

**IN THE HIGH COURT OF TANZANIA**

**TEMEKE SUB-REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**CIVIL REVISION NO. 06 OF 2022**

*(Arising from Probate and Administration Cause No. 195 of 2022 at the District Court of Temeke, One Stop Judicial Centre)*

**RAMADHANI KITWANA KINYOGOLI..... APPLICANT**

***VERSUS***

**MAGRETH ADOLPH NGAIZA** (As Administratrix  
of the estate of the late **KITWANA KAMBI KINYOGOLI**) .....**RESPONDENT**

**RULING**

Date of last order: 19.07.2022

Date of Ruling: 02.08.2022

**OMARI, J.**

This is a ruling is with regard to the two points of preliminary objection raised by the Respondent, one Magreth Adolph Ngaiza against the Application for Revision sought by the Applicant, one Ramadhani Kitwana Kinyogoli. The Respondent was appointed as the Administratrix of the estate of the late Kitwana Kambi Kinyogoli by the District Court of Temeke at One Stop Judicial Centre in Probate and Administration Cause No. 195 of 2022.



The Applicant being dissatisfied, filed this Application for Revision. However, the Application was objected by the Respondent on two points; that is the Application is time barred and that the Application has been brought against a wrong (non-existing) party.

At the hearing of the points of the preliminary objection the Respondent was represented by advocate Masuna Gabriel Punju who was holding brief of August Mramba, learned advocate and the Applicant was represented by Shiza Ahmed John, also learned advocate. The matter was disposed by way of written submissions.

Submitting in support of the first point of the preliminary objection the counsel for the Respondent contended that the Application contravenes Item 21 of Part iii of the Schedule to the Law of Limitation Act Cap 89, R.E 2019 (the LLA) which requires applications brought under the Civil Procedure Code Cap 33 RE 2019 (the CPC) to be brought within a period of sixty days after the decision. Counsel argued that the current Application was filed on the 19<sup>th</sup> August 2022, which is approximately 217 days from the Ruling of the district court, therefore, it was filed out of time.

To support his argument counsel referred to the case of **Barclays Bank Tanzania Limited v. Phylisia Hussein Mcheni**, Civil Appeal No. 19 of

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2016(unreported) where the Court of the Appeal subscribed to the decision in the case of **John Cornel v. Grevo (T) Ltd**, Civil Case No. 70 of 1998 (unreported) where the law of limitation was held to be a merciless sword that has no sympathy. Counsel argued that based on the case the current Application should be dismissed with costs as per section 3 of the LLA.

On the second point of objection the Respondent submitted that Probate and Administration Cause No. 195 of 2021 was finalized on the 28 March, 2022 thus, the closure of the probate proceedings upon the Administratrix filing the inventory and accounts of the estate. He underscored that once probate proceedings are closed the Administratrix becomes *functus officio* and no longer has mandate over the administration of the deceased's estate. Therefore, on the 28 March, 2022 the Respondent stopped having mandate over the estate of the deceased for she was no longer the Administratrix. As a result, it is inappropriate for the Applicant to initiate legal proceedings against the Respondent as the Administratrix of the estate of the deceased after the closure of the probate proceedings.

To support his contention counsel referred to the case of **Andrew C. Mfuko v. Geprge C. Mfuko (An Administrator of the Estate of The Late Clement N. Mfuko)**, Civil Appeal No. 320 of 2021 where Court of Appeal



stated that once the administrator has vacated the office of administrator he then cannot sue or be sued in that capacity.

In response to the first point of the preliminary objection, the Applicant's counsel submitted that the Application was filed within time, since the file was officially closed on the 13 June, 2022. He submitted further that this Application was submitted for filing on judiciary electronic filing system on 12 August, 2022 technically 59 days since the file was closed and although the hard copy was physically filed on the 19 August, 2022 the law favours the Applicant since the delay of one week is due to system failure of the judicial electronic filing system. Counsel supported his argument by citing Rule 21(1) of the Judicature and Application of Laws (Electronic Filing Rules), G.N. No. 148 of 2018 (the Rules) and the case of **GGN Construction Ltd v. George Johansen T/A Mageta Timber Supply**, Civil Application No. 33 of 2020.

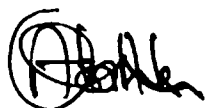
The Applicant's counsel further argued that the Application was not rejected through electronic filing system but the problem was on the courts' internet system. Therefore, it is the Applicant's counsel's contention the Application is not time barred as per the Rules and the case of **GGN Construction Ltd v. George Johansen T/A Mageta Timber Supply** (supra). He contended that the Respondent is misleading the court by saying the probate matter was closed



on the 28 March, 2022 while the court records show it was re-opened on 13 June, 2022 and was officially closed again on 13 June, 2022.

The Applicant's counsel also disputed the contention that the Respondent has no mandate over the deceased's estate since she still holds properties which were meant to be distributed to the beneficiaries including the Applicant. As regards the case of **Andrew C. Mfuko v. George C. Mfuko** (supra) referred by the Respondent, counsel argued that the Respondent has failed to interpret the case and he is misleading the court for the reason that the case referred involved an appeal where the court exercised its revisionary powers and nullified the judgment and decree hence the appeal was struck out pursuant to section 4(2) of the Appellate Jurisdiction Act Cap 141 RE 2019. The counsel then quoted from Black's Law Dictionary where revision is defined as a re-examination or careful review for correction or improvement which according to him is what his client was seeking and could not be likened to the case cited by the Respondent.

Having considered the rival submissions of both parties, the only issue for this court's determination is whether the points of objection are meritorious and the way forward.

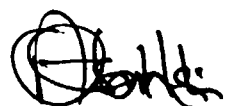
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Item 21 of Part iii of the Schedule to the LLA demands applications under the CPC, the Magistrates' Courts Act Cap 11 RE 2019 or other written laws for which no period of limitation is provided to be brought within sixty days. This being the case the Application at hand should have been brought within 60 days of closure of Probate and Administration Cause No. 195 Of 2022 since the same is regards a matter that has already been marked closed by the probate court. The quandary for the parties seems to be the question as to when exactly Probate and Administration Cause No. 195 Of 2022 was closed. The answer to that question is the key in determining both points of objection, it is for that reason I commence with the same.

The records show that the Probate Cause No. 195 Of 2022 was closed on 28 March 2022. For clarity at page 9 of the trial court's typed proceedings it is stated:

*'kwa kuwa warithi wameridhika mali yote ya marehemu imegawanywa kama ambavyo inaonekakana kwenye hesabu na kwa kuwa hakuna kilichobaki natamka rasmi kuwa mirathi hii imefungwa, aidha naamuru msimamizi arudishe barua ya uteuzi na atarudishiwa cheti cha kifo cha marehemu baada ya kuandika barua'*

The record also depicts that on 09 June 2023 the Respondent approached the court regarding the information she obtained from the bank relating to the deceased's estate, that is there being money that is part of the deceased's



estate. As a result, the learned district court magistrate re-opened the file on 13 June, 2022. This is the crux of the Applicants contention that the matter is filed within time on 12 August, 2022 that is on the 59<sup>th</sup> day, when it was filed online.

It is my considered view that since Administration and Probate Cause No. 195 of 2022 was marked closed on 28 March, 2022 then any action that was made after the closure of the said file would mean that the court went ahead and gave orders regarding a matter that was already closed. The file being closed, both the Administratrix and the court were *functus officio* to deal with the unadministered assets that subsequently came to the knowledge of the former Administratrix in the manner that they did.

I am inclined to agree with the Respondent's counsel that the case **of Andrew C. Mfuko V. George C. Mfuko (An Administrator of The Estate of The Late Clement N. Mfuko)**, (supra) is applicable in this case to the extent that it is not correct to sue the Respondent as the Administratrix because she no longer has the powers or capacity to act as an Administratrix of the deceased's estate.

The Applicant's counsel when defending against the objection also stated that the Application had to be heard because the Administratrix not only had some

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of the properties that are part of the estate but also the probate cause was filed with false information leading to other heirs be denied their rights. This would even if were true would still meet the same fence of the file being closed. In The case of **Ahmed Mohammed Al Laamar v. Fatuma Bakari and another**, Civil Appeal No. 71 of 2012 the Court of Appeal had this to say:

*'Given the fact that the Appellant had already discharged his duties of executing the will, whether honestly or otherwise, and had already exhibited the inventory and accounts in the High Court, there was no granted probate which could have been revoked or annulled in terms of section 49(1) of the Act.'*

Although the above case is making reference to a Will and in the present Application the Respondent was an Adminstratrix the principle is the same the matter has already been closed, there is no longer a grant and by necessary implication no Adminstratrix to sue or be sued in that capacity. The Applicant can if he so wishes take legal action, if any, against the Respondent in a proper forum.


In probate and administration matters the Administrator has powers and functions that derive with the legal assumption of that office through an appointment by a court. One can then ask the question; what is the role and function of the Administrator and that of the court after the closure of the file?



The answer is simple; none, they are all *functus officio*. This means the decisions rendered after the closure of the administration are all made after the court was *functus officio* as was the administrator. The decision to open the file upon the Respondent's request was null as was anything else that was done after the said file was marked closed on 28 March, 2022. Moreover, the Administratrix no longer existed thus, the Respondent can no longer be sued in that capacity. This position has also been elucidated in several cases see for example **Ahmed Mohammed AL Laamar v. Fatuma Bakari and another** (supra) and in a later case of **Andrew C. Mfuko V. George C. Mfuko(An Administrator of The Estate of The Late Clement N. Mfuko)** (supra) it was stated that:

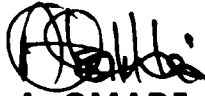
*'On our part having heard the advocates' submissions to the questions we posed, there is no dispute that the order of the high court in probate cause closed the matter with the result that the Respondent ceased to be an administrator. Having vacated office as administrator, he could not sue or be sued in that capacity'.*

From the above elucidation, both points of objection are sustained to the effect that the matter was filed out of time for a probate matter once closed remains so and that was on 28 March, 2022 and by that act the Administratrix ceased to exist in that capacity and the court no longer had powers over the matter.




Consequently, the Application is dismissed. Given the nature of the matter there is no order as to costs. It is so ordered.



  
**A.A. OMARI**  
**JUDGE**  
**02/08/2023**

Judgment delivered and dated 02<sup>nd</sup> day of August, 2023.

  
**A.A. OMARI**  
**JUDGE**  
**02/08/2023**