

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

MISCELLANEOUS CIVIL APPLICATION NO. 336 OF 2019

*(Originating from Probate and Administration Cause No. 47/2012 in
the District Court of Kinondoni/Kivukoni)*

CAROLINE MWENDA ----- APPLICANT

VERSUS

DORAH MWENDA ----- 1ST RESPONDENT

ERIC MWENDA ----- 2ND RESPONDENT

RULING

MUTUNGI, J.

The Applicant (CAROLINE MWENDA) has made an Application 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 2001** praying inter alia, that this honorable court be pleased to extend time for filling her appeal against the decision of the District court of Kinondoni/Kivukoni in Probate and Administration Cause No. 42 of 2012 before (Hon. Kasailo,

RM). The application is supported by an Affidavit deposed by Caroline Mwenda (the Applicant) on the following main facts: -

That on 6th day of September, 2012 the Respondent were illegally appointed by the District Court of Kinondoni/Kivukoni to be the Administratrix of the estate of the late Baltazar Christolodge Mwenda.

In her submission, she adopted the Affidavit as part of her submission, and further argued that, this court has Jurisdiction to extend time where there is an allegation of illegality as pointing out in paragraph 6 of the Affidavit. The decision to appoint the administrator was tainted with illegality, she referred the court to the cases of **ARUNABEN CHAGGAN MINNS V. NAUSHAD MOHAMED HUSSEIN & OTHERS, CIVIL APPL. NO.61 OF 2016 (CAT)** and the **PRINCIPLE SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VS VALAMBHIA (1992) TLR 182.**

Further, the District Court lacked jurisdiction to determine the estate in this matter, whose value was above Tshs 10,000 as defined under **s. 2 (1) of the Probate and Administration of**

Estate Act, Cap 352. The record shows that the estate in issue was over and above Tshs 10,000 in terms of value and therefore, the District Court determined the matter without Jurisdiction pointing out **s.6 (1) of the Probate and Administration Act, Cap 352.** Hence prayed to this honorable court to extend time.

The respondent on the other hand presented before the court that, they were not intending to contest the application. The main issue before this court is extension of time due to alleged illegality in the said probate cause. Therefore, the court is being asked to assess whether the said Probate and Administration Cause No. 42 of 2012 before (Hon. Kasailo, RM) was tainted with illegality.

In the case of **ASHURA M. MASOUD VS SALMA AHAMAD, CIVIL APP. NO 213 OF 2004 (HC)** among other things in the said case it was stated that: -

“... the Jurisdiction of the District Court as such in probate and administration matter, is governed by the provision of s.6 cap 352 R.E 2002. Under that section District Courts have only jurisdiction in

respect of “small estate” defined under s. 2 (1) of Cap. 352, are those whose value does not exceed Tshs 10,000 (ten thousands)”.

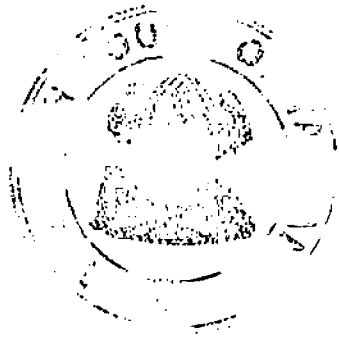
In the above case the estate was the house situated on Plot No. 1 Block A Kigogo whose value exceeded Tshs. 10,000 hence the court ruled that the District Court had no Jurisdiction over the matter.

A similar situation appears in the case at hand. Therefore, I am inclined to conclude that the Probate and Administration Cause No. 42 of 2012 before (Hon. Kasailo, RM) should be looked into by a superior court to put things right.

In the case of **ROBERT D. ISHENGOMA V. KAHAMA MINING CORPORATION LTD & 2 OTHERS, CIVIL APPL. NO. 2 OF 2013 (UNREPORTED)** among other things, it was held that illegality constituted a good cause for the court to consider extension of time.

In the upshot, from the above findings it is found, the application has merit. I do here by grant extension of time and the intended appeal should be filed within 21 days from

the date of this ruling. Since the respondent did not contest the application, I make no order to costs.

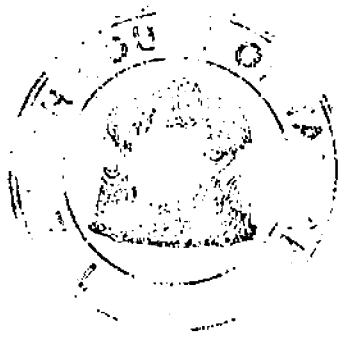



B. R. Mutungi

JUDGE

29/10/2019

Read this day of 29/10/2019 in presence of applicant and Elisa Mdeme for the applicant.




B. R. Mutungi

JUDGE

29/10/2019

Right of appeal explained.




B. R. Mutungi

JUDGE

29/10/2019