

IN THE HIGH COURT OF TANZANIA

AT MTWARA

MISC. CIVIL APPEAL NO. 4 OF 2012

Arising From Civil Appeal No. 2 of 2012 of Mtwara District Court Original

Probate and Administration Cause No. 46 of 2008 of Mtwara Urban
Primary Court

DARUWESHI IBRAHIMUAPPELLANT

VERSUS

BLANDINA GEUGEU RESPONDENT

JUDGMENT

30th July 2013 & 23rd August, 2013

MZUNA, J.:

Before Mtwara Urban Primary Court, Blandina Geugeu was successful in her application to be appointed as the Administratrix of the deceased estate the late Ngurumo Daruweshi, who was their son with Daruweshi Ibrahimu. The application to set it aside at the District Court after three and half years met a stumbling block hence this appeal.

The first issue is whether there is sufficient cause shown to grant leave to appeal out of time?

It was the appellant's argument during hearing of this appeal that the respondent was his wife and that they were blessed with two issues

among them was the deceased who passed away leaving no surviving issue and was unmarried. That, he submitted his medical chits at the District Court showing the cause for his delay in prosecuting his appeal was due to his illness. That has been the same ground he had advanced in this appeal. He prayed for this court to allow his appeal.

In response, the respondent said that the allegation that he was sick is not true and that he is very stubborn. He prayed for this appeal to be dismissed.

It is clear from the proceedings of the Primary court that the appointment of the respondent was made in the presence of the appellant and he never objected. The matter had been reported there to bless the distribution of the deceased's property which was listed. That was preceded by the family meeting which had appointed her to stand as such. The District Court in dismissing the application said, and I agree entirely, that the applicant was present on 7/8/2008 when the ruling was delivered. It was a lame excuse to produce medical chits showing he went to the hospital on 20/8/2008 and 19/9/2011 only as can be seen in his paragraph 9 of the affidavit to that court. He was aware of the judgment even before he became sick. He never averred he was admitted in the hospital during all that period.

As rightly said by the Resident Magistrate, the allegation by the applicant that he was suffering from ulcers without proof that he was admitted is not good cause for failure to file an appeal for about 3½

years. The alleged application for leave was filed on 9/2/2012 and it seems was an afterthought.

There was no sufficient cause shown and that is a prerequisite condition before granting such leave as it was held in the case of **Michael Lessani Kweka vs. Joh Eliafye** [1997] T.L.R. 152 (CA) by Kisanga, J.A (as he then was) that.

"The court had power to grant an extension of time if sufficient cause has been shown for doing so."

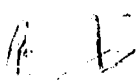
For the reason stated above, the first issue is answered in the negative that there is no sufficient cause shown for the appellant to be granted extension of time.

Other raised matters in the memorandum of appeal like unfair procedure never emerged in the District court and I see no reason to argue new grounds not connected to the delay at the appeal stage.

This appeal therefore fails. It is hereby dismissed with costs.

M. G. MZUNA,
JUDGE
23/8/2013

Court: Judgment delivered this 23rd day of August 2013 in the presence of the parties.


M. G. MZUNA,
JUDGE
23/8/2013

