

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**MISCELLANEOUS CIVIL APPLICATION NO. 7 OF 2022**

(C/F High Court Civil Application No. 111/2020)  
(Original High Court Probate Cause No. 11/2016)

**IN THE MATTER OF the Estate of the late THOMAS PHILIP OLOTU of  
Arusha  
and**

**IN THE MATTER of an Application for Probate by Ms. MATILDA THOMAS  
PHILIP, MR. ELIAS BENJAMIN OLOTU, MR. RAJENDRA OCHHVLAL  
SARAIYA AND MR. ELVAISON ERASMO MARO granted on the 24<sup>th</sup> day of  
November, 2016**

**and**

**IN THE MATTER of an Application for re-instatement into their active  
duties as Administratrix/Administrator of the estate of the late THOMAS  
PHILIP OLOTU by Ms. MATILDA THOMAS PHILIP, Mr. RAJENDRA  
OCHHAVLAL SARAIYA AND MR. ELVAISON ERASMO MARO.**

**MISC. CIVIL APPLICATION NO. 111 OF 2020**

(C/f Probate and Administration Cause No. 11 of 2016)

**MATILDA THOMAS PHILIP .....1<sup>ST</sup> APPLICANT**

**REJENDRA OCHHAVLAL SARAIYA.....2<sup>ND</sup> APPLICANT**

**ELVAISON ERASMO MARO .....3<sup>RD</sup> APPLICANT**

**RULING**

**11/05/2021 & 24/05/2022**

**GWAE, J**

The applicants named above were appointed administrators by this court vide Probate and Administration Cause No.11 of 2016 however they had closed their statutory duty as administrators of the estate of the late Thomas Philip Olotu. After closure, there was discovery of other estate of the said deceased not distributed to the heirs. Such detection led the applicants to come to the court seeking re-opening of the file so that they could accomplish their duty as administrators vide Miscellaneous Civil Application No. 111 of 2020.

Unluckily, the said Miscellaneous Civil Application was dismissed on the 7<sup>th</sup> December 2021 by the court for want appearance. Seemingly, the applicants became aware after lapse of the prescribed period for setting aside a dismissal order. Thus, this omnibus application for extension of time and re-admission of the dismissed application made under section 14 of the Law of Limitation Act, Cap 89, Revised Edition, 2019 and Order ix Rule 3 (4) and section 95 of the Civil Procedure Code, Cap 33, Revised Edition, 2019.

This application is supported by sworn affidavit of one Valentine Joachim Nyalu in which reasons for the sought extension of time within which to set aside the dismissal and the prayer of re-admission of the dismissed Misc. Civil Application No. 11 of 2020. The applicants' reasons

contained in the affidavit are; that, the learned advocate, Mr. Deogratias Urassa who had the charge of prosecuting both the Probate and Administration Cause and the said Miscellaneous Civil Application, left the country sometimes in the month of October 2021 and went to India for medical treatment, that, when the said advocate Urassa had turned back home, he did not report back to his office. It is further deponed that, on the 10<sup>th</sup> day of January 2022 when the office styled and known as M/S Maro and Company Advocates conducted routine audit it was discovered that the said Miscellaneous Civil Application lost its dates for either mention or hearing as the last date was on the 26<sup>th</sup> Day 2021 and that when follow ups were made to know the status of the application, it was learnt that the same was dismissed for want of appearance.

At the hearing of this application, Mr. Gwakisa Sambo, the learned advocate appeared for the applicants however he reiterated the prayers contained in the chamber summons. It is thus the duty of the court to ascertain if the applicants' application is grantable or refusable in the eye of the law.

It is common ground that, grant of an application for extension of time to apply for re-admission or refusal of the same is a discretion of the court which is judiciously exercisable (see **Benedict Mumello vs. Bank**

**of Tanzania**, Civil Appeal No. 12 of 2002 (unreported-CAT and (see **R. v. Governor of Winchester Prison, ex p Roddie** (1991) 2 ALL ER 931). More so, the restoration of the dismissed application for want of appearance depends upon reason or good cause given by the applicants as to why they were not present on the material date. In order to properly exercise judicial discretion. I think there is no requirement of applying mercy or sympathy or excuses but something more tangible is required to justify the court to re-admit an appeal that has been dismissed for want of appearance.

I have no doubt as to period when the applicants' advocates became aware of the dismissal order (18<sup>th</sup> January 2022) to the date of filing this application that is 25<sup>th</sup> January 2021 as the action of making follows ups followed by subsequent filing of this application is indicative of prompt action on the part of the applicants, which must be judiciously taken into consideration when asked to extend time or not. This position of the law was stressed in **Royal Insurance Tanzania Limited vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 (unreported-CAT), cited with approval in the case of **Sebastian Ndaula vs. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No.4 of 2014 (unreported) where it was held that;

" It is trite law that, in an application before the Court, the applicant must satisfy the Court that since becoming aware of the fact that he is out of time, he acted very expeditiously and that the application had been brought in good faith. "

I have further considered the applicants' contention that from dates of October, 2021, the applicants' advocate one Deogratias Urassa who was prosecuting the application went to India for medication, the fact which is remains uncontested. I am alive of the fact that sickness, if proved, constitutes good cause to either extend time or and re-admit an appeal or application dismissed for want of appearance like the matter at hand (See a judicial precedent in **Kijiji Cha UjamaaManolo vs. Hote** [1990–1994] 1 EA 240.

Without further ado, in the light of the above explanations this court is of the considered view that, the applicants have given sufficient cause for justifying this court to extend time to apply for setting aside dismissal order and for re-admission of the Miscellaneous Civil Application 111 of 2020. This application is thus granted. Consequently, the applicants' Misc. Civil Application No. 111 of 2020 is re-admitted. No order as to costs is made.

It is so ordered.

Dated at Arusha this 24<sup>th</sup> May, 2022



**MR. GWAE**  
**JUDGE**  
**24/05/2022**