

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
TEMEKE HIGH COURT SUB – REGISTRY
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE
PROBATE AND ADMINISTRATION CAUSE NO. 107 OF 2022

MIKE GILL (Previously known as Nikhilal Buhecha).....**APPLICANT**

VERSUS

MRUNDULA BIPIN CHANDRA KAMALIA (Administrator of the
late Manjula Mohanlal Buhecha).....**1st RESPONDENT**

KETAN BIPINCHANDRA KAMALIA (Administrator of the
late Manjula Mohanlal Buhecha).....**2nd RESPONDENT**

RAMESH CHANDRA MOHANLAL BUHECHA (Caveator).....**3rd RESPONDENT**

RULING

10/11/2023 & 21/02/2024

M.MNYUKWA, J.

This is a rare application where a person sought for extension of time to file caveat against a petition which is about to be heard after the expiry of 14 days since its publication as per Rule 76 of Probate Rules, GN No. 10/1963.

Before going further, let see what transpires in this application at hand where an applicant preferred the same under the provisions of Section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] and Section 68(e) and 95 of Civil Procedure Code, [Cap 33 R.E 2019],



through chamber summons supported by his affirmed affidavit sought for orders that;

- 1) This honourable court be pleased to grant leave for extension of time within which to file a caveat in Probate Cause No. 107 of 2022.*
- 2) The Costs of this application to follow the event*
- 3) Any other relief(s) this honourable court may deem just and fair to grant.*

Applicant averred in paragraph 12 and 13 of his affidavit that 3rd respondent who was supposed to represent the applicant's interest of buying the 1st and 2nd respondents' shares acted in his own interests, and turned out that, only 3rd respondent will buy and as a matter of fact bought the shares of the 1st and 2nd respondents at the consideration of USD 100,000.

Further, he averred in para 16 and 17 that time to file caveat against the petition lapsed on 10/8/2022 but he did not file the same on time due to a reason that he was supporting a caveat filed by the 3rd respondent, who according to his view acted against what they agreed.

He then contended ~~under para 18 that~~, if this application is not granted, applicant ~~will be prejudiced~~ of his interest on the property in



dispute since, a deed of settlement entered between respondents on the said property does not favour him.

These averments were strongly contested by the 1st and 2nd respondents who averred that, despite the applicant's failure to account for each day of delay, he still did not establish sufficient cause for this application to be granted. In their joint affidavit they admitted to his participation during settlement as a family member, however they contended that terms agreed in the deed of settlement cannot prejudice applicant in any how when it comes to his father's share on the property which is already apportioned. Regarding this application they dubbed it as an abuse of court process which is of no any legal merits.

On the 3rd respondent's side, he disputed the fact that they agreed with applicant to buy the 1st and 2nd respondents' share equally rather he averred under paragraph 7 of his counter affidavit that, he doesn't hold an equal weight as beneficiaries with the applicant since the same has not been stated in the deceased's WILL.

Further, he averred that applicant ~~did not~~ establish his interest on the deceased's estate (~~the late~~ Manjula Buhecha), though, he claimed that ~~the interest of the applicant's~~ father on the disputed property was not interfered with by the terms in the deed of settlement.



For better understanding of this application, it is convenient to briefly narrate facts leading to the same. Facts gathered from the records are that; parties to this application are relatives who originated from the same father. Basically, the original owners of a Property at Plot No.158 Nyangoro Street, East Upanga, Dar es Salaam were parents of the deceased, and 3rd respondent, and grandparents to the applicant and 1st respondent. After their demise they bequeathed this property through WILL to their children namely; Manjula Buhecha (deceased in this case), 3rd respondent and Kantilal Buhecha (applicant's father).

In the said WILL deceased (Manjula) was appointed executor who filed a probate case but it is allegedly that she never closed the case until her demise. Therefore, it is said, the property was never distributed to the beneficiaries but luckily enough the late Manjula left a WILL to which she bequeathed the same property to respondents herein and applicant's father. In this WILL she appointed 1st and 2nd respondents as executors, who on 27/5/2022 filed in this court a petition to be granted probate.

However, this petition was antagonised by a caveat which was filed on 3/8/2022 by the 3rd respondent while applicant filed an affidavit supporting the caveator on 27/9/2022. On 1/11/2022 when the petition was called for hearing, parties were urged by the court to settle their



dispute amicably before appointing the executors named in the WILL, time was given for them to settle. Fortunately, the same was a success when a settlement deed was filed in court on 15/2/2023. Then, unexpectedly applicant filed an application on 6/3/2023 seeking for an order that his name be added as a necessary party and beneficiary of the deceased's property. Before determination of the said application, he filed the present application. Later on, the earlier application was withdrawn, but remaining with the application at hand.

At the hearing parties were represented. For the applicant was Ms Ester Peter learned counsel, while Mr. Laurent Leornard learned counsel represented the 1st and 2nd respondent and 3rd respondent enjoyed legal services of Mr. Boniphace Woiso, learned counsel. A prayer made by Ms Ester Peter, learned counsel that this application be argued by written submissions was granted.

Supporting the application was Ms Ester learned counsel who submitted to the factors to be considered for court to grant extension of time. She stated that, for this application to be granted it is the applicant's duty to show sufficient cause which delayed him to file caveat within prescribed time by accounting for each day of delay. To buttress her argument, she cited the case of **Lyamuya Construction Company**



Limited vs Board of Registered of Young Women's Christian Association of Tanzania, Civil Application No. 2/2010 CAT.

On establishing sufficient cause, she submitted that, when applicant filed an affidavit supporting a caveat filed by 3rd respondent, he believed that his interest on the disputed property will be protected by 3rd respondent's negotiation during settlement. This is due to the fact that, as stated by the learned counsel, there was a prior agreement between 3rd respondent and applicant that they will buy the 1st and 2nd respondents' shares equally. Instead, she argued, 3rd respondent negotiated in his own favour by purchasing to himself all of the said shares. Therefore, it was the learned counsel's argument that, terms in the settlement deed are detriment to the applicant's interest on the disputed property. To support her argument, she cited the following cases; **Attorney General vs Emmanuel Maragakisi**, Civil Application No. 138 of 2019 CAT, **Attorney General vs Mkongo Building & Civil Works Constructors Ltd & Another**, Civil Application No. 266 of 2019 TZCA 44.

Furthermore, when accounting for days of the delay, learned counsel argued that applicant delayed for 8 months from when the petition was filed in court. However, she stated, applicant came to the knowledge of the deed of settlement being filed in court on 22/2/2023,



thereafter on the same date applicant through his advocate wrote a letter to this court for file perusal, the same was granted on 1/3/2023 hence filed an application to be joined as a necessary party on 6/3/2023 which later on was withdrawn on 13/7/2023, hence this application which is still pending. According to learned advocate applicant has accounted for days of delay. The case of **Ally Salum Said vs Idd Athumani Ndaki**, Civil Application No. 450 of 2021 TZCA 191 was referred to support her argument.

After her submission, she prayed for this application to be granted.

Disputing the application, was Mr Laurent learned advocate for the 1st and 2nd respondents who, before his submission against the application he brought to the attention of the court that this application is preferred against the wrong parties. Submitting on the same he said, since the 1st and 2nd respondents were not appointed as executors or administrators, referring them as such is fatal which makes the application incompetent by contravening Section 71 of the Probate and Administration of Estate Act, **[Cap 352 R.E 2002]**. Hence, its fate is dismissal with costs.

Submitting against the application he argued that, applicant has no locus stand to presents this application in this court. His reasoning was, applicant is neither has a direct nexus to the estate of the deceased nor



named in the WILL as beneficiary. Learned advocate went further to state the meaning of locus standi as was defined by the Court of Appeal in the case of **William Sulus vs Joseph Samson Wajanga**, Civil Appeal No. 193/2019 CAT to which he said, applicant cannot bring this application on behalf of his father before he establishes that he is his personal representative.

Moreover, learned advocate submitted further that, applicant neither accounted for each day of delay nor shows sufficient cause for this application to be granted. He contended that, applicant delayed for 10 months, since he was supposed to file his caveat within 14 days from the date of the last publication which was 10/6/2022. According to the learned advocate these 10 months of delay were not accounted for by the applicant which renders the application devoid of merits. To support his argument, he cited the cases of **Hyasintha Malisa vs John Malisa**, Civil Application No. 167/01 of 2021 CAT, **Lyamuya Construction Company Limited (supra)**, **Karibu Textile Mills Limited vs Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 CAT, **Meet Sigh Bhachu vs Gurmmitt Singh Bhachu**, Civil Application No. 463/02 of 2018 CAT. He then prayed for the application to be dismissed with costs.



Learned advocate for the 3rd respondent opposed the application by stating that applicant failed to show sufficient cause to warranty this application and account for each day of the delay. He submitted that it is settled principle that for application of this nature to be granted, one must show sufficient cause and account for each day of the delay. He cited the case of **Lyamuya Construction Company Limited (supra)**.

It was learned advocate's submission that a reason for the applicant that he sought an extension of time to file caveat since he was not party to the petition for probate is unjustifiable.

Further, he contended that there was no agreement between applicant and 3rd respondent to buy shares equally. Rather, he argued, 1st and 2nd respondents agreed to sell their share to 3rd respondent so as to resolve their dispute on the property. It was the advocate's view that the issue of distribution cannot be raised at this stage since the executors are yet to be appointed. He therefore prayed for the application to be dismissed with costs.

When rejoining, learned counsel replied on the issue raised by Mr Leonard that the same was human error which can be cured by the principle of misnomer. She then prayed for court to allow the same to be



amended. As for the rest of the submission, she reiterates what she submitted in chief.

Having considered the parties' submissions and examined records in court, the issue for my consideration and determination is whether this application can be granted. However before going to the determination of this issue, I would like to address an issue raised by Mr. Leonard advocate for the 1st and 2nd respondent that this application is preferred against the wrong parties. As was argued by the learned advocate that since probate is yet to be granted to the 1st and 2nd respondents, addressing them as administrators of the deceased's estate as transpires on the title of the chamber summons is fatal which renders the whole application incompetent.

I cannot undermine the argument posed by the learned counsel that addressing the 1st and 2nd respondents as administrators of the late Manjula Buhecha when they are yet to be granted probate is anomaly. However, we differ on whether this anomaly is fatal to render this application incompetent.

My humble view is, the same is not fatal because, there is no dispute on the status of the 1st and 2nd respondents as far as this application is concerned. I say so due to the fact that, it is undisputed that they were



appointed in the WILL as executors and therefore petitioners in this court. This fact is known to the applicant and respondents too. Therefore, referring them as administrators causes no injustice to either of the parties. As learned advocate for the applicant called it, a human error, which I agree with, does not go to the root of the matter, hence can be cured by Overriding Objective rule provided under the provisions of Section 3A and 3B of the Civil Procedure Code, [**Cap 33 R.E 2019**] which advocates for substantive justice and expeditious adjudication of civil disputes, having in mind that the petition subject of this application is pending in this court since May, 2022.

Following what I have stated above, a prayer by the learned advocate that this application be dismissed is denied.

Coming now to the gist of this application, the main question for consideration and determination is whether the same can be granted. Application for extension of time is common in our jurisprudence as a result, principles are settled that for application of this nature to be granted, one must show sufficient or good cause for the same to be granted. Also, to account for each day of the delay so that to assure the court that applicant was not sloppy or negligent in his action toward an intention to prosecute his case. These principles have been stated in a



plethora of authorities including the celebrated cases of **Lyamuya Construction Company Limited (supra)**. (See also the case of **Karibu Textile Mills Limited (supra)**)

However, granting extension of time or not is in discretionary power of the courts which are enjoined to act judiciously, since sufficient or good cause differ from one case to another depending on the prevailing circumstances of each particular case. In the case of **Hyasinth Malisa (supra)** Court of Appeal held that what is a good cause is a question of facts, depending on the facts of each case. (See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12/2012 CAT)

After stating principles facilitating granting of extension of time, let now see if applicant in this application at hand has adhered to the same. It is on record that, a petition (Probate Cause No. 107/2022) subject of this application was filed on 27/5/2022. And, according to the record the last publication was on 10/6/2022.

Since this application is for extension of time for the applicant to file caveat, it shall be prudent to know when was applicant supposed to file his caveat. According to rule 76 of Probate Rules, GN No. 10/1963 (*the Rules*) which for ease of reference it is herein reproduced;



Where a general citation is required to be publish by these Rules or by the court no probate of a will or letters of administration shall be granted until after the expiration of fourteen clear days from the date of the last publication of such citation and unless no caveat or objection has been lodged during that period.

From the foregoing provision it is technically that a person who wishes to object a petition for probate or letters of administration has to do so before the expiry of 14 days of its last publication. However, when you look at the prescribed form 58 set out in the first schedule to the Rules, to which general citation has to be exhibited, it bears words which requires an objector to file his objection on or before the date fixed for hearing of a particular petition.

It follows therefore that, since the law provides for a petition to be granted after expiry of 14days from its last publication, it is therefore reasonable that any objection thereto has to be filed within those 14 days. But the question would be, what if the petition is not granted even after the expiry of the prescribed time, like in the petition (Probate Cause No. 107/2022) subject of this application at hand which its last publication was on 10/6/2022 and till this day the petition is not granted.



Thinking of that question it is when I think this application was inevitable. Though the questions of whether applicant established sufficient cause and accounts for each day of the delay remain the standing ground for this application to be granted.

Starting with the first principle, let see if sufficient cause was shown by the applicant in this application, applicant claimed to have interest on the deceased's property which he claimed by virtue of being a son of Kantilal Buhecha (deceased) who had a share on the property. This fact has been stated in paragraph 4 of the petition which I hereunder reproduced;

4. In her WILL, the deceased had bequeathed her estate to her brother Kantilal Mohanlal Buhecha, now deceased but survived by his son the said Nikhil Buhecha (applicant)....

Considering the foregoing paragraph, an argument by the respondents that, applicant ought to have established that he is the legal representative of the deceased's estate for him to have locus on this application is unjustifiable. I hold so because, even if he is needed to establish that fact, I am convinced that it is not in this application, for the view that, determining whether applicant has locus or not should be determined during hearing of the caveat, if this application is granted



It follows therefore that as far as this application is concerned, I humbly think sufficient cause can be stated or interpreted in accordance with Section 58 (1) of PAEA which provides that any person having or asserting an interest in the estate of the deceased may enter a caveat against probate or letters of administration. And, as for this application I agree with the learned counsel for the applicant that applicant has interest on the deceased's estate which is sufficient cause for this application to be granted.

Now turning to see if applicant accounted for each day of delay. It was submitted by the counsels for respondents who claimed that, applicant failed to account for 10 months of delay. I am in agreement of what they have submitted in respect of the same but I hold a different view when it comes to when time started to run against the applicant. I humbly think time started to run when settlement deed was filed in court, and if any interested party felt prejudiced with the same.

In this case at hand, ~~settlement deed~~ was filed on 15/2/2023 and this application was **filed on 21/4/2023**. Applicant delayed for more than **60 days** of which in March, 2023 he filed an application to be joined as a necessary party which was later on withdrawn. Still, learned advocate did not clearly account for each day of delay, but considering the nature of



the case (being probate case) I use my discretionary power to grant extension of time for the applicant to file caveat. Applicant is given 5 days from the date of this Ruling to file caveat.

Before I rest my pen, I would like to answer Mr Leonard learned advocate his question that the basis of this application is, of course, the said general citation which invited interested persons to see proceedings of the case or file objections thereto. Therefore, this court will not issue another general citation rather procedures subsequent to filing of caveat will follow. As a matter of fact, dispute is settled between respondents as the record shows and the same, in my opinion do not bind or restrict applicant from objecting the petition.

That being said, this application is granted to the extent stated above. Depending on the nature of this application I make no orders as to costs.



M.MNYUKWA

JUDGE

21/02/2024,

Court: Ruling delivered in the presence of parties' counsels.

M.MNYUKWA

JUDGE

21/02/2024