

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TEMEKE HIGH COURT SUB-REGISTRY)
(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 10 OF 2022

*(Arising from Probate No. 8 of 2021 of Ilala District Court before Hon. E. Nassary –
SRM)*

**KULWA TANGA JUMBE (The administrator of the estate of the late
Mwajuma Salahe Matimbwa)..... APPLICANT**

VERSUS

MLANGALI HASHIMU.....1st RESPONDENT
TANGA SALEHE.....2nd RESPONDENT
HAMZA BAKARI NGAYUNGA.....3rd RESPONDENT
JABIRI SALEHE.....4th RESPONDENT

RULING

30/05/2022 & 02/06/2022

I.C. MUGETA, J

The applicant moves this court to grant him orders extending time within which to file an appeal to this court. The respondents failed to file the counter affidavit within the prescribed time and their prayer to have time extended was rejected. Therefore, the application is unopposed. The applicant is represented by Hashimu Mziray, learned advocate while the respondents are represented by Jacob Minja, learned counsel.

The decision sought to be challenged was rendered on 22/12/2021. Its name is probate appeal No. 8 of 2021 of the Ilala District Court at Kinyerezi. In the

affidavit, the applicant has raised the following complaints against the decision of the District Court:

- i. That the ruling does not show that he appealed as an administrator.
- ii. That in the decision of the District Court, all the respondents are not disclosed except for Mlangali Hashimu. The rest has been referred to as "others"
- iii. That the District Court decision is titled as "ruling" while it was supposed to be titled as a judgement.

There are other complaints in the affidavit but for the purpose of this ruling the foregoing are the relevant ones. The rest are matters to be raised in the appeal not in application for extension of time.

The general principle to grant extension of time to appeal out of time is that each day of the delay ought to be accounted for. In case of allegation of illegalities in the decision, the same ought to be jurisdictional or time limitation errors. The applicant has tried to account for lapse of time by the averments in paragraph 13. According to paragraph 13 of the affidavit, the applicant spent the whole of the months of January and February, 2022 trying unsuccessfully to cause the District Court to rectify the above pointed out clerical errors in its decision. That it was until March, 2022 when the

Deputy Registrar advised him to take legal measures but, alas, he was already time barred, hence, this application.

Indeed, the appeal in the District Court was determined on merits. Therefore, the decision thereof is a judgment not a ruling. Unfortunately, it is entitled as "ruling". It is also true that the parties in the appeal at the District Court are not fully listed. The learned magistrate has used the word "and others" in place of the name of the parties. It is also true that the appellant is not identified as prosecuting the case as an administrator of the deceased's estate. For clarity, let me reproduced how the District Court decision is titled.

*'IN THE DISTRICT COURT OF ILALA
AT KINYEREZI
PROBATE APPEAL NO. 8 OF 2021
KULWA TANGA JUMBE
V
MLANGALI HASHIMU & OTHERS'*

While I do agree that the District Court decision is not properly titled, I do not see how this prevented the applicant to appeal. If he wished, such issues could have been part of the complaints in the petition of appeal. Those errors are typical administrative which are subject to correction under section 96 of the

CPC. See **Reuben Abraham Molele V. Nay Elisha**, P.C Civil Appeal No. 58/2020. High Court – Arusha (unreported) and **The Registered Trustees of Chama cha Mapinduzi & Another V. Paskazia Rwegishora & Another**, land Case Appeal No 70/2015, High Court – Bukoba (unreported).

I have considered the allegation that the applicant tried in vain to have the errors corrected but it is my view that the allegation is not proved. This is because the same is a mere statement in the affidavit which is not supported by any letter or application to the court requesting correction to that effect or an affidavit of a court officer who attended him. Where it alleged that one dealt with the court in a certain manner, evidence must be produced. When the allegation is about a court officer doing or failing to perform a particular function, evidence from that officer in form of affidavit or a proof that he failed to cooperate must be produced. No such evidence has been tendered. Therefore, each day of the delay has not been accounted for.

On the illegalities pointed out that the names of the parties are not fully listed and that his name is listed in personal capacity and not as administrator, it is my view that these are not jurisdictional errors. The same are just mixed points of law and fact capable of being attended administratively and not worth consideration by way of appeal. The reasons for my conclusion are firstly, that the names not listed can be listed upon application for amending the judgment

by the District Court. Secondly, an administrator is identified as suing in that capacity when he sues or is sued over the estate in that title or office. In this case the applicant is a normal party contesting for appointment to the office of the administrator of the deceased's estate. Therefore, he cannot be referred to as administrator of the deceased's estate in the proceedings where the right to that office is contested. Herein this application he has identified himself in the following manner:

'KULWA TANGA JUMBE (the administrator of the estate of the late Mwajuma Salehe Matimbwa'.

This identification is not right because the applicant is not prosecuting the case in that capacity. He is petitioning for appointment to that office, therefore, on appeal he cannot be referred to as administrator of the estate.

In the event, I hold that the applicant has not shown sufficient cause upon which this application can be granted. Each day of the delay has not been accounted for and no illegality had been pointed out to warrant the orders sought. No orders as to costs because the parties are relatives.




I.C. MUGETA

JUDGE

02/06/2022