

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT TABORA**

**MISC. LAND APPLICATION NO. 42 OF 2019**

(Originating from Land Application No. 5 of 2017 in the District Land and  
Housing Tribunal for Nzega)

**SAMIKE NKALANGO .....APPLICANT**

***VERSUS***

**NYANGAKI NKALANGO ..... RESPONDENT**

**RULING**

**KIHWELO, J.**

This ruling was reserved by my late brother, Bongole, J, who sadly did not live to compose it. Consequently, the record has been re-assigned to me.

The applicant and the respondent were respondent and applicant respectively, in Land Application No. 5 of 2019 of the District Land and Housing Tribunal of Nzega (Henceforth "the Tribunal") (Hon. M. Nyaruka-Chairman). The application before the Tribunal was brought by the respondent who is the administrator of the estate of the late Nkalango Tija (Henceforth "the deceased") and sued the respondent over a piece of land about 60 acres (Henceforth "the suit premises") which is claimed to be part of the estate of the deceased. The applicant herein is the young brother of

the respondent herein. It is on record that the matter was decided ex-parte because the applicant herein did not enter appearance.

Upon full trial the Tribunal decided the matter in favour of the respondent as the administrator of the estate of the deceased and therefore the applicant was ordered to vacate and handover the suit premises to enable the respondent continue with other administration procedures.

Unhappy with the decision of the Tribunal the applicant herein filed this application seeking extension of time within which to file an application for revision against the decision of the Tribunal.

Before this Court the Applicant was represented by Mr. Mwigamba Sosthenes, learned counsel while the Respondent appeared in person. Upon the application of both parties, this application was argued by way of Written submission which were dully filed in line with the schedule set by the Court.

With this background, let me now turn to the present application.

The application is supported by a skeletal affidavit of Samike Nkalango (the Applicant).

Without looking at the other averments deposed to by the Applicant, I think, the Applicant is mainly trying to attribute the delay to reason furnished in paragraph 5 of the affidavit. I will quote it:

*"5. That, the applicant was not given a notice on the day for delivery of judgment."*

From the affidavit and counter affidavit as well as the written submissions by the parties, the issue that clearly emerges and cries for determination is whether the Applicant has disclosed sufficient cause for extension of time in which to file the intended application.

Mr. Mwigamba, learned counsel adopted the written submission which he had filed in support of the application. He argued that there was some illegality on the face of the record of the Tribunal which required to be determined upon full determination of the matter. He cited the case of **Ntinga Gwisu v Republic**, Criminal Appeal No. 428 of 2015 (Unreported) and the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992]. He dealt at length with this matter and cited a number of authorities to try to buttress his point.

Mr. Mwigamba went further to strenuously submit that the applicant was not notified the date when the Tribunal was to deliver its judgment. To hammer the point home, he cited the case of **Bharya Engineering & Contractors Co. Ltd v Hamoud Ahmed Nassor**, Civil Application No. 545/11 of 2018 (Unreported).

The respondent through his submission in reply was not impressed. He valiantly and spiritedly submitted to oppose the application. He strongly opposed the ground of irregularity raised by the applicant. According to him the cited cases were not applicable to the instant case. He further

As hinted earlier on, the main reason for the applicant's delay as alluded in the supporting affidavit is that the applicant was not notified of the judgment date. I have dispassionately considered the submission by the learned counsel for the applicant in respect of this argument and I find considerable merit in his submission. I think that the law relating to this issue is now fairly settled. In the case of **Bharya Engineering & Contractors Co. Ltd v Hamoud Ahmed Nassor** (supra) the Court of Appeal stated that;

*" ...I have to find that the applicant has sufficiently demonstrated good cause that she was not notified of the date of delivery of the ruling either by the Deputy Registrar or Mr. Mtaki, and therefore she could not lodge the requisite application for reference within the prescribed period of seven days."*

The above position describes the correct position of the law regarding the circumstances of the present application. In the result, the application is granted. In the event, I grant the application for extension of time to file the application for revision. The applicant is granted fifteen (15) days from the date of delivery of this ruling to file his revision.

Costs in the cause.



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**P.F. KIHWELO**

**JUDGE**

**10/12/2020**



Ruling to be delivered by the Deputy Registrar on a date to be fixed.

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**P. F. KIHWELO**

**JUDGE**

**10/12/2020**



**Date : 17/12/2020**

**Coram : Hon. B.R. Nyaki, DR**

**Appellant : Ms. Janeth Ubapa, Advocate**

**Respondent: Present in person**

**Bench Clerk: Grace Mkemwa, RMA**

**Ms. Janeth** – For Ruling, we are ready.

**Court:** Ruling delivered in the presence of Ms. Janeth Ubapa, Advocate for the Applicant and the Respondent in person.

Right of appeal explained fully.



A handwritten signature in blue ink, appearing to read "B.R. Nyaki", is written above the printed name.

B.R. Nyaki  
**DEPUTY REGISTRAR  
HIGH COURT – TABORA**