

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

MISCELLANEOUS CIVIL APPLICATION NO. 811 OF 2018

HUSSEIN SAID MUHODE-----PETITIONER/APPLICANT

VERSUS

FLORA NDIRIMBO-----CAVEATOR/RESPONDENT

RULING

Date of last order: 21.02.2020

Date of Ruiling: 13.03.2020

Ebrahim, J.:

The applicant herein has filed an application to be extended time to file an application for revision against the ruling of Kinondoni District Court in Probate and Administration Cause No. 5 of 2015 dated 18th December 2015. The application has been preferred under the provisions of **section 14(1) of the Law of Limitation Act, Cap 89 RE 2002 and Section 79(1) of the Civil Procedure Code, Cap 33 RE 2002.** The application is supported by an affidavit of one Christian Laurent Rutagatina, Counsel for the Applicant.

The genesis of this application goes back to the ruling of the District Court of Kinondoni where the subordinate court joined the respondent herein as a co-

petitioner in Probate and Administration Cause No. 5 of 2015. In the above mentioned application, the applicant herein petitioned for letters of administration of the Estate of the late Ally Salum Mzeru. Aggrieved by the decision of the subordinate court, he filed an application for revision which according to his averment at para 2 and 3 of the affidavit, he withdrew the application with leave to refile to rectify the mistake pointed out by this Court. Considering that the decision of the District Court was delivered on 18th December 2015, he filed the present application for extension of time.

When the matter was called for hearing, the applicant was represented by Advocate Rutagatina. The respondent was represented by Madame William. Both Counsels prayed for the application to be argued by way of written submission. The court granted the prayer and set a schedule thereto.

Submitting in support of the application, Mr. Rugatina adopted the affidavit to form part of their submission. Hereferred the court to the decision of the Court of Appeal in the case of **Rutagatina C.L. V The Advocates Committee and Another**, Civil Application No. 21 of 2011 in expounding what constitute sufficient reasons for court's consideration. He expounded that court would accept what prevented the applicant from taking essential step in time; or other reasons why the intended appeal should be allowed to proceed though out of time. He explained the reasons

for the delay was followed by the withdrawal of the previous application for revision i.e. Miscellaneous Civil Application No. 85 of 2016 after the advice from hon. Mutungi, J.

He further went on to challenge the counter affidavit filed by the respondent that it offends the general rule of practice and procedure as it contain extraneous matters and prayers. He cited the case of **Uganda Vs Commissioner of Prison Ex-Parte Matovu** (1996) EA 514 at 520. He prayed for the counter affidavit to be rendered incompetent.

Responding to the submission by the Counsel for the Applicant, Counsel for the Respondent while noting the authority cited by the applicant of Rutagatina Case (supra); contended that there is no any sufficient reason for the delay that has been established by the applicant. Counsel or the respondent cited the case of **Dr. Ally Shabay Vs. Tanga Bohora Jamaat** [1997] TLR where the Court of Appeal insisted those who go to court to show great diligence. She also referred to the case of **Barenga Ngozi Vs Mary Ntuzwe** [2002] TLR 141 which insisted on sufficient reasons for extension of time. She prayed for the application to be dismissed with costs. In rejoinder, Counsel for the applicant submitted at length on the efforts they took to obtain the ruling. He referred to various decision on the duty of the court to extend time where shutting down the matter would amount to

injustice – **Boney N. Katatumba Vs. Waheed Karim**, Civil Application No. 27 of 2007. He further narrated a series of events from when the ruling of Kinondoni District Court to when they were availed a certified copy of ruling and drawn order on 24th December 2018. He urged the court to extend time on the wisdom that shutting it down would cause injustices particularly after listing the prolonged request of files the relevant documents. He reiterated their prayer.

I have careful followed the rival submissions from both counsels and I have read the affidavit and counter affidavit of the applicant and the respondent respectively. The main task for determination by this court is to determine as to whether the applicant has advanced sufficient reasons to make this court exercise its discretion to extend time.

Indeed extension of time is granted by the Court upon exercising its judicial discretion upon establishment of sufficient cause which prompted the delay by the applicant. The principle has been elaborated in the case of **Mumello Vs Bank of Tanzania** [2006] 1 EA 227 where it was held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause".

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 amounts 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 his affidavit and emphasized in the submission that the previous application for revision which was filed within reasonable time, as there was no objection on time, was withdrawn with leave to refile following the defect pointed out by this court on 29th March 2017. Thereafter, the applicant's Counsel has explained the huddles and efforts he exerted in obtaining the pre-requisite documents that would enable him to file a competent revision. Indeed it is a fact that after the withdrawal of the application for revision and the fact that the ruling of the subordinate court was delivered back in December 2015, the applicant would be out of time to file revision hence the present application.

Indeed one would say that the applicant has not accounted each day of delay from the date of withdrawal of the application for revision to when this application was lodged. However looking at the whole scenario and

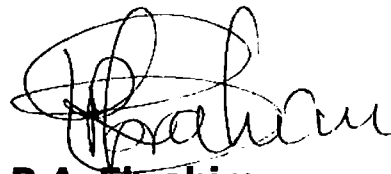
efforts exerted by the applicant to pursue his application, it is clear that the applicant was not disinterested with his cause. That notwithstanding, there are instances where extension of time can be allowed depending on the overall circumstances surrounding the case. Court of Appeal has in many cases 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 is a case originating from a probate matter where rights of beneficiaries still await. I therefore find it that it would be just if matters are extensively adjudicated so as no one is left out.

It is on those special circumstances that I am inclined to agree with the Counsel for the applicant in the spirit of the cited **case of Boney N. Katatumba** (supra) and allow the application for extension of time so that the applicant can 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 file the intended revision. Being an application originating from a probate matter, I give no order as to costs.

Ordered accordingly.

A handwritten signature in black ink, appearing to read 'R.A. Ebrahim', written in a cursive style.

R.A. Ebrahim

JUDGE

Dar Es Salaam

13.03.2020.