

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

PROBATE AND ADMINISTRATION APPLICATION NO 23/2017

ARISING FROM

PROBATE AND ADMINISTRATION APPLICATION NO. 1/2013

CHAMBER SUMMONS

(Under Rule 14 of the Probate Rules)

IN THE MATTER OF THE ESTATE OF BENEDICTO JOSEPH RUTAIHWA

(DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR PROBATE BY

ALOYSIUS BENEDICTO RUTAIHWA

AND

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME WITHIN
WHICH TO FILE A FULL INVENTORY OF THE AFFAIRS OF THE ESTATE OF
BENEDICTO JOSEPH RUTAIHWA (DECEASED)**

RULING

25/07/2018 & 31/8/2018

Kairo, J.

The Applicant, one Aloysius Benedicto Rutaihwa through the representation service of the Learned Advocate Martin Wanyancha from the chamber of Kanywanyi, Mbakileki, Mtaki and Nditi Advocates filed a chamber summons under section 107 (2) of Probate and Administration of Estate Act Cap 352. RE 2002 and r 109 (1) of the Probate Rules for the following orders:

1. That the Hon. court be pleased to make an order for an extension of time for two years or any other period which the Hon. court may consider appropriate to grant within which the Applicant is to file a full and true inventory of the Affairs of the Estate of Benedicto Joseph Rutaihwa (deceased).
2. Any other order (s) that this Hon. court may consider proper and just to make for the ends of Justice.

As usual the application is supported by an affidavit sworn by the Applicant.

When invited by the court to make his oral submission, Advocate Wanyancha prayed the court to adopt the affidavit sworn by the Applicant

together with the annexures thereto as part of his submission, which prayer was granted.

In his submission Advocate Wanyancha informed the court that this is the third application for an extension of time by the Applicant. He went on that in the first instance, the Applicant was granted an extension of time of six months effective 4/08/2015 which expired on 4/2/2016. Again on 12/8/2016, another extension of time of eighteen months was granted to the Applicant from 4/2/2016 which expired on 4/8/2017, hence this third application.

The Advocate gave a brief background that culminated to this application to the effect that the Applicant was appointed by the late Benedicto Joseph Rutaihwa (Testator) as his heir and executor of his last will and a legal personal Representative. The Applicant successfully petitioned for the Probate under Probate and Administration Cause No 1/2013 in the High Court of Tanzania at Bukoba and granted the same on 4/2/2014.

He went on that according to the requirement of the law the executor or administrator of the deceased estate has to file in court a full and true inventory of the affairs of the estate administered within six months from the grant of the Probate or Administration or within such period as the court from time to time may state or appoint [section 107 (2) of the Probate and Administration of Estates Act Cap 352 RE 2002]. Advocate Wanyancha stated that that in the course of the conduct of his duties as an executor, the

Applicant discovered that a portion of the estate of the late Benedicto Joseph Rutaihwa (the Testator) was trespassed or encroached by some of the villagers of Karonge and Ibwera after conspiring with some of the Applicant's relatives. He added that to-date the said trespassers were still holding the said portion of the estate unlawfully with no claim of right.

Following the said incidence, the Applicant had to institute three claims at the District Land and Housing Tribunal (DLHT), for Kagera against the 33 trespassers. The cases are Land Application No. 150/2014, 151/2014 and 152/2014 which are still pending at the District Land and Housing Tribunal, two awaiting ruling and one (151/2014) is at the hearing stage.

The Learned counsel told the court that the pendency of the cases have prevented the Applicant to file a full and true inventory of the affairs of the estate of the late Benedic Joseph Rutahiwa within the time prescribed by law. However the Applicant has on 4/11/2015 filed in this court part of an inventory of the affairs of the Estate of the late Benedict Rutaihwa which had been so far collected and is in his hands awaiting the other portion which is the subject of the cases pending in court while its determination pace is not within the Applicant's control.

It is with this background that the Applicant is seeking this court to invoke its discretionary powers and grant an extension of time of two years or any other period which the court may consider appropriate to grant to enable

However the record further reveals that the Applicant has in between filed in this court a portion of the inventory of the affairs of the estate of the late Benedict Rutaihwa which he has so far collected. The action shows that he is diligent and keen in the conduct of his task as a testator; as such I have no doubt that his current application is genuine. Besides, the law also allows for an extension of time to file the inventory. The wanting question is how long should the extension of time be. The Applicant has prayed for two years or any other period which the Hon. court may consider appropriate to grant. Looking at the trend and history of the matter, this is the third application. The Applicant had already been given six and eighteen months extensions respectively which time was thought would have sufficed to finalize the matters pending at the District Land and Housing Tribunal. The Learned Advocate has informed the court that one case (151/2014) was still at the hearing stage. Though the other two cases were at ruling stage (150/2014 and 152/2014) but even the said stage doesn't guarantee the finalization of the same as an aggrieved party has a right to institute an appeal, the process which can still take various years to finally determine the pending cases.

Besides, it is true that without determination of these cases, the Applicant cannot be able to prepare and file the full and true inventory of the affairs of the estate of the late Rutaihwa. Considering all the these factors and for the sake of avoiding the now and then (multiple) applications of the extension of time which is costly in terms of time, energy and money on the part of the Applicant and the court as well, I hereby grant an extension of six months

which are to be counted from the date of the determination of the last pending matter and appeal thereto if any.

It is so ordered.




L.G. Kairo
Judge

At Bukoba

31/8/2018

Date: 31/8/2018

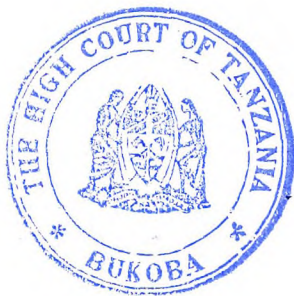
Coram: Hon. L.G. Kairo, J

Applicant: Present in person; Advocate Martin Wanyoncha

B/C: R. Bamporiki

Advocate M. Wanyoncha: Hon. Judge, the matter is for ruling. We are ready to receive it.

Court: The matter is scheduled for ruling. The same is ready and is read over before the Applicant who is present in person and before Advocate Martin Wanyoncha representing the Applicant in open court today 31/8/2018.




L.G. Kairo
Judge
31/8/2018