

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

MISC. CIVIL APPLICATION NO. 730 OF 2018

*(Arising from Misc. Civil Application No. 4 of 2015 and Misc.
Civil Application No. 375 of 2017; Origin Probate and
Administration Cause No. 28 of 2005)*

MARTHA EMMANUEL KARLO.....APPLICANT

VERSUS

JESCA GORDON ELIAS KARLO..... 1ST RESPONDENT

ELISHA KARLO MUHEHE.....2ND RESPONDENT

RULING

Date of last order: 26/11/2019

Date of Ruling: 31/03/2020

S.M. KULITA, J.

This is an application for an extension of time for leave to apply for an order to set aside the order of discharging the administrators of the estate of the Late Gordon Elias Karlo in the Probate and Administration Cause No. 28 of 2005. The application is made under section 14(1) of the Law of Limitation Act [Cap 89 RE 2002] and Section 95 of the Civil

Procedure Code [Cap 33 RE 2002]. The application is accompanied with a chamber summons and the affidavit sworn by **MARTHA EMMANUEL KARLO**, the applicant.

In the affidavit the applicant prays to be granted leave to file the application to this court to set aside an order of discharging the administrators of the deceased estate delivered by this court on the 11/12/2014 and the reasons are stated from paragraph 9 to 15 of the affidavit.

The application was heard by way of written submissions. The applicant's advocate Ms. Simkoko started to submit by praying for the contents of the affidavit to be adopted as part of her submissions.

Ms. Simkoko stated that the administrators were discharged on the 11/12/2014 where the applicant became aware of the ruling on 12/12/2014. Being aggrieved with the said ruling she filed Misc. Civil Application No. 375 of 2017 on the date that she had not mentioned. The said application was withdrawn on the date that the applicant also never mentioned with the leave to re-file. She submitted that on the 16/11/2018 the said application was refilled and admitted. She said that the cause of delay is the technical, illegality and the degree of prejudice which led the applications to be struck out by the court, the last previous being declared functus officio. Ms. Simkoko

submitted that the delay was technical issue which was not caused by the negligence of the applicant. As for the 1st application which was withdrawn Ms. Simkoko stated that the applicant had not filed it immediately after the struck out of the original matter because the applicant was not financially fit to engage the advocate.

Ms. Simkoko also stated that there is illegality with regard to the distribution of the estate of the deceased by the administrator which needs court's intervention.

Replying the applicant's submissions the respondents through their advocate Mr. Banana prayed for the contents of their counter affidavit to form part of their submission. Mr. Banana then stated that normally the application for extension of time is granted at the discretion of the court upon good cause being shown by the applicant. He is of the view that the applicant has failed to demonstrate good cause to warrant the court to grant the extension of time.

Mr. Banana submitted the length of delay being three years, eleven months and six days is inordinate and beyond imagination. He challenged that the applicant demonstrated the cause of delay to be the technical delay, illegality and the degree of prejudice. He said that that is not a source of delay. He said that the applicant filed the first application which was

struck out by the court for being functus officio. In that sense even the success of the present application for extension of time will be useless because the reasons demonstrated cannot be as good cause to grant the intended application.

Lastly Mr. Banana submitted that the ground for extension of time is granted upon showing good cause for delay where as in the case at hand delay was occasioned by the negligence of the applicant and her advocate.

In conclusion he submitted that the application has no merit to warrant the applicant extension of time.

In her rejoinder submission the applicant's advocate still maintained that the applicant has advanced sufficient reasons and that illegality in the distribution of the deceased estate should be intervened by this court. She said that the said distribution is governed by the law, the act of the administrator (1st Respondent) to allocate to herself the property valued at Tsh. 629,000,000/= located at Mikocheni leaving the applicant and others with less valued properties to inherit is illegal which is a sufficient ground to warrant the applicant extension of time.

Upon going through the submissions of the advocates I have this to say; It is a settled principle that before granting an extension of time the applicant must establish sufficient cause

for the delay while keeping in mind that powers to grant an extension of time is entirely in the discretion of the court but it should be exercised judiciously.

If we put the matter at hand into test to assess if it has fulfilled the conditions to warrant extension of time we may go through the Court of Appeal case namely **LYAMUYA CONSTRUCTION COMPANY LTD V. BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010 (UNREPORTED)** in which the following conditions were set;

- (i) The applicant must account for all the period of delay*
- (ii) The delay should not be inordinate.*
- (iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) If the court feels that there other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge.*

In her submission the applicant's advocate, instead of giving an account for delay for order of the court dated 11/12/2014 which discharged the administrator, she based on giving an account for delay of the subsequently withdrawn application

only. As for the period ranging between the discharge of the administrators and filing the 1st application the applicant's advocate just gave the general reasons that the applicant was finding money for hiring the advocate, the reasons which requires a proof for the court to agree. Under that circumstances the day to day delay has not been accounted for, thus the first condition does not fit in the matter at hand.

The second test is that the delay must not be inordinate; in my view the period of three years, eleven months and six days is inordinate to warrant her extension of time, I therefore agree with the respondents' advocate that the delay is inordinate which required sound reasons to be accepted.

With regard to the third test I find that the applicant was not diligent in prosecuting her case due to the fact that after the order of discharging the administrators the matter proceeded with a number of unsuccessful applications. That situation connotes that the applicant and her advocate were both negligent for not being diligent enough to make inquiry on the position of the law before filing those wrong applications. It suffices to say that they were tossing the lucky coins.

The applicant's advocate also submitted the issue of illegality of distribution of the deceased estate by the administrators. I am of the view that it is not worthy to discuss the said issue of

illegality at this stage not only for the reason of immaturity but also for the fact that the other grounds have already proved failure.

Under Section 14(1) of the Law of Limitation Act this court is vested powers to extend time to file application out of time but there must be reasonable or sufficient cause submitted by the applicant before the court. The section states;

*"..... The court may, **for any reasonable or sufficient cause**, extend the period of limitation for the institution of an appeal or an application, other than application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the said period of limitation prescribed for such appeal limitation prescribed for such appeal or application"(**emphasis is mine**)*

The term "*reasonable or sufficient cause*" has not been interpreted there in the statute but it has been clarified in several decisions of the Court of Appeal to mean the situation in which the Applicant had no powers or influence to enable the necessary steps to take place in time for the application or appeal to be lodged in time. The applicant must have established that he has acted diligently, reasonably and promptly to make sure that he

lodges the appeal or application in time. See the case of **BRAITON SOSPETER @ MZEE & TWO OTHERS V. R, Criminal Appeal No. 358 of 2009 (unreported)** and **BENEDICT MUMELO V. BANK OF TANZANIA, Civil Appeal No. 12 of 2002, CAT at Dar es Salaam (unreported)**.

In upshot the applicant has failed to show sufficient cause for this court to grant the application for extension of time, hence dismissed. As the application involves family matters I make no orders as to costs.



S.M. KULITA

JUDGE

31/03/2020