

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

MISCELLANEOUS CIVIL APPLICATION NO. 540 OF 2018

(Arising from the decision of Kinondoni District Court in Probate Administration No. 19 of 2017 in the matter of the Estate of the late Michael Jovin Masenge)

Marry Michael Masenge and 7 Others----- APPLICANTS

VERSUS

Kandida Michael Masenge(The administratrix of the Estate of the late Michael Jovin Masenge)----- **RESPONDENT**

RULING

Date of last order: 24.06.2020

Date of Ruling: 22.07.2020

Ebrahim, J.:

The applicants herein have filed the instant application praying for extension of time to file revision against the decision of Kinondoni District Court in Probate Administration No. 19 of 2017. The Applicants have further prayed for the court to call and examine the records in respect of the above stated probate matter and satisfy itself as to whether such District Court of Kinondoni exercised its jurisdiction so vested. The application has been made under the provisions of **section 14(1) of the Law of Limitation**

Act, Cap 89 RE 2002, section 44(1)(b) of MCA, Cap 11 RE 2002 and section 79(1) of the Civil Procedure Code, Cap 33 RE 2002; and it is supported by the affidavit of Sakina H. Sinda, Counsel for the Applicant.

It could be gathered from the affidavit of the Applicants, the deceased Michael Jovin Masenge whose estate is a subject of the instant application died intestate leaving behind two wives and a number of children. It is averred at para 4 of the affidavit that upon the meeting of clan members, Roman Jovin Masenge, Jovin Michael Masenge and Alex Michael Masenge were appointed to administer the estate of the deceased. The Applicants stated further that to their surprise they came to know about letters of administration granted to the Respondent vide Probate Administration No. 19 of 2017 sometimes in August 2018 when Marry Michael Masenge and Roman Michael Masenge were served with eviction notice from the Respondent's advocate and asked to surrender the properties of the deceased. The instant application has been preferred so that the applicants could file revision for this court to call and examine the records of the lower court.

In her counter affidavit, the Respondent save for the contents of the affidavit that she noted, disputed the application on the basis that there is no any court order or pending proceedings that decided for appointment of

Roman Jovin Masenge, Jovin Masenge and Alex Michael Masenge. She noted the presence of Probate Cause No. 226 of 2015 as per the order of the High Court, the matter which was later dismissed by the Primary Court on 16th May 2017 for want of prosecution. After the dismissal, as the wife of the deceased, the respondent lodged Probate Cause No. 19 of 2017. She claims that she has legal powers to inquire about all the properties of the deceased. I must point here that Counsel for the Respondent had initially filed notice of preliminary objection which upon reflection he abandoned it. Nevertheless, I must also state here that the Applicant's application contains prayers for revision which this court would out-rightly ignore them for being brought prematurely while they have not yet mandated to file the revision.

In this application, the Applicant was represented by Ms. Sakina Sinda assisted by Ms. Asma Al-Hassan, both learned advocates while the Respondent was represented by advocate Mohamed Majaliwa.

Ms. Sinda adopted the contents of their affidavit to form part of their submission and advanced the reason for the application being that the Respondent obtained the letters of administration fraudulently as the applicants did not know that she has petitioned for the same. She said that the Applicants became aware after being issued with eviction letters. She contended further that the Applicants' delay was not out of their dilatory

conducts but they became aware of the administration on 28.08.2018 and the letters were issued on 2017; hence the instant application.

Responding to the submission by the Counsel for the Applicants, Counsel for the Respondent argued that the application by the Applicants has not met the standards set by law of availing reasonable cause for the delay. He contended further that the citation was issued in the newspaper of which they are presumed to have knowledge. As for the purpose of letters of administration, the Applicants could go back to the Probate Court where they could pray for revocation or be added to the cause. He prayed for the application to be dismissed with costs.

In rejoinder Ms. Sinda insisted that there is no proof that the citation was issued in the newspaper and there is no even proof of affidavit as to the consent in the records. She reiterated their prayers.

Extension of time is granted by the Court upon exercising its judicial discretion owing to the establishment of sufficient cause which prompted the delay by the applicant. The principle has been elaborated in the case of **Mumello Vs Bank of Tanzania** [2006] 1 EA 227 where it was held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

The Court of Appeal, in the case of **Aluminium Africa Ltd V Adil Abdallah Dhyebi and others**, Application No. 6 of 1990 (Unreported) expounded further on what amount to sufficient reason by holding that the applicant must show that the delay was **not out of negligence, disinterest or lack of diligence and has to account for each day of delay** (see also the case of **Yusufu Same and Another V Hadija Yusufu, ,** Civil Appeal No. 1 of 2002, CAT- DSM (UR)).

Expounding further on the consideration for extension of time, Court of Appeal had in the case of **Losindilo Zuberi V Ally Hamisi Losindilo Zuberi**, Civil Application No. 5 of 1999, CAT- DSM (UR) citing with authority the case of **Principal Secretary, Ministry of Defence and National Service V Devram Valambhia** [1992] TLR said that:-

*"We have held in one of the many applications involving Devram Valambhia V Transport Equipment Ltd that this Court will extend time within which to file an application if there is an allegation of an illegality. **I am of the considered opinion that where there is an allegation that provision of law has been contravened, this Court cannot wring its hands in desperation but must give itself an opportunity to look into the matter...**"(Emphasis is mine).*

The similar position was held in the cited case of **Amour Habib Salim versus Hussein Bafagi**, Civil Application No. 52 of 2009.

In this application the applicants stated that they were not aware of the existing appointment of the Respondent in Probate Administration No. 19 of 2017. Counsel for the Respondent vehemently challenged the application on the basis that the citation was advertised in the newspapers. Nevertheless there is neither Newspaper nor Government Gazette that has been availed to the court to exhibit such assertion. Counsel for the Applicant argued before the court that there is no proof of affidavit as to the consent of beneficiaries in the record and that the letters of appointment have been obtained fraudulently. Certainly if that is the case, it would mean major flout of procedure which would result into illegality.

Verily, illegality is a wide term which in its broad sense includes issues of jurisdiction, exercise of such jurisdiction, interpretation and contravention of the provisions of the law, abrogation of procedures and right to be heard; to name but a few. All in all the term and the spirit of the above principle is geared into preventing the infringement of right of either party.

Court of Appeal had in a number of cases extended time even where there seems to be no sufficient reasons have been established; but for the reason of ensuring that the alleged illegality is handled and proper measures are taken so that the matter is put right and so are the records – see the cited

case of **Principal Secretary, Ministry of Defence and National Service (supra)**. In another case of **VIP Engineering and Marketing Limited and Three Others V Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (CA – Unreported) the Court of Appeal reiterated the same position and held that:

*"We have already accepted it as established law in this country that where the point of law at issue **is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time**". (emphasis is mine)*

This is a probate matter which involves right of many heirs. Following the stance of the Court of Appeal in the cited case of **Losindilo Zuberi (supra)**, I cannot wring my hands in desperation but rather should give an opportunity to look into the matter so that the issue of fraud and illegality of procuring the said letters of administration can be well examined by the court to ensure ends of justice.

It is on that back ground that I exercise my judicial discretion and allow the application for extension of time. The applicants are granted fourteen days (14) days from the date of being availed with a copy of this ruling and a

drawn order to file revision in this court. Being a probate matter I shall give no order as to costs.

Accordingly ordered



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", written over a horizontal line.

R.A. Ebrahim

JUDGE

Dar Es Salaam

22.07.2020.