

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY AT TABORA  
LAND CASE APPLICATION NO. 22 OF 2022**

*(Arising out of Land Application No. 27/2015 Tabora District Land  
and Housing Tribunal)*

**NASHONI CHRISTOPHER .....APPLICANT**

**VERSUS**

**GERALD JAMES BAGUMYA .....RESPONDENT**

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**RULING**  
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*Date of Submissions: 12/07/2022  
Date of Delivery: 12/07/2022*

**AMOUR S. KHAMIS, J:**

Nashoni Christopher is aggrieved by Judgement and Decree of the District Land and Housing Tribunal for Tabora in Land Application No. 27 of 2015 delivered on 30/12/2019.

He brought the present application for extension of time to appeal against that Judgement.

The application was brought by way of Chamber Summons and supported by an affidavit of Nashoni Christopher and such other grounds to be adduced at the hearing.

The chamber summons was made under Section 41(2) of the Land Disputes Court Act, Cap 216, R.E. 2019.

Subsequently, the applicant presented a supplementary affidavit pursuant to the order of this Court.

The supplementary affidavit was affirmed by Musa Kassim, learned advocate on 18<sup>th</sup> day of September 2021 and lodged on 21/9/2021.

Gerald James Bagumya who was the applicant in the District Land and Housing Tribunal and a decree holder, resisted the application with two counter affidavits.

The first counter affidavit dated 7/9/2020 was in response to the affidavit of Nashon Christopher. The second counter affidavit related to a supplementary affidavit of Musa Kassim.

The issue is whether the application discloses a sufficient cause for extension of time.

Section 41(2) of the Land Disputes Courts Act, Cap 216, R.E. 2019 provides that an appeal the an appeal or revision against decision of the District Land and Housing Tribunal to the High Court in its original jurisdiction may be lodged within forty five (45) days after the date of the decision or order.

The provision empowers this Court to extend time for filing an appeal either before or after expiration of such period of 45 days where a good cause is shown.

In support of the application, Mr. Musa Kassim, learned advocate, contended that the application disclosed an issue of illegalities.

To expound on the assertion, Mr. Kassim drew attention of the Court to paragraphs 3 of the affidavits in support of the Chamber Summons which depicted that the applicant was not afforded a right to be heard.

In reply, Gerald James Bagumya who appeared in person, submitted that the applicant was sufficiently afforded a right to be heard by the lower tribunal.

He cautioned this Court not to be misled by the applicant whom he accused of conning him.

The respondent asserted that prior to delivery of the impugned judgement, the applicant led his evidence and closed his defence case.

Further, the respondent contended that on date of delivery of judgement, both parties were present and wondered why the applicant did not take immediate steps to appeal.

He faulted the applicant for presenting the present application six months from delivery of the impugned decision.

In rejoinder, Mr. Musa Kassim reiterated his earlier submissions and asserted that 30/12/2019 was not date of delivery of the judgement but a date of its composition.

He contended that the Judgment was just composed and left in the file but not delivered to the parties. He added that the right of appeal was never explained to the parties as per legal requirements.



The learned advocate differed with the respondent as regards to closure of the applicant's case. According to him, the applicant did not close his case on 29/11/2017 as alleged by the respondent.

The issue of illegality is not new in our jurisdiction. The highest Court of the land has held in a number of cases that where illegality crops up, time would be extended for the purpose of appeal particularly where the applicant has not acted negligently.

In **PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICES V D.P. VALAMBIA (1992) TLR 185**, the Court of Appeal held that when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and record right.

The same position was restated in **MRS MARY KAHAMA (ATTORNEY OF GEORGIA GEORGE KAHAMA) AND ANOTHER V H.A.M IMPORT & EXPORT (T) LTD AND 2 OTHERS, CIVIL APPLICATION NO. 52 /17 OF 2017** (Unreported) and several other cases.

In paragraph 3 of the affidavit of Nashon Chiristopher, it was averred that:

*"3 That further to paragraph 2 above, I state that the said tribunal Land Application No. 27/2015 on 30/12/2019 the date of judgement was composed (sic) the said case was still at defence*

*hearing stage having only heard the 1<sup>st</sup> defence witness and the presiding chairman got transferred from Tabora District Land and Housing Tribunal before finalizing the trial”*

In paragraph 3 of the supplementary affidavit of Musa Kassim, it was averred that:

*“3 That in addition to para 5 of the first affidavit sworn on 15/7/2020 by the applicant, I state that the tribunal proceedings requested by the applicant stand supplied by this Court on 14/9/2021. Annexed here to and marked “ANS – 1” is the copy of proceedings to form part of the affidavit.”*

In paragraph 4 of the respondent’s counter affidavit in reply to the affidavit of Nashoni Christopher, Gerald James Bagumya deposed that:

*“4. That the contents under paragraph 3 of the applicant’s affidavit is vehemently disputed in its totality and the respondent state that at the time presiding chairman got transferred, the defence case was already closed and the date for judgement was already scheduled.”*

As regards to a supplementary affidavit, Gerald James Bagumya, stated that:

*“3. That the contents of paragraph 3 of the applicant’s supplementary affidavit on which applicant make an additional to parahraph 5 of the first affidavit is strongly disputed. The respondent state further that since the judgement was delivered*





*on 30/12/2019 and the applicant from that time did not make any effort to request the certified copy of Judgement, decree and proceedings until on 14/9/2021 when he decided to make follow up and tribunal delivered to him and his advocate letter which was attached dated 16/6/2020 lack authenticity for not being endorsed with tribunal seal to show that the letter was received by the tribunal requesting the certified copy of judgement decree and proceedings.”*

These contentious issues coerced me into scanning records of the trial tribunal.

The lower tribunal’s proceedings show that trial started before Hon. Murirya Nyaruka, Chairman on 9/3/2016.

The then applicant, Gerald James Bagumya testified on that day and thereafter lined up five (5) more witnesses making a total of six (6) witnesses.

The defence case started on 7/3/2017 when Nashon Chirstopher, the applicant herein, testified.

After testimony of Nashon Christopher (DW1), his advocate, Mr. Musa Kassim stated that:

*“MUSSA*

*That is all to the witness let (us) continue tomorrow with another witness.”*

The advocate’s submission was met by a prayer from the present respondent, Gerald James Bagumya, who submitted that:

*“APPLICANT*

*Your Honor as I annexed to the pleadings the documents to be relied upon and the respondent was served and on the day I was producing my evidence I tendered the original documents now I pray that I be afforded opportunity to tender the same ..... I mean the documents.”*

*That application was resisted by Mr. Mussa Kassim. Following on objection, the tribunal made an order stating that: “For the interest of Justice, the applicant is allowed to tender his document because on 9/3/2016 when he was adducing evidence this Court ordered for the document to be tendered on the next hearing. Unfortunately the applicant was not afforded that opportunity .....*”

Thereafter, the tribunal adjourned the case for hearing on 14/3/2017.

Proceedings of the lower tribunal further show that on 18/4/2017, Mr. Mussa Kassim expressed his intention of moving the High Court for revision against the order which permitted Gerald James Bagumya to file documentary evidence in support of his case.

To that end, the learned advocate prayed for copy of the impugned order.

On 24/10/2017 parties appeared before the same trial chairman (Murirya Nyaruka) and whereupon, Mr. Musa Kassim said

the case was stuck for a long time following his request for copy of the impugned order. The learned advocate added that:

*“.....The case got stuck for the long time since when we prayed for the supply of the ruling and order before proceeding with other witnesses”.*

The trial Chairman recorded that assessors were not present and set the case for hearing on 29/11/2017.

From that date on wards, the proceedings are silent as to what transpired. That notwithstanding, there is on record a Judgement of the tribunal dated 30/12/2019 (Hon. Murirya Nyaruka, Chairman).

I have carefully examined both the impugned Judgement and its Decree dated 30/12/2019.

Contrary to the respondent's submissions, neither the impugned proceedings, judgement nor decree indicate that the purported judgement was delivered in presence of any of the parties or delivered at all.

Without going into the merits of the intended appeal, I am satisfied that failure to read a composed judgement is an issue of legality and is a sufficient ground for extension of time.

Consequently, the application is granted. Let the intended appeal be filed within forty five (45) days from date of delivery of this ruling. I make no order as to costs.





**AMOUR S. KHAMIS**

**JUDGE**

**12/7/2022**

AT. 12. 43 PM.

CORAM: As before.

**AMOUR S. KHAMIS**

**JUDGE**

**12/7/2022**

**ORDER**

Ruling delivered in chamber in presence of both the applicant and respondent in person and Mr. Musa Kassim, learned advocate for the applicant.

Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**12/7/2022**