

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. CIVIL APPLICATION NO. 43 OF 2021

*(Arising from Probate Cause No. 9 of 2016 of the District Court of
Nyamagana at Mwanza.)*

LENATUS THOMAS KAZI 1ST APPLICANT

TAMASHA JUMANNE *(Next Friend of*

AYOUB THOMAS KAZI) 2ND APPLICANT

VERSUS

MARGARITHA THOMAS KAZINI RESPONDENT

RULING

25th August & 2nd November, 2021

ISMAIL, J.

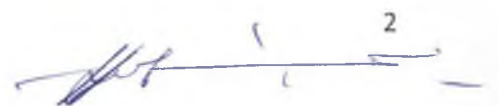
The application that is before me is for extension of time for institution of an application for revision. The impending revisional proceedings are intended to challenge regularity and/or legality of the decision in Probate Cause No. 9 of 2016, pursuant to which the respondent was appointed as an administratrix of the deceased's estate. The appointment was done by

the District Court of Nyamagana at Mwanza, before which the matter was placed. The applicants, both of whom claim to be biological children of the late Thomas Kazi and, therefore, the beneficiaries of his estate, were allegedly excluded from the list of beneficiaries. Extension of time, sought through the instant application, is intended to give a life line for the applicants to challenge their exclusion from the list of beneficiaries of the deceased's estate.

The application is supported by a joint affidavit sworn by both of the applicants, setting out grounds on which extension of time is sought.

The application has been strongly opposed to by the respondent. This is demonstrated through depositions made in the counter-affidavit sworn by the respondent. The contention by the respondent, as deposed in paragraphs 10, 11 and 12, is that sufficient reason has not been adduced to justify the delay. The respondent further averred that the proceedings sought to be revised are not liable to revision because the respondent has discharged her obligations and vacated the office of the administratrix.

Hearing of the application saw Mr. Steven Mhoja, learned counsel, represent the applicants, while the respondent was represented by Mr. Paul

A handwritten signature in blue ink is written over a horizontal line. To the right of the signature, the number '2' is written above a small mark.

Bomani, learned advocate. Hearing was through written submissions filed in compliance with a schedule which was drawn on 25th August, 2021.

In his submission, Mr. Mhoja has cited illegality as the basis for praying for an extension of time. The illegality allegedly resides in the following areas: One, exclusion of the applicants from the list of heirs despite the fact that the clan meeting recognized them as heirs; two, the act of applying to amend accounts of the estate in the trial court which is a manifestation of her untrustworthy and unfaithfulness in administration of the estate; and three, failure by the administratrix to distribute the estate of the deceased in time.

Citing the decision of ***Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 Others***, CAT-Civil Application No. 6 of 2016 (unreported), the counsel argued that where illegality is cited as a ground then extension of time must be granted. The counsel further contended that the applicants' delay in applying for revision was not caused by negligence. It was beyond their control. They prayed that the application be granted.

Mr. Bomani began his onslaught by highlighting areas of opposition to the application. The first is that no sufficient cause has been shown by the applicants. The counsel argued that, going by the decision of the Court of



Appeal in ***Allison Xerox Silla v. Tanzania Harbours Authority***, CAT-Civil Reference No. 14 of 1998, as quoted in ***Martha Wilson Masangya v. Lazaro Katundu Lazaro***, HC-Civil Appeal No. 84 of 2019 (both unreported), he argued that the key consideration in granting an extension of time is demonstration that the delay was for sufficient cause. The counsel added that such demonstration entails placing before the Court, material which will move the Court to exercise its discretion and extend time. On this, the counsel cited the decision of the Court of Appeal in ***Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited***, CAT-Civil Application No. 96 of 2007 (unreported). He argued that matters pertaining to administration of the estate were handled openly and in conformity with the law, and that the applicants' recourse was to pursue legal remedies, instead of bringing what he called a hopeless application that is intended to abuse the court process and the court's precious time.

With respect to the second ground, Mr. Bomani's argument is that the applicant of extension of time has to account for every day of delay, consistent with the holding in ***Sebastian Ndaula v. Grace Rwamafe***, CAT-Civil Application No. 4 of 2014 (unreported). The counsel contended that the applicants have failed to account for the days of delay, spanning from 2016, when the probate cause was determined, culminating in the

appointment of the respondent as the administratrix of the estate. While imputing negligence and lack of diligence, the respondent's counsel urged the Court to dismiss the application.

The singular question for determination is whether the application before me is meritorious.

It is common knowledge that grant of extension of time is not as of right. It is a discretion that is vested in the Court, exercised judiciously, and only where the applicant thereof is able to demonstrate that the delay leading to the quest for extension of time was caused by sufficient cause. This has been stated in a plethora of decisions of this Court and the Court of Appeal. These include: ***Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others***, Sup. Ct. Application 16 of 2014; ***Nicholaus Mwaipyana v. The Registered Trustees of Little Sisters of Jesus of Tanzania***, CAT-Civil Application No. 535/8 of 2019 (unreported).

The reasoning in the cited decisions traces its root from the holding in the landmark decision of ***Mbogo v. Shah*** [1968] EA 93, in which the defunct Court of Appeal for East Africa held:

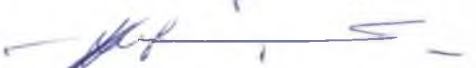
"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay,

whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

Factors constituting sufficient cause were refined and restated in the subsequent decision of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported), in which the following key conditions were expounded. These conditions are:

- "(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*
- (d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

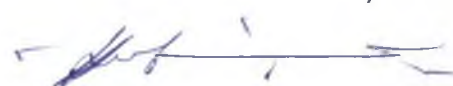
As stated in the supporting affidavit, and emphasized in the written submission, the ground for extension of time is illegality. Before I examine the alleged illegalities, it is apposite that I should state, albeit briefly, that the established position is that, once illegality is invoked as a ground in an application, the same serves as the basis for extension of time. See: ***The Principal Secretary, Ministry of Defence and National Service v.***

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Devram Valambhia [1992] TLR 185; and ***Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others***, CAT-Civil Application No. 463/01 of 2017 (unreported). In ***Citibank (Tanzania) Limited v. T.C.C.L. & Others***, CAT-Civil Application No. 97 of 2003 (unreported), it was held that ***"a claim of illegality or otherwise of the challenged decision or order or in the proceedings leading to the decision"*** constitutes sufficient cause for extension of time.

The condition precedent for application of illegality as a ground is that such illegality must be of sufficient importance and apparent on the face of the record. It should not be one that would be discovered by a long drawn argument or process. (See: ***Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*** (supra)).

Reviewing the instances of illegality pleaded in the supporting affidavit, and underscored in the submission, it comes out that such illegality is based on the actions which were allegedly committed by the respondent. Issues such as exclusion of the applicants from the list of beneficiaries; attempts to amend the accounts of the estate; and failure to distribute the estate timely, are all issues which touch on the respondent. They do not constitute a failure by the court. If proven, they all fall in the category of non-compliance with



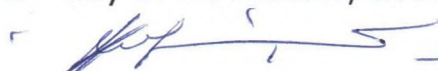
the law by the respondent, and the applicants are entitled to query them and found an action on. They are not in the realm of illegality which is envisioned in the decisions cited above. Such actions would be considered to be an illegality if they were committed by the court, in the course of handling the proceedings from which the impending revisional proceedings arise. Nothing, in the affidavit, shows any semblance of a blemished conduct by the trial court, and I do not see how the respondent's untoward conduct, if any, would be the basis for extension of time.

It is my considered view that what is considered to be grounds of illegality are nothing more than allegations of wrong doing by the respondent. As such, the same cannot be considered as the basis for enlargement of time. Accordingly, I dismiss the application. This being a matter originating for probate proceedings, I make no order as to costs.

It is so ordered.

DATED at **MWANZA** this 2nd day of November, 2021.




M.K. ISMAIL
JUDGE