

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

PC CIVIL APPEAL NO. 1 OF 2023

*(Arising from Civil Application No. 8 of 2022 District Court of Bukoba Originating from
Probate Cause No. 6 of 2021 Kishanje Primary Court)*

JONESTA BABINGANYA..... APPELLANT

VERSUS

DICKSON RWE GASIRA KAHABUKA (Administrator of
the Estate of the Late Anthony Joseph Rwegasira)..... **RESPONDENT**

JUDGMENT

1st and 16th June, 2023

BANZI, J.:

On 28th September, 2021, the respondent instituted Probate and Administration Cause No. 6 of 2021 before Kishanje Primary Court ("the trial court") seeking to be appointed as administrator of the estate of his father, Anthony Joseph Rwegasira who died on 6th February, 2021. Before the matter was heard, the appellant being the second wife of the deceased filed a caveat objecting the appointment on the grounds that; one, she was not involved in the meeting which proposed the respondent to be administrator; two, some of members in meeting live very far but it shows they signed in the minutes and three, they did not recognise the will of the deceased. After receiving evidence from both sides, the trial court dismissed the objection

and ordered the matter to proceed. At the end, the trial court appointed the respondent as administrator of the estate of the deceased.

On 1st March, 2022, the respondent filed form number V and VI after he completed to distribute the estate of the deceased to heirs. Soon thereafter, the appellant through the services of Mr. Anesius Stewart, learned counsel registered an objection opposing distribution of the estate of the deceased on allegation that; one, the respondent distributed her house which she acquired with the deceased to the children of the first wife; two, respondent evicted her from her house; three, the respondent took away her personal properties namely, 80 timbers, 1 goat and one pig and four, she suffers discrimination on the hands of the respondent. On the other hand, the respondent through Mr. Lameck John Erasto, learned counsel opposed the objection and claimed that, the appellant is a mere concubine of the deceased due to existing marriage Christian between Getrude Samwel and the deceased. It was also contended that, although the appellant was not lawful heir of the deceased but she was given one house and a farm at Kigoro area in Mushozi village. After hearing both parties, on 29th March, 2022, the trial court decided in favour of the respondent after concluded that, the appellant is not the legal wife of the deceased in the eyes of law

due to existing Christian marriage between Getrude Samwel and the deceased. Thus, legally, she cannot be the heir of the deceased.

The decision of the trial court did not impress the appellant and on 9th April, 2022, she applied for copy of the proceedings because she intended to appeal against that decision. Having been supplied with the copy in question, and after realising that she was out of time, the appellant filed application for extension of time before the District Court within which she can file her appeal. Her application did sail through and as a result, she filed this appeal challenging the decision of the District Court which refused to grant the extension sought. Her petition of appeal comprises four grounds namely:

- 1. That the Honourable Court erred in law and fact by failure to consider the sufficient reasons for extension of time adduced by the appellant.*
- 2. That, the Honourable Court erred in law and fact by dismissing the application for extension of time without any reasonable ground.*
- 3. That, the Honourable Court erred in fact by dismissing the application without due regard to the fault and delay of the trial court*
- 4. That, the Honourable Court erred in law and fact for determining the application against the weight of*

evidence, submission and reasons adduced by the applicant for her delay to appeal.

At the hearing, the appellant was represented by Mr. Scarius Bukagile, learned counsel whereas, the respondent enjoyed the services of Mr. Lameck John Erasto, learned counsel.

Mr. Bukagile began his submission with a request to argue the 1st, 3rd and 4th grounds jointly. He further argued that, as it was stated in the case of **Yona Kaponda and 19 Others v. Republic** [1985] TLR 84, sufficient cause does not look on the delay but it looks at the decision intended to be appealed against including the surrounding circumstances, weight of the matter and implication of issues. It was his contention that, the matter at hand involves deceased's children and the second wife of the deceased; the decision in question was not certain and the weight of the matter was great. He added that, the appellant failed to appeal within time because she was delayed to be supplied with copy of proceedings as the decision was made on 29th March, 2022 and immediately thereafter, on 9th April, 2022, she applied for copy of proceedings through a letter which was received by trial court on 10th April, 2022. It was until 5th May, 2022 when she was supplied with the copy in question. After that, on 26th May, 2022, she filed the application for extension of time. According to him, the delay to be supplied

with copy of proceedings was the main cause for the delay which constitutes sufficient cause for granting extension of time. He cited the case of **Lewin Benard Mgala v. Lojasi Mutuka Mkondya and 2 Others**, Land Appeal No. 33 of 2017 HC (unreported) to buttress his point. Concerning the 2nd ground, he submitted that, the dismissal of the application was made without reasonable ground because the appellant explained the reason for the delay and the step, she took from the moment the decision of the trial court was made. Thus, he prayed for the appeal to be allowed without costs because parties are members of the same family.

In his reply, Mr. Erasto opposed the appeal and submitted that, according to section 20 (3) of the Magistrates Courts Act [Cap. 11 R.E. 2019] ("the MCA") the appellant was supposed to appeal within 30 days. This was underscored in the case of **Joseph Mniga v. Abass Fadhil Abass and Another** [2001] TLR 213. The law does not require attachment of copy of judgment or proceedings on appeal. So, the appellant had no reason to apply for copy of proceedings. He added that, learned counsel for the appellant did not state if those proceedings have irregularity which can be subject to appeal. It was further his submission that, the Law of Limitation Act is not applicable where there is specific law providing for limitation of time in a certain matter like section 25 (1) (b) of the MCA. This was stated in the case

of **Gregory Raphael v. Pastory Rwehabura** [2005] TLR 99. According to this case, exclusion of time for obtaining copy of judgment is not applicable in cases which attaching such copy is not a requirement. Furthermore, he distinguished the cited cases of **Yona Kaponda** and **Lewin Mgala** because in the former case they did not state if that case originated from District Court to Primary Court whereas in the latter, the same originated from the District Land and Housing Tribunal on filing the appeal, it is mandatory to attach copy of decree and judgment. Besides, the issue of looking at chances of success of appeal was restricted through the case of **Mzee and Others v. Republic** [2012] 1 EA 254. In his conclusion, he challenged the appellant for failure to account for each day of the delay as required by law and he supported his point by citing the case of **Idadi Sued v. Mangadalena Philipo and Another**, Misc. Land Application No. 1 of 2021 HC (unreported). Finally, he prayed for the appeal to be dismissed.

In his rejoinder, Mr. Bukagile emphasised that, although it is not the requirement of the law to attach copy of proceeding on appeal but, it was necessary for the appellant to obtain such copy for purpose of appeal and the trial court had a duty to supply her within time. Failure to supply the same within time constitutes sufficient cause. In paragraphs 7 and 8 of the affidavit, the appellant accounted for the delay after she obtained the copy.

In that regard, he prayed for the appeal to be allowed so that parties can settle the matter once and for all.

Having perused and considered the record of the two courts below and rival submissions of both sides, the main issue for determination is *whether the appellant had established sufficient cause for the delay.*

Section 20 (1) (b) and (4) (a) of the MCA provides that:

"(1) Save as hereinafter provided-

(b) in any other proceedings, any party, if aggrieved by an order or decision of the primary court, may appeal there from to the district court of the district for which the primary court is established.

(4) Notwithstanding the provisions of subsection (3)-

(a) the district court may extend the time for filing an appeal either before or after such period has expired;"

According to the extract above, the District Court is vested with discretion to extend time. However, it is a settled principle that, such discretion is exercised when the applicant has established sufficient cause for the delay. In the case of **Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227 it was stated that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

There is no hard and fast rule on what amount to sufficient cause but there are several factors to be taken into account before granting or refusing to grant extension of time. These factors were developed by case laws and they include the length of delay; the reasons for the delay; the degree of prejudice that the respondent may suffer if the application is granted; whether or not the application has been brought promptly, just to mention a few. See unreported decisions on the Court of Appeal of Tanzania in the cases of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016.

In the instant case, the District Court refused to grant extension sought by the appellant on the reason that, she had failed to establish sufficient reasons to justify her delay to file the appeal within time. It arrived into that conclusion after considering that, attachment of copy of judgment and proceedings is not the requirement in filing the appeal from Primary Court

to District Court. Also, the fact that the appellant was seeking legal advice because she is a layperson cannot constitute sufficient cause for the delay. Looking closely at the affidavit of the appellant filed before the District Court in support of application, it is apparent that, the main reason for the delay was that, she was waiting to be supplied with copy of proceedings and decision (ruling) of the trial court. To substantiate her reason, she attached a letter of request of those documents for purpose of appeal.

As rightly submitted by learned counsel for the respondent, the matter at hand emanates from Primary Court and it has been held in a number of cases that, for the matters originating from Primary Court, attachment of a copy of judgment is not a requirement of the law. In the case of **Sophia Mdee v. Andrew Mdee and Three Others**, Civil Appeal No. 5 of 2015 CAT (unreported) it was stated that:

"Attaching petition of appeal with a copy of judgment is not a legal requirement in matters arising from Primary Court. Rather it is a legal requirement on matters originating from District Courts and Courts of Resident Magistrate as it is provided under the Civil Procedure Code."

From the above cited case, it is evident that the appellant had no need of attaching the copy of ruling and proceedings when appealing to the

District Court after being aggrieved with the decision of the Primary Court. In normal circumstances, it may be said that, the delay to be supplied with copy the requested copies was not a reason for the delay because they were not necessary documents required to be attached on appeal. However, in the particular circumstances of this case, the appellant in her letter stated clearly that, she wanted the copy for appeal purpose. Besides, in paragraph 2 of her affidavit, she stated that she is applying for copy of proceedings for appeal purpose as the decision was made contrary to adduced evidence. This connotes that, the requested copy was not for purpose of attaching to the appeal but rather it was necessary for her to have the copy of proceedings and ruling for purpose of preparing grounds of appeal because such grounds cannot fall out of the sky. Thus, with due respect, it is my considered view that, the said delay in obtaining copy of ruling and proceedings in the circumstances of this case constituted sufficient cause for extension of time. Moreover, among the factors to be considered in granting extension of time is the degree of prejudice that the respondent may suffer if the application is granted. This being matter of inheritance where two families are competing over the property of the deceased, I don't find any reason the respondent would be prejudice if the application was granted. In that regard, had the District Court considered all these factors, it wouldn't have denied the appellant with extension of time. Therefore, it is the finding

of this court that, the appellant had managed to establish that, the delay was with sufficient cause.

That being said, I find the appeal with merit and I hereby allow it by quashing and setting aside the ruling and order of the District Court. The appellant is given 21 days from the date of this judgment to lodge her appeal before the District Court of Bukoba. Owing to the nature of this matter I make no orders as to costs. It is accordingly ordered.



I. K. BANZI
JUDGE
16/06/2023

Delivered this 16th day of June, 2023 in the presence of Mr. Scarius Bukagile, learned counsel for the appellant and Mr. Lameck John Erasto, learned counsel for the respondent.



I. K. BANZI
JUDGE
16/06/2023