

TANZANIA / JUDGMENT

Ruling Rakesh

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IN THE HIGH COURT OF TANZANIA MWANZA SUB-REGISTRY AT MWANZA MISC.APPLICATION No. 97 of 2024 (Arising from Probate Cause No. 13 & 14/2022 of the High Court of Tanzania at Mwanza BETWEEN RAKESH ARUNKANT MAKHECH.....APPLICANT VERSUS ASMITA ARUNKANT MAKHECHA &ARUNKANT JAMNADASH MAKECHA.....

.....DECEASEDS EX-PARTE RULING 21st & 23rd May 2024 CHUMA, J. In this application, indulgence of the court is sought, for enlargement of time to enable the applicant to file inventory in Probate and Administration Cause No.13 &14 of 2022. The application is supported by an affidavit of RAKESH ARUKNKANT MAKHECHA. The applicant is seeking the following orders; I. That this Honorable Court be pleased to extend the period to enable the Applicant to file an Inventory in Probate and Administration Cause no. 13 & 14 of 2022. 1 II. Any other relief this Honourable Court deems fit and just to grant. Before me for hearing the applicant represented by Ms.Lucy Mussa Learned counsel. In her submission at the outset, she prayed to adopt the applicant's affidavit as part of her submission and court records. She further stated that the applicant was appointed as administrator of the late Arun Kant Jamnadas Makhecha and Asmita Arunkant Makhecha. The applicant failed to submit inventory within the required time because he was on frequent business travel outside the country from 2022 to 20/3/2024 where he consulted his lawyer hence this application. She finally invited this court to consider the reasons for the delay stated in the applicant's affidavit together with her submission and grant the sought

orders.

I have carefully followed the submission of Ms Lucy Mussa learned counsel for the applicant and considered the chamber summons along with the affidavit in support of this application, the issue for determination is whether this application is meritable. It is cardinal law that in any application for an extension of time, the applicant is required to state sufficient cause for his delay. 2 What amounts to sufficient or good cause has been discussed in a range of cases including the Court of Appeal case of John Mosses and Three Others v. The Republic, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of Elias Msonde v. The Republic, Criminal Appeal No. 93 of 2005 was quoted. The Court of Appeal stated We need not belabor the fact that it is now settled law that an application for an extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by

sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part. It was also stated by the Court of Appeal in the case of Blue Line Enterprises Ltd. V. East African Development Bank, Misc. Application No. 135 of 1995 (unreported) that:- It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, 'upon sufficient cause being shown which has to be objectively assessed by Court.' 3 In the instant matter, the major reason for the delay is the absence of the applicant who was on his frequent business travel outside the country from 2022 to 20 day of March 2024. The applicant tried to indicate each day of travel in his affidavit. It might be true that he traveled for all that period, but the question is does travel for his business justifiable reasons to warrant this court grant the sought order? I don't think so. This is because, at a time of travel, the applicant was aware of the existence of his obligation and that by not complying with a court order to file inventory for the stated reason is as good as failure to give weight of the same, unlike his business which to him was his priority. This amounts to negligence on his side so to say bearing in mind that he ought to file inventory within six months from the date of the court's order issued on 15/12/2022. I was about to desist from granting it for the above reasons however for the sake of justice and considering the nature and circumstance of this matter, I will think otherwise. My verdict is guided by the position of the law stated in the case of Yara Tanzania Limited V. DB Sharpriya & Co. Limited Civil Application No. 498/2016 where Kenyan cases of Savings and Loan Kenya Ltd. V. Onyacha Bwomonte, Civil Application No. 70 of 2004 and Belinda Murai & Others V. Amos 4 Wainaina, Civil Application No. 9 of 1978 were cited, in those cases the court held that; The court should not keep the door of justice closed as the duty of the court is to dispense justice to the parties. From the above-cited case laws and considering the nature and circumstance of this matter, I proceed to grant the instant application and the applicant is given seven days from the date of this ruling to file inventory. DATED at MWANZA this 23rd day of May 2024. W.M. CHUMA JUDGE Ruling delivered in court before Ms. Luccy Mussa Learned counsel for the applicant this 23rd day of May 2024. W.M. CHUMA JUDGE 5 6

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