

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CIVIL APPLICATION NO.12 OF 2020**

(Arising from Revision Application No. 1 of 2016 before Hon. M. S. Kasonde, RM

in the District Court of Nanyumbu)

**MALINDA HASHIMU KWITANDA (Administrator of the estates of  
the late Hashimu Kwitanda Malinda).....APPLICANT**

**VERSUS**

**ZUBEDA PETRO LUGIGA.....RESPONDENT**

**RULING**

29 June & 31 August, 2021

**DYANSOBERA, J.:**

The applicant herein has moved this court under section 25 (1)(b) of the Magistrates' Courts Act [Cap11 R.E. 2019], section 14 (1) of the Law of Limitation Act [Cap 89 R.E. 2019], Order XLIII Rule 2 and Section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019] praying for extension of time to appeal out of time. The applicant has supported his application with his

own affidavit. In response, the respondent has filed her counter affidavit resisting the application.

A brief background leading to this application is that the applicant, on 20<sup>th</sup> January, 2016, successfully applied for letters of administration before Mangaka Primary Court in a Probate and Administration Cause in respect of the estate of the late Hashimu Kwitanda Malinda who passed away on 21<sup>st</sup> September, 2014. His appointment was, however, revoked by the District Court of Nanyumbu in Revision No. 1 of 2016. In revoking the applicant's letters of administration, the learned Resident Magistrate found that the Primary Court had contravened rule 5 (2) of the Primary Courts (Administration of Estates) Rules, GN No. 49 of 1971 in that no notice was issued to all persons known or alleged to be to be the near relatives of the deceased requiring their appearance in court.

The District Court, in consequence, nullified the proceedings, decision and order of the primary court, ordered the hearing *de novo* before the same Magistrate and directed them to follow the required procedure.

This direction was not, however, complied with as instead of going back to Mangaka Primary Court, the respondent went to Dar es Salaam

and filed a Probate and Administration Cause No. 14 of 2016 at Buguruni in respect of the same estate of the deceased. The respondent was duly appointed as administratrix of the estate of the late Hashimu Kwitanda Malinda on 29<sup>th</sup> day of February, 2016. However, this appointment of the respondent was, on 22<sup>nd</sup> day of January, 2021 by the same court after the appellant raised complaints that the appointment of the respondent by Buguruni Primary Court was in violation of the order of the District Court of Nanyumbu which had directed the matter to be heard de novo before the same Magistrate (of Mangaka).

Another disturbing feature is that apart from failing to implement the decisions of the Buguruni Primary Court and the District Court at Nanyumbu that the Probate and Administration Cause in respect of the estate of the late Hashimu Kwitanda Malinda be heard de novo before the Mangaka Primary Court, the respondent on 27<sup>th</sup> day of June, 2019 instituted before the District Land and Housing Tribunal, Land Application No. 46 of 2019. Though the current status of that Land Application is not clear, there is a danger on part of the respondent to abuse the court process. This conduct, is not healthy for the administration of justice and should be discouraged.

Back to this application. On 27<sup>th</sup> day of May when this application came up for hearing, the parties appeared in person and unrepresented. Both told this court that they had filed their respective affidavits in support and opposition of the application for extension of time and their averments was a re-iteration of the back ground I have alluded hereinabove.

Having considered the application and the grounds adduced in the applicant's affidavit, I am in no doubt that the issue calling for determination by this court will be the propriety of the decision of the District Court revoking the applicant's appointment. In other words, the question that should be determined by this court if the application is granted and time extended is whether or not the District Court had a legal mandate to nullify the proceedings of the primary court which had appointed the applicant as administrator the deceased's estate. This issue is crucial as it touches on the jurisdiction of the District Court in the letters of administration granted by the primary court. Besides, there is the applicant complaint that the revocation of his letters of administration was made ex parte and was, therefore, denied the right of being heard.

For those reasons, this application has merit and is, accordingly, granted. Time for the applicant to file his intended appeal is extended and he should file his appeal within thirty days from the date of this ruling.

It is so ordered.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P.Dyansobera**

**Judge**

**31.8.2021**

This ruling is delivered under my hand and the seal of this Court on this 31<sup>st</sup> day of August, 2021 in the presence of the applicant and respondent.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P.Dyansobera**

**Judge**