

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT IRINGA

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MISCELLANEOUS LAND CASE APPEAL NO. 15 OF 2011  
(Arising from the decision of the District Land and Housing  
Tribunal of Iringa District in Land Case No.32 of 2011  
and Original Ward Tribunal of Image in  
Application No. 39 of 2009)

LWIMIKO MAGINGA ..... APPELLANT

VERSUS

MARTIN WIMBE &  
ANOTHER ..... RESPONDENTS

17/10/2014 & 21/10/2014

**RULING**

Kihwelo J.

On 28<sup>th</sup> July, 2011 the Appellant filed a Petition of Appeal seeking to challenge the decision of the District Land and Housing Tribunal for Iringa Hon. A. Mapunda the Chairman made on 19<sup>th</sup> August, 2010 that confirmed the decision of the Ward Tribunal.

On 30<sup>th</sup> November, 2011, M/S **B.P MKWATA** (Advocates) filed a Notice of Preliminary Objection on behalf of the respondents stating one ground of objection namely the appeal is time barred and prayed the court to dismiss the appeal with costs.

The said point of preliminary objection was argued orally. The appellant is represented by Mr. Mussa Mhagama, learned counsel while the respondents are represented by Mr. Edward Kenyuko, learned counsel.

It was submitted on behalf of the Respondents that the appeal before this court originated from Image Ward Tribunal to the District Land and Housing Tribunal of Iringa and later to this court and that by virtue of Section 38(1) of the Land Disputes Courts Act, 2002 appeals of this type have to be filed within 60 days. The counsel for the respondents stated further that the decision of the District Land and Housing Tribunal subject of this appeal was made on 19<sup>th</sup> August 2010 therefore in this case the 60 days expired on 20<sup>th</sup> October, 2010. The appeal to this court was filed on 28<sup>th</sup> July, 2011 that is more than eleven months beyond the limitation period prescribed by the law.

Counsel for the respondents did not stop there he went further to put a spirited argument that the appeal at hand was filed out of time and without even leave of the court. It

is therefore clear that the appeal is time barred and therefore it should be dismissed with costs.

On the other hand Mr. Mhagama argued that the appeal was filed within 60 days required by law namely section 38 (1) of the Land Disputes Court Act, 2002. That, in order for a person to file an appeal one must be supplied with copies of proceedings and judgments to enable him/her prepare grounds of appeal. It was further submitted by the counsel for the Appellant that he agrees with the submission for the counsel for the respondents that the District Land and Housing Tribunal delivered judgment on 19<sup>th</sup> August, 2010 and the appeal was filed on 28<sup>th</sup> July, 2011.

Mr. Mhagama forcefully argued further that the judgment of the District Land and Housing Tribunal was certified on 31<sup>st</sup> May, 2011 hence he was of the view that time to appeal starts to accrue on the day when the judgment was certified. This is according to section 19 (3) of the Law of Limitation Act, Cap. 89 of the Revised Edition 2002 which requires that time spent in obtaining a copy of judgment shall be excluded in computing time. It is therefore submitted that by virtue of the above provision and in simple arithmetic from 31<sup>st</sup> May, 2011 to 28<sup>th</sup> July, 2011 it is within the 60 days required by law. The counsel for the appellant therefore prayed that the preliminary objection be dismissed with costs.

In his brief rejoinder the Counsel for the Respondents submitted that the appellant's counsel did not state which law requires that the appeal should be accompanied by a copy of judgment and proceedings, and that section 38 (3) of the Land Disputes Courts Act, 2002 provides for the Appeals to the High Court to be by way of petition and shall be filed in the District Land and Housing Tribunal which shall upon receipt of the Petition of Appeal within 15 days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court (Land Division). According to the counsel for the respondents, the appellant is therefore not duty bound to file his appeal accompanied by a copy of the judgment or order appealed against and he referred this court to the case of **Khatibu Kikoti V. Mahuvi Chusi**, Miscellaneous Land Case Appeal No.1 of 2010, High Court of Tanzania at Iringa (unreported).

A cursory perusal to the court records and upon earnest consideration of the submissions by both counsels I am of the considered opinion that the issue to be determined is whether the appeal at hand is time barred or not.

Although section 38 (1) of the Land Disputes Court Act, 2002 provides that an appeal from the decision or Order of the District Land and Housing Tribunal in its exercise of appellate or revisional jurisdiction should be filed within sixty days after the date of the decision or order but

that section should not be read in isolation but rather it should be read together with section 19 (3) of the Law of Limitation Act Chapter 89 of the Revised Edition 2002. This is by simple logic that no one can be able to prepare and therefore file an appeal in the absence of a judgment that is subject to that appeal. It is know fact that Order XX rule 4 of the Civil Procedure Code, 1966 Cap. 33 Revised Edition 2002 clearly provides that-

“ Judgments shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.”

It is therefore undisputed fact that for the appellant to be able to frame and file a sound appeal which is based upon an informed judgment one has to be supplied first with the judgment. This position was taken in the case of **Mary Kimaro V Khalfan Mohamed** (1995) T.L.R 202, in which Mwaikasu, J (as he then was) held that;

*“(i) A copy of proceedings and a copy of judgment are necessary for 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”.*

This decision was applied with approval by **Kihiyo J** in **Usharika Wa Missiwa DKK/KKKT V. Cosmas Mwangila** Miscellaneous Land Case Appeal No. 28 of 2010 High Court of Tanzania (Land Division) at Iringa (unreported).

Otherwise this court is not bound by the decision in the case of **Khatibu Kikoti V. Mahuvi Chusi** cited above.

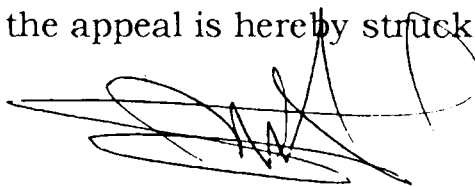
Based on the foregoing position it is quite clear that computation of time for filing an appeal to this court as rightly submitted by the counsel for the appellant begins from the date when the judgment which is the subject of the appeal was certified for collection. However, some crucial steps for appealing against the said judgment or ruling must be taken by an aggrieved party. The steps must include lodging a letter to the particular court's registry requesting for copies of judgment, proceedings and decree for purposes of preparing an appeal. This position was celebrated in the case of **Hussein Chota v. Mufindi District Council & Another**, Miscellaneous Land Application No. 4 of 2013, High Court of Tanzania at Iringa (unreported).

A thorough scrutiny to the court records has revealed to me that while the decision subject of this appeal was delivered on 19<sup>th</sup> August, 2010 copies of judgment and proceedings were certified for collection on 31<sup>st</sup> May, 2011. However, the appellant did not lodge a letter requesting for

copies of judgment and proceedings immediately and instead lodged the same on 8<sup>th</sup> September 2010 twenty days after judgment. The appellant therefore after being supplied with the requisite copies on 28<sup>th</sup> July 2011 filed the appeal to this court.

For a very simple arithmetic from 31<sup>st</sup> May, 2011 to 28<sup>th</sup> July, 2011 there is a total of 58 days which elapsed and there is another 20 days which the appellant spent before applying for the copy of the proceedings and judgment making a total of 78 days well beyond the required 60 days.

Consequently, the preliminary objection raised has to be sustained and the appeal is hereby struck out with costs.

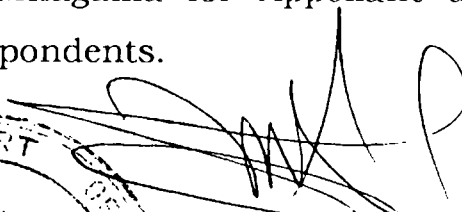
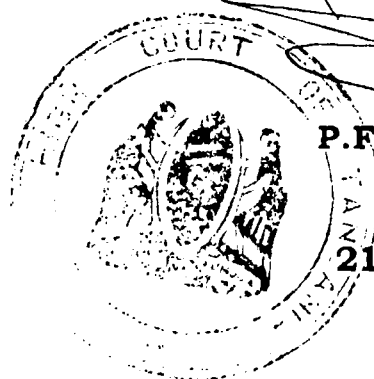


**P.F. KIHWELO**

**JUDGE**

**21/10/2014**

Ruling delivered on 21<sup>st</sup> October, 2014 in the presence of Mr. Mussa Mhagama for Appellant and Mr. Edward Kenyuko for Respondents.

**P.F. KIHWELO**  
**JUDGE**  
**21/10/2014**