

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

LAND APPEAL NO.61 OF 2019

(Arising from the Ruling of the District Land and Housing Tribunal of Mwanza at Mwanza in Land Application No. 25 of 2014)

**EDWARD MASHINDANO (The Administrator of
the Estate of the late Pilly) APPELLANT**

VERSUS

1. HARUNA PHILOPO	} RESPONDENT
2. IZACK MAYUNGA		
3. ELIAS REUBEN MGWENO		
4. BERNARD NTANGIJA		
5. FLORIDA JOVIN		

JUDGMENT

Last Order: 22.05.2020

Judgment: 12.06.2020

A.Z.MGEYEKWA, J

The Appellant Edward Mashindano, the administrator of the estate of the late Pilly Juma is appealing against the decision of the District

Land and Housing tribunal of Mwanza in Land Application No. 25 of 2019 which was dismissed. The appellant did not see justice hence this appeal before this court. The grounds upon which this appeal is based are these:-

1. *That the trial tribunal erred in law for delivering the decision based on conflicting evidence adduced by the witnesses of both parties in relation to the disputed land of which the same were not sufficient to prove the case in the respondents' favour.*
2. *That the trial tribunal erred in law and fact for holding that the sale to the 2nd, 3rd, 4th, and 5th respondents was lawful while the 1st respondent failed to show coherent reasons to prove the ownership of the suit land during the hearing of the trial tribunal.*
3. *That the trial tribunal erred in law for delivering the decision without giving the reason(s) for the decision thereof.*
4. *That the trial tribunal erred in law for failure to observe all required procedures in conducting the case as the result the trial tribunal reached at unrealistic decision.*

5. *That the trial tribunal erred in law and fact for not giving the credit to the evidence adduced by the appellant in relation to the suit land.*
6. *That the trial tribunal erred in law and fact for adjudicating upon the 1st Respondent proved the case to the required standard while the decision contains conflicting evidence.*

In prosecuting his appeal which was by the way of written submissions, the appellant filed his written submission on 27th April, 2020 the respondent filed a reply on 4th May, 2020. A rejoinder was filed on..... The appellant had a service of Mr. Remigius Silas Mainde, the learned counsel and the respondents afforded the service of Mr. Bernadetha Jinay, learned counsel.

It is fortunate, that before I started to belaboured over the submissions for both parties for determination, I noted the core aspect that this appeal did not comply with the legal requirements on the filing. I find that on records, the matter was decided on 31st July, 2019 before the District Land and Housing Tribunal for Mwanza and this appeal finds this court on 23rd October, 2019 which equals 84 days

from the date the decision was pronounced by the District Land and Housing Tribunal for Mwanza.

The same observation was raised by the respondent in his reply among other things he raised a concern that the appeal is filed out of time. He argued that the District Land and Housing Tribunal for Mwanza delivered its decision on 31st July, 2019 but the appellant filed the appeal after 83 days from the date of judgment contrary to section 38 (1) of the Courts (land Disputes Settlements) Act of 2002. He prays for this court to dismiss the appeal for being time-barred.

I am aware that the proceedings of this nature are governed by the Land Dispute Courts Act, Ca. 216 [R.E 2019] and the time for limitation is governed by the Law of Limitation Cap. 89 [R.E 2019] Part II of First Schedule. I am in accord with the learned counsel for respondents submission that the application is out of time. The Provisions of Part II of the First Schedule to the Law of Limitation Act Cap. 89 [R.E 219] which prescribes a period of 45 days within which to file an appeal. It is certainly clear that the present application which was filed after 84 days is indeed time-barred. In this case, since the

decision was ready for collection on 31st July, 2019, the appeal ought to have been filed on or before 14th September, 2019. By filing it on 23rd October, 2019 39 days had already lapsed.

The appellant in this appeal was represented by an Advocate therefore he was required to direct the appellant to file an application for extension of time to file his appeal out of time. But there is no record which shows that the applicant applied for an extension of time to file his appeal out of time, instead, the appellant proceeded to file an appeal before this court. Section 3 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] provides that where a suit is brought out of time the remedy is to dismiss the appeal even if the issue would not be raised by the parties. In the case of **John Cornell v A. Grevo Tanzania Ltd** Civil Case No. 70 of 1998 High Court of Tanzania, it was held that:-

" However, unfortunate it may be for the plaintiff, the Law of Limitation, on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

Guided by the above authorities I proceed to dismiss the appeal for being hopeless time-barred. Each party to shoulder his own costs.

Order accordingly.

Dated at Mwanza this date 12th day of June, 2020.


A.Z.MGEYEKWA
JUDGE
12.06.2020

Judgment delivered on 12th day of June, 2020i via audio teleconference, Mr. Mainde, learned counsel for the appellant was remotely present.


A.Z.MGEYEKWA
JUDGE
12.06.2019