

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**PC. PROBATE APPEAL NO. 01 OF 2020**

*(Arising from Probate Appeal No.01 of 2019 of the District Court of Meatu at Meatu)*

**MASANJA LUPONYA.....APPELLANT**

**Versus**

**ELIAS LUBINZA MASHILI.....RESPONDENT**

*Date of Last Order: 28/04/2020*

*Date of Judgment: 27/05/2020*

**JUDGMENT**

**C. P. MKEHA, J**

On 17<sup>th</sup> June, 2019 the respondent petitioned for letters of administration of the estate of the late Kija Mashili Jisena who passed away on 09<sup>th</sup> August, 1987. The appellant objected. One of the reasons for objection was that, the petition for grant of letters of administration was filed out of time, the same having been filed thirty two (32) years after the deceased's death without sufficient reasons for the delay. The trial Resident Magistrate upheld the objection on the basis that, the petitioner failed to give reasons of his delay

in filing the petition for such a long period of time. The petition was therefore struck out.

The first appellate court did not attach weight to the respondent's delay in petitioning for letters of administration. Neither did it consider the respondent's failure to account for the delay. It however overturned the trial court's decision. The respondent was therefore appointed the administrator. This time around, grievances shifted to the appellant's side. That is how the matter reached this court.

Whereas the appellant was represented by Mr. Audax Constantine learned advocate, the respondent appeared unrepresented. On the hearing date, Mr. Audax learned advocate opted to abandon the first two grounds of appeal. The learned advocate argued the following ground of appeal:

*That, in view of the respondent's claim and evidence adduced before the trial court, the first appellate court erred in law and fact for failure to hold that, the former court lacked jurisdiction.*

It was the learned advocate's submission that, before Kimali Primary Court, the court upheld the appellant's objection to the effect that, since the deceased died in 1987, it was improper for Probate Petition to be filed in

2019, after expiry of thirty two (32) years since when the deceased died. The learned advocate went on to submit that, there was no dispute as to the date of death of the deceased and that, for that reason, the trial court decided that, in the absence of special and reasonable explanation, it would be improper for the court to entertain such an application.

In his further submission the learned advocate cited the case of **Abasi Kambuga & Two Others Vs Mbaraka Abasi Kambuga, Probate and Administration Appeal No.1 of 2015** (HC) at Sumbawanga in which it was held that, there ought to be time limit for filing Probate Petitions and that the time limit for filing those cases is 60 days from the date on which the deceased died. The learned advocate insisted that, in any case thirty two (32) years was more than excessive delay.

In his reply, the respondent submitted that there was a reason for delay. That, the deceased's heirs were at all times in occupation of the estate subject of this probate matter hence the issue of delay could not arise.

From the parties' rival arguments, the following issue arises:

*Whether the Law of Limitation Act has any manner of applicability to an application for grant of letters of administration.*

It was the learned advocate's submission that Probate Petition ought to have been filed within sixty (60) days since when the deceased passed away. Reliance was put on the decision in **Ramadhan Said Abasi Kambuga & Two Others Vs Mbaraka Abasi Kambuga** (supra) whereby the court held that since there is no time limit provided under the Law of Limitation Act, the sixty days' rule provided under Paragraph 21 Part III of the Schedule to the Law of Limitation Act, ought to apply.

The respondent was of the view that an issue of delay could not arise in circumstances whereby the properties were at all times in the hands of the requisite heirs. The respondent did not explain during hearing of the objection before Kimali Primary Court, as to when actually the properties ceased to be in the heirs' hands. He merely notified the trial court that when the deceased died in 1987, he was in Mbeya. The respondent remained silent on when he got knowledge of the deceased's death.

In the case of **Majuto Juma Nshahuzi Vs Issa Juma Nshahuzi, P. C. Civil Appeal No.9 of 2014** (HC), at Tabora, the court held that there is no specific time limit for petitioning for letters of administration and that it would not be in the interests of justice to have such a provision. In **Probate and Administration Cause No.03 of 2019** before **the High Court of Tanzania at Musoma District Registry, in the Matter of the Estate of the Late Noela Songo Nyekaji** in which **Majura Songo Nyekaji** was the **petitioner**, the court held that, although no specific period of limitation is laid down, there should be no unwarranted delay in bringing such proceedings. The court held further that, supporting a petition with a statement explaining the delay is mandatory if the petition is filed more than three years after the deceased's death.

I subscribe to the above cited decisions in lieu of the one cited by the learned advocate for the appellant. The two decisions are in accord with Rule 31 of the Probate Rules. The said Rule provides:

*"(1) In any case where probate or administration is for the first time applied for after expiration of three years from the death of the deceased, the petition shall contain a statement explaining the delay.*

*(2) Should the explanation in the petition be unsatisfactory the court may require such further proof of the alleged cause of delay as it may think fit."*

The decisions in the two cases reflect what have been approved to be correct interpretation of the law by the Court of Appeal. In the case of **Mwaka Musa Vs Simon Obeid Simchimba, Civil Appeal No.45 of 1994**, the Court observed that:

*"We agree with Mr. Maira's submission that in view of section 31(1) of the Probate and Administration Ordinance, Cap 445, (the Court must have been referring to the Probate Rules) the Law of Limitation Act, 1971 is not strictly applicable in matters of probate. In that section, it is provided that in any case where probate or administration is for the first time applied for after three years from the death of the deceased, the petition shall contain a statement explaining the delay."*

From the above cited cases the position of the law as it now stands is that, under the Law of Limitation Act no period is prescribed within which an application for grant of letters of administration must be made. However, it seems that, in terms of Rule 31(1) & (2) of the Probate Rules, delay beyond

three (3) years after the deceased's death would arouse suspicion and the greater the delay the greater would be the suspicion. That should not be interpreted to mean that, there is any law which compels the applicant to file the proceedings for grant of letters of administration within a given time. The right to apply accrues when it becomes necessary to apply which may not necessarily be within three (3) years from the date of the deceased's death. However, unwarranted delay is discouraged. That is why it is also the position of the law that, once there is delay, such delay must be explained by the intending applicant. The intending applicant who succeeds in assigning reasons for delay would certainly be allowed to petition for grant of letters of administration regardless the extent of delay. This follows truth that, the question of delay is a question of fact.


As indicated earlier in this judgment, the respondent got an opportunity of explaining reasons for the delay through an objection raised by the appellant before the trial court. There was no dispute that the deceased died in 1987. The respondent is on record to have told the trial court that when the deceased passed away, he (the respondent) was in Mbeya. The respondent was however uncertain as to when he got knowledge of the deceased's death. He neither told the trial court as to when the properties subject of

this case ceased to be in the heirs' hands as to necessitate the filing of Probate Petition thirty two (32) years after the deceased's death.

The first appellate court's decision that the trial court failed to explain the mandatory procedure to the respondent was unjustified in circumstances whereby the respondent had failed to explain his reasons for delay through the appellant's objection to which he (the respondent) had three witnesses. Given the extent of delay, being thirty two (32) years since when the deceased died, the trial court was justified to strike out the petition after upholding an objection that there was no statement from the applicant explaining the reasons for the delay.

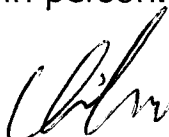
For the foregoing reasons, the first appellate court's decision is set aside. In its place, I restore the trial court's decision. I make no order as to costs. Appeal allowed.

Dated at **SHINYANGA** this **27<sup>th</sup> day of May, 2020.**

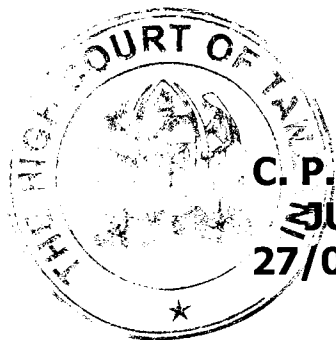

  
**C. P. MKEHA**  
**JUDGE**  
**27/05/2020**



**Court:** Judgment is delivered in the presence of Mr. Audax learned advocate for the appellant and the respondent in person.

  
**C. P. MKEHA**  
**JUDGE**  
**27/05/2020**

**Court:** Right of further appeal to the Court of Appeal of Tanzania is explained.

  
  
**C. P. MKEHA**  
**JUDGE**  
**27/05/2020**