extension of time to file an application for revision of the decision of the Resident Magistrate's Court of Dar es Salaam, at Kisutu in Probate and Administration Cause No. 83 of 2003. The application was brought under s. 14(1) of the Law of Limitation Act, Cap 89 R.E 2002 and s.95 of the Civil Procedure code, Cap. 33 R.E. 2002.

Mr. Nassoro, learned Counsel represented the applicant while the respondent appeared in person.

Submitting in support of the application, Mr. Nassoro argued that the applicant who is the brother of the deceased person could not file this application within time because it was not until the court broker issued him with a notice to hand over some properties which were in his possession, that he became aware that the respondent had been appointed the administratrix of the deceased's estate. The learned counsel submitted further that the members of the deceased's family including the applicant were not involved in the process of appointing the administrator of the deceased's estate. He added that, apart from the fact that the consent of family members was not obtained, the citation was not published in the Government Gazette but only in "Uhuru" News paper.

Mr. Nassoro also based his application on the point of law that the Resident Magistrate's Court did not have jurisdiction to entertain the case. He cited the case of

Afisa Hutba v Naomi Issa, Civil Revision No. 108 of 2003 (HC – DSM) (unreported). It was his submissions therefore that since there is an issue concerning illegality or perceived illegality of the trial court’s proceedings, on the authority of the case of **Consolidated Mines Ltd v. Mbeya Cement Company Ltd**. Civil Application No. 105 of 1999 (CA –MBY)(unreported), the court should consider to grant the application.

In response, the respondent admitted that she published the citation only in “Uhuru” Newspaper. She said that she mistakenly believed that the said Newspaper is a Government Gazette. She further admitted that she could not obtain the consent of the deceased’s family members because they were not in good terms with her.

As to the jurisdiction of the Resident Magistrate’s Court in entertaining her probate and Administration Cause, it was her contention that although she was being

assisted by the Tanzania Media Women's Association (TAMWA) in the case, she was the one who filed it in the Resident Magistrate's court as she believed that the said court had jurisdiction.

Under s. 14(1) of the Law of Limitation Act, extension of time may be granted upon a sufficient or reasonable cause. The section provides as follows:


“ 14(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application”.

In this application, the learned counsel for the applicant has raised an issue whether or not the Resident Magistrate's Court had jurisdiction to entertain the probate and Administration cause. It is trite law that when the legality or otherwise of the decision is being challenged, that would constitute a reasonable cause for extension of time so that such an issue can be determined. That position was clearly stated in the case of **Principal Secretary, Ministry of Defence and National Service v. Devrans Valambhia (1992)** TLR, 182. In that case the Court of Appeal held *inter alia* as follows:

“ When the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the propose, to ascertain the point and, if the alleged illegality be established to take

appropriate measures to put the matter and the record right". (Emphasis added).

In my considered view, the question of jurisdiction which has been raised, need to be considered in the intended application for revision. For that reason, I hereby grant the application for extension of time. The applicant to institute his application for revision within 21 days from the date of this ruling.


A.G. MWARIJA
JUDGE
12/4/2011

12/04/2011

Coram: Hon. A. G. Mwarija

For the Applicant – Mr. Nassoro

For the Respondent – Absent

CC: Butahe

Ruling delivered

A.G.MWARIJA

JUDGE

12/04/2011

Order: The respondent to be notified of the ruling


A.G.MWARIJA

JUDGE

12/04/2011