

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT MOROGORO**

**MISC. CIVIL APPLICATION NO. 42 OF 2021**

*(Arising from the Decision of the District Court of Kilombero, at Ifakara in Probate Cause No. 1 of 2019 – By Hon. L. O. KHAMSINI, SRM)*

**FRANK LUCAS KIMOSOLA..... APPLICANT**  
**VERSUS**  
**ANNA RICHARD KIMOSOLA.....RESPONDENT**

**R U L I N G**

**CHABA, J.**

Frank Lucas Kimosola, herein the applicant filed this application under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019] seeking for two reliefs from this Court; **One**, for extension of time to apply for revision of the decision reached by the District Court of Kilombero, at Ifakara (the District Court) in **Probate Cause No. 1 of 2019** by Hon. L. O. Khamsini, Senior Resident Magistrate, and **Second**, for any other relief (s) that the Court may deem just and fit to grant.

The brief background to this application can be gleaned from the affidavit filed by the applicant and submissions from both parties. The respondent is the step mother of the applicant. It all began when the respondent herein had filed a **Probate Cause No. 13 of 2018** before Mang'ura Primary Court, in the District Court of Kilombero, at Ifakara to administer the estate of his late husband, Lucas Dominick Kimosola.



According to the record, the applicant objected the same by presenting a caveat. It is apparent in the court record that the respondent did file another petition which is **Probate Cause No. 1 of 2019** before the District Court of Kilombero, at Ifakara from which this application emanates. The respondent averred in her counter affidavit that, soon upon entered the said a caveat, the former petition, **Probate Cause No. 13 of 2018**, before Mang'ura Primary Court was dismissed for want of jurisdiction and ordered to file the same before the District Court of Kilombero, at Ifakara. However, diversely the applicant averred in his affidavit that the case which was registered as **Probate Cause No. 13 of 2018** before the Mang'ura Primary Court is unknown to date.

From the court records, the trial court efficaciously appointed the respondent as an Administratrix of the Estates of his late husband **Lucas Dominick Kimosola** and the decision was rendered on 5<sup>th</sup> June, 2020. Dissatisfied by the decision of the District Court, the applicant wishes to challenge the same by way of revision and by so doing on 27<sup>th</sup> January, 2021 he lodged the instant application which is almost six (6) months from the date of the decision. From the affidavit of the applicant specifically under paragraphs 6 and 7, the applicant's reasons for extension of time are mainly on the illegality that the fate of **Probate Cause No. 13 of 2018 filed** before the Mang'ura Primary Court is unknown to date.

When the matter was called on for hearing, Mr. John Msangi, learned advocate appeared for the applicant, whilst the respondent was represented by Mr. Sikujua Funuki, learned advocate.





I appreciate the learned advocates for the detailed oral submissions which at least unfolded some staffs that were transpired before the Mang'ura Primary Court and the District Court. But for smooth determination of the instant application, I will not refer to all of the cases cited by both sides. Instead, I shall refer to only that part of the respective submissions which I will consider useful and necessary.

It is trite principle of the law that the Court may for any reasonable or sufficient cause advanced by the applicant, grant leave for extension of the period of limitation for institution of an application or appeal. (See the cases of **Benedict Mumello v. Bank of Tanzania (2006) 1 EA 227 (CAT)** and the case of **Lyamuya Construction Company Ltd v. Registered Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (All unreported). In both cases it was stressed that an application for extension of time is entirely in the discretion of the Court to grant or refuse it and the same may be granted only where sufficient reasons for the delay has been established.

There is no dispute from both sides that the decision intended to be challenged was delivered by the District Court on 5<sup>th</sup> June, 2020. As a matter of law and procedures, the applicant was supposed to file his application for revision within sixty (60) days from the date of that decision, instead the applicant was late to do so and through the affidavit and submission by his counsel had contended not to have known the progress of the case at the District Court. However, on the other hand Mr. Funuki insisted that the applicant had the knowledge of the petition and even had a tendency of entering appearance.

*Funuki*

In support of his application for extension of time, Mr. Msangi submitted on the basis of illegality panacea on the unknown fate of the **Probate Cause No. 13 of 2018** before the Mang'ura Primary Court which the applicant filed his caveat. But in response, Mr. Funuki in his eloquent submission insisted that it was his duty to follow the course of the proceedings.

Having heard the rival submissions from both sides and upon considered the prayers sought by the applicant, the central issue for determination is whether or not the applicant has managed to give sufficient reason (s) for the delay to warrant the grant for extension of time.

Without roaming around the bush, the answer here is very straight that the issue of illegality fronted as the reason for delay has not been exhibited or justified, which makes it insufficient to warrant this Court to exercise her discretionary power to grant the order sought for extension of time to revise the proceedings stemmed from **Misc. Civil Application No. 42 of 2021**. I say so because the applicant was duty bound to make a close follow up in respect of the petition which he actually lodged as an objection. Failure of which he cannot blame anyone. This has been held in number of cases including the case of **Jenifa Barakael Lyimo v. CRDB Bank Ltd & Another**, Misc. Land Application No. 20 Of 2018, HCT at Iringa (Unreported). It was voiced by Hon. Kente, J., (As he then was) at page 8 that:

*"...there is no doubt that, the one who moves the court, shall make a close follow up to know the scheduling date of his case. It is not the duty of the*





*court to ensure that the applicant appears before the court to prosecute his case..."*

But again, upon taking a keen perusal to the four corners of the applicant's application, I have found that nothing has been disclosed to justify why he delayed to lodge the application for revision for about four (4) months as the time lapsed on the 5<sup>th</sup> August, 2020. I subscribe to the position set in the decision reached by the Court in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported) wherein it was held that:

*"...Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

From the above observations, it is clear that the applicant has failed to advance and account for reasonable grounds for the delay. Further, the issue of illegality averred in his affidavit has no legal base to warrant me exercise my discretion to grant the prayer sought. Hence, the raised issue is answered in negative.

Although illegality may suffice as one of factors to be considered as good cause, the same is not an automatic right. For illegality to be considered as a good cause for extension of time, it must be apparent on the face of record. This was held by the Court of Appeal in the case of **Mega Builders Limited v. D.P.I. Simba Limited**, Civil Application No. 319/16 Of 2020, CAT, at Dar Es Salaam (unreported). But as observed above, the applicant did not establish any illegality in this application.



That said and done, I am convinced on the balance of probability that this application is untenable and devoid of merit. It is hereby dismissed. Given the nature of this application being a probate related matter, each party to bear its own costs.

**It is so ordered.**

**DATED at MOROGORO this 23<sup>rd</sup> day of November, 2021.**



**M. J. CHABA**

**JUDGE**

**23/11/2021.**

This ruling delivered at my hand and the Seal of the Court at Morogoro this 23<sup>rd</sup> day of November, 2021 in Chambers in the presence of the Applicant and Respondent who appeared in persons, unrepresented.



**M. J. CHABA**

**JUDGE**

**23/11/2021.**

Rights of Appeal to the parties fully explained.



**M. J. CHABA**

**JUDGE**

**23/11/2021.**