

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

**MISCELLANEOUS CIVIL APPLICATION NO. 313 OF 2023**

(Originating from the Decision of Kinondoni District Court, Hon. E. Rwehumbiza, PRM dated 6<sup>th</sup> April, 2023. Civil Application No. 169 of 2022, Civil Case No. 232 of 2021. Original Probate and Administration Cause No. 216 of 2018, Kawe Primary Court.)

**LIZYBERTH ASSEY**

**(As an attorney of Angela Dieckmann) .....APPLICANT**

**VERSUS**

**ELIZABERTH PETER MOSHA .....RESPONDENT**

**RULING**

7<sup>th</sup> March & 22<sup>nd</sup> May, 2024

**DYASOBERA, J.:**

The applicant above named has instituted this application in this court praying for extension of time within which she can file notice of appeal and appeal to this court. The application has been made under section 14(1) of the Law of Limitation Act [Cap. 89 R: E 2019], section 25(1) (b) of the Magistrate Court Act [Cap. 11 R: E 2019] and section 95 of the Civil Procedure Code [Cap. 33 R: E 2019] and any other enabling laws and supported by the affidavit of the applicant herein.

The factual background of this matter, as depicted from the court records may be briefly stated as thus: the respondent was appointed to be the administratrix of the estate of the late Agatha Joseph Ritter on 18.12.2018 whereby the applicant herein is representing on Ms Angela Dieckman as one of the beneficiaries under power of attorney.

The applicant herein sued the respondent herein in Civil Case No. 232 of 2021 at Kawe Primary Court claiming for a share of Tshs 5,448,475 and House Plot No. 2057 Block E Title No. DSMT1015745 and hector of shamba located at Madale which was not distributed to the heirs. The trial court ordered that the dispute concerning the above named house be determined by clan members while the matters regarding the farm located at Madale was not discussed on the ground that the probate case was closed. The applicant herein was aggrieved by the decision and orders of the trial court. Eventually, she lodged an application for revision in Civil Application No. 169 of 2022 in the District Court of Kinondoni. The application was dismissed on the grounds, **first**, that the trial court had no jurisdiction to entertain the probate matter and **second**, that the court cannot entertain revision which the case has already closed. The applicant herein, as the attorney of Angela Dieckmann who is the beneficiary of the estate of the late Agatha Joseph Ritter, now seeks extension of time to appeal against the impugned judgment of the trial court, hence this application.

In opposing the application by way of counter affidavit, the respondent also filed a notice of preliminary objections on the following grounds:-

- 1. That, this honourable court has no jurisdiction to entertain this application originating from Probate and Administration cause which falls under a specific forum i.e. at One Stop Judicial Centre at Temeke.*
- 2. That, the application is in bad in law/ or not competent as the Respondent is wrongly sued as an individual and not in the capacity of the Administratrix of the estate of the late Agath Joseph Ritter.*
- 3. That, the application is incompetent for being filed in the non existing Registry.*

While the applicant was represented by Mr. Katala John Kalimba, learned advocate, the respondent appeared in person and unrepresented. The preliminary objections were argued by way of written submissions.

Submitting on the first limb of preliminary objection, the respondent challenged the jurisdiction of this court by arguing that since this application originated from probate and administration of estate cause, the applicant ought to appeal on a specific forum i.e in the High Court at One Stop Judicial Centre at Temeke. To support her argument, she cited the case of **Attorney General vs. Lohay Akonaay & Another** [1995] T.L.R 80.

In reply Mr. Kalimba submitted that, it is true that the Probate and Administration Cause No.216/2018 was closed on 8th December 2020 and

the applicant instituted Civil case against the respondent on 12.2.2021 claiming for her inheritance share.

It was further submitted that on 20.8.2021 the Judicature and Application of Laws (One Stop Judicial Centre of Temeke) (Establishment) Order, 2021 establishes the High Court Sub- Registry One- Stop Judicial Centre of Temeke at Temeke which was published under the GN. No. 640 of 27 August 2021. He pointed out that that it is an established doctrine that the law should not act retrospective if it affects substantive rights maintaining that at the time the applicant instituted a Civil Case No. 232 of 2021 before Kawe Primary Court the aforementioned order was not operative. He cited the case of **Seth Jacob Ndossi vs. Hai District Council & Another** Land Revision No. 6/2022 to support his argument and insisted that it could not be possible for the applicant to institute the matter at One-Stop Judicial Centre at Temeke while at the time of instituting her case the court did not exist and the probate and administration No. 216 of 2018 was already closed.

Having considered the parties' submission on the first preliminary objection, it is my settled view that the same has been misconceived. The reason for this is not far to find. It is established that the High Court is one in this country and derives both its jurisdiction and mandate from either the Constitution or any law to that effect. The law is also clear that it has

unlimited jurisdiction and judges of the High Court are mandated to exercise all or any part of the powers conferred on the High Court. Putting emphasis on this fundamental legal position, the Court of Appeal in Civil Appeal No. 129 of 2015 between the **National Bank of Commerce Ltd v. National Chicks Corporation Ltd and 4 Others**, had the following to observe:

'It is plain that while the High Court is a creature of the Constitution, the registries and divisions of it are a creature of Rules and the provisions of the Rules cannot override the provisions of the Constitution.'

The High Court Sub- Registry of One- Stop Judicial Centre of Temeke at Temeke established by Judicature and Application of Laws (One Stop Judicial Centre of Temeke) (Establishment) Order, 2021 cannot override the Constitution and the Substantive law of the land. As it was established under the Government Notice No. 640 of 27 August 2021 which is procedural law.

On that score, the respondent's argument that this court has no jurisdiction to entertain this application originating from Probate and Administration Cause which falls under specific forum has no legal merit.

Submitting on the second point of preliminary objection, the respondent contended that the application is bad in law as the respondent is wrongly sued as an individual and not in the capacity of the administratrix. It was submitted that the applicant sued the respondent in her personal capacity and not as administratrix, she stated that her personal capacity

lacks locus to defend the application arising from probate and administration cause.

She added that all the role in respect of the matters arising from probate and administration are to be played by the administrator of the deceased's estate appointed by the court. To substantiate her submission, she cited the case of **Monica Nyamakare Jigamba vs. Mugeta Bwire Bhakome as an Administartor of the Estate of the Late Musiba Jigabbha**, Civil Application No. 199/01 of 2019 (unreported).

In response to this second point of preliminary objection Mr. Kalimba stated that once the court close probate and administration cause the administratrix power ceases automatic. He stated that he sued the respondent on her personal capacity because the Probate cause No. 216 was already closed since 8.12.2020 and the respondent is no longer administratrix of the estate of the late Agatha Joseph Ritter.

The second preliminary objection raises an issue as to what capacity the respondent should have been sued. The respondent pointed out that she ought to have been sued in the capacity as and Administratrix of the deceased's estate and not in personal capacity. Rightly as argued by the learned advocate for the applicant, after the closure of the probate matter, the applicant relinquished her capacity as Administratrix of the deceased's

estate. The respondent did not file rejoinder submission to counter the argument that she is no longer an Administratrix of the deceased's estate. Besides, this is a mere application for extension of time and not a substantive appeal. This preliminary point of objection fails.

Submitting on the last point of preliminary objection that the application is incompetent for being filed in the non-existing Registry i.e Dar es Salaam District Registry instead of Dar es Salaam Sub-registry, it was the respondent's view that the Registries are made by the rules, an error in citing a Registry or Sub- registry has serious consequences to the wrongly filed an application. She added that the anomaly in this context is a fatal defect and it is not curable.

Replying to this point, Mr. Kalimba submitted that the use of the word District Registry instead of sub-registry it is not fatal defect which can render this application to be struck out as it is the mere clerical error which is curable under the principle of *overriding objective*. That the omission cannot render the application to be dismissed or struck out, counsel for the applicant insisted. He prayed that the preliminary objection be dismissed with costs.

The third point of preliminary objection should not detain me longer that it is necessary. By virtue of rule 2 of the High Court Registries (Amendment), 2024 promulgated by the Chief Justice in the Government

Notice No. 61A of 2024 published on 29/1/2024, the High Court Registries Rules, GN No. 95 of 2005 were generally amended in the following terms:-

2. The principal Rules are amended by deleting the words "district registry" wherever they appear in the principal Rules and substituting for them the word "sub-registry".

According to rule 1 the said 2024 Amendment Rules, came into force on 30<sup>th</sup> day of January, 2024. However, as the record shows, the application in question was filed in court on 27<sup>th</sup> June, 2023 well before the promulgation of the rules which changed the words district registry to sub-registry. Those Rules were not, as clearly demonstrated under rule 1 above, meant to have retrospective effect. This means that the respondent's argument in her third point of preliminary objection that this application is incompetent for being filed in the non-existing registry is but a misconception as well.

Even if, for the sake of argument, the respondent would have been right in her argument, still the preliminary point would not have assisted her, for the mere mentioning of the words "Sub-Registry" was not fatal to the competence of the application as it would have been a mere deviation from the formal format which could not have been held to be not fatal but also could not go to the root of the matter and prejudice the respondent.



In upshot I find all the preliminary objections raised by the respondent lacking in merit and are accordingly overruled. Time for the applicant to file both notice and petition of appeal is extended as prayed in the chamber summons supported by applicant's affidavit.

Costs shall be in the intended appeal.

It is so ordered.



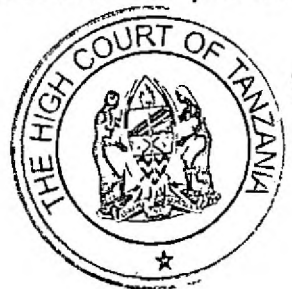
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**W.P. Dyansobera**

**JUDGE**

**22.5.2024**

This ruling is delivered under my hand and the seal of this Court on this 22<sup>nd</sup> day of May, 2024 in the presence of Mr. Katala Kalimba, learned Counsel for the applicant and in the presence of the respondent in person.



A handwritten signature in black ink, appearing to be "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**