

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

**MISC. LAND APPLICATION NO. 38 OF 2020**

*(Arising from Misc. Application No. 46 of 2018 of the District Land  
and Housing Tribunal for Nzega at Nzega)*

**PETER SUGA.....APPLICANT**

**VERSUS**

**LUSOKA MUSA.....RESPONDENT**

.....  
**RULING**  
.....

Date of Last Order: 21/10/2022

Date of Delivery: 12/12/2022

**AMOUR S. KHAMIS, J.**

Peter Suga, the applicant herein, filed this application for an order of extension of time to file a reference against ruling of the District Land and Housing Tribunal for Nzega in Taxation (Misc. Application) No. 46 of 2018.

The application was made by way of Chamber Summons under Order 8(1) and (2) of the Advocates Remuneration Order, 2015 which chamber summons was supported by an affidavit sworn by Frank Samwel, learned advocate.

The respondent, Lusoka Musa, strongly disputed the application through a counter affidavit sworn by himself.

When the application was scheduled for hearing, Mr. Frank Samwel and Mr. Kilingo Hassan, learned advocates, represented the applicant and respondent respectively.

Both advocates agreed on disposal of the case by way of written submissions. The prayer was accordingly granted and the timeline set by the Court was well adhered to.

Mr. Frank Samwel adopted contents of his affidavit in support of the chamber summons as part of the submissions. He alleged that the applicant and the respondent were parties in Misc. Application No. 46 of 2018 before the District Land and Housing Tribunal for Nzega.

The learned advocate said the impugned ruling delivered on 24<sup>th</sup> October 2019 was the reason for the present application for extension of time to lodge a reference.

Mr. Frank Samwel asserted that on the same date of the ruling, the applicant orally applied for copies of the ruling and drawn order which the tribunal promised to be supplied within seven (7) days.

He contended that despite of the promise, the applicant was not given the said copies as promised.

The learned advocate detailed the various steps that the applicant employed in following up copies of the ruling and drawn order to no avail.

He contended that the requested copies were only saved on the applicant on 7/10/2020 hence the present application lodged on 2/11/2020.

Mr. Frank Samwel submitted that main reason for the delay was the tribunal's delay to supply the applicant with copies of the impugned ruling and drawn order.

He contended that as soon as the applicant received the requested copies, he consulted his advocate and the process of applying for extension of time was initiated.

The learned advocate submitted that Section 19(2) of **THE LAW OF LIMITATION ACT [CAP 89 R.E 2019]** provides for the exclusion of time within which to appeal or to file an application for revision or review for an individual who waited for copies of the decision appealed from.

Mr. Frank Samwel further submitted that ruling in Misc. Application No. 46 of 2018 is tainted with illegalities and has contravened the rules of natural justice.

He contended that illegality is a good ground for extension of time and relied on the case of **THE ATTORNEY GENERAL VS TANZANIA PORTS AUTHORITY AND MR ALEX MSAMA MWITA, CIVIL APPEAL NO.87 OF 2016** wherein the Court of Appeal held that;

*“Moreover, it is a settled law that a claim of illegality of the challenged decision constitutes sufficient reasons of extension of time regardless of whether or not a reasonable explanation has been given by the applicant.”*

The learned advocate capped his submissions with a prayer to the Court to grant the application as presented.

On the other hand, Mr. Kilingo Hassan, the respondent's advocate, opposed the application stating that the applicant failed to show a good and sufficient reason for extension of time.

He relied on the case of **LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF REGISTERED TRUSTEES OF**

**YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA (2022)** wherein the Court of Appeal set guidelines to follow when an applicant applies for extension of time, namely;

- a) The applicant must account for all the periods of delay.
- b) The delay must not be inordinate.
- c) Whether there is an arguable case such as if there is a point of law on the illegality or otherwise of the decision sought to be challenged.

Mr. Kilingo contended that the applicant failed to prove either of the elements outlined by the Court of Appeal in the case of **LYAMUYA CONSTRUCTION COMPANY LIMITED (Supra)**.

Expounding, he argued that the applicant did not account for the days of delay and faulted the tribunal for the delay in supplying copies of the ruling and drawn order. Further, he contended that the applicant negligently delayed to follow up for the requested copies from the tribunal.

The learned advocate for the respondent strongly contended that the tribunals' ruling was not tainted with illegalities as alleged by the applicant.

He also relied on the Court of Appeal stance in the case of **LYAMUYA CONSTRUCTION COMPANY** (supra) but emphasised that such point of law to be considered for extension of time must be of sufficient importance and would be apparent on the face of the record such as a question of jurisdiction.

He asserted that the case of **THE ATTORNEY GENERAL VS TANZANIA PORTS AUTHORITY AND MR ALEX MSAMA MWITA** (supra) cited by applicant on illegality is distinguishable from the

case at hand as it was on lack of jurisdiction which was a sufficient reason for extension of time.

Mr Kilingo contended the the illegality claimed by the applicant is not apparent on the face of the record as it demands a long process for its discovery.

He summed up that the applicant acted negligently in pursuing copies of the ruling and drawn order and moved this Court to dismiss the application with costs.

There was no rejoinder from the applicant. 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 a reference to the High Court.

Order 8(1) of **THE ADVOCATES REMUNERATION ORDER, 2015** provides that the High Court may extend the time for filing a reference upon sufficient cause being shown.

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 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 in this matter is untimely supply of copies of the ruling and drawn order which was delivered on 24 October 2019.

Records show that despite of the constant follow ups, the applicant learnt that copies were ready for collection on 7<sup>th</sup> October 2020.

Records show that when the impugned ruling and drawn order were ready for collection by the applicant on 7<sup>th</sup> October 2020, the twenty-one (21) days within which to file a reference had expired.

In my view, this is a sound reason for extension of time because no concise application for reference could be prepared without reference to the impugned ruling and drawn order.

The applicant also stated that the trial tribunal’s decision was tainted with an illegality 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, it 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.


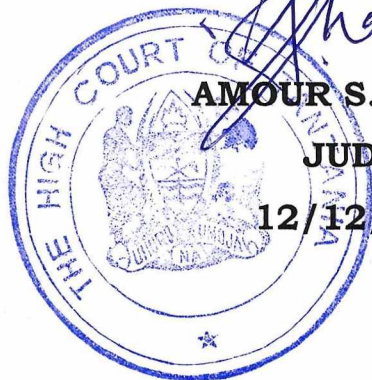
The illegality raised by the applicant is that the trial tribunal's Chairman did not give reasons for his decision.

Having gone through submissions by both parties and records of this 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 to by this Court.

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.

It is so ordered.

**AMOUR S. KHAMIS**  
**JUDGE**  
**12/12/2022**

**ORDER**

Ruling delivered in Chambers in presence of Ms. Christina Jackson, learned advocate, holding brief of Mr. Frank Samwel, advocate for the applicant.

The respondent is absent. Right of Appeal is explained.


**AMOUR S. KHAMIS**  
**JUDGE**  
**12/12/2022**