

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAM**

**AT DAR ES SALAAM**

**(PC) CIVIL APPEAL NO. 61 OF 2021**

**SYDNEY MWALUKASA ..... APPELLANT**

***VERSUS***

**FREDRICK AGREY MWALUKASA as a Legal Personal  
Representative of the late Bethelina**

**Agrey Mwalukasa ..... RESPONDENT**

*(Appeal from the judgment of the District Court of Kinondoni at Kinondoni  
in Miscellaneous Application No. 154 of 2019 originating from the decision  
of the Kawe Primary Court in Probate Cause No. 149 of 2017)*

**JUDGMENT**

14<sup>th</sup> and 16<sup>th</sup> March, 2022

**KISANYA, J.:**

The appellant and the respondent herein are children of the late Bethelina Agrey Mwalukasa (the deceased) who died intestate on the 21<sup>st</sup> day of May 2004. The respondent who is the younger brother of the appellant petitioned for letters of administration. The petition was lodged in the Primary Court of Kawe (primary court). In its ruling dated 28<sup>th</sup> August, 2017, the primary court appointed the respondent as an administrator of the estate of the deceased.

It was on 29<sup>th</sup> August, 2019 when the appellant filed an application for revision of the proceedings and ruling of the primary court. The

application was lodged in the District Court of Kinondoni at Kinondoni. It was heard orally. At the end, the District Court dismissed the said application for want of merit. The said decision irked the appellant who opted to file the present appeal. A total of six grounds of appeal were raised in the appeal. For the reasons to be noticed in this judgment, I will not reproduce the said grounds of appeal.

When the matter was called on for hearing, the appellant was represented by Mr. Ambrose Malamsha, learned advocate, whilst the respondent had the legal services of Mr. Fredrick Masawe August, learned advocate holding brief of Ms. Bertha Mhagama, learned advocate, with instruction to proceed.

Before the hearing could commence, I probed the parties to address the Court on whether the application for revision which gave rise to this appeal was lodged within time prescribed by the law. That issue was premised on the provision of section 22 (4) of the Magistrate's Courts Act, Cap. 11, R.E. 2019 (henceforth "the MCA").

Submitting on the above issue, Mr. Ambrose Malamsha argued that application for revision was lodged within the time prescribed by the law. His argument was based on the contention that the last order of the primary

court was made on 27<sup>th</sup> March, 2019 and the copies of the proceedings supplied to the appellant on the 15<sup>th</sup> day of September, 2019.

In his response, Mr. Fredrick submitted generally that the application was filed out time. However, the learned counsel was not able to cite the relevant provision on the issue under consideration.

Having heard the parties, I am now in a position of addressing the issue whether the application for revision lodged in the District Court was timeous. As indicated earlier, that issue is based on the provisions of section 22 (4) of the MCA which provides as follows: -

*“No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section..”*

According to above provision, the time within which the proceedings of the primary court may be revised is twelve months from the termination of the proceedings subject to revision. In that regard, it is my considered view that an application for revision of the decision of the proceedings of

the primary court must be lodged within twelve months from the date of termination of the said proceedings.

To resolve whether the application for revision was timeous, I find it apt to look at the nature of prayers sought before the District Court. The substantive prayers are reproduced hereunder:

1. *This Honourable court to call for and examine the record of the Primary Court of Kawe before Hon. **KASANGA**, RM dated 28/08/2018 in a Probate Cause No. 148 of 2018 in order to satisfy itself as to the correctness, legality and regularity of its orders and annul the proceedings.*
2. *That upon examining and revising the record, this Honourable court be pleased to quash and /or set aside the entire proceedings, findings and orders made by the Primary Court of Kawe in Probate Cause No. 149 of 2018."*

In the light of the above, it is clear that the District Court was moved to examine the record of primary court dated 28<sup>th</sup> August, 2018 and revise the same. This fact is also reflected in paragraph 11 of the supporting affidavit in which the appellant deposed as follows:-

*"That, the proceedings and ruling of Kawe Primary Court (Hon. Kasanga RM) dated 28<sup>th</sup> August, 2018 in Probate Cause No. 149 of 2019 demands for immediate*

*intervention of this Honourable Court as they are tainted with irregularities.”*

It worth to note here that, there are no proceedings and ruling of the primary court dated 28<sup>th</sup> August, 2018. What is on record are the proceedings and ruling dated 28<sup>th</sup> August, 2017. Indeed, there are proceedings and decision that proceed after 28<sup>th</sup> August, 2017. Since it is trite law that parties are bound by their own pleadings, this Court finds that the District Court was asked to revise the proceedings and decision of the primary court dated 28<sup>th</sup> August, 2018.

Now, guided by the provision of section 22(4) of the MCA, the time within which to revise the proceedings and ruling subject to the application before the District Court lapsed on 27<sup>th</sup> August, 2019. It is on record that the application which gave rise to this appeal was lodged in the District Court of Kinondoni on 29<sup>th</sup> August, 2019 while the court's filing fee was paid on 10<sup>th</sup> September, 2019.

As alluded earlier, there are proceedings and orders made after 27<sup>th</sup> August, 2017. However, in terms of the pleadings by the appellant, the same were not subject to the application for revision lodged in the District Court of Kinondoni. That being the case, Mr. Malamsha's argument that the last order of the primary court was issued on 27<sup>th</sup> March, 2019 lacks merit

because the said proceedings were not subject to revision's application lodged in the District Court. Further, since the application was lodged on 29<sup>th</sup> August, 2019, the contention that the copies of proceedings were supplied to the appellant on 15<sup>th</sup> September, 2019 implies that filing of the application did not depend on availability of the said copies.

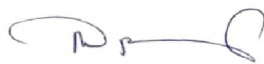
From the foregoing, I am convinced that the application for revision was filed out time prescribed by the law. It is settled that delay of even a single day must be accounted for. Unless an extension of time is sought and granted, courts lack jurisdiction to determine a matter lodged out of time. As a result, the proceedings and judgment which originates from a matter filed out of time are a nullity. This position was stated in the case of **Tanzania National Road Agency and Another vs Jonas Kinyagula**, Civil Appeal No. 71 of 2020 (unreported), in which the Court of Appeal had this to say in respect of a case filed out of time:-

*"We subscribe to the above cited authority. In this case, since the suit was lodged far beyond the prescribed time it was time barred, and hence, the trial High Court lacked jurisdiction to entertain it. Since the trial court entertained an incompetent suit, the whole proceedings and judgment thereof were a nullity."*

That being the position, the proceedings and ruling of the District court were a nullity. In that regard, the appeal cannot be determined it is based on the proceedings and decision of the District Court which are a nullity.

In the circumstances, the Court exercises its revisionary powers by nullifying the District Court's proceedings, quashing the ruling and setting aside the drawn order passed thereon. In lieu thereof, this Court holds that the application for revision filed in the District Court was incompetent for being lodged out of time. Given the nature of this case, the Court makes no order as to costs.

DATED at DAR ES SALAAM this 16<sup>th</sup> day of March, 2022.



S.E. Kisanya  
JUDGE