

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO 368 OF 2019

*(Originating from Misc. Civil Application No. 98 of 2019, Probate and Administration
Cause No 21 of 2000 Ilala District Court at Samora)*

ABDUL ISMAIL BAYUMI.....APPLICANT

VERSUS

URSULA CHRISTOS MITROPOLOUS.....RESPONDENT

RULING

Date of last Order: 19/02/2020

Date of Ruling: 27/03/2020

MLYAMBINA, J.

The application at hand was made under *Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E 2002]*, Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. The applicant is seeking for leave to file an appeal to the Court of Appeal of Tanzania. The underlying reasons in support of the application that are contained in the applicants' affidavit and written submission are as follows:

One, on the 20th day of June, 2019 this Hon. Court delivered decision in favour of the respondent herein on the ground that the applicant had not advanced sufficient grounds for extension of time to file an application for revision.

Two, that being dissatisfied with the decision of the High Court refusing to grant extension of time to lodge an application for revision, the applicant has lodged a notice of appeal to the Court of Appeal of Tanzania against the said decision.

Three, that the applicant and the respondent are blood relatives sharing the same womb from their late mother one Asha Abdul Ramole. The said mother passed away well back in 1997.

Four, without knowledge to the applicant herein the respondent allegedly instituted Probate and Administration Cause No. 21 of 2000 where the only property on Plot No. 452 Block DDD Karanga Moshi township was granted to the respondent herein and her sister leaving behind the applicant and his sister.

Five, all times the applicant was not aware of any probate and administration cause instituted by the respondent until the applicant went to Urban Primary Court of Moshi to apply for letters of administration in Probate and Administration Cause no. 108 of 2018. The said application before the Moshi Urban Primary Court was struck out on the ground that the respondent had been granted letters of administration by the Ilala District Court in 2000.

Six, it was at that time the applicant became aware of the said Probate and Administration Cause in which however the applicant

herein and his sister were not included in the said probate and were never granted their allotment in their deceased mother's estate.

Seven, having discovered the said anomaly the applicant herein decided to find legal advice from several knowledgeable people in the legal profession. He was advised to file an application for extension of time to file revision proceedings in the High Court as he was not a party to the original proceedings.

Eight, in Misc. Application No. 98 of 2018, the applicant did not persuade this Court to enlarge time within which to file an application for revision, despite of the glaring illegalities obtained in the Probate and Administration Cause No. 21 of 2000 at Ilala District Court.

Nine, that, it is intended to ask the Court of Appeal of Tanzania to determine the legality for the granting of the letters of administration to the respondent herein without inclusion of the applicant and his sister as among the beneficiaries. The consideration should be on the fact that the only estate is located in Moshi and that the deceased passed away in Moshi and was buried there.

Ten, it is intended to ask the Court of Appeal of Tanzania whether with the glaring material irregularity in the proceedings of the Ilala

District Court the same can be left un attended by the superior Court on the ground of not taking action promptly where it was not in the knowledge of the applicant.

In his counter affidavit, the respondent substantially disputed the application and stated that the applicant belongs to another different biological father.

It was affirmed by the respondent that the trial Court is correct in all four corners of the law as the applicant failed to demonstrate any good cause to warrant the Court to exercise its discretionary power for leave.

In the written submission, the applicant stressed on the point of illegality. He argued that the Probate and Administration Proceedings were instituted before the Ilala District Court at Samora where the deceased resided, passed away, was buried and the only estate is situated in Moshi Kilimanjaro.

The applicant argued that a decision of the Court without jurisdiction is a no decision. Thus, had the trial Judge directed her mind on this aspect, she could not have denied the applicant an extension of time to file revision proceedings. It is only the Court of Appeal of Tanzania that can rectify the anomaly. Going through

the submission in chief, the applicant has raised six points of illegalities:

- i) There was misrepresentation of the public on the name of the late Asha Abdul Ramole, while the name of the deceased was Asha Abdul Ramole. The notice given by the respondent to the public during her application of the letter administration is Asha Aboule Mitropolous. Thus, this was deliberately done.
- ii) *That*, Asha Abdul has her own properties. She lived, own properties. She lived, resided, worked, died and buried in Moshi-Kilimanjaro yet the purported letter of administration was applied for procured and granted in the District Court of Ilala at Samora Dar es Salaam Contrary to *Section 5 (2) and 6 of the Probate and Administration of Estate Act Cap 352 R.E 2002*.
- iii) *That*, while Asha Abdul has her own properties her letter of administration was fraudulently and illegally joined in the application of administration of Estate of one Dinistious Christos Mitropolous.
- iv) That, according to Probate Form No. 27 as used by the respondent to file petition in the District Court of Ilala, the petition was made only in respect of one Dimitrious Christos Mitropolous. The typed proceeding also makes reference to

that person only. It was illegal then to later include the estate of the late Asha Abdul Ramole if she is the one referred to as Asha Mitropolous.

- v) Also, as per Probate Form No. 27 and 56 in Probate Cause No 21 of 2000, the respondent misleads and deceived the Court that the only surviving relatives of the late Asha Abdul Ramole are two while there was more than two including her biological son who is the applicant.
- vi) According to the proceeding of the trial Court, the respondent filed inventory in respect of Probate Cause No. 21 of 2000 out of time (i.e more than six years since the grant of the letter of administration) and without leave of the Court contrary to *Section 107 of Probate and Administration of Estate Act (supra)*.

In reply submission, the respondent denied the illegality to have been established. Two points were stated by the respondent. First, the applicant failed to prove his *locus standi* to file revision. Thus, there was no proof by Birth Certificate that he is the son of the purported Asha Abdul Ramole or Asha Abdul and that the applicant is not the legal administrator of either the estate of Asha Abdul Ramole or Asha Abdul.

The respondent submitted that though a stranger to the proceedings has the right to file revision, it is not every stranger has such right. The said right has to be demonstrated through affidavit and some tangible proof of the same.

Second, the Marriage Certificate annexed as AB2 bears names of different person called Asha Abdul and her father is Abdul Ahmed.

After a careful and close consideration of the parties' arguments, this Court is of finding that illegality is a good cause for extension. Indeed, if there is a point of law, leave to appeal to the Court of Appeal of Tanzania, as a matter of law, has to be granted. The respondent in this matter has not disputed that Asha Abdul though lived, resided, worked, died and buried in Moshi Kilimanjaro, the impugned Letters of Administration were applied and granted by the Ilala District Court Contrary to the provisions of *Section 5 (2) and 6 of the Probate and Administration of Estates Act, Cap 352 (supra)*. In view of this Court, such error alone is a sufficient point of law to be dissolved by the Court of appeal.

Further, the respondent has conceded that the available legal avenue for a stranger to the case is to file revisional proceedings. The Court of Appeal of Tanzania in the case of *Bank of Tanzania v.*

Saidi A. Karinda and 30 others and the Attorney General, Civil Revision No. 74 of 1998 (unreported) held:

The applicant not being a party to the proceedings, had no right of appeal irrespective of whether the matter was appealable. The revisional process was therefore, the venue available to the applicant to come to the Court.

I further agree with the respondent that not every stranger can file revision, in my found view, for a stranger to have *locus* of filing revision proceedings, there are two pre-liquisite criteria to be considered.

One, the applicant must demonstrate that he/she has interest over the contested property. *Two*, the applicant has to demonstrate that there is illegality or injustice over the impugned decision touching his interest over the property.

In this case the applicant has demonstrated that the deceased was one Asha Abdul Ramole but the notice given by the respondent during General Citation indicated the deceased is Asha Aboule Mitropolous. In her testimony (affidavit), the applicant demonstrated that her and the respondent share the same womb. Moreover, the applicant has sufficiently demonstrated that there exists a point of illegality. The same principle reflects in the cited

cases of *Arunaben Chaggan Mistry v. Naushad Mohamed Hussein and 3 others* Civil Application No. 6 of 2016 Court of Appeal of Tanzania at Arusha (unreported). Also, in the case of *Principal Secretary Ministry of defence and National Services v. Devram Valambia* (1992) TLR 182, the case of *Simon Nchagwa v. Majaliwa Bande and Another* Civil Application No. 205 of 2017 Court of Appeal of Tanzania at Dar es Salaam (unreported).

In the case of *Lyamuya Construction Co. Ltd v. Board of registered trustees of young women's Christian association of Tanzania* Civil Application No. 2 of 2010, the Court emphasized that such point of law must be that of sufficient importance and that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process. In the present case, the jurisdiction of the Ilala Court is question able.

In the end, therefore, the application is granted. Costs be shared. It is so ordered.

Y. J. MLYAMBINA
JUDGE

27/03/2020

Ruling delivered and dated 27th March, 2020 in the presence of counsel Consolata Malolela holding brief of counsel Banana Hussein for the applicant and counsel Bumi Mwaisaka for the respondent.



Y. J. MLYAMBINA

JUDGE

27/03/2020