

IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

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

CIVIL APPEAL NO. 487 OF 2022

JUMA LUPOLI.....APPELLANT

VERSUS

CHARLES NGOBETSE.....RESPONDENT

(Appeal from the Decision of the High Court of Tanzania

at Kigoma)

(Matuma, J.)

dated the 28th day of October, 2021

in

Land Appeal No. 18 of 2021.

RULING OF THE COURT

06th & 8th June, 2023

MWAMPASHI, J.A.:

This is a second appeal originating from the decision of the District Land and Housing Tribunal for Kigoma at Kigoma (the DLHT), in Land Application No. 111 of 2014 wherein the respondent, Charles Ngobetse, sued the appellant, Juma Lupoli, for trespass to land. The dispute between the parties was in respect of a piece of land (the suit land) located at Kisozi/Mgoti in Kalinzi Village within Kigoma Rural District in Kigoma Region.

In brief, the background facts underlying this appeal as we have gathered from the record, are as follows; According to the respondent, in 2000, he let the appellant to occupy and use part of his 8 acres land

measuring about an acre, for pineapple farming. However, in 2010, the appellant extended beyond the piece of land let to him claiming that the whole 8 acres piece of land (suit land) belongs to him. In doing so, the appellant did also institute criminal proceedings against the respondent charging him with criminal trespass.

In defence, the appellant claimed that the suit land belongs to him. He insisted that he and the respondent had exchanged their pieces of land in 1987. He pointed out that while he was given by the respondent the suit land, on his part, he gave to the respondent two pieces of land (shambas) at Shemba area within Kalinzi Village. He also insisted that he has been in possession and use of the suit land since 1987.

Having heard the evidence from both sides, the DLHT, in its judgement dated 10.03.2021, decided for the appellant. The DLHT found that it was established from the evidence on record that the parties exchanged their respective pieces of land in 1987 and that the respondent had already sold the two pieces of shambas given to him by the appellant. The respondent's claims were thus dismissed. Dissatisfied, the respondent successfully appealed to the High Court vide Land Appeal No. 18 of 2021 wherein the decision by the DLHT was upset and the respondent was declared the rightful owner of the suit land.

Aggrieved by the High Court decision, the appellant has preferred this appeal on three (3) grounds of appeal, which, for reasons to be apparent soon, we do not intend to reproduce herein.

When the appeal was called on before us for hearing, the appellant was represented by Mr. Method R.G. Kabuguzi, learned advocate whereas the respondent appeared in person and was unrepresented.

Before the hearing could commence, we first wanted to satisfy ourselves on the competence of the appeal lodged by the respondent before the High Court. We particularly invited the parties to address us on whether the appeal by the respondent to the High Court was filed within the prescribed period of time.

Mr. Kabuguzi was the first to respond to our query. He contended that the appeal before the High Court was time barred. It was pointed out by him that according to the record of appeal, at page 93, the decision by the DLHT was delivered on 10.3.2021 in the presence of both parties and that the right of appeal within 45 days was also explained to the parties. He again referred us to page 96 of the record of appeal where it is shown that the petition of appeal was lodged on 26.05.2021. Mr. Kabuguzi further submitted that, bearing in mind that the parties were supplied with the copy of the record on the same day the decision was delivered, that is, on 10.03.2021, then the appeal

lodged on 26.05.2021 was filed out of time. In that regard, he argued that the High Court lacked jurisdiction to entertain the appeal. He thus urged us to nullify the proceedings in the said purported appeal and quash the resultant judgment.

On his part, the respondent contended that he did not delay in filing the appeal. He argued that after the delivery of the decision by the DLHT, he complained to the Prevention and Combating of Corruption Bureau (PCCB) and that is where he was directed to go to the High Court. He beseeched us to hear and determine the merits of the appeal before us.

Having heard the brief submissions from the parties and carefully examined the record of appeal before us, we are of the view that the issue for our determination, as it was also posed to the parties, is whether the respondent's appeal to the High Court was filed within the prescribed period of 45 days as provided under section 41 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Act) that:

"41 – (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 days”.

[Emphasis supplied]

From the above clear provision of the law, an appeal or revision against any decision or order, in respect of proceedings of the DLHT, to the High Court, has to be lodged within 45 days from the date of the decision or order. Where there is a delay to do so and if there are good reasons for the delay, the High Court is empowered to extend time within which the delayed appeal or revision can be filed.

In the instant appeal, the record clearly show that, while the decision by the DLHT was rendered on 10.03.2021, the appeal to the High Court against that decision was lodged by the respondent on 26.05.2021, which was after the expiry of 76 days and well beyond the period of 45 days as prescribed by section 41 (2) of the Act. It is also clear that before lodging his appeal, the respondent had not approached the High Court for extension of time. The respondent's claim that after the decision by the DLHT he submitted his complaints about his

dissatisfaction of the decision to the PCCB before he was directed to go to the High Court, cannot rescue the situation at this stage.

It should be emphasized that lodging an appeal before any court within the period of limitation prescribed by the law is imperative because the issue of limitation goes to the root of the jurisdiction of the court. This was stressed by the Court in **District Executive Director Kilwa District Council v. Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017 (unreported) where it was observed that:

"On our part, we think that in the circumstances of this appeal in which the issue of limitation touches on the jurisdiction of the Court, insisting on the compliance of mandatory requirement of lodging an appeal within the prescribed time goes in tandem with facilitating the just determination of the matter before us in accordance with the law. The Court cannot have jurisdiction to entertain an appeal which is time barred and no extension of time has been sought and granted. We think the issue of time limit is not a technicality which goes against the just determination of the case or undermines the application of the overriding objectives principle contained in section 3A (1) and (2) and 3B (1) (a) of Act No. 8 of 2018".

In view of what we have discussed above, we unhesitatingly find that the respondent's appeal to the High Court, that is, Land Appeal No. 18 of 2021, was filed out of time. The High Court ought to have dismissed it under section 3 of the Law of Limitation Act [Cap 89 R.E. 2019] for being time barred. That being the case, bearing in mind that the appeal was time barred and as the High Court had no jurisdiction to entertain it, we invoke our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and nullify the entire proceedings of the said appeal before the High Court and quash the resultant judgment. Consequently, as the purported appeal before us emanate from a nullity, we accordingly strike it out with no order as to costs.

DATED at KIGOMA this 7th 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 8th day of June, 2023 in the presence of the respondent in person and Mr. Michael Mwangati holding brief for Mr. Method R. G. Kabuguzi, learned advocate for the appellant is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL