

IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL APPLICATION NO. 30 OF 2021

*(Originating from Probate Revision No. 01/2020 at Kishapu District Court, hon.
J.P.Rwehabula-RM, Original Probate Case No. 3/2019 at Itilima Primary Court
hon. N.D. Kondela-RM)*

THOBIAS LUBASHA..... APPLICANT

VERSUS

JOHN GOYAYI MAGILIGINGA.....RESPONDENT
(Administrator of the estate of the late Goyayi Magiliginga)

RULING

23rd & 29th Sept 2022

Nongwa, J.

This ruling emanates from an application for extension of time within which to file an appeal before this court. The application has been filed by the applicant THOBIAS LUBASHA, who alleges to have been the objector in probate Case No. 03/2019 at Itilima Primary Court as well as the applicant in Probate Revision Case No., 01/2020 at Kishapu District Court.

Upon being aggrieved by the decision of the two courts below he thought of appealing to this court. Being time barred, he has preferred this application for extension of time under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2019, praying for orders that;

- i. The honorable Court be pleased to extent time to the Applicant for filing an appeal before this Honorable Court.
- ii. Costs of this application be provided for.
- iii. Any other relief (s) deemed fit and just to be granted.

The application is supported by the affidavit sworn by Thobias Lubasha the Applicant.

In a nutshell, the brief facts from the records are that the respondent, John s/o Goyayi applied and was granted letters of administration of the estate of the late Goyayi s/o Magililinga in probate Case No. 03/2019 before primary court of Itilima in Kishapu District. Then came one Thobias Lubasha the applicant who filed a revision against the administrator before the District court of Kishapu Probate Revision Case No. 01/2020 praying for orders that, the court be pleased to order for revision of Probate no. 3/2019. That he had filed an objection in respect of the administrator appointment and the primary court ignored the same and proceeded to appoint the administrator John Goyayi Magililinga without fulfilling the perquisites conditions.

From the records of the District court, he alleged that the probate was filed without there being proof of death of his grandfather and that he had no interest over the estate but he was objecting on behalf of his father and that the said grandfather died in 1989.

Upon examination of the records on legality, propriety, and correctness of the proceedings of the trial court, the District court came to the findings that there was a previous probate cause no. 2 of 2019 filed before Probate no. 3 of 2019 where the applicant filed an objection and the court ordered that they go and convene a clan meeting and appoint one person to apply for the letters of administration of the estate. Following the said order under the supervision of Ipeja village ward executive officer, they managed to convene a meeting and they nominated the respondent in this application to apply for the letters of administration, that is probate case no. 3/2019. The District Magistrate observed that there was certificate of death, all procedure were followed and ruled out that the application was devoid of merits.

The applicant, unsatisfied with the decision of the District court and that of the Primary court has preferred to appeal before this court and as a matter of procedure being out of time, he has filed an application for extension of time within which to file his appeal out of time.

At the hearing of the application, Mr. Emmanuel Sululu, learned advocate for the applicant submitted that the prayer is for extension of time within which to file appeal from the decision of Kishapu District Court. That the application originates from the Probate cause No. 3/2019 of Itilima Primary Court, where the Respondent applied to be appointed administrator of the estate of the late Goyayi Magililinga, Applicant objected and the objection was dismissed.

That, following that dismissal, the applicant filed for Revision No. 1/2020 at Kishapu District Court. Being unsuccessful, he appealed before this Court via appeal No. 6/2020 filed by the appellant in person. Being engaged to represent the appellant and upon going through the records, the counsel says he realized that the appeal had been filed out of time, he then prayed to withdraw the appeal so that they first apply for extension of time within which to file the appeal, hence this application at hand.

The learned counsel stated further that the reasons for their being out of time that it was beyond their control due to the fact that despite of the ruling being received within time, the drawn order was delayed, at the time the applicant got one, he was already out of time. Being a layperson, he came and lodged his appeal while he was out of time. The second reason being that there were number of illegalities from the proceedings of Itilima Primary Court and Kishapu District Court, one of which there was no proof of death, no death certificate of the said Goyayi Magililinga that made the said John Goyayi Magililinga apply for letters of administration. He submitted further that, there were some properties

that were included in the estate improperly, of which when they get chance to appeal, they will explain more.

The learned counsel, Mr. Sululu, acknowledged the position of the law that granting or not to granting the application for extension is a discretion of Court, and urged this court to see that the reasons advanced, were out of control of the applicant, who still wish to pursue his appeal.

It be noted that this application has been heard ex parte after the respondent's refusal to accept summons. The proceedings and the records, shows that the respondent refused summons as stated by the chairman of Butulwa old Shinyanga suburb in the summons that were returned. The matter being cause listed in the special program session, I had to proceed ex parte after satisfying myself that from the grounds of application, hearing ex parte will not cause any miscarriage of justice.

After carefully considering the arguments stated by the counsel for the applicant and before deciding whether this application should fail or succeed, I wish to state quite clearly that, it is a common law that an order for extension of time may be granted by the Court in the exercise of its discretionary powers. I wish to follow the reasoning of the Court of Appeal in the case of **Yusufu Same and Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002 CAT at Dar es salaam** (<http://tanzlii.org>), the court stated that;

'It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and the overriding consideration is that there must be sufficient cause for so doing. What amounts to 'sufficient cause' has not been defined. From decided cases, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any

valid explanation for the delay, lack of diligence on the part of the applicant, does not amount to sufficient cause'.

Moreover, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case under consideration and the ground might not be similar. There is no a precise definition of what amounts to reasonable cause, however, I am in consensus with what was stated in the case of **Felix Tumbo Kisima vs. Ireland Another (1997) TLR 57** where the court observed that;

'It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or cause which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps.'

From the application before me, the main reasons for prayer for extension of time to file an appeal are found under paragraph one and four of the applicant's affidavit and those reasons being that, upon the ruling in probate Revision Case No. 01/2020 being delivered by Kishapu District Court, he filed probate Appeal No. 06/2020 challenging the said ruling and filed the same without attaching Drawn order as the same had not been availed to him despite of applying for it and that the delay to file the appeal on time was not deliberately done but it was beyond his control after being only issued with copy of ruling in Probate Revision Case No. 10/2020 without a copy of the drawn order.

I consider it to be a sufficient cause for this court to grant the applicant with the prayers sort.

I have also considered the submission by the applicant counsel that being engaged to represent the appellant and upon going through

the records, he realized that the appeal had been filed out of time, he thus prayed to withdraw the appeal, so that they first apply for extension of time within which to file the appeal hence this application at hand. That the reasons for their being out of time is delay for being supplied withdrawn order, and at the time the applicant got one, he was already out of time the reasons that were beyond their control.

The applicant in this application has found shelter under the Law of Limitation Act, Cap 89 in particular section 14 (1) which provides that;

'S. 14-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.'

For clarity subsection (2) of section 14 the same Act provides that for the purposes of section 14, the court means the court having jurisdiction to entertain the appeal or, as the case may be, the application. This court finds merit in the applicant's application for extension of time within which to file an appeal. From the foregoing reasons, the applicant has managed to show sufficient cause for his delay in filing appeal.

The application therefore succeeds the time is hereby extended and the prospective appellant to file an appeal within fourteen days (14) from the date of this ruling. From the circumstances of this application each party shall bear own costs.

It is so ordered.




V.M. Nongwa
Judge
29/09/2022