

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 2017

(Arising from Probate Appeal No. 17/2013 RM's Court Mwanza and originating from Probate & Administration Cause No. 49/2013 of Nyamagana Urban Primary Court Mwanza)

IBRAHIM LIBO APPLICANT

VERSUS

BELITA OJENI RESPONDENT

EXPARTE RULING

08/10/2018 & 24/01/2019

RUMANYIKA, J.:

Application made under **Section 25 (1) (b) and (3) of the Magistrate's Court Act Cap. 11 R.E. 2002** is for extension of time within which Ibrahim Libo (the applicant) to lodge application for revision on the 19/12/2013 decision of the District Court for Mwanza at Mwanza. It is supported by affidavit of Ibrahim Libo. Whose contents essentially, the applicant herein adopted.

I think there is no harm at the juncture to state the circumstances giving rise to the exparte ruling. When the application was called on for hearing on 20/09/2018, Belita Ojeni (the respondent), by Ms. Tausi Libo (daughter) reportedly indisposed, wasn't in attendance. Hearing was, by consent adjourned to 08/10/2018 at 09:00a.m. Nevertheless neither the

respondent nor representative appeared on the hearing date. The former's appearance, pursuant to my reasons and order of 08/10/2018 was dispensed with. Hence the ex parte hearing and ruling. Irrespective of her complaints that actually the case was fixed for 9/10/018. It is trite law that serious as it is, court records speak themselves. They cannot be impeached casually.

During the hearing, the applicant submitted nothing material. But simply urged the court to consider contents of the supporting affidavit therefore grant the application. That is it.

Looking at a summary of the supporting affidavit, it runs as follows:

That having applied, and was on 03/10/2013 granted letters of administration of the estate at issue, the respondent successfully appealed. Such that by it's order, the District Court Mwanza excluded the shamba in issue from estate of the deceased Seleman Libo. That as was, between 30th November, 2013 and 4th February, 2014 admitted at a military hospital in Mwanza, and, upon discharge was given a three (3) months bed rest, the applicant could not have been aware of the case and impugned decision (copies of medical chits appended to the affidavit).

That now back from Kahamahe he had to work for economic regains and stability until 1st April, 2016. Only to learn about the decision but late in the day. Hence the 2nd attempt application. But the time barred application for revision was struck out on 18/07/2016.

The central issue and bottom-line is whether the applicant had assigned cause and sufficient ground for extension of time. The answer is no! Reasons are:-

One; his locus standi was since questionable. Unless extension was sought and granted by the probate court, the 03/10/2013 applicant's appointment and letters of administration lapsed on 03/04/2014 latest. Once after the 1st six (6) months allowed by the Probate and Administration of Estates Act Cap. 352 R.E. 2002 had expired without the administrator filling in court inventory, with a view now to having the matter closed, the estate was, from there in my considered view as having been abandoned. There can be no life time probate proceedings or letters of administration for that matter. It follows therefore that w.e.f 03/04/2014, the applicant had no locus on the estate. Whether or not he fell sick until 01/04/2016, or throughout or until a later date, it is immaterial in my considered opinion.

Two; even if the applicant's letters of administration still were in order and valid, he fell indisposed until as late as February, 2014 but upon recovery remained back working for economic regains and recovery until April, 2016, that one constituted no sufficient ground. Because if that was allowed, it would have defeated both logic and principle that very seldom than not a person knew what follows' deep pockets contained. In which case therefore, majority would have not missed the defence always. Leave alone failure in his affidavit to mention date of the impugned decision.

Three; even when for the sake of assumption it was the case, so much so that now the applicant was free of predicaments until as late as

April, 2016, yet he lodged the present application *thirteen (13) months* later i.e. on 22/05/2017. It follows therefore that the applicant has not given account for each day of the delay.

Having attempted and said all, I would, as now hereby do dismiss the devoid of merits application with costs. Ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE

19/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of both parties in person.



O.H. Kingwele



DEPUTY REGISTRAR

24/01/2019