

IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

(CORAM: SEHEL, J.A., FIKIRINI, J.A. And ISSA, J.A.)

CIVIL APPEAL NO. 311 OF 2021

MATAGE NYAMBEGA APPELLANT

VERSUS

RHOBI BAGENI RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Musoma)

(Kisanya, J.)

dated the 17th day of March, 2020

in

Land Appeal No. 45 of 2019

RULING OF THE COURT

24th April, & 2nd May, 2024

ISSA, J.A.:

This is the third appeal in which the appellant was aggrieved by the decision of the High Court of Tanzania at Musoma in Land Appeal No. 45 of 2019. The dispute giving rise to this appeal originated from the decision of Buswahili Ward Tribunal (trial tribunal) in Land Application No. 25 of 2017. The dispute was centred on the ownership of a piece of land situated at Kongoto village, Butiama within the District of Butiama in Mara Region. The appellant's claim was that, he bought a piece of land from Chacha Garani in 1998 while the respondent's story was that, she has been occupying the disputed land since 1974. The trial tribunal

delivered the decision in favour of the respondent who was declared the lawful owner of that piece of land.

Aggrieved by the decision, the appellant appealed to the District and Housing Tribunal for Musoma at Musoma (the DLHT) in Land Appeal No. 201 of 2018. The DLHT reversed the trial tribunal's decision. The appellant was declared the lawful owner of the disputed land as he had enjoyed peaceful occupation of the same for the past 18 years.

Aggrieved, the respondent appealed to the High Court of Tanzania at Musoma (the second appellate court) in Land Appeal No. 45 of 2019. The second appellate court reversed the decision of the DLHT and declared the respondent to be the lawful owner of the disputed land. The appellant was aggrieved and he appealed to the Court in Civil Appeal No. 311 of 2021. The appeal hit a snag when the respondent lodged a notice of preliminary objections on point of law that:

"1. The appeal is time barred.

2. The appeal is incompetent as it contains other grounds which were not granted and not even prayed for during the application for leave to appeal to this honourable Court.

2. That the appeal is incompetent as it was lodged in this Court without seeking for and obtaining a certificate on point of law from the High Court."

As a normal practice, we started to hear the preliminary objections raised. Both the appellant and respondent appeared in person unrepresented. The respondent made a short submission in which she argued the first and third objections together. She submitted that, the appellant's appeal is time barred as he failed to file his appeal within 60 days. He also did not get the certificate on points of law.

The appellant disputed the respondent's assertion, he argued that he was given the documents for appeal purpose on 30th April, 2021 and he filed his appeal on 25th June, 2021. Hence, he filed his appeal within time prescribed by law.

The issue before us is whether the present appeal is time barred. The institution of appeals is provided for under the provisions of rule 90 of the Tanzania Court of Appeal Rules, 2009 (the Rules) which states:

*"90 (1) subject to the provisions of Rule 128, an appeal shall be instituted by lodging in the appropriate registry, **within sixty days** of the date when the notice of appeal was lodged with-*

- a) a memorandum of appeal in quintuplicate;*
- b) the record of appeal in quintuplicate;*

c) security for costs of the appeal,

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.

2. N/A

3. An appellant shall not be entitled to rely on the exception to sub-rule (1) unless his application for the copy was in writing and a copy of it was served on the Respondent within 30 days unless the respondent acknowledges receipt or the Court orders otherwise.

4. N/A

5. Subject to the provisions of sub-rule (1), the Registrar shall ensure a copy of the proceedings is ready for delivery within ninety (90) days from the date the appellant requested for such copy and the appellant shall take steps to collect copy upon being informed by the Registrar to do so, or within fourteen (14) days after the expiry of the ninety (90) days.

6. Notwithstanding the provisions of this rule, where an appeal lies with the leave or certificate on a point of law, in computing time within which to institute an appeal, there shall be excluded such time as may be necessary for obtaining leave or certificate on a point of law and copies of such order, as the case may be."

Perusing the record of appeal it was clear to us that, the decision of the High Court which is the subject of appeal before the Court was delivered on 17th March, 2020. The notice of appeal was lodged timeously on 9th April, 2020 within 30 days as prescribed by rule 83(2) of the Rules.

Further, the appellant wrote a letter to the Registrar of the High Court on 6th April, 2020 requesting for copy of the proceedings and served the letter to the respondent on 10th April, 2020 within 30 days as prescribed by rule 90(3) of the Rules. Therefore, the appellant complied with the prescribed rules and was entitled under rule 90(1) of the Rules to exclusion of those days which were certified by the Registrar of the High Court as necessary for the preparation and delivery of the copy of the proceedings to the appellant.

In the instant case which is a third appeal originating from the Ward Tribunal the appellant, before appealing to the Court, was required to obtain a certificate on point of law in terms of section 47(2) of the Land Disputes Courts Act, Cap. 216 of which he applied vide Misc. Land Application No. 16 of 2020. The High Court on 29th September, 2020 certified two points fit to be determined by the Court. This answers the third preliminary objection which we find meritless.

Turning to the request made by the appellant to be supplied with the copies of the proceedings, the appellant wrote a reminder letter to the Deputy Registrar on 22nd December, 2020 requesting for the copy of the Certificate of Delay and a letter confirming that he has received the copy of the proceedings. Again, on 1st March, 2021 he wrote another reminder letter to the Registrar of the High Court. This time he was complaining that, he has not been supplied with the Certificate of Delay, proceedings of the leave application and a letter confirming that he has received the copy of the proceedings.

The Registrar responded to him through a letter dated 20th April, 2021 with reference no. AB.35/57/01/15 that:

"2. Baada ya kufuatilia nimebaini kuwa mnamo tarehe 2/2/2021 ulitaarifiwa kufika Mahakamani

kuchukua barua ya kuchukulia nyaraka ikiwa ni pamoja na hati ya kuchelewa (Certificate of Delay) na hadi naandika barua hii hujafika kuchukua nyaraka ulizomba licha ya kufika tarehe 8/3/2021 kufungua maombi ya shauri lako. [After making a follow up I found that on 2/2/2021 you were informed to come to Court and take a letter for receiving the documents including the Certificate of Delay and to this date you have not appeared to take those documents despite that you came on 8/3/2021 to file your application]."

The appellant, finally, was provided with the letter from the Registrar dated 2nd February, 2021 informing him that, the documents were ready for collection. He was also supplied with the Certificate of Delay dated 2nd February, 2021 which excluded 134 days from 22nd December 2020 to 2nd February, 2021. Consequently, the appellant was required to file his appeal within 60 days from 2nd February, 2021. Unfortunately, the appellant lodged his appeal on 25th June, 2021 which is out of time prescribed by rule 90(1) of the Rules. There was a delay of 83 days.

The excuse given by the appellant for late filing of the appeal was that, the Registrar delayed in supplying him with the requisite

documents. But based on the letter of the Registrar it was evident that, the appellant himself was to be blamed for the delay in collecting the requisite documents. Rule 90(5) of the Rules has been couched on mandatory terms, and it imposed a duty on the appellant to collect copy of the proceedings upon being informed by the Registrar to do so. Therefore, the appellant has no one to blame but himself. The end result is that, the appeal was filed out of time prescribed by the Rules.

The Court's position with respect to the failure to file the appeal within 60 days in compliance with rule 90(1) of the Rules is that, it renders the appeal incompetent. This has been enunciated in several cases, including: **Hamisi Luga Kitegile v. Loans and Advances Realization Trust** Civil Appeal No. 17 of 1999, [2005] TZCA 77(25th November 2005, TANZLII) **Cresthale (U.K) Ltd. V. Bondeni Seeds Ltd.** [2000] T.L.R 1, **Kantibhai M. Patel v. Dahyabhai F. Mistry** [2003] T.L.R. 437 and **Maneno Mengi Ltd and 3 Others v. Farida Saidi Nyamachumbe and Another** [2004] T.L.R. 391, **Mary Agness Mpelumbe v. Shekha Nasser Hamad**, Civil Appeal No. 136 of 2021 [2021] TZCA 667 (5th November 2021, TANZLII).

In the result we sustain the preliminary objection. The appeal was instituted outside the prescribed period of sixty (60) days after the notice of appeal was lodged. We accordingly strike it out with costs.

DATED at **MUSOMA** this 30th day of April, 2024.

B. M. A. SEHEL
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. A. ISSA
JUSTICE OF APPEAL

The Ruling delivered this 2nd day of May, 2024 in the presence of both the Appellant and Respondent in persons, unrepresented, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL