

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLAENEOUS CIVIL APPLICATION NO. 229 OF 2021

(Arising from Misc. Civil Application No. 431 of 2018)

BETWEEN

THERESIA MBONELA KUYANGANA.....1ST APPLICANT

L.T. COL. JOSEPH LEON SIMBAKALIA2nd APPLICANT

VERSUS

NEEMA ADELA MBONELARESPONDENT

RULING

MRUMA,J.

This is an application for extension of time within which the Applicants Theresia Mbonela Kuyangana and Lieutenant colonel Co. Joseph Leon Simbakalia can Lodge a notice of Appeal and apply for leave to appeal to the Court of Appeal against the Ruling and drawn orders of this court (Kulita,J) dated 31st day of March 2020 in which this court made the following orders:

1. That the Respondent should comply with the order of this Court in Miscellaneous Civil Application No. 525 of 2016.
2. That existing property, a house located on plot No. 288 Block "C" Kijitonyama area in Kinondoni be handled to the Applicant who is the sole rightful heir and has already attained the age of majority.
3. That the Respondents to file a true and full inventory of the late Mathias Sibomona Mbonela within three months from the date.

In miscellaneous Civil Application No. 525 of 2016 this Court (Mkasimongwa,J) had ordered the administrator to exhibit an inventory containing a full and true estimate of all the property and all credits and debts owing by any person to which administrators are entitled in that character along with an account of the estate showing the assets which have come to their hands and the manner in which they have been applied or disposed of.

The application is premised on the grounds on the face of the application and the supporting affidavit of the Applicants Theresia Mbonela Kunyangana and lieutenant colonel Joseph Leon Simbakalia. The reasons espoused for the delay in filing the appeal is that their former advocate had wrongly pursued the matter in a wrong course in that he

instituted review in Miscellaneous Civil Application No. 289 of 2020 instead of filing an appeal.

The Respondent is opposed to the application vide Counter- affidavit sworn by Neema Adela Mbonela on 28th June 2021. She avers that the Applicants have not sufficiently explained good reasons for not filing their appeal in time and that the Applicants delay was due to negligence of their advocate. The Respondent avers that the Applicants have not demonstrated any sufficient reason to warrant a grant of extension of time.

It has been submitted for the Applicants that this application meets the criterion set out in the case of **Royal Insurance Tanzania Limited Vs Kiwengwa Strand Hotel Limited Civil Application No. 111 of 2009 (CAT) (unreported)**, where it was held that in exercise of discretionary power to grant extension of time, the following matters should be taken into account;

- i. Length of the delay;
- ii. Reasons for the delay

- iii. The degree of prejudice to the Respondent if the Application is granted and chances of appeal succeeding if the Application is granted.

For the Respondent it has been submitted that neither ignorance of the law nor advocates mistake constitutes good or sufficient cause.

I have considered the application, the grounds and the affidavit in support, the counter affidavit and the parties' submissions. The issue for determination is whether the Applicants are deserving of the orders sought. Section 11(1) of the Appellate Jurisdiction Act [cap 141 RE 2019] provides that;

" Subject to subsection (2), the High Court or where an appeal lies from a subordinate court with extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court.....notwithstanding that the time for giving the notice or making the application has already expired."

Extension of time such as prayed in this application is an equitable remedy and not a right to an applicant. The party that seeks such

extension, bears the burden of satisfying the court that his application is worthy of the exercise of this discretionary power.

As correctly submitted by the counsel for the Applicants the principles that guide grant or otherwise of an application such as this are length of the delay, the reason (s) for the delay, the possible chances of the appeal succeeding if the leave is granted and the prejudice to the Respondent if the leave is granted.

The impugned ruling was rendered down on 31st March 2020 while the instant application was filed on 19th May 2021. The delay is about 414 days. The Singular reason given for the delay in filing the appeal is that the former advocate for the Applicants chose a wrong way to challenge the ruling in that instead of lodging a notice of appeal, he filed a review despite the fact that there were no new facts or errors on the face of the record. The question for this court is therefore whether this is a good or sufficient cause to warrant the grant of extension sought.

Though the provisions for extension of time requiring sufficient reason or good cause should receive a liberal interpretation to give effect to the overriding principle so as to advance substantial justice, that rule is not of general application. Where the application either by design or incidentally may frustrate the course of justice, its interpretation must be

in accordance with judicial principles, if the Applicant may have a good case on the merits but is out of time and has no valid excuse for the delay, the application should be denied. Court must guard itself against the danger of being led away by sympathy, the application should be dismissed as time barred, even at risk of injustice.

In the present case, and given the facts surrounding the case I find that the reason given for the delay in lodging notice of appeal which is that the advocates ^{chose} ~~close~~ wrong and in appropriate remedy does not meet the threshold expected. Further to that the ruling subject of this application which simply required the Applicants to give a true account of the estate of the late Mathias Sibomana Mbonela cannot be said to be arguable or to have chances of success. Filing of inventory and final account of the estate of a deceased person is the requirement of the law which is among the mandatory obligation of the administrators.

The upshot is that the Applicants' application lacks merit and is dismissed with costs to the Respondent.


A.R.MRUMA

JUDGE

4/8/2022

4/8/2022

Coram: Hon. A. R. Mruma, J.

For the 1st Applicant: Miss Blandina Kihampa for

For the 2nd Applicant

For the Respondent: Mrs Blandina Kihampa for Mr. Grayson Laizer for

Rep

Cc: Delphina

Court: Judgment delivered



A.R.MRUMA

JUDGE

4/8/2022