

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

**MISCELLANEOUS CIVIL APPLICATION NO. 67 OF 2022
(Originating from HC Miscellaneous Civil Application No. 96 of
2021 and Probate and Administration Cause No. 31 of 2022)**

IN THE MATTER OF the estate of the late **CHANA UKA
MODHWADIA**

AND

IN THE MATTER OF Application for Extension of Time to file
inventory and account by **NATHA CHANA MODHWADIA**

RULING

16/06/2022 & 22/06/2022

D.C. KAMUZORA, J.

This application is brought under the provision of Rule 109 (1)(2) of the Probate Rules in which the Applicant prays for extension of time to file inventory and account of the estate of the late Chana Uka Modhwadia. The application is supported by the affidavit of the Applicant Natha Chana Modhwadia.

Briefly, the Applicant vide Misc. Application No. 97 of 2021 applied and was granted letters of administration of the estate of the late Chana Uka Modhwadia *pendente lite*. The grant was issued on 08th December 2021 pending the determination of the Probate and Administration Cause No. 31 of 2021. Since then, nothing was filed by the Applicant in court to show the duty performed in the deceased's estate. However, the Applicant brought this application praying for enlargement of to file inventory and account of the deceased's estate.

The counsel for the Applicant Mr. Jeremia Mjema appeared in court and orally addressed the court on the application. He first adopted the affidavit in support of application and submitted that, the Applicant was granted the letter of administration *pendente lite* on 8th December 2021 and was supposed to file inventory within 6 months from the date of the grant. That, after being granted letters of administration the Applicant was unable to comply to the given time due to the prevailing circumstances in the estate of the deceased and the nature of the estate left by the deceased. He explained that, after the Applicant was appointed, he started to collect the properties of the late Chana Uka Modhwadia as required by the law. That, the properties were scattered in various areas and some properties were in form of shares in various

companies where the deceased was the shareholder. That, the Applicant applied to the existing shareholders in the companies where the deceased was holding substantial shares to be registered and recognised as the legal representative of the deceased in order to proceed with administration duties. However, that, the existing shareholders refused to recognise him as a legal person representative as it can clearly be evidenced by the pleadings which are pending in court and attached to the affidavit in support of this application as annexure NM1.

The counsel further submitted that, the deceased also had a registered landed property of which the occupiers of the said property declined the Applicant's access to the landed property as the legal person representative an act which culminated into the filing of the case by the occupiers and the case is still pending in court. That, all these disputes consumed a lot of time and the matters are still pending in court despite the clear evidence that the deceased was the lawful owner of the landed properties. That, the same gave the Applicant several duties to accomplish the duties of the administrator.

In concluding, the counsel for the Applicant urged this court to consider the numerated circumstances as reasons which prevented the Applicant to file inventory within the prescribed time. He thus prays that

this application for extension of time within which to file the inventory of the estate of Chana be granted as prayed.

It is clear that under section 38 of the Probate and Administration Cause, a person can apply and be granted letters of administration pendente lite waiting for determination of the Probate matter. Rule 50 of the Probate Rules gives the procedures for the grant of the letters of administration Pendente lite. Being governed by the above provision, the Applicant applied and was granted letters of administration *pendente lite* but he was bound to comply with the requirement under Rule 84 which requires every grant of letters of administration *pendente lite* to be in the appropriate form prescribed in Form 73 set out in the First Schedule. I have decided to reproduce the said form for easy of reference.

FORM 73

GRANT PENDENTE LITE

(Section 38, Rule 84)

(Title)

WHEREASlate of
deceased, died at *on the**day of*
..... *20*.....

AND WHEREAS *there is now pending in this Court*
..... *(state the title of the proceedings, concerning*
..... *(state the nature of the dispute).*

BE IT KNOWN *that letters of administration of the property and credits of the*
said deceased pending the determination of the said proceedings and subject to the

provisions of section 38 of the Probate and Administration of Estates Act are *HEREBY GRANTED* to he having undertaken to administer the said property and credits, save distributing the same, under the directions and control of this Court, and to exhibit a full and true inventory of the said estate in this Court whenever directed by the Court so to do or failing such direction **within six months from the date of this grant and also to render to this court a true account of his administration of the said property** and credits whenever directed by this court so to do **or failing such direction within one year from the date of this grant.**

Dated at this day of 20.....

By the Court,

.....

Registrar

The above form set the requirement for the person having undertaken to administer the said property and credits, under the directions and control of this Court to exhibit a full and true inventory of the said estate in this Court whenever directed by the Court so to do or failing such direction within six months from the date of this grant and also to render to this court a true account of his administration of the said property and credits whenever directed by this court so to do or failing such direction within one year from the date of this grant. The only duty that cannot be done under administration *pendente lite* is the distribution of the estate because that has to be done after determination of the

Probate and administration proceedings resulting to full appointment of the administrator of the estate of the deceased.

It is on the basis of that requirement the present application was brought in this court under Rule 109 of the Probate Rules, GN No. 369 of 1963. The said Rule read: -

"109., Application for extension of time to file inventory or account

*(1) An application for extension of time to exhibit an inventory or account shall be made by chamber summons supported by an affidavit **stating the reasons for such application.***

*(2) An application under this rule shall be made **before the expiry of the period** within which the executor or the administrator is required by the court to file the inventory or account."*

The above provision gives courts power to extend time to file inventory or account, but apart from the requirement on the format of the application, it sets out two conditions to be met by the Applicant; **one**, the Applicant has to state reasons for such application and **two**, the application must be brought to court before the expiry of the period within which the administrator was supposed to file the inventory or account.

I have gone through the application and I am satisfied that this application was brought in the format set out under the law, by way of chamber application and supported by the affidavit. The affidavit in support of the application, the attachment there to and the submission by

the counsel for the Applicant set out the reasons for the delay in filing inventory and account of the deceased's estate. It was deponed and submitted that the estate to be administrator is tainted with encumbrances as there is resistances from other people which culminated into the filing of cases in court as per the attachments to the affidavit. It is clear that, those cases which are still pending are in relation of the said estate. I thus agree that the circumstances of the matter are likely to prevent the Applicant from exercising administration duties hence unable to file the inventory or account on time. The record also shows that the grant of letters of administration *pendente lite* was issued on 08/12/2021 and this application was brought to court 01/06/2022 before the expiry of six months.

From the above analysis it is my settled view that, the Applicant had met the requirement under Rule 109 of the Probate Rules and there is good reason for the grant of this application. I therefore grant the application by extending three months within which the Applicant shall file inventory and account. However, if by that time the main Probate and Administration cause will still be pending, the Applicant will still be under duty to file inventory and account of what he had administered after every

six months until when the main case, Probate and Administration Cause No. 31 of 2021 will be determined by this court.

It is so ordered.

DATED at **ARUSHA** this 22nd Day of June 2022.



D.C. KAMUZORA
JUDGE

The seal of the High Court of Tanzania is circular. It features a central emblem with two figures flanking a shield, topped by a crown. The text "THE HIGH COURT OF TANZANIA" is inscribed around the perimeter of the seal, with a small circle at the bottom center.