

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

PC CIVIL APPEAL NO. 26 OF 2020

(C/F Civil Revision No. 5 of 2019 in the District Court of Arumeru at Arusha
Originated from Probate Case No. 40 of 2016 at Enaboishu primary Court)

SARAH PHILIPO LAIZERAPPELLANT

VERSUS

RICKY PHILIPO LAIZER..... 1ST RESPONDENT

GILENCE PHILIPO LAIZER.....2ND RESPONDENT

NORA PHILIPO LAIZER.....3RD RESPONDENT

TUMAINI PHILIPO LAIZER.....4TH RESPONDENT

FURAHA PHILIPO LAIZER.....5TH RESPONDENT

JUDGMENT

22/6/2021 & 10/9/2021

ROBERT, J:-

The appellant, Sarah Philipo Laizer, petitioned successfully for letters of administration of the estate of her late husband, Philipo Koikan Laizer at Enaboishu primary Court in Probate Cause No. 40 of 2016. The first respondent herein filed a caveat resisting appointment of the

appellant as administrator of estate. The trial Court decided to appoint both the appellant and first respondent herein as co-administrators of the estate of the late Philipo Khoikan Laizer. Aggrieved, the appellant registered Civil Appeal No. 17/2017 at the District Court of Arumeru against the decision of the trial Court. The District Court allowed the appeal and removed the first respondent as a co-administrator of the estate leaving the appellant as the sole administrator of the estate of the late Philipo Koikan Lazer.

Thereafter, the appellant proceeded to execute her duties as a sole administrator. Dissatisfied, the respondents herein decided to file an application for revocation of the appellant as the administratrix of the estate of the deceased at the trial court on grounds that, the appellant did not identify the deceased's debtors and creditors, she did not pay or collect the deceased's debts, she failed to identify the deceased's properties and heirs who are still minors and be able to pay their school fees and other maintenance. The trial Court decided to add Alphayo Koikan and Norah Philipo Kweka as co-administrators together with the appellant and ordered them to expedite the administration process and close the administration of estate.

Aggrieved, the appellant herein challenged the decision of the trial Court at the District Court of Arumeru vide Civil Appeal No. 33/2018. After the hearing, the District Court allowed the appeal and removed Alphayo Koikan and Norah Philipo Kweka from administration of the estate and left the appellant as the sole administrator of estate.

Thereafter, the respondents herein filed an application for revision at the District Court of Arumeru, registered as Civil Revision No. 5/2019 seeking to revise the decision of Enaboishu Primary Court in Probate Cause No. 40/2016. The appellant herein resisted the application and raised three preliminary points of objection to the effect that: - **One**, the suit is misconceived and or incompetent and unmaintainable in law; **two**, the application for revision of Probate Cause No. 40/2016 of Enaboishu Primary Court is an abuse of the process of Court; and **three**, appeal process was not blocked by law. The District Court dismissed all points of preliminary objection and ordered that the application for revision be heard on merits.

Having heard both parties in the application, the District Court decided that another person who knows undisclosed properties of the deceased be appointed to work with the existing administratrix of estate to finish the remaining administration work within three months and the

remaining part of the matter to be tried with another magistrate with competent jurisdiction at Enaboishu Primary Court. Dissatisfied, the appellant preferred this appeal on the following grounds:

- 1. That, the District Court erred in law by entertaining a revision which was improperly brought before it.*
- 2. That, the District court erred in law by entertaining the revision while the administration of estate at the primary Court was already being closed.*
- 3. That, the District Court erred in law and in fact by relying on the unsupported evidence by the respondents' advocate that the appellant did not administer the estate properly.*
- 4. That, the district court erred in law by nullifying the closure of the administration of estate by the Appellant while all procedure were followed.*
- 5. That, the District Court erred in law by not taking into consideration that the Appellant was a sole wife to the deceased hence at a better position to know all the estate of the deceased.*

At the hearing of this appeal, the Appellant appeared in person without representation whereas the Respondents were represented by Mr. Fridolin Bwemero, learned advocate. At the request of parties, the Court ordered parties to argue the appeal by filing written submissions.

Prior to deliberating on the merits of this appeal, this Court finds it convenient to make a determination on the competence of this appeal raised by the learned counsel for the respondent in his reply submissions.

In their joint reply submissions, the respondents submitted that this appeal is time barred. He argued that, the ruling of Arumeru District Court in was delivered on 11/02/2020 and the right of appeal was dully explained to the parties to be within thirty (30) days from the date of the ruling. However, as shown in the petition of appeal, the present appeal was filed on 23/03/2020 which is more than ten (10) days past the period prescribed for appeal. He argued further that although this Court has powers to extend time for filing an appeal, the appellant did not apply for leave to file an appeal out of prescribed time before filing this appeal. Hence, this appeal is hopelessly time barred and deserves to be dismissed with costs.

On the other hand, the appellant did not file rejoinder submissions to respond to the arguments raised by the respondents. Thus, the respondents' arguments remains uncontroverted.

Section 25 (1) (b) of the Magistrates' Court Act, Cap.11 (R.E 2019) provides that:


*(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, **within thirty days after the date of the decision or order, appeal therefrom to the High Court:*** (emphasis is mine).

Provided that the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

It is apparent from the quoted provision that an appeal from the District Court in the appellate or revisional jurisdiction to the High Court needs to be lodged within thirty days from the date of the decision to be appealed against. It is not disputed that the appellant filed this appeal out of the prescribed time for appeal without seeking leave of the Court. I therefore find this appeal to be incompetent for being time barred. Consequently, this appeal cannot be spared and I hereby dismiss it for being time barred. I give no order for costs considering the nature of this matter and the relationship of parties.

It is so ordered.




K.N. ROBERT
JUDGE
10/9/2021