

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

**MISCELLANEOUS CIVIL APPLICATION NO. 600 OF 2019**

**ZATIA SALEHE-----APPLICANT**

***VERSUS***

**SAID SALUM RAMADHANI----- RESPONDENT**

**RULING**

*Date of last order: 11.03.2020*

*Date of Ruling: 20.03.2020*

**Ebrahim, J.:**

The applicant herein has filed an application to be extended time to refile an application for extension of time after the previous application for extension of time being struck out by this Court with leave to refile within 14 days. The application has been preferred under the provisions of **section 93 of the Civil Procedure Code, Cap 33 RE 2002** and **section 14(1) of the Law of**

**Limitation Act, Cap 89 RE 2002.** The application is supported by an affidavit of Zatia Salehe, the Applicant.

The applicant had initially filed an application (Miscellaneous Civil Application No. 3 of 2019) for extension of time to apply for revision against the decision of the District Court for Kinondoni in Probate Appeal No. 28 of 2017. However her application was caught in a web of preliminary objection that the affidavit in support of her application was defective. Following the raised points of law, this Court, Hon. Masabo, J on 23<sup>rd</sup> May 2019 struck out the application and suo motto granted the applicant leave of 14 days from date of the ruling to refile the application for extension of time.

The genesis of this application goes to the decision of District Court for Kinondoni in Probate Appeal No. 28/2017 where it confirmed the decision of the Primary Court in a Probate Cause No.89/2015 appointing both the applicant and the respondent to be the administrators of the estate of the late **Salum Ramadhan**

**Kiwambilo.** The applicant was also aggrieved that the Primary Court declared the respondent to be the son of the deceased without any concrete evidence, thus the quest for application for revision.

When the matter was called for hearing, both parties appeared in person unrepresented.

The applicant adopted the contents of her affidavit and simply prayed to be extended time again.

The respondent also adopted the contents of his counter affidavit and objected the application on the ground that the case has taken long time.

In rejoinder, the applicant reiterated her prayers.

Indeed extension of time is granted by the Court in exercising its judicial discretion upon establishment of sufficient cause which prompted the delay by the applicant.

In the case of **Rutagatina C.L. V The Advocates Committee and Another**, Civil Application No. 21 of 2011 this Court expounded what constitute sufficient reasons for court's consideration and held that it is the reason that court would accept what prevented the applicant from taking essential step in time; or other reasons why the intended appeal(in our case application for revision) should be allowed to proceed though out of time.

The Court of Appeal, in the case of **Aluminium Africa Ltd V Adil Abdallah Dhyebi and others**, Application No. 6 of 1990 (Unreported) expounded further on what amount to sufficient reason by holding that the applicant must show that the delay was **not out of negligence, disinterest or lack of diligence** and **has to account for each day of the delay.**

The applicant has averred in para 4 to 12 of her affidavit that failure to adhere to the order of this court wanting her to refile the application for extension of time to file revision was caused by her misinterpretation of the ruling of the court into thinking that the

matter has been dismissed. Consequently she embarked on the journey of requesting for copies of ruling, proceedings and drawn order so that she can lodge an appeal at the Court of Appeal. She came to learn about the exact order of this court when she was availed with the said copies on 5<sup>th</sup> September 2019 and by then the said 14 days had already lapsed. She insisted that the intended application for revision raises serious matters for consideration by this court.

The respondent in his counter affidavit strongly disputed the application and argued that the same is contradictory.

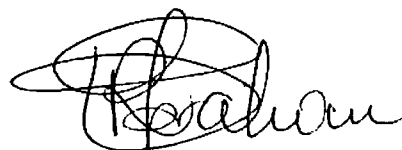
As alluded earlier, grant of extension of time is the discretion of the court judiciously exercised. After the struck out order, the applicant here was availed 14 days by the court so that she did not have to explain the time from when the application was struck out. Nevertheless, as the general rule, once the matter is struck out, it does not prohibit the applicant to file it again. In this case the applicant is applying for extension of time to file revision and she

has explained the reason for not meeting the granted 14 days leave. All in all even if the applicant was not granted the said leave she would come back with the same application of extension of time and undoubtedly application for extension of time has no time limitation.

The above notwithstanding, there are instances where extension of time can be allowed depending on the overall circumstances surrounding the case. Court of Appeal has in many cases decided that each case should be looked at its own facts, merit and circumstances. See the cases of **CITIBANK (Tanzania) Ltd V TTCL, TRA & Others**, Civil Application No 97 of 2003 (unreported), and **William Malaba Butabutemi V Republic**, Criminal Application No 5 of 2005 (unreported) where the Court of Appeal referred to an English case of **Property & Revisionary Investment Corporation Ltd V Temper & Another** [1978] 2 All E.R. 433. In that case, special circumstances were considered in allowing the applicant to file an appeal out of time.

This case originates from a probate matter where rights of beneficiaries still await. The applicant seeks to challenge the validity of her co-administrator and his position as to whether he is the son of the deceased. It is on those special circumstances that I am inclined to allow the applicant to file a proper application for extension of time to be allowed to lodge his application for revision. The applicant is granted fourteen (14) days from the date of being availed with a copy of this ruling and a drawn order to refile the said application. Being an application originating from a probate matter, I give no order as to costs.

Ordered accordingly.



**R.A. Ebrahim**

**JUDGE**

**Dar Es Salaam**

**20/03/2020**