

**IN THE HIGH COURT OF TANZANIA**

**AT MOSHI**

**(PC) CIVIL APPEAL NO. 54 OF 2004**

**[C/F DC MOSHI CIVIL APPEAL NO. 15/2004]**

**[ORG. MOSHI URBAN P/C CV.C.NO. 56/2003]**

**NDEONO RILE KIMAMBO ..... APPELLANT**

**VERSUS**

**I. ARTISIA RILE KIMAMBO ]**

**2. ELISIA RILE KIMAMBO ]..... RESPONDENTS**

**3. DORA BENJAMINI ]**

**4. RUTH JOEL ]**

**JUDGMENT**

**HON. JUNDU, J.**

The Appellant had filed a suit against the Respondents in Moshi Urban Primary Court vide Civil Case No. 56/2003 for recovery of a piece of land measuring 4 acres situated at Msaranga Village. The suit was filed on 24/6/2003. On 16/10/2003, the said court delivered its Judgment in favour of the Respondents. In other words, the Appellant had lost in the trial court. The Judgment of the trial court was certified on 12/12/2003.

The Appellant having been aggrieved by the decision of the trial court, he appealed to the District Court of Moshi vide Civil Appeal No. 15/2004. He filed the appeal on 30/3/2004 which he also lost on 28/9/2004. He thereafter appealed to this court after lodging his grounds of appeal in the first appellate court on 22/11/2004.

The trial court and the first appellate court based their decisions in favour of the Respondents inter alia on long use of the suitland over forty (40) years. In this

appeal, the Appellant listed five (5) grounds of appeal in the Petition of Appeal seeking to fault the decision of the two courts below. In the said grounds of appeal, the Appellant mainly challenges the evidence of the Respondents in the trial court and the findings of the said court and that of the first appellate court on the alleged long use of the suitland by the Respondents. He has greatly tried to attack the credibility of the Respondent's witnesses in the trial court by showing that judging by their age when they were adducing evidence in the trial court they were minors at the time they alleged to have seen the Respondents using the suitland hence their evidence could not be reliable.

On the other hand, the Respondents, in their submission did not respond to the issue of credibility of their witnesses raised by the Appellant. They raised the question of jurisdiction of the trial court to entertain the suitland in terms of the provisions of the Land Act No. 4 of 1999 and the Land Disputes' Courts Act No. 2 of 2002. I hasten to state that the suit was filed on 24/6/2003 in the trial court while the courts and tribunals mentioned in the aforesaid statutes became operational effective 1/10/2003. Therefore, the trial court, the first appellate court and this court still enjoyed jurisdiction on the dispute over the suitland. In other words, the contention of the Respondents has no merits.

Can this court deal with the issue of evaluation of evidence or credibility of witnesses in the trial court as is advanced by the Appellant in his Grounds of appeal and submission? My answer is in the negative. This is because this court as a second court of appeal deals only with points of law that arises from the decision of the first appellate court. It is always a rule of thumb that the issue of evaluation of evidence or credibility of witnesses is to be dealt with by the two courts below. In my considered view, there being no point of law that has been canvassed by the Appellant before this court, from the decision of the first

appellate court, I need not disturb its decision, that the Respondents have been using the suitland over long period of time. I so hold.

In any event, my careful perusal of the record of the first appellate court, shows me that the Appellant's appeal, that is Civil Appeal No. 15/2003 to the said court from Civil Appeal No. 56/2003 in the trial court was time barred. The Judgment of the trial court was delivered on 16/10/2003 and certified on 12/12/2003. The Appellant had lodged his appeal (Civil Appeal No. 15/2003) in the first appellate court on 30/3/2004 which was over and above the 30 days appealing period provided for under Section 20 (3) of the Magistrates' Courts Act, 1984 from the Primary Court to the District Court.

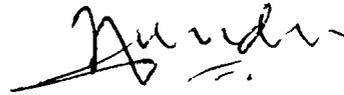
The learned magistrate in the District Court did not determine the said issue in his decision thought the same had featured in the Respondent's Reply to the Petition of Appeal in the said court, which the Appellant tried to oppose it in his rejoinder to the Reply of the Petition of Appeal. The Appellant, it appears, on 1/3/2004 had written a letter to the District Court for extension of time having realized that he was out of time. On 4<sup>th</sup> March, 2004 vide its letter Ref. No. MS/DC/29 Vol.V/305, the Principal District Magistrate Incharge wrote to the Respondent in the following words –

“Ombi lako la kuomba uongezewe muda  
limekubaliwa kama ulivyoomba, hivyo chungu muda  
wa nyongeza uliopewa.”

In my considered view, an extension of time to file an appeal out of time cannot be made administratively by exchange of mere letters. It has to be done by a proper application leading to a judicial decision that an extension of time has been granted to file an appeal out of time. The letter of the Appellant dated 1/3/2004 and the reply letter dated 4/3/2004 by the Principal District Magistrate do not constitute an application for extension of time to file an appeal out of time nor a judicial

decision granting the same. It remained therefore, that the appeal by the Appellant filed in the District Court vide Civil Appeal No. 15/2003 was filed out of time hence time barred.

In the upshot, the appeal before this court is hereby dismissed with costs. It is so ordered.

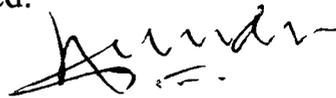


**F.A.R. JUNDU**

**JUDGE**

**25/7/2007**

Right of Appeal Explained.



**F.A.R. JUNDU**

**JUDGE**

**25/7/2007**

25.7.2007

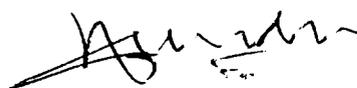
Coram: F.A.R. Jundu, J.

For the Appellant: present by attorney

For the 1<sup>st</sup> – 4<sup>th</sup> Respondent: present by attorney

C/C: Muyungi

**Court:** Judgment delivered in the presence of the Attorney for the Appellant and in the presence of the Attorney for the Respondents.



**F.A.R. JUNDU**

**JUDGE**

**25/7/2007**

**AT MOSHI**