

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
CIVIL REVISION No. 2 OF 2017**

**SHEMSA SUDI ALLY.....APPLICANT**

*Versus*

**AMAN PATRICK VYAMUNGU**(Personal Legal Representative of Late AL  
HAJI AMAN  
VYAMUNGU).....**RESPONDENT**

**RULING**

**23/05/- 08/10/2019**

**J. A.DE-MELLO, J;**

The Applicant **Shemsa Sudi Ally**, has moved this Court, under **Section 72** of the **Probate and Administration of Estates Act, Cap. 352, R.E.2002** praying for the following orders;

- i) **That, this Honourable Court may be pleased to call for the record of the District Magistrate Court, Kinondoni in Misc Civil Application No. 19 of 2014 originating from Probate and Administration Cause No. 4 of 2012 of Primary Court, Kinondoni with a view to examine the records of both Primary and District Courts of Kinondoni for purpose of satisfying itself as to the correctness legality or propriety of any decision or order of the courts and as to the regularity of any proceedings therein.**

- ii) **Costs of this Application be granted.**
- iii) **Any other reliefs that this Honourable Court may deem fit to grant.**

The Application is supported by the affirmed Affidavit of the Applicant herself fended by Counsel Mtanga. However, before the hearing of the Application, **Counsel Kyara** for the Respondent has in his Counter Affidavit raised a Preliminary Objections on point of law to the effect that;-

- 1. The Application is incurably defective for improperly moving the Court for non citation of proper provision of the law.**
- 2. That the Application is hopeless time barred.**
- 3. That the affidavit supporting the application is incurably defective and is bad in law.**

It is the **2<sup>nd</sup> objection** that I find to be quite prominent over the rest, on limitation which if answered in the affirmative, this Court will have no jurisdiction to entertain the instant Application.

With the Leave of this Court, the preliminary objections were disposed off, by way of written submissions on which only the Respondent was in compliance with the schedule.

Supporting the **2<sup>nd</sup> Objection, Counsel Kyara** submits that, the application is filed out of time as the decision which is subject to this Application was dismissed for **Want of Prosecution** on **15<sup>th</sup> June, 2015** more than five years contrary to Paragraph 21 of Part III of the Schedule of the **Law of Limitation Act Cap. 89 R.E. 2002** which limits time for sixty days (60), from the date of the decision. He therefore prayed for the Application to be **Struck Out** with costs.

Another carefully perusal of the Chamber summons and the record of the **District Court of Kinondoni in Misc. Civil Application No. 19 of 2014**, I am fully in one with **Counsel Kyara** that this Application was filed out of time as prescribed by the **Law of Limitation Act Cap. 89** having been filed in this Court on the **24/02/2017** whereas; the decision sought to be Revised was issued on the **15<sup>th</sup> June 2015** after the lapse of solid two years. **Part III item 21** of the **Law of Limitation Act Cap. 89 R.E 2002** provides for sixty (60) days period within which to file an Application for Revision. Unless Leave is sought and with good and sufficient reasons for Extension, the Application is misplaced. This has and, will all the time be the stance and position of the law and as observed by several cases namely; decision was followed in **Civil Application No. 42 of 2000, NBC**

**Holding Corporation and Another vs. Agricultural & Industrial Lubricants Supplies Ltd. & Two Others** (unreported)

However, in the case of **Dominic Nkya & Another vs. Cecilia Mvungi & Others, Civil Application No. 3 "A" of 2006** (Unreported) the Court of Appeal held and, I quote;

**"This application was brought about five months after the delivery of the decision sought to be revised, and the first applicant did not seek for and obtain an enlargement of time before instituting the application, it is clearly time-barred....."(Emphasis is mine).**

From the foregoing reasons, the preliminary objection raised by **Counsel Kyara** is merited and ought to sail through, as I sustain. I will not waste time for the rest of the objection as I will be entertaining a Nullity.

The application is accordingly **Struck Out** as opposed to a **Dismissal** and with costs.

It is so ordered.

  
**J. A. DE-MELLO**  
**JUDGE**  
**08/10/2019.**