

IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: MUGASHA, J.A, SEHEL, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 486 OF 2022

NICODEMUS LUSAMBO (The Administrator
of the estate of the late **JULIUS LUSAMBO**) **APPELLANT**

VERSUS

GERADA ZACHARIA (The Administratrix of
the estate of the late **ZAKARIA LUSAMBO**)**RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania
at Kigoma)**

(Matuma, J.)

dated 30th day of July, 2021

in

Land Appeal No. 5 of 2021

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RULING OF THE COURT

6th & 9th June, 2023

SEHEL, J.A.:

This is a ruling on a point of law regarding limitation of time for the appeal arising from the District Land and Housing Tribunal to the High Court.

The background facts leading to this ruling are such that; the appellant herein was the applicant in Land Application No. 43 of 2019 before the District Land and Housing Tribunal for Kigoma at Kigoma (the DLHT) where he sued the respondent over a piece of land situate at

Magera area in Kamala Vilage within the District and Region of Kigoma on account that the said piece of land was the lawful property of his late father, one, Julius Lusambo who died in 1978. He claimed that his late father had been in occupation of the said piece of land from 1950 and they have been living there peacefully until when the respondent trespassed into the land in 2016.

On the other hand, the respondent disputed the appellants' claims averring that his late father, one Zacharia Lusambo acquired the disputed property in 1952 and ever since they have been occupying it uninterruptedly.

Having heard both parties, on 12th October, 2020, the DLHT gave judgment in favour of the appellant. The record shows that on 12th March, 2021, the respondent lodged her petition of appeal to the High Court of Tanzania at Kigoma (the High Court) seeking to challenge the decision of the DLHT. The High Court reversed the findings and holding of the DLHT. It declared the respondent as the rightful owner of the disputed property.

Aggrieved, the appellant filed an appeal to this Court but for the reason to be apparent soon, we shall not reproduce the grounds of appeal.

When the appeal was called on for hearing, the appellant had the legal services of Mr. Thomas Matatizo Msasa, learned advocate, whereas, the respondent appeared in person, unrepresented.

Before arguing the grounds of appeal, Mr. Msasa prayed and was granted leave to argue a point of law which he said he had discovered when preparing for the hearing of appeal. The point of law was to the effect that the appeal by the respondent to the High Court was filed out of time. He pointed out that the impugned decision of the DLHT appearing at pages 243-249 of the record of appeal was delivered on the 21st October, 2020 while the petition of appeal was filed on the 23rd April, 2021 in the High Court which is far beyond the statutory forty-five period prescribed under the provisions of section 45 (1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 (the LDCA). He added that the record of appeal bears out that the respondent did not seek an extension of time to lodge her appeal to the High Court out of time. It was Mr. Msasa's submission that since the respondent filed the appeal beyond the prescribed period of forty-five days, her appeal to the High Court was time barred hence the purported appeal before the Court is incompetent. In that regard, the learned counsel for the appellant urged the Court to strike out the appeal.

The appellant replied that she was belatedly supplied with the copy of the judgment because the Chairman of the DLHT was on leave thus he could not sign the judgment. She further contended that since the High Court admitted her appeal then it was within time. She thus urged the Court to proceed to hear and determine the appeal on merit.

Mr. Msasa reiterated his earlier submission that the appeal was filed out of time.

Having heard the contending submissions, we find that the issue before us is whether the appeal filed by the respondent to the High was within time. The time to institute an appeal to the High Court from the District Land and Housing Tribunal is prescribed under the provisions of section 41 of the LDCA which states, *inter alia*:

"(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.”

The above provision of the law requires an aggrieved party to lodge an appeal from the DLHT within forty-five (45) days from the date of the impugned decision or order. That provision further empowers the High Court to extend time, either before or after expiration of such period of forty-five days, for filing the delayed appeal or revision or any other proceedings, upon showing good cause.

In the present appeal, there is no dispute that the decision of the DLHT was delivered in the presence of parties on 21st October, 2020. The forty-five days period of limitation ended on the 5th December, 2020. However, the respondent lodged her appeal in the High Court on 12th March, 2021 after a lapse of four months and 12 days which is far beyond the forty-five days period stipulated under section 41 (1) of the LDCA. As there was no extension of time sought by the respondent that would have permitted her to file the appeal out of time, the respondent's appeal was supposed to be filed by latest on 5th December, 2020 which was not the case.

The respondent contended that she was making a follow up for the judgment and decree to be signed by the Chairman. We are alive that under section 19 (2) of the Law of Limitation Act, Cap. 89 R.E. 2019 (the LLA), the time spent to be supplied with certified copies of the judgment and decree will be excluded in computing time for lodging an appeal. However, for a party to enjoy from such exclusion, there must be a written request for the supply of the documents necessary for appeal purpose including a certified copy of judgment. We said so in the case of **Valerie McGivern v. Salim Farkrudin Balal**, Civil Application No. 386 of 2019 [2021] TZCA 235 (7 June, 2021; TANZLII) that:

"...it must be understood that section 19 (2) of the LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal."

Having gone through the entire record of appeal, we could not find any evidence suggesting that the respondent wrote a letter requesting for a copy of the certified judgment. Further, although the date is unknown when she was supplied with a copy of judgment and decree for lodging her appeal, the record shows that the judgment was delivered and signed on the same date, that is, on 21st October, 2021. Given that the respondent admitted in her submission made to this

Court that she was making a physical follow up, we are thus satisfied that the respondent cannot be entitled to rely on the exclusion under the provisions of section 19 (2) of the LLA. We are therefore satisfied that the respondent's appeal to the High Court was time barred. The High Court had no jurisdiction to admit and determine the appeal on merit and as such, it ought to have dismissed it under section 3 of the LLA for being time barred.

Here, we wish to restate the underlying policy in setting time frame as we stated in the case of **Bazil Gerald Mosha & 3 Others v. Ally Salimu** [2014] T.L.R. 96 that:

"It is well established that the underlying policy rationale for periods of limitation, statutory or ... include that of diligence in the speedy determination of disputes with a reasonable, rather than an unreasonable or inordinate length of time; of fairness to the opposing party who is not to be the subject of an indefinite threat of being dragged into Court undetermined dates by an applicant who does not pursue his or her remedies timely; interminably and at promoting certainly in the rights and title of preventing the potential loss of evidence, oral or document and of public interest in the timely resolution of disputes."

It is our holding that the above policy embraces section 41 (2) of the LDCA which prescribes the time limit of filing an appeal from the DLHT to the High Court.

Now, given the circumstance obtaining in the appeal before us that the High Court ought to have dismissed the appeal, we find that the purported appeal before this Court is incompetent as it emanates from null proceedings of the High Court.

In the end, we invoke our revisional powers under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 and proceed to nullify the entire proceedings of the High Court, quash its judgment and decree and strike out the present appeal with costs.

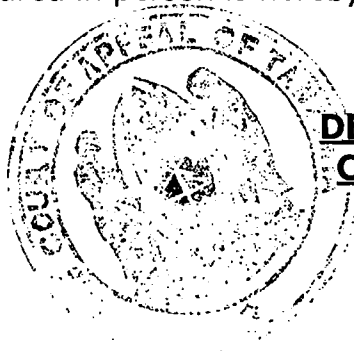
DATED at KIGOMA this 8th day of June, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The ruling delivered this 9th day of June, 2023 in the presence of the Mr. Thomas Msasa, learned advocate for the appellant and respondent appeared in person is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL