

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC CIVIL APPEAL NO. 29 OF 2022

(Originating from the decision of the Karatu District Court Civil Application No. 4 of 2021)

ENOCK PAULO..... APPELLANT

VERSUS

ELIBARICK PAULO..... RESPONDENT

JUDGMENT

27th September & 21st October, 2022

TIGANGA, J.

In this appeal the appellant Enock Paulo was the respondent in the District Court of Karatu whereby the respondent herein was the applicant. The application was for extension of time to file an appeal challenging the decision originating from the Primary Court of District of Karatu at Karatu. The time was extended so that the respondent could lodge his appeal in the District Court of Karatu at Karatu. This decision aggrieved the appellant who believed that, that extension was given without considering established principles for extension of time. Thus, he lodged this appeal in this Court.

The factual background of the matter can be summarized as follows:

The appellant applied for being appointed an administrator of the estate of the deceased Martha Paulo in the Primary Court of Karatu District, at Karatu. He was appointed the administrator on 11/03/2021. Later on, the respondent furnished the primary court with complaint letter objecting appointment of the appellant to administer the deceased's estate. The appellant and the respondent are siblings and the deceased is their mother. The objection brought by the respondent was premised on the grounds that;

1. The administrator was not appointed by the clan meeting to administer the deceased's estate and;
2. That, the general citation was not published to the extent of the relatives including the appellant miss the chance of objecting the appointment.

The respondent rejected all those complaints. Therefore, the court went on delivering the ruling on 26th May, 2021 in favour of the appellant. The respondent did not appeal in a prescribed time and thus, found himself out of time prescribed by the law of limitation.

Because of that, the respondent applied to the District Court of Karatu, at Karatu seeking for enlargement of time in order to file an appeal against the ruling of the Primary Court of Karatu District, at Karatu. That application was allowed. As said, the appellant was aggrieved hence this appeal.

The appeal is hinged on three grounds to wit;

1. That the District Court erred in law and in fact that it (sic) unable to know (sic) the respondent who was the applicant in Civil Application No. 4 is (sic) the objector in Probate and Administration Cause No. 1 of 2021 in Karatu Primary Court.
2. That the District Court of Karatu erred in law and in fact to allow the respondent's application without any adequate reasons.
3. That the District Court erred in law and in fact for failure of (sic) the respondent to support his application for extension of time to file the petition of appeal while he was present in court on 11th March, 2021 when the court delivered its decision.

In fact, all those three grounds can be summarized in one, that; the trial magistrate erred in law and in fact for granting extension of time without good cause.

Both the appellant and the respondent appeared in person, unrepresented. The hearing was conducted orally. May be due to the parties being lay-persons, both, the appellant and the respondent did not argue grounds of appeal, instead, they kept on contending on the issues in relation to probate and administration of estate application. They are saying about the deceased's estate rather than arguing on the merits and demerits of the appeal. However, this court is enjoined to decide on the grounds submitted before it for determination.

In times without number, this Court and the Court of Appeal of Tanzania ruled that, to grant or refuse extension of time is discretionary to the court. That discretion however, should be exercised judiciously. This rule was given in a variety of case laws. One of those case laws is the case decided by the Court of Appeal of Tanzania of **Amiri Athuman vs The Republic**, Criminal Application No. 6 of 2011 CAT at (Unreported) which held that:

"It may be observed that it is the judicial discretion of this Court to either grant or to refuse to grant an application for extension of time."

Another case on the same discretionary power of the court to grant extension of time is that of **Robert s/o Nyengela versus The**

Republic, Criminal Application No. 42/13 of 2019 CAT at Iringa (Unreported) where it was observed that:

"Flowing from the above, extension of time is a matter within the discretion of the Court, as such, a party seeking an extension must always put forward material and consideration that would persuade the Court to exercise its discretion in favour of an extension."

Drawing the inference from the above cited cases, it is apparent that, despite the fact that extension of time is within the court's discretion, still, the applicant must put forward relevant material for consideration within which the court can stand to grant the application. Whenever these materials are not given the court shall refuse granting the application.

I have taken time to peruse the District Court's record and find that at paragraph 5 of the applicant's affidavit, the ground raised which in fact is the only ground for extension of time in the application before the District Court. The ground is what is termed as financial difficulties. This reason cuts across both constraints thereat, court fees and difficult in finding a lawyer. The relevant paragraph states:

"That, I failed to file the petition of appeal within a prescribed time due to various reasons including but not limited to financial difficulties to afford court fees"

as well as difficult in finding (sic) lawyer who (sic) assist me in pursuing the said appeal and that the time to file appeal had already lapsed."

On the issue of financial constraint as a good cause or otherwise to grant the application for extension of time, the law is now settled. The Court of Appeal of Tanzania in the case of **Constantine Victor John vrs Muhimbili National Hospital**, Civil application No. 214/18 of 2020 it was observed that:

*"As observed in **Yusufu Same** (supra) in the excerpt reproduced above, financial constraints may not be a sufficient ground for extension of time."*

However, despite such omission still, the District Court went on giving the reason for enlarging time within which to file the appeal. Some of the reasons which convinced him to grant the application is the fairness of the administrator in administering the deceased's properties to the heirs. The complaint which was raised by the respondent and also that the complaint should be resolved in appeal.

As earlier on pointed out, the question of extending time within which to file the appeal is discretionary, the discretion which must be exercised judiciously. Judicial exercise of discretion must be guided by the supreme and ultimate course of court proceedings, that is non other than justice. It should be noted that, matters of probate are not the

domain of only individuals who are in court litigating, they also concern the lawful heirs who in one way or the other may have not complained in court, but those in court carries their interest to. Not only the heirs, but also the beneficiaries, the debtors and other interested parties in the estate of the deceased whom their interest must be protected. Now, where there are such kind of consideration, the court can be taken to have judiciously exercised the discretion. In the matter at hand, learning from the ruling of the District court, I find that, the District Court properly and judiciously exercised the discretion bestowed in it. In the event therefore, I do not find immediate reasons to interfere with the discretionary power of the District Court in granting the application for extension of time.

I do not find how the appellant will be prejudiced by the order extending time for the appellant to appeal for the complaint over the matter to be dealt with in appeal. I thus find the appeal to be devoid of merits as it intends to circumvent the right not only of the parties but also of other interested parties to be determined on merits.

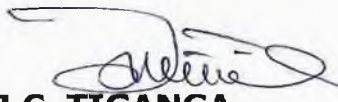
That said and done, I find no merit in this appeal which I accordingly dismiss. Considering the circumstances of the appeal and

the fact that the parties are blood related and the deceased was their mother, I will make no order as to costs

It is accordingly ordered.

DATED at **ARUSHA** this 21st day of October, 2022




J.C. TIGANGA

JUDGE.