

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

LAND APPEAL NO. 32 OF 2010

(Originating from District Land and Housing Tribunal of Manyara at Babati
in Land Application No. 75 of 2009)

ASHA SHAMIRA APPELLANT

VERSUS

ABDI ALLY RESPONDENT

(From Judgment of Manyara District Land and Housing Tribunal at Babati)
(P.J. Makwandi, Chairperson)

JUDGMENT

S.E. MUGASHA, J.

In the District Land and Housing Tribunal of Babati at Babati, the appellant sued the respondent for return to her family, a piece of land measuring 1¼ acres located in Mapea – Magugu. It is alleged that, the disputed land was leased to the respondent by her husband KASSIM ALI. The suit was dismissed while the respondent declared lawful purchaser.

Aggrieved; the appellant filed this appeal with five (5) grounds namely;

1. That; the learned Chairperson of the Tribunal erred in law and in fact in ordering the appellant to hand over the disputed land to the respondent without considering that the appellant is a co-bonafide

owner of the disputed land which the respondent alleged to have purchased from one KASIMU ALLY, husband of appellant.

2. That; the learned Chairperson of the trial Tribunal erred in law and in fact in passing Judgment against the appellant without visiting the *locus in quo* in order to see location of the disputed land.
3. That; the learned Chairperson of the Tribunal erred in law and in fact in admitting a false and forged sale agreement without putting into consideration the fact that the appellant's name is ASHA SHAMILA and not FATUMA SHAMILA.
4. That; the learned Chairperson of the Tribunal erred both in law and in fact in believing the respondent's evidence that he purchased the land in 2007 while the village Chairperson who verified the sale agreement stated to the District Land and Housing Tribunal at Babati that the agreement was made in 2006. The respondent's witness did not establish exactly as to where it was signed and when the respondent purchased the disputed land.
5. That; the learned Chairperson of the Tribunal erred both in law and in fact in not analyzing or evaluating the cogent appellant's evidence on record, instead; arriving at erroneous decision that the disputed land belongs to the respondent.

The appellant appeared in person whereas the respondent was represented by S.J. Lawena, Advocates. The hearing of the appeal was conducted by written submissions. Before addressing the grounds of appeal, this Court has discovered the following. It is on record that; Judgment of the District Land and Housing Tribunal appealed against was delivered on 15th March, 2010 while the appeal was filed on 19th May, 2010 that is, 65 days after the date of Judgment.

In the first place, unlike appeals originating from the Ward Tribunals where section 38(1) of the Land Courts Disputes Act, [CAP. 216 R.E, 2002] specifies the limitation period within which an appeal may be filed, in appeals originating from District Land and Housing Tribunal, limitation period is not specifically stated. That brings into play item 2 of Part II of the schedule to the Law of Limitation Act (supra) which categorically provides:-

"2. An appeal for which no period of limitation is prescribed by this

Act or any other written law forty-five days".

It is not in dispute that, the law requires exclusion of period of obtaining copies of Judgment and Decree in computing time limitation. Judgment of the District Land and Housing Tribunal was certified on 31st March, 2010 while Decree of Tribunal was issued on 12th May, 2010. The law excludes the time used to obtain copies of Judgment and Decree in terms of section 19(2) of the Law of Limitation Act (supra) which provides:-

"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded".

But the question to be answered is whether the exclusion of period of obtaining the Decree can be dealt in the appeal. Section 14(1) of the Law of Limitation Act (supra) provides:-

*"(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, **other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed** for such appeal or application".*

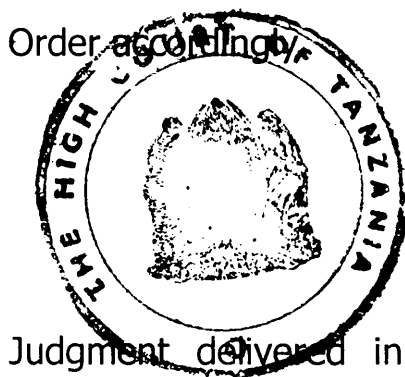
In a summary, the law avails discretionary powers to Court to enlarge time to appeal either before or after expiry of the period of limitation. Enlargement of time can only be sought in a requisite application as the Court cannot in an appeal automatically exclude the time used to obtain copies of Judgment and Decree. In the event law provides room for one to seek enlargement of time after expiry of limitation period, that accommodates the fate of late appeals where one can lodge an application to seek enlargement and avail reasonable or sufficient cause for the delay.

In the matter under scrutiny, the appellant before lodging the appeal ought to have lodged an application to seek enlargement of time where the

ground for delay would be late supply of the Judgment and Decree. Furthermore; on record, there is no appellant's letter seeking to be supplied with copies of Judgment and Decree for the purposes of preparing an appeal. It is very unfortunate that the appellants rushed to lodge an appeal which was already late.

In view of the aforesaid, this appeal is time barred and it is dismissed in terms of section 3(1) of the Law of Limitation Act (supra). Since the anomaly has been raised by this Court, I make no order as to costs.

Right of appeal is explained.




S.E. MUGASHA
JUDGE
06/11/2013

Judgment delivered in chambers this 6th day of November, 2013 in presence of the appellant and the respondent in person.