

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOSHI DISTRICT REGISTRY)**

AT MOSHI

MISCELLANEOUS APPLICATION NO. 24 OF 2020

*(Originating from Probate Appeal No. 1/2019 Moshi District Court,
Maombi madogo Na. 6/2018 of Moshi Urban Primary Court)*

ERENEDINA WILLIAM SWAI APPLICANT

VERSUS

ANDREA NEHEMIA SWAI 1ST RESPONDENT

ANNA ANGA SWAI 2ND RESPONDENT

RULING

MUTUNGI .J.

The Applicant herein dully represented by Mr. Emmanuel Karia, learned Advocate is praying inter-alia for the following orders: -

- (1) That, this Honourable Court be pleased to extend/enlarge time within which to file an appeal out of time against the decision in Probate Appeal No. 1 of 2019 of the District Court at Moshi.
- (2) Any other relief(s) the Honourable Court may deem fit and just to grant.

The above prayer is made pursuant to **Section 25 (1) of the Magistrates' Court Act, R.E. 2019**. In line with filing Misc. Application, the Applicant has also filed a Corresponding Affidavit thereto which the counsel prayed it forms part of his submission.

Submitting in support thereof, the learned advocate stated the Applicant was the Appellant in Probate Appeal No. 1/2019 and the Objector in Probate Petition No. 155/2018. On the other hand the Respondents had appealed from the original Probate No. 66/2018 filed at Moshi Urban Primary Court and were Respondents in Probate Appeal No. 1 of 2019. Immediately after the decision of Appeal No. 1 of 2019, the Applicant started making a follow up of the appeal documents (on 16/7/2019) but was asked to collect the same on 24/7/2019. The Applicant did visit the court on the promised date but the documents were not ready. She did not give up hence on 26/7/2019 and 30/7/2019 she once again inquired from the court but the documents were still not available. She learnt from the court officials that the trial Magistrate (Hon. P. Meena, RM) was on leave, that is why the documents were not readily available. In due of the fact that, the Applicant was running out of time, she sought for an

appointment to see the RM-In charge. This time around she managed to get the drawn order only (1.8.2019). The Applicant decided to file an application for revision but on 15/9/2019 her pleadings were rejected, since time was still not in her favour she decided to lodge her complaints with the Deputy Registrar.

Having entertained her, the Deputy Registrar on 9/9/2019 endorsed at the back of her petition of appeal, that she had 90 days to appeal from the date of the decree. In view of the Deputy Registrar's directives, the Applicant filed Appeal No. 17/2019 before this court, but the same was struck out on 3/7/2020 for being time barred.

The learned advocate contended that, in view of the foregoing narration, the Applicant has sufficient reasons to ask the court to extend her time. The Applicant's reasons meet the test in the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No. 12/2002 (CAT-D'SM unreported)**. Further that what the Applicant is required to do is to account for the whole period of delay as provided for in the case of **Tanga Cement (T) Ltd. vs. Jumanne Masangua and Amani**

Mwaulanga, Civil Application No. 6/2001 (unreported CAT-Arushu).

The Applicant's advocate added, there are material irregularities and legal issues in the Primary Court and District Court proceedings. To mention an example of the irregularities was the authenticity of the will. In the upshot the learned advocate, prayed the application be granted.

In reply thereto Miss Dorice Kinyoa representing both Respondents averred that, despite the fact that the Applicant alleges she received the copies on 30/7/2019 while the same were issued on 11/7/2019, still counting from 30/7/2019 the appeal period ended on 30/8/2019. Filing her appeal on 11/9/2019 was already out of time. The Respondents' advocate questioned the root the Applicant had taken. She explained it is surprising instead of filing an appeal she proceeded to file a revision more so she did this while in fact she had legal representation. She went on, to cite the case of **Metal Product Ltd vs. Minister of Land and Director of Land Services [1989] TLR 5**, where it was established, ignorance of procedure is not one of the categories for extension of time.

The counsel submitted further, she did not find anything wrong with the decision in Appeal No. 1/2019 filed in the District Court since the same was originating from the decision of the Probate Matter No. 66/2018 from the Primary Court.

In conclusion the learned advocate moved the court to find that, getting or receiving copies of appeal documents is a good cause but this should not draw sympathy of the court. It should further be remembered that in this matter, there is still a pending probate matter at the Primary Court. All that the Applicant is doing is to employ delaying tactics. The application should hence forth be dismissed with costs.

In re-joinder the Applicant's advocate expounded that, they had filed a revision against the decision in Appeal No. 1/2019 to get a proper interpretation of the court, on how the District Court could give a decision in matters still pending before the Primary Court. He then retaliated his submission in chief.

The court in light of the submissions has found itself faced with the question, whether the Applicant has demonstrated sufficient causes. The court is thus faced with a duty to exercise its discretion judiciously in carrying out this noble

task. It is now common knowledge that an application for extension of time like the one facing the court is entirely in its discretion to grant or refuse it. What then amounts to "sufficient cause" has been laid down in the case of **Tanga Cement Company (Supra)** that: -

"What amounts to sufficient cause has not been defined. "

From decided cases it has been laid down that a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay, lack of diligence on the part of the Applicant. Also to be considered is whether there is a point of law of sufficient importance such as illegality of the decision to be challenged as amplified in the case of **Principal Secretary, Ministry of Defence and National service vs. Derham Valambia [1992] TLR 185.**

It is undisputed that the impugned decision was delivered on 11/7/2019. The Applicant through the letter annexed to the supporting Affidavit, clearly shows that the Applicant vide letter dated 16/7/2019 did apply for copies of appeal documents. Reading through the Affidavit, the Applicant's grievances are that she was not supplied with the appeal

documents despite her serious follow ups, only to learn the trial Magistrate was on leave. This assertion is far from the truth, since the documents annexed prove that, the requisite documents were certified on 30/7/2019 and the Respondent's counsel had the same story. In that regard the documents were ready for collection by 30/7/2019. Paragraph 4 of the supporting Affidavit sworn by the Applicant spells out loud that indeed, she did get information that the appeal documents were ready by then but did not get assistance from the adverse party.

It would seem the Applicant is trying to impress upon the court that, she had filed a revision and an appeal struck out on 3/7/2020 the advice given to her and directives by the Deputy Registrar that she still had 90 days of appeal. The court finds that the Applicant's supposed inability to come to grips with the legal procedures after was aggrieved by the decision sought to be challenged is unacceptable. I am guided by the decision in the case of **Ali Vuai Ali vs. Suwedi Mzee Suwedi, Civil Application No. 1 of 2006** that a party's ignorance of law governing applicable procedures is not good cause for granting extension of time.


The applicant has raised the issue of illegalities in that the decision sought to be appealed against is tainted with illegalities which this court needs to look into. It has been settled that in such a situation where a claim of illegality of the challenged decision is raised, it constitutes sufficient reason for extension of time. Such authority is the one found in the case of **VIP Engineering and Marketing Limited and two other vs. Citibank Tanzania Limited consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported)**. Even though the illegalities have been explained but it is not a general rule that every applicant who demonstrates that the intended appeal raises points of law, should, as of right, be granted extension of time if he applies for one. In the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** the court emphasized"

"Such point of law must be that of sufficient importance and, I would add 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."

Applying the above mentioned principle to the instant application, I have not been moved by the applicant to find the illegality mentioned, such as the authenticity of a will, apparent on the face of the record. It will take a long argument to solve the same. Thus it cannot be termed as a sufficient cause to grant the prayers sought in this application.

In the upshot, under the circumstances pertaining in this application, I find no sufficient cause demonstrated by the applicant and in the event, the same is dismissed with costs.




B. R. MUTUNGI
JUDGE
23/10/2020

Ruling read this day of 23/10/2020 in presence of Mr. Emmanuel Karia for the Applicant and the 1st Respondent.


B. R. MUTUNGI
JUDGE
23/10/2020

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI

JUDGE

23/10/2020