

**IN THE HIGH COURT OF TANZANIA  
TABORA DISTRICT REGISTRY  
AT TABORA**

**MISC. LAND APPLICATION NO. 33 OF 2020.**

[Arising from Land Appeal No. 11 of 2020 in the District Land and Housing Tribunal for Nzega and Misc. Application No. 67 of 2019 and Original Land Dispute at Muhigi Ward Tribunal.]

**MHOJA KANYEMBE..... APPLICANT**

**VERSUS**

**KAPAGIJO NSILIMBA..... RESPONDENT**

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**RULING**  
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Date of Last Order: 08/10/2021

Date of Delivery: 05/11/2021

**AMOUR S. KHAMIS, J.**

Mhoja Kanyembe filed this application for extension of time to file an appeal from the decision of the District Land and Housing Tribunal for Nzega in Land Appeal No. 11 of 2020 and Misc. Application No. 67 of 2019.

The application was preferred by way of a chamber summons under Section 41 of the Land Disputes Courts, Act, Cap. 216, as amended by S. 41 (2) of the Written Laws (Misc. Amendments) Act No. 2 of 2016 and supported by the applicant's own affidavit.

Mhoja Kanyembe deposed that he was aggrieved by the decision(s) of the District Land and Housing Tribunal for Nzega

delivered on 25/03/2020 and was determined to challenge it in the High Court.

He averred that immediately after delivery of the decisions, he applied for copies of the requisite documents for appeal purpose.

He deposed that while awaiting supply of the documents, he was repeatedly sick and admitted at Nkinga Hospital between 21<sup>st</sup> August 2020 and September 2020. He explained his sickness as legs weakness such that he was not able to walk.

Upon discharge from the hospital on 25/09/2020, he stayed at home to regain health and automatically found himself out of the 60 days within which to lodge an appeal.

The applicant also complained of his advocate's inaction and asserted that he lost trust in him and thus opted to pursue the appeal by himself.

Furthermore, the applicant stated that after he instituted his appeal in the District Land and Housing Tribunal (Land Appeal No. 11 of 2020), he subsequently withdrew it after reconciliation with the respondent who literally is his grandfather.

He said the respondent subsequently changed his mind and applied for execution of the Ward Tribunal's decision that was given in his favour.

He also submitted that there was a point of illegality in the proceedings as the land in contention was formerly under ownership and actual occupation of the late Kanyembe Kapagio,

hence a need to appoint administrator of the estate of the deceased before proceedings could be commenced.

In conclusion, he said that, it is in the interest of justice for this Honourable Court to grant the prayers for extension of time to file an appeal.

Submitting for the respondent, Mr. Kanani Chombala, learned advocate, contended that the respondent was declared a lawful owner of the disputed land on 15<sup>th</sup> December, 2017.

He later on filed an application for execution which was heard sometimes in August 2019 following which the applicant was given 14 days to vacate. Following a default, the tribunal issued an eviction order on 12<sup>th</sup> September, 2019.

Thereafter, the applicant filed a Misc. Land Application No. 67/2019 moving the District Land and Housing Tribunal to order for release of the property subject of execution because as it was a clan land.

The learned advocate further submitted that, the applicant did not take action to appeal against the decision of Muhigi Ward Tribunal and therefore, Misc. Land Application No. 67/2019 was an afterthought.

He added that the same was dismissed and prompted the applicant to file Land Appeal No. 11/2020 which was withdrawn on the 25<sup>th</sup> March, 2020.

Mr. Chombala vehemently opposed this application on the ground that the applicant has not assigned any reason for the delay.

Regarding settlement of the matter that resulted to applicant's withdrawal of Land Appeal No. 11/2020, Mr. Chombala stated that it is a cardinal principle in law for parties who intend to settle a case to have a settlement deed filed in Court which evidence parties' commitment to settlement.

He argued that the order dated 25<sup>th</sup> March, 2020 clearly showed that it was the Applicant who withdrew the appeal without any settlement terms.

He submitted that the applicant failed to account for each day of delay and to that end, he cited the case of **Wambele Mtumwa vs. Mohamed Hamis**, Civil Application No 136/2016 CAT, wherein the Court of Appeal referred to the case of **Bushfire Hassan vs. Latina Lucia Masaya**, Civil Application No 03/2007 (Unreported) which held that;

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

Concluding, Mr Chombala stated that the applicant did not provide any medical document to evidence the purported sickness.

He prayed for dismissal of the application with costs allegedly because the respondent incurred legal fees and other incidental expenses.

From the submissions, the issue for determination is whether the applicant adduced sufficient reason for the delay to file an appeal.

It is trite law that whoever moves the Court for extension of time must give sufficient reason for the delay.

In the case of **Lyamuya Construction Co Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02/2010 (unreported) the Court of Appeal underscored the following,

*“As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion arbitrarily. On the authorities however, the following guidelines maybe formulated;*

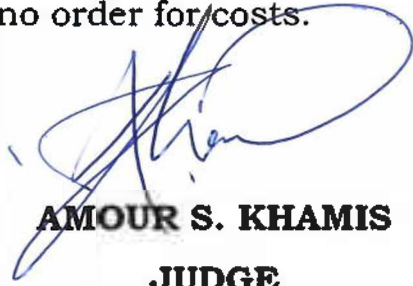
- a) The applicant must account for all the period of delay,*
- b) The delay should not be inordinate,*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,*
- d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.”*

*(see also **Bushfire Hassan vs Latina Lucia Masaya (supra)**)*

In the present case, Mhoja Kanyembe, the applicant, herein stated that the delay was due to his sickness. However, he did not adduce any medical report to prove such sickness and treatment at Nkinga Hospital.

In the circumstances, I find that the applicant failed to show sufficient reason for the delay and therefore the application is hereby dismissed with no order for costs.

It is so ordered.



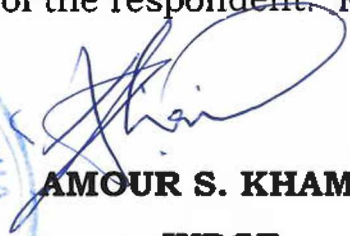
**AMOUR S. KHAMIS**

**JUDGE**

**5/11/2021**

**ORDER:**

Ruling delivered in chambers in presence of the applicant in person and absence of the respondent. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**5/11/2021**