

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

AT IRINGA

LAND APPEAL NO. 25 OF 2020

**(Arising from application No.78 of 2017, District Land and
Housing Tribunal of Iringa)**

HTT INFRANCO LIMITED t/a

HELIOS TOWERS TANZANIA APPELLANT

VERSUS

JULIANO CHARLES MIKONGOMI (As Administrator of the

Estate of the Late CHARLES MIKONGOMI) ... 1ST RESPONDENT

MIC TANZANIA LIMITED t/s TIGO LTD 2ND RESPONDENT

ALICE BOAZ 3RD RESPONDENT

05/5 & 23/6/2020

RULING:

MATOGOLO, J.

This ruling is in respect of Preliminary objection on point of law against the appeal lodged by the above appellant namely HTT INFRANCO LIMITED t/a HELIOS TOWERS TANZANIA. In the said appeal the appellant is challenging the decision of the Iringa District Land and Housing Tribunal, in Land Application No. 78 of 2017. The objection has been raised by the

counsel for the 1st respondent, to the effect that this appeal is hopelessly time barred as the same was filed out of time.

The brief Background of this matter is that the appellant sued the respondents for trespass to the land located at Lugodalutali village in Mufindi District. It has estimated value of Ths.20, 000,000/=. The case ended in favour of the respondents hence this appeal.

At the hearing, the appellant was represented by Mr. Malaki Masatu learned Advocate while the 1st respondent was represented by Baraka Mbwilo learned advocate.

Submitting in support of preliminary objection, Mr. Mbwilo stated that the decision of the District Land Housing Tribunal was delivered on 1st July 2019, and this appeal was filed on 20th November 2019. Mr. Mbwilo submitted further that the 45 days provided for appeal expired on 14th August, 2019. He argued that the instant appeal was filed after 97 days.

Mr. Mbwilo submitted that the main questions for determination in this objection are two as follows;

- (i) Which law provides for time limitation or governs an appeal from the decision originating from the District Land and Housing Tribunal to High Court.
- (ii) Whether the law contains provision which excludes time spend for obtaining copy of judgment and decree.

Regarding the first issue, Mr. Mbwilo argued that before Act No. 2/2016 the law which was governing the appeal to the High Court from the decision originating from the District Land and Housing Tribunal exercising original jurisdiction was the Law of Limitation Act, Cap 89 R.E 2002. Mr. Mbwilo went on stating that in 2016 the parliament amended section 41 of the Land Disputes Courts Act, Cap 216, through the written Laws (Miscellaneous Amendments) (No.2) Act, 2016 which provides for time limitation to appeal to this court. He argued further that the law which governs appeal like this is Land Dispute Courts Act, Cap 216.

With regard to the second issue on whether that law contains provision which excludes time spend for obtaining copy of judgment and decree, Mr. Mbwilo submitted that the answer is no because section 41 (2) of cap 216 (supra) stated clearly that the time starts to run from the date of decision or order.

He argued that the although appellant was in time of filing the appeal basing on section 19 (1) of the Law of Limitation Act, Cap 89 which excludes time spend for collecting judgment and decree for appeal purpose such exclusion does not apply under the above referred provision.

He argued further that the Law of limitation Act (supra) applies in civil matters where the respective law does not provide time limitation for doing any act, he contended that a party who may enjoy relief under section 19(2) of Cap 89 is the one whose his/her matter, the law applicable is the law of Limitation Act Cap 89.To buttress his argument he referred this court to the Case of ***Kisioki Emmanuel Versus Zakaria Emmanuel***

,Civil Appeal No. 140 of 2016 Court of Appeal of Tanzania At Arusha (unreported) in which at page 11 to page 12 the Court stated;

"Limitation periods being a creature of principal or subsidiary legislation can only be subject to exemption or exclusion on the basis of the law. We are aware that the provisions of the Law of Limitation Act are not applicable to matters originating from primary Court and those matters are, instead, governed by the provisions of Government Notice No. 311 of 1964. In the premises, we have no hesitation to hold that the learned Judge erred in law in extending time and applying the provisions of Section 19 of the Law of Limitation Act in favour of the respondent to exclude the periods of time requisite for obtaining a copy of judgment and decree. The High Court, we think ought to have applied Government Notice No. 311 of 1964, which, unfortunately, has no provisions that mirror section 19 of the Law of Limitation Act".

Mr. Mbwilo submitted further that in this matter as far as Land Disputes Courts Act, Cap 216, is the one which applicable in Computation of time and as far as Cap. 216 has no provisions which mirror Section 19 of the Law of Limitation Act (supra), he insisted that this appeal was filed out of time.

He argued that the law of Limitation can not apply where the period of limitation is prescribed by any other law, to support his argument he referred this court the case of ***Yahaya Mzee Kapera versus National Microfinance Bank (NMB) PLC Iringa***, Misc. Civil Application NO.10 of 2019 High Court at Iringa (unreported) at page 9 the Court ruled that;

"It is the trite law that the Law of Limitation Act cannot apply to any proceedings for which a period of limitation is prescribed by any other written Law".

Mr. Mbwilo also referred this court the case of ***Seif Chande Mayanga versus Majid Hussein Teikwa***, Land Appeal NO. 149 of 2018 High Court at DSM (unreported).

Mr. Mbwilo argued that the appellant before filing an appeal ought to have applied for extension of time under the proviso of section 41(2) of the Land Disputes Courts Act, Cap 216 as amended by the Written Law (Miscellaneous amendments) (No.2) Act, 2016.

Mr. Mbwilo prayed before this court to strike out this appeal with costs.

In reply the counsel for the appellant submitted that the counsel for the first respondent argues that section 19 of the law of limitation Act, 1971 is not applicable in this matter. He contended that this argument is unfounded in law and in fact and the cited cases are distinguishable.

Mr. Malaki submitted that the time within which an appeal can be preferred against the decision of the District Land and Housing Tribunal is provided for under Section 41(1) and (2) of the Land Disputes Courts Act, Cap. 216 (R.E. 2019). He went on stating that in terms of section 51 (1) of

the Land Disputes Court Act and Rule 1(1) of Order XXXIX of the Civil Procedure Code (Cap 33 R.E) requires annexing of the decree. To support his argument he referred this court the case of ***Julitha Andrew Kessy versus Timothy Joseph Kaare and Another***, Misc, Land Case Appeal No.14 of 2014 at page 4 to 6.

Mr. Malaki submitted further that, section 19(1)(2) and (3) of the Law of Limitation Act excludes periods from the date of judgment to the date of obtaining a copy of the judgment and decree in computing period of limitation, he argued that he is aware of two conflicting positions of whether the exclusion under section 19 (2) of the Law of Limitation Act is automatic or not as noted by Maige, J in Misc. Land Application No. 581 of 2018 ***in Mustafa Kimaro versus Mariam Hamis Maftaha***, HC. Land Division, where the court observed at page 3 paragraph 2 and for the position contrary to automatic right of exclusion as decided in Appeal No. 270 of 2017 Augustino ***E. Mdachi and 2 others versus Ramadhani Ngaleba HC at DSM.***

Mr. Malaki submitted that the exclusion of time required to obtain a copy of a decree is automatically excluded under section 19(2) of the Law of Limitation Act (supra), to support his argument he referred this court the case of The ***Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi Versus The Registered Trustees of the Catholic Church Sumbawanga Diocese***, Civil Appeal No. 64 of 2006, CAT, Dar es Salaam, the Court held that;

"..... it follows that the period between
2/5/2003 and 15/12/2003 when the appellants

eventually obtained a copy of the decree ought to have been excluded in computing time, once that period was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred”.

Mr. Malaki submitted further that the Court of Appeal pronounced on the applicability of the section 19(2) of the Law of Limitation Act in the case of ***Fortunatus Nyigana Paul versus Permanent Secretary Ministry of Home Affairs and Attorney General***, Civil Appeal No. 37 of 2014 at page 9 the court held that;

"Thus, the time which is excluded therein only relate to a copy of the decree or order sought to be appealed”.

Mr. Malaki contended that, the 1st respondent admits that the appeal was filed one day after receipt of the decree but his argument upon which the objections is purported to be premised is to the effect that since the provisions of the Land Dispute Courts Act provide for time limit to file appeal and power of the High Court to extend time to file appeal, the provision of 19(2) of the Law of Limitation Act does not apply, he argued that this argument is unfounded in law and the cited decisions have been cited out of their context as they are distinguishable to the fact and law applicable in this matter.

He contended that the counsel for the 1st respondent cited the case of ***Kisioki Emmanuel versus Zakaria Emmanuel*** (supra) ***Yahaya Mzee Kapera versus National Microfinance Bank (NMB)*** (supra) and ***Seif Chande Manyanga versus Majid Hussein Teikwa*** (supra). He argued that the cited decisions are distinguishable due to the fact that in the case of ***Yahaya Mzee Kapera*** (supra), the applicant was applying for a leave to appeal to the Court of Appeal. He contended that the period of application for leave is prescribed by rule 45(a) of the Court Of Appeal Rules, this rules are complete and they provide for time limit and exclusions of time and or Computations in terms of rule 8 of the same. He argued that in this case the provision of the Land Disputes Courts Act provides time limit but do not contain any provisions on exclusions of time similar to section 19(2) of the Law of Limitation Act.

Mr. Malaki with regard to the case ***of Seif Chande Mayanga***(supra), he said that it is distinguishable to the instance case in the sense that, in that case the finding of the Court was that it was filed beyond 45 days. However there was no argument as to whether the delay in filing was due to failure to be supplied with certified copy of decree neither reliance on section 19 (2) of the Law of Limitation Act (supra).

Mr. Malaki argued that the provision of the Law Limitation Act is applicable in this matter. Time for obtaining a copy of decree is excluded thus time start to run from the date of obtaining the decree, to support his argument he referred this court the case of ***Damani versus Ndarumaki [1968]IEA318(HCT)*** In this case the High Court held that;

"Rent Restriction Act and Rent Restriction (Appeals) Rules 1962 are not a complete code so as to exclude the general provisions of the Limitation Act, therefore the time required for obtaining a copy of the order of the board was excluded in computing the limitation period and the appeal was not time barred".

Mr. Malaki argued that the applicant was availed with a requisite certified copy of the decree on the 19th November 2019 and filed this appeal on 20th November 2019; the appeal was filed within time as the 45 days of filing appeal are reckoned from the date of obtaining the requisite decree.

Hence the learned counsel for the appellant prayed before this court to dismiss the objection raised with costs.

In rejoinder Mr. Mbwilo reiterated what he submitted in submission in chief, and he submitted further that he agrees that there is a requirement to annex decree and judgment to the memorandum of appeal. However as the law which provides for time limitation to appeal is The Land Disputes Courts Act which states clearly that the time starts to run from the date of decision or order and as said the Land Dispute Courts Act does not contain provision which excludes time spend to collect copies of decree and judgment.

In regard to the paragraph 3 of the reply submission, he contended that, exclusion of time under section 19(2) and (3) of the Law of Limitation Act is applicable in the matter which its time limitation is provided by the Law of Limitation Act, but where there is specific law providing for time limitation, Law of Limitation Act does not apply.

Mr. Mbwilo submitted further that the cited cases most of them favors his position, hence he insisted that this appeal is time barred the same ought to be strike out.

Having read the respective submissions by the Learned Counsels and having traversed through the trial tribunal records, the crucial issue to be determined by this court is whether this appeal is competent before this court.

The record reveals that this matter originated from the District Land and Housing Tribunal for Iringa exercising original jurisdiction, and it was referred before this court as an appeal.

According to section 41(2) of ***the Land Disputes Courts Act, Cap 216 R.E 2002*** as amended by the Written Laws (Miscellaneous Amendments) (NO.2) Act, 2016 provides that;

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

The instant appeal was filed on 20th day of November 2019 and the trial tribunal judgment was delivered on 1st July of 2019, thus it was filed after 110 days to elapse.

Mr, Mbwilo submitted that this appeal is time barred as the same was filed out of time as required by the law specifically The Land Disputes Courts Act (supra).

Mr. Malaki submitted that this appeal is not time barred as the appellant was availed with the requisite certified copy of decree on 19th November 2019 and filed this appeal on 20th November 2019.

Mr. Malaki argued that section 19(2) of the Law of Limitation Act (supra) excludes the time one spent in procuring a copy of judgment and decree and the same is automatically, and supported his position by citing the case of ***the registered Trustees of the Marian Faith Healing Centre @Wanamaombi*** (supra).

Mr. Malaki further argued that in terms of section 51(1) of the Land District Court Act and Rule 1 (1) of Order XXXIX of The Civil Procedure Code, requires annexing of the decree, to bolster his argument he referred this court to **Julitha Andrew Kessy versus Timothy Joseph Kaare and Another case**.

With the foregoing submission by the learned counsel, there is no dispute that the instant appeal was filed after 45 days from the date the

decision appealed for was delivered. Now the question to be resolved here is whether section 19 (2) of the Law of Limitation Act (supra) can apply in the instant case.

As I have already discussed above that this matter originating from the District Land and Housing Tribunal exercising original jurisdiction, and it is clear that the limitation period of appeal from the District Land Housing Tribunal exercising original jurisdiction to the High Court is forty five days.

The specific law governing and determining the time limit of appeal from the District Land and Housing Tribunal exercising original jurisdiction to High Court is section 41 (2) of the Land Dispute Courts Act, Cap 216 R.E 2002 as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016.

In his reply submission the counsel for the appellant it seems like he is indirectly admit on what was submitted by the counsel for the 1st respondent, but he argued that the delay was caused by delaying to be supplied with the copies of judgment and decree, as the same ought to be excluded and the time starts to run from the date he obtained such documents.

It is trite law that the time one spent in procuring the copy of judgment and decree may be excluded in computing the limitation period but the same cannot be automatically be assumed by parties unless one can lodge an application to seek enlargement and avail reasonable or sufficient cause

for delay, the same as it was held in the case of ***Augustino Elias Mdachi and Others Versus Ramadhani Omary Ngaleba***, Civil Appeal No. 270 of 2017 (unreported) , the same applies to the instant case, the appellant was supposed to apply before this court for an extension of time to file his appeal out of time, and the said delay to be issued with the copies of judgment and decree as a necessary document to be annexed to his appeal would be the reason for his delay to lodge the appeal on time.

Basing on the above arguments I agree with what was submitted by the counsel for the 1st respondent that this appeal is incompetent before this court as it was filed after expiration of the prescribed time of forty five days (45) without leave.

The counsel for the appellant ought to know that the Law of Limitation Act can not apply to the instant case while the Land Disputes Courts Act is a specific law prescribing the time limit for an appeal to High Court, when the District and Housing Tribunal exercising original jurisdiction. Section 41 (2) of Cap. 216, as amended has a proviso for an application for extension of time. It provides:-


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

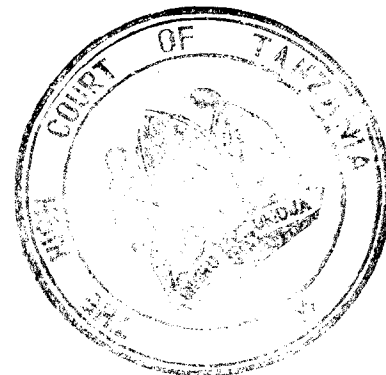
Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days"

It is clear from the above quoted provision that the time during which the appellant was supposed to appeal is 45 days. But as the appellant could not appeal without copies of judgment and decree which are necessary documents as attachments, after find herself out of time she would have sought extension of time, and this is the import of the proviso to subsection (2). It is therefore not correct for Mr. Malaki learned counsel to argue that extension of time is automatic. It is until a party has applied and granted extension. But the present appellant did not do so.

It is my considered opinion that the preliminary objection raised has merit and as this appeal was filed out of the prescribed period, the same is incompetent. It is hereby stuck out with costs.

It is so ordered.


F.N. MATOGOLO
JUDGE
23/6/2020.



COURT:

Ruling delivered today in the presence of Mr. Walter Shayo, learned advocate for the appellant but in the absence of the respondents and in the absence of Mr. Baraka Mbwilo learned advocate for the respondents.


F.N. MATOGOLO
JUDGE
23/6/2020.

