

TANZANIA / JUDGMENT

19970516 TZHC Dar es Salaam

COURT
TZHCDECIDED
16 May 1997

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM PROBATE & ADMINISTRATION
CAUSE NOa 28/94 IN THE MATTER OF THE ESTATE OF THE LATE PHILEMON ABONYO MGUTU
AND IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION BY ANTHONY
ALONG OGUTU

RULING

KAJI, J., This is an application by the applicant JUTHONY AIDNG MGUTU for extension of time within which to file an application for, review. It has been filed under s.14 of the Law of Limitation Act, 1971. The gist of the matter is that on 21st April, 1994 the applicant filed a petition for being appointed the administrator of the estate of the late PHILIMON OBONYO MGUTU who died at Dar es Salaam and, 2nd November, 1993. Subsequent to that petition the respondent SARA MGUTU filed a caveat on or around 1st June, 1994. Pursuant to the filing of that caveat, this court on 16th June, 1994 issued a notice to the applicant under Rule 82 (2 A) of the Probate and Administration Rules requiring the applicant to apply for citation within 21 days from the date of service. That notice was served on the applicant on 17th June, 1994 through his advocate Hyera (Advocate). Supposed to have filed his application for citation not later than by 7th July, 1994. But the applicant did not do so. So on 12th October, 1994 the caveator's/respondent's learned counsel Mr. Magesa applied for the applicant's petition to be marked "withdrawn". His application was granted and the applicant's petition was marked withdrawn under Rule 82 (2A) of the Probate and Administration Rules. On 20th September, 1995 the applicant filed this application through the legal services of Mchora & Company (Advocate). His main ground for his delay is that he was not notified by either his advocate Hyera or his agent / representative IBO J.J.W. LA KUJ/1. about the notice or the withdrawal. He said he was residing in Tarime District and had appointed one Leo Wayala Kuja to represent him. The said Wayala died around April, 1995 without telling him anything about the progress or state of his petition. This application has been strongly resisted by the respondent through her learned counsel Mrs Magesa. Mr. Magesa maintained that the applicant has failed to show sufficient or good cause for being late for almost two years despite the fact that the notice was served on him on 17/6/94 through his advocate and that the withdrawal order was made by the court almost 3 months later, that is, on 12/10/94. The learned counsel went on replying that if his advocate Mr. Hyera or his so called agent/representative Wayala did not inform him in time then that is not the concern of the court and can not be said to be sufficient or good cause. Mr. Magesa went on replying that the

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