

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 114 OF 2019**

*(Originating from (PC) Probate Cause no 221/2008 Arising from Probate Appeal No. 32 of 2017)*

**BETWEEN**

**HAMISI HAIDARY KAVIRA.....APPLICANT**

**AND**

**SHEILA HAIDARY KAVIRA**

**AND RAMADHANI YUSUPH LWAMBO**

**ADMINISTRATOR AND ADMINISTRATRIX OF**

**THE LATE HAIDARY NASSORO KAVIRA.....RESPONDENT**

**RULING**

*Date of last Order: 24/07/2019*

*Date of Ruling: 11/10/2019*

**MLYAMBINA, J.**

The Applicant is seeking for extension of time within which to file an appeal in respect of Probate Appeal No. 32 of 2017 between Sheila Haidary Kavira and Yusuph Ramadhani Lwambo Administrator and administratrix of the late Haidary Nassoro.

The application has been supported with the affidavit of the Applicant which contains the following reasons;

1. That, the Applicant herein was the Respondent in the Probate Appeal No. 23 of 2017 at the District Court of Kinondoni at Kinondoni.
2. That, after the Judgment on 16<sup>th</sup> day of March, 2018 the Applicant intended to appeal but he could not be able to appeal because he was arrested by the police on 23<sup>rd</sup> March, 2018.

3. That, after been released from remand prison, the Applicant was seriously sick for months, he could not even instruct a lawyer due to economic hard ship to handle the matter himself.
4. The judgment was encountered by several illegalities to the extent if this application is not granted, the Applicant with be deprived his rights by illegal judgment.

At a hearing the Applicant reiterated that the impugned decision was delivered on 16<sup>th</sup> March, 2018 but he filed this application on 6<sup>th</sup> March, 2019.

The Applicant went on to tell the court that he got the copy of decision two weeks after it was delivered but, on the day, he got the copy of decision he was arrested on Bhangi Offence.

It was further stated by the Applicant that he was released two weeks later.

Thereafter, the Applicant started processing his appeal through legal and Human Rights Centre. The Applicant discovered that his opponents were using the same office. It took the Applicant long time to find a lawyer.

As correctly replied by the Respondent, the Applicant has failed to account for the delay of about a year. As per the letter dated 18<sup>th</sup> December, 2018 with Ref No. KIN/CID/B. I/1/VOL. 101 from OCCID Kinondoni District, the Applicant was released from 29<sup>th</sup> March, 2018.


There is no other good reason as to why the Applicant remained docile up to 6<sup>th</sup> March, 2019. The argument that the Applicant approached The Legal and Human rights Centre only to find his opponents used the same lacks any support. Even if true, there are several other legal aid offices in the Dar es Salaam City.

Indeed, the contention that the Applicant lacked financial muscle to lodge the application has not been substantiated. Even if true, it has never been a ground for extension of time. If it is accepted there is a danger of flooding courts with hopeless cases for extension on similar ground. In the cited case of **Vodacom Foundation v. Commissioner general TRA the court of Appeal of Tanzania held;**

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

Given that the Applicant has miserably failed to account for the one-year delay, I find the application is hopeless.

In the end, the Application is dismissed with costs for lack of merits. Order accordingly.



**Y. J. MLYAMBINA**  
**JUDGE**  
**11/10/2019**

Ruling dated and delivered this 11<sup>th</sup> day of October, 2019 in the presence of the Applicant in person and Counsel Private Rugambwa for the Respondent. Right of Appeal Explained.



**Y. J. MLYAMBINA**  
**JUDGE**  
**11/10/2019**