

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO.130 OF 2008

*(From the Decision of the District Land and Housing Tribunal of
KINONDONI District at KINONDONI in Land Case No.297 of 2005)*

WILLIAM HUDSON MWAMBIJEAPPELLANT

VERSUS

FAITH RUTH MATUMBORESPONDENT

R U L I N G

R.E.S. Mziray, J.

The respondent in this Appeal through her learned Counsel Ms Majamba has raised a preliminary objection on a point of law that the Appeal filed by the appellant is irreparably defective as it has been filed out of time hence it should be struck out with costs.

The preliminary objection has been argued by way of written submission.

In her submission, Ms. Majamba learned Counsel for the respondent submitted that the appeal filed by the appellant is irreparably defective as it has been filed out of time. She stated that the said application No.297 of 2005 filed at the District Land and Housing Tribunal at Kinondoni was determined on 18th July, 2008. Judgment was delivered in presence of appellant's representative who was duly represented by an Advocate. However the appeal was filed on 12/11/2008, over 120 days after the delivery of the said relevant judgement. She cited section 38(1) of the Land Disputes Court Act which provides that;

"s.38(1) any party who is aggrieved by a decision of Order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order appeal to the High Court (Land Division)".

Ms Majamba further contended that the law is silent on the time in which an appeal can be filed at the High Court if the District Land and Housing Tribunal exercised its original jurisdiction at first instance. Thus this takes us to the Law of Limitation Act, 1971 No.10 of 1971.

She cited Part II of the first schedule which provides for 45 days for appeals for which no period of limitation is prescribed by the law of limitation Act or any other written law.

In support of her submission Ms Majamba cited the cases of ***Mohamed Ally Mlowezi v. Israel P. Kwayu Civil Appeal No.11 of 1996 HCT (unreported)*** and ***TanESCO v. Kassim J.R. Kambaya, Civil Appeal No.36 of 1996 HCT (unreported)***.

Ms Majamba finally submitted that the time against the Appellant's appeal started running soon after the judgement have been delivered and could only be put to halt on the presentation of a request for the documents of Appeal. She therefore urges this Court to strike out the appeal before it with costs as it is hopelessly out of time.

Responding to this the appellant counsel submitted that the Counsel cited a dead law the Law of Limitation Act no.10 of 1971 instead of the Law of Limitation Act Cap 89 RE 2002. He argues that appeals from the District Land and Housing Tribunal are by practice filed within the period of sixty (60) days from the date of obtaining the necessary documents for appeal purposes.

The Counsel further submits that the record shows that the typed copy and certified copy of the judgement, decree and proceedings were obtained on 26/9/2008 and the appeal was filed on 12/11/2008 well within the period of sixty (60) days. He further contends that the computation of time for appeal purposes starts to run from the date of obtaining the necessary documents for appeal purposes. He cited the case of Mary Kimaro v. Khalfani Mohamed (1995) TLR 2002 in support of his submission where it was held that:

"(i) a copy of proceedings and a copy of judgement are necessary for the purposes of framing a sound memorandum of appeal.

(ii) it is from the time of supply of both such documents that the Limitation of time for appeal begins to run"

Thus the appeal was filed within time.

Having gone through submissions of both parties, I will draw my attention on what the law says on the time for which to file an appeal originating from the District Land and Housing Tribunal. Section 38 of the Land Disputes Courts Act Cap 216, RE 2002 provides for time to file appeals originating from Ward Tribunals

in other words appeals from District land and Housing Tribunal in exercise of its original jurisdiction.

In the circumstance I will go to the Law of Limitation Act Cap 89 RE 2002 Part II, Item 2 of the schedule which provides inter alia that an appeal for which no period of limitation is prescribed by this Act or any other written law shall be filed within (45) forty five days.

I now turn my attention to the computation of the days for which to lodge/file an appeal. The computation of days within which to lodge an appeal starts from the date of delivery of necessary documents as it was held in the case of Mary Kimaro v. Khalfani Mohamed (1995) TLR 2002 (supra).

In the instant case therefore the days should be computed from 26th September, 2008 to the date of filing the appeal which is 47 days.

In the circumstance therefore I am inclined to state that this appeal is time barred as the statutory time is 45 days as per the provisions of Item 2 Part II of the schedule to the Law of Limitation Act Cap 89 RE 2002 (supra).

Having said all that I find that this appeal is hopelessly time barred hence the appeal be and is hereby struck out with costs.

R.E.S. MZIRAY

JUGE

8/12/2010

Right of appeal explained.

R.E.S. M,ZIRAY

JUDGE

8/12/2010

M/s Majamba

My Lord, there is a cross-appeal. I pray for hearing date of the cross-appeal and notice to the respondent.

R.E.S. MZIRAY

JUDGE

Order: Hearing of Cross Appeal on 24/2/2011.

Notify the respondent through his respective Counsel,
Mr. Galikano.

R.E.S. MZIRAY

JUDGE

8/12/2010