

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 11 OF 2022**

(Arising from Misc. Probate and Admin. Cause No. 37 of 2020 at Nyamagana District Court, Original Probate and Admin. Cause No. 3 of 2010 at Nyamagana District Court)

**1. ANJENDILE STEVEN MTETEMELA  
2. ANTHONY STEVEN MTETEMELA** } .....**APPLICANTS**

**VERSUS**

**MRS. MARY FLORENT S. MTEEMELA  
(As an Administratrix of the Estate of  
Steven Weston Mtetemelela** } .....**RESPONDENT**

**RULING**

10<sup>th</sup> & 31<sup>st</sup> May, 2022

**DYANSOBERA, J.:**

The applicants, Anjendile Steven Mtetemela and Anthony Steven Mtetemela, have moved this court under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019] praying for extension of time to file an appeal to this court against the decision of the District Court in Misc. Probate Administration Cause No. 37 of 2020 delivered on 20.11.2020. The applicants have supported their application by the affidavit sworn by Mr. Deya Paul Outa, learned Counsel. The application has been resisted by way of a counter affidavit sworn by Mary Florent Stephen

Mtetemela, the respondent and filed by Mr. A.K. Nasimire, learned Advocate.

The genesis of the present application is, in brief, the following. The applicants filed Misc. Probate and Administration Cause No. 37 of 2020 praying for revocation of the letters of administration granted to the respondent in respect of the estate of the late Steven Wetson Mtetemela. The reason for that application was the alleged respondent's disobedience of court's order given on 28.6.2011 which required the respondent to collect and preserve the deceased's estate but; instead, the respondent went beyond the court's power and distributed the estates to David Steven and Angendile Lupiana Weston Mtetemela and paid the debts. The applicants had also argued that there was fraud in the inventorying and distributing the estate letters of administration.

In its ruling dated 20.11.2020, the District Court found that the administratrix (respondent) acted beyond the powers of the court and had failed to counter the allegations after she defaulted appearance. Relying on the decisions in **Joseph Mniko and others v. Daud Kichonde** [1996] TLR No. 48 and **Sekunda Mbombo v. Rose Ramadhan** [2004] TLR 439 on the authority that acts of administration which will give birth to doubts by beneficiaries and court to lead to loss

of faith on such administrator will also warrant the court to revoke the grant of administration, the District Court found that the respondent had gone beyond powers conferred to her by the court and had distributed the estate to two heirs instead of distributing it to fifteen heirs. The court further found that since it was the same court which granted the respondent letters of administration, it had power to revoke it under section 82 of the Probate and Administration of Estates Act [Cap. 352 R.E.2019].

The District Court, after satisfying itself that there was a reason justifying revocation of letters of administration granted to respondent, revoked the respondent's letters of administration and made the following order,

"The cost to follow the event, but no any other relief is granted by this court"

It is this last order which aggrieved the applicants. They are, therefore, seeking extension of time to challenge it by way of appeal upon their application for extension of time being granted by this court.

On 10<sup>th</sup> day of May, 2022 when this application was called for hearing, Mr. Deya Paul Outa, learned Advocate, stood for the applicants

whereas the respondent was represented by Mr. Anthony Nasimire, learned Counsel.

Supporting the application, learned Counsel for the applicants was brief and focused. He submitted that the applicants faulting the District Court's refusal to order the respondent account for what had come into her hands during her administration of the estate of the late Steven Weston Mtetemela. The District Court was also faulted for failure to give reasons, a fact which, according to learned Counsel, was in contravention of the law. In his view, the decision of the District Court was both irregular and illegal. In support of his argument, Counsel for the applicants relied on the cases of **Ikindila Wigae v. R.**, [2005] TLR 365 on the necessity of giving reasons and **Principal Secretary, Ministry of Defence and National Service v. D. P. Valambia** [1992] TLR 387 on the authority that illegality is a good ground for extending time.

Replying, learned Counsel for the respondent pointed out that the impugned ruling of the District Court was delivered on 20.11.2020 while this application was filed in this court on 11.2.2022. He argued that there was no reason advanced to explain this late filing.

On the argument that illegality is one of the grounds for granting extension of time, Mr. Nasimire had no quarrel with it but explained that the illegality advanced by the applicants was fancy and this application is nothing but an academic exercise. He reasoned that the application leading to the impugned ruling was filed in court after the respondent had already filed an inventory and accounts and had already been discharged. Counsel for the respondent argued that on the date when the Probate and Administration Cause was filed, the respondent was no longer an administratrix. In his opinion, the order by the District Court purporting to revoke the respondent's letters of administration did not serve any useful purpose as the application had been overtaken by events which means that the order compelling the respondent to render the accounts, if made, would have no legs to stand on. Counsel for the respondent further contended that the applicants had no *locus standi*. In his conclusion, he informed this court that since the District Court was not entitled to give its ruling, it cannot be said to have acted illegally.

In his rejoinder, Mr. Outa, in response to the argument that there was no accounting of each day of delay, contended that there was a technical delay as indicated at paragraphs 6 of and 7 of the supporting affidavit and asserted that the applicants did not sit on their rights as

they were still struggling in court. He was of the view that the delay has been sufficiently accounted for in the circumstances of the case.

On the presence of illegality, Mr. Outa told this court that his learned friend has conceded that illegality is a good ground for extension of time. He said that the court, at present, is not being called upon to determine the merits of the application and that the arguments advanced by learned Counsel for the respondent including the legitimacy or otherwise of the deceased's children goes to the merits of the case and should, therefore, await the appeal.

With respect to the argument by learned Counsel for the respondent on the ruling of the District Court being problematic, Mr. Outa was of the view that this is an anomaly calling for the courts to intervention to rectify.

Having considered the application and the supporting affidavit and after hearing the submissions of both Counsel, the issue calling for determination is whether the applicants have adduced reasonable or sufficient cause to justify the extension of time.

As the Chamber Summons clearly indicates, this application has been filed under Section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2019]. The said Section provides as follows:-

"14(1) Notwithstanding the provisions of this Act; the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for

the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

According to the supporting affidavit and the submission of learned Counsel for the applicants, two main grounds have been advanced. One is technical delay and two, the illegality.

The respondent, through her learned Counsel has resisted those grounds.

Let me start with the argument that the delay in lodging the appeal in time was technical. In arguing on this ground, Mr. Outa contended that after the impugned decision, the applicants were struggling with the case that was before the District Court at Kinondoni. On his part, Mr. Nasimire argued that the delay was inordinate.

I think Mr. Nasimire is right. According to paragraph 6 of the affidavit sworn by Mr. Deya Paul Outa, following the delivery of the ruling of Nyamagana District Court, the applicants' sibling Asungushe Steven Mtetemela file Probate Cause No. 38 of 2021 before Kinondoni District Court in Dar es Salaam seeking the appointment as administration. It is averred under paragraph 7 of the said affidavit that the District Court of Kinondoni ruled that it had no jurisdiction as the matter was originally filed in Mwanza.

Although Mr. Outa did not state when the decision of Kinondoni District Court was delivered, the copy of the ruling annexed to the affidavit (AM 2) is clear that it was delivered 2<sup>nd</sup> day of June, 2021. It is on record that this application for extension of time was filed before this court on 11<sup>th</sup> day of February, 2022 after almost eight solid months. As rightly pointed out by Mr. Nasimire, there was no explanation on part of the applicants on the late filing of this application. Indeed, the applicants failed to account for the delay of more than eight solid months.

The salutary principles in grant of extension of time were amply elucidated by the Court of Appeal in **Lyamuya Construction Company Ltd versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha, in which at pp. 6-7 of the judgment had this to say:-

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrary. On the authorities however, the following guidelines may be formulated (a) the applicant must account for all period of delay (b) the delay should not be inordinate (c) the applicant should show diligence, and not



apathy, negligence, sloppiness in the prosecution of the action that he intends to take (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.”

In the instant case, the applicants have failed to account for all period of delay, the delay was inordinate and the applicants failed to show any diligence in pursuing their matter.

With respect to the principle of technical delay, I am aware that the principle of technical delay was propounded by the Court of Appeal in the case of **Fortunatus Masha v. William Shija and another** [1997] TLR 154 (CA) where the Court had this to say:-

“A distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted”.

In that case, the single judge of the Court of Appeal held that the delay on the part of the respondent had been technical and not actual and that the original appeal, though incompetent, had been lodged in time.

In the case under consideration, no appeal was found to be incompetent after it had been lodged in time. So, the ground of technical delay advanced by the applicants through Mr. Outa is of no assistance to them the delay was not technical, rather it was an actual delay. The averment under paragraph 10 of Mr. Outa's affidavit that the delay by the applicants to appeal in time has been occasioned by the decision to file an application in Dar es Salaam by another member, an application which was struck out is, in the circumstances of the case, unacceptable.

This ground falls away.

Now on the ground of illegality. Under paragraph 9 of the supporting affidavit, it is averred that that the decision of the Nyamagana District Court is irregular for not giving reasons for the decision. In his submission, Mr. Outa argued that they intend to challenge that illegality which is a ground for extending time. Reliance was placed the case of **Principal Secretary, Ministry of Defence & National Service vs Duram P. Valambhia** [1992] TLR 387. Mr. Nasimire, in response, contended that the illegality is nothing but fancy.

It is true and as conceded by Mr. Nasimire that illegality is a ground for extension of time. This legal position was echoed by the Court of Appeal in **Principal Secretary, Ministry of Defence; National**

**Service vs Devram Valambhia** [1992] TLR 185 in the following words:-

“In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to take appropriate measure to put the matter and record right”

The Court was, however, of the view that the point must be a point of law of sufficient importance to justify the delay.

Likewise, in the case of **Principal Secretary, Ministry of Defence & National Service vs Duram P. Valambhia** [1992] TLR 387 cited by Mr. Outa, the Court of Appeal was clear that the illegality was a sufficient ground for extension of time was a point of law sufficiently weighty such that if proved it would go to the root of the matter. The Court gave the instance of the alleged illegality of the order or orders of the court and found to be obviously, a point of law.

In the instant case, there is nothing in the sworn affidavit of Mr. Outa or even in his submission that the decision of the Nyamagana District Court was an illegality amounting to a point of law of sufficiently weighty such that, if proved, would go to the root of the matter. This point, was, therefore, not of sufficient importance to justify the extension of time.

The aim of the discretion being to advance substantial justice, it is my firm but considered view that, apart from the fact that the applicants have miserably failed to adduce reasonable or sufficient cause, the grant of extension will enhance the protraction of the matter and delay the realization of the justice, taking into account that this matter dates back in 2010.

The application fails and is dismissed. Each part to bear its costs.



  
**W.P. Dyansobera**  
**Judge**  
**31.5.2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 31<sup>st</sup> day of May, 2022 in the presence of Mr. Deya Paul Outa, learned Advocate for the applicants and Mr. Arsein Molland, learned Counsel holding brief for Mr. Nasimire, learned Counsel for the respondent.



  
**W.P. Dyansobera**  
**Judge**