

TANZANIA / JUDGMENT

NYEKAJI

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISC. PROBATE AND ADMINISTRATION CAUSE NO. 000018790 OF 2024 IN THE MATTER OF THE ESTATE OF THE LATE SONGO NYEKAJI AND IN THE MATTER OF THE RULING ARISING FROM PROBATE AND ADMINISTRATION CAUSE NO. 06 OF 2020 APPOINTING MAJURA SONGO NYEKAJI AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SONGO NYEKAJI AND IN THE MATTER OF APPLICATION FOR AN EXTENSION OF TIME FOR ADMINISTERING THE ESTATE OF THE LATE SONGO NYEKAJI BY MAJURA SONGO NYEKAJI.....APPLICANT RULING OF THE COURT 15/01/2025 & 18/12/2025 Kafanabo, J.: This is an application for an extension of time within which to administer the estate of the late Songo Nyekaji (hereinafter referred to as the 'deceased'). It is on record that the Applicant herein on 30/03/2021 was appointed the administrator of the estate of the deceased vide Probate and Administration Cause No. 06 of 2020. The Applicant was also ordered to file an inventory of the deceased's estate within six (06) months from the date of appointment and further required to administer the estate of the deceased according to law. i The application is brought by way of chamber summons under section 107 of the Probate and Administration of Estates Act, Cap. 352 R.E. 2002 supported by an affidavit of the Applicant. At the hearing of the application, Mr. Ostack Mligo entered an appearance for the Applicant. In support of the application he submitted that the application is for an extension of time for the continuance of the administration of the estate by the Applicant and he adopted an affidavit of the Applicant as part of his submissions. The Applicant was appointed the administrator of the estate of Songo Nyekaji through probate Cause No. 06 of 2020, and the decision was issued by this Court on 30th March 2021. Immediately after his appointment the Applicant fell sick and continued to be sick for three years from 2021 to 2024. He suffered from spinal stenosis and recovered in 2024 but is still on medication. It was further submitted that the Applicant was being treated in various hospitals and the documents evidencing his treatment are attached to the application. The Applicant improved and recovered from the ailment in 2024 when he realized that the time within which to file inventory and final accounts had lapsed and thus this application for an extension of time. He thus prays for an extension of time so that he can comply with the relevant laws by filing inventory and final accounts. In light of the above submissions and depositions in the affidavit supporting the application, it is opportune for this Court to determine the application according to law. 2 As alluded to earlier, this application is made under section 107 of the Probate and Administration of Estates Act, Cap. 352 R.E. 2002 (hereinafter

referred to as the 'Act'). The said section 107 subsections (1) and (2) read as follows: "(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint or require, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and in the manner in which they have been applied or disposed of

- (2) If the administration is not completed within one year from the grant of probate or letters of administration, the executor or administrator shall at intervals of not more than six months, or within such further time as the court which granted the probate or letters of administration may from time to time appoint or require, and on the completion of the administration, exhibit in the like manner an account showing the assets which have come into his hands and the manner in which they have been applied or disposed of since the last account was exhibited." 3 In light of the above provisions of section 107 of the Act and as ordered by the Court, the Applicant, after being appointed the administrator of the deceased's estate, was required to file an inventory of the deceased's estate within six months. He was also required to file final accounts within one year of the appointment. Moreover, the above provisions also empower this Court to extend and appoint time within which to file an inventory and final accounts of the deceased's estate. The relevant provision, however, is silent on circumstances under which the said time may be appointed or extended. That being the case this Court is not short of authorities regarding circumstances under which time may be extended. It is trite law that extension of time may only be extended if the Applicant demonstrates good cause for the delay including accounting for each day of the delay. See the case of the Board of Trustees of the Free Pentecostal Church of Tanzania vs Asha Selemani Chambada and Another (Civil Application 63 of 2023) [2023] TZCA 147 (28 March 2023). Moreover, the application should be brought promptly; see the case of the Attorney General vs Tanzania Ports Authority & Another (Civil Application 87 of 2016) [2016] TZCA 897 (12 October 2016), where it was held that: 'What amounts to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant.' 4 Moreover, in the case of Yusufu Hassan vs Republic (Criminal Application No. 50 of 2017) [2020] TZCA 37 (18 February 2020) the Court of Appeal held that: "Z/7 exercising its discretion to grant an extension of time, the court considers the following crucial factors: the length of the delay, the reason of the delay and degree of prejudice that the respondent may suffer if the application is granted. It is therefore the duty of the Applicant to provide the relevant material in order for the court to exercise its discretion." Reverting to the present case, the Applicant has demonstrated that immediately after his appointment he fell sick and his ailment continued from 2021 to 2024 when he recovered, but continues to be under medication. In the affidavit supporting the Application, several medical documents have

been attached straddling from 2021 to 2024 indicating that the Applicant was truly under treatment and medication. That being the case it is inevitable to conclude that the Applicant was sick within the period he failed to fulfil his duties as the administrator of the deceased's estate which also lapsed before he recovered from sickness. However, this application for an extension of time is further guided by Rule 109 of the Probate Rules which is about an application for an extension of time to file inventory or account and the Rule reads as follows: "(1) An application for extension of time to exhibit an inventory or account shall be made by chamber summons supported by an affidavit stating the reasons for such application. 5

- (2) An application under this rule shall 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. In light of the above, this application was required to be filed within six (06) months or before the expiry of six (06) months from 30th March 2021 for an extension of time to file an inventory. Moreover, an extension of time within which to file accounts of the deceased's estate was required to be filed within one (01) year or before the expiry of one (01) year from 30th March 2021. According to this Court's record, the present application was filed on 25th July 2024 which is more than three years after the appointment of the Applicant as the administrator of the deceased's estate. This means that the present application has been filed contrary to the requirements of Rule 109(2) of the Probate Rules and thus cannot be granted as prayed. However, in a situation where an executor or administrator is barred by the above provision of the law, and yet must present/exhibit an inventory and/or accounts of the deceased's estate, the statutory remedy for the entanglement is on the final requisition of the deceased's estate which is provided in Rule 110(1) of the Probate Rules, which provides as follows: "(1) Where an executor or administrator fails to exhibit an inventory or account within the period specified in section 107 or within the time last appointed by the court, the court shall make an order requiring him to exhibit such inventory or account within such 6 further period as it may think fit and the Registrar shall cause a notice in the form prescribed in Form 83 set out in the First Schedule to be served upon the executor or administrator notifying him of the order of the court and the consequences of non-compliance therewith. Under the circumstances, since the Applicant who is the administrator of the deceased's estate failed to exhibit an inventory or account within the period specified in section 107 of the Probate and Administration of Estate Act, this Court upon noting the noncompliance by the executor or administrator has the mandate to make an order under Rule 110(1) above referred requiring the administrator or executor to exhibit such inventory or account within such further period as it may think fit. Given the predicament the Applicant has found himself in for failure to exhibit the inventory and accounts of the deceased's estate, this Court has the power to make such an order under Rule 110(1) of the Probate Rules in respect of Probate and Administration Cause No. 06 of 2020, but not in the present application. Given the foregoing, this application for an extension of time is hereby struck out for being misconceived and filed in contravention of Rule 109(2) of the Probate Rules. It is so ordered. The ruling was delivered in the presence of

Mr. Ostack Mligo, Advocate for the Applicant. K. I. Kaf[^]nabo Judge 18/02/2025 8

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