

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND CASE APPEAL NO. 23 OF 2020

(Arising from the Ruling and order of the District Land and Housing Tribunal for Mwanza at Mwanza before Hon. S. M. Mayeye, Chairman) in Land Application No. 381 of 2019 dated 20/03/2020)

MAILANDE AUGUSTINE MPEMBAAPPELLANT

VERSUS

PIUS REGASIRA1ST RESPONDENT

PAUL SHABAN 2ND RESPONDENT

GWAMAKA MWATEBELA 3RD RESPONDENT

RULING

03 & 10/06/2020

RUMANYIKA, J.:

When the appeal with respect to decision of Mwanza District Land and Housing Tribunal (the DLHT) of 20/03/2020 was called on for hearing on 03/06/2020, Mr. I. E. Mushongi learned counsel for Pius Rwegasira and two others (the respondents) took "a time bar" preliminary point of objection (the p.o) formally raised by him on 02/06/2020. Mr. J. Madukwa learned counsel appeared for Mailande Augustine Mpemba (the appellant).

Following global outbreak of the Coronavirus pandemic and pursuant to my order of 07/05/2020, through mobile numbers 0622177842

and 0764463958 respectively by way of Audio Teleconferencing I heard parties.

Mr. Mushongi learned counsel submitted that the appeal was lodged on 06/05/2020 against decision of 20/03/2020 therefore contrary to Section 41 of the Land Disputes Court Act Cap 216 R.E. 2002 two days' time barred as it should have been instituted within the first 45 days the dates of filing were exhibited by stamp and endorsement attached to it by the Deputy Registrar.

Mr. J. Madukwa learned counsel submitted that he filed the appeal online within the first 42 days i.e. on 30/04/2020 but the process was finalized as late as 06/05/2020. Questioned by court for clarification, the learned counsel submitted that looking at the date the filing fee was paid the appeal was out of time. That is it.

The central issue is whether the appeal is out of time. At least copy of the Exchequer Receipt upon payment of filing fee issued to one Lilian. Mrindoko vide Control No. 991400203115, it was dated 07/05/2020. When was asked for clarification the appellant was generous enough he conceded that going by date of payment of the filing fee the appeal was time barred. Like Mr. Mushongi learned counsel correctly so in my view submitted, it is settled law that for purposes of calculating limitation period where date of filing was contested, unless it was filed *informa pauperis* it is date of exchequer receipt that counted unless through a formal application for extension of time, which is not the case here, it was sufficiently established; **(a)** that for the purposes of payment the applicant was late in

the day availed the control number **(b)** that the exchequer receipt was backdated **(c)** that the delay was caused by the Registry Officer's in action. Categories not closed.

The applicant may have been late for two days only or for any shorter period yes, but the general rule has been of, and there is unbroken chain of authorities that in determining application for extension of time, and I think in order courts to avoid endless litigation the applicant is duty bound to account for each day of the delay (cases of **Moto Matiko Mabanga V. Ophir Energy PLC & 2 Others**, Civil Appl. No. 463/01 of 2017) like Mr. Mushongi learned counsel correctly submitted, the instant appeal has not met this test. The p.o is sustained. The devoid of merits appeal is dismissed with costs. It is ordered accordingly.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE

04/06/2020

It is delivered under my hand and seal of the court this 10.06.020 in chambers in absence of the parties with notice.




S. M. RUMANYIKA
JUDGE

10/06/2020