

**IN THE HIGH COURT OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISC. LAND APPLICATION NO. 48 OF 2019**

(Arising from Land Application No. 11 of 2011 in the District Land and  
Housing Tribunal for Tabora)

**NIKODEMUS KISALO.....APPLICANT**

**VERSUS**

**PROF. SAITIEL M. KALUBA.....1<sup>ST</sup> RESPONDENT**

**THE EXECUTIVE DIRECTOR**

**NZEGA DISTRICT AUTHORITY.....2<sup>ND</sup> RESPONDENT**

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**RULING**  
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Date of Last Order: 16/7/2021

Date of delivery: 10/9/2021

**AMOUR S. KHAMIS, J.**

The applicant, Nikodemus Kisalo through the services of Ms. Flavia Francis, learned advocate brought the present application under Section

41(2) of the Land Dispute Courts Act, Cap 216 as amended by the written Laws (Miscellaneous Amendments) Act No. 2 of 2016). The application is supported with the affidavit of Nikodemus Kisalo, the applicant who moved this court to grant him extension of time within which to file an appeal out of time.

In response, the respondents filed their respective counter affidavits in which they objected the application.

By consent and with approval of this Court the application was argued and disposed of by way of written submissions.

In support of the application, Ms. Flavia Francis, learned counsel for the applicant argued that the reasons for the delay in filing the appeal is that the applicant was supplied with a copy of judgment on 21<sup>st</sup> July 2016 one day before the expiring of time to appeal and that apart from being served with a copy of judgment very late, the applicant fell sick and he was not economically healthy. She submitted further that the applicant filed an appeal to the High Court- which was registered as Land appeal No. 24 of 2016 but the said appeal was dismissed on 6<sup>th</sup> July 2017 for being time bared.

On their part, the respondents, vehemently opposed the application for extension of time for the reason that no good cause has been established by the applicant for the delay to warrant the court extend the time sought.

Mr. Amos Gahise, learned counsel for the first respondent argued that the applicant has miserably failed to demonstrate as to why he did not lodge his appeal within the time prescribed by law. The learned counsel argued citing the case of **RASHID MCHILIMBA AND 14 OTHERS VS. SEVERINA LIBENTIKA KANYABURUG, LAND APPEAL NO. 140 OF 2015**, that once application has been dismissed for being time barred like the present one, the remedy available is to appeal against that decision and not to file in the same court an application for extension of time. On that basis, he submitted that the present application is misconceived and he urged this Court to dismiss it for want of merit with costs.

On his part, Mr. Robert Ambrose, Nzega District solicitor with enthusiasm submitted that the application is misconceived and has no merit at all because financial constraint has never been a good ground for extension of time. To buttress his view, he cited the case of **ZABITIS KAWUKA VS. ABDUL KARIM, CIVIL APPEAL NO. 18 OF (1937) EACA** as authority.

In the light of the arguments raised from either side above, the thrust on the Court is whether or not, the application by the applicant merits.



In **ALLISON SILA V THA, CIVIL REFERENCE NO. 14 OF 1998**

(unreported) the Court of Appeal held that:

*"It is settled that where the time limited by the rules has expired, sufficient reason should be shown for the delay. The appellant's absence from the country at one time and also his advocate's indisposition and temporary absence from the country at another time did not constitute sufficient reason for the purpose of rule 8. It is worse in the instant case where the applicant was in D'Salaam and in good health other considerations such as the merits of the intended appeals, would come in after the applicant has satisfied the Court that the delay was for sufficient cause. It does not seem just then on applicant who has no valid excuse for failure to utilize the prescribed time but tardiness, negligence or ineptitude of counsel, should be extended extra time merely out of sympathy for his cause. After all, no appeal is eve put forward without a claim to its merits."*

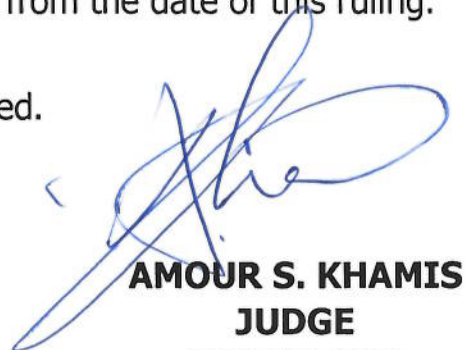
It is evident from the preceding cited authority in above that granting an extension of time is a discretion of the Court. To that end the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time. The reasons for the purported delay in this case is that prior to this application, the applicant was in this Court pursuing Land Appeal No. 24/2016 and Land Application No. 55 of 2017 both of which were struck out on technicalities. Since, the applicant was not idle but all along been in this Court pursuing

his right of appeal - that constitute good cause. See **Robert Schelten V. Balden Norataran Varma and 2 Others, Civil Appliication No.112 of 2016** (unreported).

The other reason for delay in filing an appeal was that the applicant immediately after having been served with a copy of judgment fell sick. It is established principle of law that sickness amounts to sufficient cause for extension of time. See **Pimak Profesyonel Mutfak Limited Sirketi Vs. Pimak Tanzania Limited and Farhaabduiah Noor**, Misc. Commercial Application No. 55 of 2018 (unreported).

Basing on what has been highlighted above, and upon dispassionately giving a deep thought to the sequence of events in the scenario explained by the applicant in his affidavit, I find merit in the application by the applicant. As a result, I grant the application with direction that, the applicant has to lodge his appeal within a period of fourteen (14) days from the date of this ruling.

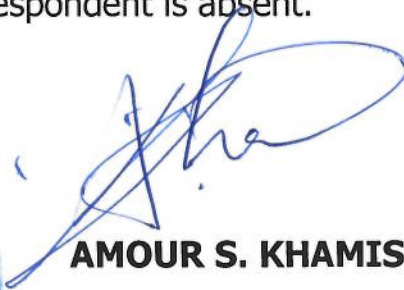
It is so ordered.



**AMOUR S. KHAMIS**  
**JUDGE**  
**10/09/2021**

**ORDER:**

Ruling delivered in chambers in presence of Mr. Amos Gahise for the first respondent and also holding brief of Ms. Flavia Francis for the applicant. The 2<sup>nd</sup> respondent is absent.

A handwritten signature in blue ink, appearing to read "A. Khamis", is written over the text "AMOUR S. KHAMIS".

**AMOUR S. KHAMIS**

**JUDGE**

**10/9/2021**