

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

CIVIL APPEAL NO.23 OF 2020

(Arising from Misc. Civil Application No. 11 of 2020 of Muleba District Court at Muleba & Probate and Administration Cause No.08 of 2018 of the Primary Court of Muleba at Kashasha)

AUDAX JOHN.....APPELLANT

VERSUS

OCTAVIANA RENATUS.....1ST RESPONDENT

PHILIS YASINI..... 2ND RESPONDENT

JUDGMENT

03 & 25 /11 /2022

E. L. NGIGWANA, J.

The background of this matter is that; in June 2018, the appellant herein successfully petitioned for a grant of letters of administration of the estate of the late John Rutambi who died in 1981. However, sometimes in 2019, the respondents herein filed an objection in the trial court praying for revocation of the appellant from being a sole administrator due to unfaithfulness and unfair distribution.

The objection was heard and decided in favour of the respondents Octaviana Renatus and Philis Yasini. In its ruling dated 22/10/2019, every distribution done by him was declared null and void, whereby Clan members were left at liberty to propose another suitable and faithful person who can administer the estate of the late John Rutambi.

The appellant was aggrieved by the decision of the trial court therefore, on 22/11/2019, he lodged Civil Appeal No. 58 of 2019 to the District Court of Muleba but the same ended up being withdrawn on 16/4/2020 for being incompetence. On 9/07/2020, the appellant through his advocate Mr. Rainhod T. Mujuni lodged Misc. Application No. 11 of 2020 for extension of time within which to appeal against the decision of the Primary Court Muleba District at Kashasha in Probate and Administration Cause No. 08 of 2018 dated 22/10/2019.

Upon hearing the application, the District court was satisfied that the applicant now Appellant has failed to demonstrate sufficient cause to warrant it to exercise its discretion to extend time as sought. Consequently, Misc. Application No. 11 of 2020 was dismissed with costs for want of merit.

The appellant was aggrieved by that decision of the District court, hence this appeal. The grounds of appeal raised in the memorandum of appeal are as follows;

- 1. That the trial Magistrate erred in law and facts for denying the appellant the right to appeal.*
- 2. That the trial Magistrate erred in law and facts for not considering the nature of the original case.*
- 3. That the trial Magistrate erred in law and facts for employing technicalities to deny extension of time to the Appellant*
- 4. That the trial court grossly erred and misdirected himself for considering the withdrawal order as the base of counting the days of filing an application for extension of time and denying the fact that extension of time refers on delay and not otherwise.*

At the hearing of this appeal, the appellant had the legal services of Mr. Reuben Gerase, learned advocate while the respondents were represented by Mr. Remidius Mbekomize, learned advocate. When invited to take the floor, Mr.

Gerase abandoned the 1st ground of appeal, and argued the 2nd, 3rd and 4th separately.

Submitting on the 2nd ground of appeal, Mr. Gerase argued that probate matters are very sensitive matters, therefore, the District Court ought to have considered that sensitivity and grant extension of time. He added that up to this moment, the administrator of the estate of the late John Katambi has not been appointed. As regards the 3rd ground, Mr. Gerase submitted that District court erred in law as it applied technicalities to deny extension of time to the appellant to appeal out of time.

As regards the 4th ground, Mr. Gerase submitted that the appellant was not given a specific time within which to file a proper appeal after he had withdrawn Appeal No 58/2019 on incompetence basis, therefore, according to him, there was nothing to account.

In reply, Mr. Mbekomize submitted that, Appeal No. 58 of 2019 was withdrawn on 16/04/2019 at the request of the appellant through his advocate, but leave to file a proper appeal was not granted. He added that since Appeal No.58/2019 was withdrawn on 16/04/2020 and Misc. Application No.11 of 2020 was filed on 19/07/2020, there was delay of 83 days which ought to have been accounted for by the appellant. Mr. Mbekomize added that, as a matter of law, extension of time can only be granted upon demonstration of good cause for the delay, and each day of the delay has to be accounted for. He made reference to the case of **Dr. Ally Shabahy versus Tanga Bohora Jamaat** [1997] TLR 305 and **Mbogo versus Sharh** (1968) EA 93. Mr. Mbekomize added that the argument that the District court did not consider that this is a probate matter hence very sensitive is a baseless since the nature of the matter has never been a ground for extension of time.

Mbekomize went on submitting that the ground that the appellant was denied extension of time on technical grounds is unfounded because extension of time is a legal matter and factors to be considered by the court are also clear, and that without accounting for each day of delay, extension cannot be granted. He ended his submission praying to the court to dismiss this appeal with costs for being devoid of merit.

In his rejoinder, Mr. Gerase admitted the appellant prayed to withdraw Appeal No.58/2020 with leave to re-file but the order of the court was silent as to whether the same should re-filed that is why application for extension of time was filed.

Having appropriately considered the grounds of appeal, the rival submissions and examined the records, the issue for determination is whether the District court was right for ruling that the appellant had not demonstrated sufficient cause to warrant extension of time.

It is undisputed that the matter at hand arises from the decision of the District Court of Muleba refusing the appellant extension of time within which to file an appeal out of time.

For the purpose of brevity and clarity, I will address all three grounds of appeal together because they are intertwined. Misc. Application No. 11 of 2020 which filed in the District Court by way of chamber summons under section 20 (4) (a) of the Magistrates Courts Act, Cap 11 R.E 2019 which clearly states that the District Court **may extend the time for filing an appeal** either before or after the prescribed time to appeal to wit; 30 days. As per this section, it goes without saying that a trial district enjoys a wide discretion to grant or not to grant an application for extension of time, however, such discretion has as of law to be exercised reasonably, judiciously and on sound legal principles.

The settled law is that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello versus Bank of Tanzania** [2006] E.A. 227 that,

"An application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."

From the herein above decision, it is apparent that the extension of time can only be granted where it has been sufficiently established that the delay was due to sufficient cause.

Though the law does not define what amounts to sufficient cause or good cause, the Court of Appeal of Tanzania in the case of **Oswald Masatu Mwizarubi versus Tanzania Processing Ltd**, Civil Application No.13 of 2010 the Court of Appeal had this to say;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term is good cause is a relative one and is dependent upon party seeking extension of time to prove the relevant material in order to move the court to exercise its discretion."

It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore, that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought.

The founding affidavit of the appellant supporting the application filed in the District Court had six (6) paragraphs which read as follows;

1. *That, I was Applicant in Probate and administration of estates Cause No. 08 of 2018 Kashasha Primary Court before Honourable Julius G. Karugaba*

whereby the judgment delivered on 22nd day of October, 2019 therefore duly conversant with the facts I am about to depose.

- 2. That, after the judgment was delivered in Probate Cause No. 08 of 2018, the Applicant filed Civil Appeal No. 58 of 2019 on 22nd day of November, 2019 in which the case was filed within time.*
- 3. That, on 16th day of April, 2020 the case was for hearing when it was withdrawn for some irregularities.*
- 4. That, if it could not have been irregularities on the face of the appeal, such appeal was filed within time hence the time lapsed was because the matter was proceeding before this Honourable Court.*
- 5. That, the applicant intends to refile an Appeal which now the time to file it have lapsed due to the above reasons unless the time is extended to file the Appeal out of time.*
- 6. That, the appeal still stands overwhelming chances of success and matter of merit are to be determined therein, and that if this application is not granted, the Applicant stands to suffer since his right will be prejudiced.*

There is no doubt that the period starting from the date when Civil Appeal No. 58 of 2018 was filed up to the date which the same was withdrawn, that is to say; 16/04/2020 constitutes what is known as technical delay, developed by case law from **Fortunatus Masha versus William Shija and Another** [1997] TLR 154.

Since Appeal No. 58 of 2019 was withdrawn on **16/04/2020** and since Misc. Application No.11 of 2020 was filed on **19/07/2020**, it is apparent that there was a delay of 83 days, the fact which was not in dispute in the District Court. Reading the applicant's affidavit from paragraph 1-6 as they appear herein

above, the reasons which delayed the appellant for 83 days were not stated, like wise during the hearing, reasons for 83 days delay were not stated.

The Court of Appeal of Tanzania in a number of cases including **Bushiri Hassan versus Latifa Lukio Mashayo**, Civil Application No.3 of 2007 and **Karibu Textile Mills versus Commissioner, (TRA)** Civil Application No. 192 of 2016 (Both unreported) has emphasized on the duty imposed upon the applicant to account for every single day of delay. The court had this to say;

"Delay, of even a single day has to be accounted for otherwise there would be no proof of having rules periods within which certain steps have to be taken."

Since there was failure by the applicant to account for each day of the delay, and, taking into the circumstances of the matter, the delay was inordinate therefore I agree with Mr. Mbekomize, advocate that the District Court had exercised its jurisdiction judiciously to refuse extension of time to the appellant. It is also worth noting that in our Jurisdiction, ignorance of the law or rather procedure involved in doing something does not constitute good cause to warrant extension of time. This position was emphasized in the case of **Farida F. Mbarak and Another versus Domina Kagaruki and 4 others**, Civil Reference No. 14 of 2019 CAT (Unreported).

I agree with Mr. Mbekomize that the complaints by the appellant that the nature of the case was not considered by the District court and that the appellant was denied extension of time on technical grounds are baseless and unfounded.

Therefore, on the basis of the above discussion, this court has no reasons to interfere with the discretion of the District Court owing to the reason that the discretion was exercised judiciously and reasonably. Consequently, this appeal is hereby dismissed for being devoid of merits. Given the nature of the matter, I enter no order as to costs. It is so ordered.

Dated at Bukoba this 25th day of November, 2022.

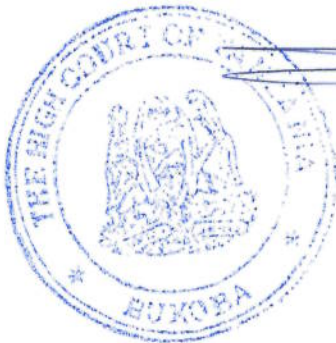


E. L. NGIGWANA

JUDGE

25/11/2022

Judgment delivered this 25th day of November 2022, in the presence of the Appellant, in person, both respondents in person and Ms. Sophia Fimbo, B/C.



E. L. NGIGWANA

JUDGE

25/11/2022