

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 595 OF 2019

(Arising from the decision of Kinondoni District Court in Probate Appeal No. 05 of 2019 which originated from the decision of Probate Cause No. 258/2002 from Kinondoni Primary Court and Probate and Administration Cause No. 149 of 2017 from Magomeni Primary Court)

Said Ally Makanyagilo ----- **APPLICANT**

VERSUS

Pili Abdallah Manyamba ----- **RESPONDENT**

RULING

Date of last order: 18.06.2020

Date of Ruling: 22.07.2020

Ebrahim, J.:

The applicant has filed the instant application praying for extension of time to lodge his appeal in this court against the decision of Kinondoni District Court in Probate Appeal No. 05 of 2019. The application has been made under the provisions of **section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 and section 95 of the Civil Procedure Code, Cap 33 RE 2002.**

The application is supported by an affidavit affirmed by Said Ally Makanyagilo, the Applicant.

According to the Applicant's averments in his affidavit, he was the Appellant in Probate Appeal at the District Court the decision of which was delivered on 20th September 2019. He applied for a copy of judgement which was issued on 26th September 2019. The Applicant averred further that he received legal aid where he was advised to file application for extension of time. He however goes to state that after receiving a copy of judgement he filed for revision which ultimately was not registered in High Court though he was told to wait which is the cause for the delay.

In her counter affidavit, the Respondent vehemently disputed the reasons advanced by the Applicant on the basis that being a layperson is not a sufficient reason for the delay so is the reason of seeking for an advocate. She averred also that there is no requirement to attach a copy of judgement on appeals originating from the Primary Court; and that the allegation of filing revision at the High Court is misconceiving and confusing. She prayed for the application to be dismissed with costs.

The application was argued by way of written submission. In this application both parties appeared in person, unrepresented.

In the endez-vous to establish sufficient reason for the delay, the Applicant submitted that the delay was caused by failure of his revision which he filed immediately after being availed with the copy of judgement to be registered

by the court and that he had to look for legal assistance. He cited the cases of **Tanga Cement Company Limited V Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001; and **Jaluma General Supplies Limited Vs Stanbic Bank Limited**, Civil Application No. 48 of 2014 which defined sufficient cause to be considered as to whether or not the application was brought promptly and there is no lack of diligence by the applicant.

In reply the Respondent firstly brought to the attention of the court the point of law on none citation of the relevant law i.e. **section 25(1)(b) of the Magistrate's Court Act. Thus the court has not been properly moved.** Adopting the contents of her counter affidavit, she vigorously objected the application and argued that the grant of this application would be wastage of time as the High Court has no jurisdiction to revoke letters of administration duly issued by the Primary Court but the appointing court itself **Rule 9(1) of the Primary Courts (Administration of Estate) Rules (GN No. 49 of 1971)**. To buttress his argument he cited the case of **Richard Somba and Mariam Somba** Civil Appeal No. 126 of 2006 CAT (unreported). The Respondent further challenged the advanced reason for the delay that the Applicant was seeking for a copy of judgement which is not a requirement for the Appeals from Primary Court to High Court. She cited the case of **Sophia**

Mdee Vs Andrew Mdee and Others, Civil Application No. 5 of 2015. The Respondent also challenged the fact that the Applicant failed to attach the alleged revision that he filed at the High Court.

It is the cardinal principle of the law that once there is raised a point of law, a court of law should not proceed with the hearing of the case without addressing it. I cement my stance by the principle illustrated by the Court Appeal in the above cited case of **Sophia Mdee V Andrew Mdee and 3 Others** (Supra) where it was held as follows:

"A court of law which proceeded with hearing of the case without first entertaining the issue of law, even though not properly raised, which goes to the competency of the case of which the court is called upon to adjudicate is abdicating its duty".

The Respondent has raised a point of law that the court has not been properly moved as the application should have been brought under **Section 25(1)(b) of the Magistrates Court Act.**

Certainly **Section 14(1) of the Law of Limitation Act, Cap 89** is a general provision which gives mandate to the court of law to exercise its judicial discretion to extend time to file an appeal or application where sufficient reason for the delay is established. Nevertheless, it is also a cardinal principle of the law that where there is specific law/statute for a

particular function or covering specific forum then the court must be moved by such specific relevant enabling provision specifically for the stated function.

This matter originates from the Primary Court. The relevant specific provisions for extension of time on matters originating from the Primary Court are specifically provided in **Part III sub Part C of the Magistrate's Court Act, Cap 11** under **section 25(1)(b) of the Act**. The said section reads:

*"25.-(1) Save as hereinafter provided—
(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; **and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.**"*
(emphasis added)

It follows therefore that since the present application emanates from the Primary Court and there is a specific provision provided by a specific statute giving the court the mandate to perform such particular function of extending time; certainly the court in the instant application was supposed to be moved by the provisions of **section 25(1) (b) of The Magistrate Court Act, Cap 11 RE 2002**. The general powers of the provisions of **section 14(1) of Cap 89** could have been used if the law had not provided for a specific provision/ piece of legislation governing proceedings from the Primary Court.

At this juncture I am moved to borrow a leaf from the spirit of the Court of Appeal in the case of **Aero Helicopter (T) Ltd Vs F.N. Jansen** [1990] TLR 142 where it was held that:

"The inherent power of the court under section 95 of the Civil Procedure Code is exercisable where the law has made no provision governing the particular matter at hand".

Applying the same principle to the circumstances of the present application, it is safe to say that the court has not been properly moved to perform the function it has been asked for.

Having found that, it is obvious that the application is incompetent before the court and I cannot proceed to determine the merits of the same.

Therefore I struck out the application with costs.

Accordingly ordered




R.A. Ebrahim

JUDGE

Dar Es Salaam

22.07.2020.