

**IN THE HIGH COURT OF TANZANIA**

**AT TABORA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 24 OF 2020**

*(Arising from High Court Misc. Land Application No. 82/2016)*

**NELSON KUBILA ----- APPLICANT**

**VERSUS**

**EGIDIUS WANDA KASHUMBA ----- RESPONDENT**

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**RULING**  
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*Date of Last Order: 05/07/2022*

*Date of Delivery: 19/08/2022*

**AMOUR S. KHAMIS, J:**

The applicant Nelson Kubila filed this application under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 seeking extension of time to lodge a notice of appeal to the Court of Appeal and to apply for leave to appeal against the decision of this Court in Land Case Application No. 82 of 2016.

In the Land Case Application No. 82 of 16 which was heard by Hon. Mallaba J (as he then was), the applicant unsuccessfully applied for extension of time to apply for leave to appeal to the Court of Appeal against the decision of this Court in Land Case Appeal No. 50 of 2013.

Following that decision, the applicant neither lodged notice of appeal nor applied for leave hence this application.

The application was made by way of chamber summons and supported by an affidavit sworn by the applicant himself, Mr. Nelson Kubila.

The ground for delay put forward by the applicant was that the delay to file a notice of appeal and delay in applying for leave was not occasioned by negligence but rather his diligence was hampered by legal technicalities rendering his applications fruitless.

Mr. Method Raymond Gabriel Kabuguzi, learned advocate of this Court representing Egidius Wande Kashumba, the respondent herein, filed a counter affidavit challenging the application.

In the said affidavit, Mr Kabuguzi averred that the delay was caused by applicant's advocate's negligence.

With the permission of this Court, the application was set to be disposed by way of written submissions.

The applicant was represented by Mr. Fred Peter Kalonga learned advocate, whereas the respondent enjoyed services of Mr. Method R. G Kabuguzi, senior learned advocate.

Submitting in support of the application, Mr. Kalonga stated that the contest started way back in 2010 when the respondent lodged Application No. 57/2010 against the applicant at Kigoma District Land and Housing Tribunal.

The application ended in favour of the respondent. Aggrieved, the applicant unsuccessfully appealed to this Court via Land Appeal No. 50/2013.

Following unsuccessful appeal, the applicant filed a series of abortive applications which took his time from 2016 to 2020 when the last application was struck out by this Court at Kigoma registry

for the reason that he ought to have filed the application at the High Court, Tabora Registry.

Finally, Mr. Kalonga stated that, the delay to file a notice of appeal and an application for leave was not occasioned by negligent act but it was caused by pursuing fruitless applications.

He added that the judge in Land Case Application No. 82/2016 ought not to have dismissed the application as it had merit and the intended appeal was based on questions of illegalities occasioned by this Court and the tribunal.

The respondent through the submission filed by his advocate Mr. Kabuguzi, strongly opposed the application.

He pointed out that the reasons for delay stated by the applicant did not account for such inordinate delay.

He contended that the application was struck out by the Court of Appeal on 29/04/2022 but the applicant opted to keep on waiting for long time before coming to this Court with this application.

Moreover, Mr. Kabuguzi stated that the facts depictable from the applicant's affidavit portrays negligence and in-diligence on the side of the applicant in taking efficient legal action so as to challenge the impugned judgment of this Court through an appeal.

Finally, Mr. Kabuguzi contended that since there is no thorough account for such inordinate delay in the affidavit supporting the application, the overriding objectives demands that cases should be expeditiously determined by the Court.

On that ground, he prayed the application be dismissed with costs.

Having read the submissions of the parties, the major issue for determination at this point is whether the applicant has accounted for the period of delay as required by law.

It is settled law that the Court can only grant extension of time if the applicant shows sufficient cause.

In ***BENEDICTO MUMELO VS BANK OF TANZANIA, CIVIL APPEAL NO. 12 OF 2002*** the Court of Appeal stated that:

*“It is trite law that, an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.”*

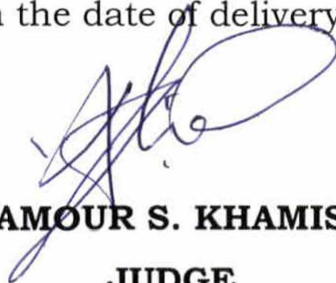
Therefore, for a party to be entitled to extension of time, he/she must put before the Court sufficient material to show not only that he took actions before and after expiry of time to lodge the application, but also that he acted promptly and diligently to take the action in order to convince the Court to exercise its discretion.

In the instant application, I am satisfied that the applicant consistently pursued his right throughout the time that the dispute was processed in the courts of law as evidenced by the various applications that were referred herein before.

For the stated reason, the application is granted. Let the applicant file an application for leave to appeal to the Court of Appeal and also file a notice of appeal to the Court of Appeal

against the ruling of this Court (Malaba J.) dated 11 May, 2017 in Land Case Application No. 82 of 2016. The same to be filed within fourteen (14) days from the date of delivery of this ruling.

It is so ordered



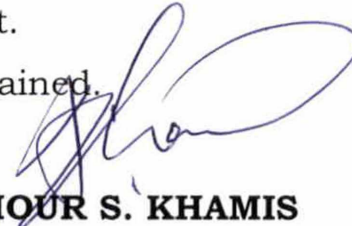
**AMOUR S. KHAMIS**  
**JUDGE**

**19/08/2022**

**ORDER**

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

Right of Appeal Explained.



**AMOUR S. KHAMIS**  
**JUDGE**

**19/08/2022**