

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

MISC.CIVIL APPLICATION No. 9 OF 2019

*(Originating from Primary Court of Temeke on Probate and Administration
Cause No. 699 of 2012 and Civil Appeal No. 130 of 2013 in the District
Court of Temeke)*

NJITI MANSURI.....APPLICANT

Versus

SIJALI MANSURI.....RESPONDENT

RULING

22nd May, 2020 – 23rd June, 2020

J. A. DE - MELLO J;

The Applicant has filed this Application seeking for the following orders;

- 1. That, this Honourable Court be pleased to grant Leave to the Applicant to Appeal Out of Time against the decision of the District Court of Temeke delivered on 19th August, 2014 on Civil Appeal No. 13 of 2013**
- 2. That, costs to follow the events; and**
- 3. Any Relief this Honourable Court deems fit to grant.**

The Court is moved under **section 14 (1) the Law of Limitation Act, Cap. 89, R.E 2002, section 25 (1) (b) of the Magistrates Court Act Cap. 11, R.E 2002 and, section 72 of the Probate and Administration of Estates Act, Cap. 352,** supported by the Affidavit of the Applicant

himself, while the Respondent has filed his Counter Affidavit, resisting the same. On the **14th April, 2020** this Court directed Parties to argue this Application through written submissions due to the presence of **Covid-19 pandemic**, which demanded social distancing of which am grateful that both have adhered to. It is the Applicant's submissions that, the Respondent is among the three issues of the deceased born outside the wedlock, disqualifying her to inherit under Islamic traditions and customs but the p through her mother, as it was held in the case of **Asia D/o Amiri vs. Ahmed S/o David (1968) No. 206**. That, the Respondent's mother was not married to the deceased, **Mansuri Mbena**, but brought to the family by the aunts, following that demise, which brought discontent to the other children, highly against Islamic rites and thus the need of Leave to Appeal Out of Time. It is the Applicant's further contention that, and, surrounded by all the above, the only remedy is to Appeal taking into account of the principles of natural justice and, right to be heard as laid down by the Constitution under **Article 13 (6) (a)** of the **Constitution of United Republic of Tanzania** backed up by the case of **Jeremia Mtobesya vs. Attorney General, Misc. Civil Case No. 29 Of 2015**.

Rebutting, the Respondent's submits that whether or not the Respondent is the child of the deceased had been fully heard and determined by **Temeke Primary Court** vide **Probate and Administration Cause No. 699/2012** as well as **Appeal No. 13 of 2013 in Temeke District Court**, upholding the lower Trial Court's decision. That even the right to appeal was fully explained but ignored, as the Applicant preferred a Revision which ended up in a dismissal, for being out of time. Other than this, and, of essence quite

relevant to this application, is failure by the Applicant in exhibiting what it takes for extending time namely;

(a) whether there insufficient reasons warranting extension of time and,

(b) whether the Applicant accounted for each day of delay from 06/11/2019 which is almost four (4) years now. Neither is the case of **Jeremia Mtobesya vs. Attorney General, Misc. Civil Case No. 29 of 2015**, nor is the case of **Sophia Yusuph Mwinyi vs. Destelia Antony and Others, Misc. Land Application No. 734 of 2016, High Court of Tanzania, at Dar es Salaam (Unreported)**, is relevant to the Application at hand, he observes. Similarly, is **Article 13 (6) (a)** of the **Constitution of United Republic of Tanzania** regarding principles of natural justice and the right to be heard, considering presence of parties all along from for a hearing, not mentioning appeal heard at the **District Court of Temeke**. On **page 5** of the Judgment annexure MN-4) the right of Appeal was explained which the Applicant sat on it. In his rejoinder, the Applicant submitted that the Application before the Court is for **Leave to Appeal Out of Time** as opposed to **Extension of Time**, which if not considered under the principles of natural justices and, right to be heard, which if not granted the Applicant will suffer irreparably amidst several and, various applications but all in vain. It is his ultimate prayer that this Court to grant **Leave to Appeal Out of Time**.

It is evident that, the Application before this Court is for Leave to Appeal Out of Time differently from Extension of Time, as was what the case of **Shanti vs. Shindocha & Others [1973] E.A 207** explicitly explained the difference, where the Court of Appeal stated; **"The position of the**

Applicant for extension of time is entirely different from that of an Applicant for leave to Appeal. He is concerned with showing sufficient reasons why he should be given more time and the most persuasive reason he can show is that the delay has been caused or contributed by dilatory conduct on his part. But there may be some other reasons and these all are matters of degree".

It is even vivid that, such Leave is out of time of which good and sufficient reasons needs to be advanced. Nothing as gathered explains the delay other than principles of natural justice and, right to be heard which are irrelevant for what it takes for Leave to Appeal and Out of Time. Record has it and as narrated by the Respondent that, this Application has its genesis from **Primary Court of Temeke on Probate and Administration Cause No. 699** of 2012, whose appeal in **Civil Appeal No. 13 of 2013** was heard at the **District Court of Temeke**, sharing the same position. Aggrieved by both, the Applicant preferred a **Revision in Probate and Administration Cause No. 37** of **2014**, which was dismissed for being out of time by the High Court. As this was not enough, another **Review** case in **Miscellaneous Civil Application No. 715 of 2015** was again attempted but, **Struck Out** for wrong citation of provision of the law. I find nowhere was the Applicant's rights been infringed as alleged. In the case of **Athumani Hamisi Benta vs. Issa Mohamed Benta, Miscellaneous Land Case Application No, 33 of 2019, High court of Tanzania, Moshi District (Unreported)**, it was held that;

"In determining this application for leave, the law is settled to the effect that leave to appeal is not automatic,

it is discretionary. In order for the Court to exercise its discretion, it is essential that it has to be furnished with sufficient contentious issues”.


A glance and, thorough examination of the Applicant’s Affidavit, I find nothing contentious to merit consideration as alleged. Also in the case of **Ramadhani Mnyanga vs. Abdallah Salehe (1996) TLR 74**, it was stated that, **“For leave to appeal to be granted, application must demonstrate that, there are serious and contentious issues of law or fact fit for consideration of appeal.”**

It is obvious that, in quest of all those remedies, the Applicant, duly represented by legal Counsel **J.G Makala.**, opted for a wrong avenue for Revision/Review as opposed to Appeal. In the case of **Tumsifu Elia Sawe vs. Tommy Spades Limited, Civil Case No. 362 of 1996** (Unreported) **“failure of party's advocate to check the law is not sufficient grounds for allowing an appeal out of time.”**

Conclusively so to state, the Applicant has neither demonstrated any sufficient contentious issue nor reasons for delay that, would entitle him, **Leave to Appeal Out of Time.** In the ultimate result, this application fails and is, accordingly, dismissed with costs.

It is so ordered




J. A. DE- MELLO
JUDGE
23rd June, 2020