

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY**

AT MUSOMA

MISC. PROBATE APPLICATION NO. 07 OF 2022

***(Arising from Probate Appeal No. 05 of 2021, in the District Court of Musoma
at Musoma)***

BETWEEN

MARY LAZARO NYAGANYA.....1ST APPLICANT

GIDEON WARIOBA MAZARA..... 2ND APPLICANT

VERSUS

WINNIE SANURO..... RESPONDENT

RULING

5th & 5th May, 2022.

A. A. MBAGWA, J.

This is an application for extension of time within which to appeal against the decision of the District Court of Musoma in Probate Appeal No. 05 of 2021.

The 1st applicant, Mary Lazaro Nyanganya, is a mother of the late Kennedy Warioba Mazara whereas the respondent was a concubine of the late Kennedy Warioba Mazara with whom she was blessed with one issue namely, Daudi Warioba Kennedy.

Upon demise of the late Kennedy Warioba Mazara, the applicants were appointed administrators of the estates of the late Kennedy Warioba Mazara through Probate Cause No. 139 of 2019 in Musoma Urban Primary Court. The two applicants submitted before the Primary Court minutes of clan meeting which resolved, among other things, that the child, Daudi Warioba Kennedy should be given Tanzanian shillings ten million (10,000,000/=) as his share of inheritance. It appears the minutes of the clan meeting were endorsed by the Primary Court and the matter came to an end. However, when the respondent demanded her son's share the 1st applicant turned hostile and claimed that the said Daudi Warioba Kennedy is not a biological child of her late son. The Primary Court dismissed the 1st applicant's claims and ordered Daudi Warioba Kennedy to be given his share.

The applicants were aggrieved by the decision of the Primary Court hence appealed to the District Court of Musoma. As bad luck would have it on the side of the applicants, the District Court upheld the decision of the Primary Court and consequently, dismissed the appeal.

The applicants were still not satisfied with the decision of the District Court hence they are determined to challenge it by way of appeal. Nonetheless,

the applicants have found themselves out of prescribed time for lodging appeal hence this application.

In the supporting affidavit, the 1st applicant states that the reason for delay is sickness. She states that she was suffering from hypertension hence she had to visit the hospital regularly. The applicant attached medical record from Musoma Referral Hospital to substantiate her claims. She further contends that she started getting better from 17/02/2022 and that is when she commenced a follow up of her case. Consequently, the 1st applicant was advised by her advocate that she had to apply for extension of time.

In rebuttal, the respondent resisted the application through counter affidavit. In fact, the respondent disputed the 1st applicant's claims of illness. She stated that the 1st applicant was admitted at the hospital on 15th March, 2021 and discharged on 17th April, 2021 and this was before the judgment was delivered.

When the matter was called on for hearing, the applicants were represented by Hellena Mabula, learned counsel whereas the respondent appeared, unrepresented.

Submitting in support of the application, Ms Mabula adopt the affidavit of Mary Lazaro Nyaganya to form part of her submission. She then argued that the applicants appealed to the District Court of Musoma via Probate Appeal No. 05 of 2021 after they were dissatisfied with the decision of the Primary Court of Musoma Urban in Probate Cause No. 139 of 2019. She contended that the said Probate Appeal was dismissed on 22/07/2021 thus, according to the law, it was supposed to be lodged within thirty (30) days which expired on 20/08/2021. The applicants' counsel said that unfortunately, on 15/08/2021 the 1st applicant fell sick of hypertension and therefore she was admitted at Musoma Referral Hospital from 15/08/2021 to 27/09/2021. The counsel continually told the Court that after being discharged she was scheduled to attend clinic on 25/10/2021, 18/11/2021, 20/12/2021, 03/01/2022, 21/01/2022 and 15/02/2022.

The applicants counsel submitted further that thereafter she got some improvements and on 17/02/2022 she went to their office for legal advice and was advised to apply for extension of time. The counsel said that her office prepared this application and filed the same on 21/02/2022. Ms Mabula prayed the court to consider that sickness is beyond human control and consequently allow the application. She cited decision of this Court in the

case of **Bosoa Mfaume vs Ulimwengu Sungura Hamimu**, Misc. Land Application No. 27 of 2021, HC at Kigoma where Mlacha J at page 6 held that sickness of the applicant if proved is a ground for extension of time.

The respondent, being a lay person, had little to submit. She simply said that she was resisting the application on the ground that the 1st applicant was not sick.

I have keenly gone through the submissions of both parties and the record. The pivotal issue for determination of this matter is whether the applicants have demonstrated a sufficient cause of delay for this Court to grant extension.

It is a common ground that according to the applicants' annexures, the judgment sought to be impugned was delivered on 22nd July, 2021 in the presence of both 1st applicant and the respondent. Further, according to the medical report, the 1st applicant was admitted on 15/08/2021 and discharged on 27/09/2021 and thereafter the 1st applicant was going to hospital for monthly check up. It is also in evidence that at the District Court the applicants had legal representation of Mr. Edson Philipo, learned advocate.

Upon going through the application documents, the only reason for delay is sickness. However, from 27/09/2021 the 1st applicant was discharged and she was attending clinic as an outpatient. There is no explanation as to what prevented her from filing this application immediately after being discharged on 27/09/2021. Besides, there are two applicants namely, Mary Lazaro Nyaganya and Gideon Warioba Mazara but there is no a single statement as to why Gideon Warioba Mazara did not process the appeal during the 1st applicant's illness.

In determining a sufficient cause of delay Court takes into account various factors including; length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, the conduct of the parties, whether the applicant was diligent, the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal and the overall importance of complying with prescribed time lines. See **Jaliya Felix Rutihwa vs Kalokola Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam, **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No.

372/01/2018, CAT at Dar Es Salaam and **Alasai Josiah vs Lotus Valley LTD**, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam at page 6

Indeed, parties are required to comply within prescribed time provided by law and where a party fails to lodge an appeal within the time frame, he should adduce strong reasons for delay. Whereas I agree with counsel Hellena Mabula that sickness is a good ground for extension of time, it is not automatic that whenever sickness is pleaded extension of time would be granted. Of course, extension of time should be granted upon evaluation of all circumstances attending in each case.

In this case, there are two applicants but there is no mention of the 2nd applicant, Gideon Warioba Mazara nor is the Court informed why he failed to process the appeal during the sickness of the 1st applicant. Secondly, after the 1st applicant was discharged on 27/09/2021, she continued to attend the clinic monthly. If the 1st applicant was able to attend monthly clinic why did she fail to follow up the appeal?

In view of the above, it is my considered findings that the applicants have not shown sufficient cause for their delay. From 27/09/2021 when the 1st

applicant was discharged to 22 of February, 2022 when this matter was filed in this court is an inordinate delay which has no explanation.

In the circumstances, I dismiss the application with costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

05/05/2022

Court: This ruling has been delivered in the presence of Hellena Mabula, advocate for the applicants, on the one side and the respondent, on the other side this 5th day of May, 2022.


A. A. Mbagwa

JUDGE

05/05/2022