

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 24 OF 2020

(Originating from Nyamagana District Court, Probate Appeal No. 7/2019, Probate and Administration Cause No. 64/2014)

HAWA ALLY APPLICANT

VERSUS

OMARY HAMAD RESPONDENT

RULING

27/05 & 02/06/2020

RUMANYIKA, J.:

The application under Sections 3A and B (1) and (2) and 79 (1) (c) of the Civil Procedure Code and Section 30(a) of the Magistrate's Court Act is for revision of the ruling of Nyamagana district court dated 08/11/2019 with respect to Probate Cause No. 64/2014 of Mwanza Rural primary court which dismissed the appeal of Hawa Ally (herein the applicant) for being time barred. It is equally important to be noted here that according to records the applicant was on 19.09.2014 appointed administratrix of the estate (a house at Rufiji street in the city) of Ibrahim Seif Makuka who died on 12th June 1955). In other words now about six (6) years ago the sole administratrix of the estate had not submitted inventory and close the cause. The applicant appeared in person. Mr. Kelvin Mtatina learned counsel appeared for Omary Hamad (the respondent).

When the application was called on 27/05/2020, but following global outbreak of the Coronavirus pandemic, and the parties were online (mobile numbers 0654360017 and 0715167633) respectively, by way of Audio Teleconferencing I heard them on a 3 limb preliminary point of objection (the p.o) formerly raised on 29/04/2020 by Mr. Kelvin Mtatina and now taken by him.

Quietly though having abandoned limb No. 2 of the p.o Mr. Kelvin Mtatina learned counsel submitted; **(a)** that as the two were not alternative of each other the applicant should have appealed not apply for revision against the impugned ruling (the case of **Hassan Ng'anzi Kalfan V. Njama Juma Mbega** (Legal Representative of the Late Mwanahamisi Njama) **and Another**, Civil Application No. 218/12 of 2018 (CA) at Tanga, unreported. **(b)** that the MCA set no limitation period yes, but the application was time barred because the fall back Part III item 21 of the Law of Limitation Act Cap 89 R.E. 2002 sets sixty (60) days therefore one should have lodged the present application on 08/01/2020 latest his first attempted matter of 18/11/2019 dismissed on 21/01/2020 notwithstanding. As it was beyond sixty days instituted without extension of time sought and granted the application be dismissed the learned counsel further contended.

Unusually very briefly, the applicant submitted that instead of being tied up with legal technicalities the court be pleased to consider what was born out on record and abide with substantive justice only. That is it.

The central issue is whether the application for revision is tenable. It is undeniable fact that the applicant's appeal was dismissed for being time. As stated her, the applicant may have had good cause and sufficient grounds for the delay (having lost a boy and she remained back home mourning) yes! But as it was well reasoned by the lower court, the applicant should have raised the point in application for extension of time. Moreover, the applicant may have been aggrieved with the dismissal order yes, but as Mr. Kelvin argued very right, she should have appealed against it and sought a revision order. Much as unless the law permitted it, and appeal process was blocked (which is not the case here) revision proceedings was no appeal in disguise nor was each a substitute of the other (the case of **Hassan Ng'anzi Khalfan** (supra). Else one should have gone back and make her house suffices the point to dispose of the application.

Moreover the issue of time bar needs not detain me as Mr. Kelvin argued it precisely so in my view, the Magistrate's Court Act set no limitation period for application for revision, the fallback position is found in Part III Item 21 of the Law of Limitation Act Cap 89 R.E. 2002 sixty (60) days is the limit. In other words the applicant should have lodged the application on 08/01/2020 latest if at all proper course was the application suffices the point to disposed of the matter. The p.o is sustained.

Without running risks of jumping into merits of the application however, it wasn't born out the records what is it that had prevented the applicant to make use of half a decade plus of her appointment as administratrix of the estate actually she was not appointed life time

administrator of the estate. Even when she was given the last wakeup call on 28/03/2017 the applicant never bothered she did not even suggest when exactly she expected to submit and file inventory with a view to court closing the backlog probate cause.


Now that by all standards it was frivolous and vexatious, the application is dismissed with costs. Unless the applicant accordingly submitted inventory within fourteen (14) days of this ruling, the probate court shall be entitled to revoke the applicant's letters of administration and, with respect to the estate order otherwise. It is ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
31/05/2020

It is delivered under my hand and seal of the court in chambers this 2nd June, 2020 in absence of the parties with notice.



S. M. RUMANYIKA
JUDGE
02/06/2020