

**IN THE HIGH COURT OF TANZANIA
AT BUKOBA**

LAND CASE APPEAL NO. 30 OF 2017

*(Arising from Land Case Revision No. 30 of 2015 of the District Land and Housing Tribunal for Kagera at Bukoba
and original Katoina Ward Tribunal Case No. 4 of 2013)*

LAURENT BENEDICTO.....APPELLANT

VERSUS

ALISTIDIA BENEDICTO.....1st RESPONDENT
REDEPTA BENEDICTO.....2nd RESPONDENT
JOHARITHA BENEDICTO.....3rd RESPONDENT

RULING

Masoud, J.

The appellant filed the present appeal against the above three respondents (decree holders in ward tribunal's case No. 4 of 2013). The appeal was not against the decision of the District Land and Housing Tribunal (the district tribunal) exercising its revision powers which was delivered on 25/08/2016 striking out the revision. Rather, the appeal was against a ruling made by the district tribunal in the course of execution of the decree emanating from the trial tribunal's decision (i.e case No. 4 of 2013). The impugned ruling was delivered by the district tribunal on 06/02/2017. The appeal against such ruling was lodged in the trial tribunal on 21/04/2017 on three grounds of complaint. The complaint

was by and large on the execution of the decree emanating from the decision of the trial ward tribunal in Case No. 4 of 2013.

Having been assigned the case for the special cleanup session, I noted that the pleadings were complete and the last order of the previous honourable judge was for mention with a view to fixing a date for the decision of the court. The appeal was heard by filing written submissions in compliance with the order of this court of 07/08/2019. The parties appeared to me on 03/12/2019 for a mention.

Having perused the file I noted that there was an issue to be addressed by the parties on whether the appeal was filed within the period of sixty (60) days as stipulated by section 38 of the Land Disputes Courts Act, cap. 216 R.E 2002 as amended. I invited the parties to address me on the point before I fix the date for my decision. The respondents were represented by Mr Lameck Erasto, learned Advocate, while the appellant was appeared in person unrepresented.


When the applicant and the counsel for the respondents were heard on the above point, the applicant hastily told the court that he had nothing to say as the point had been well addressed in his written submissions

on the record. On the other hand, the learned counsel submitted that the appeal was incompetent for being filed out of time contrary to the requirement of section 38 of the Land Disputes Courts Act (supra). He urged the court to dismiss the appeal with costs.

I have considered the appeal mindful of the fact that there is a decision of the district tribunal exercising its revision jurisdiction which was never appealed against by the appellant. This decision which struck out the revision by the appellant was delivered on 25/08/2016. The decision which is in this appeal challenged by the appellant was given on 06/02/2017 as the district tribunal was executing the decree emanating from the trial ward tribunal's decision. There is in the circumstances no doubt that the applicant could not have applied against the decision as he never in the first place appeal against the ruling which struck out his application for revision. In this respect, it means that the decision of the trial ward tribunal remains unchallenged.

Even if it is argued that the appeal is properly brought against the above mentioned decision of the district tribunal, the same cannot stand for being preferred outside the period of sixty (60) days contrary to the requirement of section 38 of the Land Disputes Courts' Act (supra).

In the result, and for the foregoing reasons, the appeal is out of time. It is accordingly dismissed. Having considered the circumstances and the parties involved, I find it prudent not to make any order as to costs. It is so ordered.

 *She*
B. S. Masoud
Judge

Date: 13/03/2020

Coram: Hon. J. M. Minde - DR

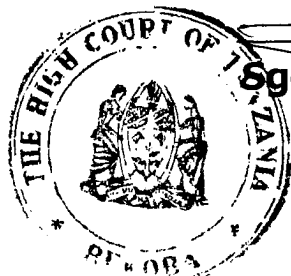
Applicant: Present

1st Respondent: }
2nd Respondent: } Absent
3rd Respondent: }

B/Clerk: Lilian Paulo

Court:

This matter was fixed for ruling today and I deliver the said ruling this 13th day of March, 2020 in the presence of the Applicant and in the absence of the Respondent. Let them supplied with the delivered ruling.

 Sgd: J. M. Minde - DR
13/03/2020