

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**LAND CASE APPEAL NO. 10/2018**

*(Arising from Original Land Application No. 70/2016 of Karagwe District  
Land and Housing Tribunal)*

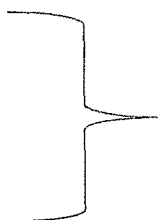
**ELIAS KAMOKYO ..... APPELLANT**

**VERSUS**

**1. JASSON KASAIZI**

**2. THEODOZIA KASAIZI**

**3. NELSON JASSON KASAIZI**



**..... RESPONDENTS**

**RULING**

**28/2/2020-20/3/2020**

**BAHATI, J.**

This ruling is in respect of a preliminary objection on point of law raised by the respondent against the applicant that the Land Appeal No.10 /2018 is improperly before this court for being time barred.

At the hearing of the Preliminary Objection, the applicant was represented by Angelo Samwel, the learned counsel and the respondent by Christian Byamungu, learned counsel. As it has been the practice of the Court, before dealing with the application, I had to dispose of the preliminary objection raised. The learned counsel addressed the Court on the Preliminary Objection raised.

In support of the preliminary objection, the learned Counsel for the respondent submitted that this preliminary objection is on time limitation for Land Application No. 10/2018. The order was delivered on 25/1/2018 by the District Land and Housing Tribunal as it is shown in the copy of judgment. The applicant filed Memorandum of Appeal on 28/3/2018 as is shown in the Memorandum of appeal and the signature of Court Clerk.

The learned counsel further submitted that by computing, the order was delivered on 25/1/2018 and the date which the Appeal was registered is 28/3/2018 which is 63 days from the date of the decision of the District Land and Housing Tribunal. The law clearly provides for a person to appeal from District Land and Housing Tribunal to the High Court within 45 days.

He further submitted that, according to section 41(2) of the Land Disputes Courts Act, Cap. 216 as amended by section 41(a) and (b) of

the Written Laws Miscellaneous Amendment (No.2) Act, 2016. Since the days allowed are 45, this expires on 12/3/2018. Hence the applicant filed his appeal on 28/3/2018 which is sixteen days more of the time acceptable by the law.

The counsel for the respondent further submitted that, the applicant did not even request leave to appeal out of time as provided for by the relevant provision of the law relating to land disputes of which the effect of filing out of time without permission of the court renders the appeal time barred.

To bolster his submission, he referred the court in ***Joseph Ndyamukama V Gaudensia Kaizilenge (High Court Land Appeal No. 30/2014)*** unreported at page 8 where Khaday J. explained the consequences of filing an appeal out of time which is to dismiss the case. This was also stated in **Stephen Masatu Wasira Vs. Joseph Sinde Warioba and AG (1999) TLR. 334** and in **Dr. Ally Shabhay V. Tanga Bohava Jamat (1997) TLR. 305** where the cases were dismissed for being filed out of time.

The counsel for the respondent submitted further that, this appeal was brought out of time and should be dismissed under section 3(1) of the Law of Limitation Act, Cap. 89 which provides that;

*“Subject to the provisions of this Act, every proceedings described in the first column of the schedule to this Act, and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence”.*

The counsel for the respondent thus submitted that , the applicant also has attached NMB bank slip of Kayanga Branch which is dated on 26/2/2018 for a total of TZS 4,000/=. He signed the petition of appeal on 6/3/2018 8 days after depositing the said amount to the bank. It seems that he went to deposit the money before writing the reasons for appeal. The bank slip which he attached served no purpose; he paid for things which was non- existence.

Further he submitted that, this money was deposited in the Ministry of Lands and Human Settlement but if it was proper he was supposed to deposit the same in the judiciary account. Hence, the purported bank slip had no effect.

In reply, the applicant before his submission on the preliminary objection and with leave of the court requested to show this court the essential matter which he referred from the original record of the main case namely; Land Application No.70/2016, that there are serious

illegalities on the proceedings at page 7 and 8 on the issue of res-judicata. This has been reproduced as hereunder;

Chairman on 15/12/2017

*“On the 25/1/2018 when the matter came for hearing the Chairman of the Tribunal Ordered that this Application is hereby dismissed with costs for being res judicata to civil case no. 49 of 2019 and Misc. Application No. 66 of 2016, after going through the records, the tribunal found that this matter is res judicata to former case between Nelson Jason and Joakim Johansen. The matter was concluded on merit and executed. The document on evidence and execution report is tendered. The applicant is trying to circumvent the ends of justice; he cannot claim to be owner until the execution is done. This is a delay of justice.”*

The counsel submitted further that, the dismissal order was reached without the applicant being given time to be heard. He mentioned this because he sought this court to decide on this matter first for the interest of justice. He contended that was a contravention of the *audi alteram partem* rule which is the basic principle of natural justice He further cited the case of ***Khalifa Seleman Saddot V. Yahya Jumbe Court of Appeal Civil Application No. 20/2003*** at page 5 and 9 where in Bank

**of Tanzania v Saidi Marinda and Others, Civil Application No.74 of 1988, Court of Appeal Tanzania** the Court held;

*“that a person should be accorded a hearing before taking adverse action against him or her. The omission to give the applicants hearing, caused the proceedings of the case to be nullified.”*

In the case of **Diamond Trust Bank Tz LTD Vs. Idrisa Shahe Mohamed (Civil Appeal No 262 of 2017)** at page 11 and 12 and **Yahaya Selemani Mralya Vs. Stephano Sijia and others (Civil Appeal No. 316 of 2017)** at page 9.where it was held that;

*“With respect, wrong in delivering the judgement without giving a chance to the parties to argue the ground of appeal. It is for these serious irregularities that we refrained from striking out the appeal so as to rectify the same by the way of revision.”*

The counsel for the applicant after submission of his main argument , he conceded that the time for appeal is time barred as correctly stated but as he has found out those illegalities in the decided case, he prayed for this court to invoke revisional power for this illegalities first which has been exposed. The counsel for the applicant further submitted that, if the case will be dismissed, the rights of the appellant will be deprived as the limitation period stands. Hence for the interest of justice he

prayed the court to invoke its revisional power to the District Land and Housing Tribunal.

On his rejoinder, the counsel for the respondent submitted that the appellant has conceded on the preliminary objection and the consequence is to dismiss the case.

He further submitted that, the submission of the applicant counsel on irregularities can be prayed in other application and not this one. The Counsel for the applicant submitted the cases which in our case are irrelevant and distinguishable. There is no case on time barred from our present matter. Hence, the learned counsel prayed this preliminary objection be sustained.

Having considered and weighed the argument from both sides. I will not labour on the issue raised by the applicant, although this issue is very important, however this is not its forum, the court should be and only be focused on the issue raised. Indeed the issue for determination is whether the appeal was filed out of prescribed time. The counsel for the applicant has conceded that the appeal is time barred. The law that governs appeal to this Court is the Land Disputes Act Cap.216 as amended by the Written Laws Miscellaneous Amendment No. 2 of 2016, where section 41(2) provides;

*“An appeal under subsection (1) may be lodged within 45 days after the date of the decision.....”*


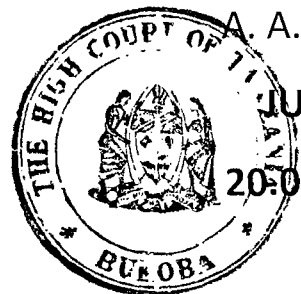
There is no dispute that the appeal at hand was filed out of time which is 16 days later. It is also not disputed that there is no leave of the court that was sought, leave alone to be granted to the appellant to file the matter out of the time prescribed. In the case of **Theobald Rugambwa V Rugimbana Rugaibula (Land Appeal No. 60/2014 Bukoba High Court** this court dismissed the appeal filed out of time.

This being the position, I find the appeal before me is time barred.

Costs to follow the event.

It is so ordered.

Right of Appeal explained.

  
A. A. Bahati  
JUDGE  
20.03.2020  




Date: 20.03.2020

Coram: Hon. A. A. Bahati – J

Appellant: Absent

Respondent: Jasson Kasaizi, Nelson Kasaizi.

B/Clerk: L. Kyaruzi.

**Order:** The ruling was delivered in the presence of respondents.

  
A. A. Bahati  
JUDGE  
20.03.2020  
