

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA
(APPELLATE JURISDICTION)
MISC.CIVIL APPLICATION NO. 5 OF 2021

(Arising from Probate Cause Appeal No. 01/2020 of the District Court of Kigoma before Hon. K. V. Mwakitalu, Originating from Probate Cause No. 8 of 2019 at Nguruka Primary Court)

SAID MUSSA KASEBELELO..... APPLICANT

VERSUS

RAMADHAN MUSSA KASEBELELO.....RESPONDENT

RULING

29th & 29th April, 2021

A. MATUMA, J

The Applicant, the respondent and one Moshi Haruna Ndiba were at one time appointed jointly to administer the estate of the late Musa Kasebelelo Muyonga. It was latter alleged that the Applicant and Moshi Haruna Ndiba became obstacle to the execution of the administration of the said estate as they were not cooperative which resulted into the respondent moving the appointing court to revoke them from the joint administration. The trial Primary Court after several considerations revoked the two and, in their place, Sada Musa Kasebelelo was appointed. Thus, the administrators became to be the Respondent who at that time was referred to as Ramadhani Yusufu Ruhiso and Sada Musa Kasebelelo.

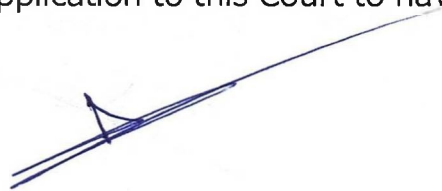


The applicant was aggrieved with such decision which revoked his appointment as co-administrator of the estate and therefore appealed to the District Court which dismissed his appeal for want of merit.

The applicant was further aggrieved with the decision of the District Court of Kigoma which was Probate Cause Appeal No.1/2020 which was delivered on 26th June, 2020. He could not appeal in time hence this application for extension of time to appeal against the herein above decision.

At the hearing of this Application both parties were present in person and made their respective submissions for and against the Application by reiterating their Affidavit and Counter Affidavit respectively.

The applicant argued that the reason for the delay to file his appeal was due to poverty as he could not afford to pay the court fee for the purpose which necessitated him write a letter to "**Katibu Tawala**" of Uvinza requesting for a permit to institute his appeal to the High Court against the said decision free of Charge. That after due communication between him, the said District Administrative Secretary and the Deputy registrar he was required to make formal Application to this Court to have him waived court fees.



That having so directed, he sought legal advice and assistance from Mr. Masanja, the learned State Attorney on how to file the same but the learned state attorney instead volunteered to pay for him the filling fees but it transpired that he was already out of time hence this application.

The applicant has accompanied the affidavit of the said State Attorney in which he has affirmed;

'That, instead of assisting him drafting the said applications, and providing that his intended appeal against the judgement of appeal in Probate Appeal Cause No. 1/2020 was out of time, I volunteered paying for him the court fees for this Miscellaneous Civil Application for the extension of time to appeal against the said decision'

The Respondent on his party has opposed this application stating that the Applicant is not poor as he purports because he is the only famous solar panel technician at Nguruka, he is in possession of 40 acres of farms some of which hired by people and a house of nine rooms which is rented and the tenants are paying rents to him.

The respondent further argued that even though the applicant did not act promptly after the date of the impugned judgment as to DAS he wrote the letter so stated on 16/08/2020 which was two months time after the

delivery of the impugned judgment whose time for appeal had already been expired.

In his rejoinder submission the applicant stated that despite of being a solar installer, now days Nguruka there is electricity thus no jobs. Also that there are so many other Solar installers thereat. He thus insisted that his application be granted.

I would agree with the respondent that by the time the applicant started to take administrative actions by writing to DAS, he was already out of time and it cannot be said that he delayed to appeal due to poverty. That is because no any action towards an appeal was taken within the prescribed time for appeal and got hindered by reason of poverty. Such period as between the date of the impugned judgment and the date in which the applicant took the first action to write to Katibu Tawala has not been accounted for.

Not only that but also the Deputy Registrar of this Court Mr. Anord J. Kirekiano on 20/10/2020 wrote to the District Commissioner who acted for the Applicant directing the applicant to bring formal application to have the Court Fees waived for him to institute any matter he wanted to pursue. That directives were clearly communicated to the applicant as evidenced by the affidavit of Shabani Juma Masanja who has deposed that the

applicant approached him sometime in 2020 to have him assist to draft the requisite applications. That after such approach he decided to volunteer the requisite fees so that the applicant could file the instant application for extension of time.

But surprisingly this application was filed in this court on 19th March, 2021. There is no explanation as to why the same was not filed immediately as the state attorney volunteered to pay the requisite fees for it sometime in 2020.

The guidelines as to the grounds upon which time should be extended to the applicant have been set by various authorities including but not limited to ***Bruno Wenceslaus Nyalifa V. The Permanent Secretary Ministry of home affairs and Attorney General, Civil Appeal No. 82 of 2017.***

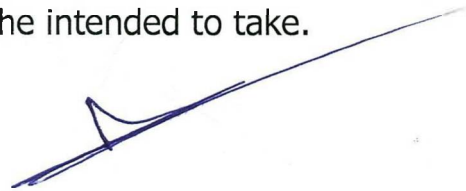
In that case the court of appeal quoted that of ***Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Womens Christian Association of Tanzania, Civil Application No. 2 of 2010*** which had set the guidelines for the factors to be considered by the Court in the exercise of its discretion to extend time or not. The guidelines are:-

- (i) *The applicant must account for the all period of delay.*

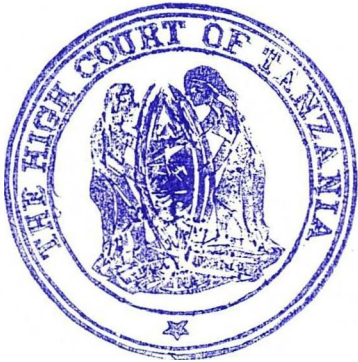
- (ii) *The delay must not be inordinate*
- (iii) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- (iv) *If the court feels there are sufficient reasons, such as the existence of a point of Law of sufficient importance such as the illegality of the decision sought to be challenged.*

In the instant matter the applicant has not accounted for the period between the date of the impugned judgment and that when he wrote to the District Administrative Secretary, he did not account for the period between when the Deputy Registrar directed him to bring formal application showing cause why should he waived court fees to the time when the state attorney volunteered to pay the stated fees for him, and he did not account for the period between when the state attorney volunteered as such to the period when the instant application was filed.

As stated in the above quoted authority, the applicant is duty bound to show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.



I thus find that this application has been brought without any sufficient cause and I accordingly dismiss it. Right of Appeal to the Court of Appeal is explained. No orders as to costs.



A. Matuma

Judge

29/04/2021

Court: Ruling delivered in chambers in the presence of both parties in person. Right of further appeal is explained.

It is so ordered

Sgd: A. Matuma

Judge

29/04/2021