

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT SUMBAWANGA**

**MISCELLANEOUS LAND APPLICATION NO. 23 OF 2017**

**MASENDE MAPELA FIMBO.....APPLICANT**

**VERSUS**

**NOBERT NKUMBA.....RESPONDENT**

**(Application for extension of time to appeal out of time  
from the decision of District Land and Housing  
Tribunal of Rukwa in Appeal No. 1 of 2015)**

**RULING**

**MGETTA, J:**

A brief background of this application is that one Nobert Nkumba (henceforth the respondent) sued one Masende Mapela Fimbo ( henceforth the applicant) before the Ward Tribunal of Mtowisa (henceforth the trial Tribunal) in Madai No 16 of 2014 over a piece of land which he claimed to have purchased from Mzee Mapela Fimbo (the deceased). In its judgment delivered on 01.12.2014, the trial tribunal found claims of the present respondent baseless. He was therefore unsuccessfully. He was aggrieved. On 13.1.2015, he appealed to the District Land and Housing Tribunal of Rukwa (henceforth the appellate tribunal) in Appeal No. 01 of 2015.

In her judgment delivered on 29.12.2016, the appellate tribunal chairperson allowed the appeal. The present applicant was aggrieved. On

23.2.2017, about fifty six (56) days from the date of the decision of the appellate tribunal, the applicant presented for filing a petition of appeal to this court challenging the judgment delivered on 29.12.2016 by the appellate tribunal. Upon hearing the appeal my learned brother, Hon. A.J. Mambi, J found the applicant's appeal incompetent and then proceeded to strike it out on 14.11.2017; hence, this application for extension of time.

As striking out of the appeal gave the applicant a room to come again before this court, on 05.12.2017, he lodged a chamber summons. In his chamber summons made under **section 38(1)** of the **Land Disputes Courts Act, No. 2 of 2002**, (henceforth CAP 216), the applicant is seeking for an extension of time within which to file to this court a petition of appeal out of time. His application is supported by his affirmed affidavit.

When the application was called on for hearing, both the applicant and respondent appeared in persons, unrepresented. They requested, the request which was accordingly granted, to argue the application by way of written submissions which were indeed filed as scheduled.

At this juncture, it should be born in mind that in order an application for extension of time to be granted by this court, the applicant should advance good and sufficient cause as provided for under the proviso to **section 38(1) of CAP 216** (supra) which reads:

**"...the High Court.....may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired"**

According to the affirmed affidavit, whose contents the applicant adopted when this application was called on for hearing, it is true that in Misc. Land Appeal No. 10 of 2017, this court did strike out the applicant's appeal after it was found that his petition of appeal was not endorsed by person who drew and prepared it. He said he was the one who prepared it but due to his laymanship he did not know that there was a requirement for him to endorse it. He thought that requirement does apply only when such document is drawn and prepared by an advocate or legal practitioner. He is now feeling that he has a right to have what he considered his right over the suit land be determined on appeal. He therefore prays for indulgence of this court to allow him to file an appeal out of time.

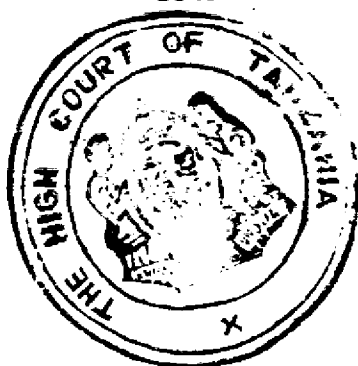
In his submission, the respondent stated that the applicant was negligent to pursue what he considered to be his right. As a result His lordship A.J. Mambi,J struck out his appeal as he negligently and improperly prepared his petition of appeal. He urged me to dismiss the application as the applicant had failed to advance sufficient grounds.

Having meticulously gone through the record of this application, I have found that there is a proof that effort to process an appeal and or application was embarked into by the applicant. There is therefore no sign of negligence on his part. He never slept on what he considered to be his right. He was keen in taking an action whenever he found himself to have a right to do so. Moreover, as he rightly submitted, there are issues of facts and law arising from the proceedings and decisions of the lower tribunals which need the attention and determination of this court.

I am therefore constrained to give the applicant an opportunity to present his appeal out of time; and, on the other hand, to give this court an opportunity to determine some issues of facts and law which might be revealed during the hearing of the appeal.

In the upshot, for the foregoing reason(s) I do find that the applicant has advanced sufficient ground. I find his application meritorious. I do accordingly allow it. The applicant is given sixty (60) days from the date of delivery of this ruling to lodge his petition of appeal straight to this court. Costs to follow the event.

It is so ordered.




  
**J.S. MGETTA**  
**JUDGE**  
**24/01/2019**

Date - 24.01.2019  
Coram - Hon. R.M. Mbuya – DR.  
Applicant - Present  
Respondent - Present  
B/C - J.J. Kabata

**COURT:** Ruling hereby delivered in the present of both parties and the  
Court Clerk Ms. J.J. Kabata.

Rights of appeal explained.



  
**R.M. MBUYA**  
**DEPUTY REGISTRAR**  
**24.01.2019**