

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**PROBATE APPEAL NO. 4 OF 2020**

*(Arising from the decision of the District of Court of Musoma at Musoma in PC  
Revision No.20 of 2019)*

**SAASABA MALEMBO MATAGE ..... APPELLANT**

**VERSUS**

**ELIAS JOSHUA MUGANDA ..... RESPONDENT**

**JUDGEMENT**

*3<sup>rd</sup> and 4<sup>th</sup> August 2020*

**KISANYA, J.:**

This appeal stems from the decision of the District Court of Musoma at Musoma in PC Revision No. 20 of 2019 whose judgment was rendered on 18.02.2020. In that application, the appellant, Saasaba Malembo Matage moved the District Court under section 24(2) and (4) of the Magistrate Courts' Act, Cap. 11, R.E. 2002 (hereinafter referred to as "the MCA") to revise proceedings and orders of the Musoma Urban Primary Court in Probate Cause No. 124 of 2010. The District Court upheld the respondent's preliminary objection on point of law that, the said application was time barred.

Dissatisfied, the appellant has come to this Court by way appeal. The main ground of appeal is to the effect that, the District Court erred in law by dismissing the appellant's appeal on the reasons that, it was time barred without considering the irregularities in Probate Cause No. 124 of

2010.

The facts which gave rise to this appeal are reflected in the affidavit in support of the application filed before the District Court. The appellant is one of the relatives of the late Daniel Malembo Matage who died intestate on 29/4/1998. It is not disputed that, the respondent was appointed by the Musoma Urban Primary Court (Probate Cause No. 124 of 2010) to administer the estates of the deceased. It was averred that, the respondent failed to bequeath Plot No. 36, Uhuru Street, Musoma Municipality to heirs of the deceased and that, he failed to file an inventory before the Primary Court. Therefore, the appellant was appointed by the clan members to administer the deceased's estates. Upon being appointed, he petitioned and granted the letters of administration through Probate Cause No. 53 of 2019 (before the Primary Court). However, his appointment was revoked by the District Court in PC Civil Revision No. 13 of 2019. Thereafter, the appellant filed an application to revoke the appointment of the respondent (Objection of Probate No. 124 of 2010 in the Primary Court). His application was dismissed by the trial Primary Court on 20.11.2019. That decision prompted the appellant to file the application for revision of the proceedings and order of the Primary Court in Probate Cause No. 124 of 2010 and hence, the present appeal.

At the hearing of this appeal, the appellant was represented by Mr. Kulwa Sanya, learned advocate while the respondent enjoyed the services of Mr. Masoud Hamis and Mr. Wambura Kisika, learned advocates.

Submitting in support of the appeal, Mr. Sanya argued that, the District Court erred in law and fact by holding that the application for revision was time barred without considering that, the respondent had not filed an inventory on how he administered the estates of the deceased. He went on to submit that, the respondent revoked himself from administering the deceased's estates when he failed to submit the inventory. The learned counsel backed his argument by citing the decision of this Court in **Joseph Mniko and Others**, Probate and Administration Cause No. 48 of 1996, HCT at Dar es Salaam (unreported). He was of the firm opinion that, the application before the District Court was not time barred. Therefore, the learned counsel urged the Court to allow the appeal with costs.

Responding, Mr. Masoud and Kisika, learned advocates for the respondent resisted the appeal. Their submission was to the effect that, the District Court had no jurisdiction to determine application for revision filed out of 12 months prescribed under section 22(4) of the MCA. Mr. Masoud was of the firm view that, the case of **Joseph Mniko and Others** (*supra*) is distinguishable from the circumstances of the present case. His view was founded on the fact that, the said case involved an application for revocation of grant of letters of administration while the application which gave rise to this appeal is premised on revision. The learned advocate went on to argue that, revocation of letters of administration is not automatic and that, it is by an order of the court. Mr. Kisika echoed by submitting that, the fact that

the administrator of the estate of the deceased did not file the inventory does empower the District court to determine the application for revision filed out of time. For the aforesaid reasons, this Court was urged to dismiss the appeal for want of merit. The learned advocates prayed for the costs of the appeal.

When Mr. Sanya rose to rejoin, he submitted that, the appellant filed the application for revision due to the irregularities in the proceedings and the order of the Primary Court in Probate Case No. 124 of 2010.

Having stated above, the issue for consideration is whether the present appeal has merit. In disposing of this issue, I am inclined to address the issue whether the application for revision before the District Court was time barred. The answer to issue is not hard to find. According to the Chamber Summons filed before the District Court, the appellant prayed the court “to be pleased to revise proceedings and orders in Shauri la Mirathi No. 124/2010 of Musoma Urban Primary Court.” The appellant did not request to revise the proceedings in Objection of Probate No. 124 of 2010 whose decision was rendered on 20/11/2019.

The provision of section 22(4) of the MCA cited in the Chamber Summons filed before the District Court, sets the time within which the proceedings of Primary Court should be revised by the District Court. The said section provides that:

*“No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject*

*of a revisional order under this section.”*

Reading from the above cited provision, I am in agreement with Mr. Masoud that, the jurisdiction of the District Court to revise the decision or proceedings of the Primary Court is twelve (12) months from the determination of the matter in the Primary Court. It follows that an application filed beyond the period of 12 months cannot be determined by the District Court.

It is on record that, the proceedings of the Musoma Urban Primary Court which the District Court was probed to revise was determined on 31/12/2010. Thus, the statutory time to revise the proceedings and order arising thereto lapsed on 30/12/2011. However, the application for revision which is led to this this appeal was filed in the District Court on 29/11/2019. That was after expiration of almost nine (9) years from the termination of the proceedings of the Primary Court. Therefore, I am in agreement with the learned advocates for the respondent that, the application for revision was time barred. As rightly argued by Mr. Masoud, the case of **Joseph Mniko and Others** (*supra*) relied upon by Mr. Sanya is distinguishable from the circumstances of this case. It related to application for revocation of grant of letter of administration which was not the case in the matter at hand.

The counsel for the appellant asked the Court to consider that there were irregularities in the proceedings of the Primary Court. It is my considered opinion that, an irregularity in the proceedings or decision of the Primary Court does not empower the District Court to determine the application for revision filed beyond the period of twelve months



prescribed by the law, unless an order for extension of time is first sought and granted. Likewise, failure by the respondent to file an inventory or his revocation from administering the deceased's estates was not a ticket for District Court to determine the application for revision filed out of time.

The above said, I find no reasons to quash the decision of the District Court. Consequently, this appeal is devoid of merit and it is hereby dismissed in its entirety. Considering that this is a probate and administration issue, this Court orders for each party to bear its own costs.

DATED at MUSOMA this 4<sup>th</sup> day of August, 2020.



E.S. Kisanya  
JUDGE  
4/8/2020

Court: Judgement delivered in open Court this 4<sup>th</sup> day of August in the present of the appellant in person and Mr. Masoud Hamis, learned advocate for the respondent.



E.S. Kisanya  
JUDGE  
4/8/2020