

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

MISC. PROBATE AND ADMINISTRATION CAUSE NO. 449 OF 2023

(Arising from Probate and Administration Cause No. 85 of 2021)

IN THE MATTER OF THE ESTATE OF THE LATE HASSAN SHIVJI KARIM

AND

**IN THE MATTER OF APPLICATION FOR EXTENSION OF TIME TO FILE
INVENTORY BY SHAHEEN HASSANALI**

SHAHEEN HASSANALI *(being the Administratrix of
the Estate of the Late **HASSAN SHIVJI KARIM**)* **APPLICANT**

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Section 107(1)&(2) of the Probate and Administration of Estates Act, [Cap. 352 R.E 2019], Section 14(1) of the Law of Limitation Act [Cap. 89 R.E 2019] and Section 109(1) of the Probate Rules. The applicant is moving the court for an order extending time within which the applicant may file an inventory in respect of the estate of the late Hassan Shivji Karim in Probate and

Administration Cause No. 85 of 2021 ("the Probate Cause") and any other relief that the court may deem fit and just to grant. The application was brought by way of a chamber summons supported by the affidavit of the Applicant, Shaheen Hassanali affirmed on the **17th August 2023**. From its very nature, the application was unopposed. Hearing of the application was by way of written submissions.

Brief background of the matter is that sometimes on the 30th January 2022, vide Probate and Administration Cause No. 85 of 2021, the applicant was appointed by this court as the executrix of the Will of her late father, Hassan Shivji Karim, who died on 17th March 2021 in Chelsea, Westminster Hospital in the United Kingdom. Having administered the estate, filing of an inventory was one the requisite to conclude a Probate Cause. As per the affidavit of the applicant, she could not be able to file the required inventory within the statutory period for reasons beyond her control.

In his submissions to support the application, Mr. Lugwisha's reasons advanced to be beyond her control included that she obtained the actual grant of probate on 30th January 2022 (Annexure SH-2), having followed up with the court on several occasions, to be referred to as part of this affidavit with the court's leave. That in the course of executing her duties, she came

to learn that the estate was straddled with various loans in respect of companies associated with the deceased, to wit, The Tides Beach Resort Ltd, Sea and Creek View Ltd, Msimbazi Creek Housing Estate Ltd and associated disputes with commercial banks including Azania Bank Ltd, Diamond Trust Bank Ltd, Exim Bank Ltd and Habib African Bank Ltd. The applicant hence claimed that since her appointment as executrix of the Will, she engaged the above banks and is yet to resolve with some of the banks including Azania Bank (Annexure SH-3) and that she in the process of concluding discussions with Habib Bank Ltd and hope to conclude these discussions with the bank (Annexure SH-4)

Mr. Lugwisha submitted further that an inventory cannot be properly presented in court unless assets and liabilities of the deceased are ascertained. Without this information, an executrix cannot present a realistic inventory which reflects the state of the estate of the deceased. That according to the supporting affidavit, the deceased's estate is encumbered with debts from financial institutions. Further that the deceased, who was also a director of three companies, the Tides Beach Resort Ltd, Sea and Creek View Ltd, Msimbazi Creek Housing Estate Ltd, had taken loans from various financial institutions and had also personally guaranteed and to this

end, the applicant had to engage with these banks, as evidenced by Annexures "SH-3 & SH-4" so as to obtain the actual extent of such loans, which information has not been revealed by the said banks.

On the Court's power to extend time, his submission was that this court is vested with the discretion to extend time and allow the applicant to file the inventory under Section 107 (1) & (2) of the Probate Act. He also admitted that this discretion can only be exercised when the applicant demonstrates good cause, to the satisfaction of the court why the said inventory could not have been filed within the required time. He cited cases whereby the discretion of the Court was principled under the ambit of sufficient reasons, the case of **Tanga Cement Company v. Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001**, (Unreported) whereby the Court of Appeal of Tanzania, CAT held that:

"...an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judiciously, and overriding consideration is that there must be sufficient cause for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account,

including whether or not the application was brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant."

He then argued that from the affidavital disposition of the applicant, her major setback to file the inventory within time is the fact that the deceased's estate is encumbered with debts from multiple financial institutions. Further that it was and still is not easy to obtain the true estimate of the assets and financial liabilities.

He then referred the case where this court was faced with a somewhat similar scenario **In the Matter of an Application for Letters of Administration by Mary Massay, Misc. Civil Application No. 348 of 2021, High Court of Tanzania** (Unreported). That in this case, an applicant, who was the administratrix of estates of the late Sirili Wilbald Massay, was seeking for extension of time to file an inventory and accounts of the deceased estate and one of her reasons for delay was that she could not timely file an inventory because it took her long to retrieve some of the documents pertaining to the deceased's stock and the court found this to be a sound reason and extended time. He further cited the decision of this court in **the Matter of Application for Extension of Time to File Inventory**

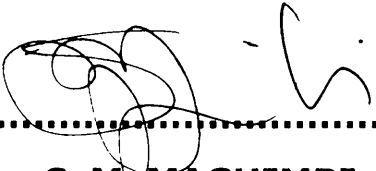
and given the fact that the estates are yet to be distributed to the heirs, his prayer was that the application be granted for the interests justice and the applicant be allowed to file her inventory.

Having considered the grounds for the delay as deponed in the affidavit and submitted by Mr. Lugwisha, the issue before me is to see whether the advanced reasons for the delay are sufficient bearing in mind that before me, I have an unclosed probate that is yet to settle the estate of the deceased. With that in mind, having considered several grounds for the delay particularly those which were not within the control of the applicant. For instance, an issue of settlement of Bank liabilities cannot be said to be within the control of the applicant.

With the above in mind, I am satisfied that the advanced grounds for the delay are sufficient to warrant this court's discretion to extend time. It is also a principle of law that all probates causes must be finally determined and concluded by the appointed executor or administrator filing the inventory of the state with a subsequent accounts thereto. It is in that principle that the probate having been unopposed and the grounds for the delay being sufficient, this application is hereby granted. Time is extended for the applicant to file the inventory of the estate of the deceased Hassan Shivji

Karim. The inventory shall be filed in court within 180 days from the date of this ruling. Since the application was unopposed and this being a probate matter, I make no order as to costs.

Dated at Dar es Salaam this 22nd day of January, 2024.



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S. M. MAGHIMBI
JUDGE