

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 5090 OF 2024

(Originating from Probate and Administration Cause No. 117 of 2012; Misc. Cause No. 205 of 2016 and Misc. Application No. 266 of 2022)

IN THE MATTER OF THE ESTATE OF THE LATE HUSSEIN NASSER SHARIFF

AND

IN THE MATTER OF THE APPLICATION FOR AN EXTENSION OF TIME TO FILE INVENTORY AND ACCOUNT OF THE ESTATE BY SADRUDIN HUSSEIN SHARIFF

RULING

09th April & 28th May, 2024

BWEGOGGE, J.

This is an application for grant of extension of time within which the applicant would comply with an order of this court in Misc. Civil Application No. 266 of 2022 dated 30th November, 2023. The application herein has been brought under section 95 of the Civil Procedure Code [Cap. 33 of 2019] and section 107 (1) and (2) of the Probate and Administration of the Estates Act [Cap. 352] read together with rule 109 (1) and (2) of the Probate Rules of 1963. The application herein is supported by the affidavit of the applicant.

The applicant was represented by Mr. Victor Mhoru, learned advocate, and the respondent had the services of Mr. Ntemi Masanja and Ms. Catherine Kiiza, learned advocates. The matter herein was heard orally.

Mr. Mhoru, in elaborating matters deposed by the applicant, submitted that the applicant herein complied with the order of this court which instructed the same to complete the process of sale of the property constituting the deceased's estate and distribute the proceeds of sale to the lawful beneficiaries within the prescribed period. That the proceeds of sale have been distributed to the beneficiaries except for one beneficiary namely, Badrudin Hussein Nasser Shariff who has died and no legal representative of his estate has been appointed. Thus, as the prescribed period has expired whereas the family of the deceased beneficiary has not received the entitled share of the estate, the applicant prays for the extension of time so that he can finalize the distribution of proceeds of the deceased's estate and file an account of the estate and conclude the probate proceedings which remain pending in court for many years.

The counsel summed his submission by praying that it is in the interest of justice that the application herein be granted. The same proposed that the extension for the period of six months would be appropriate in the circumstances of this case.

In reply, Mr. Masanja contended that it is trite law that for the court to grant an application for the extension of time, the guidelines set in the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 should be adhered to. That the laid guidelines by the Apex Court are thus;

- 1. The applicant should account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence not apathy or sloppiness in the prosecution of the action he intends to take.*
- 4. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.*

That looking at the above guidelines, the applicant has failed to advance sufficient grounds as hereunder demonstrated: **First**, the applicant has failed to account for the time of delay. The same was granted 90 days and no explanation has been given on how the 90 days were expended to warrant the extension. That the applicant had remained inactive until he received the offer for purchase of the property from the respondent. **Secondly**, one of the reasons for the delay in finalizing the probate was for reason that one beneficiary had died. That the law provides on how the administrator can preserve the respective share of the deceased

beneficiary; likewise, the applicant would deposit the deceased share into the judiciary account pending the commencement of the purported probate proceedings. Otherwise, the counsel contended that no evidence was furnished on how the applicant made an effort to contact the family of the deceased beneficiary to understand the current state of the probate. The counsel reminded this court that the applicant previously made an arrangement with the family of the deceased beneficiary and distributed to them their periodic entitled share in the estate. Hence, it is surprising to hear that the applicant has no means to distribute the proceeds of sale to the family of the deceased's beneficiary. **Thirdly**, the applicant has not acted with due diligence. That the same has been the administrator of the deceased probate for the period of 12 years now, which is unreasonable. Hence, there is lack of diligence on the part of the applicant.

In the same vein, the counsel contended that the reason for delay fronted by the applicant in that he belatedly became aware of the ruling of this court, while he is well represented, is misconceived.

Apart from the above, the counsel charged that the respondent made an offer to purchase the property at the price of USD 400,000 on 12th February, 2024 whereas the administrator didn't respond to the offer.

However, on 29th February, 2024 the respondent received communication by email from the applicant that he had sold the property to one Wahida Rastam Somji. That the respondent is aggrieved with the purported sale and protests for two reasons: **One**, the purchaser is the biological daughter of the administrator. **Two**, there was no transparency in the process of sale specifically on how the administrator arrived at the price at which the property was sold. The counsel enlightened this court that the respondent made a counteroffer. However, to date, the administrator has not responded to her offer. On account of the above submission, the respondent's counsel prayed that this application be denied.

In rejoinder, the applicant's counsel conceded that he was present in court when the ruling was delivered; however, the applicant has the right to scrutinize the decision of this court and take appropriate action. And pertaining to the allegation that the sale process was biased and non-transparent, the counsel responded that this is another issue in this court which cannot be dealt with in this case.

Further, the counsel contended that the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (supra) cited by the respondent's counsel is distinguishable from this case in that the applicant herein has already sold

the property within the period given by this court on 01st March, 2024. Hence, no delay was occasioned.

In tandem with the above, the counsel refuted the charge that the applicant acted upon receiving the offer from the respondent though he acknowledged that the respondent communicated her offer to purchase the property. That the applicant received the offer of a higher price from the current purchaser. Hence, the applicant decided to sell the property because it was the respondent herein who made the application for his revocation on the ground that he failed to discharge his legal duty of distributing the deceased's estate to the lawful heirs.

Thus, taking into consideration that the probate remained pending in court for such a long period, the applicant found it prudent to sell the deceased property, distribute the proceeds of sale to the lawful beneficiaries and close the probate. The counsel opined that, as far as the respondent made an offer to purchase, it follows that the sale process was transparent. That it was unfortunate that the respondent's later offer was made after the property was already sold. Otherwise, the counsel denounced the allegation that the property was sold to the applicant's daughter.

The counsel concluded that since the property has been sold, and the respondent received the proceeds; it is his prayer that the extension of time be granted so that the applicant can finish distributing the proceeds to the remaining beneficiaries within the period prayed for. This is all about the submissions made by the counsel herein.

The question before this court is whether the application is merited.

Ab initio, I find it pertinent to address the issue raised by the respondent's counsel herein in that the purported sale of the property constituting the deceased's estate is questionable. That the respondent disputes the purported sale on the grounds that; the purchaser of the property is the biological daughter of the administrator; and there was no transparency in the process of sale. The counsel for the applicant responded that the charges made herein are different from the issue for determination before this court.

Admittedly, I find substance in the assertion made by the applicant's counsel in respect of the charges made by the respondent's counsel in respect of the process of sale of the property in question. From a legal perspective, the administrator of the deceased's estate is enjoined with power to dispose of movable property, as he thinks fit, without any requirement to seek consent of the heirs in terms of the provision of

section 101 of the Probate and Administration of the Estates Act [Cap.352], though he has an obligation to act honestly [**Joseph Shumbusho vs. Mary Grace Tigerwa & Others** (Civil Appeal No. 183 of 2016) [2020] TZCA 1803]. Therefore, the allegation that the sale of the property was biased and, or lacked transparency cannot be attended in this case; it should be a subject matter of another case. The issue before this court is whether the application for grant of extension of time to file inventory and account of the estate is merited or otherwise.

That said, I would revert to the matter at hand. Previously, in Misc. Civil Application No. 266 of 2022 the respondent lodged an application in this court praying for revocation of the letters of administration of the deceased's estate granted to the applicant herein. The grounds advanced for revocation were the applicant's failure to exhibit inventory and account of the estate; poor administration of the state; and misappropriation of funds. This court opined that taking into consideration that the probate was granted in 2014, the revocation of the applicant herein from administering the deceased's estate would further delay the distribution of the deceased's estate to the lawful beneficiaries. Likewise, this court observed that as the applicant herein sought and obtained leave of this court to sell the deceased's property and distribute the proceeds of sale

to the beneficiaries and the valuation of the property had been conducted reflecting the current market situation; the applicant was better placed to conclude his legal obligation and close the probate proceedings. Therefore, this court ordered the applicant to sell the property constituting the deceased's estate and distribute the proceeds of sale to the beneficiaries within clear 90 days lest the grant of probate ceases to be in force.

The applicant complied with the order of this court at the 11th hour. Now, the applicant is praying for the extension of time to conclude his legal duties. The grounds advanced for extension are mainly two: **One**, to finalize the distribution of proceeds of the deceased estate and file the inventory and account of the estate. **Two**, the 90 days period provided by this court has expired whereas the administrator is yet to close the probate proceedings.

Primarily, I would hastily subscribe to the submission made by the respondent's counsel in that the purported death of the one of beneficiaries (Badrudin Hussein Shariff) should not be the ground for delay in filing the account of the estate. As it was rightly submitted by the respondent's counsel, the applicant herein had previously arranged with the family of the deceased beneficiary for the distribution of their period

share from the estate. Hence, the applicant cannot be heard submitting that he has no means to distribute the proceeds of the sale to the family of the deceased's beneficiary. Otherwise, as rightly opined by the respondent's counsel, the applicant may deposit the deceased share into the judiciary account pending the commencement of the purported probate proceedings. It suffices to point out that the demise of one of the beneficiaries should not be fronted as the ground for the extension of time.

Apart from what I observed above, I find it pertinent to reiterate that it is the law of this land that in the application of like nature, the applicant is obliged to furnish sufficient and, or good cause for failure to take the intended action within the prescribed period [**Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported) and **Dar Es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (unreported)]

I would reiterate that the applicant complied with the order of this court which instructed him to complete the sale process of the property constituting the estate of the deceased's estate and distribute the proceeds of sale to the lawful beneficiaries of the deceased within 90 days

from the date of the order, though tardily. It suffices that the order was complied with.

As aforesaid, the prayer for grant of extension of time is hinged on the ground that the applicant has not yet filed inventory and account of the estate; hence, he cannot close the probate proceedings which have remained pending in court for an unreasonably long period whereas the prescribed period of 90 days has expired.

Explicably, the applicant cannot file the account of the estate while his term has expired. Likewise, the same cannot execute transfer documents in favour of the *bona fide* purchaser. Hence, for the reasons mentioned above, I find the application herein with substance.

The provisions of section 107 (2) of the Probate and Administration of Estates Act enjoins this court with the power to extend the time for filing inventory and account of the estate in case the administrator/executor fails to discharge his legal duty within the prescribed period. In my considered opinion, the applicant has furnished sufficient reasons for grant of extension sought.

In fine, I would find the application herein merited and allow the prayer for the extension of time to file the account of the estate. The applicant is hereby granted clear 90 days to execute necessary documents for the

transfer of property to the *bona fide* purchaser; and file the account of the probate and conclude probate proceedings in Probate and Administration Cause No. 117 of 2012.

I so order.

DATED at DAR ES SALAAM this 28th May, 2024.



O. F. BWEGOGI

JUDGE