

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 17 OF 2018

(Arising from Nyamagana District Court Civil Appeal No. 11/2016, original from Probate Cause No. 121/2015 Mwanza Urban Primary Court)

FLORIDA NKOLA APPLICANT

VERSUS

ENGELBERTH PHILIPO BUJIKU RESPONDENT

RULING

04/12/2018 & 31/01/2019

RUMANYIKA, J.:

Application under **Section 14 (1) and (2) of the Law of Limitation Act and Section 31 (2) of the Magistrate's Court Act Chapters 89 and 11 R.E. 2002** respectively is for extension of time within which Florida Nkola (the applicant) to lodge application for revision on the 11/10/2016 decision of the District Court Mwanza. The latter having upheld decision of 27/06/2016 of the trial probate Mwanza Urban Primary Court.

I think there would be no harm for me to give its brief historical back ground:-

That with respect to estate of deceased husband one Engelberth Philipo Bujiku, having applied for, but before was granted letters of

administration, and at the probate court's request she filed a list of shares suggested by her (the applicant) for the beneficiaries (inclusive of herself). That irrespective of two attempts, the probate court rejected it but just imposed the "equal share" distribution. She appealed unsuccessfully to the 1st appeal court. Then hereto. But for reason of incompetence, the appeal was struck out. That for the next seven (7) months until 25/01/2018 she had been looking for an advocate. Hence the delay.

Messrs. Angelo James and Alhaj Majogoro learned counsel appeared for the applicant also it would appear for other survivors of the deceased. However, when the matter stood up on 09/08/2018 for hearing, Alhaj Majogoro raised, successfully a preliminary point of objection. In that not only application was against the deceased, but, if anything, strangers to proceedings (survivors of the deceased Engelberth Philipo) Bujiku counsel was, pursuant to my 09/08/2018 discharged.

Additionally, Mr. Angelo James pointed out a list of points of illegality which, according to him sufficiently constituted a ground for extension of time:

- (1) the probate court per se had not declared her administratrix of the estate. But the District Court just proceeded.
- (2) the probate court assumed role of administrator. Whereby distributing shares of the estate amongst the heirs.
- (3) the district court determined the matter against deceased.
- (4) the district court's judgment was based on criminal proceedings to which applicant wasn't a party.

Now essentially, the issue is whether the application is tenable. It is actually not. Reasons are:

One; having admitted that she had not been appointed administratrix of the estate, the applicant should not have appealed or otherwise challenged decision of the probate court or anything subsequent thereto. Otherwise she did all but prematurely. She in fact had no locus standi.

Two; now that this court had struck out her incompetent appeal, the applicant should have made her house first and then come back. Not coming back asking to revise the district court's decision. In other words the application is seriously out of place.

Three; now that if at all she had for no apparent reasons suggested to take a lion's share, on that ground the two courts below refused her, the applicant cannot have clean hands any more. With the above 3 points therefore, the points of illegality are neither here nor there.

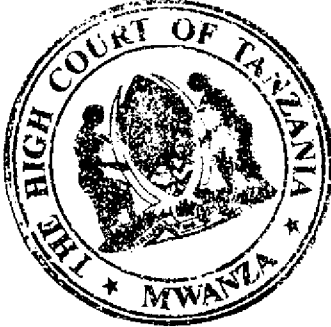
Suffices the points to dispose of the application. Now that the application is not tenable, extension of time therefore could not be granted.


The purported application is dismissed. Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
26/01/2019

Delivered under my hand and seal of the court in chambers this 31st day of January, 2019 in the presence of the both parties in person.




O.H. Kingwele
DEPUTY REGISTRAR
31/01/2019