

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

AT DAR ES SALAAM

PROBATE AND ADMINISTRATION CAUSE NO 31 OF 2019

**IN THE MATTER OF THE ESTATE OF THE LATE CELCIUS
SALVATORY SADDA**

AND

**IN THE MATTER OF APPLICATION FOR LETTERS OF
ADMINISTRATION**

BY VERONICA CLARA ESSANGA

RULING

Date of last Order: *12/08/2020*

Date of Ruling: *27/10/2020*

MLYAMBINA, J.

On 13th day of June, 2019, Venonica Clara Essanga petitioned before this Court for a grant of Letters of Administration of the Estate of the late Celcius Salvatory Sadda who died at Dar es Salaam on 6th April, 2017.

General citation was issued through Uhuru Newspaper dated 9th July, 2019 ISSN No. 0876-3896 No. 23430 and through Government Gazette dated 19th July, 2019 ISSN 0856-0323 G.N No. 831.

On 28th February, 2020 Michael Celcius Satta filed a caveat against the Petitioner. When the petition came for mention on 1st April, 2020, this Court suo moto raised a *plea in limine lits* that the caveat was hopelessly filed out of time and wanted the parties to address the Court on the competence of the caveat.

The Petitioner was represented by Learned Counsel Bahari Juma. The Caveator was represented by Learned Counsel Baraka Maungo, it was fortunate that Counsel Baraka Maungo conceded with the preliminary objection and cited among other authorities, the case of **Mwajuma Ahmada Mzee v. Hadija Ahmada Mzee and 2 Others**, Civil Application No. 104/15 of 2019 (unreported) in which at page 6 and 7 of the ruling, the Court stated:

That said, since the current application was lodged on 30th October, 2018 after lapse of more that Forty Two (42) days beyond the prescribed period of fourteen (14) days, the same is time barred. Eventually and for the foregoing reasons, the incompetent application is hereby struck out for being time barred. I make no order as to costs. Order accordingly.

Counsel Baraka Maugo, however, prayed to withdraw the caveat. The prayer of which was resisted by Counsel Bakari Juma. I have two reasons to refuse the prayer of withdrawing the caveat after the *plea in limine litis* has been raised.

One, it is an accepted principle of law that one cannot make a prayer or raise another preliminary objection before determination of the first raised preliminary objection. If such act is allowed, it amounts to pre-empting the preliminary objection. In the case of **Kimomogoro v. the Board of Trustees of Tanapa**, Civil Application No. 1 of 2005 (unreported) the Court observed with emphasis:

This Court has said in a number of times that it will not tolerate the practice of an advocate trying to pre-empt a preliminary objection either by raising another preliminary objection or trying to rectify the error complained of.

Two, as replied by Counsel Bakaria Juma, this Court lacks jurisdiction to entertain a caveat filed out of time. In the case of **Paul Reginald Bramely Hii v. Security Group Cash in Transit (T) Ltd**, Revision No. 21 of 2013 this Court quoted with approval the Court of Appeal decision in the case of **Juma Mtungirehe v. the Bord of Trustees Tanganyika National**

Parks t/a Tanzania National Parks, Civil Appeal No. 66 of 2011 (unreported) in which it was held:

I also find that what matters is that prescribed time has passed, not how much time or for what reason it has passed. Once time has lapsed, the Court has no jurisdiction in the matter unless extension of time has been applied for and granted.

In the premises of the above observation, I hereby uphold the preliminary objection raised by the Court and proceed to dismiss the caveat for being time barred. Costs be shared.

Y. J. MLYAMBINA

JUDGE

27/10/2020

Ruling delivered and dated 27th October, 2020 in the presence of Bakari Juma, Advocate for the Petitioner and Baraka Maugo, Advocate for the Caveator.

Y. J. MLYAMBINA

JUDGE

27/10/2020