

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 175 OF 2024**  
**(Arising from the Ruling of the High Court of Tanzania at Dar es Salaam District Registry in Civil Revision No. 34 of 2020 dated 16<sup>th</sup> October 2020; arising from the District Court of Kinondoni in Civil Revision No. 27 of 2018; original, Probate and Administration Cause No. 108 of 2017 in the Primary Court of Manzese at Sinza)**

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**MARY ATUPELE MUNGAI.....1<sup>ST</sup> APPLICANT**

**JAMES JOSEPH MUNGAI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**WAHEEDA YAKUB SELEMANI..... RESPONDENT**

**RULING**

*Date of last Order: 8<sup>th</sup> February 2024*  
*Dat of Ruling: 15<sup>th</sup> March 2024*

**MTEMBWA, J.:**

Under ***Section 11 (1) of the Appellate Jurisdiction Act, Chapter 141, RE 2019***, the Applicants are seeking for extension of time within which to lodge an Application for a certificate on point of law to appeal to the Court of Appeal of Tanzania against the decision of this Court in **Civil Revision No. 34 of 2020**. The same is supported by an affidavit of Mr. Chance Luoga, the learned counsel for the Applicants.

Before embarking into the crux of the matter, I find it opt to narrate the background information leading to this Application. That,

sometimes in 2013, the 1<sup>st</sup> Applicant petitioned in **Matrimonial Cause No. 2 of 2013** in the High Court of Tanzania against the late Joseph James Mungai seeking for an eviction order against the Respondent. The order requested for was to the effect that the Respondent be evicted from the matrimonial House which belonged to the 1<sup>st</sup> Applicant and her husband, the late Joseph James Mungai. That, it was very unfortunate that the said Joseph James Mungai died before the final determination of the matter.

The facts reveal further that, upon the demise of Joseph James Mungai, sometimes in 2017, the 2<sup>nd</sup> Applicant herein applied for letters of administration in **Probate and Administration Cause No. 108 of 2017** in the Primary Court of Manzese/Sinza, whereas he was accordingly appointed as such. That, following such an appointment, a deed of settlement was entered between the 1<sup>st</sup> and 2<sup>nd</sup> Applicants and as a result thereof, **Matrimonial Cause No. 2 of 2013** was marked withdrawn.

It could appear, as per the records, the 2<sup>nd</sup> Applicant's appointment was unsuccessfully challenged by the Respondent (suing on behalf of Faraja Joseph Mungai) in **Civil Revision No. 27 of 2018** in the District Court of Kinondoni which however, was dismissed on technicalities. That, after a year, the Respondent filed in this Court, a complaint letter that later on, moved the Court to call for and determine

the two lower courts decisions *suo moto* in **Civil Revision No. 34 of 2020** that ended in favour of the Respondent.

That, this Court in **Civil Revision No. 34 of 2020** revised both the decision of the District Court of Kinondoni in **Civil Revision No. 27 of 2018** and that of the Primary Court of Manzese/Sinza in **Probate and Administration Cause No. 108 of 2017**. Dissatisfied, the Applicants filed in this Court, **Miscellaneous Civil Application No. 569 of 2020** seeking for leave to appeal to the Court of appeal which however was dismissed for want of prosecution. The Application to restore it in **Miscellaneous Civil Application No. 217 of 2022** was unsuccessful. Following the above unsuccessful attempts to demonstrate their rights, the Applicants have filed this application seeking for an order of extension of time to file an application for a certificate on point of law to the Court of Appeal.

When this matter was placed before me for orders on 8<sup>th</sup> February 2024, **Mr. Jamuhuri Johnson** assisted by **Mrs. Rwechungura**, both learned counsels, appeared for the Applicants while **Mr. Jeremiah Mtobesya**, the learned counsel, appeared for the Respondent. By consent, parties agreed to argue this Application by way of written submissions. I have passed through the records and noted that, parties adhered to the agreed schedule to which I personally subscribe.

In the conduct of this matter by way of written submissions, Mr. Chance Luoga, the learned counsel, submitted for and on behalf of the Applicants while Mr. Deogratias Cosmas Mahinyila replied for and on behalf of the Respondent.

Stagging the floor, Mr. Luoga prefaced that, the Applicants seek for an order of this Court of enlarging time within which to file an application for a certificate on point of law to appeal to the Court of Appeal of Tanzania against the decision of this Court in Civil Revision No. 34 of 2020 in view ***of section 11 (1) of the Appellate Jurisdiction Act, Cap 141, RE 2019***. Thereafter, Mr. Luoga reiterated what is in the Affidavit supporting the Application from when the letters of administration was granted to the 2<sup>nd</sup> Applicant in Probate and Administration Cause No. 108 of 2017 in the Primary Court of Manzese/Sinza to a dismissal order dated 22<sup>nd</sup> June 2023 in Miscellaneous Civil Application No. 217 of 2022. I will therefore not reproduce the submissions here.

From what I have gathered from Mr. Luoga's submissions is that, this Court was not mandated to revise the decision of the Primary Court of Manzese/Sinzai in Probate and Administration Cause No. 108 of 2017 as the rights to appeal was not blocked by any judicial process. That, the Respondent had an opportunity to come to this Court by way of an appeal under the provisions of ***Section 25(1)(b) of the Magistrate***

***Court Act, Cap 11 RE 2019 and Rule 3 of the Civil Procedure (Appeals Originating in Primary Courts) Rules, 1963 GN No, 312 of 1964.***

Mr. Luoga was of the views that, revision therefore was used as an alternative to appealing which is legally impractical. He cited the case ***Ramadhani Myolele Vs. Hamadi All Islam, Misc. Civil Application No. 40 of 2022, High Court of Tanzania Morogoro*** where the Court quoted the principle settled down in the case of ***Israel Mwakalabeya Vs. Ibrahim Mwaijamba, Misc. Civil Application No. 21 of 1991, High Court of Tanzania at Mbeya (unreported).***

It was the submissions of Mr. Luoga further that, this Court in Revision No. 34 of 2020 had no jurisdiction to revise its own decision in Matrimonial Cause No. 2 of 2013. That, such jurisdiction rested on the Court of Appeal under the provisions of ***Section 4(3) of the Appellant Jurisdiction Act Cap 141, R.E 2019.*** He then faulted the act taken by this Court by consolidating three cases. He cited the case of ***Stumberg and Another Vs. Potgieter [1970] E.A 323*** where it was observed that, there must be common question of law for cases to be consolidated together.

In his submissions too, Mr. Luoga argued that, this Court was legally wrong to join the 1<sup>st</sup> Applicant (Mary Atupele Mungai) in **Revision No. 34 of 2020** as she was neither a party in **Civil Revision**

**No. 27 of 2018** in the District Court of Kinondoni nor in **Probate and Administration Cause No. 108 of 2017** in the Primary Court of Manzese/Sinza. He lastly implored this Court to grant the Application.

On his part, Mr. Mahinyila implored this Court to adopt the Counter Affidavit by Mr. Jeremiah Mtobesya, the learned counsel. He then faulted Mr. Luoga's assertion that this Court in Revision No. 34 of 2020 consolidated three cases including the decision of this Court. He said, such assertion was typically misguided as this Court only revised the decisions of the two lower courts and the reasons thereof were given at page 8 of the Ruling of this Court in Revision No. 34 of 2020. He was of the views that, the Applicants' counsel misapprehended the concept of consolidation of cases.

Mr. Mahinyila continued to note that, this Court has mandate to revise the decision of the lower Courts including the Primary Courts. He faulted Mr. Luoga for believing that this Court can only revise the decision of the District Court and not the Primary Court as it did. He reminded this Court to consider the arguments by this Court at page 8 of the said Ruling.

On the issue of illegality as raised by the Applicants' counsel, Mr. Mahinyila submitted that, the illegality must be clear on the face of records. He added that, the power of this Court to revise the two decisions of the lower Court was driven from ***section 44 of the***

***magistrate's Court Act (supra)***. As such, the party's right to appeal cannot take away the Powers of the Court provided for under the law. He argued further that, therefore, the Respondent did not opt for revision as alternative to appealing, and if so, the complaint should be taken against the Court and not the Respondent.

Lastly, Mr. Mahinyila beseeched this court to find that, considering the circumstances, there is no illegality on the face of the records warranting a grant of extension of time. He implored this Court to dismiss the Application with costs.

Having dispassionately gone through the rival arguments by the parties, I should admit that, this matter involves a number of cases decided before. To get conversant with the nitty gritty of the matter, one has to go through all previous records, albeit briefly, with the view to tackle the issues and or questions before the Court. It was therefore not an easy task on my part although I had to.

Indeed, in the case of ***Mansoor Daya Chemicals v. NBC, Civil Application No. 88 of 2016, CAT at Dar es Salaam (unreported)***, the Court had this to say;

*In an application for extension of time .....an Applicant is required to show good cause why time should be extended. What is a good cause is a question of fact, and this may vary with the circumstances of each case. But it is common ground that in such an application the Applicant must show:-*

- i. The length of the delay*
- ii. The reason(s) for the delay that would account for each day of delay.*
- iii. If there is an arguable case.*

Guided by the above position, I can now proceed to determine the Application. From what I have observed, the Applicants rely heavily on illegality on the face of records as a ground for extension of time. On other words, the Applicant's counsel has raised a number issues to support the application for extension of time on ground of illegality. Principally, the alleged illegality must be apparent on the face of records and that is what can be gathered from ***Lyamuya Construction company V. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010.***

I should however be cautious and avoid not to discuss the inner part of the Ruling of this Court in **Revision No. 34 of 2020** as by doing so, I might find myself turning to be an appellate Court thereby rendering this ruling into illegality too. I will therefore lightly and or somothly look into whether there was illegality on the face of records warranting a grant of extension of time.

Among other things, the Applicants' counsel complained that, this Court was wrong to revise both, the decision of the District Court of Kinondoni in **Civil Revision No. 27 of 2018** and that of the Primary Court of Manzese/Sinza in **Probate and Administration Cause No. 108 of 2017**. In the first place he argued that, this Court had no



mandate to revise the decision of the Primary Court of Manzese/Sinza. He added further in the second, that the decision of the District Court of Kinondoni was not subject of revision. That, the Respondent was under liberty to come to this Court by way of an appeal and not through a revision as by doing so, she was escaping to do what was necessary for her to appeal, that is, to apply for extension of time.

The Applicants' counsel also argued that, the 1<sup>st</sup> Applicant was not a party to the two decisions of the lower Courts. She was only joined in Revision No. 34 of 2020 before this Court. In addition, the counsel submitted that, this Court was wrong to consolidate three cases including the decision of this Court in Matrimonial Cause No. 2 of 2013. He said, this Court has no mandate at all to revise its own decision.

I have passed through the impugned Ruling of this Court in Revision No. 34 of 2020 only to note that, this Court did not consolidate and revise three cases as alluded by the Applicants' counsel. Such assertion therefore was misguided as alluded by Mr. Mahinyila. I don't see anything either suggesting that this Court revised its own decision in Matrimonial Cause No. 2 of 2013. As pointed out by Mr. Mahinyila which I find to be correct, this Court only revised the decisions of two lower Courts only. I therefore find this argument too misplaced.

It could appear however that, both counsels agree to the salutary import of ***section 44 of the Magistrate Courts Act (supra)*** which

confers powers to this Court to call for and revise the records of the subordinates Courts. Whether such powers extend to the decisions of the Primary Courts is a matter of discussion which, for purposes of this Ruling, I will distance myself because, by doing so I might find myself getting into the shoes of the appellate Court as aforesaid. But Mr. Luoga insisted that, still, the decision of the District Court of Kinondoni in Revision No. 27 of 2018 was not subject of Revision and that, in the circumstances, this Court had no mandate to revise the decision of the Primary Court of Manzese/Sinza.

This Court in its Ruling (in Revision No. 34 of 2020) observed that, since the District Court of Kinondoni touched and or discussed the decision of the Primary Court of Manzese/sinza in Revision No. 27 of 2018, it had jurisdiction to revise it.

I have passed through the Ruling of the District Court of Kinondoni in Revision No. 27 of 2018 dated 3<sup>rd</sup> July 2019 and noted that, when the said revision was filed by Faraji Joseph Mungai (through appointed agent – Waheed Yakubu Suleiman), preliminary objections were taken by the second Applicant. As a result, the Application was dismissed on technicalities. On other hands, the Application was not heard on merit.

The question would be whether this Court was mandated to revise the Application before the District Court of Kinondoni as if it was heard on merits. In my considered opinion, although reluctantly as aforesaid, looking

at the records, having successfully revised the decision of the District Court of Kinondoni which was on the preliminary objections as aforesaid, the records would have been remitted back to the District Court for determination of the matter on merit. In that stance, I am not so far to hold that the decision of the Primary Court of Manzese was not challenged. I think there is a point I am making here.

Besides, reading between lines, one may fail to understand when did the 1<sup>st</sup> Applicant chip in. According to the Ruling of this Court, the two decisions of the lower Courts were consolidated and revised together, that is **Probate and Administration Cause No. 108 of 2017** and **Revision No 27 of 2018**. In all cases, the 1<sup>st</sup> Applicant was not a party. It is not established easily why and how she was joined in the revision before this Court. Mr. Mahinyika did not opt to reply to this. It is for this reason the Applicants' counsel is confused and think that may be, the decision of this Court in Matrimonial Cause No. 2 of 2013 was also involved. As such, one can say that, legally, although involved, the 1<sup>st</sup> Applicant had nothing to do with the decisions revised by this Court. In that stance, I don't see if she was a proper party.

There is more. Looking at Revision No. 27 of 2018, one discovers that it was filed by Faraja Joseph Mungai (through appointed agent) Waheeda Yakubu Suleimani. As such, the Respondent herein was not suing in her own capacity. I don't see if the name Faraja Joseph Mungai

is featuring in Revision No 34 of 2020 before this Court unless she was not ready to be heard, the facts I don't see on records.

From what I have lightly highlighted, I see there is illegality on the face of records warranting a grant of extension of time. Let the parties be given an opportunity to expound further on illegality, if any, in the next coming stage.

In the result, this application is granted on point of illegality on the face of records. Time therefore is hereby extended for the Applicants to file an Application for certificate on point of law to appeal to the Court of Appeal of Tanzania within fourteen (14) days from today. Considering the circumstances, there will be no order as to costs. I order accordingly.

Right of appeal fully explained.

**DATED at DAR ES SALAAM** this 15<sup>th</sup> March 2024.



**H.S. MTEMBWA  
JUDGE**

Ruling delivered in the presence of Mr. Jamuhuri Johnson, learned counsel for the Applicants and Ms. Wakuru Buzana, learned counsel, holding briefs for Mr. Jeremiah Mtobesya for the Respondent.



**H.S. MTEMBWA**  
**JUDGE**

