

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISC. CIVIL APPLICATION NO. 91 OF 2023

(C/f Probate and Administration Cause No. 24 of 2020)

**IN THE MATTER of the estate of the late LIVIA LE POER TRENCH of P.O. BOX
299 KARATU, TANZANIA AND OF P.O. BOX 43 NANYUKI, IN THE REPUBLIC
OF KENYA**

AND

**IN THE MATTER OF an application by MR. GLADWASHITON MARIKI and MRS.
MARY MAEDA legal administrators of the estate, for extension of time within
which to file inventory and accounts in respect of the estate of the late LIVIA
LE POER TRENCH**

RULING

08/11/2023 & 20/11/2023

KINYAKA, J.:

The Applicants have on 15/09/2023, lodged the present application seeking the indulgence of the Court to extend time within which they may file inventory and accounts of the estate of the late Livia Le Poer Trench (herein after, the "deceased") out of time in Probate and Administration Cause No. 24 of 2020. The application is supported by the joint affidavit of

Mr. Gladwashiton Mariki and Mrs. Mary Maeda, the administrator and administratrix of the estate of the late Livia Le Poer Trench, respectively (herein after, the "administrators" or the "Applicants", interchangeably).

The application being non-contentious, it was heard *ex parte* under the dictates of Rule 14(1) of the Probate and Administration of Estate Rules, G.N. No. 369 of 1963 (herein after, the "Probate Rules"). When the application was called on for hearing, Ms. Salvasia Kimario, learned Counsel appeared to argue the application for the Applicants.

Submitting in support of the application, Ms. Kimario adopted the contents of the joint affidavit sworn by Mr. Gladwashiton Mariki and Mrs. Mary Maeda and the annexure appended to the affidavit as forming part of her submissions.

Counsel submitted that the Applicants were appointed the administrators of the estate of the late Livia le Poer Trench on 11/02/2022 as per LPT 1 referred to in paragraph 2 of the affidavit. She submitted that the Applicants were required to file inventory and accounts within six months and twelve months, respectively, from the date of their appointment. She contended that the administrators could not comply with the period specified

under the law due to the nature of estate of the deceased which included, among other assets, a shareholding interest of 9,990 shares in Ben Dhu Limited with Incorporation Number 2733 (herein after, the "Company").

She stated that immediately after their appointment on 11/02/2022, the administrators applied to the Company to be recognized and registered as the administrators of the deceased. Counsel contended that on 11/02/2022, the Company resolved that the shares of the deceased be transmitted to the Applicants by operation of the law as shown in Annexure LPT 2 referred to in paragraph 10 of the affidavit. She submitted that the transmission could not be registered by the Business Registration and Licensing Agency (herein after the "Company Registry") because the Company had not updated the online registration system (ORS). Counsel submitted that from 11/02/2022, the Company started updating the ORS until 12/09/2023 when the update process was completed and transmission of shares to the Applicants was effected.

Counsel argued that the delay to file inventory and accounts after expiry on 11/08/2022 and 11/02/2023, respectively, was occasioned by the process of registration of transmission of shares from the deceased to the administrators, and the process of updating ORS, culminating to the

registration of transmission of shares to the Applicants on 12/09/2023. She contended that from 12/09/2023 to 13/09/2023, the Applicants spent time to prepare the present application culminating to its online filing on 13/09/2023 and later on, physical filing in court on 15/09/2023. Counsel prayed for the grant of the application.

Upon hearing the Applicants, the Court is enjoined to determine whether the applicant has demonstrated good cause for delay that justifies the grant of the orders sought. The letter of administration of the estate of the deceased was granted by the Court upon the Applicants' undertaking to administer the said property and credits and to make a full and true inventory of the said property and credits and exhibit the same in this court within six months from the date of the grant or within such further time as the court may from time to time appoint, and also to render to the court a true account of the said property and credits within one year from the same date within such further time as the court may from time to time appoint. The duty to make full and true inventory and account to court is provided for under section 107(1) of the Probate and Administration of Estates Act, Cap. 352 R.E. 2019 (herein after, the "Probate Act").

The relevant provision that empowers the Court to extend time in the circumstance of the present application is Rule 109(1) and (2) of the Probate Rules which require the application to be made by chamber summons supported by an affidavit, to state the reasons for the application, and to be made before the expiry of the period within which the executor or the administrator is required by the court to file the inventory or account under section 107(1) of the Probate Act.

I have read the affidavit and heard the submissions of the Applicants and found that the Applicants complied with Rule 109(1) of the Probate Rules upon lodging the present application in the form required under the law and upon advancing good and reasonable cause for the delay. The Applicants delayed to file inventory and account due to compliance with registration of the transmission of the shares held by the deceased in the Company and updating the information of the Company in the ORS.

The Applicants managed to account for each delay of their failure to file inventory and accounts as expounded in various cases. For instance, in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Association of Tanzania, Civil Application No. 2 of 2010** on page 6 of the decision, the Court of

Appeal established grounds warranting an order for extension of time which include; the applicant must account for all period of delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take, and if there are sufficient reasons such as a point of law of sufficient importance, such as the illegality of the decision sought to be challenged. I find the Applicants have sufficiently accounted for all period of delay.

I have noted that the Applicant failed to comply with Rule 109(2) of the Probate Rules that require applications of similar nature to be filed before expiry of the period of six months and 12 months for filing inventory and accounts, respectively. In the affidavit and the Applicants' submissions in support of the application, the Applicants have not demonstrated the reasons for their failure to file an application for extension of time before expiry of the period to file inventory and accounts. It was expected of the Applicants to file an application for extension of time to file inventory and accounts, prior to the expiration of the respective periods while updating the ORS or waiting for the registration of transmission of shares. It is clear that the Applicants have failed to file the present application within time stipulated under Rule 109(2) of the Probate Rules.

Despite the Applicants' delay, I am of the considered view that the Court's powers to grant extension of time is discretionary. However, such discretion should be exercised judiciously by looking at the circumstance and reasons for the delay. I have held that the Applicants have demonstrated good reasons for delay. The only obstacle is the requirement under Rule 109(2) of the Probate Rules that require applications of similar nature to be lodged before expiry of time. In exercising the discretion of the Court, and despite the requirement under Rule 109(2) of the Probate Rules, I am inclined to grant the present application due to several considerations.

The first consideration is the nature of the actions that are intended to be exercised by the Applicants upon being granted with an order for extension of time that is, to file an inventory and accounts of the estate of the deceased. Being administrators of the estate of the deceased, they are bound to administer the estate of the deceased within the time specified under the law. If the present application is not granted, the estate will not be administered which will highly prejudice the deceased's estate and the beneficiaries, causing irreparable consequences.

The second consideration is based on the rule against procedural technicalities expounded under sections 3A (1) and (2) and 3B (1) (a) and

(c) of the Civil Procedure Code, Cap. 33 R.E. 2019 that require the courts to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes for just determination of the proceedings, and timely disposal of the proceedings at a cost affordable by the respective parties. If the present application is denied, the overriding objective principle will not be achieved.

The third consideration is the non-contentious nature of the present application. The grant of the present application will not prejudice anyone. It is just and equitable to grant the application than to deny the same. Justice will be accorded to the estate of the deceased and the beneficiaries if the application is granted that if it is denied.

In view of the above findings, I find to be in the interest of justice to grant the present application. I must hasten to state, this is not the first time the Court grants extension of time when Applicants filed similar applications after expiry of the period for filing inventory and accounts under Rule 109(2) of the Probate Rules. These include; **In the Matter of Application for Extension of Time to File Inventory, Joanna Adela Menezes (Administrator of the estate of the late Joaquin Fransisco Santana,** Misc. Probate Application 8 of 2022 [2022] TZHC 14325 (10 October 2022; TANZLII), **In the Matter of the estate of the late Easter Meshack**


Ndoje and In the Matter of an Application for Extension of Time to File Inventory By Frank Mlekio Mongi (Administrator of the estate of the late Easter Meshack Ndoje, Misc. Civil Application 74 of 2022 [2022] TZHC 13451 (26 August 2022; TANZLII), and In the Matter of Application For Extension Of Time To File Inventory And Account Of Estate By Toufiq Turkey, Misc. Civil Application No. 66 of 2023) [2023] TZHC 15868 (3 March 2023; TANZLII).

In the upshot, I order the Applicant to file inventory and final accounts of the deceased estate within 30 days from today. In case of the Applicants' failure to file inventory and final accounts within the prescribed time limit, the letters of administration granted to the Applicants shall be revoked for failure to perform their duties of administering the estate of the deceased. The application being non-contention, I make no order as to costs.

It is so ordered.

DATED at ARUSHA this 20th of November 2023




H. A. KINYAKA
JUDGE