

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(IRINGA DISTRICT REGISTRY)**

**(LAND DIVISION)**

**AT IRINGA**

**LAND APPEAL NO. 21 OF 2019**

**(RESTORATION LAND APPEAL NO. 02 2019)**

(Arising from Land Application No.15 of 2014 in the District Land and  
Housing Tribunal for Njombe)

**EDESIUS MWINUKA ..... 1<sup>ST</sup> APPELLANT**

**PATRICK B. MBATA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**PATRICK B. MGAYA ..... RESPONDENT**

**JUDGMENT**

*28/4 & 11/5/2020*

**MATOGOLO, J.**

This ruling is in respect of preliminary objection on point of law raised by the respondent one Patrick B. Mgaya against the appeal lodged by the appellants namely Edesius Mwinuka and Patrick Mbata. In the said appeal the appellants are challenging the decision of Njombe District Land and Housing Tribunal in application No. 15 of 2014.

The said preliminary objection is to the effect that the appeal is time barred.

During hearing of the said preliminary objection the appellants were represented by Mr. Frank Ngafumika the learned Advocate while the respondent appeared in person (unrepresented).

The said objection was argued orally.

The respondent submitted that the case before the District Land and Housing Tribunal Njombe was decided on 30/11/2016, the appellants were supposed to appeal within 45 days from the date of judgment. The respondent submitted further that the appellants lodged this appeal on 30/1/2017, beyond 45 days. He submitted further that the appeal was lodged after 61 days from the date of judgment thus was lodged out of time, the same should be dismissed and the decision of the District Land and Housing Tribunal should stand.

In reply, Mr. Ngafumika submitted that according to section 46 of the Law of Limitation act (Cap. 89 R.E. 2002), where it happens that there is time limitation in other relevant law will be taken to be of the law of limitation Act and the relevant Provision will apply.

He contended that the period of 45 days for appeal is provided for under the Land Dispute Courts Act Cap 216. As this appeal originated from the District Land and Housing Tribunal the procedure is guided by Order XXXIX Rule (1) (2) of The Civil Procedure Code. The appeal to the High court is to be by memorandum of Appeal accompanied by copies of judgment and decree. That is why Section 19(2) of The Law of Limitation Act (Cap. 89 R.E. 2002), excluded the period appellants have been waiting for copies of judgment and decree.

He further argued that this application was not filed out of time since it was filed within 31 days from the date decree was obtained.

Mr. Ngafumika went on submitting that the issue of computation of periods of appeal has been discussed in several cases. To support his argument he referred the case of ***Registered Trustees of The Marian Healing Center @Wanamaombi VS. Registered Trustees of The Catholic Church Sumbawanga Diocese***, Civil Appeal No.64 of 2007 and the case of ***Fortunatus Nyigana Paulo Vs. Permanent Secretary Ministry Home Affairs and Attorney General***, Civil Appeal No. 37 of 2014 Court of Appeal of Tanzania at Dar es Salaam.

Mr. Ngafumika concluded by submitting that in the principle of *stare decisis* this court is bound by the decision of the Court of Appeal, and this appeal was filed in time. He therefore prayed for this court to dismiss the preliminary objection and proceed to hear the appeal.

In rejoinder the respondent insisted that the appeal was lodged out of time and the same be dismissed.

Having heard the parties' respective submissions, and having passed through the court records as well as the memorandum of appeal filed before this court, the crucial issue to be determined by this court is whether the appellants properly moved this court.

The respondent objected this appeal for the reason that the same was filed out of time as required by the Law. The respondent went on

arguing that the appellants were supposed to file their appeal within 45 days from the date of judgment or order.

Mr. Ngafumika for the appellants relied on section 19(2) of Cap. 89 to argue that the time appellants spent for procuring a copy of judgment and decree are excluded.

According to section 41(2) of the **Land Disputes Courts Act (Cap. 216 R.E. 2002)** as amended by Written Laws (Miscellaneous Amendments) Act No.2 of 2016, the time limitation for appeals to High court from the District Land and Housing Tribunal exercising original jurisdiction is 45 days from the date of judgment or order appealed against, the section provides as follows;

*"41(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order"*

The court records reveal that judgment was delivered on 30/11/2016 and the present appeal was filed on 30/1/2017, it means that this appeal lodged after lapse of 61 days from the date of judgment was delivered.

It is principle of law that where there is a specific Law provides for a period of limitation for any proceeding then general Law cannot apply. Given that section 41(2) of the Land Disputes Courts Act (supra) provides for a time limit for appeal from District Land and Housing Tribunal to High Court, The law of limitation Act as a general law cannot apply.

I subscribe to the respondent's argument that the appeal is time barred. The appellants were supposed to appeal within 45 days from the date of judgment or order.

The counsel for the appellants seems to admit indirectly on the objection raised but he is relying on **Section 19(2) of the Law of Limitation Act (Cap 89 R.E 2002)**, which provides that;

*"19 (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 copy of the decree or order appealed from or sought to be reviewed, shall be excluded".*

There is no dispute, as submitted by Mr. Ngafumika that the time spent in procuring copies of Judgment and decree which are necessary documents to be attached to the appeal may be excluded in computing the limitation period, but the same cannot be automatically assumed by the parties unless they lodge an application seeking for enlargement time and give reasonable or sufficient cause for delay. This was held in the case of **Augustino Elias Mdachi and Others Versus Ramadhani Omari Ngaleba**, Civil Appeal No.270 of 2017 (unreported). But even in the case of **Fortunatus Nyigana Paul** (supra), that was emphasized at page 10 paragraph 2.

The proviso of section 41(2) of the Land Disputes Courts Act (supra) provides for the right for extension of time for filing an appeal if there are good reasons. But in this application the appellants have not prayed for extension of time. This is totally violation of law and it is an abuse of court process in delivery of justice. There are several decisions on this, including the case of ***The Registered Trustees of Evangelical Lutheran Church in Tanzania versus Emiliana Petro Msige***, Land Appeal No.13 of 2018 High Court of Tanzania at Iringa(unreported), whereby it was held that;

*"An appeal is found to be incompetent before the court as it was filed after expiration of the prescribed time of forty five (45) days and without leave"*

In the case of ***Dr. Ally Shabbay versus Tanga Bohora Jamaat*** [1997] TLR 305 it was held that;

*"Those who wishes to come to court of law must not show unnecessary delay in doing so especially where a prescribed limitation period is provided by the law they must show due diligence"*

There is no doubt that the present appeal is time barred as the same was filed out of time, and the appellants had not applied for extension of time to lodge their appeal out of time. For that reason it is my opinion that the preliminary objection raised has merit. The appellants did not properly move this court as they lodged the appeal out of the prescribed time without applying first for extension of time. For that reason

this appeal is incompetent before this court and the same ought to be struck out which as I hereby do. The appellants are advised to follow appropriate procedure of appealing out of time.

**DATED at IRINGA this 11<sup>th</sup> day of May, 2020**

*M. N. Matogolo*  
**F.N. MATOGOLO**  
**JUDGE**  
**11/5/2020.**



Date: 11/05/2020  
Coram: Hon. F. N. Matogolo – Judge  
Appellants: Mr. Frank Ngafumika  
Respondent: Present  
C/C: Grace

**COURT:**

Ruling delivered this 11<sup>th</sup> day of May, 2020 in the presence of Mr. Frank Ngafumika learned advocate for the appellants and in the presence of the respondent.

*M. N. Matogolo*  
**F.N. MATOGOLO**  
**JUDGE**  
**11/5/2020.**

