

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
MISC. LAND APPLICATION NO. 19 OF2021

(Arising from the decision of the District Land and Housing Tribunal for Mwanza in Application No. 731 of 2017 dated 28/02/2020)

ADOLF ANTHONY (Administrator of the Estate of Pius Rwechungura and Arodia Anthony Pius) **APPLICANT**

VERSUS

ADINANI ALLY MFINANGA **1ST RESPONDENT**

JOSEPHINA AUGUSTINE **2ND RESPONDENT**

RULING

19th & 29th April, 2021

RUMANYIKA, J.:

The application is for extension of time within which Adolf Anthon (administrator of the estate of the late Rwechungura and Arodia Anthony Pius) "the applicant" to lodge an appeal against judgment and decree dated 28/02/20202 of the District Land and Housing Tribunal for Mwanza (the DLHT). It is supported by affidavit of Adolf Anthony whose contents essentially, Mr. Innocent Kisigiro learned counsel for the applicant adopted on 19/04/2021 when, by way of audio teleconferencing the appeal was called and heard.

Adinani Ally Mfinanga (the 1st respondent) appeared in person. As such I heard them through mobile numbers 0716094644 and 0754410366 respectively. Irrespective of several and repeated attempts Josephina Augustine (the 2nd respondent) having had not been traced and, now that counsel for the applicant did not even suggest any other alternative but more sufficient mode of service, the latter was deemed to have dropped the 2nd respondent and I recorded him as such.

In a nutshell, Mr. I. Kisigiro learned counsel submitted that having had the impugned judgment been delivered on 28/02/2020 and they asked for the copy, they were not supplied until late in the day on 23/11/2020 when they were notified and invited to collect the same counsel having had sent the DLHT a 2nd reminder letter on 14/09/2020 hence the instant application. Leave alone points of illegality that the impugned judgment was tainted with illegality which also constituted a sufficient ground for extension of time (Cases of **Mohamed Salum Mohamedi v. Elizabeth Yereiah**, Civil Reference No. 14 of 2017 and **Hamis Mohamed (Administrator of the Estate of late Risasi Ngawe) v. Mtumwa Moshi (Administrator of the Estate of the late Moshi Abdallah)** Civil Application No. 407/17 of 2019 (CA) both unreported.

On his part, the respondent was even unusually brief as having adopted contents of the counter affidavit he only submitted that the application lacked merits because all the time the applicant was around but now only played delaying tactics. That is it.

Questioned for more clarity, Mr. I. Kisigiro learned counsel submitted that the applicant administered it all because the deceased husband and wife commonly owned the estate at issue.

The bottom line, and it is trite law, as far as the delayed copy of the impugned judgment is concerned the issue is whether the applicant has assigned sufficient grounds for extension of time. The answer is no for two main reasons: **(a)** the judgment having had been delivered on 28/02/2020, according to him the applicant did not apply for the copies until without explanation say 25 good days later i.e. on 23/03/2020 and that still missing it he only sent the 1st reminder on 14/09/2020 that is to say 5²¹/₃₀ months later **(b)** the copy of judgment may have had been certified, therefore ready for being collected on 13/11/2020 yes, but for reasons known to him the applicant did not tell when exactly he received the copy (paragraph six (6) of the supporting affidavit refers). The omission might be by design or accidentally. I just could not know! Nevertheless, the applicant lodged the

instant application say another three (3) good months later on 16/02/2021 there is no wonder the delay!

With regard to the issue of points of illegality, in the supporting affidavit Mr. I. Kisigiro may have stated none of them yes, but very quickly looking at the all fours of the impugned judgment I noticed that unless, by way of appeal this court put the records right, the four points of illegality were bound to remain: -

One; whereas, according to testimony on record, the deceased husband whose estate was now at stake, the applicant referred the latter as Merchades Rwechungura, at the same time but without reasons on record the same deceased was referred as Pius Rwechungura.

Two; from the records, with respect to the estate who between the applicant and 2nd respondent actually was the administrator, pursuant to order of 5/8/2013 in Revision No. 4 of 2013 of Muleba district court the case was sub judice since. It means therefore, until further notice with respect to the estate applicant had no locus in the first place leave alone the 2nd respondent, if at all having had passed title to the 1st respondent.

Three; with a view to establishing whether or not the DLHT's judgment was premature or properly made ex parte, the copy of the impugned judgment did not actually show when, and what had happened that end of the day appearance of the 2nd respondent was dispensed with.

Four; if anything, and going by evidence of the applicant on record the latter had the estate handed over to him only by the deceased wife (Arodia Anthony) it follows therefore, with respect to the deceased spouse whose estates were at stake, as said, actually no administrators had been appointed. The issue could be whether the applicant had capacity to sue under the obtaining circumstances.

I am also aware of the application being not related to probate and administration of the estates proceedings yes, but as said, basing on the 4 points should the application be granted a number of pertinent issues would crop up in the intended appeal and therefore sorted out.

The application for extension of appeal is granted. As for the above narrated short comings no party was to blame, each shall bear their costs.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

27/04/2021

The ruling delivered under my hand and seal of the court this
29/04/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

29/04/2021