

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

MISC. APPLICATION NO. 475 OF 2018

(Being an application for extension of time of file and Appeal against the Judgment and Decree of the Ilala District Court, dated 23rd May, 2016 in Civil Appeal No. 60 of 2015 at Ilala Hon. Kiyoja, RM)

SALIM OMARY.....APPLICANT

VERSUS

KARAMA OMARY RIZEG.....RESPONDENT

RULING

Date of last Order: 14/07/2020

Date of Ruling: 02/10/2020

MLYAMBINA, J.

Under the provision of *Section 25 (1) (b) and the proviso thereof, of the Magistrates Courts Act Cap 11 (R.E. 2002)*, the Applicant has applied for extension of time within which to enable the Applicant to lodge an intended appeal out of time, against the Judgment and Decree of the Ilala District Court dated 23rd May, 2016 arising out of *Civil Appeal No 60 of 2015*, originating from the Buguruni Primary Court.

The application is supported with the affidavit of the Applicant Salim Omary. Paragraph 2 through paragraph 10 of the supporting affidavit states:

- 2) That, the decision of Ilala District Court (against which is intended to be appealed) was pronounced on 23rd May, 2016.
- 3) That, a notice of intention to appeal the above-mentioned decision was previously registered on 22nd July, 2016. Subsequently, my appeal was assigned a number as *PC Civil Appeal No. 72 of 2016*.
- 4) That, after realizing that the said appeal was instituted without being an order for enlarging the time to do so, when the matter came up for a hearing, my Advocate sought a permission from the Court to withdraw it so that he could rectify the situation.
- 5) That, on 19th December, 2017 the Honorable Judge Dyansobera granted the said application to withdraw.
- 6) That, immediately thereafter, my Advocate yet filed an application for extension of time to bring an appeal before the Court. That application was given an identity as *Misc. Civil Application No. 14 of 2018*.
- 7) That, when the matter came up for a hearing on 17th April, 2018 (Before Honorable Muruke, J) my Advocate conceded to a point raised *suo mottu* by the Court that the proper citation for an application for extension of time in probate

matter being appealed from District Courts is *Section 25 (1) (b) of the Magistrates Courts Act (Cap, R.E 2002)* and not *Section 25 (1)* of the said law as my lawyer had indicated in the chamber summons that was filed in the High Court on 5th January, 2018.

- 8) That, I am still aggrieved by the decision Ilala District Court which affirmed that of Buguruni Primary Court, on various grounds including illegalities, fraud, concealment, unexplained loss of vital trial document, violation of the right to be heard and other irregularities.
- 9) That, the period of 30 days within which to file a Notice of Appeal has long expired.
- 10) That, I have instructed my Advocate to relentlessly proceed with fighting for my rights so that at the end justice prevails.

The application was resisted through the Counter Affidavit of the Respondent Karama Omary Rizeg. By consent of both parties, the application was disposed by way of written submissions. Both parties are not in dispute as regards the guiding principles of granting extension of time. That is proof for existence of sufficient cause as expounded in various cases including the leading East

African decision of **Shanti v. Hindocha** (1973) EA 207. According to the Applicant:

- i) The proceedings are riddled with illegalities/irregularities, namely:
 - a) The Magistrate who presided over the Probate Case was not designated District Delegate, but rather went to preside over the matter as the Ordinary Magistrate;
 - b) No valuation was ever done to ascertain the value of each of the numerous properties of the deceased that were at the centre of the administration;
 - c) The Court ignored the Applicant's case and prayers including that of his application to be made as a Co-Administrator.
 - d) It was not reflected as to the where-about of the letter that was tendered by the application the Buguruni Primary Court, as the same never made into the record when the matter reached the District Court of Ilala on appeal.
 - e) The Ilala District Court never addressed each and every issue presented to it by the Applicant therefore, denying him with the opportunity to be heard.

On the question (s) of illegalities, the Applicant cited the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority, The Liquidator of Tri-Telecommunication (T) Limited v. Citibank Tanzania Limited**, Court of Appeal of Tanzania at Dar es Salaam consolidated Civil Referenced No. 6, 7 and 8 of 2006.

The Applicant advanced other two points. **One**, this case involves a point of law of great public importance relating to distribution of the deceased's assets without first making official valuation and preparing a properly-kept inventory. To appreciate that point of great public importance the Applicant cited the case of **Selina Chibago v. Finishas Chibago**, Court of Appeal of Tanzania at Dar es Salaam, *Civil Application No. 182 "A" of 2007* (unreported) in which it was held:

This Court therefore has a duty to ascertain this point and if established to take appropriate measures to rectify the situation. This will be possible if the Court will grant extension of time to the Applicant...we take this to be a point of law of great public importance to be decided by this Court whatever its consequences.

Two, the case involves a point of law as to whether a competent heir wishing to become a Co- Administrator of his deceased father's estate can simply be arbitrarily denied the exercise of such wish especially under a situation where he has apprehension that the estate is at risk to be properly distributed.

In reply, the Respondent opposed the point of irregularities as there were no place where the irregularities were exemplified. For example, in the judgment of the District Court of Ilala at Samora Avenue, before Honorable Kiyoja, RM she was of the following to say on the above issue of irregularities:

The Appellant (Salim Omary) as a son of the deceased involved in all process made by the Respondent (Karama Omary Rizeg) including the listing of the deceased estates. He had full knowledge that the house situated at Ilala Sharrif Shamba is one of the deceased estates, according to the position of law. Equally, the Respondent disputed the submission that there is a point of law of great public importance as the same was answered by the District Court of Ilala at Samora avenue, in which Honorable Kiyoja, RM has the following answer to the above ground:

...I am also perused at the Primary Court record, it shows clearly that the Appellant (Salim Omary) was appeared and given a right to be heard as SM2, he supported all the evidence produced by the Respondent (Karama Omary Rizeg) to be true. He prays the Respondent to be appointed as administrator of the estate of the deceased father having a full knowledge of the deceased estate. He raised no objection on the appointment of the Respondent (Karama Omary Rizeg) on the list of deceased estates...

Further, the Respondent opposed existence of point of law because while the case was at District Court of Ilala at Samora avenue, the above ground was answered by Honorable Kiyoja, Resident Magistrate and she stated the following:

...He raised some of complainants before the trial Court praying to be appointed as Co-Administrator of the estates of the deceased, at the same time complained ownership of the house situated at Ilala Sharif Shamba. It is my view that, the trial Court deals properly with the application made by Respondent (Karama Omary Rizeg) and supported by the beneficiaries as required by the law. The application made by

the Appellant (Salim Omary) is out of time, that it has no legs to stand.

I have passionately considered the submissions of both parties along with the affidavit evidences supporting and opposing the application. I noted, despite of the legal technicalities the Applicant promptly filed this application. The Applicant never slept on his rights.

I'm also persuaded that the Court on appeal will have to decide on whether the Magistrate who presided over the Probate case was designated as the District delegate and as to whether the Applicant was fully heard and each of the issues decided.

The above observed, I grant this application with no costs. the Applicant is given 14 days from the date he is issued with the copy of this ruling to lodge his appeal. It is so ordered.



Y. J. MLYAMBINA

JUDGE

02/10/2020

Ruling delivered and dated 2nd October, 2020 in the presence of both parties in person.



Y. J. MLYAMBINA

JUDGE

02/10/2020

A handwritten signature in black ink is written over the text. The signature is cursive and appears to be 'Y. J. Mlyambina'. It starts with a small 'Y' and ends with a long horizontal stroke.