

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPEAL NO. 27 OF 2019

(From the District Land and Housing Tribunal for Mbeya in Land Appeal No. 123 of 2018. Originating from Land Case No. 19 of 2018 in Utengule Usongwe Ward Tribunal)

SIMON ASAJILE MBOGELA.....APPELLANT

VERSUS

JUMA NJATE.....RESPONDENT

RULING

Date of Last Order: 02/04/2020
Date of Ruling : 08/05/2020

MONGELLA, J.

This is a ruling on preliminary objection raised by the Respondent herein against the appeal filed in this Court by the Appellant. The respondent raised a preliminary objection containing two points of law to wit:

1. *That the appeal is hopelessly time barred.*
2. *That the appeal is incompetent for not being dated.*

The preliminary objection was argued by written submissions timely filed in this Court by the parties. Both parties appeared in person however, the appellant's submission was drawn ex gratis by a legal aid provider named "Haki za Raia na Msaada was Ushauri wa Kisheria."

Arguing on the first point, the respondent submitted that the judgment in Land Appeal No. 123 of 2018 was delivered on 18th February 2019, but the appellant filed his appeal on 29th April 2019 whereby 71 days had already passed. He submitted that the appellant thus delayed for eleven days while as per section 38 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2002 he was supposed to file his appeal within sixty days as the case emanated from the ward tribunal. He argued that having delayed for eleven days the appellant ought to have applied for leave to appeal out of time. He referred again to section 38 (1) of Cap 216 which empowers the High Court to extend time for filing an appeal where there is sufficient cause for delay.

He submitted further that the appellant may argue that he was delayed in receiving the copies of judgment and decree, but that is not acceptable because it is not mandatory to attach copies of judgment and decree on matters emanating from the ward tribunal. He as well cited the case of **Lewin Bernard Mgala v. Lojas Mutuka Mkondya & Others**, Land Appeal No. 33 of 2017 (HC at Mbeya, unreported) in which it was held that the exclusion of time while waiting for copies of judgment and decree is not automatic. A party must first lodge an application for extension of time to file the appeal.

On the second point the respondent argued that the appeal should not be entertained by this Hon. Court since it is not dated. He contended that it is important for the appellant to fix a date to the copy of the petition of appeal so as to ascertain whether the appellant is within time or not.

In reply, the appellant contended that the issue of date is very minor and does not touch the root of the suit and thus cannot be used to curtail this Court from entertaining the appeal. On the issue of time, he in fact conceded that he delayed in filing the appeal, but argued that it was due to the delay in obtaining copies of judgment and decree to enable him prepare the grounds of appeal and to meet the requirement of the law. He said that the copies of judgment and decree were supplied to him on 28th April 2019 and he filed the appeal on 29th April 2019. He cited section 19 (2) of the Law of Limitation Act which provides that in computation of time the time spent on waiting copies of judgement and decree should be excluded. On these bases he prayed for the Court to overrule the preliminary objection.

I have considered the rival submissions from both parties and I shall start with the first point of preliminary objection. On this point the respondent argued that the petition of appeal is undated and thus the appeal should not be entertained by this Court. I in fact agree with the appellant that this defect is minor and not touching the root of the matter. If the aim as presented by the respondent was to ascertain whether the appeal is within time or not, then the stamp of the Court which shows the date of filing the appeal suffices to show that. The defect can as well be served under the overriding objective principle introduced into our legal system vide section 3(A) & (B) of the Civil Procedure Code, Cap 33 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendment) Act No. 3 of 2018. I therefore overrule this point of preliminary objection.

On the first point of preliminary objection, the Appellant argued that the delay was caused by the delay in issuing copies of judgment and decree and thus time should start to run after the date of obtaining such copies. As much as I agree with the Appellant that under section 19 (2) of the Law of Limitation Act the waiting for copies of judgment and decree amounts to sufficient reasons for delay, I do not accept his reason because appeals to the High Court on matters emanating from the ward tribunals do not require to be accompanied by copies of judgment and decree. Section 38 (2) of the Land Disputes Courts Act, only requires the appellant to lodge his petition to the Tribunal.

In addition, even if he was waiting for such copies, the exclusion of time is not is not automatic. A party must first lodge an application for extension of time to file the appeal and waiting for copies of judgment and proceedings shall be taken as sufficient reason to warrant the Court to grant the extension of time to file the appeal out of time. See: **Kisioki Emmanuel v. Zakaria Emmanuel**, Civil Appeal No. 140 of 2016 (CAT, unreported). See also: **Michael Eliawony Makundi v. Geoffrey Eliawony Makundi**, Probate Appeal No. 04 of 2019 (HC-Mbeya, unreported).

I thus agree with the respondent that the Appellant's appeal is hopelessly time barred for being filed after the elapse of seventy one days without leave of the Court. The appeal is therefore incompetent before this Court and is dismissed with costs.

Dated at Mbeya on this 08th day of May 2020.




L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 08th day of May 2020
in the presence of both parties appearing in person.


L. M. MONGELLA
JUDGE