

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

MISC. LAND APPLICATION NO. 6 OF 2020.

[Arising from Land Application No. 16 of 2018 in the District
Land and Housing Tribunal for Nzega.]

JUMA RAMADHAN MNYELESI..... APPLICANT

VERSUS

JUKE NHALYA..... RESPONDENT

.....
RULING
.....

Date of Last Order 10/08/2022

Date of Delivery 12/08/2022

AMOUR S. KHAMIS, J.

Juma Ramadhan Mnyelesi, the applicant herein, filed an application for an extension of time to file an appeal against a decision of the District Land and Housing Tribunal for Nzega in Land Application No. 16 of 2018.

The application was made by way of Chamber Summons under Section 41 of the Land Disputes Courts Act, Cap 216, R.E 2019, Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019, Section 93 and Section 95 of the Civil Procedure Code, Cap 33, R.E 2019.

The chamber summons was supported by an affidavit deponed by Juma Ramadhan Mnyelesi and subsequently, a supplementary affidavit was filed.

The respondent, Juke Nhalya, initially entered appearance in Court but afterwards, continuously defaulted appearance without notice to the Court.

On account of the failure to appear, the application was heard exparte and no counter affidavit was ever filed.

On hearing the application, the applicant was unrepresented and prayed to adopt contents of his own affidavit and supplementary affidavit.

In both affidavits, Juma Ramadhani Mnyelesi stated that the judgement in Land Application No.16 of 2018 was given out on 22 October 2019.

Being aggrieved by the same, he made an oral application for certified copies of the judgement and decree before the trial chairman on that very day.

He also lodged a letter applying for copies of the judgement and decree before the trial tribunal. Subsequently, he made several physical follow-ups at the tribunal but the said copies were not supplied until on 6 December 2019.

Juma Ramadhan Mnyelesi also averred that the trial tribunal's decision was tainted with illegalities and irregularities that were worthy consideration and determination by this Honourable Court.

He named them to include determination of the matter which was previously heard and determined by the same tribunal between the same parties or parties claiming under them.

Expounding on the contention, the applicant stated that the matter was *res judicata*.

The applicant also stated that the respondent was not only non-owner of the suit land, but also lacked *locus standi* as he was not the administrator of the estate in relation to the properties in the case at hand.

Lastly, the applicant averred that the learned chairman erred in law by misdirecting himself in evaluating the evidence especially for ignoring a copy of judgement which showed that the matter was previously adjudicated by the same tribunal.

For those reasons, the applicant prayed for an order of extension of time to file an appeal to this Court.

As stated earlier, there was no reply to the affidavit and a supplementary affidavit from the respondent's side.

The main issue for determination in this matter is whether or not sufficient cause has been shown by the applicant to warrant this Court exercise its discretion to grant extension of time to file an appeal out of time.

Section 41(2) of the **LAND DISPUTES COURTS ACT, CAP 216, R.E 2019** provides that the High Court may for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five (45) days after the date of decision or order.

It is trite law that whoever applies for extension of time must account for each day of the delay.

The case of **LYAMUYA CONSTRUCTION CO LTD VS BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010** (unreported) clearly laid down the guidelines to be followed in any application for extension of time namely:

- 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."*

One of the reasons advanced by the applicant for the delay is untimely supply of copies of the judgement and decree which were delivered on 22 October 2019 but supplied on 06 December 2019.

Records show that when the impugned judgement and decree were supplied to the applicant on 6 December 2019, the forty-five (45) days within which to lodge an appeal had expired.

This, in my view, is a sound reason for extension of time because no concise memorandum or petition of appeal could be prepared without reference to the impugned decision and or proceedings.

The other reason for extension of time was that the trial tribunal's decision was tainted with illegalities and irregularities that were worthy of consideration and determination by this Honourable Court.

It should be remembered that when illegality is raised as a ground for extension of time, the grounds raised must be serious enough to the effect that if proved it would have resulted to lack of jurisdiction of the Court and not mere correctness or otherwise of the decision.

The applicant raised *res judicata* as one of the illegalities in the trial tribunal's judgement. He averred that the tribunal conducted the matter which was previously heard and determined by the same tribunal.

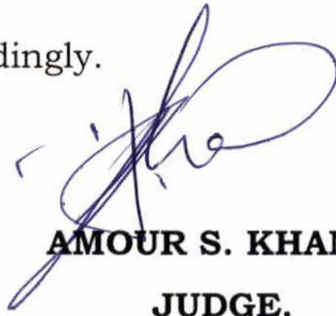
He also attached copy of the judgement that was previously determined by the tribunal which showed that the matter was indeed adjudicated by the trial tribunal.

Going through the records of the application, I am convinced that there is a triable issue for consideration and determination by this Court by way of appeal.

For the above reasons, I find it justifiable to grant the application so that the issues raised can be adequately attended by this Court in appeal.

In the upshot, the application is allowed. Let the applicant file his intended appeal within thirty (30) days from the date of delivery of this ruling.

Ordered accordingly.



AMOUR S. KHAMIS


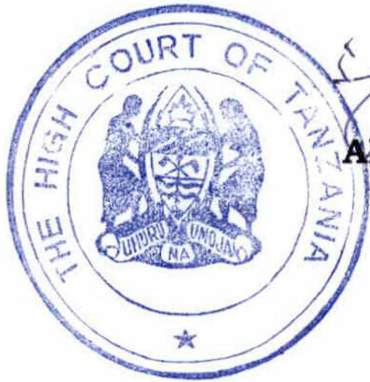
JUDGE.

12/08/2022

ORDER:

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

Right to appeal is explained.



AMOUR S. KHAMIS

JUDGE.

12/08/2022