

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**MWANZA**

**MISCELLANEOUS LAND CASE APPEAL NO. 7 OF 2007**

**(From the Decision of the District Land and Housing Tribunal of Mwanza District at Mwanza in Land Case Appeal No. 75 of 2006 and Original Ward Tribunal of Bukindo Ward in Application No. 7 of 2006)**

**MAGAYANE MTANDU ..... APPELLANT**

**VERSUS**

**MUSIMU MKAMA ..... RESPONDENTS**

**JUDGMENT**

**MWAMBEGELE, J.:**

This is an appeal from the decision of the District Land and Housing Tribunal of Mwanza District at Mwanza (A. Constantine, Chairman) on a Judgment and decree dated 24.11.2006 in Land Appeal No. 75 of 2008. Musimu Mkama; the Respondent herein had sued Magayane Mtandu; the Appellant herein in the Bukindo Ward Tribunal for trespass into a disputed parcel of land. The Ward

Tribunal decided in favour of the Appellant. Aggrieved, the Respondent herein successfully appealed to the District Land and Housing Tribunal. Thinking that the Ward Tribunal was correct to decide the case in his favour, the Appellant has appealed to this court filing four grounds of appeal; namely:

1. The Chairman erred in law in entertaining the appeal while the appeal had been filed out of time;
2. The Chairman erred in law in holding that he had allowed the appeal while he had declared the proceedings a nullity;
3. The Chairman erred in law in declaring that there was no evidence on which the Bukindo Ward Tribunal could base its judgment or verdict; and
4. Going through the record of the Bulamba Village Council where the case originated and the Bukindo Ward Tribunal the appellant had established his claim over the disputed land and accordingly the District Land and Housing Tribunal should have affirmed the two concurrent verdicts.

This appeal was argued before me on 16.10.2012. The Appellant was represented by a seasoned lawyer; W. K. Butambala, learned Counsel while the Respondent appeared in person and unrepresented. Mr. Butambala, at the

hearing of this appeal, and to my mind rightly so, dropped the second ground of appeal. He argued the first, third and fourth grounds of appeal separately. I think the first ground of appeal sufficiently disposes of this appeal. It involves a question of jurisdiction. On this ground, Mr. Butambala submitted that the appeal from the Ward Tribunal to the District Land and Housing Tribunal was filed out of time. The Respondent filed the appeal on 08.09.2006 while the judgment of the Ward Tribunal was handed down on 21.06.2006. Mr. Butambala submitted that as per Section 20 of the Land Disputes Courts Act, Cap 216 (hereinafter Cap 216), the limitation period is 45 days. He further submitted that these provisions are mandatory and there is no record to show that the Tribunal extended time to file the appeal.

On this point the Respondent submitted that he filed the appeal in time and that the District Land and Housing Tribunal was correct to arrive at the verdict it reached.

I have given equal due consideration to the rival submissions on this appeal; one from the renowned lawyer on the one hand and another from a lay person

on the other hand. I have taken due cognizance of this huge disparity and thus have tread very carefully in tackling this decisive ground.

The appeal from the Ward Tribunal was lodged In the District Land and Housing Tribunal on 08.09.2006 while the judgment of the Ward Tribunal was delivered on 21.06.2006. I hasten to state that this was in clear contravention of the provisions of Section 20 (1) of Cap 216. This matter was and still is controlled by the provisions of Section 20 (1) of Cap 216. This subsection provides for time within which a party aggrieved by the decision or order of the Ward Tribunal may appeal to the District Land and Housing Tribunal. The provision reads:

*“Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought”.*

And the provisions of subsection (2) to this provision read:

*“Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend the time for filing an appeal either before or after the expiration of forty-five days.”*

In the present case, as already alluded to hereinabove, The Respondent filed the appeal on 08.09.2006 while the judgment of the Ward Tribunal intended to be impugned was delivered on 21.06.2006. The appellant was certainly out of time when he preferred this appeal; he ought to have preferred the same within 45 days from the date of judgment of the Ward Tribunal; that is by 05.07.2006. in the absence of any order of the court enlarging time within which to file the appeal within the provisions of subsection (2) of Section 20 of Cap 216 I find and hold that the appeal was incompetently before the appellate Tribunal. The Tribunal was therefore not competent to entertain it.

The court is not properly moved if an appeal is filed out of the prescribed time. There is a line of decisions of the Court of Appeal; the highest court of the land, which so state. These cases include *Michael Leseni Kweka Vs John Eiliafe*, Civil Appeal No. 51 of 1997 (unreported), *Faustine G. Kiwia and Another Vs Scolastica Paulo*, Civil Appeal No. 24 of 2000 (unreported) and *Nicomedes*

***Kajungu & 1374 Others Versus Bulyankulu Gold Mine (T) LTD*** Civil Appeal No. 110 of 2008 (unreported), to mention but a few.

For instance, in the ***Nicomedes Kajungu*** Case (supra) the Court of Appeal, Speaking through Othman, J.A (as he then was - now Chief Justice of Tanzania) held:

*“...it is the duty of the Court to satisfy itself that it is properly seized or vested with the requisite jurisdiction to hear and determine a matter. It is a well settled principle that a question of jurisdiction ... goes to the root of determination – see **Michael Leseni Kweka V. John Eiliafe**, Civil Appeal No. 51 of 1997 (CA) (unreported)”. A challenge of jurisdiction is also a question of competence”. (Underlining supplied)*

Having found that the appeal was filed out of time in the District Land and Housing Tribunal, it is obvious therefore that the District Land and Housing Tribunal had no jurisdiction to entertain it. The District Land and Housing Tribunal ought to have struck out the appeal for being filed out of time [see ***Ngoni-Matengo Cooperative Marketing Union Ltd Vs Alimamohamed Osman***,

(1959) EA 577, and *Abdallah Hassan Vs VODACOM (T)*, Civil Appeal No. 18 of 2008, (unreported) and *Thomas Kirumbuyo and Another Vs Tanzania Telecommunications Co. Ltd.*, Civil Application No. 1 of 2005 (CA - unreported)]. As already said hereinabove, this ground of appeal disposes of this appeal. I will not consider the rest of the grounds, for to do that will be but an academic endeavour of which I do not want to indulge at this moment. Time allowing, they may be pursued at some other opportune moment.

In the end result, as the District Land and Housing Tribunal was not competent to entertain an appeal which was filed out of time, its decision is a nullity and is therefore set aside. The decision of the Ward Tribunal is, in the premises, still valid. This appeal is allowed with costs.

DATED at Mwanza this 23<sup>rd</sup> day of October, 2012

**J. C. M. MWAMBEGELE**

**JUDGE**